



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

OCTOBER 16, 2018

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. Invocation by Rev. Glenn Rice of Port Orange United Church of Christ
2. Pledge of Allegiance
3. Roll Call

B. CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only
5. Agenda Approval
6. Approval of Minutes
 - a. October 2, 2018 - Regular City Council Meeting
7. Bid Awards and Contract Items
 - a. Approval of Addendum No.2 to Engagement Letter with Gray Robinson Relating to Wireless Communication Towers and Facilities
 - b. Approval of FY19 Expenditures for CentralSquare Technologies, Inc. (f/k/a Superion, Inc./SunGard Public Sector, Inc.) and delegating authorization to the City Manager for execution of all related documents.
 - c. Approval of FY19 Expenditure Authorization for AT&T Mobility Wireless Communication Services & Equipment
8. Resolution No. 18-44 - Approval of Grant Agreement for \$644,250 from Federal Emergency Management Agency for the Virginia Avenue and Monroe Street Drainage and Water Quality Project
9. Resolution No. 18-45 - Approval of Grant Agreement for \$750,000 from Florida Department of Environmental Protection for the Port Orange Flooding Mitigation and Stormwater Improvements

10. Resolution No. 18-48 - Ratifying and Accepting \$3,000 grant from Target Corporation for Shop With A Cop Program
11. Resolution No. 18-49 - Budget Appropriation (FY18)
12. Resolution No. 18-50 - Acceptance of Deed of Dedication for public purposes along the north side of Herbert Street, adjacent to 3658 Nova Road
13. Major Special Event – Christmas Tree Sales at Dunlawton Square Shopping Center located at 3813 Nova Road
14. Renewal #1 of the License Agreement with Sandy Point Progressive Sports LLC for water recreation services at Riverwalk Park
15. Approval of a License Agreement at 215 Fox Place
16. Approval to Submit Grant Application for Florida Department of Law Enforcement Edward Byrne Memorial Justice Assistance Grant Direct (JAGD) Program
17. Approval to Submit Grant Application for Federal Emergency Management Agency's Assistance to Firefighters Program

C. CITIZEN PARTICIPATION (Agenda)

18. Request for Utility Lien Reduction for 5204 Sydney Street

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

E. COUNCIL COMMENTS

19. Comments/Concerns from Council Members

F. BOARD APPOINTMENTS, INTERVIEWS, REPORTS

20. Citizen Advisory Committee for TPO

G. PUBLIC HEARING

21. Second Reading - Ordinance No. 2018-26 - LDC Text Amendment Chapter 17, Section 26 - GPU Zoning District
22. Second Reading - Ordinance No. 2018-27 - Shopping Carts (Continued from 9/19/18)

H. REGULAR AGENDA

23. 3449 Shamrock Drive - License Agreement (Dock)

I. COMMENTS

24. City Attorney Comments
25. City Manager Comments

J. COUNCIL COMMITTEE REPORTS

26. City Council Committee Reports

- a. ArtHaus
- b. First Step
- c. Port Orange/South Daytona Chamber of Commerce
- d. Roundtable of Elected Officials

K. 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 AN 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, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY 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.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

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
PORT ORANGE, FLORIDA
OCTOBER 2, 2018

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

Invocation - Pastor Mike Swingle - First Baptist Church of Harbor Oaks

Pledge of Allegiance

Roll Call Present: Councilman Bob Ford
 Councilman Chase Tramont
 Vice Mayor Scott Stiltner
 Mayor Donald Burnette

Absent: Councilman Drew Bastian

Also Present: City Manager Jake Johansson
 City Attorney Margaret Roberts
 City Clerk Robin Fenwick

CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only

There were none.

5. Agenda Approval

Motion to pull Items #7(d) and #11 was made by Councilman Bob Ford and Seconded by Councilman Chase Tramont. Motion carried unanimously by voice vote.

6. Approval of Minutes

- a. September 19, 2018 - Regular City Council Meeting
- b. September 25, 2018 - Joint Workshop w/Parks & Recreation Advisory Board
- c. September 25, 2018 - City Council Workshop

7. Bid Awards and Contract Items

- a. Approval of Change Order No 1 to Task Authorization No 13 with Mead and Hunt, Inc. for the South Commonwealth Water Main Improvement Project in the amount of \$17,626; revised Task Authorization amount not to exceed \$185,026.
- b. Intent to Award ITB 18-23 Master Lift Station Cleaning

- c. Approval to Award ITB #18-27 - Causeway Park North Boat Ramp to Brothers Construction, Inc.
 - d. Approval to Renew the Annual Service Agreement with Halifax Humane Society
 - e. Approval of Task Authorization No. 11 with Kimley Horn for ADA Transition Plan - Phase 1
 - f. Intent to Award ITB #18-29 to A.G. Pifer Construction Company, Inc. as it relates to the Public Works Administration Building Roof Replacement.
- 8. Resolution No. 18-46 - Ratifying and Accepting \$98,579.00 for 2018-2019 Victims of Crime Act (VOCA) Grant
 - 9. Approval of Foster Settlement
 - 10. Approval to Submit Grant Applications for Transport Start Up Equipment
 - 11. Approval of an "After the fact" Historic Tree Removal Permit for 713 Kristina Court

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

Item 7(d) - Approval to Renew the Annual Service Agreement with Halifax Humane Society

Councilman Bob Ford asked for an update as to the amount being spent. Jake Johansson, City Manager, provided details regarding the monies spent. Halifax Humane Society is the most economic option.

Motion to approve Item #7(d) was made by Councilman Bob Ford and Seconded by Councilman Chase Tramont. Motion carried unanimously by voice vote.

Item #11 - Approval of an "After the fact" Historic Tree Removal Permit for 713 Kristina Court

Councilman Bob Ford asked why no fine was being charged for cutting down a tree without a permit. Mr. Johansson advised the current code does not include a fine. The tree ordinance is coming to Council on October 23, 2018.

Motion to approve Item #11 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Bob Ford. Motion carried unanimously by voice vote.

CITIZEN PARTICIPATION (Non-Agenda – 15 minutes)

There were none.

COUNCIL COMMENTS

12. Comments/Concerns from Council Members

Mayor Don Burnette asked Council to share their thoughts on Senator Dorothy Hukill's passing, which they did.

Mayor Don Burnette asked Chief Thomas Grimaldi to provide an update regarding the DUI checkpoint held last weekend. Chief Grimaldi advised there was one DUI arrest and lots of education to drivers. The grant and the entire process was a success.

SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

13. Report from KemperSports on the Cypress Head Golf

Bob Duquette, General Manager, provided details of the financial report from August 2018 and recent events held at the golf course. The course was voted the best course in Volusia County for the 9th year in a row, as well as the Best of the Best for Volusia/Flagler area.

PUBLIC HEARING

14. Second Reading - Ordinance No. 2018 - 24 - Annexation/1727 & 1737 Fern Park Drive; (Case No. 18-10000003)

Mayor Burnette read Ordinance No. 2018-24.

ORDINANCE NO. 2018-24

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ANNEXING APPROXIMATELY ±15.3 ACRES OF PROPERTY LOCATED AT 1727 AND 1737 FERN PARK DRIVE; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2018-24 was made by Councilman Bob Ford and Seconded by Vice Mayor Scott Stiltner.

Robert Rienhagen, citizen, expressed his concerns with the annexation and wetlands.

Motion carried unanimously by roll call vote.

15. First Reading - Ordinance No. 2018-26 - LDC Text Amendment Chapter 17, Section 26 - GPU Zoning District

Mayor Burnette read Ordinance No. 2018-26.

ORDINANCE NO. 2018-26

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE CITY OF PORT ORANGE LAND DEVELOPMENT CODE; AMENDING CHAPTER 17, SECTION 26, TO REMOVE THE CHANGE OF USE PUBLICATION AND HEARING PROCEDURE FOR PERMITTED USES IN THE GOVERNMENT/PUBLIC USE ZONING DISTRICT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2018-26 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Chase Tramont.

Penelope Cruz, Planning Manager, provided details regarding the requested changes. The site plan process will provide review and action by Council. This public hearing requirement does not allow for action to be taken on the item.

Motion carried unanimously by roll call vote.

16. Second Reading - Ordinance No. 2018-29 - Adoption of 18-3 Comprehensive Plan Amendments/Colony in the Wood (Case No. 18-20000005)

Mayor Burnette read Ordinance; No. 2018-29.

ORDINANCE NO. 2018-29

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, RELATING TO COMPREHENSIVE PLANNING; AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING THE FUTURE LAND USE DESIGNATION FOR +/- 24.7 ACRES FROM OFFICE/RESIDENTIAL TRANSITION TO URBAN MEDIUM DENSITY RESIDENTIAL (4-8 UNITS/ACRE) FOR PROPERTY GENERALLY LOCATED IN THE FRONT PORTION OF THE COLONY IN THE WOOD MOBILE HOME PARK AT 4000 S. CLYDE

MORRIS BOULEVARD; PROVIDING FOR CONFLICTING ORDINANCES, SEVERABILITY, AND AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2018-29 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Chase Tramont. Motion carried unanimously by roll call vote.

REGULAR AGENDA

17. Temporary Urban Chicken Pilot Program Update

Ms. Cruz provided an update on the pilot program for urban chickens. It is set to expire in January 2019. She asked Council for direction.

Motion to make the program permanent was made by Councilman Bob Ford and Seconded by Councilman Chase Tramont.

Councilman Chase Tramont asked for details from the program participants, complaints, etc. Ms. Cruz explained there was only one (1) complaint and they have not had any issues with the five (5) permits issued.

Vice Mayor Scott Stiltner expressed concerns regarding the program. He believes there may be some properties where it's acceptable but other neighborhoods not. Mr. Johansson suggested notifying the homeowner's associations, so they can determine whether they want to change their covenants and restrictions.

Councilman Bob Ford is concerned with limiting the rights of homeowners.

Mayor Don Burnette doesn't believe the one noise complaint he received is significant.

Mark Dickinson, citizen, asked Council to approve the continuation of the program.

Sharon Herr, citizen, supports the program and has enjoyed having the chickens.

Scott Pontius, 806 Wildwood Circle, asked Council to continue the program.

Carol Banning, 1431 Chamale Lane, explained the details of the program and asked Council to continue it. She believes it has been successful.

Motion was withdrawn by Councilman Bob Ford.

18. Contract Amendment - City Manager

Mayor Don Burnette provided details of the changes being requested.

Motion to approve the amendment contract was made by Vice Mayor Scott Stiltner and Seconded by Councilman Chase Tramont. Motion carried unanimously by roll call vote.

19. Financial Report August 2018

Tracey Riehm, Finance Director, provided Council with an update of the financial position of the City.

Mayor Don Burnette asked Ms. Riehm to watch for the need of incremental increases to avoid larger increases in the future.

COMMENTS

20. City Attorney Comments

Margaret Roberts, City Attorney, advised Council Scotty Boys Landscaping has begun their work. They have requested reimbursement for the 2% bond refund as required.

Motion to approve was made by Vice Mayor Scott Stiltner and Seconded by Chase Tramont.

21. City Manager Comments

Mr. Johansson asked Chief Grimaldi to discuss the FDLE investigation against Captain Kimberly Kilpatrick. Chief Grimaldi advised the complaint was unfounded by FDLE.

Mr. Johansson advised he will be meeting with the citizens at Shamrock relating to the dock. He's hoping to come to an agreement with the neighbors.

COUNCIL COMMITTEE REPORTS

22. City Council Committee Reports

- a. River to Sea TPO – Councilman Bob Ford attended in Councilman Drew Bastian's absence and provided an update.
- b. General Employees' Pension Plan - Vice Mayor Scott Stiltner provided an update from the recent meeting of the General Employees' Pension Board.

ADJOURNMENT – 7:58 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, CMC, City Clerk

DRAFT



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B7a) Approval of Addendum No.2 to Engagement Letter with Gray Robinson Relating to Wireless Communication Towers and Facilities

DEPARTMENT: City Attorney

GOAL:

RECOMMENDED MOTION: Move to approve the Addendum No. 2 to Engagement Letter with Gray Robinson Relating to Wireless Communication Towers and Facilities.

SUMMARY: The law offices Gray Robinson through the services of Gary Resnick, Esquire, Special Legal Counsel for the City of Port Orange was engaged last fiscal year to assist the Community Development and Public Utilities departments. The ordinance governing right of way uses for wireless telecommunication facilities was recently adopted by council and the Public Utilities staff received extensive training during the summer to administer the permits provided for in the ordinance.

Currently, Resnick is assisting with the preparation of the ordinance governing private property uses related to wireless communications facilities. Both ordinances are required to regulate wireless communication activities in the City of Port Orange; and have implemented and will implement a local standard consistent with the restrictions imposed by the federal government.

Resnick will also participate in the legal analysis performed for individual site plans applications as filed subsequent to the adoption of the new private property ordinance. Costs of services incurred for site plan applications will be regulated by the ordinance and reimbursable to the city. FY 2019 estimated costs of services are \$35,000 based on current applicant interest. If the same trend of applications continues FY 2020, the estimated annual costs are \$10,000.00.

Legal has prepared and attached Addendum No. 2 for council's consideration.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Staff Report	Staff Report.pdf
2.	Addendum No. 2 - Gray Robinson, PA	Addendum No. 2 - Gray Robinson, PA.pdf

Tracy London

Created/Initiated - 09/11/2018

Margaret Roberts	Approved - 10/03/2018
Tim Burman	Approved - 10/03/2018
Tracey Riehm	Approved - 10/03/2018
Matthew Jones	Approved - 10/03/2018
Jake Johansson	Approved - 10/04/2018
Robin Fenwick	Final Approval - 10/05/2018



STAFF REPORT

Gray Robinson Attorney at Law provided the City with consulting services related to multiple personal wireless communication tower applications submitted to the City during the Summer/Fall 2018. The consulting services were specifically related to the review if a tower was needed or if an antenna could be located on an existing tower. Further services were also provided in completing a review of the capacity and co-location requirements in the Land Development Code for the proposed AT&T tower (Case No. 18-32000001) at 651 Taylor Road. At the time these application submittals were received, the City did not have a Radio Frequency (RF) Engineer that specializes in determining if there is a need within the City for the proposed ATT communication tower that could not be met by co-locating antennas on existing communication towers or by installing the subject antennas on alternative support structures. These services are estimated at \$10,000.

Gray Robinson also provided the City an estimate of \$22,500.00 - \$25,000.00 in attorney's fees to rewrite and update the development requirements for Personal Wireless Communications governed by Chapter 16, Section 9 of the Land Development Code. The current personal wireless communications regulations in the Land Development Code have not been comprehensively updated since 1997. The code re-write is anticipated to take Gray Robinson 80-85 hours of work and includes a review of the existing City requirements for personal wireless communications, development of reasonable regulations that are legally enforceable, assistance with preparation of materials for hearings, and attendance at public meetings. The City Attorney's office and Community Development will be working with Gray Robinson to prepare the communications regulations updates to the Land Development Code and bring them before the Council.

ADDENDUM NO. 2
to Gray Robinson, P.A. Engagement Letter Executed August 7, 2017
Relating to Wireless Communication Towers and Facilities

This Addendum No. 2 is entered into on the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **GRAY ROBINSON, P.A.** ("Consultant"), a Florida professional association, whose principal address is 301 E. Pine Street, Suite 1400, Orlando, Florida 32801 (collectively "the Parties"). The Parties have agreed as follows:

Whereas, this Addendum No. 2 supplements the terms provided in the Engagement Letter between Gray Robinson P.A. and City of Port Orange executed August 7, 2017, and Addendum No. 1; and

Whereas, the initial term of this Contract commenced on August 7, 2017.

Now, therefore, the parties agree as follows:

1. City Obligations. In return for the legal services identified herein which shall include the scope of work detailed in the attached Exhibit "A", the City agrees to compensate the Consultant \$350 per hour for shareholders and blended hourly rates of \$200 per hour for of Counsels and other Associates of the firm, but not to exceed \$20,000.00.

In addition to the ordinance work described in Exhibit "A", the Consultant shall also provide legal services to assist with development reviews related to communication facilities, as needed, at the rates set forth above. However, for legal services that provide for cost recovery to be paid or reimbursed by a private entity, the Consultant shall be reimbursed at the rate of \$400 per hour for shareholder and blended hourly rates that range from \$225 to \$300 for Associates and Of Counsels, subject to reimbursement by the private entity.

2. All other terms and conditions of the Engagement Letter executed August 7, 2017 and Addendum No. 1, shall remain in full force and effect, except for conflicts herewith.

Witnesses:

GRAY ROBINSON, P.A.

Printed Name: _____

By: _____
Printed Name: _____
Title: _____

Printed Name: _____

If this Contract is signed by an individual not identified as the President of the corporation in the records of the Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, as _____ of Gray Robinson, P.A., a Florida professional association, and who 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

Printed Name: _____

By: _____
M.H. Johansson, City Manager

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by M.H. Johansson, as City Manager of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

Witnesses:

Attest:

Printed Name: _____

By: _____
Robin L. Fenwick, CMC, City Clerk

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

EXHIBIT “A” – Scope of Work

Background:

The City’s land use authority over towers and antennas has been preserved under both Florida and federal law with certain restrictions. In 1997, the City adopted Ordinance 1997-23 to address such Facilities. It appears that the LDC was amended in 1999, 2001 and most recently in 2012. The existing LDC does not address regulations adopted by the FCC in 2014 to address collocating antennas on existing towers and base stations pursuant to eligible facilities requests. These are limited situations, but restrict local authority over such applications. Some provisions of the Code dealing with the application process and collocation should be amended to comply with applicable regulations.

Proposed Work Plan to Amend Code:

We would propose revisions to LDC Chapter 2, Section 2, Definitions, to be consistent with Florida, Federal and industry terms.

The majority of the LDC suggested revisions would be to Chapter 16, Section 9. We would review other provisions of the LDC that may need to be amended to reflect the proposed revisions, such as Ch. 16, Section 4, addressing the height of such Facilities.

Our plan for revising the LDC would include the following:

- Creating a list of issues for the City staff to consider with respect to zoning issues, such as zoning districts, zoning hierarchies, set back requirements, fall zones, stealth requirements, collocation, and other concerns. In addition, the existing LDC does not address amateur radio antenna facilities, which the City may want to regulate to the extent allowed under FCC regulations.
- Engage in conference calls with appropriate City staff to obtain input on such issues.
- Prepare a draft Ordinance for internal review.
- Engage in conference calls to discuss the Ordinance.
- Revise Ordinance per input.
- Distribute the proposed Ordinance to representatives of the communications industry, obtain comments and suggest appropriate revisions based on their comments; and
- Assist with preparation of materials for hearings on the proposed Ordinance.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B7b) Approval of FY19 Expenditures for CentralSquare Technologies, Inc. (f/k/a Superior, Inc./SunGard Public Sector, Inc.) and delegating authorization to the City Manager for execution of all related documents.

DEPARTMENT: Administrative Services

GOAL: N/A

RECOMMENDED MOTION: Move to approve spending authorization with CentralSquare Technologies, Inc. for annual software maintenance and technical support for FY 2018 in the amount of \$111,369.66; and upon approval of the City Attorney, to authorize the City Manager and City Clerk to execute any documents required for this purpose, including documents related to the name change.

SUMMARY: The City has been under contract with CentralSquare Technologies, Inc. (formerly Superior, Inc., previous to that SunGard Public Sector, Inc. and previous to that H.T.E, Inc.), for their proprietary software since 1988. The fee for annual software maintenance and technical support covers 30 software modules currently utilized throughout all city departments, including archived public safety operations. A detailed inventory of the modules covered in the annual maintenance contract for FY 2019 is provided in the supporting documentation. The annual support also entitles the City to any new enhancements or upgrades the vendor may make available to these modules.

While the city is moving in the direction of a new enterprise resource planning system in the coming years, it is not anticipated that we will be able to eliminate CentralSquare within this fiscal year.

Project No.: N/A Funding Account No.: 501-0700-519.46-36

ATTACHMENTS:

1.	SunGard Maintenance Contract	SunGard Maintenance Contract.pdf
2.	Superion Proposal	Superion Proposal.pdf
3.	Maintenance Contract Memorandum	Maintenance Contract Memorandum.pdf

James Hicks
Jamie Miller
Tracey Riehm
Margaret Roberts

Created/Initiated - 09/27/2018
Approved - 09/27/2018
Approved - 10/01/2018
Approved - 10/03/2018

Jake Johansson
Robin Fenwick

Approved - 10/04/2018
Final Approval - 10/05/2018

H.T.E., INC. SOFTWARE LICENSE AND SERVICES AGREEMENT

This Agreement for Licensed Program(s) and related Support Services, subject to the limitations and conditions set forth in this Agreement, as more specifically described in the attached Supplement and Schedule(s), is entered into by and between:

H.T.E., Inc. (HTE), a Florida Corporation, with its principal place of business at: 1000 Business Center Drive, Lake Mary, Florida 32746;

AND

CITY OF PORT ORANGE, FLORIDA
1000 City Center Circle
Port Orange, Florida 32119-9619

"CUSTOMER",
with its principal place of business at

HTE and Customer agree that when this Agreement is signed by both parties, all terms and conditions contained in this Agreement will apply to any Licensed Program(s) and/or service(s) offered under this Agreement. HTE will furnish to the Customer by this Agreement:

1. The HTE Licensed Program(s) listed in the Supplements to this Agreement.
2. Grant of a nonexclusive, nontransferable license to use the Licensed Programs on AS/400 Serial # _____ and/or its backup or replacement. If the AS/400 is replaced, then the new serial number will be provided within 10 days of installation of the Licensed Programs.
3. Support service(s) as described herein.
4. Modifications, training, conversion and project management services as described herein and listed in the Supplement(s) to this Agreement.

With respect to the Licensed Program(s), the Customer agrees to accept responsibility for:

1. The installation of the Licensed Program(s) plus any enhancements and/or updates.
2. Use of the programs to achieve the Customer's intended results.

I. DEFINITIONS

"Licensed Program(s)" shall mean a licensed data program or set of programs, or routines and subroutines, consisting of a series of instructions or statements in machine readable object code and source code form and any related licensed program materials provided for use in connection with the program. Unless otherwise provided herein, the term "Licensed Program(s)" shall refer solely to HTE Licensed Program(s).

"Machine" or "CPU" or "Hardware" shall mean computer hardware designated, supplied or approved by HTE for operation of any Licensed Program(s).

"Source Code" shall mean a copy of the computer programming code in human-readable form and related system documentation, including updates, applicable enhancements, and all pertinent commentary as well as any procedural code such as job control language.

"Object Code" shall mean a copy of the computer programming code assembled or compiled in magnetic or electronic binary form on software media, which are readable and usable by machines, but not generally readable by humans without reverse assembly, reverse compiling, or reverse engineering.

"Installation Date" shall mean the date that the Licensed Program(s) is installed/loaded on a designated machine.

"Delivery Date" shall mean the date that the Licensed Program(s) is received by the Customer, or no later than ten (10) calendar days after shipment by HTE. For services, the "Delivery Date" refers to the date services are performed.

"Acceptance" shall mean that the installed/loaded Licensed Program(s) has gone through the program testing and acceptance period as described in Section VI.

"Support Services" shall mean the maintenance and support call services provided to Customer for the HTE Licensed Program(s).

II. LICENSE

The license granted under this Agreement permits the Customer to:

- a. Use the Licensed Program(s) on the designated Machine(s).
- b. Copy the Licensed Program(s) in machine readable object code form to provide sufficient copies to support the Customer's use of the Licensed Program(s) as authorized under this Agreement.
- c. Transfer the Licensed Program(s) to a back-up CPU to be used when the designated CPU is temporarily inoperable.
- d. Modify any Licensed Program(s) for the Customer's use, provided that:
 1. The Customer supplies HTE with written notification of the modification or
 2. The modification is made according to the HTE conventions of the HTE Modification Library and not to the base system.

The Licensed Program(s) should not be reverse assembled or reverse compiled in whole or in part.

Failure to modify the programs in the manner prescribed may negate the ability to maintain the Licensed Program(s) by HTE and will relieve HTE of any responsibility related to the modified program and any effected programs to provide support services. Any updated work using portions of the Licensed Program(s) that meets the above criteria will continue to be subject to all terms of this Agreement.

- e. Have access to a copy of the Licensed Program(s), belonging to HTE, in Object Code and Source Code form.

III. TERM

This Agreement is effective from the date on which it is signed by both parties and will remain in effect until terminated by the Customer upon one (1) month written notice or by HTE as stated in this section. This Agreement may be terminated by the Customer only when all Licensed Program(s) have been returned to HTE or destroyed. An authorized representative of HTE, upon request, shall be afforded sufficient access to Customer's premises to verify that all use of Licensed Program(s) have been discontinued. Notice of discontinuance of any or all licenses shall not be considered notice of termination of this Agreement unless specifically stated.

License(s) granted under this Agreement may be discontinued by the Customer upon written notice, effective immediately, during the testing period described in Section VI.

HTE may discontinue any license or terminate this Agreement upon one (1) month written notice if the Customer fails to comply with the terms and conditions of this Agreement. In the event Customer breaches its obligations under this Agreement, HTE shall notify Customer and Customer shall have thirty (30) days to cure the breach. If a dispute exists, prior to any termination, the accelerated dispute resolution section shall be followed. Any responsibility of the Customer provided under this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.

IV. HTE SUPPLIED PRODUCT(S) AND/OR SERVICES

HTE shall supply the Licensed Program(s) specified in the Supplement(s) in machine readable object code and source code form with instructions for installation by the Customer. Standard form options, if applicable, will be provided by HTE. In addition, HTE shall supply related services and/or maintenance, and may supply specialized hardware or other third party products necessary for the performance of certain special features or functions. These services and deliverables, if any, shall be identified and more specifically described in the Supplement(s), and shall constitute the complete list of deliverables provided by HTE.

HTE assumes no liability for any hardware or other third party products beyond manufacturers' warranty specified in the Supplement(s). Customer acknowledges that these products were selected by Customer, based upon HTE's recommendation, to support features desired by Customer, and that they are included in the Agreement solely for that purpose. HTE represents that there are no undisclosed third party software programs imbedded within the HTE Licensed Programs that require additional license agreements from a third party.

V. PRICING AND PAYMENT TERMS

All pricing and terms associated with Licensed Program(s) and any other HTE products and services are specified in the Supplement(s) to this Agreement. The prices in the Supplement(s) shall be firm upon execution of this Agreement and may be changed subsequent to the Execution Date as specifically provided therein. HTE may increase its prices without notice on items not provided for in the Supplement(s).

Fees for HTE Support Services are payable prior to the commencement of such Support Services. Should Customer require Support Services prior to receipt of payment and the contractual start date of such Service, Customer will be billed at the then prevailing hourly rate until payment is received.

Fees for support services for any third party products provided for under this Agreement shall be payable to and in accordance with the provisions of the third party Vendor unless otherwise specified in the Supplement(s).

HTE recognizes that Customer is a municipality and, as of the Execution Date, states that it is tax exempt. Any taxes for which Customer becomes obligated resulting from this Agreement or activities resulting from this Agreement, including but not limited to sales and/or use tax, will be the responsibility of the Customer. HTE will accept an exemption certificate from the Customer in lieu of taxes if the Customer qualifies for exempt status. Such exemption certificate will need to be provided to HTE upon contract execution.

If funds are not appropriated for a succeeding fiscal year subsequent to the one in which this Agreement is entered into, for the purpose of this Agreement, then Customer may terminate this Agreement upon thirty (30) days prior written notice to HTE. Should termination be accomplished in accordance with this paragraph, Customer shall be liable only for payments due through the date of termination. Customer agrees that should it terminate in accordance with this paragraph, it shall not purchase, lease or rent products which are substantially equal to or perform functions similar to those for which this Agreement was entered into for the remainder of the fiscal year during which termination occurs. This provision shall survive any termination of the Agreement.

VI. LICENSED PROGRAM TESTING AND ACCEPTANCE

Beginning on the date ten (10) days after delivery of the Licensed Program(s) by HTE, the Licensed Program(s) will be available for Non-Productive Use (as hereinafter defined) for testing for a period of thirty (30) days. Non-Productive Use, as used in this section, means the period of time prior to Customer's established "go-live" date. This testing period is to determine whether the Licensed Program(s) functions operate together and whether the Licensed Program(s) meet the Customer's specifications and/or requirements.

At any time during the testing period, upon written notice, the Customer may discontinue the Licensed Program(s) and receive full credit or refund for the amount of the license fee. If written notice of discontinuance is not received by HTE prior to the end of the testing period, or if the Customer uses the Licensed Program(s) for other than Non-Productive Use during the testing period, the Licensed Program(s) shall be deemed to be accepted under the provisions of this Agreement.

VII. LICENSED PROGRAM SERVICES

Training on HTE Licensed Program(s), if necessary, will be provided for in the Supplement(s) and will be invoiced as incurred at the completion of each training session at the rate specified in the applicable Supplement(s). The Customer understands that the number of training sessions and the number of hours of training vary per application, and are estimated based on HTE's experience in the training of other Customers for the same applications. Additional training can be provided upon request of the Customer at the then prevailing rate per hour.

Conversion, if necessary, will be provided for in the Supplement(s) and will be invoiced as incurred at the rate specified in the applicable Supplement(s) or at HTE's then prevailing rate per hour. Data must be given to HTE in an IBM compatible format on a specified magnetic media. Data must match data field definition. Input data file clean up shall be the responsibility of the Customer. Additional conversion, if necessary, will be invoiced at the prevailing rate per hour. It is understood that no two systems and file structures are exactly alike and there may be a need for some manual conversion efforts to take place along with the electronic conversion.

Modifications, if any, will be provided for in the Supplement(s) and will be controlled by the HTE System Change Request form ("SCR") which will be prepared for the Customer by the HTE Project Manager responsible for that module. HTE will proceed on the SCR when the signed SCR is returned with the Customer's authorization along with appropriate payment as provided for in the Supplement(s).

Project Management is strongly recommended by HTE, and will be provided for in the Supplement(s) and will be invoiced as incurred.

HTE will provide the Customer with the Support Services listed below for the HTE Licensed Program(s) for such period as may be listed in the Supplement(s), and commencing one hundred twenty (120) days after delivery of the Licensed Program(s). Thereafter the Services will be provided on a year-to-year basis provided the Customer exercises the option and pays HTE's annual support fee.

- a. Toll free telephone support line; twenty-four (24) hours a day, seven (7) days per week.
- b. Electronic support.
- c. Product updates and new releases of the covered Licensed Program(s).
- d. Response time to calls within approximately two (2) hours of call.
- e. Error corrections as made.

Support for the first one hundred twenty (120) days after delivery of the Licensed Program(s) shall be provided by the appropriate HTE project manager or trainer.

Upon commencement of the HTE Support Services, telephone support will be provided using a dedicated support telephone number, and the Customer must have Electronic Customer Support installed. Support requests relating, if applicable, to third party hardware or software will be directed to the Vendor of such products unless otherwise provided for in the Supplement(s). Unless otherwise stated herein or in the Supplement(s), HTE shall assume no responsibility for the pricing of, payment to, or provision for support services of any third party Vendors.

HTE shall not supply any support services nor be liable for any damages to damaged Licensed Program(s) or portions thereof (the existence of which damage is to be determined solely by HTE) in the event that any portion of the Licensed Program(s) is used on equipment or with software products or software systems other than those supplied or approved by HTE. Customer shall notify Customer's HTE customer care representative if Customer attaches to the computer system any equipment not supplied or approved by HTE. In the event HTE, in response to a request from Customer, investigates and determines that a

system support problem is the result of Customer's change in the computer system, then Customer shall reimburse HTE for time and materials used in investigating the problem.

Customer acknowledges that the systems supplied by HTE have unique operating properties and are a matched system of components which must not be altered, modified, or tampered with without specific assistance from HTE designated personnel. HTE shall not be liable for any damage or loss of function which results from violating the approved operating environment by personnel not approved by HTE.

In the event of the failure of any hardware component or other third party product supplied under this Agreement to function or operate in conformance with specifications, HTE shall have no obligation for warranty beyond that of the hardware or other third party manufacturer or that specified in the Supplement(s).

For any hardware or third party products which HTE provides to Customer, HTE shall insure that Customer, rather than HTE, is listed as the original purchaser for purposes of the manufacturer's or third party vendor warranties.

VIII. PROTECTION AND SECURITY OF PROPRIETARY MATERIALS

The Customer acknowledges that the Licensed Program(s), including the source code (if applicable), design specifications and associated documentation of the Licensed Program(s), (the "HTE Proprietary Information") constitute proprietary information and trade secrets of HTE and will remain the sole property of HTE. The Customer agrees that it shall not at any time sell, assign, transfer or otherwise make available to, or allow use by, a third party any of the HTE Proprietary Information. The Customer shall hold in confidence the HTE Proprietary Information for its benefit and internal use only by its employees. HTE acknowledges and agrees that Customer may provide access to the HTE Proprietary Information to its auditors from CPA firms engaged by Customer; however, the parties agree that if Customer desires to provide HTE Proprietary Information to agents or representatives of Customer, Customer shall enter into a three-party agreement with HTE and the agent or representative. Said three party agreement shall be in substantially the form of the three party agreement attached hereto. The Customer further acknowledges that, in the event of a breach or threatened breach by the Customer of the provisions of this paragraph, HTE has no adequate remedy in money damages, and, accordingly, shall be entitled, without bond, to an injunction against such breach or threatened breach. Notwithstanding anything in the foregoing to the contrary, if Customer is required by law to disclose HTE Proprietary Information, Customer shall not thereby be in breach of this Section VIII.

IX. WARRANTY

HTE warrants that for a period of ninety (90) days after acceptance, as provided for in Section VI, the HTE Licensed Program(s) listed in the Supplement(s) will perform in substantial compliance with the Reference Documentation (as provided on each individual Supplement) supplied by HTE, provided the Licensed Program(s) are used in the Proper Operating Environment. The current Proper Operating Environment is listed on Attachment 1 attached hereto and incorporated herein by this reference. HTE does not warrant that the functions contained in the Licensed Program(s) will meet the Customer's requirement or will operate in the combinations which may be selected for use by the Customer after the ninety (90) day period after the completion of the Licensed Program testing described in Section VI. Any other utility or incidental software distributed by HTE (which software by definition does not include the Licensed Program(s)) will be on an "AS IS" and "WITH ALL FAULTS" basis without warranty of any kind either expressed or implied. HTE shall be responsible only for the Licensed Program(s) and products as originally supplied and accepted by Customer, and for changes made to the Licensed Program(s) by HTE's authorized representatives. HTE will not be responsible for the consequences of attempts at changes or modifications to the products and Licensed Program(s) made by the Customer or any other unauthorized party.

HTE warrants that it has the right to license the HTE Licensed Program(s) listed in the Supplement(s) and that the HTE Licensed Program(s) does not infringe any intellectual property of any third party. HTE agrees to indemnify Customer against expenses, including reasonable attorneys' fees, and liability arising from any claim of infringement related to HTE Licensed Program(s) provided HTE shall have the right to control the defense or settlement of any such claim. If use of the HTE Licensed Program(s) by the Customer is enjoined by any infringement proceeding, HTE shall, if possible, obtain without unreasonable expense the right of License for the Customer to use the HTE Licensed Program(s), or modify or replace the Licensed Program so that it is not infringing, or if that is not possible, HTE shall refund to the Customer the license fee(s) paid under this Agreement for the particular Licensed Program(s) that is determined to be infringing.

HTE does not make any representations or warranties with respect to intellectual property rights of any third party products. Any such representations or warranties are made solely by the Vendor of such products, and shall not be construed as a warranty with respect to infringement and the like by HTE.

HTE MAKES NO WARRANTIES, OTHER THAN AS STATED HEREIN, WITH RESPECT TO THE PARTICULAR LICENSED PROGRAM(S), EITHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

X. COPY AND USE

Customer shall have the right to use the Licensed Program(s) in equipment or systems supplied or approved by HTE while this Agreement is in effect. Customer shall have the right to make copies of the Licensed Program(s) and the associated reference documentation for archival and/or backup purposes only. Any copies made by Customer shall be the property of HTE.

XI. LIMITATION OF LIABILITY AND REMEDIES

To the extent permitted by law, and to the extent provided for under this Agreement, for claims related to bodily injury, death and damage to real property and tangible personal property, HTE shall indemnify and hold harmless the Customer from and against all direct damages and costs of any kind, including but not limited to reasonable attorney fees, arising out of or resulting from any willful or negligent acts, or willful or negligent omissions of HTE, regardless of whether such claims are caused in part by any party indemnified hereunder, but not to the extent that the Customer is legally liable for such damages and costs. In no event, however, will HTE be liable for any consequential damages, including lost profits, savings or procurement costs, even if HTE has been advised of their possibility.

Except for HTE's obligations to indemnify the Customer under infringement actions, as noted in Sections IX and XII of this Agreement, and claims for personal injury or damages to real or tangible personal property caused by HTE's negligence as noted above, HTE's liability for damages to the Customer for any cause whatsoever under this Agreement, regardless of the form of action, is limited to the total amount of fees paid by Customer under this Agreement for HTE Licensed Program(s) and services, not including any fees associated with HTE project management and related out-of-pocket expenses.

In situations involving performance or nonperformance of Licensed Program(s) furnished under this Agreement, the Customer's remedy is (1) the correction by HTE of Licensed Program defects, or (2) if, after repeated efforts, HTE is unable to make the Licensed Program(s) operate as warranted, the Customer shall be entitled to recover damages to the limits set forth in this section.

XII. PATENT AND COPYRIGHT INDEMNITY

HTE will, at its expense, defend the Customer against any claim that the HTE Licensed Program(s) supplied hereunder infringe a U. S. patent or copyright, trade secrets or other intellectual property, and HTE will pay all costs, damages and attorney's fees that a court finally awards as a result of such claim. To qualify for such defense and payment, the Customer must:

- a. Give HTE prompt written notice of any such claim, and
- b. Allow HTE to control, and fully cooperate with HTE in the defense and all related settlement negotiations.

The Customer agrees to allow HTE, at HTE's option and expense, if such claim has occurred, to procure the right for the Customer to continue using the Licensed Program(s) or to replace or to modify them so that they become non-infringing, or provide replacement software. If neither of the foregoing alternatives is available on terms which are reasonable in HTE's judgment, upon written request, the Customer will return the Licensed Program(s) to HTE, and HTE shall refund to the Customer the license fee(s) paid under this Agreement for the particular Licensed Program(s) that is determined to /be infringing.

HTE shall have no obligation with respect to any such claim based upon the Customer's modification of the Licensed Program(s) or their combination, operation or use with data or programs not furnished by HTE or in other than the specified operating environment. This section states HTE's entire obligation to the Customer regarding infringement.

XIII. COPYRIGHT PROTECTION

The software and any written documentation associated therewith are protected under the Copyright Laws of the United States. HTE warrants and Customer acknowledges that HTE has the following exclusive rights with regard to the Licensed Program(s):

- a. To reproduce the Licensed Program(s) in any or all forms.
- b. To adapt, transform or rearrange the Licensed Program(s).
- c. To prepare other products derivative of the Licensed Program(s).
- d. To control the distribution of the Licensed Program(s).

Customer agrees not to violate any of HTE's rights or to assist or aid others in doing so. Customer agrees to preserve all copyright and other notices in the Licensed Program(s) and written documentation.

XIV. MISCELLANEOUS AGREEMENT PROVISIONS

Applicable Law. This Agreement shall be governed by the laws of the State of Florida.

Binding Agreement. The parties signing this Agreement and any Supplement(s) to this Agreement for the respective parties warrant that they have been duly authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement and that the Agreement and any Supplement to the Agreement are a valid and binding obligation of the parties.

Assignment. This Agreement and the rights, title, and interest may not be assigned or transferred by the Customer without the prior written consent of HTE, which consent may be withheld by HTE. HTE may assign its rights, title and interest by providing prior written notice to the Customer, provided the assignee agrees to be bound by all contract provisions.

Successors Bound. The terms and conditions of this Agreement shall extend and inure to the benefit and be binding on the respective successors and assigns of Customer and HTE.

Force Majeure. HTE is not responsible for failure to have fulfilled its obligations under this Agreement due to causes beyond its control. Such acts shall include but are not limited to acts of God, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, flood, hurricanes, communication line failures, power failures, earthquakes, or other disasters.

Severability. If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Notices. Any notice provided for herein shall be in writing and sent by registered or certified mail, postage prepaid, addressed to the party for which it is intended at the address set forth on the first page of the Agreement or to such other address as either party shall from time to time indicate in writing. Any such notice to be deemed to be effective upon receipt or five (5) days from the date of the mailing, whichever occurs first.

Headings. Numbered topical headings, articles, paragraphs, subparagraphs or titles in this Agreement are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of the terms thereof.

Non-Hiring Statement. During the term of this Agreement, neither party may offer to hire or in any way employ or compensate any of the employees of the other party, nor shall a party entice or solicit an employee to leave the other party.

Non-waiver. Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement.

Non-Discrimination. During the performance on this Agreement, HTE agrees as follows: HTE will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona-fide occupational qualification reasonably necessary to the normal operation of business. HTE agrees

to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. HTE agrees and fully supports and complies with the American Disabilities Act of 1990.

Quiet Enjoyment. Customer shall be entitled during the term of any Schedule A to this Agreement to use the Licensed Programs listed thereon without disturbance, subject only to Customer obligations under the terms of this Agreement and the applicable Schedule A. HTE represents that this Agreement is not subject or subordinate to any right of HTE's creditors.

Insurance. HTE shall maintain insurance during the life of this Agreement, and Customer must be listed as an additional insured on that insurance document (a waiver of subrogation on the workers compensation shall suffice in lieu of additional insured on workers' compensation), in an amount and a form set forth below, to insure against risks which are identified herein.

Insurance	Standards	Comments
Workers' Compensation: Limits 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 Limits: Commercial General Liability (including Completed Operations and Contractual Liability) Special Conditions:	Combined Single Limit Bodily Injury and Property Damage \$1,000,000/occurrence; \$1,000,000/combined single limit. 30 days notice to Governmental Entity, Additional Insured, Waiver of Subrogation.	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 liability and property damage insurance in amounts as requested by the Railroad.
Comprehensive Limits: Business, Automobile Liability to include all automobiles. Additional Coverage: Special Conditions:	Auto Liability Bodily Injury: \$250,000 each person; \$500,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-owned, Hired Car 30 days notice of cancellation to Governmental Entity, Additional Insured, Waiver of Subrogation	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage.
Property Insurance Limits: Builders Risk Additional Coverage: Special Conditions:	Buildings – Completed value of contract "All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy 30 days notice of cancellation to Governmental Entity, Additional Insured. Owner named as insured AIMA.	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.

	30 days notice of cancellation to Owner, Additional insured, waiver of subrogation	
Professional Liability Limits: (Errors and Omissions)	Coverage - \$1,000,000 minimum	
Special Conditions:	30 days notice of cancellation to Owner, Additional insured, waiver of subrogation.	

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 according to the A.M. Best Company. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by FS 440.57.

Accelerated Dispute Resolution. In the event of a dispute arising under this Agreement the objecting party shall notify the other, in writing, of the nature of the dispute, and the parties shall attempt to resolve the issue under dispute. If the dispute is not resolved within thirty (30) calendar days following written notification by either party, then the following procedures shall apply:

1. Each party shall appoint one person to act as impartial representative in an attempt to resolve the dispute. The appointed individuals shall be of sufficient knowledge and experience to understand and deal with the dispute. The set of four (4) individuals consisting of the City Project Manager for this project, HTE representative and the two (2) appointees is called a Dispute Resolution Group.
2. The Dispute Resolution Group shall convene no later than fourteen (14) calendar days following written notification of the existence of an unresolved dispute and shall meet for a minimum of four (4) four-hour sessions during the subsequent ten (10) working days in an attempt to resolve the dispute. All resolutions of disputes shall be reduced to writing and signed by the Customer's City Manager or his designee (City Project Manager) and HTE's Representative. Such resolutions shall constitute modifications to this Agreement and further shall constitute a binding agreement between the parties. However, any resolution, previous resolution, or aggregation increasing the total Agreement amounts by more than 10% will require the prior Customer approval.

Arbitration. It is hereby agreed between the parties that if resolution is not reached pursuant to the Accelerated Dispute Resolution procedures outlined above, then such dispute shall be submitted by the objecting party to arbitration in accordance with the provisions of the American Arbitration Association. Any such arbitration shall be conducted by a panel of three (3) arbitrators in a mutually agreeable location under the laws of the State of Florida. The parties shall endeavor to ensure that the arbitrators are knowledgeable in business information and data processing systems. One (1) arbitrator shall be chosen by each party involved, and the third arbitrator will be mutually agreed upon by both parties. If the parties cannot agree on the selection of a third arbitrator, the two (2) arbitrators previously chosen will select the third arbitrator. The decision and award of the arbitrators will be non-binding so that either party may then file an action in any court of competent jurisdiction. Any disputes submitted for arbitration must be submitted within two (2) years from the date of the occurrence or from the date on which the injured party learns of the occurrence, whichever is later.

Public Entity Crimes Statement. 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 or real property to a public entity, may not get 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 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

Year 2000 Compliance

- a) HTE represents and warrants that the Licensed Program(s) is/are designed to be used prior to, during, and after the calendar year 2000 AD, which calendar year is a leap year, and that the Licensed Program(s) shall operate during each such time period without error relating to date data, specifically including any error relating to, or the product of, date data which represents or references different centuries or more than one century. Without limiting the generality of the foregoing, HTE further represents and warrants:
- That the Licensed Program(s) shall not abnormally end or provide invalid or incorrect results as a result of date data, specifically including date data which represents or references different centuries or more than one century;
 - That the Licensed Program(s) has been designed to ensure year 2000 compatible, including, but not limited to, date data century recognition, calculations which accommodate same century and multi-century formulas and date values, and date data interface values that reflect the century;
 - That the Licensed Program(s) includes "year 2000 capabilities". For the purposes of this Software License and Services Agreement, "year 2000 capabilities" means the Licensed Program(s):
 - shall manage and manipulate data involving dates, including single century formulas and multi-century formulas, and shall not cause an abnormally ending scenario within the application or generate incorrect values or invalid results involving such dates; and
 - provides that all date-related user interface functionalities and data fields include the indication of century using the "fixed window" approach or four digit year; and
 - provides that all date-related data interface functionalities include the indication of century using the "fixed window" approach or four digit year.
- b) Term. The Year 2000 Compliance Warranty set forth herein shall begin as of the date of this Agreement and end of the date after January 1, 2001, subsequent to which the Licensed Program(s) have operated without a breach of the Year 2000 Compliance Warranty for a consecutive six (6) month period.
- c) Limitation on Use/Limitation on Liability. Customer shall not modify the Licensed Program(s) in any manner which would affect the performance of the Licensed Program(s) in such a manner as to cause it to fail to meet the Year 2000 Compliance Warranty set forth herein. There shall be no liability on the part of HTE for any failure of the Licensed Program(s) to conform to the Year 2000 Compliance Warranty to the extent that any such failure is attributable to a modification of the Licensed Program(s) by Customer.

Entire Agreement. This Agreement and any Supplement(s) and/or Amendments to this Agreement constitute the entire Agreement between the parties, and there are no representations, conditions, warranties, or collateral agreements, expressed or implied, statutory or otherwise, with respect to this Agreement other than as contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties to this Agreement. This Agreement may not be modified, omitted or changed in any way except by written agreement signed by persons authorized to sign agreements on behalf of the Customer and of HTE.

Both parties acknowledge that they have read this Agreement and agree to be bound by the terms and conditions herein.

THE CITY OF PORT ORANGE

By: _____

Name: _____

Title _____

Date _____

H.T.E., INC.

By: _____

Name: _____

Title _____

BRIAN B. HEAFY
Vice President, H.T.E., Inc.

Date _____

ORIGINAL



1000 Business Center Drive
Lake Mary, FL 32746
www.Superion.com
Toll free 800-727-8088

Invoice

Invoice No
214727

Date
8/29/2018

Page
1 of 3

Billing Inquiries: Accounts.Receivable@Superion.com

Bill To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Ship To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
2171LG	City of Port Orange		USD	Net 30	9/28/2018

Description	Units	Rate	Extended
Contract No. 080321			
1 NaviLine Document Management Services - Annual Maintenance Fee NAVI-DMS - Document Management Services Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$1,216.53	\$1,216.53 ✓
2 NaviLine Building Permits - Annual Maintenance Fee NAVI-Building Permits Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$8,380.59	\$8,380.59 ✓
3 NaviLine Code Enforcement - Annual Maintenance Fee NAVI-Code Enforcement Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$3,643.47	\$3,643.47 ✓
4 NaviLine Land/Parcel Mgmt-Annual Maintenance Fee-NSP - Annual Maintenance Fee Naviline-Land/Parcel Management Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$3,772.49	\$3,772.49 ✓
5 NaviLine Business Licenses - Annual Maintenance Fee NAVI - Business Licenses Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$3,643.47	\$3,643.47 ✓
6 NaviLine Planning & Engineering - Annual Maintenance Fee NAVI - Planning/Engineering Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$5,959.81	\$5,959.81 ✓
7 NaviLine QRep Catalogs - Annual Maintenance Fee QRep Catalogs for BP, CE,CR, CX, FA, GM, LX, MR, OL, PI, PR, PZ Maintenance: Start:10/1/2018, End: 9/30/2019	12	\$0.00	\$0.00
8 NaviLine Cash Receipts-Annual Maintenance Fee-NSP - Annual Maintenance Fee NAVI - Cash Receipts Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$3,631.18	\$3,631.18 ✓
9 NaviLine Fixed Assets-Annual Maintenance Fee-NSP - Annual Maintenance Fee Naviline - Asset Management I Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$3,440.71	\$3,440.71 ✓



111,369.66 Total



1000 Business Center Drive
Lake Mary, FL 32746
www.Superion.com
Toll free 800-727-8088

Invoice

Invoice No	Date	Page
214727	8/29/2018	2 of 3

Billing Inquiries: Accounts.Receivable@Superion.com

Bill To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Ship To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
2171LG	City of Port Orange		USD	Net 30	9/28/2018

	Description	Units	Rate	Extended
10	NaviLine GMBA w/Extended Reporting - Annual Maintenance Fee NAVI - GMBA w/Extended Reporting Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$14,278.96	\$14,278.96 ✓
11	NaviLine Accounts Receivable-Annual Maintenance Fee-NSP - Annual Maintenance Fee NAVI-Accounts Receivable Maintenance: Start: 10/1/2018, End: 9/30/2019	1	\$5,050.49	\$5,050.49 ✓
12	NaviLine Purchasing/Inventory-Annual Maintenance Fee-NSP - Annual Maintenance Fee NAVI-PURCHASING INVENTORY Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$7,846.05	\$7,846.05 ✓
13	NaviLine Payroll/Personnel-Annual Maintenance Fee-NSP - Annual Maintenance Fee NAVI-Payroll/Personnel Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$5,959.81	\$5,959.81 ✓
14	NaviLine Customer Information System - Annual Maintenance Fee NAVI - Customer Information Systems Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$16,097.62	\$16,097.62 ✓
Contract No. 090549				
15	NaviLine QuatreD Mobile Bar Code Interface-PA Bundle - Annual Maintenance Fee Bar Code Interface for Financials (QF) - Quatred Public Administration Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$2,654.27	\$2,654.27 ✓
Contract No. 070834				
16	NaviLine Time & Attendance Interface-Generic - Annual Maintenance Fee Time Keeping Interface - TC Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$811.03	\$811.03 ✓
Contract No. 2000369				



1000 Business Center Drive
Lake Mary, FL 32746
www.Superion.com
Toll free 800-727-8088

Billing Inquiries: Accounts.Receivable@Superion.com

Invoice

Invoice No	Date	Page
214727	8/29/2018	3 of 3

Bill To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Ship To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
2171LG	City of Port Orange		USD	Net 30	9/28/2018

	Description	Units	Rate	Extended
17	Click2Gov CIS Module - Annual Maintenance Fee Click2Gov CX Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$3,551.31	\$3,551.31 ✓
18	Click2Gov BP Module - Annual Maintenance Fee Click2Gov BP Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$3,256.39	\$3,256.39 ✓
Contract No. 121047				
19	Click2Gov OL Module - Annual Maintenance Fee Click 2 Gov - Business Licenses Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$1,197.45	\$1,197.45 ✓
20	Click2Gov PZ Module - Annual Maintenance Fee Click2Gov - Planning/Engineering Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$1,482.83	\$1,482.83 ✓

Please make remittance payable to Superion, LLC
ACH / EFT:
Routing Number 0710-000-39
Account Number 81880-15335
Bank of America (Phone 800-432-1000)
E-mail payment details to: Accounts.Receivable@superion.com

Check:
12709 Collection Center Drive
Chicago, IL 60693

Subtotal	\$95,874.46
Tax	\$0.00
Invoice Total	\$95,874.46
Payments Applied	\$0.00
Balance Due	\$95,874.46

APPROVED FOR PAYMENT

Date: _____



Invoice

1000 Business Center Drive
Lake Mary, FL 32746
www.Superion.com
Toll free 800-727-8088

Invoice No
214202

Date
8/24/2018

Page
1 of 2

Billing Inquiries: Accounts.Receivable@Superion.com

Bill To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Ship To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
2171LG	City of Port Orange		USD	Net 30	9/23/2018

Description	Units	Rate	Extended
Contract No. 2000369			
1 Click2Gov Core Module - Annual Maintenance Fee Click2Gov Core Module Embedded Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$1,468.45	\$1,468.45 ✓
Contract No. 00010790			
2 NaviLine Click2Gov Test Server - Annual Maintenance Fee Click2Gov Test Server Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$1,047.38	\$1,047.38 ✓
Contract No. 081026			
3 NaviLine QRep Reporting End User - Annual Maintenance Fee QRep End User Maintenance: Start:10/1/2018, End: 9/30/2019	5	\$383.43	\$1,917.14 ✓
Contract No. 091566			
4 NaviLine QRep Reporting End User - Annual Maintenance Fee QRep End User Maintenance: Start:10/1/2018, End: 9/30/2019	5	\$383.43	\$1,917.14 ✓
Contract No. 9803042			
5 NaviLine QRep Reporting End User - Annual Maintenance Fee QRep End User -5 Maintenance: Start:10/1/2018, End: 9/30/2019	5	\$370.65	\$1,853.25 ✓
6 NaviLine QRep Reporting Administrator - Annual Maintenance Fee QRep Administrator - 1 Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$370.65	\$370.65 ✓





1000 Business Center Drive
Lake Mary, FL 32746
www.Superion.com
Toll free 800-727-8088

Billing Inquiries: Accounts.Receivable@Superion.com

Invoice

Invoice No	Date	Page
214202	8/24/2018	2 of 2

Bill To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Ship To
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Attn Kim Le Van
1000 City Center Parkway
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United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
2171LG	City of Port Orange		USD	Net 30	9/23/2018

Please make remittance payable to Superion, LLC
ACH / EFT:
Routing Number 0710-000-39
Account Number 81880-15335
Bank of America (Phone 800-432-1000)
E-mail payment details to: Accounts.Receivable@superion.com

Check:
12709 Collection Center Drive
Chicago, IL 60693

Subtotal	\$8,574.01
Tax	\$0.00
Invoice Total	\$8,574.01
Payments Applied	\$0.00
Balance Due	\$8,574.01



Invoice

1000 Business Center Drive
Lake Mary, FL 32746
www.Superion.com
Toll free 800-727-8088

Billing Inquiries: Accounts.Receivable@Superion.com

Invoice No
214765

Date
8/29/2018

Page
1 of 1

Bill To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Ship To
City of Port Orange
Attn Kim Le Van
1000 City Center Parkway
PORT ORANGE FL 32129
United States

Customer No	Customer Name	Customer PO #	Currency	Terms	Due Date
2171LG	City of Port Orange		USD	Net 30	9/28/2018

Description	Units	Rate	Extended
Contract No. 120638			
1 NaviLine Work Orders/Facility Management - Annual Maintenance Fee Work Orders/Facilities Management Maintenance: Start:10/1/2018, End: 9/30/2019	1	\$6,921.19	\$6,921.19

Please make remittance payable to Superion, LLC
ACH / EFT:
Routing Number 0710-000-39
Account Number 81880-15335
Bank of America (Phone 800-432-1000)
E-mail payment details to: Accounts.Receivable@superion.com

Check:
12709 Collection Center Drive
Chicago, IL 60693

Subtotal	\$6,921.19
Tax	\$0.00
Invoice Total	\$6,921.19
Payments Applied	\$0.00
Balance Due	\$6,921.19



CITY OF PORT ORANGE
INFORMATION TECHNOLOGY DIVISION
Administrative Services Department

1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5550
FAX 386-506-5559
www.port-orange.org



Memorandum

TO: Jamie Miller, Administrative Services Director

FROM: James Hicks, Information Technology Manager

DATE: 9/25/2018

SUBJECT: CentralSquare Technologies, Inc. Annual Software & Support Maintenance Contract

The annual software and technical support maintenance agreement with CentralSquare Technologies, Inc. (formerly Superior, Inc., previous to that SunGard Public Sector, Inc., and previous to that H.T.E, Inc.) comprise each of the individual software modules used throughout the City. CentralSquare has been the City's financial and community service software provider for approximately 28 years.

The modules can be grouped as follows:

Community Service: Building Permits, Business Licenses, Code Enforcement, Planning & Engineering, and Land & Parcel Management.

Financial Systems: Accounts Receivable, Cash Receipts, Customer Information Systems, Fixed Assets, GMBA, Payroll/Personnel, Purchasing & Inventory, and Work Order & Facility Management.

A brief overview of each module as follows:

- **QRep:** Ad-Hoc report writer used to query data and create reports.
- **Click2GovBP:** Web based application allowing citizens and contractors to schedule inspections, view inspection results and check status of permits.
- **Click2GovCX:** Web based application offering citizens up-to-date account information, billing history, and service & consumption summaries. Customers can utilize the system to make payments, setup auto-pay, and receive e-bills.
- **Time Keeping Interface:** A custom interface used to integrate Executime (the City's time & attendance software) into CentralSquare's Payroll module.
- **Naviline Building Permits:** Manages building permit applications, information & structure specifications, and scheduling & tracking of inspections.
- **Naviline Business Licenses:** Used to issue and renew all business licenses.
- **Naviline Code Enforcement:** Process, organize, and track all residential and commercial complains and violations.

- **Naviline Cash Receipts:** Used for payment and deposit transactions.
- **Naviline Customer Information Systems (Utility Billing):** Managed customer and location maintenance, billing, delinquency, penalty, refund, write-off, meter reading processing, and charge calculation for flat and metered rate services.
- **Naviline GMBA w/ Extended Reporting:** Complete fund accounting system that includes transaction entry, disbursement processing, general ledger accounting, budgeting, and project investment tracking. Extended reporting creates financial reports that meet the Government Finance Officers Association's Government Accounting, Auditing, and Financial Reporting (GAAFR) guidelines.
- **Naviline Asset Management:** Tracks items and the value of an item throughout its economic lifetime and supplies detailed accounting information. Also, tracks the location and value of each item to facilitate physical inventory.
- **Naviline Land/Parcel Management:** A centralized database of address and parcel information interfacing with other CentralSquare modules.
- **Naviline Accounts Receivable:** Record keeping, billing, and processing for receivables.
- **Naviline Purchasing/Inventory:** Processes all purchase orders and manage physical inventory.
- **Naviline Payroll/Personnel:** Process payroll and employee personnel records.
- **Naviline Planning/Engineering:** Tracking of projects which include the planning process and all charges and receipts processing.
- **DMS (Document Management Services):** Creates Microsoft Word documents using mail merge fields provided by CentralSquare. Documents include Business Tax Receipts, Business Tax Renewal letters, Planning & Engineering project documents, Building Permit Certificate of Occupancy, Accounts Receivable invoices, requisition notifications, and e-bill notifications.
- **Bar Code Interface for Financials:** Bar Code Interface used between Quatred and CentralSquare's Purchasing/Inventory module. Currently, Information Technology, Fire Department, and the City's Warehouse use this software.

The CentralSquare Technologies annual maintenance contract is valid for 1 calendar year beginning October 1st, 2018 until September 30th, 2019. The total cost of maintenance and support for all included software is \$111,369.66.

James Hicks
Information Technology Manager



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B7c) Approval of FY19 Expenditure Authorization for AT&T Mobility Wireless Communication Services & Equipment

DEPARTMENT: Administrative Services

GOAL: N/A

RECOMMENDED MOTION: Move to approve spending authorization with AT&T Mobility National Accounts, LLC, for wireless communication services and equipment for FY 2019 in an amount not to exceed \$180,000; and to authorize the Mayor and City Clerk to execute any documents required for this purpose.

SUMMARY: The city is currently under contract with AT&T Mobility National Accounts, LLC, through a participating addendum to the Western States Contracting Alliance Master Agreement.

AT&T Mobility currently provides wireless communication service for 165 mobile phones (of which approximately 130 are smart phones), as well as 140 wireless data cards and hot spots used throughout the city, predominately in public safety.

Anticipated expenses for FY19 based on FY18 averages are estimated to be approximately \$180,000. Details related to monthly service fees and costs are attached as part of the supporting documentation.

While staff are currently researching mobility communications service through other providers in order to seek cost savings, it is too early to predict any forward movement with those providers.

Information Technology administers the contract and is responsible for monitoring citywide expenditures. Funding for wireless services comes from the communication services line item (41-00) in the operating budgets of each department.

The master agreement is currently set to expire on June 30th, 2019. However, staff expects the agreement to be extended prior to expiration.

Project No.: N/A Funding Account No.: Multiple 41-00

ATTACHMENTS:

1.	ATT FY18 Memorandum	ATT FY18 Memorandum.docx
2.	WSCA Master Service Agreement	WSCA+Master+Service+Agreement.pdf

3.	Amendment 1 - Extension	Amendment+1+-+Extension.pdf
4.	Port Orange Participating Addendum	Port+Orange+Participating+Addendum.pdf

James Hicks	Created/Initiated - 09/27/2018
Jamie Miller	Approved - 09/27/2018
Tracey Riehm	Approved - 10/01/2018
Margaret Roberts	Approved - 10/03/2018
Jake Johansson	Approved - 10/04/2018
Robin Fenwick	Final Approval - 10/05/2018

CITY OF PORT ORANGE
ADMINISTRATIVE SERVICES DEPARTMENT
Information Technology Division

1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5550
www.port-orange.org



MEMORANDUM

TO: Jamie Miller, Administrative Services Director

FROM: James Hicks, Information Technology Manager

SUBJECT: AT&T Mobility Annual Expenditure for Wireless Communication Services & Equipment

DATE: 09-26-2018

CC: Kim Le Van, Helpdesk Specialist

The City of Port Orange currently uses AT&T Mobility National Accounts, LLC, as its provider of wireless communication services and equipment. The current contract, via a participating addendum in a Western States Contracting Alliance Master Agreement, was ratified by City Council at the December 10, 2013 meeting and was originally effective only through October 31st, 2016. However, the WSCA Master Agreement has been extended through June 30th, 2019 via amendment #1. Staff expect the agreement to be renewed once again prior to expiration.

The Information Technology division oversees the contract as well as manages the purchasing and issuing of wireless devices to the respective department within the city. Presently, the city maintains 165 mobile phones and 140 wireless data cards and hot spots, predominantly issued to public safety.

The current agreement with AT&T Mobility provides the city with the following features:

- A pool of 20,100 minutes per month to be shared amongst all 160 mobile phones.
- Unlimited data usage for each smart phone and mobile data device.
- Unlimited text messaging for each smart phone.
- Waived activation fees.
- No early termination fees.

The pricing structure is as follows:

- \$35.00/month (plus applicable taxes and fees) for basic wireless phones.
- \$53.50/month (plus applicable taxes and fees) for smart phones with email capability.
- \$42.50/month (plus applicable taxes and fees) for mobile data devices.

The current agreement with AT&T Mobility also provides city staff and family members with a 17% discount on personal service plans and accessory purchases.

The request to authorize an annual expenditure not to exceed \$180,000 with AT&T Mobility takes into account the monthly service charge for all wireless phones and data cards, devices purchases and replacements, accessories such as cases, car chargers, holsters, as well any applicable taxes and fees.

Information Technology oversees the contract and manages the devices. Actual costs are budgeted for and billed to each department as part of their communication services (41-00) line items.

James Hicks
Information Technology Manager

MASTER SERVICE AGREEMENT

A Contract between the Western States Contracting Alliance
Acting by and through the State of Nevada

and

AT&T MOBILITY NATIONAL ACCOUNTS LLC

RECITALS

Whereas, pursuant to Nevada Revised Statute (NRS) 277.100, NRS 277.110, NRS 333.162(1)(d), and NRS 333.480 the Chief of the Purchasing Division of Nevada is authorized to enter into cooperative group-contracting consortium;

Whereas, WSCA issued Request for Proposal #1907 for Wireless Voice Service, Wireless Broadband Service, Accessories and Equipment, dated February 3, 2011, as amended, which is attached hereto and incorporated herein as Attachment BB (the "Solicitation");

Whereas, Contractor submitted its Response to the Solicitation, which is attached hereto and incorporated herein as Attachment CC (the "Response");

Whereas, on or about May 24, 2011, and in connection with the Solicitation, WSCA gave notice of its intent to award contracts to certain entities including Contractor (the "Notice of Intent to Award");

Whereas, WSCA and Contractor intend to enter into a contract in connection with the Solicitation and the Notice of Intent to Award that operates to both (a) set forth terms and conditions applicable between WSCA and/or the Lead State, and Contractor with respect to the overall procurement; and (b) set forth the primary, first-in-precedence terms and conditions applicable between Contractor and Participating Entities participating in the Contract.

In consideration of the above premises, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

1. **REQUIRED APPROVAL.** The Master Service Agreement (aka the "Contract") shall not become effective until and unless approved by the WSCA Directors.

2. **DEFINITIONS.**

2.1 **“Contract” and “Master Service Agreement”** mean this document, entitled “Master Service Agreement,” including, without limitation, Contractor’s Special Terms and Conditions, as may be amended by the Lead State, and Contractor, together with other incorporated documents as more fully described in §5 herein.

2.2 **“Contractor”** means the vendor entity that, along with WSCA, is a party to the Contract and that performs services and/or provides goods for WSCA under the Contract.

2.3 **“Fiscal Year”** is the Lead State’s fiscal year, which is the period beginning July 1 and ending June 30 of the following year.

2.4 **“Participant” and/or “Participating State”** means a state or other authorized entity that (a) has executed a Participating Addendum; or (b) has signed (and not revoked) an Intent to Contract at the time of the award of this Contract.

2.5 **“Participating Addendum” and/or “PA”** mean an agreement between Contractor and a Participant, in form and substance substantially similar to Exhibit 1 to the Special Terms and Conditions, through which such Participant participates in the Contract.

2.6 **“Participating Entity” and/or “Buyer”** mean a Participant, Participating State or other entity properly authorized by a Participant to purchase services and products under the Contract, or that otherwise participates in the Contract through the corresponding Participating Addendum.

2.7 **“Special Terms and Conditions”** means Contractor’s additional terms and conditions, unique to Contractor with respect to its corresponding services and products, which are attached hereto and incorporated herein as Attachment AA.

2.8 **“State” and/or “Lead State”** means the State of Nevada and its state agencies, officers, employees and immune contractors as defined in NRS 41.0307, and for purposes of this Contract, the Lead State is acting on behalf of WSCA with the authority to enter into, and amend the Contract.

2.9 **“Sub-PA”** means a document executed by a Participating Entity participating in an existing PA pursuant to which separate terms and conditions applicable only to that Participating Entity and other authorized entities.

2.10 **“Total Wireless Spend”** means, with respect to the WSCA Administration Fee, the total amount of the charges set forth on the invoices sent by Contractor to Participating Entities under the Contract, less taxes and surcharges.

2.11 **“WSCA”** means the Western States Contracting Alliance, a cooperative group-contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e.,

colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawai'i, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming.

3. **CONTRACT TERM.** The Contract shall be effective from March 15, 2012 to October 31, 2016, (subject to the WSCA Directors' approval), unless sooner terminated by either Party as specified in paragraph 21 herein. Each Participating Addendum executed in connection with the Contract shall be effective from its corresponding effective date through the end of the Contract's term, unless otherwise specified in that Participating Addendum. Notwithstanding the foregoing, Contractor and the Lead State acknowledge and agree that Contractor may enter into a Participating Addendum with any Participant hereunder on or after this Contract's "effective from" date upon approval of the Lead State. Any such Participating Addendum so executed will be subject to the terms and conditions of this Contract.

4. **CANCELLATION; NOTICE.** The Contract may be canceled by either the Lead State or Contractor upon written notice sixty (60) days prior to the effective date of the cancellation. Cancellation of the Contract due to Contractor's default may be immediate. Further, any Participant may cancel its Participating Addendum upon thirty (30) days written notice to Contractor, unless otherwise limited or stated in the Participating Addendum. Any cancellation under this provision (a) may be in whole or in part; and (b) shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Participating Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.

5. **INCORPORATED DOCUMENTS; ORDER OF PRECEDENCE.** The Contract consists of this document, entitled "Master Service Agreement," together with the following incorporated documents; Contractor's Special Terms and Conditions, the Solicitation, and the Response. The document entitled Master Service Agreement together with the Contractor's Special Terms and Conditions are intended by the Parties to be the primary Participating Entity-facing contractual document in connection with the Solicitation. To participate in the Contract, each Participating Entity must do so pursuant to a Participating Addendum. In the event of any conflict between the terms and conditions of any of the documents comprising or related to the Contract, the following order of precedence will control:

1. The applicable Participating Addendum and/or Sub-PA;
2. The Master Service Agreement;
3. Contractor's Special Terms and Conditions (Attachment AA);
4. The Solicitation (Attachment BB);
5. The Response (Attachment CC);
6. Any individual order placed on the Contract by a Participating Entity

Notwithstanding the foregoing, Contractor and WSCA expressly acknowledge and agree that the terms and conditions unique to the states of Arizona, Montana, Oregon, and Utah, which were included under Attachment K of the Solicitation, were for informational purposes only and are NOT incorporated into the Contract by inclusion in the Solicitation.

The parties acknowledge and agree that each Participating Addendum executed in accordance herewith incorporates the terms and conditions of the Contract, and that the corresponding Participating Entities will be bound to the terms and conditions of that Participating Addendum and the Contract.

Neither the Special Terms and Condition, nor any purchase order(s) issued under the Contract shall contradict or supersede any terms and conditions in the Contract without written evidence of mutual assent to such change(s) between Contractor and the Lead State.

6. [OMITTED]

7. **ASSENT.** The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. [OMITTED]

9. [OMITTED]

10. [OMITTED]

11. **CONSIDERATION.** The parties agree that Contractor will provide the services and products specified in, and in accordance with the Contract. Contracted prices represent ceiling prices for the supplies and services offered. Contractor shall report to the Lead State any price reduction or discount, or other more favorable terms offered to any Participating Entity and the Contractor agrees to negotiate in good faith to re-establish ceiling prices or other more favorable terms and conditions applicable to future orders. Bid prices must remain firm for the full term of the Contract. In the case of error in the extension of prices in the bid, the unit prices will govern. WSCA does not guarantee to purchase any amount under this Contract. Estimated quantities in the Solicitation are for bidding purposes only and are not to be construed as a guarantee to purchase any amount. If Contractor has quoted a cash discount based upon early payment; discounts offered for less than thirty (30) days have not been considered in making the award. WSCA is not liable for any costs incurred by the bidder in proposal preparation.

12. **PAYMENT.** Payment is normally made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After forty-five (45) days the Contractor may assess overdue account charges up to a maximum rate of one (1) percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a Participating State's "Purchasing Card."

13. **TAXES.**

13.1 Payable By Participating Entities. Prices shall be exclusive of state sales and federal excise taxes. Participating Entities may be required to show proof of any tax exemptions. Where a

Participating Entity is not exempt from sales taxes on sales within its state, such Participating Entity will be liable for such taxes, and Contractor shall add the sales taxes on the billing invoice as a separate entry.

13.2 Payable by Contractor. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law for it to pay. The Lead State's applicable real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and NRS 361.159. Contractor agrees to be responsible for payment of any such applicable government obligations not paid by its subcontractors during performance of this Contract. The Lead State may set-off against consideration due any delinquent government obligation owed the Lead State in accordance with NRS 353C.190.

14. FINANCIAL OBLIGATIONS OF PARTICIPATING ENTITIES. Participating Entities' financial obligations are limited to such entities having available funds. Participants incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the Solicitation, the resulting award(s) will be permissive.

15. ORDER NUMBERS. To the extent described in the Response, Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

16. WSCA ADMINISTRATION FEE; REPORTS. The Contractor will pay WSCA an Administration Fee of $1/10^{\text{th}}$ of 1% (one-tenth of one percent) of the Total Wireless Spend, pursuant to the schedule of payments set forth in the Solicitation and Attachment G thereto. The Contractor shall submit quarterly reports to the WSCA Contract Administrator in accordance with the requisites of Attachment G to the RFP.

17. DELIVERY. The prices bid shall be the delivered price to any Participating Entity. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until final inspection and acceptance, when responsibility shall pass to the Participating Entity except as to latent defects, fraud and Contractor's warranty obligations.

18. HAZARDOUS CHEMICAL INFORMATION. The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to any Participating Entity. All safety data sheets and labels will be in accordance with each Participating State's requirements.

19. INSPECTIONS. Goods furnished under the Contract shall be subject to inspection and test by the Participating Entity at times and places determined by the Participating Entity. If the Participating Entity finds goods furnished to be incomplete or in non-compliance with the Contract, the Participating Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Participating Entity, the Participating Entity may cancel

the order in whole or in part. Nothing in this paragraph shall adversely affect the Participating Entity's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

20. INSPECTION & AUDIT.

20.1 WSCA's Rights. The inspection and audit provisions of this §20.1 run to the benefit of WSCA, not to Participating Entities.

a. Books and Records. Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by the Contract. Contractor agrees to keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to WSCA, the Lead State or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by WSCA; the United States Government; the State Auditor or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum four (4) years after the Contract terminates or until all audits initiated within the four (4) years have been completed, whichever is later, and for five (5) years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the State, or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

20.2 Participating Entities' Rights. Contractor will provide each Participating Entity with reasonable access to Contractor's books and records related to the corresponding Participating Entity's payments and participation in the Contract.

21. DEFAULT; REMEDIES.

21.1. WSCA's Rights Upon Default. Any of the following events shall constitute cause for WSCA to declare Contractor in default of the Contract: (1) nonperformance of contractual requirements under the Contract; and/or (2) a material breach of any term or condition of the Contract. In order to declare Contractor in default, WSCA shall issue a written notice of default providing a period in which Contractor shall have a reasonable opportunity to cure the default(s). Time allowed for cure shall not diminish or eliminate Contractor's liability for damages otherwise available under the Contract. If the default remains after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: (1) exercise any remedy provided by law; (2) terminate the Contract or portions thereof; and/or (3) suspend Contractor from receiving future bid solicitations.

21.2 Participating Entity's Rights Upon Default. Any of the following events shall constitute cause for a Participating Entity to declare Contractor in default of the corresponding Participating Addendum or Sub-PA: (1) non-performance of contractual requirements; and/or (2) Contractor's material breach of any term or condition of the Participating Addendum or Sub-PA. In order to declare Contractor in default, a Participating Entity shall issue a written notice of default providing a period in which Contractor shall have a reasonable opportunity to cure the default(s). Time allowed for cure shall not diminish or eliminate Contractor's liability for damages otherwise available under the Participating Addendum. If the default remains after Contractor has been provided the opportunity to cure, the Participating Entity may do one or more of the following: (1) exercise any remedy provided by law; (2) terminate the Participating Addendum, Sub-PA, or portions thereof.

21.3 No Cross Termination. Notwithstanding the foregoing, in the event of a default by Contractor hereunder, then (a) an individual Participating Entity may not terminate the Contract but, instead, may only terminate its own PA; (b) WSCA may not terminate an individual Participating Addendum or Sub-PA, except as a consequence of its termination of the Contract; and (c) a Participating Entity that is not (i) concurrently the Participant or Participating State under the corresponding Participating Addendum, or (ii) a party to a valid Sub-Participation Addendum, may not terminate the corresponding Participating Addendum or Sub-PA and, instead may only terminate any outstanding, unfilled purchase orders made in connection with the corresponding Participating Addendum or Sub-PA.

21.4 Post-Termination Issues. In the event of termination of the Contract or a Participating Addendum for any reason, the parties agree that the provisions of this paragraph survive termination:

a. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under the Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

b. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by WSCA or a Participating Entity;

c. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this contract if so requested by WSCA;

d. Contractor shall preserve, protect and promptly deliver into WSCA's possession all of WSCA's proprietary information in accordance with paragraph (31).

22. REMEDIES NON-EXCLUSIVE. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for attorneys employed by the Lead State. The Lead State may set off consideration against any unpaid obligation of Contractor to Lead State in accordance with NRS 353C.190, or the applicable Participating Addendum. A Participating Entity's right of set-off shall be in accordance with the law of the Participating Entity's state, and the provisions of the applicable Participating Addendum.

23. LIMITED LIABILITY. The Lead State will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of Contractor, WSCA, the Lead State, and/or any and all Participating Entities shall not be subject to punitive damages. In no event shall Contractor be liable for inability of users to access 911 or E911 service. In no event shall either Contractor, WSCA, the Lead State and/or any and all Participating Entities be liable for any indirect, special, consequential or incidental damages, however caused, which are incurred by the other party and which arise out of any act or failure to act relating to this agreement, even if such party has been advised of the claim or potential claim or the possibility of such damages, and in no event shall either party be liable to the other party for punitive damages.

24. FORCE MAJEURE. Neither party to this Contract shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases. WSCA may terminate this Contract after determining such delay or default will reasonably prevent successful performance of the Contract.

25. INDEMNIFICATION.

25.1 Contractor's Obligations to WSCA. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the Lead State's right to participate, the Lead State and/or WSCA from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

25.2 Contractor's Obligations to Participating Entities. The Contractor shall release, protect, indemnify and hold Participating Entities and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

25.3 Exception. Contractor will not be liable for damages that are the result of negligence or willful misconduct by WSCA, the Participating Entities, and/or their respective employees, officers and agencies.

26. INSURANCE SCHEDULE. Unless expressly waived in writing by the Lead State or Participating States, Contractor, as an independent contractor and not an employee of the Lead State or Participating States, must carry policies of insurance in amounts specified in this Insurance Schedule and/or any Insurance Schedule agreed by Contractor and a Participating State via a participating addendum, and pay all taxes and fees incident hereunto. The Lead State and Participating States shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Lead State.

The Lead State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent this Contract. Any failure of the Lead State to timely approve shall not constitute a waiver of the condition.

Insurance Coverage: The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically stated herein or otherwise agreed to by the Lead State, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by the Lead State of the completion of this Contract; or
2. Such time as the insurance is no longer required by the Lead State under the terms of this Contract.

Any insurance or self-insurance available to the Lead State shall be excess of and non-contributing with any insurance required from Contractor. Contractor's required insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the Lead State, Contractor shall provide the Lead State with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the State and immediately replace such insurance or bond with an insurer meeting the requirements. Contractor agrees that the following insurance coverages and policy limits shall also apply to, and operate for the benefit of, each Participating Entity that participates in this Contract pursuant to a Participating Entity.

Workers' Compensation and Employer's Liability Insurance

- 1) Contractor shall provide proof of worker's compensation insurance.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

Commercial General Liability Insurance

- 1) Minimum Limits required:
 - \$25,000,000.00** General Aggregate
 - \$25,000,000.00** Products & Completed Operations Aggregate
 - \$5,000,000.00** Personal and Advertising Injury
 - \$5,000,000.00** Each Occurrence
- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Business Automobile Liability Insurance

- 1) Minimum Limit required: **\$Waived** Each Occurrence for bodily injury and property damage.
 - 2) Coverage shall be for "any auto" (including owned, non-owned and hired vehicles).
- The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Professional Liability Insurance

- 1) Minimum Limit required: **\$ Waived** Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the Contract
- 3) Discovery period: Three (3) years after termination date of Contract.
- 4) A certified copy of this policy may be required.

Umbrella or Excess Liability Insurance

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is "As Broad as Primary Policy"

Commercial Crime Insurance

Minimum Limit required: **\$Waived** Per Loss for Employee Dishonesty

This insurance shall be underwritten on a blanket form amending the definition of "employee" to include all employees of the Vendor regardless of position or category.

General Requirements:

- b. Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. Deductibles and Self-Insured Retentions: Any deductible or self-insured retention shall be at the sole risk of the Contractor.
- e. Policy Cancellation: Except for ten (10) days notice for non-payment of premium, each insurance policy shall be endorsed to state that; without thirty (30) days prior written notice to the Lead State, the policy shall not be canceled or non-renewed, and shall provide that notices required by this paragraph shall be sent by mail to the address identified on page 1 of the Contract.

f. Approved Insurer: Each insurance policy shall be:

- 1) Issued by insurance companies authorized to do business in the Lead State and Participating States or eligible surplus lines insurers acceptable to the Lead State and Participating States and having agents upon whom service of process may be made, and
- 2) Currently rated by A.M. Best as "A-VII" or better.

Evidence of Insurance:

Prior to the start of any Work, Contractor must provide the following documents to the Lead State:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of Contractor.
- 2) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the Lead State prior to the commencement of work by Contractor. Neither approval by the Lead State nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the Lead State or others, and shall be in addition to and not in lieu of any other remedy available to the Lead State or Participating States under this Contract or otherwise.

Mail all required insurance documents to the Lead State identified on page one of the Contract

27. COMPLIANCE WITH LEGAL OBLIGATIONS. Any and all supplies, services and equipment bid and furnished shall comply fully with all applicable Federal and State laws and regulations. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract.

28. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

29. SEVERABILITY. If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

30. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by State, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or

delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator, which approval shall not be unreasonably withheld.

31. OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code, or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) specifically for WSCA in performance of Contractor's obligations under this Contract (collectively, the "Specially Prepared Proprietary Information") shall be the exclusive property of WSCA and all such Specially Prepared Proprietary Information, that has not already been delivered into WSCA's possession, shall be delivered into WSCA possession by Contractor upon completion, termination, or cancellation of this Contract. For purposes of this delivery obligation, Contractor shall provide the Specially Prepared Information to the Lead State. Contractor shall not use, willingly allow, or cause to have such Specially Prepared Information used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of WSCA. Notwithstanding the foregoing, unless otherwise specifically stated in the Contract, neither WSCA nor any Participating Entities shall have any proprietary interest in any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code, or any other documents or drawings, any pre-existing works or materials, or any materials licensed to WSCA (or otherwise provided for WSCA's use) that are NOT specifically prepared by Contractor for WSCA in performance of Contractor's obligations under this Contract, whether such materials are subject to patent, trademark or copyright protection or otherwise.

32. PATENTS, COPYRIGHTS, ETC. The Contractor shall release, indemnify and hold WSCA, the Lead State, and Participating States and their officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this Contract.

33. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The Lead State will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the Lead State for honoring such a designation. The failure to so label any document that is released by the Lead State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

The above provision applies to WSCA and the Lead State, and does not inure to the benefit of Participating Entities. Information or documents produced or received by a Participating Entity in connection with participation in this Contract shall be subject to the public records laws of the Participating Entity's state, and the provisions of the applicable Participating Addendum.

34. CONFIDENTIALITY. Contractor shall comply with applicable laws with respect to confidentiality of all information, in whatever form, produced, prepared, observed or received by

Contractor in connection with the Contract. Unless otherwise mandated by court order, or unless otherwise required by applicable law, Contractor shall keep confidential all information observed or received by Contractor in connection with the Contract to the extent that such information is made confidential under the terms of this Contract.

35. NONDISCRIMINATION. Contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Contractor further agrees to furnish information and reports to requesting Participating Entities, upon request, for the purpose of determining compliance with these statutes. Contractor agrees to comply with each individual Participating State's certification requirements, if any, as stated in the special terms and conditions. This Contract may be canceled if the Contractor fails to comply with the provisions of these laws and regulations. Contractor must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

36. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, §67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

37. **LOBBYING.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

38. **NON-COLLUSION.** Contractor certifies that this Contract and the underlying bid, have been arrived at independently and have been without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the invitation to bid, designed to limit independent bidding or competition.

39. **WARRANTIES.** Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry. Except as specifically set forth above, Contractor makes no representations or warranties, express or implied, and specifically disclaims any representation or warranty of merchantability, fitness for a particular purpose, title, non-infringement or any warranty arising by usage of trade or course of dealing. Further, Contractor makes no representation or warranty that wireless calls or other transmissions will be routed or completed without error or interruption (including calls to 911 or any similar emergency response number), or guarantee regarding network security, the encryption employed by any service, the integrity of any data that is sent, backed up, stored or subject to load balancing, or that contractor's security procedures will prevent the loss or alteration of, or improper access to, a Participating Entity's data and information. Contractor does not authorize anyone to make a warranty of any kind on its behalf, and Participating Entities should not rely on anyone making such statements. Contractor is not the manufacturer of equipment purchased by or provided to participating entities in connection with use of the service.

40. **CONFLICT OF INTEREST.** Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA Participating Entities to any officer or employee of WSCA or Participating Entities to secure favorable treatment with respect to being awarded this Contract.

41. **INDEPENDENT CONTRACTOR.** Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective Participating Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the Participating Entities, except as expressly set forth herein.

42. POLITICAL SUBDIVISION PARTICIPATION. Participation under this Contract by authorized political subdivisions shall be voluntarily determined by the corresponding political subdivision. Contractor agrees to provide products and services to such political subdivisions based upon the same terms, conditions and prices set forth in the corresponding Participating Addendum.

43. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract, a Participating Addendum, and/or order, as applicable, on behalf of the corresponding party has full power and authority to do so. Contractor acknowledges that as required by statute or regulation the Contract is effective only after approval by the WSCA Board of Directors and only for the period of time specified in the Contract. Except as otherwise provided herein, any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency.

44. GOVERNING LAW; JURISDICTION.

44.1 Lead State. The parties acknowledge and agree that with respect to Contractor and the Lead State and/or WSCA, the rights and obligations of the parties hereto shall be governed and construed in accordance with the laws of the state of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The parties consent to the exclusive jurisdiction of the First Judicial District Court, Carson City, Nevada for enforcement of this Contract.

44.2 Participating Entities. The construction and effect of any Participating Addendum or order against the Contract shall be governed by and construed in accordance with the laws of the corresponding Participating Entity. Venue for any claim, dispute or action concerning an order placed against the Contract or the effect of a Participating Addendum shall be in the Participating Entity's State.

45. SIGNATURES IN COUNTERPART. The Contract may be signed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one in the same instrument.

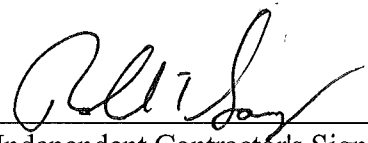
46. AMENDMENTS. The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract administrator. Each Participating Entity expressly acknowledge and agree that it will be bound by the terms and conditions of the Contract and by all existing or future amendments or modifications thereto, all of which are incorporated herein by reference, without the necessity of further action or notice by Contractor or the Lead State. Each Participating Entity hereby consents to and waives notice of any such amendments and modifications.

47. ENTIRE CONTRACT. This Contract, its integrated attachment(s) and, the Participating Addenda, as applicable constitute the entire agreement of the parties and such are intended as a complete

terms and conditions of the Contract and by all existing or future amendments or modifications thereto, all of which are incorporated herein by reference, without the necessity of further action or notice by Contractor or the Lead State. Each Participating Entity hereby consents to and waives notice of any such amendments and modifications.

47. ENTIRE CONTRACT. This Contract, its integrated attachment(s) and, the Participating Addenda, as applicable constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.


Independent Contractor's Signature

AT-T
Date Independent Contractor's Title

Signature

Director of Contracts
Date Title

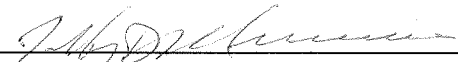

Greg Smith, Administrator, State of Nevada

APPROVED BY WSCA DIRECTORS

On 3-14-12
(Date)

On _____
(Date)

Approved as to form by:


Deputy Attorney General for Attorney General

On 14 Mar. 12
(Date)

AMENDMENT #1 TO CONTRACT

Between the State of Nevada
Acting By and Through Its

Various State Agencies
Monitored By: Department of Administration
Purchasing Division
515 East Musser Street, Suite 300
Carson City, NV 89701
Contact: Teri Becker
Phone: (775) 684-0178 Fax: (775) 684-0188
Email: tbecker@admin.nv.gov

and

AT&T Mobility National Accounts LLC
2600 Camino Road
San Ramon, CA 94583
Contact: Twila Lively
Phone: (925) 487-9945 Fax: (510) 261-2155
Email: twila.lively@att.com

1. AMENDMENTS. For and in consideration of mutual promises and/or their valuable considerations, all provisions of the contract between the above-referenced parties resulting from Request for Proposal #1907 and dated March 15, 2012 (the "Contract"), remain in full force and effect with the exception of the following:

A. The Contract term shall be extended from October 31, 2016 to June 30, 2019 to coincide with filing requirements by Federal E-Rate customers.

2. INCORPORATED DOCUMENTS. The Contract is incorporated herein by reference.

3. REQUIRED APPROVAL. This amendment to the original Contract shall not become effective until and unless approved by the WSCA-NASPO Directors.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to the original contract to be signed and intend to be legally bound thereby.

Independent Contractor's Signature

Date

Independent's Contractor's Title

Greg Smith, Administrator, State of Nevada

APPROVED BY WSCA-NASPO Directors

On

Approved as to form by:

(Date)

Deputy Attorney General for Attorney General

On

(Date)

PARTICIPATING ADDENDUM UNDER THE
WESTERN STATES CONTRACTING ALLIANCE WIRELESS COMMUNICATION
SERVICES AND EQUIPMENT BID NUMBER RFP: #1907

PARTICIPANT: CITY OF PORT ORANGE

This Participating Addendum (the "PA") is made this 10 day of December, 2013 (the "PA Effective Date"), between CITY OF PORT ORANGE ("Participant") and AT&T Mobility National Accounts LLC ("Contractor"). (Participant and Contractor are, at times, referred to individually as a "Party" or together as the "Parties.")

Section 1. Recitals.

1.1 Contractor and the State of Nevada, acting through its Department of Administration, Purchasing Division, and the participating members of the Western States Contracting Alliance (WSCA), and the NASPO Cooperative, are parties to that certain WSCA contract #1907, dated March 15, 2012 (the "Contract" or "Master Service Agreement").

1.2 Participant wants to participate in the Contract pursuant to the terms and conditions of the PA.

Section 2. Agreement. In consideration of the recitals set forth in §1 above, which are hereby re- stated and agreed to by the Parties, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, Participant and Contractor hereby agree to the terms and conditions of the PA (the Contract and the PA, together with all valid purchase orders submitted to Contractor by Participating Entity, collectively, the "Agreement"). Unless otherwise defined, capitalized terms in the PA have the meanings ascribed to them in the Contract.

Section 3. Authorized Participating Entities. Participant hereby designates CITY OF PORT ORANGE as the only authorized Participating Entity(ies) under the Agreement, effective upon written approval by WSCA within thirty (30) days after submission. Failure of WSCA to approve shall render the Participating Addendum null and void.

Section 4. Purchase Orders. Participating Entity(ies) must issue purchase orders hereunder that reference both Master Service Agreement #1907 and the PA. Upon issuance of any such valid purchase order, Participating Entity will be bound by the terms and conditions of the Agreement including, without limitation, the obligation to pay Contractor for Service, Equipment, and related products provided. Notwithstanding the foregoing, any purchase order submitted that does not properly reference the Contract number and/or the PA may be accepted, at Contractor's sole discretion, if Contractor can reasonably ascertain that such purchase order was properly authorized and intended for use with the PA. In such instances, the corresponding purchase order will be similarly valid and binding. Except as expressly provided in the Agreement, terms and conditions inconsistent with, contrary or in addition to the terms and conditions of the Agreement will not be added to or incorporated into the Agreement by any purchase order; and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of the Agreement will prevail and govern in the case of any such inconsistent or additional terms.

Section 5. Primary Contacts.**Participant:**

Name: Deb Trainor
 Title: Administrator
 Address: 1000 City Center Circle
 Port Orange, Florida 32129
 Telephone: 386-506-5550
 Fax Number:
 E-Mail: dtrainor@port-orange.org

Lead State:

Name: Teri Becker
 Title: Purchasing Officer
 Address: 515 E. Musser St., Suite 300
 Carson City, Nevada 89701
 Telephone: 775-684-0178
 Fax Number: 775-684-0188
 E-Mail: tbecker@admin.nv.gov

Contractor Account Team:

Name: Alpresia Pressley
 Title: Account Manager
 Address: 675 W. Peachtree Street
 Atlanta, Georgia 30308
 Telephone: 404-927-6546
 Fax Number: 770-360-5082
 E-Mail: ap6788@att.com

Contractor Main:

Name: Twila Lively
 Title: Manager, Sales Operations
 Address: 2600 Camino Road
 San Ramon, California 94583
 Telephone: (925) 487-9945
 Fax Number: (510) 261-2155
 E-Mail: twilalively@att.com

Section 6. Authority. By signing below, the corresponding Party's representative represents that he or she is duly authorized by Contractor or Participant as applicable, to execute the PA on behalf of the respective Party, and that the Contractor and Participant agree to be bound by the provisions hereof. In addition, Participant represents that it has received the requisite approvals from the applicable Chief Procurement Official and WSCA to participate in the Agreement.

Section 7. Miscellaneous.

7.1 American Recovery and Reinvestment Act of 2009 ("ARRA"). Each Participating Entity is responsible for informing Contractor in writing prior to ARRA funds being used for a purchase or purchases under the Contract. If and when Contractor is so notified, Contractor will comply with the data element and reporting obligations (as currently defined in Federal Register Vol. 74 #61, Pages 14824-14829, or subsequent changes or modifications to these requirements as published by the Federal OMB) that are legally required of vendors as providers of goods and services to recipients or sub-recipients of ARRA funds. Contractor will provide the required report, if any, to the Participating Entity with an invoice presented for payment. With respect to ARRA and the Agreement, Contractor is not a sub-contractor, recipient, sub-recipient or sub-grantee, but simply a vendor, as defined in the OMB guidelines. Contractor assumes no responsibilities under ARRA beyond those required of a vendor.

7.2 Employee Benefit Program. Participating Entity(ies) will participate with Contractor in efforts to obtain eligible Employees' participation in the Employee Benefit Program.

Section 8. Notice of Administration Fees. All Participating Entities are hereby on notice of the following charges being paid by Contractor under the Contract.

- WSCA Fees. Contractor is being charged a WSCA Administration Fee of 1/10th of 1% (one-tenth of one percent) of the Total Wireless Spend, pursuant to the

schedule of payments set forth in the Contract.

Section 9. Order of Precedence. The Parties acknowledge and agree that in the event of a conflict between the terms contained in the various documents comprising the Agreement, the following order of precedence will control: (a) the PA; (b) the Master Service Agreement; and (c) any valid purchase order issued in connection therewith. This section specifically supersedes any order of precedence provisions set forth elsewhere in the Agreement.

Section 10. Entire Agreement. The Agreement sets forth the entire agreement between the Parties with respect to its subject matter, and it supersedes all previous communications, representations or agreements, whether oral or written, with respect thereto, except as set forth in Exhibit "1" hereto.

IN WITNESS WHEREOF, the Parties have executed the PA as of the PA Effective Date.

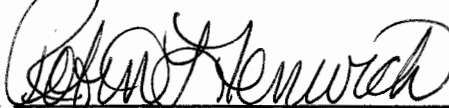
CITY OF PORT ORANGE



Allen Green, duly authorized
Title: Mayor

Date: DEC 10, 2013

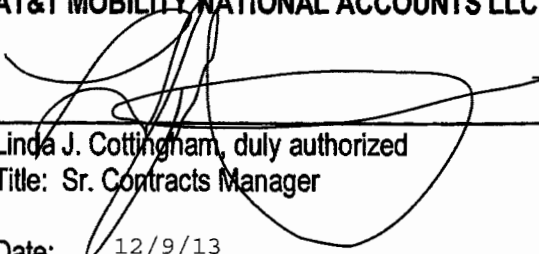
ATTEST:



Robin L. Fenwick, CMC, duly authorized
Title: City Clerk

Date: DEC. 10, 2013

AT&T MOBILITY NATIONAL ACCOUNTS LLC



Linda J. Cottingham, duly authorized
Title: Sr. Contracts Manager

Date: 12/9/13

EXHIBIT "1"

**SUPPLEMENTAL CONDITIONS TO THE PARTICIPATING ADDENDUM UNDER THE WESTERN STATES
CONTRACTING ALLIANCE WIRELESS COMMUNICATION SERVICES AND EQUIPMENT
BID NUMBER RFP:#1907
BETWEEN CITY OF PORT ORANGE, FLORIDA AND AT&T MOBILITY NATIONAL ACCOUNTS,LLC**

1. Workers Compensation and Employer's Liability Insurance

- 1) Contractor shall provide proof of worker's compensation insurance.
- 2) Employer's Liability insurance with limits of \$500,000.00 each employee per accident for bodily injury by accident or disease \$1,000,000.00, per incident per employee, and in all instances shall comply with Chapter 440, Florida Statutes.

General Requirements:

f. Approved Insurer: Each insurance policy shall be:

- 1) Issued by insurance companies eligible to do business in the State of Florida, the Lead State and Participating States or eligible surplus lines insurers acceptable to the Participant, Lead State and Participating States and having agents upon whom service of process may be made; and
- 2) Currently rated by A.M. Best as "A-VII" or better.

- 2. Public Records Compliance:** Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically: (a) keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service; (b) provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

If Contractor does not comply with a public records request, the City shall enforce the contract provisions in accordance with the contract.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B8) Resolution No. 18-44 - Approval of Grant Agreement for \$644,250 from Federal Emergency Management Agency for the Virginia Avenue and Monroe Street Drainage and Water Quality Project

DEPARTMENT: Finance

GOAL: 2 - Infrastructure

RECOMMENDED MOTION:

Move to approve Resolution No. 18-44 grant agreement between the City of Port Orange and the Federal Emergency Management Agency to be used for the Virginia Monroe Avenue Drainage and Water Quality Project, subject to final review and approval of the grant agreement by the City Attorney.

SUMMARY: The City of Port Orange has been awarded a grant for \$644,250 from the Federal Emergency Management Agency Hazard Mitigation Grant Program. These funds will be utilized for construction for the Virginia Monroe Avenue Drainage and Water Quality Project. The City of Port Orange will be providing a \$670,348 local cost share that has already been budgeted in the Capital Improvement Plan.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Reso. No. 18-44	Reso. No. 18-44.pdf
2.	4283-86-R CONTRACT (10-09-18)	4283-86-R CONTRACT (10-09-18).pdf

Amanda Lasecki
Tracey Riehm
Lynn Stevens
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 08/29/2018
Approved - 09/06/2018
Approved - 09/12/2018
Approved - 09/21/2018
Approved - 09/22/2018
Final Approval - 09/27/2018

RESOLUTION NO. 18-44

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORT ORANGE, VOLUSIA COUNTY, FLORIDA;
ACCEPTING GRANT FUNDS FROM THE FEDERAL
EMERGENCY MANAGEMENT AGENCY (FEMA) FOR THE
VIRGINIA AVENUE AND MONROE STREET DRAINAGE
AND WATER QUALITY PROJECT; AUTHORIZING THE
MAYOR AND CITY CLERK TO EXECUTE AGREEMENTS
AND CONTRACTS; PROVIDING FOR AN EFFECTIVE
DATE.

WHEREAS, the Grants Manager applied for hazard mitigation grant funds from the Federal Emergency Management Agency to implement the Virginia Avenue and Monroe Street Drainage and Water Quality Project; and

WHEREAS, the City Council of the City of Port Orange desires to ratify and accept the grant funding from FEMA.

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

Section 1. The City Council of the City of Port Orange hereby ratifies the acceptance of grant funding in the amount of \$644,250.00 for the Virginia Avenue and Monroe Street Drainage and Water Quality Project.

Section 2. The Mayor and City Clerk shall be authorized to execute any and all documents, agreement or contracts necessary to implement this Resolution.

Section 3. This Resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the _____ day of _____ 2018

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

Agreement Number: H0112

Project Number: 4283-86-R

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.92 states that a “subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.”

As defined by 2 C.F.R. §200.74, “pass-through entity” means “a non-Federal entity that provides a subaward to a Sub-Recipient to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.93, “Sub-Recipient” means “a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.38, “Federal award” means “Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.”

As defined by 2 C.F.R. §200.92, “subaward” means “an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity.”

The following information is provided pursuant to 2 C.F.R. §200.331(a)(1):

Sub-Recipient's name:	<u>City of Port Orange</u>
Sub-Recipient's unique entity identifier:	<u>59-6000412</u>
Federal Award Identification Number (FAIN):	<u>FEMA-DR-4283-FL</u>
Federal Award Date:	<u>August 20, 2018</u>
Subaward Period of Performance Start and End Date:	<u>Upon Execution thru January 31, 2021</u>
Amount of Federal Funds Obligated by this Agreement:	<u>\$644,250.00</u>
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	<u>\$644,250.00</u>
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	<u>\$644,250.00</u>
Federal award project description (see FFATA):	<u>City of Port Orange – Drainage Project</u>
Name of Federal awarding agency:	<u>Federal Emergency Management Agency</u>
Name of pass-through entity:	<u>FL Division of Emergency Management</u>
Contact information for the pass-through entity:	<u>Holly.Swift@em.myflorida.com</u>
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	<u>97.039 Hazard Mitigation Grant Program</u>
Whether the award is R&D:	<u>N/A</u>
Indirect cost rate for the Federal award:	<u>N/A</u>

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and the City of Port Orange, (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302 provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

b. As required by Section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,
- ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Holly Swift, Project Manager
Division of Emergency Management
Bureau of Mitigation
2702 Directors Row
Orlando, Florida 32809-5631
Telephone: (850) 815-4570
Email: Holly.Swift@em.myflorida.com

c. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Amanda Lasecki, Grants Manager
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129
Telephone: (386) 506-5737
Email: alasecki@port-orange.org

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK.

The Sub-Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(8) PERIOD OF AGREEMENT.

This Agreement shall begin upon execution by both parties and shall end on **January 31, 2021** unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.77, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with 2 C.F.R. §200.309, the Sub-Recipient may receive reimbursement under this Agreement only for "allowable costs incurred during the period of performance." In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

- a. This is a cost-reimbursement Agreement, subject to the availability of funds.
- b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either Chapter 216, Florida Statutes, or the Florida Constitution.
- c. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is **\$644,250.00.**
- d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any

false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a "performance goal", which is defined in 2 C.F.R. §200.76 as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared." It also remains consistent with the requirement, contained in 2 C.F.R. §200.301, that the Division and the Sub-Recipient "relate financial data to performance accomplishments of the Federal award."

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 ("Compensation—personal services") and 2 C.F.R. §200.431 ("Compensation—fringe benefits"). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (see 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as "allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages." Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,

iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b),

Florida Statutes (\$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,
- ii. Participation of the individual in the travel is necessary to the Federal award.
- i. The Division's grant manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.
- j. As defined by 2 C.F.R. §200.53, the term "improper payment" means or includes:
 - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,
 - ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10) RECORDS

- a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.
- b. As required by 2 C.F.R. §200.331(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.
- c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.333, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) fiscal years from the date of

completion of grant cycle or project. The following are the only exceptions to the five (5) year requirement:

i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.

iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.

v. Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

d. In accordance with 2 C.F.R. §200.334, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.

e. In accordance with 2 C.F.R. §200.335, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three,

basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

(11)AUDITS

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R.

§200.49, GAAP “has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).”

c. When conducting an audit of the Sub-Recipient’s performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards (“GAGAS”). As defined by 2 C.F.R. §200.50, GAGAS, “also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.”

d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(h), Florida Statutes, as “an independent certified public accountant licensed under chapter 473.” The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient’s fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

(12)REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than 15 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

c. The close-out report is due 60 days after termination of this Agreement or 60 days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

(13)MONITORING.

a. The Sub-Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement, and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14)LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement; as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15)DEFAULT.

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty days from the date written notice is sent by the Division;

c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or,

d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16)REMEDIES.

If an Event of Default occurs, then the Division shall, after thirty calendar days written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty days, exercise any one or more of the following remedies, either concurrently or consecutively:

a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein;

b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;

c. Withhold or suspend payment of all or any part of a request for payment;

d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

e. Exercise any corrective or remedial actions, to include but not be limited to:

i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected,

iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;

f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17)TERMINATION.

a. The Division may terminate this Agreement for cause after thirty days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Florida Statutes, as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty calendar day's prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.

d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the

notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

(18)PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards").

b. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall "maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

c. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall "maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders." In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any solicitation (whether competitive or non-competitive) at least fifteen (15) days prior to the publication or communication of the solicitation. The Division shall review the solicitation and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the solicitation for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to publish a competitive solicitation, this review may allow the Division to identify deficiencies in the vendor requirements or in the commodity or service specifications. The Division's review and comments shall not constitute an approval of the solicitation. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient publishes a competitive solicitation after receiving comments from the Division that the solicitation is deficient, then the Division may:

- i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,
- ii. Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.

e. Except for procurements by micro-purchases pursuant to 2 C.F.R. §200.320(a) or procurements by small purchase procedures pursuant to 2 C.F.R. §200.320(b), if the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall forward to the Division a copy of any contemplated contract prior to contract execution. The Division shall review the unexecuted contract and provide comments, if any, to the Sub-Recipient within three (3) business days. Consistent with 2 C.F.R. §200.324, the Division will review the unexecuted contract for compliance with the procurement standards outlined in 2 C.F.R. §§200.318 through 200.326 as well as Appendix II to 2 C.F.R. Part 200. Consistent with 2 C.F.R. §200.318(k), the Division will not substitute its judgment for that of the Sub-Recipient. While the Sub-Recipient does not need the approval of the Division in order to execute a subcontract, this review may allow the Division to identify deficiencies in the terms and conditions of the subcontract as well as deficiencies in the procurement process that led to the subcontract. The Division's review and comments shall not constitute an approval of the subcontract. Regardless of the Division's review, the Sub-Recipient remains bound by all applicable laws, regulations, and agreement terms. If during its review the Division identifies any deficiencies, then the Division shall communicate those deficiencies to the Sub-Recipient as quickly as possible within the three (3) business day window outlined above. If the Sub-Recipient executes a subcontract after receiving a communication from the Division that the subcontract is non-compliant, then the Division may:

- i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; and,
- ii. Refuse to reimburse the Sub-Recipient for any costs associated with that subcontract.

f. The Sub-Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

g. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."

h. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement "in a manner providing full and open competition." Accordingly, the Sub-Recipient shall not:

- i. Place unreasonable requirements on firms in order for them to qualify to do business;
- ii. Require unnecessary experience or excessive bonding;
- iii. Use noncompetitive pricing practices between firms or between affiliated companies;
- iv. Execute noncompetitive contracts to consultants that are on retainer contracts;
- v. Authorize, condone, or ignore organizational conflicts of interest;
- vi. Specify only a brand name product without allowing vendors to offer an equivalent;
- vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;
- viii. Engage in any arbitrary action during the procurement process; or,
- ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

i. “[E]xcept in those cases where applicable Federal statutes expressly mandate or encourage” otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(b), shall not use a geographic preference when procuring commodities or services under this Agreement.

j. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(c) as well as section 287.057(1)(a), Florida Statutes.

k. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(b), Florida Statutes.

l. For each subcontract, the Sub-Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in Section 288.703, Florida Statutes. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321 (“Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms”).

(19) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

- c. This Agreement has the following attachments:
- i. Exhibit 1 - Funding Sources
 - ii. Attachment A – Budget and Scope of Work
 - iii. Attachment B – Program Statutes and Regulations
 - iv. Attachment C – Statement of Assurances
 - v. Attachment D – Request for Advance or Reimbursement
 - vi. Attachment E – Justification of Advance Payment
 - vii. Attachment F – Quarterly Report Form
 - viii. Attachment G – Warranties and Representations
 - ix. Attachment H – Certification Regarding Debarment
 - x. Attachment I – Federal Funding Accountability and Transparency Act
 - xi. Attachment J – Mandatory Contract Provisions

(20)PAYMENTS

a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.

b. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.

c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under subparagraph (9)b. of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty days of receiving notice from the Division.

(21)REPAYMENTS

a. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management", and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

b. In accordance with Section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(22)MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list 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 a public entity, and may not transact business with any public entity in

excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

g. If the Sub-Recipient is unable to certify to any of the statements in this certification, then the Sub-Recipient shall attach an explanation to this Agreement.

h. In addition, the Sub-Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment H) for each intended subcontractor which Sub-Recipient plans to fund under this Agreement. The form must be received by the Division before the Sub-Recipient enters into a contract with any subcontractor.

i. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

j. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

k. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions

contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

I. All unmanufactured and manufactured articles, materials and supplies which are acquired for public use under this Agreement must have been produced in the United States as required under 41 U.S.C. 10a, unless it would not be in the public interest or unreasonable in cost.

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."

c. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, to any person for influencing or attempting to influence an officer or employee of any 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, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(24) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

a. If the Sub-Recipient has a pre-existing patent or copyright, the Sub-Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Sub-Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Sub-Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Sub-Recipient to the State of Florida.

c. Within thirty days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25) LEGAL AUTHORIZATION.

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

(26)EQUAL OPPORTUNITY EMPLOYMENT

a. In accordance with 41 C.F.R. §60-1.4(b), the Sub-Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

iii. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

iv. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

v. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

vi. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared

ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

vii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency 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 subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

b. The Sub-Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

c. The Sub-Recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

d. The Sub-Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Sub-Recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory

assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(27) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

- i. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- ii. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(28) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation.

(29) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees to comply 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), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30)SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

- i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- ii. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- iii. This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(31)BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

(32) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(33) ASSURANCES.

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SUB-RECIPIENT: City of Port Orange

By: _____

Name and Title: _____

Date: _____

FID#: 59-6000412

STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

By: _____

Name and Title: Michael Kennett, Deputy Director

Date: _____

EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program

Federal agency: Federal Emergency Management Agency: Hazard Mitigation Grant

Catalog of Federal Domestic Assistance title and number: 97.039

Award amount: **\$644,250.00**

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 CFR Part 205 Rules and Procedures for Funds Transfers

Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
 - Localized Minor Drainage Improvement
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

Attachment A

Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work (SOW) is to improve drainage by installation of pump station in the City of Port Orange, Florida; funded through the Hazard Mitigation Grant Program (HMGP) **DR-4283-86-R**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, **City of Port Orange**, agrees to administer and complete the project per sealed engineering designs and construction plans as submitted by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall complete the work in accordance with all applicable Federal, State and Local Laws, Regulations and Codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of Virginia Avenue (intersection of Grant Street), and Monroe Street, Port Orange, 32127.

The Construction scope of work proposes drainage improvements of intersection of Grant Street and Virginia Avenue. The proposed project shall include construction of a pump station, storm water ponds, installation of force main at Monroe Place and Fox Place, inlets and pipes to properly connect project area to proposed ponds. Construction of storm water pond and force main in proposed area would require acquiring land, moving any disturbed utilities and directional drilling along Fox Place. The proposed force main and diesel driven pumps would be raised 1-foot above Base Flood Elevation (BFE) and capable of removing floodwaters out of low-lying area, which is prone to standing water.

The project shall provide protection against a 25-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Project Location:

Proposed project starts approximately 50-feet west of Grant Street and Virginia Avenue, continues along Grant Street to the east; north side of the project - approx. 50 feet north of intersection of Virginia Avenue and Church Street. South side of the project approximately 100-feet south of intersection of Fox Place and Jefferson Avenue. The project ends 100-feet east of intersection of Riverside Drive and Meeker Place. Project Boundary Coordinates: (29.14245535, -80.99239573); (29.14358136, -80.98528882); (29.13402634, -80.98843858); (29.13609736, -80.98159858). Pond A (29.13790999, -80.98521282); Pond B (29.13793748, -80.98557605).

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations. All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient shall be responsible for furnishing or contracting all labor, materials, equipment, tools, transportation and supervision and for performing all work per sealed engineering designs and construction plans presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed.

The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by selected contractor.

- 2) The Sub-Recipient shall monitor and manage the installation to improve the drainage and provide flood protection

The project shall be implemented in accordance with sealed engineering designs and construction plans previously presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

The project consists of the general construction and furnishing of all materials, equipment, labor and fees to minimize recurring flooding and reduce repetitive flood loss to structures and roadways.

The Sub-Recipient shall fully perform the approved project, as described in the submitted documents, in accordance with the approved scope of work, budget line item, allocation of funds and applicable terms and conditions indicated herein. The Sub-Recipient shall not deviate from the approved project terms and conditions.

Construction activities shall be completed by a qualified and licensed Florida contractor. All construction activities shall be monitored by the professional of record. The Sub-Recipient shall complete the project in accordance with all required permits. All work shall be completed in accordance with applicable codes and standards.

Upon completion of the work, the Sub-Recipient shall schedule and participate in a final inspection of the completed project by the local municipal or county official, or other approving official, as applicable. The official shall inspect and certify that all installation was in accordance with the manufacturer's specifications. Any deficiencies found during this final inspection shall be corrected by the Sub-Recipient prior to Sub-Recipient's submittal of the final inspection request to the Division.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all contract scope of work and scope of work changes, if any. Additional documentation for closeout shall include:

- a) Signed and Sealed As-built project plans (drawings) by the Professional of Record, two hard copies and electronic version (via email or CD); and
- b) Letter of Completion:
 1. Affirming that the project was completed in conformance with the approved project drawings, specifications and scope; and

2. Certifying Compliance with all applicable codes;
 - c) Letter verifying compliance with the National Historic Preservation Act, to include if archeological materials or human remains were encountered during project activities, if so, how they were handled.
 - d) Permit(s) and verification of compliance.
 1. Copy of the As-Built Certification and Request for Conversion to Operational Phase submitted to St. Johns River Water Management District after the project was completed.
 2. Copy of the United States Army Corps of Engineers (USACE) Permit or No Permit Required (NPR). If a permit was required a copy of the Self-Certification Statement of Compliance or As-Built Certification shall be submitted.
 - e) Letter verifying that unusable equipment, debris, and material were disposed of in an approved manner and location. If any significant items (or evidence thereof) were discovered during implementation of the project, and that the Sub-Recipient handled, managed, and disposed of petroleum products, hazardous materials and toxic waste in accordance to the requirements and to the satisfaction of the governing local, state, and federal agencies.
 - f) Proof of compliance with Project Requirements and Conditions contained herein.
- 3) During the course of this agreement the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to: cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Construction Expense: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses: The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient. Quarterly reports shall be submitted by the Sub-

Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual construction and managerial costs related to the project as identified in the project application, sealed engineering designs, and construction plans. The requests for reimbursement shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount;

The Sub-Recipient's final request for reimbursement shall include the final construction project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of drainage improvements in the City of Port Orange, Florida; project includes a pump station and storm water ponds, installation of force main at Monroe Place and Fox Place, inlets and pipes to properly connect project area to proposed ponds.

The completed project shall provide protection against a 25-year storm event.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit to the Division an official letter stating that the project is 100% complete and ready for the Division's Final Inspection of the project.
- 2) The Sub-Recipient shall submit a signed and sealed final copy of the completed project's As-built drawings and all necessary supporting documentation, and provide a summary of all contract scope of work changes, if any.
- 3) The Sub-Recipient shall provide a copy of the Notice of commencement, and any local official Inspection Report and/or Final approval, as applicable.
- 4) The Sub-Recipient shall submit a certified letter of completion from Engineer of Record. The Sub-Recipient's Engineer of Record shall provide a formal certificate or letter affirming that the project has been completed in conformance with the approved project drawings, specifications, scope, and applicable codes.

D) Environmental:

- 1) Sub-Recipient shall follow all applicable state, local and federal laws regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding. If project work is delayed for a year or more after the date of the categorical exclusion (CATEX), then coordination with and project review by regulatory agencies shall be redone.

- 2) Any change, addition or supplement to the approved Scope of Work that alters the project (including other work not funded by FEMA, but done substantially at the same time), regardless of the budget implications, shall require re-submission of the application to FEMA through the Division for National Environmental Policy Act (NEPA) re-evaluation before starting project work.
- 3) The Sub-Recipient shall monitor ground disturbing activities during construction, and if any potential archeological resources are discovered, shall immediately cease construction in that area and notify the Division and FEMA.

If human remains or intact archaeological deposits are uncovered, work in the vicinity of the discovery shall stop immediately and all reasonable measures to avoid or minimize harm to the finds shall be taken. The Sub-Recipient shall ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries.

The Sub-Recipient's contractor shall provide immediate notice of such discoveries to the Sub-Recipient. The Sub-Recipient shall notify the Florida Division of Historic Resources, the Division's State Environmental Liaison Officer and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA and the Division has completed consultation with SHPO, Tribes, and other consulting parties as necessary.

In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with **Florida Statutes, Section 872.05**.

- 4) The Sub-Recipient is responsible for coordinating with and obtaining any required Section 404 permit(s) from the United States Army Corps of Engineers (USACE) and 401 permit(s) from the Florida Department of Environmental Protection prior to initiating work. The Sub-Recipient shall comply with all conditions and pre-construction notification requirements of the required permit(s). All coordination pertaining to these activities and compliance must be documented and maintained in the Sub-Recipient's permanent files. Failure to comply with these conditions may jeopardize funding. Verification of compliance will be required at project closeout.
- 5) Unusable equipment, debris and material shall be disposed of in an approved manner and location. In the event significant items (or evidence thereof) are discovered during implementation of the project, applicant shall handle, manage, and dispose of petroleum products, hazardous materials and toxic waste in accordance to the requirements and to the satisfaction of the governing local, state, and federal agencies. Verification of compliance is required at project closeout.
- 6) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments becomes known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) Project is approved with the condition that the enclosed list of deliverables shall be submitted, 30-days prior to the Period of Performance date, for review and approval by the Division; for submittal to FEMA for closeout.
- 5) Any extension of the Period of Performance shall be submitted to FEMA, 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing

and submitted along with substantiation of new expiration date, and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing to FEMA.

- 6) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 7) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 8) If the Sub-Recipient is not the current title holder of the affected properties, the Sub-Recipients shall provide documentation confirming the property acquisition and easement rights were obtained voluntarily. If condemnation or eminent domain is used to obtain easement rights, FEMA shall not pay for any associated costs or payments to the property owner. Furthermore, FEMA shall not consider it an eligible contribution to the non-Federal cost share requirement and shall not financially participate in that component of a project if land or easements are obtained involuntarily.

This is FEMA project number **4283-86-R**, is funded under HMGP; FEMA-4283-DR-FL; and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4283.

FEMA awarded this project on August 20, 2018; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **January 31, 2021**.

FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

SCHEDULE OF WORK

State and Local Contracting	3 Months
Construction Plan/Technical Specifications:	3 Months
Bidding:	3 Months
Construction:	14 Months
Final Inspections:	3 Months
Closeout Compliance:	3 Months
Total Period of Performance:	29 Months

BUDGET**Line Item Budget***

	<u>Project Costs</u>	<u>Federal Share</u>	<u>Local Share</u>
Materials:	\$1,008,788.00	\$228,607.00	\$780,181.00
Labor:	\$1,575,682.00	\$357,075.00	\$1,218,607.00
Fees:	\$258,447.00	\$58,568.00	\$199,879.00
Total Project Costs:	\$2,842,917.00	\$644,250.00	\$2,198,667.00

**Any line item amount in this Budget may be increased or decreased 10% or less without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

Funding Summary

Federal Share:	\$644,250.00	(22.661583%)
Local Share:	\$2,198,667.00	(77.338417%)
Total Project Cost:	\$2,842,917.00	(100.0%)

Attachment B
Program Statutes and Regulations

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- (2) 44 CFR Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents;
- (3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;
- (4) Hazard Mitigation Assistance Guidance- February 27, 2015 Update; and
- (5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to Chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

- (1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;

- (2) No new structure will be erected on property other than:
 - a. a public facility that is open on all sides and functionally related to a designed open space;
 - b. a restroom; or
- (3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;
- (4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and
- (5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 CFR 206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- (1) For Construction projects, the grantee must "obtain prior written approval for any budget revision which result in a need for additional funds" (44 CFR 13(c));
- (2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and
- (3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA sixty days prior to the project expiration date.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

- (1) 53 Federal Register 8034
- (2) Federal Acquisition Regulations 31.2
- (3) Section 1352, Title 31, US Code
- (4) Chapter 473, Florida Statutes
- (5) Chapter 215, Florida Statutes
- (6) Section 768.28, Florida Statutes
- (7) Chapter 119, Florida Statutes
- (8) Section 216.181(6), Florida Statutes
- (9) Cash Management Improvement Act of 1990
- (10) American with Disabilities Act
- (11) Section 112.061, Florida Statutes
- (12) Immigration and Nationality Act
- (13) Section 286.011, Florida Statutes

- (14) 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- (15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- (16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
- (17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
- (18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
- (19) Victims of Crime Act (as appropriate)
- (20) Section 504 of the Rehabilitation Act of 1973, as amended
- (21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
- (22) Department of Justice regulations on disability discrimination, 28 CFR, Part 35 and Part 39
- (23) 42 U.S.C. 5154a

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Sub-recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Sub-recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Sub-recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work to be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Sub-recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Sub-recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is

used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
 - (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to Section 112.313 and Section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Section 51 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 18 U.S.C. 594, 598, 600-605 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4002-4107, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Sub-recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/government/grant/sfha_conditions.shtm

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 CFR Section 101-19.6 for general type buildings and Appendix A to 24 CFR, Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (l) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (U.S.C. 470), Executive Order 11593, 24 CFR, Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et seq.) by:
- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR, Section 800.8) by the proposed activity; and

- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the “**Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)**” which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), and implementing regulations in 36 CFR, Part 800.
- (4) When any of the Sub-recipient's projects funded under this Agreement may affect a historic property, as defined in 36 CFR, Part 800 (2)(e), the Federal Emergency Management Agency (FEMA) may require the Sub-recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the **Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards)**, the **Secretary of the Interior's Guidelines for Archeological Documentation (Guidelines)** (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the **Standards**, the Sub-recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Sub-recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO's opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Sub-recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Sub-recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the **Guidelines** and take into account the Advisory Council on Historic Preservation (Council) publication “Treatment of Archeological Properties”. The Sub-recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within 15 calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.

- (6) The Sub-recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Sub-recipient acknowledges that FEMA may require the Sub-recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Sub-recipient further acknowledges that FEMA may require the Sub-recipient to take all

reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Sub-recipient also acknowledges that FEMA will require, and the Sub-recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Sub-recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (n) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4521-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (o) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (p) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;
- (q) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (r) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (s) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;
- (t) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7642;
- (u) It will comply with the Clean Water Act of 1977, as amended, 42 U.S.C. 7419-7626
- (v) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (w) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4728-4763;
- (x) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 270;
- (y) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
- (z) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 469a, et seq.;
- (aa) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;

- (bb) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j, regarding the protection of underground water sources;
- (cc) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (dd) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ee) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (ff) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3510;
- (gg) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-1464; and
- (hh) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-666.
- (ii) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Sub-recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.
 - (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Sub-recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
 - (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
 - (5) Provide supervision over contractors or employees employed by the Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.
 - (6) Leave the demolished site clean, level and free of debris.
 - (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
 - (8) Obtain all required permits.
 - (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
 - (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 CFR, Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

Attachment D

DIVISION OF EMERGENCY MANAGEMENT

**REQUEST FOR ADVANCE OR REIMBURSEMENT OF
HAZARD MITIGATION ASSISTANCE PROGRAM FUNDS**

SUB-RECIPIENT: City of Port Orange

REMIT ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

PROJECT TYPE: Drainage Improvement PROJECT #: 4283-86-R

PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0112

APPROVED BUDGET: _____ FEDERAL SHARE: _____ MATCH: _____

ADVANCED RECEIVED: _____ N/A _____ AMOUNT: _____ SETTLED? _____

Invoice Period: _____ To _____ Payment #: _____

Eligible Amount 100% (Current Request)	Obligated Federal Amount 22.661583%	Obligated Non- Federal 77.338417%	Division Use Only	
			Approved	Comments

TOTAL CURRENT REQUEST: \$ _____

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.

SUB-RECIPIENT SIGNATURE: _____

NAME / TITLE: _____ DATE: _____

TO BE COMPLETED BY THE DIVISION	
APPROVED PROJECT TOTAL	\$ _____
ADMINISTRATIVE COST	\$ _____
APPROVED FOR PAYMENT	\$ _____
GOVERNOR'S AUTHORIZED REPRESENTATIVE	
DATE	

**SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT
CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE
HAZARD MTIGATION ASSISTANCE PROGRAM**

SUB-RECIPIENT: City of Port Orange PAYMENT #: _____
PROJECT TYPE: Drainage Improvement PROJECT #: 4283-86-R
PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0112

	REF NO ²	DATE ³	DOCUMENTATION ⁴	(Check) AMOUNT	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
9					
This payment represents % completion of the project. TOTAL					

² Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)

³ Date of delivery of articles, completion of work or performance services. (per document)

⁴ List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

**Attachment E
JUSTIFICATION OF ADVANCE PAYMENT**

SUB-RECIPIENT: City of Port Orange

If you are requesting an advance, indicate same by checking the box below.

☐ ADVANCE REQUESTED Advance payment of \$ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.
--

If you are requesting an advance, complete the following chart and line item justification below.

PLEASE NOTE: Calculate your estimated expenses at 100% of your expected needs for 90 days.

Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

ESTIMATED EXPENSES

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	20__-20__ Anticipated Expenditures for First Three Months of Contract
<u>For example</u> ADMINISTRATIVE COSTS (Include Secondary Administration.)	
<u>For example</u> PROGRAM EXPENSES	
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION (For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.

Attachment F

DIVISION OF EMERGENCY MANAGEMENT
HAZARD MITIGATION GRANT PROGRAM
QUARTERLY REPORT FORM

Instructions: Complete and submit this form to the appropriate Project Manager within 15 days of each quarter's end date.

SUB-RECIPIENT: City of Port Orange PROJECT #: 4283-86-R
PROJECT TYPE: Drainage Improvement CONTRACT #: H0112
PROGRAM: Hazard Mitigation Grant Program QUARTER ENDING: _____

Advance Payment Information:

Advance Received ☐ N/A ☐ Amount: \$ _____ Advance Settled? Yes ☐ No ☐

Provide reimbursement **Projections** for this project (*projections may change*):

Jul-Sep 20 \$ _____ Oct-Dec 20 \$ _____ Jan-Mar 20 \$ _____ Apr-Jun 20 \$ _____

Target Dates:

Contract Initiation Date: _____ Contract Expiration Date: _____

Estimated Project Completion Date: _____

Project Proceeding on **Schedule**? ☐ Yes ☐ No (*If No, please describe under Issues below*)

Percentage of Work Completed (*may be confirmed by state inspectors*): _____ %

Describe **Milestones** achieved during this quarter:

Provide a **Schedule** for the remainder of work to project completion: (*Milestones from Contract with estimated dates*)

<u>Milestone</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Describe **Issues** or circumstances affecting completion date, milestones, scope of work, and/or cost:

Cost Status: ☐ Cost Unchanged ☐ Under Budget ☐ Over Budget

Additional **Comments/Elaboration:**

NOTE: Division of Emergency Management (DEM) staff may perform interim inspections and/or audits at any time. Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, etc. Please contact the Division as soon as these conditions become known, otherwise you may be found non-compliant with your sub grant award.

Person Completing Form: _____

Phone: _____

~ To be completed by Division staff ~

Date Reviewed: _____ Reviewer: _____

Actions: _____

Attachment G
Warranties and Representations

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.326).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

All subcontractors or employees hired by the Sub-Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Sub-Recipient.

Attachment H

Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion

Subcontractor Covered Transactions

- (1) The prospective subcontractor, _____, of the Sub-Recipient certifies, by submission of this document, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the Sub-Recipient's subcontractor is unable to certify to the above statement, the prospective subcontractor shall attach an explanation to this form.

SUBCONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

Date

City of Port Orange
Sub-Recipient's Name

H0112
DEM Contract Number

4283-86-R
FEMA Project Number

Attachment I
Federal Funding Accountability and Transparency Act
Instructions and Worksheet

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a) (2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM's issuance of a sub-award (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4283-86-R

FUNDING AGENCY: Federal Emergency Management Agency

AWARD AMOUNT: \$644,250.00

OBLIGATION/ACTION DATE: August 20, 2018

SUBAWARD DATE (if applicable): _____

DUNS#: 835509878

DUNS# +4: _____

*If your company or organization does not have a DUNS number, you will need to obtain one from Dun & Bradstreet at 866-705-5711 or use the web form (<http://fedgov.dnb.com/webform>). The process to request a DUNS number takes about ten minutes and is free of charge.

BUSINESS NAME: City of Port Orange

DBA NAME (IF APPLICABLE): _____

PRINCIPAL PLACE OF BUSINESS ADDRESS: _____

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

PARENT COMPANY DUNS# (if applicable): _____

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): _____

DESCRIPTION OF PROJECT (Up to 4000 Characters)

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage of Virginia Avenue (intersection of Grant Street), and Monroe Street, Port Orange, 32127.

The Construction scope of work proposes drainage improvements of intersection of Grant Street and Virginia Avenue. The proposed project shall include construction of a pump station, storm water ponds, installation of force main at Monroe Place and Fox Place, inlets and pipes to properly connect project area to proposed ponds. Construction of storm water pond and force main in proposed area would require acquiring land, moving any disturbed utilities and directional drilling along Fox Place. The proposed force main and diesel driven pumps would be raised 1-foot above Base Flood Elevation (BFE) and capable to remove floodwaters out of low laying area, which is prone to standing water.

The project shall provide protection against a 25-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Project Location:

Proposed project starts approximately 50-feet west of Grant Street and Virginia Avenue, continues along Grant Street to the east; north side of the project - approx. 50 feet north of intersection of Virginia Avenue and Church Street. South side of the project approximately 100-feet south of intersection of Fox Place and Jefferson Avenue. The project ends 100-feet east of intersection of Riverside Drive and Meeker Place. Project Boundary Coordinates: (29.14245535, -80.99239573); (29.14358136, -80.98528882); (29.13402634, -80.98843858); (29.13609736, -80.98159858). Pond A (29.13790999, -80.98521282); Pond B (29.13793748, -80.98557605).

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE:

****Providing the Zip+4 ensures that the correct Congressional District is reported.**

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 CFR 170.320; , (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?

Yes ☐ No ☐

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?

Yes ☐ No ☐

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at <http://www.sec.gov/answers/excomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is "No" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 CFR Ch. 1 Part 170 Appendix A:

"Executive" is defined as "officers, managing partners, or other employees in management positions".

"Total Compensation" is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.

- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____

NAME AND TITLE: _____

DATE: _____

Attachment J
Mandatory Contract Provisions

Provisions:

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The Division provides the following list of sample provisions that may be required:

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or

materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply 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). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any

other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See §200.322 Procurement of recovered materials.

APPENDIX III TO PART 200—INDIRECT (F&A) COSTS IDENTIFICATION AND ASSIGNMENT, AND RATE DETERMINATION FOR INSTITUTIONS OF HIGHER EDUCATION (IHES)

A. GENERAL

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHES (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activities* means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in §200.468 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are "unallowable" to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B9) Resolution No. 18-45 - Approval of Grant Agreement for \$750,000 from Florida Department of Environmental Protection for the Port Orange Flooding Mitigation and Stormwater Improvements

DEPARTMENT: Finance

GOAL: 2 - Infrastructure

RECOMMENDED MOTION:

Move to approve Resolution No. 18-45 grant agreement between the City of Port Orange and the Florida Department of Environmental Protection for the Port Orange Flooding Mitigation and Stormwater Improvements.

SUMMARY: The City of Port Orange has been awarded a grant for \$750,000 from the Florida Department of Environmental Protection. These funds will be utilized for construction for the Virginia/Monroe Drainage and Water Quality Project. The City of Port Orange is not required to contribute match for this grant.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Reso. No. 18-45	Reso. No. 18-45.pdf
2.	FDEP Virginia Monroe Amendment to Increase Grant Award \$750,000	FDEP Virginia Monroe Amendment to Increase Grant Award \$750,000.pdf

Amanda Lasecki
Tracey Riehm
Lynn Stevens
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 09/11/2018
Approved - 10/01/2018
Approved - 10/01/2018
Approved - 10/03/2018
Approved - 10/03/2018
Final Approval - 10/03/2018

RESOLUTION NO. 18-45

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORT ORANGE, VOLUSIA COUNTY, FLORIDA;
ACCEPTING GRANT FUNDS FROM THE FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR
THE PORT ORANGE FLOODING MITIGATION AND
STORMWATER IMPROVEMENTS PROJECT;
AUTHORIZING THE MAYOR AND CITY CLERK TO
EXECUTE AGREEMENTS AND CONTRACTS; PROVIDING
FOR AN EFFECTIVE DATE.

WHEREAS, the City has been approved to receive a \$750,000.00 grant from the Florida Department of Environmental Protection for the Port Orange Flooding Mitigation and Stormwater Improvements Project; and

WHEREAS, the City Council of the City of Port Orange desires to ratify and accept the grant funding from the Florida Department of Environmental Protection.

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

Section 1. The City Council of the City of Port Orange hereby ratifies the acceptance of grant funding in the amount of \$750,000.00 for the Port Orange Flooding Mitigation and Stormwater Improvements Project.

Section 2. The Mayor and City Clerk shall be authorized to execute any and all documents, agreement or contracts necessary to implement this Resolution.

Section 3. This Resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the _____ day of _____, 2018

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

**AMENDMENT NO. 1
TO AGREEMENT NO. LP64042
BETWEEN
FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
CITY OF PORT ORANGE**

This Amendment to Agreement No. LP64042 (Agreement) is made by and between the Department of Environmental Protection (Department), an agency of the State of Florida, and City of Port Orange, (Grantee), on the date last signed below.

WHEREAS, the Department entered into the Agreement with the Grantee for flooding mitigation and stormwater quality improvement, effective January 4, 2018;

WHEREAS, funding in the amount \$750,000 was provided under Line Item 1606A of the 2017-2018 General Appropriations Act for Port Orange Flooding Mitigation and Stormwater Quality Improvement ("Project"); and

WHEREAS, \$750,000 in additional funding for this Project was provided under Line Item 1595A of the 2018-2019 General Appropriations Act; and the total funding for this Agreement is now \$1,500,000.

WHEREAS, certain provisions of the Agreement need revision.

NOW THEREFORE, the parties agree as follows:

1. The Agreement is effective until June 31, 2022. The reimbursement period for this Agreement begins on July 1, 2017 and ends at the expiration of the Agreement. The Department and the Grantee shall continue to perform their respective duties during this extension period pursuant to the same terms and conditions provided in the Agreement.

2. Section 8. of the Agreement is amended to add the following:

j. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department.

3. Section 24. of the Agreement is deleted and replaced as follows:

Scrutinized Companies

- a. Grantee certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee or its subcontractors are found to have submitted a false certification; or if the Grantee, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole

- option if the Grantee, its affiliates, or its subcontractors are found to have submitted a false certification; or if the Grantee, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. The Grantee agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.
 - d. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.
4. **Attachment 3, Grant Work Plan**, is hereby deleted in its entirety and replaced with **Attachment 3-1, Revised Grant Work Plan**, as attached to this Amendment and hereby incorporated into the Agreement. All references in the Agreement to **Attachment 3** shall hereinafter refer to **Attachment 3-1, Revised Grant Work Plan**.
 5. **Attachment 4, Public Records Requirements**, is hereby deleted in its entirety and replaced with **Attachment 4-1, Revised Public Records Requirements**. All references in the Agreement to **Attachment 4** shall hereinafter refer to **Attachment 4-1, Revised Public Records Requirements**.
 6. **Attachment 5, Special Audit Requirements**, is hereby deleted in its entirety and replaced with **Attachment 5-1, Revised Special Audit Requirements**, attached hereto and made a part of the Agreement. All references in the Agreement to **Attachment 5**, shall hereinafter refer to **Attachment 5-1, Revised Special Audit Requirements**.
 7. **Exhibit D, Disbursement Request Package**, is hereby deleted in its entirety and replaced with **Exhibit D-1, Payment Request Summary Form**, attached hereto and made a part of the Agreement. All references in the Agreement to **Exhibit D**, shall hereinafter refer to **Exhibit D-1, Payment Request Summary Form**.
 8. All other terms and conditions of the Agreement remain in effect. If and to the extent that any inconsistency may appear between the Agreement and this Amendment, the provisions of this Amendment shall control.

The parties agree to the terms and conditions of this Amendment and have duly authorized their respective representatives to sign it on the dates indicated below.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties have caused this amendment to Agreement LP64042 to be duly executed, the day and year last written below.

CITY OF PORT ORANGE

STATE OF FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION

By: _____
Mayor

By: _____
Secretary or Designee

Print Name of Authorized Person

Print Name and Title of Authorized Person

Date: _____

Date: _____

Evan Beitsch, DEP Grant Manager

Sandy Waters, DEP QC Reviewer

List of attachments/exhibits included as part of this Amendment:

Specify Type	Letter/ Number	Description (include number of pages)
Attachment	3-1	Revised Grant Work Plan (2 Pages)
Attachment	4-1	Revised Public Records Requirements
Attachment	5-1	Revised Special Audit Requirements (5 pages)
Exhibit	D-1	Payment Request Summary Form (6 Pages)

**ATTACHMENT 3-1
REVISED GRANT WORK PLAN**

PROJECT TITLE: Port Orange Flooding Mitigation and Stormwater Quality Improvement

PROJECT LOCATION: The Project will be located in the vicinity of Virginia Avenue and Monroe Street within the City of Port Orange in Volusia County, Florida. Project Coordinates: 29.139814, 80.986654. See Figure 1 for a location map.

PROJECT BACKGROUND: The City of Port Orange (Grantee) has experienced numerous flooding events in the area of Monroe Street and Virginia Avenue. To address this continuing problem, the Grantee designed mitigation strategies for the area that includes 381 parcels. The Grantee has been working to revitalize US 1 within the affected area, however the prospect of repetitive flooding in this corridor could inhibit development. . This project will help mitigate flooding and is expected to reduce the amount of nitrogen and phosphorus pollutants entering the Halifax River by approximately 133 and 27 pounds per year, respectively.

PROJECT DESCRIPTION: The Grantee will construct pump stations, adjust existing stormwater pond elevations, add additional stormwater ponds, and install stormwater force mains. The proposed construction will provide the low lying area with an outlet to overcome the tidal effects from the Halifax River. Additional conveyance enhancements, such as inlets and stormwater pipes, will be installed to properly connect the surrounding area with the stormwater ponds. Construction of stormwater ponds in the proposed area will potentially require moving any disturbed utilities. Pumps will be connected to the force mains to pump water out of the low lying area that is prone to standing water

TASKS:

All documentation should be submitted electronically unless otherwise indicated.

Task 1: Construction

Deliverables: The Grantee will construct pump stations, adjust existing stormwater pond elevations, add additional stormwater ponds, and install stormwater force mains in accordance with the construction contract documents.

Documentation: The Grantee will submit a signed acceptance of the completed work to date by the Grantee and the Engineer's Certification of Payment Request.

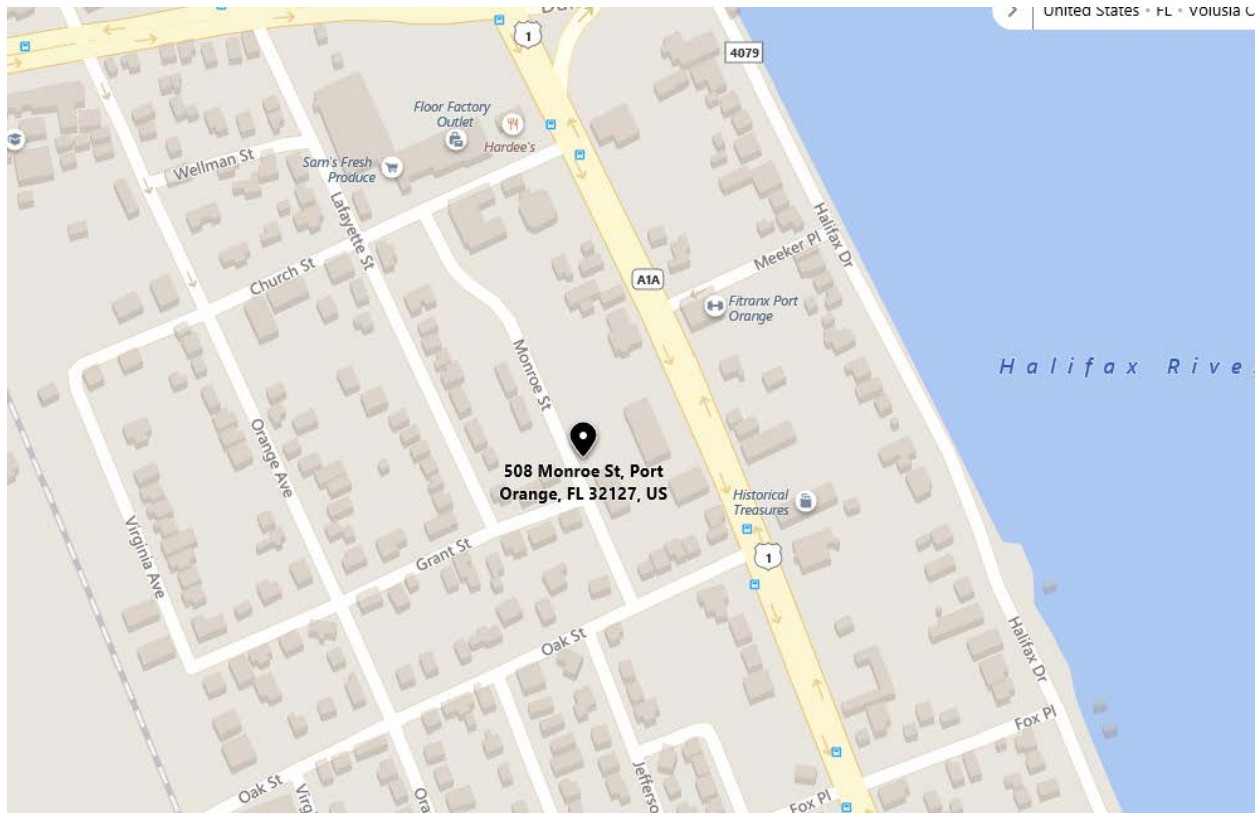
Performance Standard: The Department's Grant Manager will review the documentation to verify that the deliverables are completed as described above. Upon review and written acceptance by the Department's Grant Manager, the Grantee may proceed with payment request submittal.

Payment Request Schedule: The Grantee may submit a payment request for cost reimbursement no more frequently than monthly.

PROJECT TIMELINE & BUDGET DETAIL: The tasks must be completed by, and all documentation received by, the corresponding task end date.

Task No.	Task Title	Budget Category	Budget Amount	Task Start Date	Task End Date
1	Construction	Contractual Services	\$1,500,000	07/01/17	12/31/2021
Total:			\$1,500,000		

Figure 1. Location Map



**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements**

Attachment 4-1

1. Public Records.

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department’s custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

- f. **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:**

Telephone: (850) 245-2118
Email: public.services@floridadep.gov
Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements**

Attachment 5-1

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133, as revised, 2 CFR Part 200, Subpart F, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, and/or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised (for fiscal year start dates prior to December 26, 2014), or as defined in 2 CFR §200.330 (for fiscal year start dates after December 26, 2014).

1. In the event that the recipient expends \$500,000 (\$750,000 for fiscal year start dates after December 26, 2014) or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F.
3. If the recipient expends less than \$500,000 (or \$750,000, as applicable) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, is not required. In the event that the recipient expends less than \$500,000 (or \$750,000, as applicable) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).

4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov

PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2)(n), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Attachment indicates state financial assistance awarded through the Department of Environmental Protection by this Agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F and required by PART I of this Attachment shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised, and 2 CFR §200.501(a) (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, and 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised, and 2 CFR §200.512.

2. Pursuant to Section .320(f), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, the recipient shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, and any management letters issued by the auditor, to the Department of Environmental Protection at one the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

3. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director

Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

B. The Auditor General's Office at the following address:

State of Florida Auditor General
Room 401, Claude Pepper Building
111 West Madison Street
Tallahassee, Florida 32399-1450

4. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of the Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:
FDEPSingleAudit@dep.state.fl.us

5. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, as revised, and 2 CFR Part 200, Subpart F, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
6. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with OMB Circular A-133, as revised and 2 CFR Part 200, Subpart F, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT – 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
				\$	

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:					
Federal Program Number	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:						
State Program Number	Funding Source	State Fiscal Year	CSFA Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	FY 17-18, GAA Line Item 1606A	2017-2018	37.039	Statewide Surface Water Restoration and Wastewater Projects	\$750,000	140047
Amendment 1	FY 18-19, GAA Line Item 1595A	2018-2019	37.039	Statewide Surface Water Restoration and Wastewater Projects	\$750,000	140047

				Total Award	\$1,500,000	
--	--	--	--	-------------	-------------	--

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx>]. The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

EXHIBIT D-1
PAYMENT REQUEST SUMMARY FORM

DEP Agreement No. LP64042 Payment Request No. _____ Request Date: _____

Grantee:	City of Port Orange
(Name & Mailing Address)	1000 City Center Circle
	Port Orange FL, 32129
Grantee's Grant Manager	Amanda Lasecki

Task No(s). _____ Task Amount(s) Requested: \$ _____

GRANT EXPENDITURES SUMMARY SECTION

AUTHORIZED TASKS	AMOUNT OF THIS REQUEST	PREVIOUS PAYMENT REQUESTS	TOTAL CUMULATIVE PAYMENT REQUESTS	MATCHING FUNDS FOR THIS REQUEST	TOTAL CUMULATIVE MATCHING FUNDS
Task 1:	\$ -	\$ -	\$ -	\$ -	\$ -
Task 2:	\$ -	\$ -	\$ -	\$ -	\$ -
Task 3:	\$ -	\$ -	\$ -	\$ -	\$ -
Task 4:	\$ -	\$ -	\$ -	\$ -	\$ -
Task 5:	\$ -	\$ -	\$ -	\$ -	\$ -
Task 6:	\$ -	\$ -	\$ -	\$ -	\$ -
Task 7:	\$ -	\$ -	\$ -	\$ -	\$ -
Task 8:	\$ -	\$ -	\$ -	\$ -	\$ -
Task 9:	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL AMOUNT	\$	\$	\$	\$	\$
TOTAL BUDGET (ALL TASKS)	\$			\$	
LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF:	\$			\$	
TOTAL REMAINING (ALL TASKS)	\$			\$	

GRANTEE CERTIFICATION

Complete Grantee's Certification of Payment Request on Page 2 to certify that the amount being requested for reimbursement above was for items that were charged to and utilized only for the above cited grant activities.

Grantee's Certification of Payment Request

I, _____, on behalf of

(Print name of Grantee's Grant Manager designated in the Agreement)

_____, do hereby certify for

(Print name of Grantee)

DEP Agreement No. _____ and Payment Request No. _____ that:

1. The disbursement amount requested is for allowable costs for the project described in Attachment 3 of the Agreement.
2. All costs included in the amount requested have been satisfactorily purchased, performed, received, and applied toward completing the project; such costs are documented by invoices or other appropriate documentation as required in the Agreement.
3. The Grantee has paid such costs under the terms and provisions of contracts relating directly to the project; and the Grantee is not in default of any terms or provisions of the contracts.

Grantee's Grant Manager's Signature

Print Name

Telephone Number

Grantee's Fiscal Agent Signature

Print Name

Telephone Number

**Engineer's Certification
of Payment Request**

ONLY SUBMIT IF CONSTRUCTION IS PART OF THE PROJECT

I, _____, being the Professional Engineer retained by
(name of Professional Engineer)
_____, am responsible for overseeing construction of the project
(name of Grantee)
described in the Agreement and do hereby certify that for DEP Agreement No. _____ and Payment Request No. _____:

1. All permits and approvals required for the construction, which is underway, have been obtained.
2. Payment is in accordance with construction contract provisions.
3. Construction up to the point of this payment request is in compliance with the approved plans and permits.
4. Equipment, materials, labor, and services represented by the construction invoices have been satisfactorily purchased or received and applied to the project in accordance with construction contract documents filed with and previously approved by the Department of Environmental Protection.

Signature of Professional Engineer

Firm or Affiliation

(Date)

(P.E. Number)

**INSTRUCTIONS FOR COMPLETING
PAYMENT REQUEST SUMMARY FORM**

DEP AGREEMENT NO.: This is the number on your grant agreement.

PAYMENT REQUEST NUMBER: Number of payment request

REQUEST DATE: Date request is submitted

GRANTEE: Enter the name of the grantee's agency.

MAILING ADDRESS: Enter the address that you want the state warrant sent.

GRANTEE'S GRANT MANAGER: This should be the person identified as grant manager in the grant Agreement.

TASK NO.: This is the number of the task that you are requesting payment for and/or claiming match for (must agree with the current Grant Work Plan).

TASK AMOUNT REQUESTED: This should match the amount on the "*TOTAL TASK BUDGET AMOUNT*" line for the "*AMOUNT OF THIS REQUEST*" column.

GRANT EXPENDITURES SUMMARY SECTION:

"AMOUNT OF THIS REQUEST" COLUMN: Enter by authorized category of expenditure the amount for which you are requesting reimbursement for this task. This must agree with the currently approved budget in the current Grant Work Plan of your grant Agreement. Do not claim expenses in a budget category that does not have an approved budget. Do not claim items that are not specifically identified in the current Grant Work Plan. Enter the column total on the "*TOTAL AMOUNT*" line. Enter the amount of all Tasks on the "*TOTAL BUDGET (ALL TASKS)*" line. Enter the total cumulative amount of this request **and** all previous payments on the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" line. Deduct the "*LESS TOTAL CUMULATIVE PAYMENT REQUESTS OF*" from the "*TOTAL BUDGET (ALL TASKS)*" for the amount to enter on the "*TOTAL REMAINING (ALL TASKS)*" line.

"PREVIOUS PAYMENT REQUESTS" COLUMN: Enter the total cumulative amount that has been paid in previous requests. Do not include the current requested amount in this total. **Do not enter anything in the shaded areas.**

"TOTAL CUMULATIVE PAYMENT REQUESTS" COLUMN: Enter the cumulative amounts that have been requested to date for reimbursement by budget category. The final request should show the total of all requests; first through the final request (this amount cannot exceed the approved budget amount for that budget category for the Task(s) you are reporting on). Enter the column total on the "*TOTAL PAYMENT REQUEST*" line. **Do not enter anything in the shaded areas.**

"MATCHING FUNDS" COLUMN: Enter the amount to be claimed as match for the performance period for the Task(s) you are reporting on. This needs to be shown under specific budget categories according to the currently approved Grant Work Plan. Enter the total on the "*TOTAL AMOUNT*" line for this column. Enter the match budget amount on the "*TOTAL BUDGET (ALL TASKS)*" line for this column. Enter the total cumulative amount of this and any previous match claimed on the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" line for this column. Deduct the "*LESS TOTAL CUMULATIVE PAYMENTS OF*" from the "*TOTAL BUDGET (ALL TASKS)*" for the amount to enter on the "*TOTAL REMAINING (ALL TASKS)*" line.

"TOTAL CUMULATIVE MATCHING FUNDS" COLUMN: Enter the cumulative amounts you have claimed to date for match by budget category. Put the total of all on the line titled "*TOTAL PAYMENT REQUEST.*" The final request should show the total of all claims, first claim through the final claim, etc. **Do not enter anything in the shaded areas.**

GRANTEE'S CERTIFICATION: Must be signed by both the Grantee's Grant Manager as identified in the grant agreement and the Grantee's Fiscal Agent.

ENGINEER'S CERTIFICATION: Must be signed by Professional Engineer when Construction is being requested for reimbursement.

Documentation for match claims must meet the same requirements as those expenditures for reimbursement.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

REQUEST FOR PAYMENT – PART II

REIMBURSEMENT DETAIL

Grantee Name:	City of Port Orange				Payment Request No.:		
DEP Agreement No.:	LP64042						
Vendor Name	Invoice Number	Invoice Date	Invoice Amount (1)	Local Share or Other Funding or Amount Not Requested (2)	Requested Amount (3)	Check Number	Task/Deliverable Number (4)
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
				\$ -	\$ -		
Totals:				\$ -	\$ -		

Instructions for Completing Request for Payment - Part II

Include the Grantee Name, Payment Request No., and DEP Agreement Number. List vendor invoices that are associated with the Project by Task/Deliverable.

- 1 **Invoice Amount:** Amount of Invoice being submitted for reimbursement.
Local Share or Other Funding or Amount Not Requested: Portion of invoice paid for by Grantee, that is not being requested for reimbursement by this grant
- 2 **Requested Amount:** Subtract Grantee's Local Share or Other Funding or Amount Not Requested **(2)** from Invoice Amount **(1)**.
- 3 **Deliverable Number:** Must identify completed deliverable(s) for each invoice. If invoice covers multiple deliverables, that invoice would be listed multiple times, a line item for each deliverable with any portion not applicable to that Task/Deliverable identified under (2).
- 4

Submittal Instructions

Instructions for E-mailing:

The program now accepts reimbursement requests electronically, please E-mail to Water and Springs Restoration Program. When scanning please be sure that the minimum scan resolution must be 300 DPI (dots per inch). When reimbursement requests are sent electronically, please do not also send a hard copy by postal mail.

Please redact all sensitive financial information from the invoices and other supporting documentation to be submitted with this Payment Request Form.

Remit Payment Request by E-mail to: WSRP@dep.state.fl.us

Be sure the E-mail payment request includes the following:

Cc: Department's Grant Manager

Subject: Project Number_Disbursement Number: example – LP14025_Disb 1

Attachments:

- 1) Exhibit C Payment Request Summary
- 2) Request for Payment Part II Reimbursement Detail
- 3) Copies of invoices
- 4) Proof of payment (copies of canceled checks, front and back or EFT verification)
- 5) Other supporting documentation, as needed

For questions or concerns regarding these forms or if you would like the payment request forms listed above in electronic format please contact:

Evan Beitsch (850) 245-2993
evan.beitsch@floridadep.gov



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B10) Resolution No. 18-48 - Ratifying and Accepting \$3,000 grant from Target Corporation for Shop With A Cop Program

DEPARTMENT: Police Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve Resolution No. 18-48 ratifying and accepting grant funds of \$3,000.00 from Target Corporation for Shop With A Cop Program.

SUMMARY: The Police Department has been awarded a \$3,000 Grant from the Target Corporation for the Shop With A Cop Program.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Reso. No. 18-48	Reso. No. 18-48.pdf
2.	Target Award Letter- \$3,000- Shop With A Cop Program	Target Award Letter- \$3,000- Shop With A Cop Program.pdf

Amanda Lasecki
Thomas Grimaldi
Tracey Riehm
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 09/25/2018
Approved - 09/25/2018
Approved - 10/01/2018
Approved - 10/03/2018
Approved - 10/03/2018
Final Approval - 10/03/2018

RESOLUTION NO. 18-48

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORT ORANGE, VOLUSIA COUNTY, FLORIDA;
PROVIDING FOR ACCEPTANCE OF GRANT FUNDS
FROM TARGET CORPORATION FOR THE SHOP WITH A
COP PROGRAM; AUTHORIZING THE MAYOR AND CITY
CLERK TO EXECUTE AGREEMENTS AND CONTRACTS;
PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Police Department and Grants Manager applied for grant funds from the Target Corporation for the Shop With A Cop Program; and

WHEREAS, the City Council of the City of Port Orange desires to ratify and accept the grant funding from the Target Corporation.

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

Section 1. The City Council of the City of Port Orange hereby ratifies the acceptance of grant funding in the amount of \$3,000.00 for the Shop With A Cop Program.

Section 2. The Mayor and City Clerk shall be authorized to execute any and all documents, agreement or contracts necessary to implement this Resolution.

Section 3. This Resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the _____ day of _____, 2018

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

From: do-not-reply@cybergrants.com
To: [Lasecki, Amanda](#)
Subject: Target Application Approved - Application ID 43885599
Date: Friday, September 21, 2018 6:47:39 PM

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

Program: Shop with a Cop
Payment Amount: \$3,000.00
Check #0002644914
Check Date:09/20/2018
Grant Request ID#43885599

Dear Amanda:

Target is pleased to inform you that your organization's grant request has been approved. Your grant check should have arrived, or will arrive in the next few days and is specifically for the program and amount referenced above. If you have not received your check within 30 business days from check date, please reach out to your Target contact. Please note that your grant check is void if it is not cashed within five months.

As always, Target grants are one-time gifts. By making annual commitments, we ensure we can remain flexible and respond to changing community and business needs.

Since 1946, Target has given 5 percent of its profit to communities, which today equals millions of dollars a week. Whether it's inspiring young minds, offering unique cultural experiences or meeting your community's most basic needs; we thank you for your continued commitment to making a difference.

Kind Regards,

Target Corporate Responsibility

CG/JMAIL/135529867



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B11) Resolution No. 18-49 - Budget Appropriation (FY18)

DEPARTMENT: Finance

GOAL:

RECOMMENDED MOTION: Move to approve Resolution No. 18-49.

SUMMARY: *Golf Course Loan Forgiveness - 450 & 508 Funds

After review with our auditors, interfund transfers are required to write off the Loan Pool loan made to the Golf Course Fund 450 in the amount of 1,729,491

*Transfer 5 Parcels from General Fund 001 to Town Center CRA Fund 103 (Riverwalk property ownership):

6303-11-02-0071 (108 Herbert St) Purchase cost: \$208,977.10

6303-11-02-0031 (3900 Halifax Dr) Purchase cost: \$503,762.50

6303-11-02-0022 (3969 Ridgewood Av) Purchase cost: \$188,943.30

6303-11-02-0014 (3979 S Ridgewood Av) Purchase cost: \$143,829.50

6303-11-02-0012 (Dunlawton Av) Purchase cost: \$173,903.50

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Resolution No. 18-49	h Bud Reso 18-49 Misc Items - CC Mtg 10-16-18 - Final.pdf
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Tracey Riehm
Nadia Todor
Lisa Pallante
Tracey Riehm
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 09/19/2018
Approved - 10/04/2018
Approved - 10/04/2018
Approved - 10/04/2018
Approved - 10/10/2018
Approved - 10/10/2018
Final Approval - 10/10/2018

RESOLUTION NO. 18-49

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROPRIATING OPERATING AND CAPITAL FUNDS FOR THE FISCAL YEAR 2018 BUDGET; TO BUDGET FOR AN INTERFUND LOAN FOR THE COST OF FIVE PARCELS LOCATED WITHIN THE BOUNDARY OF THE TOWN CENTER CRA USING AN INTERFUND LOAN FROM GENERAL FUND 001 TO TAX INCREMENT TOWN CENTER FUND 103; AND TO BUDGET FOR AN INTERFUND TRANSFER PROVIDING FOR THE WRITE OFF OF A LOAN POOL FUND 508 LOAN TO THE GOLF COURSE OPERATING FUND 450; SETTING FORTH REVENUES AND EXPENDITURES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to budget for a transfer of funding for five parcels from General Fund to Tax Increment Town Center:

6303-11-02-0071 (108 HERBERT ST) Purchase cost: \$208,977.10

6303-11-02-0031 (3900 HALIFAX DR) Purchase cost: \$503,762.50

6303-11-02-0022 (3969 RIDGEWOOD AV) Purchase cost: \$188,943.30

6303-11-02-0014 (3979 S RIDGEWOOD AV) Purchase cost: \$143,829.50

6303-11-02-0012 (DUNLAWTON AV) Purchase cost: \$173,903.50

The referenced above properties are located within the boundary of the CRA; and

WHEREAS, the City Council desires to budget for an interfund loan from General Fund 001 to Tax Increment Town Center Fund 103 for the purchase of the five parcels; and

WHEREAS, the City Council desires to budget for interfund transfer to write off a loan made from the Loan Pool Fund 508 to the Golf Course Fund 450, in the amount of \$1,729,491, which was used to renovate the Golf Course and Clubhouse; 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, 2017 through September 30, 2018.

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

FY2018 General Fund 001
Prepared: October 3, 2018
Finance: Finance Staff

**Budget Increase /
(Decrease)**

Revenues:

Total Revenues: \$ -

Expenditures:

Non-Departmental - Land	(1,219,416)
Non-Departmental - Transfer to 103	1,219,416

Total Expenditures: \$ -

*To budget for the transfer of five parcels of property that were originally purchased from the General Fund to the Town Center CRA Fund 103:

6303-11-02-0071 (108 Herbert St) Purchase cost: \$208,977.10
6303-11-02-0031 (3900 Halifax Dr) Purchase cost: \$503,762.50
6303-11-02-0022 (3969 Ridgewood Av) Purchase cost: \$188,943.30
6303-11-02-0014 (3979 S Ridgewood Av) Purchase cost: \$143,829.50
6303-11-02-0012 (Dunlawton Av) Purchase cost: \$173,903.50

FY2018 **Tax Increment Town Center Fund 103**
Prepared: **October 3, 2018**
Finance: **Finance Staff**

	<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>	
Interfund Transfer -Transfer from 001	1,219,416
Total Revenues:	\$ 1,219,416

Expenditures:

Non-Departmental - Land	1,219,416
Total Expenditures:	\$ 1,219,416

*To budget for the transfer of five parcels of property that were originally purchased from the General Fund to the Town Center CRA Fund 103:

6303-11-02-0071 (108 Herbert St) Purchase cost: \$208,977.10

6303-11-02-0031 (3900 Halifax Dr) Purchase cost: \$503,762.50

6303-11-02-0022 (3969 Ridgewood Av) Purchase cost: \$188,943.30

6303-11-02-0014 (3979 S Ridgewood Av) Purchase cost: \$143,829.50

6303-11-02-0012 (Dunlawton Av) Purchase cost: \$173,903.50

FY2018 Golf Course Operating 450 Fund
Prepared: October 3, 2018
Finance: Finance Staff

	<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>	
Interfund Transfer -Transfer from 508	1,729,491
Appropriated Equity	(1,729,491)
Total Revenues:	<u><u>\$ -</u></u>

<u>Expenditures:</u>	
Total Expenditures:	<u><u>\$ -</u></u>

**After review with our auditors, interfund transfers are required to write off the Loan Pool loan made to the Golf Course Fund 450 in the amount of 1,729,491. This loan was used for renovations to the Golf Course and the Clubhouse which were completed in FY16.

FY2018
Prepared:
Finance:

Loan Pool Fund 508
October 3, 2018
Finance Staff

	<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>	
Appropriated Equity	1,729,491
Total Revenues:	<u>\$ 1,729,491</u>

Expenditures:

Non-Departmental - Transfer to 450 Fund	1,729,491
Total Expenditures:	<u>\$ 1,729,491</u>

**After review with our auditors, interfund transfers are required to write off the Loan Pool loan made to the Golf Course Fund 450 in the amount of 1,729,491. This loan was used for renovations to the Golf Course and the Clubhouse which were completed in FY16.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B12) Resolution No. 18-50 - Acceptance of Deed of Dedication for public purposes along the north side of Herbert Street, adjacent to 3658 Nova Road

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Resolution No. 18-50 accepting the Deed of Dedication for right-of-way along the north side of Herbert Street, adjacent to 3658 Nova Road

SUMMARY: The right-of-way dedication pertains to the area along the north side of Herbert Street, adjacent to Giuseppe's Steel City Pizza at 3658 Nova Road. According to the Land Development Code (LDC), the ultimate right-of-way width for the section of Herbert Street between the west boundary of Gordon Acres to Nova Road is 80 feet wide. Currently, the width of the Herbert Street right-of-way adjacent to the subject property is 55 feet, therefore an additional 25 feet is needed. The additional right-of-way is required by the LDC for future roadway improvements to Herbert Street. The property owner of 3658 Nova Road is dedicating the remaining 25 feet of right-of-way.

At this time, there are no proposed improvements at the Herbert Street and Nova Road intersection. The additional right-of-way received may be used to complete future roadway improvements at this intersection, specifically turn lanes. The attached aerial graphic shows the Herbert/Nova intersection and location of the right-of-way being dedicated to the City of Port Orange (Exhibit "1").

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Reso. No. 18-50 Acceptance of Deed of Dedication Giuseppe	Ord. No. 2018-50 Acceptance of Deed of Deciation Giuseppe.pdf
2.	Exhibit A to Reso No. 18-50	EX A DEED OF DEDICATION GIUSEPPES.pdf

Penelope Cruz
Tim Burman
Shannon Balmer
Jake Johansson
Robin Fenwick

Created/Initiated - 09/26/2018
Approved - 09/27/2018
Approved - 10/04/2018
Approved - 10/04/2018
Final Approval - 10/05/2018

RESOLUTION NO. 18-50

A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, ACCEPTING A DEED OF
DEDICATION CONVEYING APPROXIMATELY 25 FEET OF
ADDITIONAL RIGHT-OF-WAY FOR PUBLIC USE;
PROVIDING FOR CONFLICTING ORDINANCES;
PROVIDING FOR SEVERABILITY; AND PROVIDING FOR
AN EFFECTIVE DATE.

WHEREAS, MIALKI BROTHERS, LLC is willing to convey to the City of Port Orange, Florida certain real property for the purpose of right-of way improvements; and

WHEREAS, MIALKI BROTHERS, LLC has executed and presented to the City of Port Orange, Florida, a Deed of Dedication, attached hereto as EXHIBIT "A", incorporated herein and made a part hereof by reference; and

WHEREAS, said deed conveys lands necessary for future intersection improvements in the right-of-way along Herbert Street; and

WHEREAS, it is in the best interest of the City to accept the Deed of Dedication for purposes stated herein; and

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

Section 1. The above Recitals are incorporated by reference into the body of this Resolution.

Section 2. The City Council of the City of Port Orange, Florida hereby accepts the Deed of Dedication, attached hereto.

Section 3. The City Council of the City of Port Orange, Florida has determined that the acquisition of the aforesaid property is for a public purpose.

Section 4. All resolutions or parts of resolutions in conflict with the provisions of this resolutions are hereby repealed to the extent of such conflict.

Section 5. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this resolutions which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

Section 5. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on this _____ day of _____ 2018

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Prepared by:
Shannon K. Balmer,
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

EXHIBIT "A"

A portion of Parcel No. 6337-02-01-0010

Deed of Dedication
(Right-of-Way)

This Ded of Dedication, is made and executed this _____ day of October, 2018, between **MIALKI BROTHERS, LLC**, a Florida limited liability company, whose mailing address is P.O. Box 290459, Port Orange, FL 32129, hereinafter referred to as, "Dedicator;" and **CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation**, of the County of Volusia in the State of Florida, post office address: Attn: City Manager, 1000 City Center Circle, Port Orange, FL 32129-4144, "City."

WITNESSETH:

That the said Dedicator, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to said Dedicator, in hand paid by the City, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby dedicate, release, remise, and quit-claim unto the City, its successors and assigns forever, for the purposes of a right-of-way for a public road and appurtenances, all that certain land lying and being in the County of Volusia, State of Florida, being more particularly described as follows:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, lien, equity, and claim whatsoever of the Dedicator, either in law or equity forever.

CITY, by accepting this Dedication, obligates itself to forever preserve and use the property dedicated herein for the purpose recited above, and such other public purposes deemed desirable by City.

AND the said Dedicator hereby covenants with City that the Dedicator is lawfully seized of said land in fee simple; that the Dedicator has good right and lawful authority to dedicate and convey said land; that the Dedicator does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, the said Dedicator has caused this *Deed of Dedication* to be executed on its behalf the day and year first above written.

Signed, sealed and delivered
in the presence of:

Dedicator:
MIALKI BROTHERS, LLC,
a Florida limited liability company

By: _____
_____, Manager

Printed Name: _____

Date: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing *Deed of Dedication* was sworn to and acknowledged before me this _____ day of _____, 2018 by _____, **Manager of MIALKI BROTHERS, LLC**, a Florida limited liability company, who [____] is personally known to me, or [____] have produced _____ as identification.

Notary Public, State of Florida at Large
Commission Number, Date of Commission, Expiration, and Seal



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B13) Major Special Event – Christmas Tree Sales at Dunlawton Square Shopping Center located at 3813 Nova Road

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the special event request for Severt Brothers Tree Farm to be held at Dunlawton Square on the vacant lot South of Burger King subject to the attached conditions.

SUMMARY: Paul Holub, property owner, on behalf of Severt Brothers Tree Farm, is requesting to hold a major special event, for the annual sale of Christmas Trees and Wreaths, at the Dunlawton Square Shopping Center located at 3813 Nova Road. The sale is proposed for the parking lot area between Burger King and Dunkin Donuts. The event is proposed for November 13, 2018 through December 25, 2018, with operational hours from 9:00 a.m. to 11:00 p.m. daily. The event is for the sale of Christmas trees with an advanced donation of \$500 to the Spruce Creek High School. There will be a port-o-let and multiple trash receptacles on site for the event. The proposed annual Christmas Tree and Wreath annual event is the same event that Council has previously approved for Severt Brothers Tree Farm.

The proposed event has been reviewed by the Police, Fire, Public Works, Parks and Recreation and Community Development departments. The owner is not requesting additional City resources at this time, however, if needed Cost estimates will be provided from the Police and Public Works departments for staff overtime and materials to assist the event with traffic control, barriers and safety issues within the City of Port Orange. According to Code Enforcement, there are no existing code violations at this time.

Additionally, the applicant has also requested the surety bond be waived due to past good performance in clean up after prior year's event. The cost of the surety bond is determined by the 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 when required. The surety bond was waived last year and as a result, staff conditions allow the waiver. Should Council choose to require the bond, the conditions will need to be revised.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Staff Recommendations	Staff Recommendations.pdf
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Briana Conlan-King	Created/Initiated - 09/21/2018
Tim Burman	Approved - 09/21/2018
Thomas Grimaldi	Approved - 09/21/2018
Ronny Buttrum	Approved - 09/24/2018
Jake Johansson	Approved - 09/24/2018
Robin Fenwick	Final Approval - 09/24/2018

RECOMMENDATION

Staff recommends approval of the annual Christmas Tree and reath sale subject to the following conditions:

1. Hours of the event shall be from 9:00 a.m. until 11:00 p.m. with outdoor lighting provided.
2. 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.
3. Additional requirements for the tent permit (if the following are used) are as follows:
 - Portable heaters must be visibly approved for indoor usage and away from ALL combustibles. Patio heaters are strictly prohibited.
 - Portable Generator shall be positioned to the exterior of the sales tent with a sufficient separation distance accepted by the Fire Marshal and Chief Building Official.
 - All flammable/combustible fuel containers shall be of an approved type container and stored a safe distance away from the sales tent area.
4. A temporary structure-building permit is required for the proposed tent.
5. Portable fire extinguishers shall be provided in accordance with the NFPA #10 Standard for Portable Fire Extinguishers. (A fire extinguisher with current certification tags from a fire equipment company must be mounted near each exit).
6. A permit shall be required and obtained by a properly licensed contractor for any electrical work performed in connection with this event. Any such electrical work shall comply with the requirements set forth in Article 590 of the current adopted NFPA #70 National Electrical Code. All temporary lamps shall be protected from accidental contact or breakage by a suitable fixture or lamp holder with a guard.
7. All areas being used for this function shall be handicap accessible. Handicap parking is to remain open and accessible for this event.
8. The motor home used during this event shall be placed so as not to interfere with the normal flow of traffic through the shopping center parking lot. The motor home shall also be positioned between the tent and the buildings of the plaza to not directly face Nova Road.
9. The applicant shall provide port-o-let facilities that shall comply with section 4.22 or 4.23 of the Florida Accessibility Code, i.e. must be handicapped-accessible.
10. All exits and means of egress shall remain accessible and unobstructed.
11. It shall be the responsibility of the owner to maintain access for emergency vehicles.

12. Event organizers are required to delineate the event area from the vehicular driving and parking area with cones, ropes and/or barricades where necessary.
13. Tripping hazards shall be removed or isolated from pedestrian traffic. Vehicle areas, including parking, shall be physically separated from pedestrian areas.
14. A temporary sign permit shall be required for the one (1) sign allowed for this event.
15. No smoking signage shall be posted within the confines of the tent.
16. The parking lot shall be kept free and clear of all garbage, trash and tree limbs during the event. All garbage receptacles shall be placed behind the tent to not face Nova Road.
17. The Applicant shall contact the Community Development Department to schedule an inspection of the tent prior to the start of the event to ensure that the tent is well secured and that all other safety measures are in place.
18. It is the Applicant's responsibility to contact the Community Development Department for an inspection of debris removal within 48 hours after the event.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B14) Renewal #1 of the License Agreement with Sandy Point Progressive Sports LLC for water recreation services at Riverwalk Park

DEPARTMENT: Parks & Recreation

GOAL:

RECOMMENDED MOTION: Move to approve the license agreement renewal with Sandy Point Progressive Sports LLC, authorize the City Manager to approve any future renewals and authorize the Mayor and City Clerk to execute the associated documents.

SUMMARY: September 2016 the city entered into a license agreement with Sandy Point Progressive Sports LLC for water recreational services at Riverwalk Park. The agreement has two- 2 year renewal options. The Parks & Recreation Department is requesting that the agreement be renewed for an additional two years leaving one two year renewal option available. Staff recommends approval.

Project No.: Funding Account No.: 103.-0000-362.14-00

ATTACHMENTS:

1.	Extension No. 1 - Sandy Point License Agreement - 10.3.18	Extension No. 1 - Sandy Point License Agreement - 10.3.18.pdf
2.	Sandy Point ExecutedLicense Agreement 9-6-16	ExecutedLicense AgreementSP.pdf

Susan Lovallo
Susan Lovallo
Tracey Riehm
Matthew Jones
Jake Johansson
Robin Fenwick

Created/Initiated - 09/19/2018
Approved - 09/19/2018
Approved - 10/01/2018
Approved - 10/03/2018
Approved - 10/04/2018
Final Approval - 10/05/2018

**EXTENSION NO. 1
TO LICENSE AGREEMENT DATED SEPTEMBER 6, 2016**

THIS EXTENSION NO. 1 OF LICENSE AGREEMENT ("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 ("Licensor"), and **SANDY POINT PROGRESSIVE SPORTS, INC.**, whose mailing address is 3090 S. Ridgewood Avenue, S. Daytona, Florida 32119, ("Licensee"). The Licensor and the Licensee are hereinafter collectively referred to as the "Parties."

WHEREAS, the Licensee was the successful bidder to the City's RFP #16-27 to provide water recreation rental operations to the public; and

WHEREAS, on the 6th day of September 2016, the Licensor granted to the Licensee a license to access the Subject Property described on Exhibit "A" to the License Agreement, and to the non-exclusive use of the License Areas, as shown on Exhibit "B" to the License Agreement, subject to the terms and conditions contained within the License Agreement, for the purpose of operating a water recreation rental operation ("License") for a period of two (2) years with two optional two (2) year extensions thereafter; and

WHEREAS, on the 16th day of May 2017, the Parties entered into an Addendum to the License Agreement to provide for a four (4) month credit of the monthly license fee in consideration for the interruption caused by the construction of Phase II of the Licensor's Riverwalk Park project; and

WHEREAS, the Parties desire to extend the Agreement for an additional two (2) year term as provided for in the License Agreement; and

WHEREAS, the Port Orange City Manager has determined that the execution of this Extension No. 1 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: Notwithstanding the date of execution, the term of this Extension No. 1 is hereby extended for two (2) years, commencing on September 6, 2018 and continuing until September 5, 2020.

2. All other terms and conditions of the License Agreement shall remain in full force and effect.

3. Authority to Sign. Each person signing this Extension warrants that he or she is duly authorized to do so and to bind the respective party to the Extension.

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

Witnesses:

Printed Name: _____

Printed Name: _____

LICENSEE:

**SANDY POINT PROGRESSIVE SPORTS, INC.
FLORIDA**

By: _____
Robert Gilmore, Managing Member

If this Contract is signed by an individual not identified as the President of the corporation in the records of the Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into contracts on behalf of the corporation

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Robert Gilmore, as Managing Member of Gentry Oil, LLC, 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:

LICENSOR:
CITY OF PORT ORANGE
a chartered municipal corporation

Printed Name: _____

By: _____
Donald O. Burnette, Mayor

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

Witnesses:

ATTEST:

Printed Name: _____

By: _____
Robin L. Fenwick, CMC, City Clerk

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

This Document Prepared by:

Matthew J. Jones
Deputy City Attorney
1000 City Center Circle
Port Orange, FL 32129

Parcel No.: 6303-10-01-0011

This Space Reserved for Recording Data

LICENSE AGREEMENT

THIS **LICENSE AGREEMENT** is made and entered into this 6th day of September, 2016, by and between the City of Port Orange, Florida, a chartered municipal corporation ("City"), 1000 City Center Circle, Port Orange, FL 32129, ("Licensor"), and Sandy Point Progressive Sports, Inc., whose mailing address is 3090 S. Ridgewood Avenue, S. Daytona, FL 32119, ("Licensee").

PREMISES

WHEREAS, the Licensee is the successful bidder to the City's RFP #16-27 to provide water recreation rental operations to the public; and

WHEREAS, the Licensor is the owner of real property located at 3441 S. Ridgewood Avenue, Port Orange, Florida 32127, commonly known as the Riverwalk Park Phase I, hereinafter referred to as the "Subject Property", and described on **Exhibit "A"**; and

WHEREAS, the Licensor has constructed improvements at the Subject Property which include a +/- 400 sq. ft. concession/vendor building with two restrooms, a 30' wide canoe/kayak launch, a canoe kayak rack area, and public parking, hereinafter referred to as the "License Areas", as depicted on the attached **Exhibit "B"**; and

WHEREAS, the Licensee hereby warrants to the City that the Licensee has full power and authority to enter into this Agreement, and that the Licensee agrees to be bound by the terms and conditions hereof; and

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. **Use.** The City hereby grants to the Licensee a license to access the Subject Property described on Exhibit "A", and to the non-exclusive use of the License Areas, as shown on Exhibit "B", subject to the terms and conditions herein contained, for the purpose of operating a water recreation rental operation ("License").

2. Term. This License shall commence upon the execution of this License Agreement and shall continue for a period of two (2) years, with two optional two (2) year extensions thereafter. Notwithstanding the foregoing, either party may terminate this License at any time by giving sixty (60) days' written notice to the other party. At the expiration or earlier termination of this License, Licensee shall immediately cease use of the License Areas and remove any personal property located thereon.

3. License Fee. Licensee shall pay to Licensor a license fee at the monthly rate of **TWO HUNDRED AND 00/100 DOLLARS (\$200.00)**. The first payment shall be made prior to the Licensee's use of the License Area, and shall thereafter be paid on the 1st day of the month until expiration or earlier termination of this License. Payments shall be made to the Finance Department of the City of Port Orange.

4. Taxes.

(a) In the event that taxes are legally imposed, Licensee is solely responsible for all taxes, if any, imposed under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, accruing during the term of the License Agreement or any renewal thereof. In the event that taxes are legally imposed, Licensee is solely responsible for Licensee's pro rata share of ad valorem and non-ad valorem taxes, impact fees, and assessments levied, if any, against the Subject Property as more particularly described in Exhibit "A" to this License Agreement, accruing during the term of the License Agreement or any renewal thereof. Licensee shall pay all such legally imposed taxes imposed under Section 212.031, Florida Statutes, directly to the respective taxing authority.

(b) All ad valorem and non-ad valorem taxes that are legally imposed shall be advanced and paid by Licensor on behalf of Licensee directly to the Volusia County Tax Collector's Office and reimbursed by Licensee to Licensor within thirty (30) days of delivery of an invoice therefor to Licensee.

(c) Licensee acknowledges that any taxes legally imposed on the License under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, if any, are imposed on Licensee, and not on Licensor. Licensee acknowledges that any ad valorem taxes legally imposed on the Subject Premises under Section 196.199, Florida Statutes (taxation of government leaseholds), any non-ad valorem taxes, impact fees and assessments, if any, are imposed on Licensee, and that Licensor, as a governmental entity, is immune or exempt from such imposition.

5. Conditions Applicable to License. This License is subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions and rights of way with respect to the License Areas, whether or not of record.

6. City Use. The City reserves the right to use the License Areas and/or Subject Property at any time. Licensor may request removal of any and all personal property of the Licensee located at or on the Subject Property in the event that the City needs to utilize the Subject Property for City purposes, such as special events, maintenance work, or other public uses. The City shall endeavor to give at least ten (10) days prior notice to the Licensee. If the Licensee's personal property is not removed within the time specified by the City or in cases

where emergency work by the City becomes necessary, the City may remove or cause to be removed the Licensee's personal property without any liability to the City. The Licensee shall be responsible for any and all expenses for the storage of Licensee's personal property.

7. Signage. Licensors shall not install or construct permanent signage at the Subject Property; however, temporary signage may be displayed during the Licensee's regular operating hours, so long as it is displayed in accordance with the City of Port Orange Land Development Code. Signage design, layout and location, or any modification thereto, shall be submitted to the Parks and Recreation Director for review and approval prior to display. Such approval shall not be valid unless in writing.

8. Operating Hours. The Licensee may operate daily from dawn to dusk. Licensee may request additional hours of operation by providing a written request to the Parks and Recreation Director fifteen (15) days in advance of the special event requiring additional hours.

9. Licensee Obligations.

(a) Licensee shall operate a non-motorized marine equipment rental operation serving the general public in accordance with the City's RFP 16-27, as modified by Addendum 1, and Licensee's proposal in response thereto, attached hereto as **Exhibit "C"** and incorporated herein by reference. In the event that there is a conflict between the terms of this License Agreement and the terms of RFP 16-27, as modified by Addendum 1, or the Licensee's proposal in response thereto, the terms of this License Agreement shall control.

(b) All operating costs, including the cost of utilities used exclusively by the Licensee, its employees or its patrons, shall be the responsibility of the Licensee.

(c) Licensee shall be responsible for securing and safeguarding its equipment and other personal property. Licensors shall not be responsible for vandalism or theft of property while located in or on the Subject Property.

(d) Licensee shall maintain the License Areas to keep a neat and clean appearance. This maintenance shall include, but is not limited to daily refuse removal, sweeping, mopping, and cleaning the License Areas and areas immediately surrounding the License Areas daily, and screening of any refuse collection from public view prior to disposal.

(e) All equipment and staffing necessary to meet the public demand shall be provided by the Licensee at its own expense.

(f) Licensee shall conduct regular inspections of all rental equipment and safety equipment to ensure the safety of those individuals renting the equipment. Licensee shall not use or rent equipment that is damaged or defective, and shall repair or replace any damaged or defective equipment at its own expense.

(g) Licensee shall train each renter on water safety and equipment operation prior to renting equipment, and shall develop standard equipment rental procedures to ensure the safety of all participants.

(h) Licensee shall conduct annually, at its expense, a Florida Department of

Law Enforcement (FDLE) Level 1 background check for any and all employees of the Licensee involved in the operations described in this License Agreement. Documented evidence of such check shall be maintained by the Licensee for the entire duration of employment for each employee and shall be made available for inspection by the Parks and Recreation Director upon request.

10. Equipment Rental Pricing. The maximum allowable equipment rental rates shall be those rates set forth in Licensee's proposal submitted in response to RFP 16-27 (see Exhibit "C").

11. No Transfer or Assignment. The License is personal to the Licensee and shall not inure to the successors or assigns of the Licensee. The rights, privileges and permission granted herein shall not be assignable by the Licensee in whole or in part.

12. Permits and Regulations. Licensee shall be responsible for securing any required approvals, permits and authorizations from any federal, state or local agencies and shall comply with all applicable laws and regulations, including strict adherence to the regulations set forth in Chapters 327 and 328 of the Florida Statutes, as may be amended.

13. No Interference. Licensee shall not interfere with the normal operation and activities of Licensors, and Licensee shall conduct its activities on the License Areas to minimize damage to the License Areas and inconvenience to Licensors, its agents, employees and invitees.

14. Repair and Restoration. If Licensee, its employees or agents cause any damage to the License Areas, or to any improvements located at or on the Subject Property in connection with the exercise of this License, Licensee shall repair and restore the License Areas and Subject Property to their original condition prior to Licensee's use. Licensee shall perform the repair and restoration required hereunder prior to the expiration of this License, or within ten (10) days of the earlier termination of Licensee's rights hereunder. In the event that repair and restoration is performed following the termination of this License, the Licensee's indemnity and insurance obligations set forth herein shall continue until repair and restoration is completed as provided herein.

15. Security Deposit. Licensee shall provide Licensors with a security deposit in the form of irrevocable letters of credit, cash deposits or surety instruments satisfactory to the Licensors prior to the effective date of the License. The security deposit amount shall be **FOUR HUNDRED AND 00/100 DOLLARS (\$400.00)** to be used to offset any damage to the Subject Property or License Areas caused by the Licensee.

16. Insurance. Licensee, at its sole cost and expense, shall insure its activities in connection with this License and obtain, keep in force, and maintain insurance as follows:

(a) Commercial General Liability Insurance (contractual liability included) with minimum limits as follows:

- (1) Each Occurrence - \$1,000,000
- (2) General Aggregate - \$2,000,000
- (3) Products/Completed Operations Aggregate - \$2,000,000
- (4) Personal and Advertising Injury - \$1,000,000

(b) Property Insurance, Fire and Extended Coverage in an amount sufficient to reimburse Licensee for all of its equipment and other personal property located at or on the Subject Property.

(c) Workers Compensation as required by Florida Law.

(d) Such other insurance in such amounts which from time to time may be reasonably required by the Licensor.

The coverages required herein shall not limit the liability of the Licensee. The coverage set for the in (a) of this section shall include the Licensor as an additional insured. Licensee shall provide to Licensor a Certificate of Insurance annually as proof of insurance coverage in accordance with this section. The policies herein required shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insurers are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Licensee shall provide Licensor notice of cancellation, nonrenewal or any other changes in coverage no later than (10) days prior to the effective date of the change.

17. Hold Harmless and Indemnification. The Licensee shall not claim any damages from the City for any injuries or damages in connection with or on account of the exercise of such rights, privileges or permission, the condition of the City's property, or the use of the City's property pursuant to this License. The Licensee shall indemnify and hold harmless the City, its officers, employees and agents, from and against all claims, damages, losses and expenses, attorneys' fees and costs, arising out of, resulting from, or in any way connected with the condition of the City's property, the use of the property by Licensee, his invitees and members of the public, the exercise of the license granted by this License Agreement, the failure on the part of the Licensee to comply with any of the provisions specified herein, or otherwise permitted by this License Agreement. The City shall not be liable to the Licensee if for any reason the Licensee's use of the Subject Property is hindered or disturbed.

18. Notice. Any notice required hereunder shall be in writing and shall be addressed as follows:

Licensor: City of Port Orange
Parks and Recreation Director
1000 City Center Circle
Port Orange, FL 32129

Licensee: Sandy Point Progressive Sports, Inc.
c/o Mike Klein
3090 S. Ridgewood Avenue
South Daytona, Florida 32119

19. Lien Free Condition. Licensee shall not cause or permit any liens to be placed against the Premises or against Licensor's other property as a result of Licensee's exercise of rights under this License. In the event of the filing of any such liens, Licensee shall promptly cause such liens to be removed. In no event shall such lien removal require more than thirty (30) days.

20. License Administrator. The Parks and Recreation Director for the City of Port Orange shall perform the administration of this License Agreement.

21. Entire Agreement. This License Agreement constitutes the entire agreement between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This License Agreement may be amended or modified only by an instrument of equal formality signed by the respective parties.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the respective dates below.

WITNESSES:


Printed Name: Wayne Clark


Printed Name: Margaret T. Roberts


Printed Name: Wayne Clark


Printed Name: Margaret T. Roberts

LICENSOR:

CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation

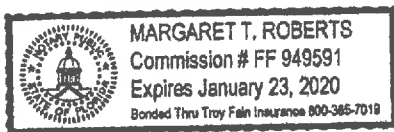
By: 
Allen Green, Mayor

Attest: 
Robin L. Fenwick, CMC, City Clerk

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th day of September, 2016, by Allen Green, as Mayor of the City of Port Orange, Florida, who acknowledged that he is duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who ☒ is personally known to me, or ☐ has produced _____ as identification.




Notary Public, State of Florida at Large
Printed name, commission and expiration:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th day of September, 2016, by Robin L. Fenwick, as the City Clerk of the City of Port Orange, Florida, who acknowledged that she is duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who ☒ is personally known to me, or ☐ has produced _____ as identification.




Notary Public, State of Florida at Large
Printed name, commission and expiration:

WITNESSES:

LICENSEE:

Sandy Point Progressive Sports, Inc.
a Florida corporation

Marty C. H.
Printed Name: MARTY GOTTlieb

Steven B. Gottlieb
Steven B. Gottlieb, President

Sherry Lewis
Printed Name: Sherry Lewis

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 2nd day of Sept., 2016, by Steven B. Gottlieb, as President of Sandy Point Progressive Sports, Inc., a Florida corporation, on behalf of the corporation, who is authorized to execute the foregoing LICENSE AGREEMENT, and who ☒ is personally known to me, or ☐ has produced _____ as identification.

Curtis Glenn Ransom
Notary Public, State of Florida at Large
Printed name, commission and expiration:



CURTIS GLENN RANSOM
MY COMMISSION # FF 927714
EXPIRES: November 17, 2019
Bonded Thru Budget Notary Services

EXHIBIT "A"

Riverwalk Park Phase 1
3441 Ridgewood Avenue, Port Orange, FL 32129

Full Parcel ID:

03-16-33-10-01-0011

Short Parcel ID:

6303-10-01-0011

Legal Description:

A portion of the Parcel ID listed above.

EXHIBIT "A"



EXHIBIT "B" RIVERWALK PARK PHASE 1A

Dredging & Marine Consultants

DMC
ENGINEERS • SCIENTISTS

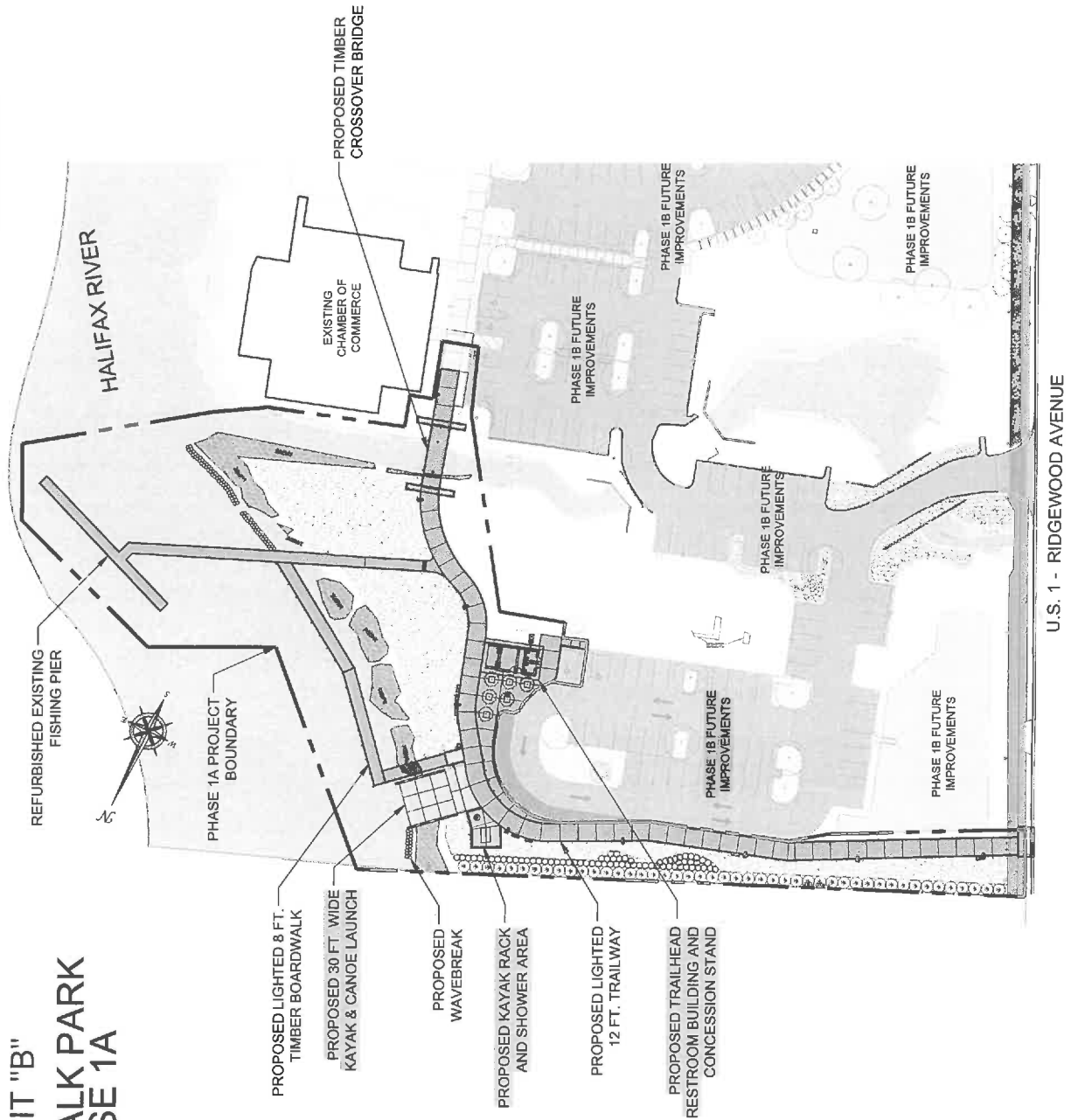


EXHIBIT "C"

CITY OF PORT ORANGE, FLORIDA

REQUEST FOR PROPOSALS

WATER RECREATION RENTAL OPERATIONS

RFP #16-27



City of Port Orange Purchasing Division
Diana M. Fye, CPPB, FCPA, Purchasing Manager

Prepared by: Diana Fye, Purchasing Manager

Release Date: June 10, 2016

Proposal Due Date and Time: July 15, 2016 at 2:30 p.m.

City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129
(386) 506-5718
purchdiv@port-orange.org
www.port-orange.org



Legal Notice to Proposers

RFP #16-27 WATER RECREATION RENTAL OPERATIONS

Notice is hereby given that the City of Port Orange is soliciting proposals for WATER RECREATION RENTAL OPERATIONS. Proposals will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 P.M. on July 15, 2016** which may be amended by addendum issued by the City. All untimely proposals will not be considered and will be returned to the proposer unopened. All proposals will be evaluated to ensure they contain all required forms in order to deem the proposer responsive or non-responsive. Proposals will be opened and read aloud at 2:30 P.M. in Council Chambers.

There will be a Non-Mandatory Pre-Proposal Conference and site visit for the project at **10:00 A.M.** (local time) on **June 24, 2016** at City Hall, Council Chambers (1st floor) 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the Pre-Proposal Conference must sign in. The representative of each Proposer shall be an authorized employee of the Proposer and shall sign in accordingly

DESCRIPTION: The City of Port Orange is seeking proposals from qualified firms to enter into a lease agreement for water recreation rental operations at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127.

All proposals 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 proposals 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 32129, and at www.municode.com. Local vendors may be given a local preference pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-275.

Copies of the proposal documents, requirements, 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. All questions shall be directed **in writing** to the Purchasing Manager, Diana M. Fye, CPPB, FCPA, purchdiv@port-orange.org and reference "Questions on RFP #1627 WATER RECREATION RENTAL OPERATIONS" in the subject line. Last day for questions will be **July 1, 2016 at 5:00 PM.**

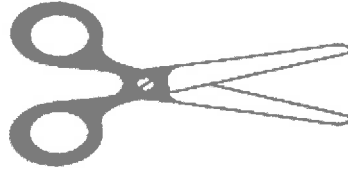
All Proposers are required to complete and submit a Public Entity Crime Statement, the Anti-Collusion Statement, and Drug Free Tie Proposal Preference Statement, as well as other documents as required by the solicitation.

No proposals 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 proposals, to waive any and all non-substantial irregularity in Proposals received, whenever such waiver or rejection is in the best interest of the City.

Proposals shall be **submitted in the City Clerk's office** with one (1) original and one (1) digital (CD or flash drive) version in pdf format, addressed to Diana M. Fye, CPPB, FCPA, Purchasing Manager, Finance Department, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 in a **SEALED ENVELOPE/PACKAGE** plainly marked on the outside: **"RFP #16-27 WATER RECREATION RENTAL OPERATIONS"**.

Diana M. Fye, CPPB, FCPA, Purchasing Manager
Legal Ad - One Time – **June 10, 2016**

Cut along the outer border and affix this label to your sealed proposal envelope to identify it as a "Sealed Proposal". Be sure to include the name of the company submitting the proposal where requested.



SEALED PROPOSAL • DO NOT OPEN	
SEALED PROPOSAL NO.	RFP #16-27
PROPOSAL TITLE:	WATER RECREATION RENTAL OPERATIONS
DUE DATE/TIME:	July 15, 2016 at 2:30 pm
SUBMITTED BY:	
	(Name of Company)
DELIVER TO:	City of Port Orange City Clerk's Office Attn: Diana M. Fye, CPPB, FCPA Purchasing Manager Finance Department 1000 City Center Circle Port Orange, Florida 32129
DATE/TIME RECEIVED:	
	(To be stamped by Clerk's Office)

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SECTION 1 – PURPOSE AND OVERVIEW

The purpose for this Request for Proposals (RFP) is to solicit competitive sealed proposals from vendors for the provision of entering into a lease agreement for water recreation rental operations at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127, as described herein.

It is the intent and purpose of the City of Port Orange (City) that this Request for Proposals promotes competitive selection. It shall be the proposer's responsibility to advise the Purchasing Division if any language, requirements, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a single source.

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO PROPOSERS

Firms or companies desiring to provide services, as described herein shall submit sealed proposals including one original copy, and one (1) digital (CD or flash drive) version in PDF format, in conformance with the detailed submittal instructions.

TIMELINE (Local Time):

The City reserves the right to alter dates as needed.

Date of Distribution: June 10, 2016
Non-Mandatory Pre-Proposal Conference Jun 24, 2016 at 10:00 a.m.
Deadline for Questions: July 1, 2016 by 5:00 p.m.
Final Addendum Posting: July 7, 2016
Proposals Due: July 15, 2016 by 2:30 p.m.
Evaluation Committee Meeting July 22, 2016 at 1:30 p.m.
Shortlisted Firms Presentations/Discussions (if required) To Be Determined

Proposals must be delivered in a sealed envelope/package and delivered to the City of Port Orange City Clerk's Office, Attn: Diana M. Fye, CPPB, FCPA, Purchasing Manager, Finance Department, 1000 City Center Circle, Port Orange, Florida 32129 no later than the date and time listed in the Timeline above. All times referenced are local time.

Proposals shall be sealed and Proposers must indicate on the outside of their proposal the following:

- a) Request for Proposal (RFP) Number and Title
- b) Date of Opening
- c) Name of Proposer
- d) Address of Proposer

Due to the timing of mail service, the City cautions Proposers to assure actual delivery of proposals to the City prior to the deadline set for receiving proposals. Carrier and hand deliveries of proposals will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida until the date and time referenced in the Timeline above or as amended by addendum issued by the City. Proposals received after the established deadline shall not be considered.

Proposers are cautioned that they are responsible for delivery to the specific location cited above. Therefore, if your bid, proposal, statement or quotation is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the above address. This office will not be responsible for deliveries made to any place other than the specified address.

Offers by telephone, email or telegram shall not be accepted. Also, Proposers are instructed NOT to fax their proposal package. **Faxed proposals shall be rejected as non-responsive regardless of where or when the fax is received.**

All proposals will be opened publicly and the names of all Proposers shall be read aloud. All conferences, and meetings (including opening of proposals) regarding this RFP are recorded electronically (audio only).

The City of Port Orange reserves the right to reject any or all proposals or parts of proposals, if it is in the best interest of the City.

NON-MANDATORY PRE-PROPOSAL CONFERENCE/SITE VISIT:

There will be a Non-Mandatory Pre-Proposal Conference and Site Visit for the project on the date and time referenced in the Timeline above at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, Florida 32129. All prospective Proposers are strongly encouraged to attend because the Pre-Proposal Conference will offer potential Proposers the opportunity to ask questions and discuss the project directly with staff. All attendees to the Pre-Proposal Conference must sign in. The representative of each Proposer shall be an authorized employee of the Proposer and shall sign in accordingly.

All prospective Proposers are strongly encouraged to attend because this will be the ONLY opportunity to tour the sites. City staff will not give individual tours after the scheduled Pre-Proposal Meeting.

CONE OF SILENCE:

Proposers shall not direct any queries or statements concerning their proposal to the City Council, City staff and/or Evaluation Committee Member during the selection process, from the time of submission of a proposal until recommendation of award. Any Proposer who initiates any discussions with staff in any manner other than that described below is subject to disqualification from this procurement.

QUESTIONS REGARDING THIS RFP:

All questions shall reference "Questions on RFP # 16-27 WATER RECREATION RENTAL OPERATIONS" in the subject line. All questions concerning this RFP shall be submitted in writing no later than the date and time referenced in the Timeline above to:

Diana M. Fye, CPPB, FCPA
Purchasing Manager
1000 City Center Circle
Port Orange, FL 32129
purchdiv@port-orange.org

ADDENDA REGARDING THE REQUEST FOR PROPOSALS:

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

It is the proposer's responsibility to be sure all correct number of addenda was received. The Proposer should verify with the designated contact persons prior to submitting a proposal that all addenda have been received. Proposers should acknowledge the correct number of addenda received as part of their proposals. It is the responsibility of the proposer to ensure all addenda have been received prior to submitting a proposal.

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

The failure of proposers to submit acknowledgement of any addenda that affects the RFP price(s) is considered a major irregularity and will be cause for rejection of the proposal.

The City of Port Orange reserves the right to consider the omission of an acknowledgement of addendum as cause for rejection of the RFP submittal.

This provision exists solely for the convenience and administrative efficiency of the City of Port Orange. No Proposer or other third party gains any rights by virtue of this provision or the application thereof, nor shall any proposer or third party have any standing to sue or cause of action arising there from.

CLARIFICATIONS:

It is the Proposer's responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this RFP. Lack of understanding and/or misinterpretation of any portions of this RFP shall not be cause for withdrawal of your proposal after opening or for subsequent protest of award. Proposers must contact the Purchasing Representative, at the email provided, should clarification be required.

Modification or alteration of the documents contained in the solicitation or contract shall only be valid if mutually agreed to in writing by the parties.

MINIMUM QUALIFICATIONS:

Proposers shall be licensed to do business in the State of Florida. Submit Sunbiz report with your company registered as "Active".

Proposers must be properly registered and licensed to engage in the scope of work pertaining to this RFP, by all applicable state and local agencies.

Proposers must provide a minimum of three (3) verifiable references from similar scopes of work as identified in this RFP following the requirements in Section 7. Failure to provide references that verify required experience will cause the Proposer to be deemed non-responsive. The City of Port Orange is not to be used as a reference.

EXCEPTIONS TO SPECIFICATIONS:

If you are taking exception to any portion of the RFP specifications, indicate those exceptions as stated on the Proposer's Acknowledgement Form.

PROPOSAL SUBMISSION AND WITHDRAWAL:

Unless otherwise specified, Proposer shall use the forms supplied by the Purchasing Division. Proposals, once opened, become the property of the City, cannot be withdrawn, and will not be returned to the proposers. Upon opening, Proposals become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

PRICING SHEETS:

Pricing sheets are to be completed as directed and without modification and returned as part of the RFP submittal prior to the RFP deadline for submission. Failure to fill out the price sheets as directed and without modification may negatively affect the evaluation of your proposal.

LITIGATION HISTORY:

The City will consider a Proposer's litigation history information in its review and determination of responsibility. All Proposers are required to disclose to the City all "material" cases filed, pending, or resolved during the last five (5) years prior to the solicitation response due date, whether such cases were brought by or against the Proposer, any parent or subsidiary of the Proposer, or any predecessor organization. If the Proposer is a joint venture, the information provided should encompass the joint venture (if it is not newly-formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Proposer's litigation history is an issue of responsibility, the failure to provide litigation history as required in the Proposal Submittal and Requirements section may result in a recommendation of non-responsive by the Purchasing Manager.

AUTHORITY TO CONDUCT BUSINESS IN FLORIDA:

A Florida corporation or partnership is required to provide evidence with its response that the proposer is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager.

A foreign (out-of-state) corporation or partnership is required to provide evidence with its response that the Proposer is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager.

A joint venture is required to provide evidence with its response that the joint venture, or at least one of the joint venture partners, is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. However, the joint venture is required to provide evidence prior to contract execution that the joint venture is authorized to transact business in Florida and provide the City with a copy of the joint venture Agreement.

A joint venture is also required to provide with its response a Statement of Authority indicating that that the individual submitting the joint venture's proposal has the legal authority to bind the joint venture. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager.

CORRECTION OF PROPOSALS:

Correction of inadvertently erroneous proposals shall be permitted up to the time of RFP opening. Proposers shall not be allowed to modify their proposals after the opening time and date.

WITHDRAWAL OF PROPOSALS:

NO proposal shall be withdrawn for a period of ninety (90) days subsequent to the proposal opening without the consent of the City of Port Orange, Florida. Negligence on the part of the Proposer in preparing the proposal confers no right of withdrawal or modification after the proposal has been opened, at the appointed time and place by the City of Port Orange. Any such withdrawn proposal shall not be resubmitted.

OPENING OF PROPOSALS:

Proposals will be received until the date and time stated in this RFP and will be publicly opened and read at the place, time and date stated. No responsibility will attach the Purchasing Department for the premature opening of a proposal not properly addressed and identified.

REJECTION OF PROPOSALS:

The City reserves the right to reject any and/or all proposals when such rejection is in the best interest of the City.

PROPOSALS MAY BE REJECTED AND/OR VENDOR(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

- (a) Failure to update the information on file including address, product, service or business descriptions.
- (b) Failure to perform according to contract provisions.
- (c) Conviction in a court of law of any criminal offense in connection with the conduct of business.
- (d) Evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
- (e) Evidence that the vendor has attempted to give a Board employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
- (f) Other reasons deemed appropriate by the City.

NO LOBBYING:

All Proposers are hereby placed on notice that the City of Port Orange Council, City Employees/Staff, nor Members of the Evaluation Committee (with the exception of the City of Port Orange Purchasing Division personnel designated to receive requests for interpretations or corrections) are not to be lobbied, directly or indirectly either individually or collectively, regarding this RFP. During the entire procurement process, all Proposers and their subcontractors, sub-consultants, or agents are hereby placed on notice that they are not to contact any persons listed above for such purposes as holding meetings of introduction, dinners, etc., if they intend to submit or have submitted proposals for this project. Any Proposer contacting individuals mentioned herein in violation of this warning may automatically be disqualified from further consideration for this RFP.

OWNERSHIP OF DOCUMENTS:

All documents resulting from this project will become the sole property of the City of Port Orange. The Proposer must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in possession of the Proposer upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

AMERICANS WITH DISABILITIES ACT (ADA):

If you need special services provided for under the Americans with Disabilities Act, contact the ADA Coordinator in our Human Resources office at 386-506-5560 at least 48 hours before the scheduled event.

[Remainder of this page left intentionally blank]

SECTION 3 – SCOPE OF SERVICES

The City of Port Orange is seeking proposals from qualified firms or companies to enter into a lease agreement for water recreation rental operations at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127. The premises shall be used for purposes consistent with related marine use such as canoe, kayak, paddleboard, and other non-motorized equipment. The Proposer shall be responsible for all self-contained maintenance, trash, sewer, cable, phone internet and other utilities required for adequate operation of the facility. Electricity and water availability is to be included in the lease fee.

The Proposer shall furnish all necessary labor and equipment for the operations and provide rental preparations as requested by the customers. The proposer shall also be responsible for the collection of all rental fees, contracts and records for the rental operation.

The agreement terms contained in this solicitation shall be part of a final agreement to be approved by the City Council. Proposers are advised to fully review all terms and conditions expressed in the solicitation as the contents of that document have precedence in all regards and will govern the operations of all parties in the provision of the required services.

Objectives:

To serve the general public as a full service outfitter in an attractive setting in compliance with all governmental codes and regulations, subject to inspection and review by the City of Port Orange and to generate revenue for the City through the base rent component of the lease agreement. The City's goal is to have the outfitter fully operational for Riverwalk Park on August 1, 2016.

Proposers must provide a sample of services with pricing for services with their operation plan. (See Tab E under Section 7 – Proposal Submittal and Requirements.)

Lease Terms:

The term of the lease is two years with the option to renew two (2) times in two (2) year intervals.

Lease terms will include a monthly base rent. Monthly lease costs include the concession area of the building and designated park areas as well as shared use of the restrooms, (attached as Exhibit 1). The Lease will also include electric, water, sewer and trash removal. The Lease will not include cable, phone and internet.

The Proposer shall provide the City with a security deposit in the form of irrevocable letters of credit, cash deposits, or surety instruments satisfactory to the City upon signing the negotiated lease. The amount of the total deposit will be the total of first and last month's rent. The anticipated lease will be a net lease in which the Tenant will pay all operating expenses.

Outfitter Operation:

The Tenant shall be responsible for operations, marketing and advertising, staffing, cleaning, security, cost of some utilities, including but not limited to cable, satellite TV service, internet and maintenance within the leased areas, and obtaining all required permits and licenses.

The City will in no way be obligated to subsidize or support the operation of the operation of the outfitter. The City will not pledge any revenues, taxes, fees, or other financial resources to pay expenses incurred by the Proposer that enters into the Contract with the City. It will be the complete responsibility of the successful Proposer to ensure that the outfitter operates in a financially responsible manner.

Background Information:

Port Orange's Riverwalk Park covers approximately sixteen (16) acres and is located along Halifax River (ICW) situated between Ocean Avenue and Dunlawton Avenue on US 1. The park amenities include a paved trail used by walkers and bikers and alike. There are playgrounds, restroom facilities, picnic areas, splash pad and fishing piers. The Riverwalk Park will serve as host to a variety of activities and special events throughout the year.

The Facility:

The Riverwalk Park, located at 3441 South Ridgewood Ave, Port Orange, FL, 32127, is a 16-acre park located along the intercostal waterway. The Park is owned by the City of Port Orange and operated by Department of Parks and Recreation.

The Riverwalk Floor Plan indicates the area available to lease. Any interior modifications can be negotiated between the successful Proposer and the City. All equipment will be provided by tenant.

The Building: The electric system meets code, water, sanitary sewer is all currently available in the facility. Phone, cable television and High speed internet are the tenant's responsibility.

The concession building is 202 square feet and has a three basin sink, roll up concession windows and electrical outlets. Outside restrooms attached to building are open to the public and maintained by the city.

Any improvements installed by the Lessee shall be approved by the City of Port Orange and shall be code compliant. Suggestions for specific improvements by the Proposer should be reviewed by the Building Department prior to submittal of the Proposal. All suggested improvements are negotiable.

The Tenant will keep and maintain the premises in good condition and repair in a neat, sanitary and orderly manner to comply with all applicable City, County, and State regulations, and shall bear the expense of any and all painting and decoration furnished to the interior of the building, and of custodial services.

Signage:

Signage, including way-finding signs, may be included in the Proposal for consideration. Proposers should suggest signage locations which the City may consider.

Signage adjacent to US1 on park property is permitted for 24sq. ft. and will be the responsibility of the tenant to pay, permit, and install and maintain the sign.

Operating Hours:

The concession(s) may be open at all appropriate times during regular park hours from dawn to dusk. Required hours of operation by the City include:

<u>Weekends</u> Jan. – May	<u>Weekends</u> Sep. – Dec.	<u>Weekly</u> Jun. – Aug.	<u>Weekly</u> Volusia County Schools Breaks and National Holidays
9:00 A.M. To 4:00 P.M.	9:00 A.M. To 4:00 P.M.	9:00 A.M. To 4:00 P.M.	9:00 A.M. To 4:00 P.M.

Vendor may request authorization from the City fifteen (15) calendar days in advance to stay open later on special occasions and holidays or to be closed.

The City Reserves the Right to:

Block out dates, limit hours of operation, or authorize other vendors that may compete with the successful proposer as a result of special events taking place at Riverwalk Park.

Equipment Rentals:

Rentals may include canoe, kayak, paddle board, and other non-motorized equipment. The following requirements for water recreation rental services shall be followed:

- Vendor shall be in compliance with all requirements of Florida Statutes 327 and 328 and State of Florida Boating Safety Laws, and any amendments or additions thereto. Vessel registrations shall be provided by the successful respondent.
- All rental items must be in good working order and pass inspection prior to being placed on the water.

Taxes:

The Tenant will pay all federal, state, and local taxes in connection with the lease, including sales tax due on the rental of the facility, as well as employment taxes and other federal taxes.

Maintenance:

Successful proposer shall be responsible for the following:

- Keeping the staging area neat, clean and in good standing;
- Removing rental-related refuse to the dumpster daily;
- Arranging seating area (if applicable);
- Sweeping, mopping and cleaning the public area surrounding the staging area daily upon completion of usage;
- Do not allow boxes, cartons, barrels trash or similar items to be in the view of the public.

- Evaluation of maintenance compliance will be at the City's sole discretion. If found to be in default, the City will issue a letter of non-compliance. The vendor will have two (2) working days to correct noncompliance items. If not corrected, vendor will be considered in breach of contract.

Parking:

The outfitter has non-exclusive use of the parking lot which must be shared among general public.

Employee Standards:

Successful Proposer shall ensure a staff that is fully responsible for all on-site operations to include but not limited to:

- Courteous and friendly service.
- To recruit, train, supervise and direct its employees in additions to having a number of employees to match the work requirements.
- Every employee will be clean and well-groomed and be professional and friendly to the public.

Rental Inspection/Pricing:

The Proposer shall charge reasonable prices for all rental services. The City reserves the right, but shall not have the obligation, to inspect rental equipment to make sure assure its safety to the public as well as the prices to make sure they are fair and reasonable.

There will be no sale or dispensing of alcoholic beverages, tobacco products, or any other item that is not in consonance with general community standards.

Proposal Requirements:

Any and all offers must include the following:

- **Operating Plan:** Proposals must include a staffing and operational plan to address the items listed in Section 3 Scope of work. This operational plan must also address procedures and methods that will ensure outstanding customer service to the customer of the concession at Riverwalk Park. (See Tab E in Section 7 – Proposal Submittal & Requirements)
- **Financial Plan:** Proposals must include a two (2) year financial plan consisting of, but not limited to proforma (forecasted) income statement, balance sheet and statement of cash flows. (See Tab G in Section 7 – Proposal Submittal & Requirements)
- **Marketing Plan:** Proposals must include a marketing plan indicating services to be provided, pricing of services, target markets, proposed marketing budget, advertising campaign, promotions to be offered or any marketing related activities. (See Tab F in Section 7 – Proposal Submittal & Requirements)
- **Financial Solvency:** Please note that selected proposers with highest evaluation score will be asked to provide proof of financial solvency, which may include providing copies of financial statements, tax records, sworn statements, and/or any other relevant documents. All information will be kept confidential. (See Tab D in Section 7 – Proposal Submittal & Requirements)

Background Checks:

The Successful Proposer shall provide, at their expense, a 2-year Florida Department of Law Enforcement (FDLE) Level 1 background check for any and all employees of the successful respondent involved in the performance of this contract on the City of Port Orange property within ten (10) business days following contract execution and, in the event of employee changes, throughout the term of the contract. Documentation must be submitted to the Parks and Recreation Director.

[Remainder of this page left intentionally blank]

SECTION 4 – 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 to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
5. **Bidder or Proposer** is a person, firm, or entity that submits a Response to a Solicitation. Any Bidder/Proposer 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 (Bid Bond)** 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. **City** means the City of Port Orange.
8. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit Responses through a Request for Proposals, Request for Statements of Qualifications, or Invitation to Negotiate.
9. **Construction** means the process of building, repairing, improving, and alterations, 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 Responses to a Solicitation.
13. **Goods** are supplies, materials, or equipment.
14. **Invitation to Bid (ITB) or Bid** means a formal request to prospective vendors requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper.

15. **Invitation to Negotiate (ITN)** means a formal request to prospective vendors requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.
16. **Lowest Responsible Bid means the responsive Bid** meeting all requirements of the specifications, terms, and conditions of the Invitation to 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.
17. **Lowest Responsible Bidder** means the Bidder submitting Lowest Responsible Bid.
18. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
19. **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 to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
20. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
21. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Bidders/Proposers to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
22. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
23. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Proposer to perform the resultant Contract.
24. **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.
25. **Request for Proposal (RFP)** means a formal request to prospective vendors requesting qualifications of the vendor and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.

26. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective vendors requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.
27. **Response/Submission** means submission of a Bid, Proposal, Reply, or Quote to a formal Solicitation.
28. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
29. **Solicitation** means a formal request, as applicable, for prospective vendors to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.
30. **Subcontractor** means a person, firm or entity providing goods or services to a Bidder/Proposer to be used in the performance of the Bidder's/Proposer's obligations under the Contract.
31. **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.

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SECTION 5 – GENERAL TERMS AND CONDITIONS

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 Solicitations; however, these may be superseded, in 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 solicitation 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/Proposers should acknowledge all addenda by circling the quantity of addenda received on the "Bidder/Proposer Acknowledgment Form" and include it in the returned Response package. Failure to acknowledge the correct number of addenda issued may result in rejection of the Response. It is the responsibility of the Bidder/Proposer to ensure all addenda have been received prior to submitting a bid. All Addenda shall be posted by the CITY on www.demandstar.com.

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

3. ANTI-COLLUSION STATEMENT

By submitting this Response to a Formal Solicitation, the Bidder/Proposer affirms that this Response is without previous understanding, agreement, or connection with any person, business, or corporation submitting a Response for the same materials, supplies, or equipment, and that this Response is in all respects fair, and without collusion or fraud. Additionally, Bidder/Proposer agrees to abide by all conditions of this Solicitation and certifies that they are authorized to sign this Response for the Bidder/Proposer. In submitting a Response to the City of Port Orange, the Bidder/Proposer offers and agrees that if the Response is accepted, the

Bidder/Proposer shall 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/Proposer.

4. APPLICABLE LAWS

In connection with the furnishing of supplies or performance of work under the Contract, the Bidder/Proposer agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.

5. ASSIGNMENT

The successful Bidder/Proposer 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 Bidder/Proposer from all contractual obligations.

6. AWARDS

Results from the evaluation committee will be considered by the City of Port Orange City Council at the earliest possible regular meeting subsequent to the evaluation process. This RFP is issued in accordance with and shall be governed by the provisions of the City's Purchasing Policy.

The City of Port Orange City Council reserves the right to make award(s) by individual sections, groups, all or none, or a combination thereof, with one or more proposers; to reject any and all proposals, or to waive any informality or technicality in proposals received as deemed to be in the best interest of the City.

The City does not award publicly funded contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act, 8 United States Code s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, Contract, proposal or quote for purchase of services and goods by the City of Port Orange.

7. CONE OF SILENCE

Bidders/Proposers shall not direct any queries or statements concerning their Response to a Formal Solicitation to the City Council, City staff and/or Evaluation Committee during the selection process, from the time of submission of a Response until recommendation of award. Any Bidder/Proposer who initiates any discussions with staff in any manner other than that described below is subject to disqualification from this procurement.

8. CONTRACT

Any acquisition above the \$25,000 level shall be done through one of the formal competitive methods except upon City Council waiver and/or shall have City Council approval. Only the Purchasing Manager and/or City Manager, have the authority to obligate the City by entering into a written 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 Responses or to waive any and all non-substantial

irregularity in Responses received, whenever such waiver or rejection is in the best interest of the City.

9. SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES

Unless otherwise specified, Bidders/Proposers shall use the Solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Bidder's/Proposer's authorized representative. Responses containing erasures or corrections must be initialed by the Bidder/Proposer in ink. Responses shall be submitted by mail or hand delivery only. No Response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: Diana M. Fye, CPPB, FCPA, Purchasing Manager, Purchasing Office, a division of the Finance Department, Port Orange City Hall, 1000 City Center, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 p.m. on the date indicated in the Solicitation documents or as addenda issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All Responses deemed non-responsive will be returned to the Bidder/Proposer and will not be opened.

Bids (Envelope/Package) shall contain one (1) original and one (1) digital (Cd or flash drive) version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/package shall be clearly marked on the outside to include the bid project name, bid number and name of the bidder/proposer.

10. BID RETURNS

Bidder/Proposers shall return all completed Responses to the City of Port Orange at the address set forth in paragraph 7 above on the date and at the time specified. Late submissions will not be accepted and shall be returned to Bidder/Proposers unopened.

11. BID PROTEST

Any person who is adversely affected by the City's decision or intended decision shall file with the City Purchasing Manager a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking Bids, Proposals, Statements, or Replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the Solicitation. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time period established herein. The formal written protest shall be filed with the Purchasing Manager in writing within ten (10) days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings. Upon receipt of the formal written protest that has been timely filed, the City shall stop the solicitation or contract award process until the subject of the protest is resolved by final City action. However, the City may continue the solicitation or award process, provided the City Manager sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or

welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties. The policy this City has established is as follows:

- a. As soon as possible after receipt, the Purchasing Manager shall provide written bid protest to City Manager, City Attorney, Department Head involved, and Supervisor directly involved in the acquisition.
- b. Purchasing Manager shall schedule within seven (7) business days, excluding weekends and holidays, a meeting with the above mentioned individuals or designee 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 shall render a decision.
- c. If the protestor disagrees, he may appeal to the City Council at a formal council meeting. After reviewing the evidence, the City Council will issue their decision. The City Council's decision is final; however, the protestor can appeal the decision to the Circuit Court in Volusia County, Florida within thirty (30) days of the City Council's final decision. Decisions at all levels shall be in writing to the protestor.

12. BID/PROPOSAL TABULATION

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

13. BONDS

If this Solicitation requires submission of bid guarantee and performance bonds, there will be a separate page explaining those requirements. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. When the Purchasing Manager deems it necessary, bid bonds/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. Payment and Performance Bonds requested for construction projects shall be in an amount equal to one hundred percent (100%) of the total contract amount. Upon award, the successful Bidder/Proposer may also be required to furnish and pay for a satisfactory contract one hundred percent (100%) Payment and Performance Bond which will be recorded by the City, at the Bidder's/Proposer's sole cost and expense, with the Clerk of the Circuit Court, Volusia County, Florida, and to enter into a written contract with the City of Port Orange. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirements of Florida law. The City will bill the cost of recording to the contractor. Payment and Performance Bonds shall also be recorded at the Bidder's/Proposer'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 Solicitation which appears in the newspaper. Unsuccessful Bidders/Proposers are entitled to the return of their surety where the Purchasing Manager has required such. A successful Bidder/Proposer shall forfeit any surety required by the Purchasing Manager upon failure on the part of the Bidder/Proposer to enter into a contract within the time specified after the award of bid.

14. BIDDER'S/PROPOSER'S PRODUCT OR SERVICES:

The Bidder's/Proposer's product (if applicable) delivered to the City shall be free of all liens, claims or encumbrances, and the vendor warrants that it has a clear title to the product being delivered.

- a. If the Bidder/Proposer is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.
- b. The Bidder/Proposer shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Bidder/Proposer.
- c. In furnishing the service or product to the City, the Bidder/Proposer shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, Contract, proposal or quote.

15. 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 shall be made in writing by the City of Port Orange Purchasing Division.

16. CONDUCT OF BIDDERS/PROPOSERS

All Bidders/Proposers or individuals acting on behalf of Bidders/Proposers are hereby prohibited from lobbying or otherwise attempting to persuade or influence any member of the Evaluation Committee, City Council members, or City staff at any time during the course of the solicitation process. The solicitation process shall end upon issuance of the written City Manager and staff recommendation for selection of a Bidder/Proposer. All Bidders/Proposers or individuals acting on behalf of Bidders/Proposers are further prohibited from contacting or otherwise attempting to communicate with any member of the staff, Evaluation Committee or City Council members regarding the pending solicitation or its outcome until after the issuance of the written recommendation of the most qualified Bidder/Proposer. Until such recommendation is issued in writing, any questions regarding the pending solicitation shall be submitted to the Purchasing Manager. Failure to comply with this procedure shall result in rejection/disqualification of said submittal without exception. Contact with staff, City Council members and the Evaluation Committee during a public meeting shall not be considered a violation of this requirement.

17. CONFLICT OF INTEREST

For purposes of determining any possible conflict of interest, all Bidders/Proposers must disclose if any City of Port Orange employee is also an owner, corporate officer, or employee of Bidder's/Proposer's business. No official or employee of the City who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Scope of Work covered by the Contract shall voluntarily acquire any personal interest, directly or indirectly, in the contract or proposed Contract.

18. CONFLICT OF INSTRUCTIONS

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

19. CONTRACT OBLIGATION

The City of Port Orange City Council shall approve the contract if greater than \$25,000.00 annually. 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 Bidder/Proposer. Department heads are NOT authorized to sign contracts 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.

20. CONTRACT RENEWALS

Renewals may be made ONLY by written agreement between the City of Port Orange and the Bidder/Proposer. Any price escalations are limited to those stated by the Bidder/Proposer on the original Response.

21. 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) shall require council approval before the purchasing contracts are entered into. (Code 1981, § 8-33, Ord. 1997-22, § 5. 5-6-1997; Ord. No. 2004-15, § 4, 7-20-2004)

22. COPYRIGHT AND PATENT RIGHTS

Bidder/Proposer 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 Response, and successful Bidder/Proposer agrees to hold the City harmless from any and all liability, loss or expense by any such violation.

23. COST INCURRED BY BIDDER/PROPOSER

All expenses, including costs for required bonds, involved with the preparation and submission of Responses to the City, or any work performed in connection therewith shall be borne by the Bidder/Proposer. No payment shall be made for any response received, nor for any other effort required of or made by the Bidder/Proposer prior to commencement of work as defined by the contract approved by the City Council.

24. DEFAULT PROVISIONS

In the event of default by the Bidder/Proposer, the City reserves the right to procure the item(s) bid from other sources and hold the Bidder/Proposer responsible for excess costs incurred as a result. If a contractor defaults on a City contract the City Council may elect to refrain from doing business with the Bidder/Proposer for a period of 36 months from the date of default.

25. DELIVERY OF GOODS/SERVICES

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

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/Proposer shall 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.

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

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/Proposers as determined by the Purchasing Division.

26. DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER /PROPOSER

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

- a. The ability, capacity and skill of the Bidder/Proposer to perform the contract.
- b. Whether the Bidder/Proposer can perform the contract within the time specified, without delay or interference.
- c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder/Proposer.
- d. The quality of performance of previous contracts.
- e. The previous and existing compliance by the Bidder/Proposer with laws and ordinances relating to the contract.
- f. The sufficiency of the financial resources and ability of the Bidder/Proposer to perform the contract or provide the service.
- g. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- h. The ability of the Bidder/Proposer to provide further maintenance and service for the use of the subject of the contract.
- i. The number and scope of conditions attached to the bid.

- j. Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

27. DISCLOSURE OF CONFLICTS

The award is subject to the provisions of Chapter 112.313, Florida Statutes. All Bidders/Proposers must disclose with their Response the name of any officer, director, or agent who is also an employee of the City. Further, all Bidders/Proposers must disclose the name of any employee who owns, directly or indirectly, an interest in the Bidder's/Proposer's firm or any of its branches. The Bidder/Proposer shall not compensate, in any manner, directly or indirectly, any officer, agent, or employee of the City for any act or service that he/she may do, or perform for, or on behalf of any officer, agent or employee of the Bidder/Proposer. No officer, agent, or employee of the City shall have any interest, directly or indirectly, in any contract or purchase made, or authorized to be made by anyone for, or on behalf of the City. The Bidder/Proposer shall have no interest and shall not acquire any interest that shall conflict in any manner or degree with the performance of the services required under the Solicitation.

28. DISQUALIFICATION OF BIDDER/PROPOSER

The Purchasing Manager shall maintain a current listing of qualified Bidders. The Purchasing Manager 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 Solicitations. 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 Responses may be rejected if the City believes that collusion exists among the Bidders/Proposers. Responses in which the prices are obviously unbalanced may be rejected. If multiple Responses are submitted by a Bidder/Proposer and after the Responses are opened one of the Responses is withdrawn, the result will be that all of the Responses submitted by that Bidder/Proposer will be withdrawn; however, nothing herein prohibits a vendor from submitting multiple Responses for different products or services.

29. EVALUATION

Evaluation shall be used as a determinant as to which Response 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 Responses are subject to tabulation by the City of Port Orange Purchasing Division and recommendation to the governing body. Compliance with all Solicitation requirements, delivery and needs of the using department are considerations in evaluating Responses. Pricing is NOT the only criteria for making a recommendation. The City of Port Orange Purchasing Division reserves the right to contact any Bidder/Proposer, at any time, to clarify, verify or request information with regard to any Response.

30. EVALUATING RFPs/RFSQs/ITNs

The evaluation process is formally conducted by a committee appointed by the Purchasing Manager or requesting department as required by general law. The Purchasing Manager leads and oversees the entire process. The evaluation is based upon specific criteria outlined in the Solicitation. The user department shall assign a weight to each of the evaluation criteria by its relative importance, with the total weights equaling 100. Each committee member establishes a summary of total scores for all the vendors. The summary of total scores is used to rank the vendors. Based upon the scores/ranking of the committee members, consensually a short list is obtained. In this Solicitation process this short list will consist of no less than three vendors

(unless less than three were received). This committee falls under the Florida Sunshine Law and therefore cannot speak with one another concerning the Solicitation unless in a public committee meeting. These meetings also shall be announced publicly in a designated area and meetings are recorded. In the case of the Solicitation, one member of the Evaluation Committee may consist of one (1) member from the City Council; and at least one (1) member from the user department, except as otherwise required by general law. The Evaluation Committee, through the Purchasing Division, schedules oral presentations from the firms that were short-listed. At the oral presentation, the short listed firms present an over view of their company and their approach to the scope of work outlined. Upon conclusion of the oral presentations, with the same criteria and procedures used to evaluate the written Responses, the committee members then evaluate those three firms again to determine a second ranking. Then, by consensus a final ranking is determined. That final ranking is then presented to the City Council by the using department head requesting approval to negotiate with the individual/firm ranked as number one. A contract is completed pursuant to the negotiations with this individual and/or firm. If a successful contract cannot be obtained with the number one ranked firm, the negotiations then move to the team ranked as number two, never to return to the number one again.

31. EXCEPTIONS TO SPECIFICATIONS

For purposes of evaluation, Bidder/Proposer 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/Proposer that are required to be signed by the City. If exceptions are not stated by the Bidder/Proposer, 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/Proposer on an attachment included with the bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

32. FACILITIES

The City reserves the right to inspect the Bidder's/Proposer's facilities at any time.

33. FAILURE TO RESPOND

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

34. 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.

35. GOVERNING LAW

Bidder/Proposers shall comply with all applicable federal, state and local laws and regulations. All Responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all Responses 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 the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for 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 Section 287.133(3)(a), Florida Statutes. Also required is the "Drug Free Preference Form" to comply with Section 287.087, Florida Statutes. Each form is included in the Solicitation.

36. 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.*

37. HIPAA COMPLIANCE

Bidder/Proposer 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/Proposer uses, discloses or has access to protected health information as defined by HIPAA.

38. IDENTICAL TIE BIDS

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

39. INDEMNIFICATION/HOLD HARMLESS

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.

40. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful vendor as an 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 bind the City.

The Bidder/Proposer represents itself to be an independent contractor offering such services to the general public and shall not represent himself or his employees to be an employee of the City. Therefore, the Bidder/Proposer shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney's fees); and damage of any kind related to such matters. The Bidder/Proposer shall further understand that the City cannot save and hold harmless and or indemnify the Bidder/Proposer and/or the Bidder's/Proposer's employees against any liability incurred or arising as a result of any activity of the Bidder/Proposer or any activity of the Bidder's/Proposer's employees performed in connection with the Contract.

41. INSPECTIONS AND 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/Proposer cannot furnish a sample of a Response item, where applicable, for review, or fails to satisfactorily show an ability to perform, the City can reject the Response as inadequate and non-responsive.

42. INSURANCE

Please submit a copy of your insurance certificate with your Response. Upon execution of a contract, the Proposer shall maintain insurance during the life of this agreement, and the City of Port Orange shall 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 accordingly to the A.M. Best Company.

43. INSURANCE CANCELLATION

No change or cancellation in insurance shall be made without thirty (30) days' written notice by the Bidder/Proposer to the City. Insurance coverage required in these specifications shall be in force throughout the contract term. Should any awardee fail to maintain or to provide acceptable evidence of current insurance within five (5) days after receipt of written notice at any time during the contract term, the City shall have the right to consider the Contract breached which shall justify the termination thereof.

44. INVOICES AND PAYMENTS

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, 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/Proposer offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Bidder/Proposers should state any payment discount in the space provided on the bid form for construction services.

45. IRREVOCABILITY OF RESPONSES

Each Bidder/Proposer agrees that Responses shall remain open until the effective date not to exceed 90 days after selection, shall not be subject to revocation or withdrawal, and shall be subject to the City Council's acceptance of a contract with the Bidder/Proposer.

46. LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS

Responses received after the Response Due Date and time are late and shall not be considered. Modifications received after the Response Due Date are also late and shall not be considered. Letters of withdrawal received after the Response Due Date are late and shall not be considered. Letters of withdraw received after contract award shall be deemed a breach of contract, subject to penalties as set forth in the contract and Solicitation.

47. LEGAL REQUIREMENTS

Applicable provision of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all Responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a Solicitation hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Bidder/Proposer shall not constitute a cognizable defense against the legal effect thereof.

Upon execution of a contract, the successful Bidder/Proposer shall hold harmless, indemnify and defend the City of Port Orange, its members, officials, officers and employees against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorneys' fees and court costs) arising out of or incidental to the performance of the Contract, whether or not due to or caused by negligence of the City of Port Orange, its members, officials, officers or employees. This Contract requirement shall be reflected in the insurance coverage certificate.

48. LICENSES, PERMITS AND TAXES

The Bidder/Proposer shall comply with all rules, regulations, laws and permitting requirements of the City, Volusia County, the State of Florida, and the United States Government now in force or hereafter to be adopted. The Bidder/Proposer shall abide by all ordinances and laws pertaining to his operations and shall secure, at his expense, all licenses and permits necessary for construction and operation.

49. LITERATURE (if applicable):

If no particular brand, model or make is specified, Proposers shall submit with the RFP two (2) copies of descriptive literature and technical data, fully detailing all features, designs, construction, appointments, finishes and the like not covered in the specifications, necessary to fully describe the equipment, material, and/or services he proposes to furnish.

50. MAINTENANCE

Maintenance required for equipment Solicitation is preferred to 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 shall be priced accordingly.

51. 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/Proposers may offer items of equal stature and the burden of proof of such stature rests with Bidder/Proposer, unless otherwise specified by the City. The City of Port Orange shall act as sole judge in determining equality and acceptability of products offered.

52. NON DISCRIMINATION

There shall be no discrimination as to race, color, religion, gender, age, marital status, 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.

53. NON-EXCLUSIVITY OF CONTRACT:

The selected Proposer understands and agrees that any resulting contractual relationship is non-exclusive and the City of Port Orange reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the City of Port Orange.

54. 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.

55. OPTIONAL CONTRACT USAGE

As provided in Section 287.042(16), 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.

56. PATENTS/COPYRIGHTS

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

57. PRE-BID CONFERENCE OR PRE-PROPOSAL CONFERENCE

The Purchasing Manager shall determine if the pre-bid or pre-proposal conference is mandatory and provide the date, time and location in the Solicitation legal advertisement and Solicitation specifications. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow. Attendance to the pre-bid and pre-proposal conference is normally mandatory. Only Bidders/Proposers attending a mandatory pre-bid conference will be eligible to submit a Response. The representative of each Bidder/Proposer shall be an authorized employee of the Bidder/Proposer and shall sign in accordingly.

58. PREPARATION OF RESPONSES

In preparing Responses, the Proposal Form, the Bid Form (when a Bid Bond is permitted as proposal security), Certificate as to Corporate Principal, Public Entity Crimes Statement, Anti-Collusion Statement, and Drug Free Preference Statement must be properly executed in ink.

Upon the prescribed Schedule of Unit Prices, all bid prices shall be typewritten or written in ink, in both words and numerals, in the blank spaces for each item, with the amounts extended if a unit price bid, and all amounts totaled. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid. The sum of the Total Bid as calculated from the individual items, Schedule of Unit Prices, shall equal the Total Price. Except as provided below, bids containing substitutions or combinations of alternates will not be considered unless such substitutions or combinations are specifically authorized by the Proposal. The Bidder/Proposer shall sign his/her name and give his/her business address in the spaces provided therefore. If the Proposal is made as a partnership, it shall be signed by all partners; if made by a corporation, it shall be signed in the name of the corporation by one of the officers thereof and shall have affixed the seal of the corporation.

59. POSTPONEMENT / CANCELLATION / WAIVER OF IRREGULARITIES

The City may, at its sole and absolute discretion, reject any and all, or parts of, Responses; re-advertise the Solicitation for new Responses; postpone or cancel, at any time, the Solicitation process; or waive any irregularities in the Solicitation or in the Responses received as a result of the Solicitation, or to accept that Response which best serves the interest of the City.

60. PRICING

Bidder/Proposer certifies that prices, terms and conditions in the Response will be firm for acceptance for a period of ninety (90) days from the date of Response opening unless otherwise stated by the City. Responses may not be withdrawn before the expiration of ninety (90) days. Prices shall be firm, with no escalator clauses unless specified by the City. Responses may be withdrawn after ninety (90) 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/Proposer 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. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid.

61. PROTECTION

Precaution shall be exercised at all times for the protection of persons, (including employees) and property. All existing structures, utilities, services, roads, trees, shrubbery, etc. shall be protected against damage or interrupted service at all times by the Bidder/Proposer during the term of contract, and the Bidder/Proposer shall be held responsible for any damage to the property occurring by reason of his operation on the property.

62. PROPRIETY INFORMATION

Upon receipt by the City, responses to Solicitations, become public records subject to the provisions Florida's state policy on public records, Section 119, Florida Statutes. If you believe that any portion of your response is exempt, you should clearly identify the specific documents for which confidentiality is claimed, and provide specific legal authority of the asserted exemption. Any financial statement that an agency requires a prospective Bidder/Proposer 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 Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution.

63. PUBLIC ENTITY CRIMES

In accordance Section 287.133 (2)(a), Florida Statutes: 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 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.

64. PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT

Section 119.071(1)(c), Florida Statutes: Any financial statement that an agency requires a prospective Bidder/Proposer 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 Bidder/Proposers 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 Bidder/Proposers, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, 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 Bidder/Proposers, but the new law limits public attendance to portions of such meetings.

65. PURCHASE ORDER AND DELIVERY

The successful Bidder/Proposer 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/Proposer. 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 shall be rectified prior to expiration of the time for performance. Failure to rectify within the performance period shall 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.

66. QUESTIONS, INTERPRETATIONS

Questions regarding interpretation of Responses, Solicitation results or Solicitation awards shall be directed in writing to the Purchasing Division and referenced by the Solicitation number no later than the last day for questions as specified in the Solicitation 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.

67. 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.

68. RIGHT OF WITHDRAWAL

A bid, proposal, statement, or reply may not be withdrawn before the expiration of ninety (90) days from the Response due date.

69. RIGHTS TO SOLICITATION SUBMITTED MATERIAL

All Responses, inquiries, or correspondence relating to or in reference to a Solicitation, and all reports, charts, and other documentation submitted by Bidders/Proposers shall become the property of the City when received.

70. RIGHT OF NEGOTIATION RFP/RFSQ/ITN

The City reserves the right to negotiate with the selected Bidder/Proposer the exact terms and conditions of the Contract.

71. RECORDS/AUDIT

The Bidder/Proposer shall maintain records sufficient to document their completion of the scope of services as a public record and as a requirement of the Contract. At all reasonable times, these records, unless exempt or confidential, shall be subject to review, inspection, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the Contract and in accordance with the requirements of public records

retention as prescribed by general law. Records which relate to any litigation, appeals or settlements of claims arising from performance under this requirement shall be made available until a final disposition has been made of such litigation, appeals, or claims.

72. RECYCLED MATERIALS

City of Port Orange encourages the use of products made of recycled materials.

73. REQUEST FOR ADDITIONAL INFORMATION

Prior to the final Solicitation selection, Bidders/Proposers may be required to submit additional information which the City may deem necessary to further evaluate the Bidder's/Proposer's qualifications to perform under the terms of the Solicitation and subsequent Contract.

74. REJECTING OF RESPONSES, REBIDDING

The City reserves the right to accept or reject any or all Responses or parts of Responses, 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 Responses. If the lowest and best Response 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.)

75. REVIEW OF RESPONSES/SUBMISSIONS

Each Response will be reviewed to determine if the Response is responsive to the submission requirements outlined in the Solicitation. A responsive Response is one which follows the requirements of the Solicitation, includes all required documentation, is submitted in the format outlined in the Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your Response non-responsive.

76. RULES, REGULATIONS AND LICENSING REQUIREMENT

The Bidder/Proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Bidders/Proposers are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

77. SAMPLES

Samples, when requested, must be furnished at, or before, Response 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/Proposer's request, be returned within thirty (30) days after bid award at Bidder/Proposer's expense. If requested by the City, samples and/or inspection of like items are to be made available in the central Florida area.

78. SEPARATION AND DISTRIBUTION

The Solicitation has been designed for transmittal as a complete document to interested parties. It is recommended that it not be separated; however, it may be reproduced in its entirety as additional distribution might dictate.

The City will utilize Demand Star for distribution of Formal Solicitations at:

www.demandstar.com.

79. 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.

80. SIGNATURE REQUIRED

All Responses 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 RESPONSES WILL BE REJECTED. All manual signatures must be original - no rubber stamp, photocopy, etc.

81. SIGNED RESPONSE CONSIDERED AN OFFER

The signed Response is considered an offer on the part of the Bidder/Proposer, which offer shall be considered accepted upon approval by the City of Port Orange City Council (if required). The City of Port Orange will issue a purchase order or a letter of authorization to the successful Bidder/Proposer, 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/Proposer after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

82. 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.

83. STATE LICENSING REQUIREMENTS

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the Bidder/Proposer shall have met the license, certification, and any other requirements of the state, county, city and/or other agency of authority with jurisdiction in such matters and should provide copies of documentation that evidence such qualifications with the response to the Solicitation; and, that the Bidder/Proposer shall provide follow-up evidence that the Bidder/Proposer maintains such credentials throughout the period of the agreement. A copy of a current certificate of authority from the Secretary of State authorizing the

Bidder/Responder to do business in the State of Florida, or other evidence of legal authority to do business in the state, county, city and/or any other agency of authority should be provided with your response to the Solicitation. Information concerning certification with the Secretary of State may be obtained at <http://ccfcorp.dos.state.fl.us/index.html>. Contract documents shall be executed by the entity's duly authorized officer as evidence by entity records.

84. SUBCONTRACTING:

The Bidder/Proposer will not sub-contract, or enter into any subcontracting agreements pertaining to this contract, without obtaining approval from the City of Port Orange.

85. SUPPLEMENTAL MATERIALS

Bidders/Proposers 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 that the Bidder/Proposer 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.

86. TAXES

The City of Port Orange is exempt from all federal excise, state and local taxes unless otherwise stated in this document. A Tax Exemption Certificate will be furnished upon written request to the City of Port Orange Purchasing Division.

87. TERM CONTRACTS

Acceptance by the City of Port Orange of Bidder's/Proposer'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.

88. TERMINATION

The City of Port Orange reserves the right to terminate the contract for default if Bidder/Proposer breaches any of the terms therein, including warranties of Bidder/Proposer or if the Bidder/Proposer 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. The City may cancel the Contract at any time for breach of contractual obligations by providing the Bidder/Proposer with a written notice of such cancellation. Should the City exercise its right to cancel the contract for such reasons, the cancellation shall become effective on the date as specified in the notice of cancellation sent to the Bidder/Proposer.

89. 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.

90. 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. Bidder/Proposer is 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.

91. USE OF SOLICITATION FORMS

Bidder/Proposer shall complete the appropriate Solicitation Form(s) included in the Solicitation. All blanks on the Solicitation Forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A."

Supplemental information may be attached to the Solicitation Forms. Failure to fully complete the appropriate Solicitation Forms may result in disqualification of the Response.

If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional Solicitation Form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated.

The signature of the Authorized Person or Entity must be that of an officer, partner or a sole proprietor of the entity making the Response. The original Response, and each copy submitted, shall contain an original signature on the Bidder's/Proposer's Acknowledgement Form contained in each Solicitation.

92. VARIANCES

For purposes of Response evaluation, Bidders/Proposers must indicate any variances, no matter how slight, contained in the Response. No variations or exceptions by a Bidder/Proposer will be considered or deemed a part of the Response submitted unless such variances or exceptions are listed in the Response and referenced in the space provided on the Response 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 Response, the City does not necessarily accept any variances contained in the Response. All variances submitted are subject to review and approval by the City. If any Response contains material variances that, in the City's sole opinion, make that Response conditional in nature, the City reserves the right to reject the Response or part of the Response that is declared, by the City, as conditional.

93. WAIVER OF IRREGULARITIES

The City of Port Orange reserves the right to waive and/or reject any non-substantial irregularity in Responses received whenever such waiver or rejection is in the best interest of the City and/or it does not meet the minimum requirements set forth. All reasonably responsive Responses will be considered. However, the City reserves the right to waive formalities or informalities in Responses, to reject, with or without cause, any or all Responses or portions of Responses, or to interview or not interview individual Bidders/Proposers, and to accept any Responses or portions of Responses deemed to be in the best interest of the City. The city council shall have the authority to waive any and all non-substantial irregularities in any and all formal Solicitations. (Code 1981, § 8-29)

94. WARRANTIES

Bidders/Proposers shall furnish all data pertinent to warranties or guarantees which may apply to items in the Response. Bidders/Proposers may not limit or exclude any implied warranties. Bidder/Proposer 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/Proposer's expense. If Bidder/Proposer fails to make the appropriate correction within a reasonable time, City of Port Orange may correct at the Bidder/Proposer's expense.

95. PUBLIC RECORDS COMPLIANCE

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- b. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The failure of Contractor to comply with a public records request shall constitute a material breach of the contract.

96. NON-EXCLUSIVITY:

The City of Port Orange reserves the right to procure items herein described in any manner it sees fit, including but not limited to: awarding of other contracts, the use of contracts awarded by GSA, federal agencies, the State of Florida, any county or municipality, or any authorized contract, whichever is considered in the best interest of the City.

97. LOCAL PREFERENCE:

In accordance with City of Port Orange City Code 2-275, except where federal or state law, or any other funding source, mandates to the contrary, the City shall give preference to local businesses in the following manner:

(a) Competitive Bids

- (1) Port Orange Business: In any competitive bidding process where a bid submitted by a Port Orange business is within eight percent (8%) of the lowest and best responsible bid

submitted by a non-Port-Orange business, then the Port Orange business shall have the opportunity to submit, within five (5) working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.

(2) Volusia County business: In any competitive bidding process where a Volusia County business is within five percent (5%) of the lowest and best responsible bid submitted by a business other than a Port Orange business or Volusia County business, then the Volusia County business shall have the opportunity to submit, within five (5) working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.

(3) Florida Business: In any competitive bidding process where a State of Florida business is within three percent (3%) of the lowest and best responsible bid submitted by a non-local business, then the Florida business shall have the opportunity to submit, within five (5) working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.

(4) Tied Bid Preference: In case of a tie bid between a local business and a non-local business, the local business shall prevail. In case of a tie between two or more local businesses, the following order of preference shall control: first priority to Port Orange business, second priority to Volusia County business, and third priority to Florida business.

(b) Request for Proposals, Qualifications or other Qualitative Submittals. In any ranking conducted pursuant to a request for proposals, qualifications, or other qualitative submittals where the bidders are rated by a point system, local businesses shall be granted the following preference:

(1) Port Orange business shall be granted up to eight percent (8%) of the available points.

(2) Volusia County business shall be granted up to five percent (5%) of the available points.

(3) Florida business shall be granted up to three percent (3%) of the available points.

(4) Tied bid preference. In case of a tie between a local business and a non-local business, the local business shall prevail. In case of a tie between two or more local businesses, the following order of preference shall control: first priority to Port Orange business, second priority to Volusia County business, and third priority to Florida business.

(c) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Port Orange business means a business having its headquarters and principal place of business within the City of Port Orange at least twelve (12) months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the City's satisfaction, demonstrating the physical business presence of the firm within the limits of the City of Port Orange.

Volusia County business means a business having its headquarters and principal place of business within the County of Volusia, and not within the City of Port Orange, at least twelve (12) months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the City's satisfaction, demonstrating the physical business presence of the firm within the limits of Volusia County.

Florida business means a business having its headquarters and principal place of business within the State of Florida, and not within Volusia County, at least twelve (12) months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within the limits of the State of Florida.

98. INSURANCE REQUIREMENTS

Please submit a copy of your insurance certificate with your proposal. Upon execution of a contract, the Bidder/Proposer shall maintain insurance during the life of the Contract. Bidder/Proposer shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers' compensation coverage, the Bidder's/Proposer's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation.

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Bidder/Proposer shall not commence work under the contract until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. Bidder/Proposer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change.

The City reserves the right to increase insurance coverage as determined for higher risk contracts and shall reimburse the Contractor for the reasonable additional costs of increased coverage.

Insurance	Limits: Standards	Comments
Workers' Compensation	Coverage A - Statutory Coverage B - \$100,000	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.
<u>Additional Coverage:</u>	All States (Broad Form) Voluntary Compensation	

Comprehensive General Liability (including Completed Operations and Contractual Liability)	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 liability and property damage insurance in amounts as requested by the Railroad.
Comprehensive Business, Automobile Liability to include all automobiles. <u>Additional Coverage:</u>	Auto Liability Bodily Injury: \$100,000 each person, \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
Property Insurance Builders Risk. <u>Additional Coverage:</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	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 (Errors & Omissions)	Coverage- \$1,000,000 minimum	

[Remainder of this page left intentionally blank]

SECTION 6 – SPECIAL CONDITIONS

PRECEDENCE IN TERMS:

In the event of a conflict, the Special Terms and Conditions shall take precedence over all other sections.

PERIOD OF OFFER VALIDITY:

Proposals offered in this RFP must remain firm for a period of ninety (90) days from the RFP opening date.

CONTRACT TERM / COMPLETION TIME:

The Term of the lease shall be for a two (2) year period with two (2) additional two (2) year renewal options.

ELIGIBILITY OF PROPOSER:

To be eligible to respond to this RFP, the Proposer must have prior successful experience working with rentals and water recreational activities. Please provide eligibility experience.

[Remainder of this page left intentionally blank]

SECTION 7 – PROPOSAL SUBMITTAL & REQUIREMENTS

Proposals shall include all of the information solicited in this RFP, and any additional data that the respondent deems pertinent to the understanding and evaluation of the proposal. The respondent should not withhold any information from the written response in anticipation of presenting the information orally or in a demonstration, since oral presentations or demonstrations may not be solicited.

Submittal of a proposal shall constitute the Proposer's agreement and intent to follow and adhere to all statements, offerings and monetary incentives contained within this proposal.

In conjunction with other material and information requested in the RFP, all Proposers responding to this solicitation shall provide one (1) original, and one (1) digital (CD or flash drive) version in PDF format, and all attachments of the following in 8 ½" by 11" format, clearly legible, tabbed and bound in the following order:

TABLE OF CONTENTS:

The Table of Contents should outline in sequential order the areas of submittal. All pages, including enclosures, must be clearly and consecutively labeled and/or numbered and correspond to the Table of Contents.

TAB A – STATEMENT OF INTEREST:

The responding firm will provide a letter, on letterhead, not exceeding two (2) pages, which serves as a statement of interest and introduction to the submittal. The Statement of Interest shall show the RFP number and title. This letter must be signed by the person authorized to bind the firm, company, or corporate entity.

TAB B – FIRM AND STAFF QUALIFICATIONS and REFERENCES:

To be eligible to respond to this RFP, the Proposer must have prior successful experience working with rentals and water recreational activities. Please provide eligibility experience.

Include the following information about your firm in the proposal:

- Qualifications and experience of the respondent, including type of business entity, organizational size, structure and history of the organization, experience in the provision of services, and location of the office that would contract for services to the City of Port Orange.
- A listing of the firm's personnel that will be assigned to the City, along with a summary of their qualifications and specific responsibilities.
- References: List at least five (5) contracts with similar sized cities completed within the last two (2) years for the services described in this RFP, indicating the type of entity, the name, email address and telephone number of the public officer in charge of the contract, and the years in which the services have been provided. ***City of Port Orange shall not be listed as a current contract. *The information provided under this tab, must be current and the City must be able to contact for verification as part of the evaluation process.**

- Provide a complete list of all cities and counties for which the firm has completed similar strategic plan facilitations with elected officials within the last five (5) years.
- Have any contracts been terminated for any reason? If so, please elaborate.
- Any other information that the respondent believes would be helpful to the City in evaluating the respondent's ability to provide the services described in this RFP.

TAB C – LICENSES/INSURANCE:

- Include copy of license to do business in the State of Florida or Sunbiz report showing your company registered as "Active."
- Include a copy of any and all professional licenses and certifications as required to perform the services described herein and of the professional licenses for each team member.
- Attach evidence of required insurance coverage or proof of insurability in the amounts indicated. If available, a properly completed ACORD Form is preferable. Final forms must contain the correct solicitation and/or project number.

TAB D – FINANCIAL STABILITY/LITIGATION:

- It is essential that the Proposer clearly demonstrates the financial ability to reliably deliver services.
- The Selected Proposer with the highest evaluation score will be requested to provide proof of financial solvency, which may include providing copies of financial statements, tax records, sworn statements, and/or any other relevant documents. All information will be kept confidential.
- This Tab shall contain information on the nature and magnitude of any litigation or proceeding whereby, during the past five (5) years, a court or any administrative agency has ruled against the firm in any matter related to the professional activities of the firm.
- This shall include any class actions within your company where named, industry investigations by Attorneys General, in addition to individual cases.
- Respondent must indicate whether any contract awarded by another government agency has been terminated in default or convenience.
- Respondent has a continuing duty to inform the City of any new claims filed against the Respondent.

TAB E – OPERATING PLAN:

- State your firm’s plans and approach for providing the goods and services outlined in this RFP.
- Sample of services with pricing for services.
- Operating Plan – Proposals must include a staffing and operational plan to address the items listed in Section 3 – Scope of Work. This operational plan must also address procedures and methods that will ensure outstanding customer service to the customer of the concession at Riverwalk Park.
- The information presented shall be in enough detail to enable the City to ascertain the Proposer understands the effort to be accomplished and should essentially outline the steps in the total services proposed.

TAB F – MARKETING PLAN:

Provide a marketing plan indicating services to be provided, pricing of services, target markets, proposed marketing budget, advertising campaign, promotions to be offered or any other marketing related activities.

TAB G – FINANCIAL PLAN:

Provide a two (2) year financial plan consisting of, but not limited to proforma (forecasted) income statement, balance sheet and statement of cash flows.

TAB H – PROPOSED MONTHLY LEASE FEE:

- Attached Exhibit 1– Proposed Monthly Lease Fee must be submitted with your proposal under Tab H.

TAB I – REQUIRED DOCUMENTS:

Include all required City of Port Orange forms. **FAILURE TO PROVIDE ALL INFORMATION** listed on each form may result in the rejection of your proposal, or a reduction in evaluation points. Required forms include:

- Form 9.1 Proposal Submittal Checklist
- Form 9.2 Proposer Acknowledgement Form
- Form 9.3 Addendum Acknowledgement Form
- Form 9.4 Drug Free Preference Statement
- Form 9.5 Sworn Statement on Public Entity Crimes
- Form 9.6 Affidavit of Anti-Collusion Form
- Form 9.7 Authorized Signatures/Negotiators
- Form 9.8 Local Business Affidavit of Eligibility
- Form 9.9 Vendor Application and W-9 Form

[Remainder of this page left intentionally blank]

SECTION 8 – EVALUATION OF PROPOSALS

EVALUATION CRITERIA:

Firms submitting the required criteria will have their proposals evaluated and scored for quality of response, qualifications and experience and cost. The following represents the principal selection criteria, which will be considered during the evaluation process. Criteria will be weighted based on 100% of total value.

EVALUATION CRITERIA FOR WRITTEN PROPOSALS

CATEGORY SCORE

A. QUALIFICATIONS AND RELATED EXPERIENCE: (Max 10 points outlined below)

(1) General Qualifications and Capabilities of Firm and Key Principal(5 points)

- 4-5 points – More than 5 years of related experience
- 2-3 points – 3 to 4 years of related experience
- 1 point – 1 to 2 years related experience
- 0 points – No prior related experience

(2) Experience with Related Scope of Work Required with this RFP (5 points)

- 4-5 points – 3 or more directly related projects
- 2-3 points – 1 to 2 directly related projects
- 1 point – Similar but not directly related projects
- 0 points – No directly related or similar projects

B. STRENGTH OF PROPOSAL AND PRESENTATION: (Max 80 points outlined below)

(1) Clarity/Completeness of Proposal..... (10 points)

- 8-10 points – Proposal is exceptionally well written and clearly addresses
- all issues outlined in the RFP
- 4-7 points – Proposal is understandable and addresses most of the specific
- issues outlined in the RFP
- 1-3 points – Proposal is somewhat understandable and addresses some of the
- issues outlined in the RFP
- 0 points – Proposal does not address issues outlined in the RFP

(2) Understanding of Scope of Requirements (10 points)

- 8-10 points – Demonstrated exceptional understanding of the scope and
- goals of the project
- 4-7 points – Understands the scope and goals of the project
- 1-3 points – Has some understanding of the scope requirements and goals
- of the project
- 0 points – Has no solid or working understanding of the scope of services or
- Goals of the project

(3) Marketing Plan..... (20 points)

- 15-20 points – Marketing plan is exceptionally detailed, well organized and shows services to be provided, pricing, target markets, proposed budget, advertising campaign, promotions, all related marketing activities and clearly demonstrates capacity to carry out the objectives.
- 8-14 points – Marketing plan is generally organized, and shows ability to carry out tasks but lacks sufficient detail on services to be provided, pricing, target markets, proposed budget, advertising campaign, promotions, and all related marketing activities in order to carry out the objectives.
- 1-7 points – Marketing plan appears to be addressed but is poorly organized and lacks sufficient detail of the services to be provided, pricing, target markets, proposed budget, advertising campaign, promotions and all related marketing activities. In order to carry out the objectives.
- 0 points – Marketing plan appears difficult to understand, poorly organized and lacks details of the services to be provided, pricing, target markets, proposed budget, advertising campaign, promotions and all related marketing activities. In order to carry out the objectives.

(4) Operating Plan..... (20 points)

- 15-20 points – Operating plan is highly detailed and directly addresses all items listed in Section 3 – Scope of Services, including a sample of services with pricing for services.
- 8-14 points – Operating plan is modestly detailed and addresses most of the items listed in Section 3 – Scope of Services, including a sample of services with pricing for services.
- 1-7 points – Operating plan lacks detail and only addresses some of the items listed in Section 3 – Scope of Services, and the sample of services with pricing for services is vague.
- 0 points – Operating plan is difficult to understand and addresses a few or none of the items in Section 3 – Scope of Services, and does not include a sample of services with pricing for services.

(5) Financial Plan (20 points)

- 15-20 points – Financial plan is highly detailed and includes a proforma (forecasted) income statement, balance sheet and statement of cash flows for a two year plan.
- 8-14 points – Financial plan is modestly detailed and includes a proforma (forecasted) income statement, balance sheet and statement of cash flows for a two year plan.
- 1-7 points – Financial plan lacks detail and does not include all the required proforma (forecasted) forms: income statement, balance sheet and statement of cash flows for a two year plan.
- 0 points – Financial plan is difficult to understand and does not provide a two year plan.

C. Proposed Monthly Lease Fee (Exhibit 1)..... (5 points)

D. REFERENCES: (Max 5 points overall)

(1) A minimum of three (3) references all from similar projects that have been successfully completed within the past 5 years (4 points)

(2) References were able to be contacted and verified..... (1 points)

Total Maximum Points (100 points)

BONUS POINTS: Local Preference per Ordinance Sec. 2-275

- *Port Orange Business eight percent of available points (8 points)*
- *Volusia County Business five percent of available points (5 points)*
- *Florida Business three percent of available points (3 points)*

Please note that prices may be negotiated in the best interest of the City after the scoring is completed.

RFP EVALUATION SCHEDULE:

Refer to the Timeline in Section 2 of the RFP document regarding proposed evaluation date(s) and time(s).
The City reserves the right to alter dates as needed.

EVALUATION PROCEDURE:

The Evaluation Committee is comprised of City staff and **may** include City Council Member or Council appointed Board of Commission member who will evaluate and rank proposals based on a weighted score point formula. All interested professionals are hereby cautioned **not** to contact any staff or Council member of the City of Port Orange, or any member of the Evaluation Committee. Any and all questions should be made through the Purchasing Manager and any attempts to lobby or persuade through any other channels may result in disqualification.

All proposals will be subject to a review and evaluation process. It is the intent of the City that all proposers responding to this RFP, who meet the requirements, will be ranked in accordance with the criteria established in these documents. The City will consider all responsive and responsible proposals received in its evaluation and award process. The committee may choose to conduct an oral interview with each finalist.

The City's evaluation criteria, as identified above, for written proposals will include consideration of, but will not be limited to the following:

1. Responsiveness of the proposal related to the Scope of Services;
2. The ability, capability and skill of the proposer to perform the contract, including the range of services offered.
3. Whether the provider can perform the contract within the time specified without delay or interference.
4. The quality, availability and adaptability of the supplies or contractual services to the particular use required;
5. The character, integrity, reputation, judgment, experience and efficiency of the proposer;
6. Professional licensure required when service of a skilled nature is required by law to perform such service and/or skill;
7. The quality of performance of previous contracts;
8. The number and scope of conditions attached to the bid or proposal;

9. Responsiveness of client references;
10. Net costs; and
11. Such other information as may be secured.
12. Local preference policy (if applicable)

FORMAL ORAL PRESENTATIONS/INTERVIEWS (If Required):

The City may choose to conduct oral interviews with, or receive oral presentations from no less than three (unless less than three proposals were received) of the Proposers. If the City chooses to allow oral interviews and/or presentations, such interviews or oral presentations will not be open to the public pursuant to the conditions set forth in Florida Statute 286.0113. If oral presentations or interviews are held the following guidelines will be used:

The City's Purchasing Division will establish the schedule and Proposers will be notified via www.demandstar.com at least five (5) calendar days in advance of the date, time and place of the presentations. The specific format of each presentation will be provided to Proposers with the notifications.

The City will allot equal time for each proposer divided into two sequential parts: formal presentations and question and answers. The times allotted are maximums and no firm will be penalized for using less than the allotted time.

FINAL RANKING AND RECOMMENDATION FOR AWARD:

After the oral presentation is completed, the Evaluation Committee will re-score all short-listed proposals, using the same criteria utilized for evaluation of the written proposals, to determine a final ranking of the short-listed proposers considered to be most capable of performing the required project in the best interest of the City.

The Evaluation Committee's final ranking will be provided to the Purchasing Manager to read aloud. The City's Project Manager will provide a notice of intent to award to the Purchasing Manager. The final ranking sheets by the committee will be posted on www.demandstar.com. The City project manager will create an agenda item recommending award to the City Council. City Council's decision will be final.

[Remainder of page intentionally left blank]

SECTION 9 – REQUIRED FORMS

FORM 9.1 – PROPOSAL SUBMITTAL CHECKLIST

- _____ Form 9.2 – Proposer’s Acknowledgement Form
- _____ Form 9.3 – Addendum Acknowledgement
- _____ Form 9.3 – Drug Free Preference Statement
- _____ Form 9.4 – Sworn Statement Pursuant to Section 287.133 (3)(a) F.S. in Public Entity Crimes (BS-2)
- _____ Form 9.5 – Affidavit of Anti-Collusion Form
- _____ Form 9.6 – Authorized Signatures/Negotiators
- _____ Form 9.7 – Local Business Affidavit of Eligibility
- _____ Form 9.8 – Vendor Application Form
- _____ Exhibit 1 – Monthly Lease Fee Proposal
- _____ W-9 Form
- _____ Copy of Certificate of Insurance
- _____ Submission of one (1) original marked “ORIGINAL”, and one (1) digital (CD or flash drive) version in PDF format.

BY: _____
Proposer

Authorized Signature

_____ Date

This document must be completed and returned with your Submittal

FORM 9.2 – PROPOSER’S ACKNOWLEDGEMENT FORM

I have carefully examined the Request for Proposals (RFP)), Instructions to Proposers, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the Request for Proposals at the prices or rates as finally negotiated. I agree that my proposal will remain firm for a period of up to ninety (90) days in order to allow the City of Port Orange adequate time to evaluate the proposal. Furthermore, I agree to abide by all conditions of the Request for Proposals.

I certify that all information contained in this proposal is truthful to the best of my knowledge and belief. I further certify that I am a duly authorized to submit this proposal on behalf of the Proposer / Contractor as its act and deed and that the Proposer / Contractor is ready, willing and able to perform if awarded the contract.

I further certify that this proposal is made without prior understanding, Contract, connection, discussion, or collusion with any person, firm or corporation submitting a proposal for the same product or service; no officer, employee or agent of the City of Port Orange City Council or of any other proposer interested in said RFP; and that the undersigned executed this Proposer’s Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

I further certify that having read and examined the specifications and documents for the designated services and understanding the general conditions for contract under which services will be performed, does hereby propose to furnish all labor, equipment, and material to provide the services set forth in the RFP.

I hereby declare that the following listing states any clarifications, any and all variations from and exceptions to the requirements of the specifications and documents. The undersigned further declares that the “work” will be performed in strict accordance with such requirements, and understands that any exceptions to the requirements of the specifications and documents may render the proposal non-responsive.

NO EXCEPTIONS ALLOWED AFTER THE PROPOSAL IS SUBMITTED:

Please check one: ☐ I take NO exceptions. ☐ Exceptions (list below; add additional pages if necessary):

NAME OF BUSINESS

MAILING ADDRESS

AUTHORIZED SIGNATURE

CITY, STATE & ZIP CODE

NAME, TITLE, TYPED

TELEPHONE NUMBER / FAX NUMBER

FEDERAL IDENTIFICATION #

E-MAIL ADDRESS

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this day of _____, 20____ by _____, who is personally known to me or who has produced ad identification and who did take an oath.

My Commission Expires:

Notary Public

This document must be completed and returned with your Submittal

FORM 9.3 – ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Request for Proposals (RFP), Instructions to Proposers, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this Request for Proposals.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the proposal.

Addendum # _____ Date: _____ Addendum # _____ Date: _____
Addendum # _____ Date: _____ Addendum # _____ Date: _____

Name of Business

Authorized Signature

Date

Print Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this day of _____, 20____ by _____, who is personally known to me or who has produced ad identification and who did take an oath.

My Commission Expires:

Notary Public

This document must be completed and returned with your Submittal

FORM 9.4 – DRUG FREE PREFERENCE STATEMENT

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, or replies that are equal with respect to price, quality, and service are received by the city 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 Section 287.087, Florida Statutes.

As an authorized representative of the firm, I certify that this firm complies fully with the above requirements.

Name of Firm: _____

By: _____
(Name and Title)

Date: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of _____ and who: [] is personally known to me; or [] has produced _____ as identification.

Notary Public, State of

This document must be completed and returned with your Submittal

FORM 9.5 – SWORN STATEMENT UNDER SECTION 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

(To be signed in the presence of notary public or other officer authorized to administer oaths.)

Before me, the undersigned Authority, personally appeared affiant _____, who, being by me first duly sworn, made the following statement:

1. The business address of _____ (name of Offeror or business) is _____.
2. My relationship to _____ (name of Offeror or business) is _____ (relationship such as sole proprietor, partner, president, vice president).
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such an agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. (Draw a line through paragraph 6 if paragraph 7 below applies.)
7. There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted vendor list. The name of the convicted person or affiliate is _____. A copy of the order of the Division of Administrative Hearings is attached to this statement. (Draw a line through paragraph 7 if paragraph 6 above applies.)

(Authorized Signature)

(Date)

(Print Name)

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of _____ and who: ☐ is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____
Printed Name, Commission Seal and Term Expiration Date

This document must be completed and returned with your Submittal

FORM 9.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT PROPOSAL FORM:

By signing this form, the Proposer agrees that this Proposal 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 Proposals will be considered incomplete, and will be disqualified, and rejected.

IT IS AGREED BY THE UNDERSIGNED PROPOSER THAT THE SIGNING AND DELIVERY OF THE PROPOSAL REPRESENTS THE PROPOSERS ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FOREGOING SPECIFICATIONS, CONTRACT AND PROVISIONS, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE PROPOSERS 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. NUMBER: _____

NO Proposal may be withdrawn for a period of ninety (90) days subsequent to the submittal of the Proposals, without the consent of the City of Port Orange.

NO PROPOSAL (REASON): _____

This document must be completed and returned with your Submittal

FORM 9.7 – AUTHORIZED SIGNATURES/NEGOTIATORS

The Bidder or Proposer represents that the following persons are authorized to sign and/or negotiate contracts and related documents to which the Bidder or Proposer will be duly bound:

Name _____	Title _____	Phone # _____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Authorized Signature)

This document must be completed and returned with your Submittal

FORM 9.8 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

This declaration is executed under penalty of perjury of the laws to the United States and State of Florida
THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

RFSQ/RFP/ITN/BID/CONTRACT/PROJECT # (as applicable): BUSINESS NAME: _____

CONTACT PERSON/TITLE: _____

MAILING ADDRESS: _____

CITY-STATE-ZIP: _____

Length of Time at Address Provided: _____

Physical Presence of Business: ☐ Headquarters, ☐ Manufacturing Facility, or ☐ Locally Owned Franchise

And within Legal Boundaries: ☐ The City of Port Orange ☐ Volusia County ☐ The State of Florida

FEIN (Federal Employer Identification Number): _____

BUSINESS STRUCTURE: ☐ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship
☐ Other (Specify): _____

PHONE NUMBER: _____ FAX: _____

EMAIL: _____

****Please attach a valid business tax receipt, or other such documentation****

ATTESTATION – I understand that:

- In accordance with City Of Port Orange City Code 2-275, local businesses shall have five (5) business days from bid/proposal opening to submit a best and final bid for evaluation. To qualify: A Port Orange business initial bid must be within (8%) of the lowest and best responsible bid from a non-Port Orange business; A Volusia County business initial bid must be within (5%) of the lowest and best responsible bid from a non-Volusia County business; A State of Florida business initial bid must be within (3%) of the lowest and best responsible bid from a non-State of Florida business.
- A local business must have its headquarters, manufacturing facility, or locally owned franchise located within the legal boundaries of the City of Port Orange, Volusia County, or the State of Florida, as indicated herein, for at least twelve (12) months prior to the bid or proposal opening date and a valid business license, issued by the corresponding government agency. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. Bidders shall attach to this affidavit of eligibility with a bid or proposal, a copy of a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within corresponding local limits.
- The preference does not apply to goods or services exempted by statute or prohibited by Federal law, State law, or other funding source restrictions.
- The preference established in this policy does not prohibit the right of the City, or other authorized purchasing authority, to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals.
 - The information contained herein may be subject to verification.
- A vendor who misrepresents the local preference status of its firm in a proposal or bid submitted to the City of Port Orange will lose the privilege to claim local preference status, and shall lose eligibility to claim local preference for a period of one (1) year. The City Manager may also recommend that the firm be referred for debarment.

BEFORE ME; the undersigned authority, in and for the State of Florida and the City of Port Orange personally appeared _____ who, after being sworn according to law, stated that he or she was authorized to represent _____ and to execute this affidavit on behalf of the said Business Entity and attests, under penalty of perjury, to the above.

(Form 9.8 Local Business Affidavit of Eligibility – Page 2)

SWORN AND SUBSCRIBED BEFORE ME

SIGNATURE OF NOTARY PUBLIC

NOTARY SEAL

THIS _____ DAY OF _____, 20____

My Commission Expires: _____

SIGNATURE OF AFFIANT DATE

PRINTED NAME OF AFFIANT / TITLE

COMPANY

This document must be completed and returned with your Submittal



FORM 9.9 - VENDOR APPLICATION

**City of Port Orange
Vendor Application**

City of Port Orange

Attn: Lisa Pallante

(386) 506-5712

lpallante@port-orange.org

1000 City Center Circle

Port Orange, FL 32129

Date: _____

FIRM NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

If remittance payment address is different than application or W9 please fill out below:

ADDRESS: _____

TEL. # (including area code): _____ FAX.# _____

SIGNATURE PERSON FILING APPLICATION: _____

PRINTED NAME: _____

TITLE: _____

FEDERAL I.D. (F.E.I.N.) # _____

E-MAIL ADDRESS: _____

(Authorized Company Representative)

COMPANY STATUS:

INCOPRORATED: ☐ Y ☐ N State Incorporated: _____ Year: _____

TYPE OF ORGANIZATION: ☐ Indiv. ☐ Partnership ☐ Corp. ☐ Non-Profit ☐ LLC

ATTORNEY TRUST ACCOUNT NAME: _____

INSURANCE: Proof of adequate coverage for professional general liability, errors and omissions and workers' compensation may be required for certain types of procurements.

☐ Check this box to waive insurance requirements **only** if you are providing goods for F.O.B destination with no installation services.

*** NOTE TO VENDORS***

The City of Port Orange, Florida does not maintain a prospective vendor's list, classified by commodities for the purpose of inviting sealed bids and quotation.

The City utilizes DemandStar www.demandstar.com to release Bids/RFP's and quotes. While the City advertises the Invitation to Bid in the local newspaper (Daytona News Journal) only in rare cases does the City mail out announcement notices to vendors. Vendors interested in becoming a member of DemandStar may visit their web site at: www.demandstar.com or by calling them at 1-800-711-1712.

Vendors will automatically receive notice of request for Bids/RFP's or quotes after they sign up on DemandStar. It is important that vendors sign, complete and return this application. Also include the W-9 and insurance information requirements in order for the City to assign a vendor number on our computer system.

It is also the vendor's responsibility to keep the Purchasing Division informed as to any change of address or insurance that may occur.

If your company is interested in bidding on commodities/services in addition to those specified, on any specific article related to the main category, insert the type of those materials on the blank space provided for each category group. Attorney services are secured by direct telephone quotes or written price inquiries.

Drug Free Workplace: A statement as to whether or not your firm has implemented a drug-free workplace program, as described in Section 287.087 of the Florida Statutes should be noted. Failure to respond in affirmative to this request will not disqualify you from consideration. Preference will be given to firms which have implemented a drug-free workplace program in the case where the City has received two or more bids what are equal with respect to price, quality, and service.

Equal Employment Opportunity (EEO): All vendors will be required to make an affirmative statement as to their support of all applicable equal opportunity affirmative actions requirements. A copy of the City's Equal Employment Opportunity statement (EEO) will be available to the vendor upon request.

I certify that the information supplied herein is correct and that neither the applicant nor any person (or concern) in any connection with the applicant as a principal or officer, so far as is known, is now disqualified from the public contracting and purchasing process by any agency of the federal government, the State of Florida or the City of Port Orange.

Signature of Person Completing Form: _____

Printed/Types Name: _____ Title: _____

Commodity/Services _____

This document must be completed and returned with your Submittal

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

This document must be completed and returned with your Submittal



EXHIBIT I - MONTHLY LEASE FEE PROPOSAL
RFP # 16-27
WATER RECREATION RENTAL OPERATIONS

(Include under Tab H of Proposal)

NAME OF BUSINESS: _____

CONTACT PERSON: _____

EMAIL ADDRESS: _____

AUTHORIZED SIGNATURE: _____

PROPOSED MONTHLY LEASE FEE		Fee Per Month
1	Lease Fee per Month	\$ -
Annual Lease (Monthly Lease Fee x 12 Months)		\$ -



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5718
FAX 386-506-5711
purchdiv@port-orange.org

ADDENDUM NO. 1

July 11, 2016

RFP 16-27 WATER RECREATION RENTAL OPERATIONS

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated June 10, 2016 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

A. CHANGES TO SPECIFICATIONS: The following changes to specifications for RFP 16-27 Water Recreation Rental Operations have been made. Vendors are to make note of these changes to in their copies of the RFP document.

1. All references to "lease" or "lease agreement" within this bid are deleted and replaced by "license" or "license agreement".
2. All references to "rent" or "rental fee" within this bid are deleted and replaced by "fee" or "license fee".
3. All references to "tenant" within this bid are deleted and replaced by "Licensee".
4. Section 3 – SCOPE OF SERVICES, shall be amended to read as follows:

The City of Port Orange is seeking proposals from qualified firms or companies to enter into a **license** ~~lease~~ agreement for water recreation rental operations at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127. The premises shall be used for purposes consistent with related marine use such as canoe, kayak, paddleboard, and other non-motorized equipment. The Proposer shall be responsible for **all operating costs including but not limited to water, electricity, waste removal, sewer, cable, phones, internet and other utilities.** ~~self-contained maintenance, trash, sewer, cable, phone internet and other utilities required for adequate operation of the facility. Electricity and water availability is to be included in the lease fee."~~

License Lease Terms:

The term of the **license agreement** lease is two years with the option to renew two (2) times in two (2) year intervals. **However, the license is subject to revocation upon a sixty (60) day notice to the Licensee by the City.**

The license will be subject to a monthly license fee. Licensee shall be permitted to use the concession area of the building and designated park areas as well as shared use of the restrooms, (attached as Exhibit 1). ~~Monthly lease costs include the concession area of the building and designated park areas as well as shared use of the restrooms, (attached as Exhibit 1).~~ **The Licensee will be responsible for all operating expenses, including but not limited to water, electricity, waste removal, sewer, cable, phones, internet and other utilities.** ~~The Licensee will not include cable, phone and internet. The Lease will also include electric, water, sewer and trash removal. The Lease will not include cable, phone and internet.~~

The Proposer shall provide the City with a security deposit in the form of irrevocable letters of credit, cash deposits, or surety instruments satisfactory to the City upon signing the **license agreement** ~~negotiated lease~~. The amount of the ~~total~~ deposit, **to offset any damage to property caused by the Licensee, will be determined upon negotiation of the contract** ~~the total of first and last month's rent. The anticipated lease will be a net lease in which the Tenant will pay all operating expenses.~~

Outfitter Operation:

The Tenant shall be responsible for operations, marketing and advertising, staffing, cleaning, security, **and cost of some utilities, including but not limited to water, electricity, waste removal, sewer, cable, phones, internet** ~~cable, satellite TV service, internet and maintenance within the leased areas, and obtaining all required permits and licenses.~~

The Facility:

The Riverwalk Floor Plan indicates the area available to ~~use lease~~. **The Licensee shall not make any modification to the interior or exterior of the facilities used.** ~~Any interior modifications can be negotiated between the successful Proposer and the City. All equipment will be provided by Licensee tenant.~~

The Building: The electric system meets code, water, sanitary sewer is all currently available in the facility. **The cost of using any utilities shall be the responsibility of the Licensee.** ~~Phone, cable television and High speed internet are the tenant's responsibility.~~

~~Any improvements installed by the Lessee shall be approved by the City of Port Orange and shall be code compliant. Suggestions for specific improvements by the Proposer~~

~~should be reviewed by the Building Department prior to submittal of the Proposal. All suggested improvements are negotiable.~~

Signage:

Signage, including way-finding signs, may be included in the Proposal for consideration. Proposers should suggest signage locations which the City may consider.

No permanent signage may be constructed by the Licensee. ~~Signage adjacent to US1 on park property is permitted for 24sq. ft. and will be the responsibility of the tenant to pay, permit, and install and maintain the sign.~~

Operating Hours:

The concession(s) may be used at all appropriate times during regular park hours from dawn to dusk. ~~Required hours of operation by the City include:~~

Maintenance:

Successful proposer shall be responsible for the following:

- Keeping the staging area neat, clean and in good standing;
- Removing rental-related refuse to the dumpster daily;
- Arranging seating area (if applicable);
- Sweeping, mopping and cleaning the public area surrounding the staging area daily upon completion of usage;
- Do not allow boxes, cartons, barrels trash or similar items to be in the view of the public.
- Evaluation of maintenance compliance will be at the City's sole discretion. **If Licensee fails to maintain to the standards of the City, the License may be revoked.** ~~If found to be in default, the City will issue a letter of non-compliance. The vendor will have two (2) working days to correct noncompliance items. If not corrected, vendor will be considered in breach of contract.~~

In all other respects, except as specifically stated herein, the subject RFP 16-27 remains unchanged.

END OF ADDENDUM NO. 1

Sandy Point Progressive Sports

Proposal

Water recreation rental operations

Mike Klein
7/11/2016

Table of contents

Page

- 2. Tab A: Statement of interest
- 3. Tab B: Firm and staff qualifications and references
- 5. Tab C: Licenses/insurance
- 10. Tab D: Financial stability/litigation
- 11. Tab E: Operating plan
- 17. Tab F: Marketing plan
- 18. Tab G: Financial plan
- 19. Tab H: Proposed monthly lease fee
- 20. Tab I: Required documents

Tab A: Statement of interest

Sandy Point Progressive Sports is presenting this proposal for a “Water Recreation Rental Operation” RFP #16-27, located at Riverwalk Park, 3441 South Ridgewood Ave, Port Orange, FL 32127. We believe our decades of experience in the water sports industry serving the communities of Volusia County and beyond shall provide evidence of our ability to professionally setup, manage and maintain a water recreation rental operation at this location.

As a water recreation rental operation we would operate and maintain an adequate number of rental kayaks, SUP's, windsurfing rigs and small sailboats to serve the community in both the high season and low. We would staff the location with a professional employee who would be able to assist all patrons regardless of skill level. We pride our company on staffing our retail location and service operations with staff that has the experience in all disciplines of water sports activities that we sell.

In addition to providing an adequate supply of equipment and a professional staff our organization will offer rental equipment that will be unique and unavailable from other local outfitters which will draw special interest and attention to the park and rental operation. This equipment will be in the kayak, SUP and sail sports.

In conclusion, in this proposal for RFP #16-27 Water Recreation Rental Operations, we will not only express our interest to operate this rental operation, but we will also provide information that will show we have the financial capability, experience, knowledge, passion and staff to operate the rental operation.

Name: _____ Signature: _____

Tab B: Firm and staff qualifications

Founded in 1983 Sandy Point Progressive Sports has professionally served our community in the retail sales of kayaks, sailboats, windsurfing, surfing and other watersports equipment for over 30 years. In addition, we also set up community events on an annual, monthly and weekly basis to help educate and train our community on proper water safety, equipment instruction and environmental awareness. These events have included, but not limited to, free kayak demo's, free sup demo's, eco tours, kayak and sup tours, competitive watersports events, windsurfing and kitesurfing instruction. We are committed to the promotion and safety of water sports activities.

The Riverwalk Park is located on the back yard of Sandy Point Progressive Sports. Our previous location of almost 20 years was located just a few blocks north of the Riverwalk Park on the water. For that period of time we successfully operated, without incident, kayak and windsurfing rentals, tours and lessons on that stretch of the ICW. Our staff has spent years, then and now, kayaking and sailing up and down that portion of the ICW and the surrounding islands.

During that time we operated a kayak rental concession with over 20 kayaks. Our staff was trained and operated in the highest regard to safety. On a daily basis our staff assisted renters with: Choosing the correct kayak for their size and experience, inspecting the kayak to make sure it was suited for rent and had all the proper safety equipment, making sure the renter had proper footwear, reviewing with the renter the proper procedure for entering and exiting the kayak, giving the renter an overview of the waterway including areas to avoid and points of interest, assisting the renter to the water and making sure the renter successfully launches and is in proper kayaking form. Our passion and attention to water safety and promotion of the watersports we rent is evident in our 30 plus years of a successful rental operation from our facility without incident.

We have some of the most dedicated and professional staff in the area. Our primary staff has been with Sandy Point for 10-20+ years and our average employee stays with us for 5-6 years. We employ only the most professional personnel in our industry that have the highest knowledge and passion of the water sports equipment we sell and rent.

We have no previous contracts with any cities or counties in regards to a rental concession. However, we have successfully organized and partnered with several

private organizations in which we setup and operated large competitive events. For these events we organized the finances, marketing, operations, equipment, staffing and personally operated the events day to day. These events have included the several Kona Worlds Competitions, an event that brought competitors from around the world to the Florida Keys for a week long competition. We also organized a West coast tour of competitive events that had a dozen stops along the West coast of the US, including several demos around the US for multiple sporting activities.

Our ability to setup, staff and manage a water recreation rental operation at the Riverwalk Park will hopefully be evident in our 30 plus year of experience.

Tab C: License/Insurance



2016 Florida Annual Resale Certificate for Sales Tax

THIS CERTIFICATE EXPIRES ON DECEMBER 31, 2016

DR-13
R. 10/15

Business Name and Location Address

Certificate Number

SANDY POINT PROGRESSIVE SPORTS INC
3090 S RIDGEWOOD AVE
SOUTH DAYTONA, FL 32119-3546

By extending this certificate or the certificate number to a selling dealer to make eligible purchases of taxable property or services exempt from sales tax and discretionary sales surtax, the person or business named above certifies that the taxable property or services purchased or rented will be resold or re-rented for one or more of the following purposes:

- Resale as tangible personal property.
- Re-rental as tangible personal property.
- Resale of services.
- Re-rental as commercial real property.
- Incorporation into and sale as part of the repair of tangible personal property by a repair dealer.
- Re-rental as transient rental property.
- Incorporation as a material, ingredient, or component part of tangible personal property that is being produced for sale by manufacturing, compounding, or processing.

Florida law provides for criminal and civil penalties for fraudulent use of a *Florida Annual Resale Certificate*.

The *Florida Annual Resale Certificate* is issued to active, registered sales and use tax dealers. **As a buyer**, use your certificate to purchase or rent property or services tax exempt that you intend to resell or re-rent to your customers. You cannot use this certificate to purchase or rent property or services that you will use in your business. **As a seller**, you must collect sales tax and discretionary sales surtax imposed on retail sales or rentals of taxable property or services, unless the transaction is exempt.

Seller Certificate Verification – Verify resale or exemption certificates using a customer's sales tax certificate number:

- Phone: **877-FL-RESALE** (877-357-3725)
- Online: Go to www.myflorida.com/dor and select "More e-Services" and then "Verify resale and exemption certificates"
- Mobile App: **Florida Tax (FL Tax)** mobile app for iPhone, iPad, Android phones and tablets, Windows Phone

If you obtain an authorization number for each tax-exempt sale, or for all sales to a specific customer, you do **not** need to keep a copy of the customer's *Florida Annual Resale Certificate*.



**CITY OF SOUTH DAYTONA
LOCAL BUSINESS TAX RECEIPT**

SUBJECT TO
LOCAL BUSINESS
TAX RECEIPT ORDINANCE

VALID PERIOD: 10/01/2015-09/30/2016

BUSINESS CLASSIFICATION

MERCHANTS WHOLESale RETAIL
RETAIL SALES-SPORTING GOODS
300,000 INVENTORY
SIGNS OVER 15 S.F.(1)

ACCOUNT ID RECEIPT NUMBER

██████████ ██████████

AMOUNT DUE: IF PAID BY:

260.00 SEPT. 30

LOCATION

3090 RIDGEWOOD AVENUE

ISSUED TO

SANDY POINT PROGRESSIVE SPORTS
GOTTLIEB, STEVE AND MARTY
SANDY POINT PROGRESSIVE SPORTS
3090 S RIDGEWOOD AVENUE
SOUTH DAYTONA, FL 32119

BUSINESS TAX ADMINISTRATOR

PAID NOV 30 2015

POST IN CONSPICUOUS PLACE AT BUSINESS LOCATION

2015/2016

Volusia County Business Tax Receipt

Issued pursuant to F.S. 205 and Volusia County Code of Ordinances Chapter 114-1 by:
Volusia County Revenue Division - 123 W Indiana Ave, Room 103, Deland, FL 32720 - 386-736-5938



Volusia County
FLORIDA

Receipt # [REDACTED] Expires: September 30, 2016
Business Location: 3090 S RIDGEWOOD AV
Business Name: SANDY PT PROGRESSIVE SPORTS
Owner Name: POINT PROGRESSIVE SPORTS SANDY
Mailing Address: 3090 S RIDGEWOOD AVE
SOUTH DAYTONA, FL 32119

BUSINESS TYPE	CODE	COUNT	TAX
Retail / Wholesale Sales	482	10	\$30.00

- This receipt indicates payment of a tax, which is levied for the privilege of doing the type(s) of business listed above within Volusia County. This receipt is non-regulatory in nature and is not meant to be a certification of the holder's ability to perform the service for which he is registered. This receipt also does not indicate that the business is legal or that it is in compliance with State or local laws and regulations.
- The business must meet all County and/or Municipality planning and zoning requirements or this Business Tax Receipt may be revoked and all taxes paid would be forfeited.
- The information contained on this Business Tax Receipt must be kept up to date. Contact the Volusia County Revenue Division for instructions on making changes to your account.

**THIS PORTION OF THE BUSINESS TAX RECEIPT MUST BE
POSTED CONSPICUOUSLY IN YOUR PLACE OF BUSINESS**



CERTIFICATE OF LIABILITY INSURANCE

SANDY-3

OP ID: SZ

DATE (MM/DD/YYYY)
07/13/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Brown & Brown of Florida, Inc.
Daytona Beach Office
P.O. Box 2412
Daytona Beach, FL 32115-2412
Joann Keenan

CONTACT NAME: STEPHANIE REYNOLDS
PHONE (A/C No. Ext): 386-239-4058 FAX (A/C No.): 386-323-9110
E-MAIL ADDRESS: SREYNOLDS@BBDBAYTONA.COM

INSURED
SANDY POINT PROGRESSIVE SPORTS
AEROTECH SAILS, INC
3090 S. RIDGEWOOD AVE.
SOUTH DAYTONA, FL 32119

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Westfield Ins Co	24112
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR BYSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO ☐ LOC ☐ OTHER		CWP7706040	09/17/2015	09/17/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 100,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS					COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per person) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ RETENTION \$ NONE		CWP7706040	09/17/2015	09/17/2016	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☒ N If yes, describe under DESCRIPTION OF OPERATIONS below					PER STATUTE ☐ OTHER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Marty

From: donotreply@sunbiz.org
Sent: Thursday, April 23, 2015 1:39 PM
To: marty@progressivesports.com
Subject: Sunbiz.org Payment Receipt

Thank you for submitting your payment to Florida Department of State,
Division of Corporations. This email will serve as confirmation that your
payment was received by our office.
Your filing will be posted on our website <http://www.sunbiz.org/> within 1-
3 business days.

The transaction information is listed below:

Receipt Number: [REDACTED]
Transaction Date/Time: 04/23/2015 01:38 PM
Card Number: [REDACTED] 6986
Card Type: MC
Approval Code: 854238
Payment Amount: \$150.00
Tracking Number: [REDACTED]
Document Number: [REDACTED]

Tab D: Financial Stability/Litigation

In the past 5 years no litigation or proceedings have been ruled against Sandy Point Progressive Sports, Inc.

There have been no government contracts that have been awarded to Sandy Point Progressive Sports, Inc. that have been terminated in default or convenience.

Tab E: Operating Plan

Objective:

Serve the general public as a full service outfitter of non-motorized water sports equipment at the Riverwalk Park, 3441 South Ridgewood Ave, Port Orange, FL , 32127. Market and operate a water recreation rental operation and promote water safety while providing a fun and professional atmosphere.

Staff:

Sandy Point Progressive Sports will employ and provide one staff member to operate the water recreation rental operation for the term of the lease. This staff member will meet all current requirements of any staff member of Sandy Point Progressive Sports. Sandy Point Progressive Sports will have additional staff members to support the primary staff member during lunch periods, sick days, time off and during times of high volume when additional staff is required.

Equipment:

Sandy Point Progressive Sports will provide kayaks, stand up paddle boards and small sailing crafts as needed to supply the demand of the rental concession. As demand increases or decreases equipment will added or removed from the fleet. All equipment will be supplied at the expense of Sandy Point Progressive Sports and secured onsite at the Riverwalk Park.

All equipment will be of the “sealed hull” type to insure the highest safety to the renters. All equipment will be continuously inspected for damage or defects that would jeopardize the safety of the renter and will be replaced or repaired as needed at the expense of Sandy Point Progressive Sports.

Safety equipment will be provided by Sandy Point Progressive Sports and all crafts will comply with any and all coast guard regulations upon entering the water. All safety equipment will be continuously inspected for damage or defects that would jepordize the safety of the renter and will be replaced or repaired at the expense of Sandy Point Progressive Sports. Additional equipment and supplies that would add to the safety and well being of the renter will be sold onsite. Additional equipment and supplies include: proper water shoes, sunscreen and water.

Rental Pricing:

Sandy Point Progressive Sports will use its current pricing structure for kayak, sup and small sailing craft rentals. This pricing will remain unchanged and in effect for the term of this lease.

Kayaks	Single Kayak	Tandem Kayak	Hobie Single Mirage Kayak
Per hour	\$20	\$30	\$40
Stand up paddle boards	Standard		
Per hour	\$20		
Windsurfer	Standard		
Per hour	\$35		
Small Sailing Craft	Standard		
Per hour	\$50		

Rental Procedures:

All staff will be required and trained to follow a strict guideline for renting equipment. This guideline is outline below:

1. Greet all potential renters with a professional and courteous attitude.
2. Require all renters to properly fill out Sandy Point Progressive Sports waiver forms.
3. Make sure all minors are accompanied by an adult who can cosign the rental waiver forms.
4. Obtain payment and a deposit for all vessels rented.
5. Fit all renters with the proper fitting life vest and explain the vest must be worn at all times.
6. Make sure all renters have the proper footwear.
7. Remove vessels from rack and review the vessels features and proper standing/sitting and paddling techniques. If a sailing craft is being rented, previous sailing knowledge is required and renter must be questioned about sailing experience. Questions will be in detail and only qualified sailors should be able to appropriately respond.
8. Accompany renter to the launch with the vessel.
9. Educate and the renter about the local waterway including all hazards, points of interest and waypoints for navigation.
10. Make sure renter is aware of their launch time and required return time.
11. Help renter launch.

12. A returning renter should be helped back into the launch area or immediately greeted if they have already returned.
13. Renter should be questioned about their experience and if they experienced any troubles.
14. Rental equipment should be checked in for any damage or missing pieces.
15. Renter may be returned their deposit slip if all equipment is returned in satisfactory condition. Only major damage or missing pieces should be considered when returning deposit.
16. Rental equipment must be cleaned and inspected before returning to the rental rack to ensure all equipment is suitable for further rental.

Below are copies of the waiver forms provided by our insurance company that will be used in the water recreation rental operation.

14 | Page



Sandy Point Progressive Sports
3090 S. Ridgewood Ave. S. Daytona, FL 32119



PROTECTIVE HEADGEAR REFUSAL AGREEMENT

Please read and be certain you understand the implications of signing.

I, FOR MYSELF AND/OR ON BEHALF OF MY CHILD OR LEGAL WARD, HAVE BEEN FULLY WARNED AND ADVISED BY SANDY POINT PROGRESSIVE SPORTS THAT WE SHOULD WEAR A PROPERLY FITTED HELMET IN ORDER TO REDUCE SOME OR ALL OF OUR HEAD INJURIES AS THE RESULT OF A FALL OR ANY OTHER OCCURRENCE ASSOCIATED WITH THIS HAZARDOUS ACTIVITY. WE REALIZE WE ARE SUBJECT TO INJURY FROM THIS ACTIVITY WHICH WE ARE EXPOSING OURSELVES PURELY VOLUNTARILY.

AGAINST THIS ADVICE, WE ARE REFUSING THIS CRITICAL SAFETY PRECAUTION.

I/WE THE UNDERSIGNED, HAVE READ THE FOREGOING STATEMENT AND DO UNDERSTAND IT'S WARNINGS AND ASSUMPTION OF RISKS.

S/

Signature of Adult Rider

Name of Adult Rider (Please Print)

Date

FOR PARTICIPANTS OF MINORITY AGE: This is to certify that I, as a Parent, Guardian, Temporary Guardian with legal responsibility for this participant, do consent and agree not only to his/her release of all Releasees, but also to release and indemnify the Releasees from any and all liabilities incident to his/her involvement in these programs for myself, my heirs, assigns, and next of kin.

S/

Signature of Parent or adult age legal
Guardian if Participant is a Minor, and
By their signature, they on my behalf
Release all claims that both they and
I have

Name of Parent or adult legal Guardian
(Please Print)

Date

Minor's Full Name

Date

RJ520 (03/2016)



Sandy Point Progressive Sports
3090 S. Ridgewood Ave, S. Daytona, FL 32119



Declaration of Fitness To Use The Rental Equipment

I hereby declare that I am physically fit. I do not, and have not, suffered from any of the following conditions, which I understand may lead to a dangerous situation with regard to other persons or myself during activities:

Epilepsy, fits, severe head injury, recurrent blackouts or dizziness, disease of the brain or nervous system, high blood pressure, lung or heart disease, recurrent weakness or dislocation of any limb, diabetes, mental illness, drug or alcohol addiction, recent back injury, arthritis and severe joint sprains, chronic bronchitis, asthma, rheumatic fever, thyroid adrenal or other glandular disorder, recent blood donation or any condition that requires the regular use of drugs.

I hereby declare that I have no physical or mental condition that should preclude me from participating in my chosen activity, that I am not participating against medical advice or treatment and that I have not been diagnosed by a registered doctor as having a terminal illness.

I further declare that in the event that I feel ill or unwell, have any physical complaints whatsoever or if an injury is sustained of any kind during the course of activities, I will notify the instructor / guide / employee of the insured immediately and before moving away from the immediate vicinity.

I have read the above Declarations, understand them, and I agree to be bound by them.

S/ _____ Name of Adult Participant (Please Print) _____ Date _____ Signature of Adult Participant

Address of Adult Participant _____ Contact No# _____

S/ _____ Name of Parent or Guardian (Please Print) _____ Date _____ Signature of Parent or Guardian if Participant is a Minor, and by their signature, they on my behalf release all claims that both they and I have

Address of Parent or Guardian _____ Contact No# _____

Name of Minor (Please Print) _____ Date _____

.....
If you cannot sign the above declaration because of any of the above conditions, you must notify the Instructor / Guide / Employee of the insured immediately before you use the equipment or commence any activities.
.....

Attention of the Authorised Insured Only (Counter-Sign upon full and correct completion)

S/ _____ Name of Authorised Insured (Please Print) _____ Date _____ Counter-Signature of Authorised Insured

R/126 (03/2006)

Tab F: Marketing Plan

Sandy Point Progressive Sports will be marketing a water recreation rental operation located at the Riverwalk Park to two primary markets; the local community and the tourism market. Given the success of our current rental operation we will extend our current marketing plan to include the Riverwalk Park as a rental location. This will be most effective as a large portion of the inquiries we receive are looking for a location on the water.

Marketing Strategies:

1. Produce and distribute kayak rental cards to be placed in hotels along beachside. Rental Card printing and distribution cost per year \$400.
2. Discovery Maps: We will have the Riverwalk Park Rental Location added to the Discovery Maps which is free map that is distributed to hotels and businesses in Volusia county. This is an annual fee of \$655.
3. Website page and online marketing. We will add the location of the Riverwalk Park to our website and continue to promote that page through an online pay per click campaign targeting the following keywords 'Daytona Kayak Rental', 'Daytona SUP Rental', 'Daytona Boat Rental'. Current annual budget \$1000.
4. Listing and promotion of the Riverwalk Park as a kayak rental location on the website www.Florida-Kayak-Tours.com. Current annual listing fee is \$99.

Tab G: Financial Plan

Given Sandy Point Progressive Sports current rental operation revenue we have extended out a 2 year financial plan based on the increase in rental operations revenue for the proposed water recreation rental operations.

2 Year Financial Plan	
Startup Expenses/ Assets	
Kayaks	\$4,740.00
SUP's	\$4,104.00
Windsurfing equipment	\$2,700.00
Small sailing craft	\$2,564.00
Total Assets	\$14,108.00
Expenses	
Employees	\$36,000.00
Lease	\$4,800.00
Advertising	\$4,308.00
Asset depreciation	\$5,643.20
Total Expenses	\$50,751.20
Income	
Projected rental sales	\$57,000.00
Projected accessory sales	\$8,640.00
Total Income	\$65,640.00
Projected Net Income	\$14,888.80

Tab H: Proposed Monthly Lease Fee

RFP #16-27

Water Recreation Rental Operations

Name of Business:	Sandy Point Progressive Sports
Contact Person:	Mike Klein
Email Address:	mike@progressivesports.com
Authorized Signature:	

Proposed Monthly Lease Fee		Fee Per Month
1	Lease Fee per Month	\$200.00
Annual Lease(Monthly Lease Fee x 12 Months)		\$2400.00



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B15) Approval of a License Agreement at 215 Fox Place

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve a License Agreement for low groundcover plantings located in the Lafayette Avenue right-of-way for a corner lot addressed as 215 Fox Place and authorize the Mayor and City Clerk to act on behalf of the City to execute.

SUMMARY: Staff has received a License Agreement application for 215 Fox Place, a residential property located at the northeast corner of the intersection of Fox Place and Lafayette Avenue. The homeowner, Ms. Toni Rinehart, has made this application to receive City approval of a recently installed 5'-5" x 12' landscape bed containing small groundcover plantings surrounded by low-profile concrete edging in the Lafayette Avenue right-of-way.

Ms. Rinehart personally prepared the bed and planted the flowers and groundcover plants. She expressed to staff that she removed trash and debris dumped by others in the right-of-way and created the landscape bed to clean up and beautify the area. Code Enforcement was contacted about the new landscape bed and informed Ms. Rinehart she would need to obtain a license agreement or remove the landscape bed from the right-of-way. The case is pending resolution of this agenda item.

Ms. Rinehart has been advised of applicable requirements and the License Agreement review process. The license agreement has the effect of requiring the applicant to maintain and if necessary, replace these improvements per the accepted standard construction requirements of the City. Further, should the applicant fail to abide by this requirement, it provides the City with the ability to take necessary corrective actions at the expense of the applicant. City liability concerns are addressed by an indemnity statement in the License Agreement document. The applicant executed the original License Agreement document prior to the City Council meeting.

The License Agreement application has been reviewed for completeness and accuracy. The area has been inspected with respect to City Codes and possible effects to adjacent properties resulting in no concerns from a staff point of view. Staff will attempt to contact the neighbors to see if they have any concerns.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	License Agreement signed by owner	215 Fox Place LA signed by owner.pdf
2.	License Agreement - Exhibit A	License Agreement - Exhibit A.pdf
3.	License Agreement - Exhibit B	License Agreement - Exhibit B.pdf
4.	Location Map	Location Map.pdf
5.	Landscaping Picture	Landscaping Picture Example.pdf

Margaret Tomlinson
 Tim Burman
 Shannon Balmer
 Jake Johansson
 Robin Fenwick

Created/Initiated - 09/27/2018
 Approved - 09/27/2018
 Approved - 10/03/2018
 Approved - 10/04/2018
 Final Approval - 10/05/2018

This document prepared by:

Shannon K. Balmer
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Parcel No.: 6303-14-11-0010

LICENSE AGREEMENT

THIS **LICENSE AGREEMENT** is made and entered into this ____ day of _____, 2018, by and between the City of Port Orange, Florida, a chartered municipal corporation ("City"), 1000 City Center Circle, Port Orange, FL 32129, ("Licensor"); and Toni Rinehart, whose mailing address is 215 Fox Place, Port Orange, FL 32127, ("Licensee").

PREMISES

WHEREAS, the City Council of the City of Port Orange has adopted Resolution No. 95-64, which establishes City policy regarding improvements within City rights-of-way by private citizens, homeowners associations, and developers; and

WHEREAS, the City and the Licensee have agreed on an improvement plan and specifications, as described on **Exhibit "A,"** attached hereto and incorporated herein by reference; and

WHEREAS, the Licensee hereby warrants to the City that the Licensee has full power and authority to enter into this Agreement, and that the Licensee agrees to be bound by the terms and conditions hereof is in compliance with and shall remain in compliance with any declaration of covenants and restrictions, as may exist and as may be amended from time to time; and

WHEREAS, the Licensee is the owner of real property located in the Amended Plan of Virginia Heights subdivision, recorded in Map Book 9, Page 92, Public Records of Volusia County, Florida, hereinafter the "Subject Property", described on **Exhibit "B;"**; and

WHEREAS, the Licensee hereby acknowledges that the City public utilities are located within the right-of-way, including but not limited to locations beneath the proposed Improvements.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. The City hereby grants to the Licensee a license to enter upon and to utilize the right-of-way known as Lafayette Avenue located and situated in Port Orange, Volusia County, Florida, adjacent to the Subject Property, as described in **Exhibit "B"** for the purpose of placing a 5'5" x 12' landscaping bed adjoining the Subject Property (hereinafter "Improvements") approved by the City as depicted on **Exhibit "A."**

2. All improvements, uses and activities shall comply with the policies established in Resolution No. 95-64 and with the terms and conditions of this License Agreement and exhibits hereto.

3. The Licensee jointly and severally assumes all responsibility for the maintenance and, if necessary, replacement of all Improvements depicted on **Exhibit "A."**

4. The Licensee agrees, upon thirty (30) days written notice from the City, to maintain, repair or replace all Improvements which require maintenance, repair or replacement. If no remedy is made within the specified time, the City reserves the right to remove all Improvements without further notice to the Licensee and at the sole cost and expense of the Licensee.

5. The City reserves the right to request removal of the Improvements depicted on **Exhibit "A"** in the event that the City needs to utilize the property for City purposes, such as road, bike path, public utility installation or maintenance, drainage improvement or other public uses. The City shall endeavor to give at least thirty (30) days prior notice to the Licensee. If the Improvements are not removed within the time specified by the City or in cases where emergency work by the City becomes necessary, the City may remove or cause to be removed the Improvements without any liability to the City or obligation to replace same upon completion of the City project. The Licensee may replace the Improvements after the City repair or maintenance; and the Licensee shall be responsible for any and all expenses of the replacement of Improvements.

6. The Licensee agrees that no improvements shall be made or altered in the right-of-way except as depicted on **Exhibit "A"** or subsequently approved amendments thereto. However, the Improvements may be maintained, repaired, replaced and removed.

7. The License granted by this License Agreement shall be effective during the period from the date of execution by both parties until terminated in accordance with the provisions specified herein.

8. Any party may terminate this License Agreement upon giving thirty (30) days prior written notice to the other party, after which time this License Agreement shall be of no force and effect. Upon termination by any party, the City shall have the option of requiring all Improvements to be removed or abandoned in place by the Licensee or maintained in their present state by the City and without further right or obligation by the Licensee. If the Licensee terminates this Agreement or otherwise fails to remain in good standing and in compliance with this Agreement, the City may maintain and repair the Improvements and the City shall not be obligated to either maintain or repair the Improvements and the City shall not be liable for either undertaking or failing to maintain or repair the Improvements. All costs and expenses of the City resulting from maintenance or repair of the Improvements, including administrative expenses, attorney's fees and costs, and expenses incurred in establishing and operating a special district, shall be chargeable to and assessed by the City jointly and severally against all lots located within the development, subdivision or project located within the property described in **Exhibit "B."** The City shall have the right to enforce collection of assessments for such costs and expenses by a lien jointly and severally against the lots, which lien shall include interest at the then highest lawful rate of interest and attorneys' fees and costs for collection thereof. The

City shall have the right to establish a special district and to utilize any methods or procedures provided by law or ordinance for imposition and collection of the assessments described herein.

9. This License is given to the Licensee as an accommodation to the Licensee without any consideration. The Licensee acknowledges the legal title of the City to the right-of-way property described herein and agrees never to deny such title or to claim title in the Licensee's name.

10. The License is personal to the Licensee and shall not inure to the successors or assigns of the Licensee. The rights, privileges and permission granted herein shall not be assignable by the Licensee in whole or in part. Upon the sale or transfer by the Licensee of title to the real property adjoining the right-of-way upon which the Improvements are located, the City shall have the immediate right to remove the improvements for which this license is granted; subject, however, to application made by the successor property owner for and due diligence in obtaining approval by the City of a new license agreement for the existing Improvements to remain in the right-of-way.

11. Further, the Licensee shall indemnify and hold harmless the City, its officers, employees and agents, from and against all claims, damages, losses and expenses, attorneys' fees and costs, arising out of, resulting from, or in any way connected with the condition of the City's property, the use of the property by Licensee, his invitees and members of the public, the exercise of the license granted by this License Agreement, the failure on the part of the Licensee to comply with any of the provisions specified herein, or the City's removal of any Improvements depicted in **Exhibit "A"** or otherwise permitted by this License Agreement. The City shall not be liable to the Licensee if for any reason the Licensee's use of the Subject Property is hindered or disturbed. The Licensee's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. Nothing contained herein shall be construed as a waiver of any immunity from or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes. The City shall have the right, at its option, to participate in the defense of any suit, without relieving Licensee of any of its obligations hereunder. The obligations contained in this provision shall survive termination of this License Agreement.

12. All notices required to be given by any party shall be in writing, addressed to all other parties, and delivered by certified mail, telegram or in person to: City Manager, City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, for the City; and Toni Rinehart 215 Fox Place, Port Orange, FL 32127, for the Licensee, or as otherwise designated in writing to all respective parties.

13. This Agreement shall be recorded in the Public Records of Volusia County, Florida. Upon execution of this Agreement, the Licensee agrees to pay the City an amount equal to the applicable cost of recording this Agreement in the Public Records of Volusia County, Florida.

14. This License Agreement constitutes the entire agreement between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This License Agreement may be amended or modified only by an instrument of equal formality signed by the respective parties.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the respective dates below.

WITNESSES:

LICENSOR:

Printed Name: _____

CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation

Printed Name: _____

By: _____
Donald O. Burnette, Mayor

Printed Name: _____

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

Printed Name: _____

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Donald O. Burnette, as Mayor of the City of Port Orange, Florida, who acknowledged that he is duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who ☐ is personally known to me, or ☐ has produced _____ as identification.

Notary Public, State of Florida at Large
Printed name, commission and expiration:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by Robin L. Fenwick, as the City Clerk of the City of Port Orange, Florida, who acknowledged that she is duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who ☐ is personally known to me, or ☐ has produced _____ as identification.

Notary Public, State of Florida at Large
Printed name, commission and expiration:

WITNESSES:

David D. Epstein
Printed Name: David D. Epstein

Sophie Zuppe
Printed Name: Sophie Zuppe

LICENSEE:

Toni Rinehart
Toni Rinehart

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 1 day of October, 2018, by Toni Rinehart, who is authorized to execute the foregoing LICENSE AGREEMENT, and who ☐ is personally known to me, or ☒ has produced FIDC as identification.

Sophie Zuppe
Notary Public, State of Florida at Large
Printed name, commission and expiration:

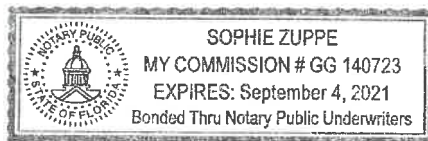


EXHIBIT "B"

LEGAL DESCRIPTION:

Lots 1 and 2, Block K, Amended Plan of Virginia Heights, according to the plat thereof, as recorded in Map Book 9, Page 92, of the Public Records of Volusia County, Florida.

EXHIBIT "B"

LEGAL DESCRIPTION:

Lots 1 and 2, Block K, Amended Plan of Virginia Heights, according to the plat thereof, as recorded in Map Book 9, Page 92, of the Public Records of Volusia County, Florida.



Case No.: 18-97500001

Applicant: Toni Rinehart,
Property Owner

Location: Lots 1 & 2, Block K,
Virginia Heights (215 Fox Place)

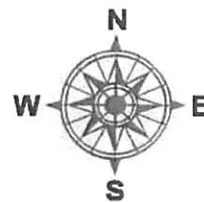
Requested Action:

To enter into License Agreement
for improvements in the
right-of-way (landscaping)



Location Map

CITY OF PORT ORANGE
DEPARTMENT OF COMMUNITY DEVELOPMENT







CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B16) Approval to Submit Grant Application for Florida Department of Law Enforcement Edward Byrne Memorial Justice Assistance Grant Direct (JAGD) Program

DEPARTMENT: Police Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve submission of a grant application for the Florida Department of Law Enforcement Edward Byrne Memorial Justice Assistance Grant Direct (JAGD) Program, subject to issuance of the legal certification for compliance with federal law.

SUMMARY: The Police Department and Grants Manager are requesting permission to submit a grant application for the Florida Department of Law Enforcement Edward Byrne Memorial Justice Assistance Grant Direct (JAGD) Program. The grant application will request \$10,000 for technology that will assist in extracting evidence from cell phones and computers following legal standards. The additional cost of \$1,995 will be paid with forfeiture funding.

Project No.: Funding Account No.: 607-3200-521.49-02

ATTACHMENTS:

1.	Required Certification of Compliance with 8 U.S.C.	Required Certification of Compliance with 8 U.S.C..pdf
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Amanda Lasecki
William Proctor
Thomas Grimaldi
Tracey Riehm
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 09/25/2018
Approved - 09/25/2018
Approved - 09/25/2018
Approved - 10/01/2018
Approved - 10/03/2018
Approved - 10/03/2018
Final Approval - 10/03/2018

**U.S. DEPARTMENT OF JUSTICE
OFFICE OF JUSTICE PROGRAMS**

FY 2017 Edward Byrne Memorial Justice Assistance Grant Program

**Certification of Compliance with 8 U.S.C. § 1373 by Prospective Subrecipient:
Recipient State subaward to a Local Government**

On behalf of the local government named below as the "prospective subrecipient," and in support of its request to the "Recipient State" identified below for a subaward from the grant awarded by the U.S. Department of Justice ("USDOJ") under the FY 2017 Edward Byrne Memorial Justice Assistance Grant Program ("the FY 2017 JAG Program"), I certify under penalty of perjury to the Recipient State, and also certify to USDOJ, that all of the following are true and correct:

- (1) I am the chief legal officer of the local government named below as the prospective subrecipient, and I have the authority to make this certification on its behalf. I understand that this certification will be relied upon as a material representation in any decision to make a subaward to the prospective subrecipient under the FY 2017 JAG Program.
- (2) I have carefully reviewed 8 U.S.C. § 1373(a) and (b), including the prohibitions on certain actions by State and local government entities, -agencies, and -officials regarding information on citizenship and immigration status. I also have reviewed the provisions set out at (or referenced in) 8 U.S.C. § 1551 note ("Abolition ... and Transfer of Functions"), pursuant to which references to the "Immigration and Naturalization Service" in 8 U.S.C. § 1373 are to be read, as a legal matter, as references to particular components of the U.S. Department of Homeland Security.
- (3) I (and also the prospective subrecipient) understand that if the prospective subrecipient receives a subaward under the FY 2017 JAG Program—
 - (a) the subrecipient (and agencies or other entities thereof) must comply with 8 U.S.C. § 1373, throughout the period of performance for the subaward, with respect to any "program or activity" funded in whole or in part with the subaward; and
 - (b) the subrecipient may not make a lower-tier subaward to a State or local government, or to a "public" institution of higher education, unless the subrecipient first obtains a certification of compliance with 8 U.S.C. § 1373 (on a form provided by USDOJ), properly executed by the chief legal officer of the jurisdiction or educational institution that would receive it.
- (4) I (and also the prospective subrecipient) understand that, for purposes of this certification, "program or activity" means what it means under title VI of the Civil Rights Act of 1964 (see 42 U.S.C. § 2000d-4a), and that terms used in this certification that are defined in 8 U.S.C. § 1101 mean what they mean under that section 1101, except that the term "State" also shall include American Samoa (*cf.* 34 U.S.C. § 10251(a)(2)). Also, I understand that neither a "public" institution of higher education (*i.e.*, one that is owned, controlled, or directly funded by a State or local government) nor an Indian tribe is considered a "local government" (or an agency or other entity thereof) for purposes of this certification.
- (5) I have conducted (or caused to be conducted for me) a diligent inquiry and review concerning both—
 - (a) the "program or activity" to be funded (in whole or in part) with the requested subaward; and
 - (b) any prohibitions or restrictions potentially applicable to the "program or activity" to be funded with that subaward (if received) that deal with sending to, requesting or receiving from, maintaining, or exchanging information of the types described in 8 U.S.C. § 1373(a) or (b), whether imposed by a State or local government entity, -agency, or -official.
- (6) As of the date of this certification, neither the prospective subrecipient nor any entity, agency, or official of the prospective subrecipient has in effect, purports to have in effect, or is subject to or bound by, any prohibition or any restriction that would apply to the "program or activity" to be funded in whole or in part with the requested subaward (which, for the specific purpose of this paragraph 6, shall not be understood to include any such "program or activity" of any planned subrecipient of a lower-tier subaward), and that deals with either— (1) a government entity or -official sending or receiving information regarding citizenship or immigration status as described in 8 U.S.C. § 1373(a); or (2) a government entity or -agency sending to, requesting or receiving from, maintaining, or exchanging information of the types (and with respect to the entities) described in 8 U.S.C. § 1373(b).

I acknowledge that a materially false, fictitious, or fraudulent statement (or concealment or omission of a material fact) in this certification may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the prospective subrecipient to civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. §§ 3729-3730 and §§ 3801-3812). I also acknowledge that USDOJ awards of grant funds, including associated subawards, are subject to review by USDOJ, including by its Office of the Inspector General.

Local government that is the "prospective subrecipient" of a subaward of funds from the FY 2017 JAG Program

Recipient State *from which the prospective subrecipient seeks a subaward* under the FY 2017 JAG Program

Signature of chief legal officer of the prospective subrecipient

Printed name of chief legal officer of the prospective subrecipient

Title of chief legal officer of the prospective subrecipient

Date of certification



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: Yes

SUBJECT: (B17) Approval to Submit Grant Application for Federal Emergency Management Agency's Assistance to Firefighters Program

DEPARTMENT: Fire/Rescue Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve submission of a grant application for Federal Emergency Management Agency's Assistance to Firefighters Program.

SUMMARY: Fire and Rescue and the Grants Manager are requesting permission to submit a grant application for the Federal Fiscal Year 2018 Federal Emergency Management Agency's Assistance to Firefighters Program.

The AFG grant request will be for 18 tactical vests at an amount of \$12,000 and 4 sets of SWAT medic gear for active shooter response at an amount of \$ 12,000 for a total grant request of \$24,000. AFG is a 90% grant that would require a 10% match from POFR, or \$2,400. The Fire Department has the 10% match covered in this year's budget.

Project No.: Funding Account No.: 00131005135200

ATTACHMENTS:

Amanda Lasecki	Created/Initiated - 10/03/2018
Ken Fustin	Approved - 10/03/2018
Margaret Roberts	Approved - 10/03/2018
Jake Johansson	Approved - 10/04/2018
Robin Fenwick	Final Approval - 10/04/2018



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: No

SUBJECT: (C18) Request for Utility Lien Reduction for 5204 Sydney Street

DEPARTMENT: Finance

GOAL:

RECOMMENDED MOTION: Move to deny the request for a reduction in the utility lien on 5204 Sydney St.

SUMMARY: On October 17, 2017 JNG Property Group purchased 5204 Sydney St. at a tax deed sale. The proceeds of the sale were applied to outstanding balances associated with the property, leaving a balance due on the utility lien of \$4,450.25 as of June 1, 2018. Application of the tax deed proceeds are detailed in the attached letter to JNG Properties dated May 25, 2018. Per diem charges are accruing at a daily rate of \$1.06 which includes availability fees, interest and penalties. On September 18, 2018 the amount due had increased to \$4,565.72 per the attached account analysis.

JNG Property Group, LLC is seeking a lien adjustment for 5204 Sydney Street.

Staff recommends against a reduction in the lien for the following reasons:

- The revenues are bonded and fully collectible
- Waiving fees for one rate payer redistributes the cost of providing service to the remaining customers. If the city waives the fee the General Fund would have to pay the amount to the enterprise funds affected.
- Engaging in the practice of waiving charges invites other rate payers to request similar concessions.
- JNG also has a code enforcement lien (see attachment) that is unpaid but is eligible for fee reduction at the City Manager level.

A payment plan consistent with City policies is available to the JNG Property Group.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	5204 Sydney Account letter	5204 Sydney Account letter.pdf
2.	5204 Sydney St Tax Deed	5207 Sydney.pdf
3.	5204 Sydney Account Analysis	5204 Sydney Account Breakdown.pdf
4.	Code Enforcement Recorded Order 9-27-18	Recorded Order.pdf
5.	Bonded Revenues - Waiver of Interest	Bonded Revenues - Waiver of Interest

	and Penalties 10-2-18	and Penalties 10-2-18.pdf
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Cherie Cadenhead	Created/Initiated - 08/01/2018
Tracey Riehm	Approved - 10/01/2018
Shannon Balmer	Approved - 10/03/2018
Jake Johansson	Approved - 10/04/2018
Robin Fenwick	Final Approval - 10/05/2018



CITY OF PORT ORANGE

1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129-4144
FINANCE DEPARTMENT
TELEPHONE 386-506-5700
FAX 386-506-5711

May 25, 2018

JNG PROPERTY GROUP, LLC
2440 SE Federal Hwy., Apt. 705
Stuart, FL 34994

Re: Property Address: 5204 Sydney St., Port Orange, FL 32127
Parcel No. 6315-07-21-0080
Account No. 141251-6740

Dear Property Owner:

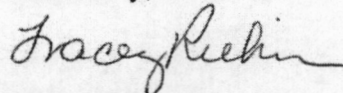
The City of Port Orange Finance Department has received a check dated January 29, 2018, in the amount of \$1,781.73 from the Surplus Funds from the Tax Deed Sale that was held on October 17, 2017 for Certificate No. 12765-14. This check has been applied toward payment in full (\$564.00) of the lot mowing lien recorded on October 17, 2013, in Official Records Book 6919, Page 3178, as re-recorded on November 26, 2013 in Official Records Book 6933, Page 3183, of the Public Records of Volusia County, Florida. The check has also been applied toward payment in full (\$953.32) of the Order Imposing Fine/Lien recorded June 01, 2015, in Official Records Book 7122, Page 380, and as it relates to the Finding of Fact, Conclusion of Law and Order, recorded April 17, 2015, in Official Records Book 7106, Page 80, all in the Public Records of Volusia County, Florida.

In addition, the remainder of the check (\$264.41) has been applied toward payment of the Order Imposing Fine/Lien recorded January 26, 2017, in Official Records Book 7353, Page 1806, as amended by the Amended Order Imposing Fine/Lien recorded February 23, 2017 in Official Records Book 7364, Page 3733, and as it relates to the Affidavit of Compliance recorded January 26, 2017, in Official Records Book 7353, Page 2034, and the Finding of Fact, Conclusion of Law and Order, recorded December 16, 2016, in Official Records Book 7338, Page 2247, all in the Public Records of Volusia County, Florida. The current balance for the Amended Order Imposing Fine/Lien, recorded February 23, 2017 in Official Records Book 7364, Page 3733 in the Public Records of Volusia County, Florida, and as described above, is **\$162.58**. There is a **per diem** of \$0.05 if paid after June 1, 2018.

JNG PROPERTY GROUP, LLC
May 25, 2018
Page 2

Please note that the current balance owed on the Utility Lien recorded August 01, 2011, in Official Records Book 6617, Page 920, in the Public Records of Volusia County, Florida, is **\$4,450.25**. There is a **per diem** of \$1.06 per diem if paid after June 1, 2018.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tracey Riehm".

Tracey Riehm
Finance Director

TR/pa

cc: Shannon K. Balmer, Assistant City Attorney
Robin L. Fenwick, CMC, City Clerk
Deborah Pearson, Code Enforcement Manager

DR-506 R. 04/16
Rule 12D-16.002
Florida Administrative Code
Eff. 04/16

Tax deed file number: 12765-14

Parcel ID number: 6315-07-21-0080

TAX DEED

VOLUSIA County, Florida

Tax Certificate numbered 12765-14 issued on **06/01/2014** was filed in the office of the tax collector of Volusia County, Florida. An application has been made for the issuance of a tax deed. The applicant has paid or redeemed all other taxes or tax certificates on the land as required by law. The notice of sale, including the cost and expenses of this sale, has been published as required by law. No person entitled to do so has appeared to redeem the land. On the 17th day of October, 2017 the land was offered for sale. It was sold to **JNG PROPERTY GROUP LLC** address **2440 SE FEDERAL HWY APT 705 STUART, FL 34994**, who was the highest bidder and has paid the sum of the bid as required by law.

The lands described below, including any inherited property, buildings, fixtures, and improvements of any kind and description, situated in this County and State.

Description of lands:

LOT 8 BLK 21 COMMONWEALTH MOBILE ESTS 2ND ADD MB 31 PGS 104-106 INC PER OR 4644 PGS
PER OR 6447 PGS

On OCTOBER 17, 2017 in Volusia County, Florida, for the sum of (\$7,200.00) Seven Thousand Two Hundred Dollars Dollars, the amount paid as required by law.

LAURA E. ROTH
Clerk of the Circuit Court of Volusia County



By: L Diggs
L DIGGS, Deputy Clerk
Volusia County, Florida

Witness: Bonnie Clark
BONNIE CLARK

Darlene McGowan
DARLENE MCGOWAN

State of Florida
County of Volusia

On this 17TH day of OCTOBER, 2017 before me, Amanda Letter, personally appeared L DIGGS Deputy Clerk of the Circuit Court or County Comptroller in and for the State and this County known to me to be the person described in, and who executed the foregoing instruments, and the acknowledged the execution of this instrument to be their own free act and deed for the use and purposes therein mentioned.

Witness my hand and official seal on the date aforesaid.

NOTARY PUBLIC
AMANDA LETTER
MY COMMISSION # GG 087916
EXPIRES: December 29, 2018
Bonded Thru Budget Notary Services

Amanda Letter
Amanda Letter

STATE OF FLORIDA
COUNTY OF VOLUSIACERTIFICATE NO. 12765-14

CERTIFICATE OF MAILING

I, LAURA E. ROTH, Clerk of the Circuit Court in and for the State and County aforesaid, do hereby certify that on 25TH of AUGUST AD, 2017, I mailed a copy of the attached Notice of Application for Tax Deed, addressed to:

* <u>LINDA KENNEDY</u>	at	<u>40 BURLISON AVE APT 2, ELLENVILLE NY 12428.</u>
* <u>JOHN KENNEDY</u>	at	<u>40 BURLISON AVE APT 2, ELLENVILLE NY 12428.</u>
* <u>MAUREEN KENNEDY</u>	at	<u>40 BURLISON AVE APT 2, ELLENVILLE NY 12428.</u>
<u>MARY E KENNEDY</u>	at	<u>PO BOX 1582, DELAND FL 32721.</u>
<u>CLERK OF COURT</u>	at	<u>FAMILY LAW DEPT 06-0011080-FD, PO BOX 6043, DELAND FL 32721-6043</u>
<u>CLERK OF [REDACTED]</u>	at	<u>MISDEMEANOR DEPT 2009-42775MMAES, PO BOX 6043, DELAND FL 32721-6043</u>
<u>CLERK OF COURT</u>	at	<u>FELONY DEPT 2009-03460CFAWS, PO BOX 6043, DELAND FL 32721-6043</u>
<u>CLERK OF COURT</u>	at	<u>FELONY DEPT 2009-02999CFAWS, PO BOX 6043, DELAND FL 32721-6043</u>
<u>CLERK OF COURT</u>	at	<u>FELONY DEPT 2010-00918CFAWS, PO BOX 6043, DELAND FL 32721-6043</u>

Witness my hand and official seal this 25TH of AUGUST, 2017

THE HOLDER OF THIS TAX CERTIFICATE APPLIED FOR TAX DEED SALE. PER FLORIDA STATUTE §197.512, THE CERTIFICATE OF MAILING AND PROOF OF PUBLICATION ARE BEING RECORDED IN THE PUBLIC RECORD.



LAURA E. ROTH
CLERK OF THE CIRCUIT COURT

By: A Letter
A LETTER
Deputy Clerk

NOTICE OF APPLICATION
FOR TAX DEED

NOTICE IS HEREBY GIVEN, that TWR AS CUST FOR EBURY FUND ZRFLLO, the holder of the following certificate number and year of issuance, is applying for a tax deed to be issued thereon. The description of the property, and the names in which it was assessed are as follows:

Certificate No. 12765-14
Year of Issuance: JUNE 1, 2014
#5315-07-21-0880 LOT 8 BLK 21
COMMONWEALTH MOBILE ESTS
2ND ADD MB 31 PGS 104-106 INC
PER OR 4644 PGS [REDACTED] PER
OR 6447 PGS [REDACTED]

Name in which assessed: LINDA KENNEDY ETAL, residing in the County of VOLUSIA, State of Florida.

Unless such certificate shall be redeemed according to law the property described in such certificate shall be sold to the highest bidder at 17TH day of OCTOBER, 2017 at 9:00 O'CLOCK A.M. at the Volusia County Courthouse, 101 N. Alabama Avenue, Deland, FL 32724, (386) 822-5753, within seven (7) working days of this bid date. If you are interested in this property, call 771-September 11, 18 & 25, 2017.

Dated this 25TH day of AUGUST, 2017.

LAURA E. ROTH
CLERK OF THE CIRCUIT COURT

By: A LETTER
Deputy Clerk

Attention: Persons with Disabilities: If you are a person with a disability who needs assistance to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Human Resources at 101 N. Alabama Avenue, Deland, FL 32724, (386) 822-5753, within seven (7) working days of this bid date. If you are interested in this property, call 771-September 11, 18 & 25, 2017.

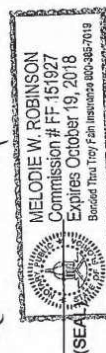
The Beacon
PUBLISHED WEEKLY
State of Florida
COUNTY OF VOLUSIA SS

Before the undersigned authority personally appeared Barb Shepherd, who on oath says that he/she is the Legal Advertising Representative of The Beacon, a weekly newspaper published at Deland, in Volusia County, Florida; that the attached copy of advertisement, being a Tax Deed in the matter of Certificate #12765-14 in the Linda Kennedy ETAL in the Circuit Court, was published in said newspaper, in the issue(s) of September 4, 11, 18 & 25, 2017

Affiant further says that the said Beacon is a newspaper published at Deland, in said Volusia County, Florida, and that the said newspaper has heretofore been continuously published in said Volusia County, Florida, each week and has been entered as second-class mail matter at the post office in Deland in said Volusia County, Florida, for a period of one year preceding the first publication of the attached copy of advertisement; and affiant further says that he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this 25th day of September, 2017

Barb Shepherd



**STATE OF FLORIDA
COUNTY OF VOLUSIA**

CERTIFICATE NO. 12765-14

CERTIFICATE OF MAILING

I, LAURA E. ROTH, Clerk of the Circuit Court in and for the State and County aforesaid, do hereby certify that on 25TH of AUGUST AD, 2017, I mailed a copy of the attached Notice of Application for Tax Deed, addressed to:

<u>CLERK OF COURT</u>	at	<u>MISDEMEANOR DEPT CTC1047392MMAES, PO BOX 6043, DELAND FL 32721-6043</u>
<u>CLERK OF COURT</u>	at	<u>MISDEMEANOR DEPT CTC1133648MMAES, PO BOX 6043, DELAND FL 32721-6043</u>
<u>CITY OF PORT ORANGE</u>	at	<u>UTILITY SERVICES, 1000 CITY CENTER CIRCLE, PORT ORANGE FL 32129</u>
<u>CLERK OF COURT</u>	at	<u>MISDEMEANOR DEPT CTC1204443MMAWS, PO BOX 6043, DELAND FL 32721-6043</u>
<u>CITY OF PORT ORANGE</u>	at	<u>LOT MOWING LIEN, 1000 CITY CENTER CIRCLE, PORT ORANGE FL 32129</u>
<u>CLERK OF COURT</u>	at	<u>FELONY DEPT 2013 101907 CFDL, PO BOX 6043, DELAND FL 32721-6043</u>
<u>CLERK OF COURT</u>	at	<u>MISDEMEANOR DEPT 2013 315940 MMDB, PO BOX 6043, DELAND FL 32721-6043</u>
<u>CITY OF PORT ORANGE</u>	at	<u>SPECIAL MAGISTRATE, 1000 CITY CENTER CIRCLE, PORT ORANGE FL 32129</u>
<u>INTERNAL REVENUE SERVICES</u>	at	<u>ATTN: TECHNICAL SERVICES ADVISORY GROUP MANAGER, 400 WEST BAY STREET STOP 5710, JACKSONVILLE FL 32202</u>
<u>CLERK OF COURT</u>	at	<u>MISDEMEANOR DEPT 2016 106405 MMDL, PO BOX 6043, DELAND FL 32721-6043</u>

Witness my hand and official seal this 25TH of AUGUST, 2017

THE HOLDER OF THIS TAX CERTIFICATE
APPLIED FOR TAX DEED SALE. PER FLORIDA
STATUTE §197.512, THE CERTIFICATE OF
MAILING AND PROOF OF PUBLICATION ARE
BEING RECORDED IN THE PUBLIC RECORD.



LAURA E. ROTH
CLERK OF THE CIRCUIT COURT

By: A Letter
A LETTER
Deputy Clerk

Date	Description on Charge/Credit	Monthly Bill	Service Charges/Penalties	Payments/Credits	Balance on Account
2/15/2011	CYCLE BILL	\$ 46.27			\$ 46.27
3/15/2011	CYCLE BILL	\$ 173.70			\$ 219.97
4/1/2011	C2GCXUSER 03311198			\$ (155.71)	\$ 64.26
4/7/2011	PENALTY		\$ 6.43		\$ 70.69
4/13/2011	SEWER	\$ (55.55)			\$ 6.50
4/13/2011	OVER 1K	\$ (8.64)			\$ 62.05
4/19/2011	CYCLE BILL	\$ 174.92			\$ 181.42
5/12/2011	PENALTY		\$ 18.14		\$ 199.56
5/17/2011	CYCLE BILL	\$ 78.97			\$ 278.53
6/9/2011	PENALTY		\$ 27.85		\$ 306.38
6/21/2011	CYCLE BILL	\$ 114.64			\$ 421.02
7/16/2011	PENALTY		\$ 0.07		\$ 462.54
7/16/2011	PENALTY		\$ 41.45		\$ 462.47
7/20/2011	CYCLE BILL	\$ 44.64			\$ 507.18
8/6/2011	LIEN ADMIN CHARGE		\$ 35.00		\$ 570.68
8/6/2011	LIEN FEE		\$ 28.50		\$ 535.68
8/8/2011	DEPOSIT INTEREST			\$ (0.21)	\$ 470.47
8/8/2011	APPLY DEP-NON PAY			\$ (100.00)	\$ 470.68
8/11/2011	PENALTY		\$ 1.63		\$ 502.86
8/11/2011	PENALTY		\$ 30.76		\$ 501.23
8/16/2011	CYCLE BILL	\$ 38.44			\$ 541.30
9/8/2011	PENALTY		\$ 27.16		\$ 571.16
9/8/2011	PENALTY		\$ 2.70		\$ 544.00
9/20/2011	CYCLE BILL	\$ 33.74			\$ 604.90
10/13/2011	PENALTY		\$ 17.91		\$ 627.07
10/13/2011	PENALTY		\$ 4.26		\$ 609.16
10/18/2011	CYCLE BILL	\$ 31.99			\$ 659.06
11/10/2011	PENALTY		\$ 15.62		\$ 679.71
11/10/2011	PENALTY		\$ 5.03		\$ 664.09
11/15/2011	CYCLE BILL	\$ 31.99			\$ 711.70
12/8/2011	PENALTY		\$ 5.71		\$ 731.46

Date	Description on Charge/Credit	Monthly Bill	Service Charges/Penalties	Payments/Credits	Balance on Account
12/8/2011	PENALTY		\$ 14.05		\$ 725.75
12/20/2011	CYCLE BILL	\$ 31.99			\$ 763.45
1/17/2012	CYCLE BILL	\$ 31.99			\$ 795.44
2/9/2012	PENALTY		\$ 6.80		\$ 813.81
2/9/2012	PENALTY		\$ 11.57		\$ 807.01
2/21/2012	CYCLE BILL	\$ 31.99			\$ 845.80
3/15/2012	PENALTY		\$ 11.43		\$ 864.54
3/15/2012	PENALTY		\$ 7.31		\$ 853.11
3/20/2012	CYCLE BILL	\$ 31.99			\$ 896.53
4/12/2012	PENALTY		\$ 13.31		\$ 917.47
4/12/2012	PENALTY		\$ 7.63		\$ 904.16
4/17/2012	CYCLE BILL	\$ 31.74			\$ 949.21
5/10/2012	PENALTY		\$ 13.54		\$ 970.89
5/10/2012	PENALTY		\$ 8.14		\$ 957.35
5/15/2012	CYCLE BILL	\$ 31.74			\$ 1,002.63
6/7/2012	PENALTY		\$ 13.81		\$ 1,025.09
6/7/2012	PENALTY		\$ 8.65		\$ 1,011.28
6/19/2012	CYCLE BILL	\$ 31.74			\$ 1,056.83
7/12/2012	PENALTY		\$ 13.94		\$ 1,079.94
7/12/2012	PENALTY		\$ 9.17		\$ 1,066.00
7/17/2012	CYCLE BILL	\$ 31.74			\$ 1,111.68
8/9/2012	PENALTY		\$ 14.08		\$ 1,135.47
8/9/2012	PENALTY		\$ 9.71		\$ 1,121.39
8/21/2012	CYCLE BILL	\$ 31.74			\$ 1,167.21
9/13/2012	PENALTY		\$ 14.21		\$ 1,191.67
9/13/2012	PENALTY		\$ 10.25		\$ 1,177.46
9/18/2012	CYCLE BILL	\$ 31.74			\$ 1,223.41
10/15/2012	PENALTY		\$ 14.35		\$ 1,248.56
10/15/2012	PENALTY		\$ 10.80		\$ 1,234.21
10/31/2012	CYCLE BILL	\$ 31.74			\$ 1,280.30
11/21/2012	CYCLE BILL	\$ 31.74			\$ 1,312.04

Date	Description on Charge/Credit	Monthly Bill	Service Charges/Penalties	Payments/Credits	Balance on Account
12/18/2012	CYCLE BILL	\$ 31.74			\$ 1,343.78
1/10/2013	PENALTY		\$ 9.33		\$ 1,353.11
1/15/2013	CYCLE BILL	\$ 31.74			\$ 1,384.85
2/7/2013	PENALTY		\$ 9.64		\$ 1,394.49
2/19/2013	CYCLE BILL	\$ 31.74			\$ 1,426.23
3/14/2013	PENALTY		\$ 9.96		\$ 1,436.19
3/20/2013	CYCLE BILL	\$ 31.74			\$ 1,467.93
4/11/2013	PENALTY		\$ 10.28		\$ 1,478.21
4/17/2013	CYCLE BILL	\$ 31.74			\$ 1,509.95
5/9/2013	PENALTY		\$ 10.60		\$ 1,520.55
5/22/2013	CYCLE BILL	\$ 31.74			\$ 1,552.29
6/13/2013	PENALTY		\$ 10.91		\$ 1,563.20
6/18/2013	CYCLE BILL	\$ 31.74			\$ 1,594.94
7/11/2013	PENALTY		\$ 11.23		\$ 1,606.17
7/17/2013	CYCLE BILL	\$ 31.74			\$ 1,637.91
8/8/2013	PENALTY		\$ 11.55		\$ 1,649.46
8/22/2013	CYCLE BILL	\$ 31.74			\$ 1,681.20
9/12/2013	PENALTY		\$ 11.87		\$ 1,693.07
9/18/2013	CYCLE BILL	\$ 31.74			\$ 1,724.81
10/10/2013	PENALTY		\$ 12.18		\$ 1,736.99
10/16/2013	CYCLE BILL	\$ 31.74			\$ 1,768.73
11/11/2013	PENALTY		\$ 12.50		\$ 1,781.23
11/20/2013	CYCLE BILL	\$ 31.74			\$ 1,812.97
12/18/2013	CYCLE BILL	\$ 31.74			\$ 1,844.71
1/16/2014	CYCLE BILL	\$ 31.74			\$ 1,876.45
2/19/2014	CYCLE BILL	\$ 31.74			\$ 1,908.19
3/18/2014	CYCLE BILL	\$ 31.74			\$ 1,939.93
4/17/2014	FORCE OFF CYCLE BILL	\$ 31.92			\$ 1,971.85
5/20/2014	CYCLE BILL	\$ 31.92			\$ 2,003.77
6/17/2014	CYCLE BILL	\$ 31.92			\$ 2,035.69
7/16/2014	CYCLE BILL	\$ 31.92			\$ 2,067.61

Date	Description on Charge/Credit	Monthly Bill	Service Charges/Penalties	Payments/Credits	Balance on Account
8/13/2014	CYCLE BILL	\$ 31.92			\$ 2,099.53
9/16/2014	CYCLE BILL	\$ 31.92			\$ 2,131.45
10/15/2014	CYCLE BILL	\$ 31.92			\$ 2,163.37
11/11/2014	CYCLE BILL	\$ 31.92			\$ 2,195.29
12/16/2014	CYCLE BILL	\$ 31.92			\$ 2,227.21
1/20/2015	CYCLE BILL	\$ 31.92			\$ 2,259.13
2/17/2015	CYCLE BILL	\$ 31.92			\$ 2,291.05
3/17/2015	CYCLE BILL	\$ 31.92			\$ 2,322.97
4/14/2015	CYCLE BILL	\$ 31.92			\$ 2,354.89
5/19/2015	CYCLE BILL	\$ 31.92			\$ 2,386.81
6/16/2015	CYCLE BILL	\$ 31.92			\$ 2,418.73
7/14/2015	CYCLE BILL	\$ 31.92			\$ 2,450.65
8/17/2015	CYCLE BILL	\$ 31.92			\$ 2,482.57
9/15/2015	CYCLE BILL	\$ 31.92			\$ 2,514.49
10/14/2015	CYCLE BILL	\$ 31.92			\$ 2,546.41
11/16/2015	CYCLE BILL	\$ 31.92			\$ 2,578.33
12/15/2015	CYCLE BILL	\$ 31.92	\$ 10.00		\$ 2,620.25
1/13/2016	CYCLE BILL	\$ 31.92	\$ 10.00		\$ 2,662.17
2/11/2016	E CYC BILL	\$ 31.92	\$ 10.00		\$ 2,704.09
3/14/2016	E CYC BILL	\$ 31.92	\$ 31.11		\$ 2,767.12
4/12/2016	E CYC BILL	\$ 31.92	\$ 31.43		\$ 2,830.47
5/16/2016	E CYC BILL	\$ 31.92	\$ 31.75		\$ 2,894.14
6/15/2016	E CYC BILL	\$ 31.92	\$ 32.07		\$ 2,958.13
7/14/2016	E CYC BILL	\$ 31.92	\$ 32.39		\$ 3,022.44
8/16/2016	E CYC BILL	\$ 31.92	\$ 32.71		\$ 3,087.07
9/20/2016	E CYC BILL	\$ 31.92	\$ 33.03		\$ 3,152.02
10/17/2016	E CYC BILL	\$ 31.92	\$ 33.35		\$ 3,217.29
11/15/2016	E CYC BILL	\$ 31.92	\$ 33.66		\$ 3,282.87
12/14/2016	E CYC BILL	\$ 31.92	\$ 33.98		\$ 3,348.77
1/17/2017	E CYC BILL	\$ 31.92	\$ 34.30		\$ 3,414.99
2/14/2017	E CYC BILL	\$ 31.92	\$ 34.62		\$ 3,481.53

Date	Description on Charge/Credit	Monthly Bill	Service Charges/Penalties	Payments/ Credits	Balance on Account
3/14/2017	E CYC BILL	\$ 31.92	\$ 34.94		\$ 3,548.39
4/18/2017	E CYC BILL	\$ 31.92	\$ 45.26		\$ 3,625.57
5/17/2017	E CYC BILL	\$ 31.92	\$ 25.58		\$ 3,683.07
6/15/2017	E CYC BILL	\$ 31.92	\$ 35.90		\$ 3,750.89
7/19/2017	E CYC BILL	\$ 31.92	\$ 36.22		\$ 3,819.03
8/17/2017	E CYC BILL	\$ 31.92	\$ 36.54		\$ 3,887.49
9/20/2017	E CYC BILL	\$ 31.92	\$ 36.86		\$ 3,956.27
10/19/2017	E CYC BILL	\$ 31.92	\$ 37.18		\$ 4,025.37
11/20/2017	E CYC BILL	\$ 31.92	\$ 37.49		\$ 4,094.78
12/21/2017	E CYC BILL	\$ 31.92	\$ 10.00		\$ 4,136.70
1/19/2018	E CYC BILL	\$ 31.92	\$ 10.00		\$ 4,178.62
2/19/2018	E CYC BILL	\$ 31.92	\$ 38.45		\$ 2,467.26
3/20/2018	E CYC BILL	\$ 31.92	\$ 26.27		\$ 4,307.18
4/17/2018	E CYC BILL	\$ 31.92	\$ 39.09		\$ 4,378.19
5/17/2018	CYCLE BILL	\$ 31.92	\$ 10.00		\$ 4,420.11
5/24/2018	CYCLE BILL-PENALTY		\$ 10.00		\$ 4,430.11
6/18/2018	CYCLE BILL	\$ 19.15			\$ 4,449.26
7/18/2018	CYCLE BILL	\$ 31.92			\$ 4,481.18
8/16/2018	CYCLE BILL	\$ 42.11	\$ 10.19		\$ 4,523.29
9/18/2018	CYCLE BILL	\$ 42.43	\$ 10.51		\$ 4,565.72
Totals		\$ 3,326.44	\$ 1,495.20	\$ (255.92)	\$ 4,565.72

**CITY OF PORT ORANGE, FLORIDA
SPECIAL MAGISTRATE**

CASE NO. 18-1025

CITY OF PORT ORANGE,
a Florida municipal corporation

Petitioner,

v.

JNG Property Group LLC
5204 Sydney Street
Port Orange, FL 32127
Parcel ID: 6315-0721-0080

Respondent.

Space Reserved for Recording Data

ORDER IMPOSING FINE/LIEN

This cause came on for public hearing before the Code Enforcement Special Magistrate of the City of Port Orange, after due notice to the Respondent(s), on the 22nd day of August, 2018, at which time Staff and the Respondent(s) had the opportunity to be heard and the Magistrate made findings of fact, conclusions of law, and thereupon issued His written order finding that a violation existed, a copy having been furnished by U. S. Mail to the Respondent.

Said Order found Respondent(s) in violation of the City of Port Orange Code of Ordinances, Chapter 42, Article II, Section 42-26 (d) & (h), as the same pertains to an overgrown lawn and overgrown package area and required Respondent(s) to take certain corrective action no later than September 2, 2018. In the event of non-compliance by Respondent(s) a fine in the amount of \$100.00 per day was imposed. The violation was found to present a serious threat to the public health, safety, and welfare and, as a result, it was referred to the local governing body with the authority to make all repairs reasonably required to bring the property into compliance.

In consideration of the testimony taken and evidence presented at hearing, it is found as follows:

Respondent(s) failed to take the corrected action as ordered. An Affidavit of Non-Compliance was filed with the Special Magistrate and testimony was presented by Code Enforcement Officer Dena Joseph, certifying under oath that the required corrective action had not been taken by the respondent as ordered and a true and correct copy of that affidavit is attached hereto as Exhibit "A," and incorporated herein by reference.

After such non-compliance, the City retained vendor Mark Solomon Properties Inc., who abated the violation(s) on the 21st day of September 2018 at the cost of \$200.00.

The City has incurred costs in the amount of \$200.00 by virtue of Respondent(s) non-compliance.

Based upon the foregoing premises, and by the authority of Section 162.09, Florida Statutes (2012), and Article V, Part II, of the Code of Ordinances for the City of Port Orange, Florida; it is hereby,

ORDERED:

1. A fine in the amount of \$100.00 per day beginning on the 3rd day of September 2018 and running through the 20th day of September 2018 for a total of 18 days is hereby imposed upon the Respondent, JNG Property Group LLC and shall run in favor of the local governing body of the City of Port Orange, Florida, and shall be payable to the order of:

CITY OF PORT ORANGE
1000 City Center Circle
Port Orange, FL 32129

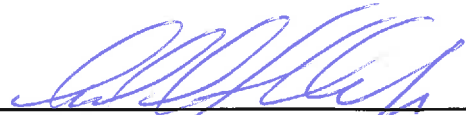
2. In addition to said fine, Respondent(s) shall pay to the City of Port Orange at the aforesaid address, the amount of \$200.00 representing vendor costs and \$92.42 representing costs of enforcement.
3. A lien is imposed on the subject property in the amount of \$2092.42 representing the total of fines, vendor abatement costs, and cost of enforcement as aforesaid.

A certified copy of this Order shall be recorded in the Official Records of the office of the Clerk of the Circuit Court in Volusia County, Florida, and such recordation shall constitute a lien against the Respondent's real and personal property, said property to include, but not necessarily be limited to that real property described as follows:

Tax Parcel ID: 6315-07-21-0080
Street address: 5204 Sydney Street, Port Orange, Florida
Legal Description: LOT 8 BLK 21 COMMONWEALTH MOBILE ESTS 2ND ADD MB 31 PGS 104-106 INC PER OR 4644 PGS 1030-1031 PER OR 6447 PGS 1442-1443 PER OR 7460 PG 3875, of the Public Records of Volusia County, Florida; and per deed recorded in Book 7460, page 3875, Public Records of Volusia County, Florida.

DONE AND ORDERED the 26 day of Sept, 2018, in the City of Port Orange,
Volusia County, Florida.

SPECIAL MAGISTRATE
CITY OF PORT ORANGE, FLORIDA

By: 
Special Magistrate

I HEREBY CERTIFY that a true and correct copy of the foregoing order has been
furnished to the Respondent by U.S. Mail this 27 day of Sept, 2018.


Secretary, Special Magistrate

Pursuant to Florida Statutes Section 162.11 Appeals. —An aggrieved party, including the local governing
body, may appeal a final administrative order of an enforcement board to the circuit court. Such an appeal
shall not be a hearing de novo but shall be limited to appellate review of the record created before the
enforcement board. An appeal shall be filed within 30 days of the execution of the order to be appealed.

History. —s. 1, ch. 80-300; s. 10, ch. 82-37; s. 3, ch. 85-150; s. 10, ch. 86-201.

Note. —Former s. 166.061.

Form Approved by the Board Attorney 08.08.0

Exhibit A
Affidavit of Non-Compliance

CITY OF PORT ORANGE, FLORIDA

SPECIAL MAGISTRATE

CITY OF PORT ORANGE,

Petitioner,

Vs.

CASE NO: 18-1025

JNG Property Group LLC

Property Owner

5204 Sydney Street

Port Orange, FL 32127

Parcel ID: 6315-07-21-0080

Respondents,

AFFIDAVIT OF NON-COMPLIANCE

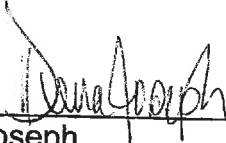
**STATE OF FLORIDA
COUNTY OF VOLUSIA**

BEFORE ME, The undersigned authority, personally appeared; Dena Joseph, Code Enforcement Officer for the City of Port Orange, Florida. Who, after being duly sworn, deposes and says:

1. That on August 22, 2018, the Special Magistrate held a public hearing and issued his Order in the above-styled matter.
2. That pursuant to said Order, Respondents were to have taken certain corrective action on or before September 2, 2018.
3. That a re-inspection was performed on September 3, 2018.
4. That the re-inspection revealed that the corrective action ordered by the Special Magistrate has not been taken. In that, the property nor the parkage area has been mowed at this location.

FURTHER AFFIANT SAYETH NOT.

Dated this 25th day of September 2018.

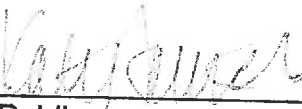

Dena Joseph
Code Enforcement Officer
City of Port Orange, Florida

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me

This 25 day of September 2018 by
Dena Joseph who

is personally known to me.

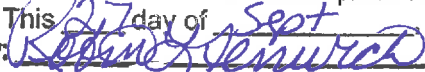

Notary Public
State of Florida at Large

Commission No. _____



CITY OF PORT ORANGE, FLORIDA
I HEREBY CERTIFY the foregoing is a true copy
of the original filed in this office.

This document has/has not been redacted pursuant to Florida Law.

This 27 day of Sept 2018.
By: 

/s/ Robin L. Fenwick



Waiver or Reduction of Interest and Penalties of Utility Liens

In reviewing the request for a waiver/reduction of a utility lien on the upcoming October 16th agenda, Legal has researched the City's past practice with regard to reduction or waiver of utility liens and the City's obligation as to bonded revenues. The question is whether interest and penalties associated with past due utility accounts or utility liens are considered bonded revenues.

The answer is in the affirmative. The City has obligated the revenues from utility billing to revenue bonds. Per the bond resolution, *all* revenues related to utility billing are obligated to the bonds. Legal has spoken with the City's Bond Counsel, who gave the opinion that the interest and penalties associated with past due utility accounts and utility liens are considered bonded revenues.

In reviewing past practice, generally, the City has not allowed for reductions or waivers for utility liens or past due utility accounts. However, last year the City did grant a reduction of the penalties and interest portion of a utility lien encumbering 866 Chickadee Drive. In an effort to remain in compliance with the City's bond obligations, it is Legal's opinion that the City pay the water and sewer fund the amount waived last year in order to make the bond fund whole. Furthermore, Legal recommends that the City not waive or reduce monies owed to the City when said monies are bonded revenues.

An alternative in assisting citizens with outstanding balances that the City has used in the past is payment plans for extended periods, such as 3 or 5 years, interest free. This mechanism continues to protect the revenue with a lien on the property until the payment plan is complete and assists the owner by allowing payments over time, interest free.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: No

SUBJECT: (G21) Second Reading - Ordinance No. 2018-26 - LDC Text Amendment Chapter 17, Section 26 - GPU Zoning District

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Move to approve Ordinance 2018-26, amending Chapter 17, Section 26 of the Land Development Code.

SUMMARY: The Land Development Code (LDC) requires all uses listed in the Government/Public Use (GPU) Zoning District as permitted to be brought before the Planning Commission and City Council, but no action is required because the uses are allowed. For any new use on property zoned GPU, a “Change of Use” application is required to be submitted and presented to the Planning Commission and City Council.

The “Change of Use” application only applies to the GPU zoning district and no other Port Orange zoning district requires a “Change of Use” application for a permitted use. The “change of use” process creates confusion because having the item presented at a public hearing gives the perception that there will be a vote to allow or deny the use. Unlike other development applications listed in the LDC, such as Special Exception, Conditional Use, Rezoning, and Future Land Use, there is not specific criteria that a “Change of Use” request is required to meet.

Similar to any use listed as permitted in a City zoning district, including the GPU zoning district, the proposed development will be required to go through the standard Development Review Process, including submitting a site plan or subdivision that meets all of the regulations within the LDC and building permits to meet the Florida Building Code.

The uses listed as a permitted use with special development requirements or a Special Exception use in the GPU Zoning District will not change and will be required to comply with requirements and approval process in the LDC.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Ord. No. 2018-26 - LDC GPU Amendment	Ord. No. 2018-26 - LDC GPU Amendment.pdf
2.	Staff Report	Staff Report_LDC Ch 17 - GPU_no CoU.pdf

Robin Fenwick

Created/Initiated - 10/01/2018

ORDINANCE NO. 2018-26

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE CITY OF PORT ORANGE LAND DEVELOPMENT CODE; AMENDING CHAPTER 17, SECTION 26, TO REMOVE THE CHANGE OF USE PUBLICATION AND HEARING PROCEDURE FOR PERMITTED USES IN THE GOVERNMENT/PUBLIC USE ZONING DISTRICT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Planning Commission has recommended amendments to the Land Development Code; and

WHEREAS, the proposed amendment is intended to improve the content of the existing code as part of an on-going maintenance effort; and

WHEREAS, the proposed amendment will enhance consistency among the zoning districts; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

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

SECTION 1: The City Council of the City of Port Orange hereby amends Chapter 17, Section 26 of the Land Development Code, to read as follows:

Chapter 17 - ZONING DISTRICT REGULATIONS

Section 26: - Government/public use (GPU) district.

- (a) Purpose and intent. The government/public use (GPU) district is intended to provide for public and quasi-public uses in a setting which recognizes the special character and location requirements of such facilities.
- (b) Permitted uses. All uses proposed by any governmental entity or agency thereof shall be permitted in this district. In addition, the following quasi-public uses shall be permitted in this district:

- (1) Adult/vocational education.
- (2) Antennas.
- (3) Camouflaged and monopole communication towers.
- (4) Cemeteries.
- (5) Charitable organization offices.
- (6) Hospitals.
- (7) Houses of worship.
- (8) Nursing homes.
- (9) Private schools.
- (10) Public utility stations/plants.

~~All proposed uses of land within the GPU district shall be advertised for public hearing at the time of rezoning, or prior to a change of use.~~

(bb) Permitted uses with special development requirements (chapter 18, section 4).

- (1) Child care centers (subsection 4).
- (2) Community gardens (subsection 5.1).

(c) Special exception uses (chapter 18, section 3).

- (1) Guyed and lattice communication towers.
- (2) Marina, recreational (subsection 9.6).

(d) Violation of terms or conditions. It is a violation of this code for any person to violate or to refuse or fail to comply with any term or condition of a rezoning or a change of use in the GPU district. Violations may be prosecuted or enforced as provided by law for prosecution or enforcement of municipal ordinances.

SECTION 2: CONFLICTING ORDINANCES.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 3: CODIFICATION.

The provisions of this Ordinance shall become and be made a part of the Land Development Code of the City of Port Orange and the Sections of this Ordinance may be renumbered or relettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 4: SEVERABILITY.

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 the 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: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved: _____
Matthew J. Jones, Deputy City Attorney



STAFF REPORT

CASE NO. 18-25000007

LDC Amendment/Chapter 17, Section 26

REQUEST:	To amend the Land Development Code (LDC) to remove the requirement for a notice hearing for permitted uses in the GPU zoning district.
APPLICANT:	City of Port Orange
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
PLANNING COMMISSION DATE:	August 23, 2018

SUMMARY OF PROPOSED AMENDMENT

The Land Development Code (LDC) requires all uses listed in the Government/Public Use (GPU) Zoning District as permitted to be brought before the Planning Commission and City Council, but no action is required because the uses are allowed. For any new use on property zoned GPU, a "Change of Use" application is required to be submitted and presented to the Planning Commission and City Council.

The "Change of Use" application only applies to the GPU zoning district and no other Port Orange zoning district requires a "Change of Use" application for a permitted use. The "change of use" process creates confusion because having the item presented at a public hearing gives the perception that there will be a vote to allow or deny the use. Unlike other development applications listed in the LDC, such as Special Exception, Conditional Use, Rezoning, and Future Land Use, there is not specific criteria that a "Change of Use" request is required to meet.

Similar to any use listed as permitted in a City zoning district, including the GPU zoning district, the proposed development will be required to go through the standard Development Review Process, including submitting a site plan or subdivision that meets all of the regulations within the LDC and building permits to meet the Florida Building Code.

The uses listed as a permitted use with special development requirements or a Special Exception use in the GPU Zoning District will not change and will be required to comply with requirements and approval process in the LDC.

The proposed amendment removes the following text in ~~strike through~~ format from Chapter 17, Section 26 of the LDC:

Chapter 17 - ZONING DISTRICT REGULATIONS

Section 26: - Government/public use (GPU) district.

(a) Purpose and intent. The government/public use (GPU) district is intended to provide for public and quasi-public uses in a setting which recognizes the special character and location requirements of such facilities.

(b) Permitted uses. All uses proposed by any governmental entity or agency thereof shall be permitted in this district. In addition, the following quasi-public uses shall be permitted in this district:

- (1) Adult/vocational education.
- (2) Antennas.
- (3) Camouflaged and monopole communication towers.
- (4) Cemeteries.
- (5) Charitable organization offices.
- (6) Hospitals.
- (7) Houses of worship.
- (8) Nursing homes.
- (9) Private schools.
- (10) Public utility stations/plants.

~~All proposed uses of land within the GPU district shall be advertised for public hearing at the time of rezoning, or prior to a change of use.~~

(bb) Permitted uses with special development requirements (chapter 18, section 4).

- (1) Child care centers (subsection 4).
- (2) Community gardens (subsection 5.1).

(c) Special exception uses (chapter 18, section 3).

- (1) Guyed and lattice communication towers.
- (2) Marina, recreational (subsection 9.6).

(d) Violation of terms or conditions. It is a violation of this code for any person to violate or to refuse or fail to comply with any term or condition of a rezoning or a change of use in the GPU district. Violations may be prosecuted or enforced as provided by law for prosecution or enforcement of municipal ordinances.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

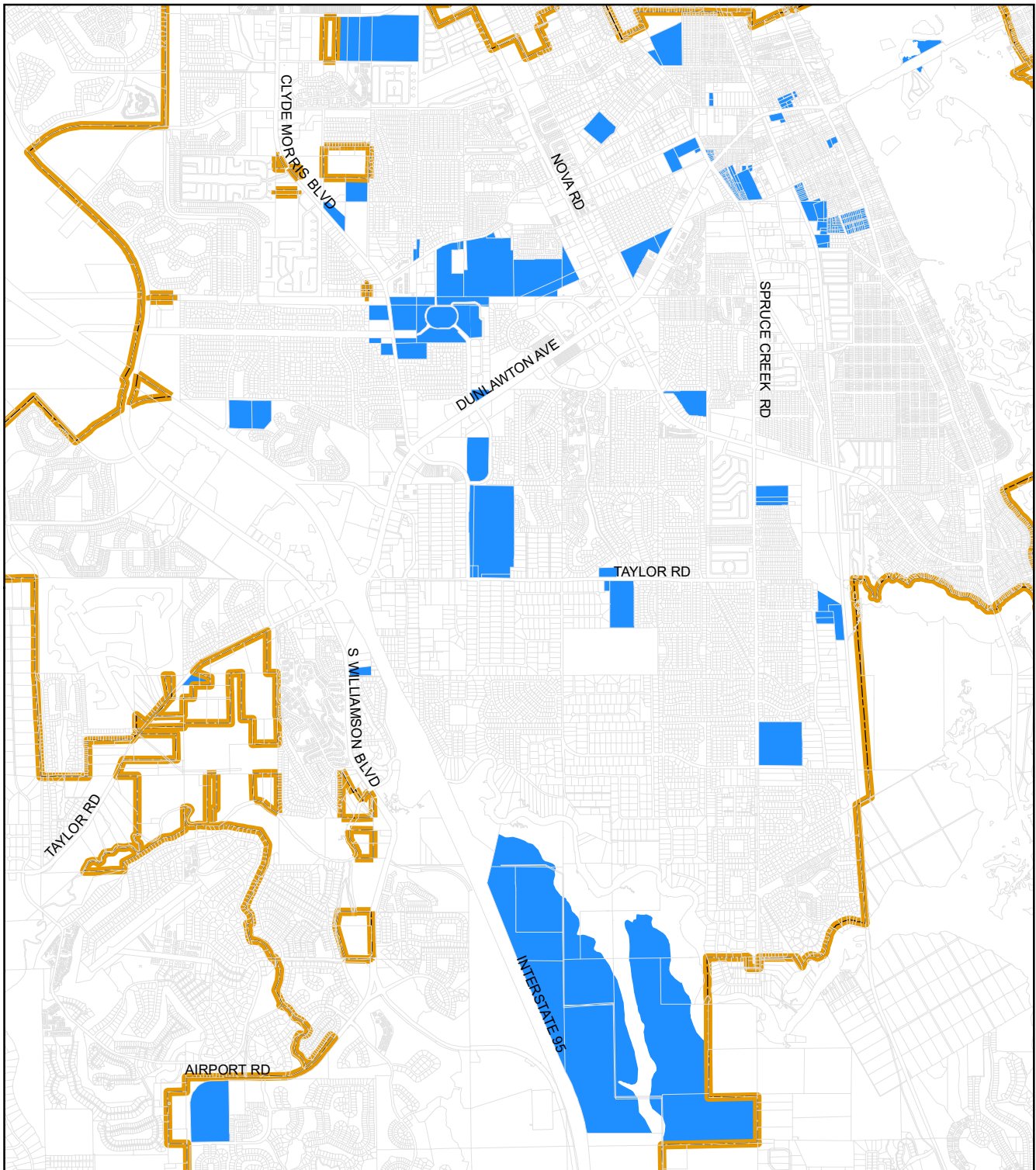
The proposed amendment is generally consistent with the pertinent Goals, Objectives, and Policies of the City's Comprehensive Plan. Policy 2.1.4 of the Future Land Use Element of the Comprehensive Plan recognizes that Public/Institutional uses are acceptable in a wide range of land use environments and, therefore, small and/or isolated properties of this type may be designated under any land use category where appropriate.

RECOMMENDATION

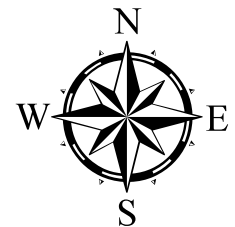
Staff recommends **approval** of the request to amend Chapter 17, Section 26 of the Land Development Code.

ATTACHMENT

Exhibit A – GPU Zoning District Map



GPU Zoning District
CITY OF PORT ORANGE
DEPARTMENT OF COMMUNITY DEVELOPMENT





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: No

SUBJECT: (G22) Second Reading - Ordinance No. 2018-27 - Shopping Carts
(Continued from 9/19/18)

DEPARTMENT: Police Services

GOAL:

RECOMMENDED MOTION: Move to approve Ordinance No. 2018-27.

SUMMARY: City Ordinance to address shopping carts being removed from owner's property and responsibilities of the owners to make efforts to prevent persons from removing shopping carts from owner property. The ordinance will also address the owner's responsibility to retrieve carts in a timely manner when notified of carts off property. The ordinance will help to reduce unsightly shopping carts on the sides of roads or any other location which is not considered cart owner property and to maintain a high quality of life in our City.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	Ordinance No. 2018-27 - Shopping Carts	Ordinance No. 2018-27 - Shopping Carts.pdf
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Robin Fenwick

Created/Initiated - 09/10/2018

ORDINANCE NO. 2018-27

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 18, TO ESTABLISH A NEW ARTICLE XIV ADOPTING SHOPPING CART REGULATIONS RELATED TO SIGNAGE, ON-SITE RETENTION MEASURES AND RETRIEVAL PLANS; PROVIDING PROCEDURES FOR SHOPPING CARTS FOUND ON PUBLIC PROPERTY; PROVIDING FOR PENALTIES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council recognizes that shopping cart theft and abandoned shopping carts have become a growing problem within the City; and

WHEREAS, City Council finds it necessary to impose reasonable regulations for the retailers to implement and encourage shopping cart retention within the boundaries of their properties; and

WHEREAS, these reasonable place and manner restrictions regarding abandoned shopping carts, serve to ensure the safety and general welfare of its citizens; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

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

SECTION 1. The City Council hereby amends Chapter 18, to establish a new Article XIV in the Code of Ordinances, City of Port Orange, Florida, to read as follows:

ARTICLE XIV. – SHOPPING CARTS

Sec. 18-302. - Signage.

- (a) Shopping cart identification sign required for retail establishments. Every retail sales establishment which utilizes shopping carts, as defined by Section 506.502(10), Florida Statutes, in the operation of its business, shall affix an identification sign on the shopping carts providing the name and store number of the owner.
- (b) Signs. Every owner of a retail sales establishment which utilizes shopping carts, or owner of a shopping center in which one (1) or more of the retail sales establishments utilizes shopping carts, as defined by Section 506.502(10) Florida Statutes, in the operation of its business shall post signs, no less than eighteen (18) inches by thirty-six (36) inches, in conspicuous locations at the entrance(s) and exit(s) of its building and parking area(s) which shall be clearly legible in English, and which shall provide, in substantial form, the following:

WARNING

Any person who removes a shopping cart from the premises of the owner, or is in the possession of any shopping cart, shall be presumed to be in possession of stolen property and is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment of up to one (1) year as provided by Sections 506.509 and 506.513 of the Florida Statutes.

- (c) Signage Exemptions. Any establishment that meets the criteria set forth below may request an exemption from subsection (a) and (b) above. Such establishment desiring an exemption, shall file a written petition for exemption and enclose an appropriate application fee to be determined by the city manager. A petition for an exemption from the requirements of subsection (a) and (b) may be granted by the city manager to any establishment which:
- (1) Utilizes twenty (20) or fewer carts; and

- (2) Constructs barriers to prevent the removal of shopping carts from the interior of the retail store, while permitting full wheelchair ingress and egress by disabled persons; or
- (3) Attaches alarm mechanisms or other security devices to shopping carts to prevent their removal from the property of the retail sales establishment or shopping center.
- (d) *Legal Nonconforming Businesses.* Any business that is nonconforming as to these signage requirements upon adoption of this section shall comply within six (6) months unless granted an exemption or otherwise provided for by law.

Sec. 18-303. - On-Site retention.

- (a) All business establishments utilizing shopping carts or similar devices, as defined by Section 506.502(10), Florida Statutes, and having more than twenty (20) shopping carts on-site shall install and maintain a system to retain all shopping carts within the real property boundaries of the business location. The business shall provide signage in a conspicuous location notifying shopping cart users of a retention system in place and how said system operates. The location, type of device and other pertinent information deemed necessary by the city manager must be shown on the approved site plan for the business or lot the business is located on.
- (b) Permitted methods of retention shall include any one of the following methods:
 - (1) A physical barrier, such as bollards, restricting shopping carts to the front sidewalk or portion of the business.
 - (2) Shopping carts equipped with a protruding arm or similar device prohibiting the cart from being removed from the interior of the business.
 - (3) A system, which may be mechanical in nature, requiring a deposit to use a shopping cart; deposit should be of a reasonable amount that would not deter the use of the cart, but would encourage the return of the cart.
 - (4) Shopping carts equipped with a wheel locking mechanism that is used in conjunction with an electronic barrier along the perimeter of the area shopping carts are allowed. The wheel locking mechanism will activate when the shopping cart crosses the electronic barrier.
- (c) *Legal Nonconforming Businesses.* Any business that is nonconforming as to on-site shopping cart retention upon adoption of this section shall comply within six (6) months unless otherwise provided for by law.

Sec. 18-304 - Retrieval plan.

- (a) All business establishments utilizing shopping carts or similar devices, as defined by Section 506.502(10), Florida Statutes, and having more than twenty (20) shopping carts on-site shall develop a retrieval plan which shall include an effective and specific

method of retrieving the retail establishment's shopping carts found throughout the city.

(b) *Plan submission, amendment and review.*

- (1) The city shall determine whether a retail establishment's plan for retrieving its shopping carts submitted pursuant to this section is reasonably calculated to result in the prompt removal of the retail establishment's shopping carts found throughout the city on property other than that of the retail establishment furnishing the shopping carts to patrons.
- (2) Based on the above-referenced criteria, the city shall approve, reject or require modification of a plan, within sixty (60) days of when the plan is submitted.
- (3) If a plan is approved, the proposed measures shall be implemented no later than thirty (30) days after approval.
- (4) If a plan is rejected or modification is required by the city, the retail establishment shall modify the plan and resubmit it to the city no later than thirty (30) days after the date of its rejection.
- (5) Following the approval of a plan, a retail establishment may file a written request with the city to amend its plan. The proposed amended plan is subject to the same criteria and review process as an original plan.
- (6) If a retail establishment's original or amended plan is approved by the city, and subsequently, the city manager determines that the retail establishment's plan for retrieving its shopping carts found throughout the city is ineffective, the city manager may schedule a hearing before the city council for the purpose of modifying the retail establishment's plan. The city manager shall provide the retail establishment with at least ten (10) days' written notice of such hearing, along with the city manager's recommendation. After consideration of the matter and after permitting the retail establishment to be heard, the city council may require modification of the plan or approve it as written.

(c) *Legal Nonconforming Businesses.* Any business that is nonconforming as to an approved retrieval plan as of the adoption of this section shall comply within six (6) months unless otherwise provided for by law.

Sec. 18-305. - Procedure for handling shopping carts found on public property.

- (a) Employees and officers of the city shall be deemed agents of the city and any identifiable shopping carts found by them on public property during the course of their official duties shall be reported to the city's code enforcement division. City staff shall collect the shopping carts and place them in storage.
- (b) The city shall provide reasonable notice to the owner of the shopping cart, as designated on the shopping cart's identification sign and/or approved retrieval plan, to retrieve the same.
- (c) The owner of the shopping cart shall have ten (10) days from receipt of the notice to retrieve the same.

- (d) If the shopping cart is not claimed by the owner within the time specified in this section, the title to such property shall vest in the city and the same shall be disposed of at the sole discretion of the city.
- (e) All unidentifiable shopping carts found on public property shall be considered lost or abandoned and shall be handled in accordance with Section 705, Florida Statutes, as amended from time to time.

Section 18-306. - Enforcement.

- (a) The code compliance inspectors shall be authorized to enforce this article in accordance with chapter 2, article V of this Code.
- (b) The police department through its law enforcement officers shall be authorized to enforce this article in accordance with section 1-8 of this Code.
- (c) In addition to any other enforcement mechanism, whether civil or criminal, the city shall, at its discretion, have the right to seek the aid of the courts of this state with respect to the enforcement hereof and the violation of this article or any lawful order of the city council, code enforcement board, special master or building official, which rights shall include the right to seek injunctive relief against such persons as may be determined by the city to be in violations of the terms and provisions of this article.

Section 18-307. - Violation and Penalty.

It shall be a violation of this article for any business establishment to fail to comply with the requirements set forth herein. Any person, firm, or corporation violating any of the provisions set forth in this article shall be subject to the penalties provided in section 1-8 of this Code and as may be imposed by the code enforcement board or special master in accordance with section 2-214 of this Code. Each day that any violation of the terms, conditions, regulations, limitations or provisions of this article shall continue to exist shall constitute a separate and distinct offense, punishable as herein provided. Any continuing violations of the terms, conditions, regulations, limitations or provisions of this article may be enjoined and restrained by an injunctive order of the circuit court in appropriate proceedings instituted for such purposes.

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. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange and the Sections of this Ordinance

may be renumbered or re-lettered to accomplish such intention. The code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 5. 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 the 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 6. This ordinance shall become effective immediately upon final passage by the City Council.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the ____ day of _____ 2018

Passed and adopted on second and final reading on the ____ day of _____, 2018.

Reviewed and Approved: _____
Matthew J. Jones, Deputy City Attorney



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/16/2018

Consent item: No

SUBJECT: (H23) 3449 Shamrock Drive - License Agreement (Dock)

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: To authorize the City Manager to terminate the license agreement in accordance with the license agreement, remove the improvements installed in accordance with the license agreement, and reimburse Mr. and Mrs. Rowe for the costs of permitting and constructing those improvement subject to their execution of a full release prepared by the City Attorney's Office.

SUMMARY: At their August 21st meeting, the City Council tabled the Shamrock Drive dock discussion item to the October 16th City Council meeting to allow Mr. Rowe and Ms. Park to meet again and try to work out a compromise. On October 3rd, a neighborhood meeting was held with approximately 45 residents who live along Shamrock Drive, Coconut Row, Coral Way and Venetian Circle. At that meeting, both Mr. Rowe and Ms. Park presented their information related to the license agreement and the private dock on public property located in front of 3449 Shamrock Drive. A large majority of the residents who spoke at the meeting were against Mr. Rowe continuing to have a license agreement for a private dock. According to the residents, they have customarily used the public space in front of 3449 Shamrock Drive to fish, cast net, and view the Halifax waterway and the use of this area has been removed from the public and given to one resident through the license agreement. The neighbors who live to the south and north of the dock also spoke and expressed concerns that the use of the dock by Mr. Rowe or the public would impact their rear-yard privacy. The agreement was originally entered into by the city based on assurances that the neighbors did not have issues with the dock being built.

After discussing various options, the consensus from the residents was to request that the city terminate the license agreement and have the dock removed and the public area returned to its original condition. Based on the feedback from the residents in this area, staff is recommending Council terminate the license agreement with Mr. Rowe, the dock constructed be removed, and provide reimbursement to Mr. Rowe for the cost to permit and construct the dock. The fence will remain until such time that the city can investigate possible replacements unless the fence has to be taken down to deconstruct the dock. The gate shall remain unlocked to allow access to the public.

Legal recommends that any reimbursement to Mr. and Mrs. Rowe be conditioned upon the receipt of a fully executed release in favor of the City for any and all claims related to the termination of the license agreement and removal of the improvements.

Project No.: Funding Account No.:

ATTACHMENTS:

1.	August 21 Agenda Item Back-Up Information	August 21 Agenda Item Back-Up Information.pdf
2.	Recorded License Agreement	Recorded License Agreement.pdf

Robin Fenwick	Created/Initiated - 10/04/2018
Tim Burman	Approved - 10/09/2018
Matthew Jones	Approved - 10/10/2018
Jake Johansson	Approved - 10/10/2018
Robin Fenwick	Final Approval - 10/10/2018



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/21/2018

Consent item: No

SUBJECT: (H21) Discussion Item: License Agreement for 3449 Shamrock Drive

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Provide direction

SUMMARY: Staff is requesting feedback from Council on whether the license agreement should be terminated. Some residents in the area recently commented that the license is a benefit only to the applicants and a detriment to residents of Port Orange, specifically those residing in the Halifax Shores neighborhood. At least one resident has threatened legal action against the City if the license is not revoked. The current license agreement does give the City the right to terminate the license agreement to use the property for City purposes. The following options are available:

1. Terminate the license agreement and leave the dock and 4' aluminum fence in place as a public facility. The City may also choose to reimburse the owner of 3449 Shamrock Drive for the cost associated with constructing the dock and 4' aluminum fence. All residents of Port Orange, specifically those residing in the Halifax Shores neighborhood and the owner of 3449 Shamrock Drive, would have the ability to access and use the dock;
2. Terminate the license agreement and require the applicants to remove the dock and 4' aluminum fence and rebuild a 2.5' concrete block wall with a wooden gate as existed in March 2018;
3. Take no action and defend the potential legal challenge brought by neighbor(s).

Background: In September 2017, City Council approved a right-of-way license agreement application for a portion of the Shamrock Drive right-of-way frontage in front of 3449 Shamrock Drive to be used for access and construction of a private dock in an existing canal. The canal is located directly across the Shamrock Drive right-of-way from the applicant's home (3449 Shamrock Drive). The license agreement requires the applicants to maintain the portion of the Shamrock Drive right-of-way which includes the concrete area, landscaping, and sea wall in exchange for the license to enter onto the right-of-way and construct the dock and maintain the barrier along the canal.

In late May 2018, the City became aware of some concerns voiced by residents along Shamrock Drive, Coconut Row, and Venetian Circle regarding the license agreement and construction of a private dock and 4' aluminum rail fence along this portion of the Shamrock Drive right-of-way. According to some of the residents, the public right-of-way area in front of the 3449 Shamrock Drive residence was historically used by residents of the neighborhood, and with the approval of the license agreement, these

residents' customary use of the public property was removed and given to one resident. They have also cited that the dock and 4' aluminum rail fence has prevented the regular use of this area by residents of the neighborhood that typically fished, cast net, and enjoyed the unobstructed view of the Halifax waterway from this portion of the right-of-way.

According to the applicants, when they purchased their home in 1998, a deteriorated dock, a wall along the canal, and landscaping were in the right-of-way across from their home. The dock was removed in the late 1990's by the applicants. The applicants state that they have continued to maintain the palm trees and wall in the right-of-way. Further, the applicants state that they worked with the City in the late 1990's to rebuild the wall along the canal and the existing gate remained for access if the applicants decided to rebuild the dock.

The applicants do not have riparian rights to build a dock in the canal. In a letter dated May 13, 2016, the applicant's attorney, Jim Morris, explained to his clients that Shamrock Drive and the portion of land between Shamrock Drive and the canal bank were dedicated to the public and reserved for public purposes. Although the applicants have been unable to provide conclusive evidence of the ownership of the canal, it's clear that the riparian rights for that portion of canal that abuts the City's right-of-way are held by the City for the benefit of the public and reserved for public purposes. Section 82-2 of the City Code of Ordinances states that "whenever a public street to thoroughfare is laid out or existing in the city abutting or touching a waterway open to public use, the city as trustee for the public has and owns riparian rights at such place where such public street or thoroughfare abuts or touches the waterway. The city shall have the right to regulate the use of the waters adjacent to such place, and to construct docks, public landings, piers or wharves at such places."

In March and April of 2018, the applicants submitted building permits to replace a 2.5' concrete block wall with a 4' aluminum rail fence and to construct a dock along the portion of the Shamrock Drive right-of-way. According to the applicants, the 2.5' concrete wall was replaced with a 4' aluminum rail fence for safety reasons as the concrete wall was deteriorating. The applicants also state that the 4' aluminum rail fence and dock does not prohibit residents of Port Orange, specially the Halifax Shores neighborhood, from using the 3449 Shamrock Drive right-of-way to fish, cast net, and view the Halifax waterway.

At the time of processing the license agreement, the applicants indicated to staff that they have historically maintained the palm trees and 2.5' concrete block wall located in the right-of-way in front of 3449 Shamrock Drive for the neighborhood, and that residents in the area were aware of their request to the City for a license agreement to construct a private dock. However, some residents have indicated the statements made by applicants that there was a deteriorated dock removed in the late 1990's and that they were not able to refute the applicants' statement.

Project No.: Funding Account No.:

ATTACHMENTS:

Robin Fenwick	Created/Initiated - 08/09/2018
Tim Burman	Approved - 08/09/2018
Jake Johansson	Approved - 08/10/2018
Robin Fenwick	Final Approval - 08/10/2018

This Document Prepared by:
Shannon K. Balmer
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

Parcel No.: 5335-11-00-0160

This Space Reserved for Recording Data

LICENSE AGREEMENT

THIS **LICENSE AGREEMENT** is made and entered into this 10 day of October, 2017, by and between the City of Port Orange, Florida, a chartered municipal corporation ("City"), 1000 City Center Circle, Port Orange, FL 32129, ("Licensor"); Terry M. Rowe and Rita E. Rowe, whose mailing address is 3449 Shamrock Drive, Port Orange, FL 32127, ("Licensee").

PREMISES

WHEREAS, on September 19, 2017, the City Council of the City of Port Orange having approved the Licensee's application for a license agreement for use of a portion of City right-of-way for the purpose of access and construction of a code compliant dock on an existing canal; and

WHEREAS, the Licensee hereby warrants to the City that the Licensee has full power and authority to enter into this License Agreement, and that the Licensee's agreement to be bound by the terms and conditions hereof is in compliance with and shall remain in compliance with any declaration of covenants and restrictions, as may exist and as may be amended from time to time; and

WHEREAS, the improvement plan encompasses a portion of a City right-of-way known as "Shamrock Drive", hereinafter known as "**License Premises**" as depicted in **Exhibit "A"**, attached hereto and incorporated herein by reference; and

WHEREAS, the Licensee is the owner of real property adjacent to the referenced City right-of-way located in the Halifax Shores Replat, subdivision, recorded in Map Book 23 Page 218, Public Records of Volusia County, Florida, hereinafter the "Licensee Property", described on **Exhibit "B";** and

WHEREAS, the Licensee hereby acknowledges that before commencing work in the License Premises, Licensee shall provide an insurance certificate to the City as provided herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. The City hereby grants to the Licensee a license to enter upon and to utilize the right-of-way of the City, per Map Book 23 Page 218, known as Shamrock Drive, located and situated in Port Orange, Volusia County, Florida as depicted in **Exhibit "A" (the "License Premises")**, adjacent to the Licensee's real property for the purpose of constructing a dock with boat lift/davits (hereinafter "Improvements") consistent with this License Agreement and the ordinances of the City. Licensee also hereby acknowledges and agrees to construct the improvements in compliance with the specifications described in **Exhibit "C."** The License

shall be a nonexclusive right of use for the License Premises. The Licensee's use of the improvements shall be exclusive to the Licensee and the Licensee's guests and invitees.

2. The Licensee jointly and severally assumes all responsibility for the maintenance and, if necessary, replacement of all Improvements licensed herein.

3. The Licensee agrees to maintain, at Licensee's expense, the License Premises which includes the concrete area, landscaping and sea wall. If Licensee fails, upon thirty (30) days written notice from the City, to maintain, repair or replace the improvements described in this paragraph which require maintenance, repair or replacement, the City reserves the right to terminate this License Agreement and remove all Improvements without further notice to the Licensee and at the sole cost and expense of the Licensee.

4. The City reserves the right to terminate this License Agreement and to require the Licensee to remove the Improvements provided for herein in the event that the City determines to utilize the property for City purposes, such as road, bike path, public utility installation or maintenance, drainage improvement or other public uses. The City shall endeavor to give at least thirty (30) days prior notice to the Licensee. If the Improvements are not removed within the time specified by the City or in cases where emergency work by the City becomes necessary the City may remove or cause to be removed the Improvements without any liability to the City or obligation to replace same upon completion of the City project.

5. The Licensee agrees that no improvements shall be made or altered in the right-of-way except as those provided for herein or by subsequently approved amendments thereto. However, the Improvements may be maintained, repaired, replaced and removed.

6. The license granted by this License Agreement shall be effective during the period from the date of execution by both parties until terminated in accordance with the provisions specified herein.

7. Any party may terminate this License Agreement upon giving thirty (30) days prior written notice to the other party, after which time this License Agreement shall be of no force and effect. Upon termination by any party, the City shall have the option of requiring all Improvements to be removed or abandoned in place by the Licensee or maintained in their present state by the City and without further right or obligation by the Licensee. If the Licensee terminates this License Agreement or otherwise fails to remain in good standing and in compliance with this License Agreement, the City may maintain and repair the Improvements and the City shall not be obligated to either maintain or repair the Improvements and the City shall not be liable for either undertaking or failing to maintain or repair the Improvements. All costs and expenses of the City resulting from maintenance or repair of the Improvements, including administrative expenses, attorney's fees and costs, and expenses incurred in establishing and operating a special district, shall be chargeable to and assessed by the City against the Licensee Property, as described in **Exhibit "B."** The City shall have the right to enforce collection of assessments for such costs and expenses by a lien which lien shall include interest at the then highest lawful rate of interest and attorneys' fees and costs for collection thereof.

8. The Licensee acknowledges the legal title of the City to the right-of-way property described herein and agrees never to deny such title or to claim title in the Licensee's name.

9. The license is personal to the Licensee and shall not inure to the successors or assigns of the Licensee. The rights, privileges and permission granted herein shall not be assignable by the Licensee in whole or in part. Upon the sale or transfer by the Licensee of title to the real property adjoining the right-of-way upon which the Improvements are located, the City shall have the immediate right to remove the Improvements for which this license is granted; subject, however, to application made by the successor property owner for and due diligence in obtaining approval by the City of a new license agreement for the existing Improvements to remain in the right-of-way.

10. The Licensee shall exercise the rights, privileges and permission granted herein at the Licensee's own risk. The Licensee shall not claim any damages from the City for any injuries or damages in connection with or on account of the exercise of such rights, privileges or permission, the condition of the City's property, or the use of the License Premises. Licensee agrees to maintain homeowner's general liability insurance having a minimum coverage of **One Million Dollars (\$1,000,000.00)** with the City as an additional insured and shall further provide for the insurance carrier to notify the City not less than 30 days prior to an effective date of non-coverage or policy cancellation. Proof of insurance coverage as set forth above shall be provided to the City with the License Agreement, signed by the Licensees, prior to City execution. Further, the Licensee shall indemnify and hold harmless the City, its officers, employees and agents, from and against all claims, damages, losses and expenses, attorneys' fees and costs, arising out of, resulting from, or in any way connected with the condition of the City's property, the use of the property by Licensee, his invitees and members of the public, the exercise of the license granted by this License Agreement, the failure on the part of the Licensee to comply with any of the provisions specified herein, or the City's removal of any Improvements provided for herein or otherwise permitted by this License Agreement. The City shall not be liable to the Licensee if for any reason the Licensee's use of the Subject Property is hindered or disturbed.

11. All notices required to be given by any party shall be in writing, addressed to all other parties, and delivered by certified mail, telegram or in person to: City Manager, City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, for the City; and to Terry M. Rowe and Rita E. Rowe, whose mailing address is 3449 Shamrock Drive, Port Orange, FL 32127, for the Licensee, or as otherwise designated in writing to all respective parties.

12. This License Agreement shall be recorded in the Public Records of Volusia County, Florida. Upon execution of this License Agreement, the Licensee agrees to pay the City an amount equal to the applicable cost of recording this License Agreement in the Public Records of Volusia County, Florida.

13. This License Agreement shall become effective upon being recorded in the Public Records of Volusia County, Florida by the City.

14. This License Agreement constitutes the entire agreement between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This License Agreement may be amended or modified only by an instrument of equal formality signed by the respective parties.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the respective dates below.

WITNESSES:

Michelle Cusella
 Printed Name: Michelle Cusella
Barbara J. Abbate
 Printed Name: Barbara J. Abbate

Michelle Cusella
 Printed Name: Michelle Cusella
Barbara J. Abbate
 Printed Name: Barbara J. Abbate

LICENSOR:

CITY OF PORT ORANGE, FLORIDA
 a chartered municipal corporation

By: Donald O. Burnette
 Donald O. Burnette, Mayor

Date: October 10, 2017

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

(SEAL)

STATE OF FLORIDA
 COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 10th day of October, 2017, by Donald O. Burnette, as Mayor of the City of Port Orange, Florida, who acknowledged that he is duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who ☒ is personally known to me, or ☐ has produced _____ as identification.

NOTARY PUBLIC
 STATE OF FLORIDA
 BARBARA J. ABBATE
 MY COMMISSION # GG 074818
 EXPIRES: April 26, 2021
 Bonded Thru Budget Notary Services

Barbara J. Abbate
 Notary Public, State of Florida at Large
 Printed name, commission and expiration:

STATE OF FLORIDA
 COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 10th day of October, 2017, by Robin L. Fenwick, as the City Clerk of the City of Port Orange, Florida, who acknowledged that she is duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who ☒ is personally known to me, or ☐ has produced _____ as identification.

NOTARY PUBLIC
 STATE OF FLORIDA
 BARBARA J. ABBATE
 MY COMMISSION # GG 074818
 EXPIRES: April 26, 2021
 Bonded Thru Budget Notary Services

Barbara J. Abbate
 Notary Public, State of Florida at Large
 Printed name, commission and expiration:

WITNESSES:

Bronaui Barnett
Printed Name: Bronaui Barnett

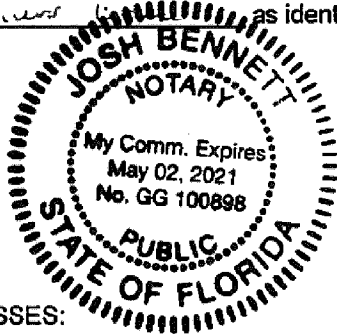
Josh Bennett
Printed Name: Josh Bennett

LICENSEE:

Terry M Rowe
Terry M. Rowe

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 4th day of October, 2017, by Terry M. Rowe, who is authorized to execute the foregoing LICENSE AGREEMENT, and who ☐ is personally known to me, or ☒ has produced Driver's License as identification.



Josh Bennett
Notary Public, State of Florida at Large
Printed name, commission and expiration:

WITNESSES:

Bronaui Barnett
Printed Name: Bronaui Barnett

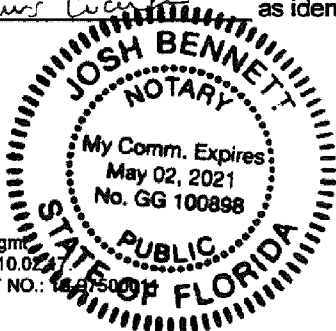
Josh Bennett
Printed Name: Josh Bennett

LICENSEE:

Rita E. Rowe
Rita E. Rowe

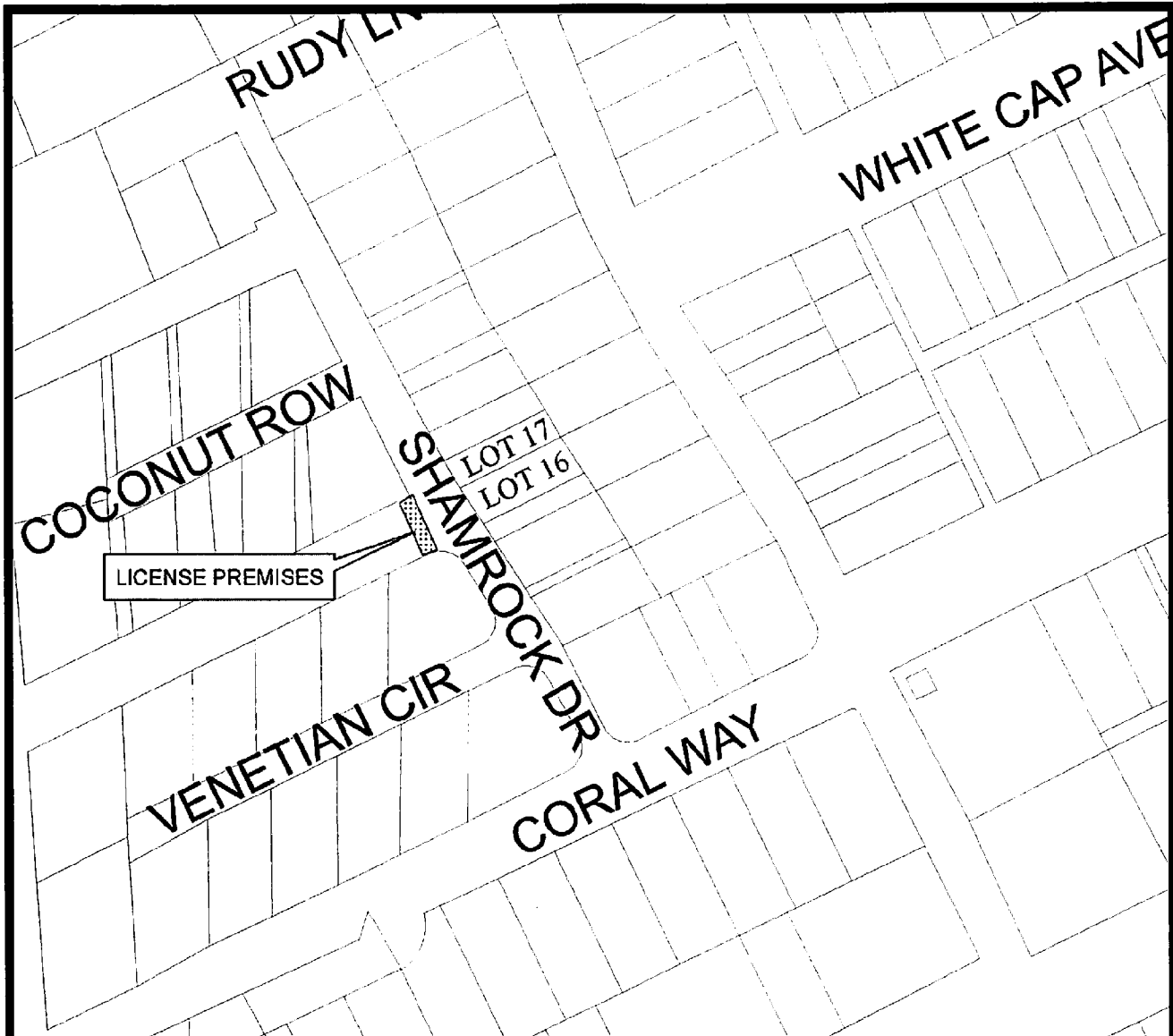
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 4th day of October, 2017, by Rita E. Rowe, who is authorized to execute the foregoing LICENSE AGREEMENT, and who ☐ is personally known to me, or ☒ has produced Driver's License as identification.



Josh Bennett
Notary Public, State of Florida at Large
Printed name, commission and expiration:

EXHIBIT "A"



Applicant: Terry and Rita Rowe,
Property Owners

Location: 3449 Shamrock Dr.
N 40 FT OF LOT 16 & S 30 FT OF
LOT 17 HALIFAX SHORES REPLAT

Requested Action: To approve and authorize
the execution of a right-of-
way license agreement for
the construction of a
dock located in an existing
canal along the Shamrock
Drive right-of-way.

Location Map
CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT

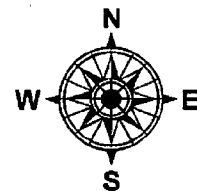
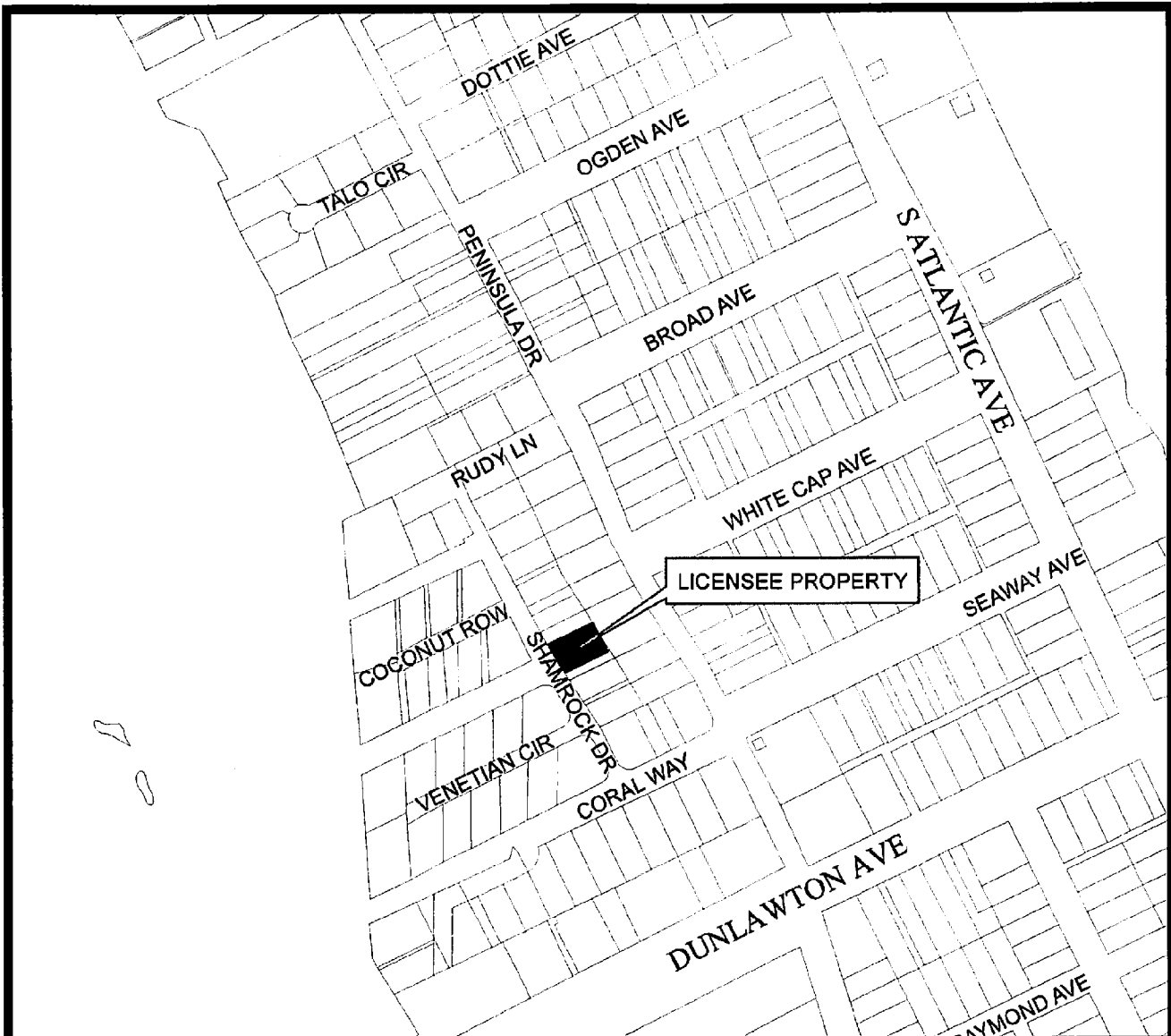


EXHIBIT "B"



Applicant: Terry and Rita Rowe,
Property Owners

Location: 3449 Shamrock Dr.
N 40 FT OF LOT 16 & S 30 FT OF
LOT 17 HALIFAX SHORES REPLAT

Requested Action: To approve and authorize
the execution of a right-of-
way license agreement for
the construction of a
dock located in an existing
canal along the Shamrock
Drive right-of-way.

Location Map
CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT

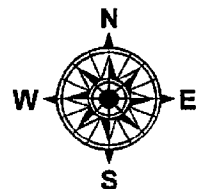


EXHIBIT "B" – LEGAL DESCRIPTION FOR 3449 SHAMROCK DRIVE

DESCRIPTION: LOT 16, EXCEPT THE SOUTHERLY 20 FEET THEREOF, AND THE SOUTHERLY 30 FOOT OF LOT 17, HALIFAX SHORES REPLAT, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 23, PAGE 218 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

EXHIBIT "C"

- One dock and covered boat slip shall be permitted.
- No dock, boat house, terminal dock platform or main access pier together with a moored vessel, left, mooring piles and/or roof shall extend beyond twenty-five percent (25%) of the width of the canal as measured from bulkhead to bulkhead by a direct line.
- No dock or boathouse shall have any enclosed sides, or contain any sleeping quarters, or be used as such. Only a roof and pilings shall be permitted for the components of these structures.
- The roof of such a structure at its highest point shall not extend more than 12 feet above the water level at the mean high water line.
- A dock with a main access pier perpendicular to the bulkhead and terminal dock platform shall be set back a minimum of 25 feet from the projected side boundaries of the Licensee's Property.
- A dock attached to the bulkhead without an access pier shall be set back a minimum of 10 feet from the projected side boundaries of the Licensee's Property.
- The main access pier shall be no greater than four feet in width and terminal dock platform shall not exceed eight feet in width and 160 square feet in area.
- The finger pier shall be three feet in width and no more than 25 feet in length, except as limited otherwise.
- Wooden steps for boat and wading area may be constructed so as to project no more than four feet beyond the bulkhead line.