



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

JANUARY 22, 2019

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 - Rev. Diane Langworthy of 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. January 8, 2019 - Special City Council Meeting
 - b. January 8, 2019 - Regular City Council Meeting
7. Bid Awards and Contract Items
 - a. Approval of Change Order No 1 to Task Authorization No 10 under the Master Contract for Engineering Services with Kimley-Horn and Associates, Inc as it relates to Engineering Services
 - b. Approval of Change Order No 1 to the EJCDC Agreement to Petticoat-Schmitt Civil Contractors, Inc. as it relates to ITB17-41 WWTP Influent Bypass.
8. Approval to Submit Grant Application for St. Johns River Water Management District's FY2019-2020 Cost Share Program and authorizing the execution of the Cost Share Agreement
9. Fee Waiver Request from Spruce Creek High School Softball Team

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

D. COUNCIL COMMENTS

10. Comments/Concerns from Council Members

E. SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

11. Report from KemperSports on the Cypress Head Golf Course

F. BOARD APPOINTMENTS, INTERVIEWS, REPORTS

12. Citizen Advisory Committee for TPO

13. Golf Advisory Board Report

14. Fire Pension Board - Interim member

G. PUBLIC HEARING

15. Second Reading – Ordinance No. 2018-32 - Amending Chapter 10 of the Code of Ordinances pertaining to Urban Chickens

16. Second Reading – Ordinance 2019-1 - LDC Text Amendment/ Chapter 15 - Residential Subdivision Signage (Case No. 18-25000008)

17. Second Reading - Ordinance No. 2019-3 - Amending Section 2-275 of the Code of Ordinances relating to Local Preference

18. Second Reading - Ordinance No. 2019-4 - Amending the Code of Ordinances relating to the Golf Course Advisory Board

19. First Reading - Ordinance 2019-5 - LDC Amendment/Chapter 2, 16, 17, and 18 - Wireless Communications Facilities Siting (Case No. 18-25000010)

H. REGULAR AGENDA

20. Ratification and approval of Task Authorization No 20 with Mead and Hunt for the Taylor Road Bridge at B-19 and Sweetwater Emergency Repairs

21. Ratification of emergency PO to P&S Paving for Taylor Road Repairs

I. ADDITIONAL ITEMS

22. City Attorney

23. City Manager

J. COUNCIL COMMITTEE REPORTS

24. City Council Committee Reports

a. First Step Shelter

b. Port Orange/South Daytona Chamber of Commerce

c. Arthaus

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.

SPECIAL CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
JANUARY 8, 2019

THE SPECIAL CITY COUNCIL MEETING of the City of Port Orange was called to order by Mayor Donald O. Burnette at 5:30 p.m.

Silent Invocation

Pledge of Allegiance

Roll Call	Present:	Vice Mayor Chase Tramont Councilman Drew Bastian Councilman Scott Stiltner Mayor Donald Burnette
	Also Present:	City Manager Jake Johansson City Attorney Margaret Roberts City Clerk Robin Fenwick

DISCUSSION ITEMS

4. Declaration of Vacant Council Seat District 1

Motion to declare a vacancy for the council member seat in District 1 was made by Councilman Drew Bastian and Seconded by Councilman Scott Stiltner. Motion carried unanimously by roll call vote.

5. Resolution No. 19-4 - Calling for a Primary and Special Election to elect a Council Member for District 1 and providing for qualifying dates

Mayor Burnette read Resolution No. 19-4.

RESOLUTION NO. 19-4

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA CALLING A PRIMARY ELECTION AND A SPECIAL, AS NEEDED, FOR THE PURPOSE OF ELECTING THE CITY COUNCIL MEMBER FOR DISTRICT 1; PROVIDING FOR THE QUALIFYING PERIOD AND ELECTION DATES; AUTHORIZING THE CITY CLERK TO PROCEED WITH ALL ELECTION ARRANGEMENTS; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Resolution No. 19-4 calling a special election to elect a council member for District 1 and providing for election dates and the qualifying period was made by Councilman Drew Bastian and Seconded by Councilman Scott Stiltner.

Discussion was held regarding the schedule for a primary and special election.

Motion carried unanimously by roll call vote.

6. Discussion regarding process for interim council member

Margaret Roberts, City Attorney, advised Council the Charter requires an appointment of an interim council member. Council can determine the process.

Council discussed their concerns regarding the process of appointing an interim and asked questions relating to qualifications. Interim candidates must be residents of District 1.

Phil Madsen, Anytime Fitness, expressed his condolences and believes it would be a waste of time to appoint someone prior to the election but he is glad they are not interested in appointing someone who wants to run for the seat.

Jake Johansson, City Manager, agreed with Council's concerns with appointing someone who may run for the position.

Mayor Burnette suggested utilizing the Board Application along with a resume to include relevant experience and whether or not they plan to run for the permanent seat. Council agreed and will interview and/or appoint an interim council member at a Special Meeting on February 26, 2019 at 5:30 p.m. if more than one (1) candidate qualifies. Candidate applications are due by close of business on February 20, 2019.

ADJOURNMENT – 6:03 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, CMC, City Clerk

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
JANUARY 8, 2019

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.

OPENING

Invocation - Pastor Austin Trammell of Salty Church

Pledge of Allegiance

Roll Call	Present:	Councilman Drew Bastian Councilman Scott Stiltner Vice Mayor Chase Tramont Mayor Donald Burnette
	Also Present:	City Manager Jake Johansson City Attorney Margaret Roberts City Clerk Robin Fenwick

4. Presentation of Proclamations to the 2018 City Retirees

Mayor Burnette read and presented the proclamation to Paul Lockaby prior to the start of the meeting.

5. Rules of Procedure ("Local Rules")

Robin Fenwick, City Clerk, provided details of the proposed changes.

Motion to approve was made by
Councilman Drew Bastian and Seconded
by Councilman Scott Stiltner.

Robert Reinhausen, citizen, expressed his concern regarding the City Manager and City Attorney Comments/Items. He would like to see a rule that no items to be voted on will be included without back-up materials.

Motion carried unanimously by roll call
vote.

CONSENT AGENDA

6. Public Comments on Consent Agenda Items Only

There were none.

7. Agenda Approval

Motion to pull Items #11 and 13 was made by Councilman Drew Bastian and Seconded by Councilman Scott Stiltner. Motion carried unanimously by voice vote.

8. Approval of Minutes

a. December 18, 2018 - Regular City Council Meeting

9. Resolution No. 19-1 - Amending Resolution 18-19 ECHO Grant Application- Recreational, Educational, and Cultural (REC) Center

10. Resolution No. 19-2 - Parks and Recreation Fee Adjustments

11. Approval of Donation/Exchange Agreement - Port Orange Woodcarver's Club

12. City cost participation request from Edengate Development, LLC for upgrades to Lift Station No. 12 for the purpose of converting the system to a submersible station.

13. Approval of Lease with U.S. Representative Michael Waltz

14. Approval of Misc. Accounts Receivable Write-Offs

Motion to approve the Consent Agenda as amended was made by Councilman Drew Bastian and Seconded by Vice Mayor Chase Tramont. Motion carried unanimously by roll call vote.

Item #11 - Approval of Donation/Exchange Agreement - Port Orange Woodcarver's Club

Jake Johansson, City Manager, explained a change to the agreement (2 days vs. 1 day). The change was made after the agenda packet was published.

John Carlton, Friends Carving Club, provided details of their event on January 13, 2019. They are hoping the show will be successful enough for a two day show next time. Mayor Burnette asked for pictures from the show to add to the City's website.

Motion to approve was made by Councilman Drew Bastian and Seconded by Vice Mayor Chase Tramont. Motion carried unanimously by voice vote.

Item #13 - Approval of Lease with U.S. Representative Michael Waltz

Mayor Burnette is happy the U.S. Representative will continue to be located in City Hall.

Motion to approve was made by Councilman Drew Bastian and Seconded

by Vice Mayor Chase Tramont. Motion
carried unanimously by voice vote.

CITIZEN PARTICIPATION (Agenda)

15. Request by Tarik Dalaq from Door Master DBA Overhead Doors of America to waive or reduce a \$500 work without permit fee.

Tarik Dalaq did not appear. Mr. Johansson provided details of his history of no fines in the past.

Motion to deny the request was made by
Vice Mayor Chase Tramont and
Seconded by Councilman Drew Bastian.
Motion carried unanimously by roll call
vote.

CITIZEN PARTICIPATION (Non-Agenda – 15 minutes)

There were none.

COUNCIL COMMENTS

16. Comments/Concerns from Council Members
a. Short Term Rental Resolution Discussion

Mayor Burnette asked Council to discuss whether or not they want to issue a Resolution similar to Ponce Inlet. Council does not believe this is a one-size fits all issue and would support the issuance of a similar resolution.

Mayor and Council Members expressed their sadness for Councilman Bob Ford's passing and discussed his contributions to the community and them personally.

Councilman Scott Stiltner advised Council they need to appoint someone to serve on the Bicycle/Pedestrian Advisory Committee. Mr. Johansson was also tasked by the TPO with finding a citizen to serve and will share the names with Councilman Scott Stiltner for Council approval.

Councilman Scott Stiltner offered to fill the Fire Pension Plan in Councilman Ford's place, if Council desires.

SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

17. Dr. Ed Prevatte - Halifax Health

Dr. Ed Prevatte of Halifax Health spoke regarding the opioid epidemic.

18. Second Reading - Ordinance No. 2018-35 - Annexation/All Aboard
Storage - Taylor Road

Mayor Burnette read Ordinance No. 2018-35.

ORDINANCE NO. 2018-35

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ANNEXING THE FOLLOWING PARCELS: 6224-00-00-0051 AND 6224-00-00-0080, MADE UP OF APPROXIMATELY ±3.8 ACRES OF PROPERTY ALONG WITH THE ADJACENT TAYLOR ROAD RIGHT-OF-WAY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2018-35 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

19. Second Reading – Ordinance No. 2018-36 - 2018 Comprehensive Plan
Capital Improvements Element (CIE) Annual Update (Case No. 18-
27500001)

Mayor Burnette read Ordinance No. 2018-36.

ORDINANCE NO. 2018-36

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE COMPREHENSIVE PLAN CAPITAL IMPROVEMENT ELEMENT; PROVIDING FOR THE FY2019-2024 FIVE YEAR SCHEDULE OF CAPITAL IMPROVEMENTS AND SUPPORTING DATA; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2018-36 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

20. First Reading – Ordinance 2019-1 - LDC Text Amendment/Chapter 15 - Residential Subdivision Signage (Case No. 18-25000008)

Mayor Burnette read Ordinance No. 2019-1.

ORDINANCE NO. 2019-1

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE CHAPTER 15 RELATING TO RESIDENTIAL SUBDIVISION SIGNAGE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2019-1 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

21. First Reading - Ordinance 2019-2 - LDC Amendment/Chapter 13 - Landscaping Requirements for Residential Lots (Case No. 18-25000009)

Mayor Burnette read Ordinance No. 2019-2.

ORDINANCE NO. 2019-2

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE CHAPTERS 13 RELATING TO LANDSCAPING REQUIREMENTS FOR RESIDENTIAL LOTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2019-2 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian.

Tim Burman, Community Development Director, explained the need for the ordinance change and provided details of what is being changed. This item was discussed at the Environmental Advisory Board. Staff recommends approval. Mr. Burman answered questions from Council regarding the changes.

Motion carried unanimously by roll call vote.

22. First Reading - Ordinance No. 2019-3 - Amending Section 2-275 of the Code of Ordinances relating to Local Preference

Mayor Burnette read Ordinance No. 2019-3.

ORDINANCE NO. 2019-3

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE VI, DIVISION 2, SECTION 2-275 TO ESTABLISH A NEW SUBSECTION REGARDING APPLICATION OF THE LOCAL PURCHASING PREFERENCE; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2019-3 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

23. First Reading - Ordinance No. 2019-4 - Amending the Code of Ordinances relating to the Golf Course Advisory Board

Mayor Burnette read Ordinance No. 2019-4.

ORDINANCE NO. 2019-4

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING SECTION 50-108, CODE OF ORDINANCES, TO REDUCE THE NUMBER OF MEMBERS ON THE GOLF ADVISORY BOARD AND REMOVE THE CITY COUNCILMEMBER POSITION ON THE GOLF ADVISORY BOARD; AMENDING SECTION 50-109, CODE OF ORDINANCES, TO PROVIDE FOR INITIAL APPOINTMENT TERMS; AMENDING SECTION 50-111, CODE OF ORDINANCES, TO REDUCE THE NUMBER OF BOARD MEMBERS NECESSARY TO FORM A QUORUM; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2019-4 was made by Vice Mayor Chase Tramont and Seconded by Councilman

Drew Bastian. Motion carried
unanimously by roll call vote.

COMMENTS

24. City Attorney Comments

Ms. Roberts remembered Councilman Bob Ford.

25. City Manager Comments

Mr. Johansson also remembered Councilman Bob Ford. He provided details of his discussions with the Spruce Creek Softball coach, principal, and athletic director regarding the waiver requests. They have all agreed all requests will go through the principal and athletic director. He asked Council for consensus to bring the request back under consent. He congratulated Ricky Francois on his nomination for Firefighter of the Year. Mr. Johansson also announced Taylor Road is open.

COUNCIL COMMITTEE REPORTS

26. City Council Committee Reports

- a. River to Sea TPO - Councilman Stiltner hasn't attended a meeting yet.
- b. General Employees' Pension Plan - Councilman Stiltner has nothing to report.
- c. Roundtable of Elected Officials – Mayor Burnette advised they discussed the half cent sales tax vote going to the citizens of the county.

ADJOURNMENT - 8:09 p.m.

Attest:

Mayor Donald O. Burnette

Robin Fenwick, CMC
City Clerk



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: Yes

SUBJECT: (B7a) Approval of Change Order No 1 to Task Authorization No 10 under the Master Contract for Engineering Services with Kimley-Horn and Associates, Inc as it relates to Engineering Services

DEPARTMENT: Public Utilities

GOAL: N/A

RECOMMENDED MOTION:

Move to approve Change Order No 1 to Task Authorization No 10 with Kimley Horn for services relating to as-requested engineering services, for an increase of \$50,000; revised task authorization amount of \$75,000.

SUMMARY: The Public Works & Utilities Department has recently lost 2 key personnel within the Engineering Division. On November 29, 2018, the City Manager approved Task Authorization No 10 to Kimley-Horn and Associates for providing engineering assistance with development review, capital project management, and other daily responsibilities until replacement personnel are hired.

Change Order No 1 to Task Authorization No 10 will be issued for an amount not to exceed \$50,000 and a revised total task agreement amount of \$75,000.

Project No.: none Funding Account No.: 401 0900 536 3113

Presenter: Lynn Stevens

ATTACHMENTS:

1.	Change Order No 1 to Task Authorization No 10	Change Order No 1 to Task Authorization No 10.pdf
2.	Department Justification Memo - CO No 1 to Task No 10 to Kimley Horn Task Authz 10	Department Justification Memo - CO No 1 to Task No 10 to Kimley Horn Task Authz 10.pdf
3.	Kimley Horn and Associates Inc Task Auth No 10	Kimley Horn and Associates Inc Task Auth No 10.pdf

Julia Wiggins
Rick Wilson

Created/Initiated - 01/07/2019
Approved - 01/07/2019

Lynn Stevens	Approved - 01/07/2019
Lori Bockelman	Approved - 01/10/2019
Margaret Roberts	Approved - 01/14/2019
Jake Johansson	Approved - 01/15/2019
Robin Fenwick	Final Approval - 01/15/2019

CHANGE ORDER NO. 1
To Task Authorization No 10, dated November 29, 2018
Master Contract for Engineering Services, dated March 17, 2015
Kimley-Horn and Associates, Inc., Contractor

Project: Task Authorization No 10 – As-needed Engineering Services

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$25,000	Original Contract Times Substantial Completion: days Final Completion 306 days (September 30, 2019)
Net changes from previous Change Order No ____: \$ 0	Changes in contract time from previous Change Orders: 0 days
Contract Price prior to this Change Order: \$25,000	Contract Completion Date prior to this Change Order: Final Completion: September 30, 2019
Net Increase (decrease) of this Change Order No 1 : \$ 50,000	Changes in contract time requested this Change Order No. 1: (Requires Council Approval) 0 days
Contract Price with all approved Change Orders: \$75,000	Contract Times with all approved Change Orders: Final Completion: September 30, 2019

CHANGES ORDERED:

- I. GENERAL: This Change Order is necessary to cover the work to be performed under the Task Authorization No 10 entered into by and between parties on November 29, 2018, under the Master Contract for Engineering Services dated March 17, 2015 between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.
- II. REQUIRED CHANGES: To provide additional spending authorization for the as-needed Engineering services for the Engineering Division of the Public Works & Utilities Department. No goods shall be delivered nor services commenced hereunder until this Change Order has been fully executed by all parties.
- III. JUSTIFICATION: Change Order No 1 to Task Authorization No 10 is required to provide additional spending authorization for services relating to as-needed Engineering assistance within the Public Works & Utilities Administration Division.
- IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of Task Authorization No 10 under the Master Contract for Engineering Services subject to a limit up to but not to exceed **\$50,000**; for a revised task authorization amount not to exceed **\$75,000**. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.

Acknowledgments:

The aforementioned change, and work affected thereby, is subject to all provisions of the original contract not specifically changed by this Change Order;

It is expressly understood and agreed that the approval of the Change Order shall have no effect on the original contract other than matters expressly provided herein;

The prices quoted are fair and reasonable and in proper ratio to the cost of the original work contracted for under competitive bidding; and,

The change in price and/or delivery date described is considered to be fair and reasonable and has been mutually agreed upon in full agreement and final settlement of all claims arising out of this modification including all claims for delays and disruptions resulting from, caused by, or incident to such modifications and change orders.

RECOMMENDED BY:
JULIA WIGGINS
Department Project Manager

ACCEPTED BY:
KIMLEY-HORN AND ASSOCIATES, INC.
Contractor

By: _____
Julia Wiggins, Business Manager

By: _____
Lewis Bryant, Prj. Manager, Associate

Date Signed: _____

Date Signed: _____

RECOMMENDED BY:
N/A
City's Representative

RECOMMENDED BY:
N/A
Engineer of Record

By: _____
Printed Name
Title: _____

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Lynn Stevens, Public Works & Utilities
Director

Date Signed: _____

City Manager

By: _____
M. H. Johansson, City Manager

Date Signed: _____

If Council approval is required:

Affirmed:

By: _____
Donald O. Burnett, Mayor

Robin L. Fenwick, CMC, City Clerk

Date Signed: _____

Date Signed: _____



City of Port Orange Public Works & Utilities Department

TO: M.H. Johansson, City Manager

THRU: Lynn Stevens, Public Works & Utilities Director

FROM: Julia Wiggins, Business Manager

DATE: January 7, 2019

SUBJECT: Change Order No 1 to Kimley-Horn and Associates, Inc. Task Authorization No 10

REQUEST:

The Public Works & Utilities Department is requesting City Council to approve Change Order No 1 to Task Authorization No 10 with Kimley Horn Inc. for an increase of \$50,000 for services relating to as-requested engineering services and a total revised task authorization amount of \$75,000.

PURPOSE:

The purpose of this request is to maintain workload during vacancies of two key positions in the Engineering Division of Public Works & Utilities.

CONSIDERATION:

Two key personnel recently resigned in the Public Works & Utilities Department Engineering Division. The Engineering Manager was vacated by Kenny Ho in August 2018. The position was advertised immediately. In September 2018, the civil engineer in the Utilities Department accepted a position at another utility. These two positions are critical in the review process for developments, construction, and other activities affecting the utilities in the city.

On November 29, 2018, the City Manager approved Task Authorization No 10 to Kimley-Horn and Associates for providing daily engineering assistance with development review, capital project management, or other daily responsibilities. That task authorization was for a total of \$25,000. It was anticipated at the time of the task authorization that one of the two positions would be filled. Unfortunately, the first advertisement period did not result in hiring a new manager and a second advertisement was initiated. On the second advertisement, a candidate was unanimously selected and accepted the Engineering Manager position. He is scheduled to begin work the third week of January 2019.

Change Order No 1 to Task Authorization No 10 will be issued for an amount not to exceed \$50,000 and a revised total task agreement amount of \$75,000 to continue daily engineering services until the Engineering Manager is on board and brought up to date on activities

FUNDING:

Public Utilities Administration – Professional Services
401 0900 536 3113
Budget: \$130,000
Actual: \$50,000

RECOMMENDATION:

Public Works & Utilities Department recommends City Council to approve Change Order No 1 to Task Authorization No 10 with Kimley Horn Inc. for an increase of \$50,000 for services relating to as-requested engineering services and a total revised task authorization amount of \$75,000.

ANTICIPATED SCHEDULE:

- a.) Council Approval – January 22, 2019
- b.) Executed Change Order – January 30, 2019

ATTACHMENTS:

- a.) Draft Change Order Documents
- b.) Executed Task No 10 documents

TASK AUTHORIZATION NO. 10
Master Contract for Engineering Services dated March 17, 2015
Between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **Kimley-Horn and Associates, Inc.**, a North Carolina corporation registered to transact business in Florida, whose principal address is 3001 Weston Parkway, Cary, North Carolina 27513 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated March 17, 2017, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

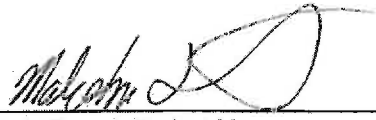
1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. The Public Works & Utilities Director, Lynn Stevens, shall perform contract administration for this Task Authorization No 10 and can be reached at (386) 506-5750.
3. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to the Fiscal Year FY18/19 As-Requested Engineering Services; as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization No 10 Exhibit "A."
4. Engineer shall complete the services to be provided herein by **September 30, 2019**.
5. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Task Authorization No 10, Exhibit "A" attached hereto and made a part hereof for all purposes, subject to a limit up to but not to exceed **Twenty-Five Thousand Dollars and on cents (\$25,000)**. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
6. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.

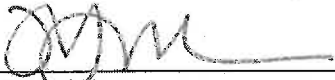
IN WITNESS WHEREOF, the Parties have made and executed this Task Authorization for the purposes herein expressed on the dates set forth below.

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.


Printed Name: Ashley Per-Due

By: 
Lewis Bryant, Project Manager


Printed Name: NICHOLAS MORA

Date: 11-28-2018

Witnesses:

CITY OF PORT ORANGE

Cynthia K Rivera
Printed Name: Cynthia K. Rivera

By: M.H. Johansson
M.H. Johansson, City Manager

Savannah Sharp
Printed Name: Savannah Sharp

Date: 11/29/18

Witnesses:

ATTEST:

Savannah Sharp
Printed Name: Savannah Sharp

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

D. Massey
Printed Name: Deanna Massey

Date: 11/29/18

[CA 4621]

TASK AUTHORIZATION NO 10

EXHIBIT "A"

KIMLEY-HORN AND ASSOCIATES, INC.

FISCAL YEAR 2018/2019 AS-REQUESTED ENGINEERING
SERVICES



Fiscal Year 2018/2019 As-Requested Engineering Services

Describing a specific agreement between Kimley-Horn and Associates, Inc. (Kimley-Horn), and The City of Port Orange (the Client or the City) in accordance with the terms of the Master Agreement for Continuing Professional Services dated March 17, 2015, which is incorporated herein by reference.

General Category of Services:

The City has recently lost key personnel and has requested assistance with the completion of their day to day responsibilities. Kimley-Horn will provide labor on an hourly basis to assist the Director with tasks such as development review, capital project management, or other daily responsibilities. The following is our understanding of the scope of work that has been requested by City staff.

Specific Scope of Basic Services:

Kimley-Horn will provide qualified staff on an hourly basis to assist the City as needed. Staffing requirements are anticipated to be between 24 and 40 hours per week. Staff will be allocated and directed by a senior Kimley-Horn engineer to meet the needs of the City with the intent of providing continuity of staff to represent the City's interests. It is our understanding that typical tasks will include development review and capital projects management, but may encompass other tasks as directed by the Director of Public Works and Utilities. Work shall generally be completed at the City's offices however, at times the work may be allocated to different staff in Kimley-Horn's office to provide the City with the most efficient, cost effective service possible.

Method of Compensation:

Kimley-Horn will perform these services for the total hourly fee based on the attached rate schedule not to exceed \$25,000.

Other Special Terms:

Services provided under this agreement will be invoiced on a monthly basis. All invoices will include a description of services provided.

Attachments:

Table A: Cost Estimate for Services

ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY: 
Malcolm L. Bryant, PE

TITLE: _____

TITLE: Vice President

DATE: _____

DATE: 10/22/18



**KIMLEY-HORN AND ASSOCIATES, INC.
PORT ORANGE ENGINEERING SERVICES
2018/2019 HOURLY RATE SCHEDULE**

<u>Category</u>	<u>Hourly Rate</u>
Clerical	\$60.00 - \$90.00
Technical	\$65.00 - \$160.00
Professional	\$90.00 - \$165.00
Senior Professional	\$165.00 - \$230.00
Principal	\$230.00 - \$265.00



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: Yes

SUBJECT: (B7b) Approval of Change Order No 1 to the EJCDC Agreement to Petticoat-Schmitt Civil Contractors, Inc. as it relates to ITB17-41 WWTP Influent Bypass.

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Change Order No. 1 to Petticoat-Schmitt Civil Contractors, Inc. for work under Bid 17-41 WWTP Influent Structure Bypass for an additional 46 days; authorize the Mayor and City Clerk to execute all required documents.

SUMMARY: The influent headworks structure at the City's wastewater treatment plant processes approximately 6 million gallons of raw sewage every day and it has a maximum capacity of 12 million gallons per day. Currently there is no back-up system for this critical structure. This project is to construct a permanent emergency bypass system for the influent headworks structure and to replace the existing influent headworks meter.

The project was bid and awarded to Petticoat-Schmitt Civil Contractors Inc. on May 23, 2018. The effective date of the Notice to Proceed was August 1, 2018. The valves for the project were ordered in June. In September, the manufacturer provided a ship date of December 11. The contractor and engineer researched an alternative supplier but due to the required material of construction and size of the valves, Dezurik, was the only acceptable manufacturer. The valves did not arrive until late December. No work could be performed until the valves arrived at the job site.

This request is to provide the contractor an additional 46 days to complete the job due to the unforeseen delay in delivery of the valves. There is no monetary impact to the delay.

Project No.: Funding Account No.:

Presenter: Lynn Stevens

ATTACHMENTS:

1.	Petticoat-Schmitt Change Order No 1	Petticoat-Schmitt Change Order No 1.pdf
2.	Department Justification Memo - CO no 1 Petticoat-Schmitt	Department Justification Memo - CO no 1 Petticoat-Schmitt.pdf
3.	DeZurik ship date letter	DeZurik ship date letter.pdf

4.	EJCDC Agreement	EJCDC Agreement.pdf
5.	NTP	NTP.pdf
6.	COI	COI.pdf

Julia Wiggins	Created/Initiated - 01/08/2019
Richard Colby	Approved - 01/08/2019
Rick Wilson	Approved - 01/08/2019
Lynn Stevens	Approved - 01/08/2019
Margaret Roberts	Approved - 01/10/2019
Jake Johansson	Approved - 01/11/2019
Robin Fenwick	Final Approval - 01/11/2019

CHANGE ORDER NO. 1
To EJCDC Contract, dated May 23, 2018
Petticoat-Schmitt Civil Contractors, Inc., Contractor

Project: ITB 17-41 WWTP Influent Structure Bypass

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$433,600.00	Original Contract Times Substantial Completion: 150 days Final Completion 180 days (January 27, 2019)
Net changes from previous Change Orders: \$ 0.00	Changes in contract time from previous Change Orders: 0 days
Contract Price prior to this Change Order: \$433,600.00	Contract Completion Date prior to this Change Order: Substantial Completion: December 28, 2018 Final Completion: January 27, 2018
Net Increase (decrease) of this Change Order: \$ 0.00	Changes in contract time requested this Change Order No. 1: (Requires Council Approval) 46 days
Contract Price with all approved Change Orders: \$433,600.00	Contract Times with all approved Change Orders: Final Completion: March 14, 2019

CHANGES ORDERED:

- I. **GENERAL:** This Change Order is necessary to cover the work to be performed under the EJCDC Agreement entered into by and between parties on May 23, 2018.
- II. **REQUIRED CHANGES:** To allow the Contractor an additional 46 day to complete the project. No goods or shall be delivered nor services commenced hereunder until this Change Order has been fully executed by all parties.
- III. **JUSTIFICATION:** Change Order No 1 to EJCDC Agreement dated May 23, 2018 is required to provide the Contractor with an additional 46 days to complete the project, due to an unforeseen delay in delivery of valves.
- IV. **PAYMENT:** There is no monetary impact for this Change Order No. 1. The original project amount of \$433,600.00 shall remain.
- V. This Change Order may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Change Order shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Change Order.

Acknowledgments:

The aforementioned change, and work affected thereby, is subject to all provisions of the original contract not specifically changed by this Change Order;

It is expressly understood and agreed that the approval of the Change Order shall have no effect on the original contract other than matters expressly provided herein;

The prices quoted are fair and reasonable and in proper ratio to the cost of the original work contracted for under competitive bidding; and,

The change in price and/or delivery date described is considered to be fair and reasonable and has been mutually agreed upon in full agreement and final settlement of all claims arising out of this modification including all claims for delays and disruptions resulting from, caused by, or incident to such modifications and change orders.

RECOMMENDED BY:
JULIA WIGGINS
Department Project Manager

ACCEPTED BY:
PETTICOAT-SCHMITT CIVIL CONTRACTORS, INC.
Contractor

By: _____
Julia Wiggins, Business Manager

By: _____
Ryan Schmitt, President

Date Signed: _____

Date Signed: _____

RECOMMENDED BY:
N/A
City's Representative

RECOMMENDED BY:
N/A
Engineer of Record

By: _____
Printed Name
Title: _____

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Lynn Stevens, Public Works & Utilities
Director

Date Signed: _____

City Manager

By: _____
M. H. Johansson, City Manager

Date Signed: _____

If Council approval is required:

Affirmed:

By: _____ N/A
Donald O. Burnett, Mayor

Robin L. Fenwick, CMC, City Clerk

Date Signed: _____

Date Signed: _____



City of Port Orange Public Utilities Department

TO: M. H. Johansson, City Manager

THRU: Lynn Stevens, Public Utilities Director

FROM: Julia Wiggins, Business Manager

DATE: January 7, 2019

SUBJECT: Change Order No. 1 – Petticoat-Schmitt Civil Contractors, Inc.
Bid #17-41 – WWTP Influent Structure Bypass

REQUEST:

The Public Utilities Department requests City Council approve Change Order No. 1 to Petticoat-Schmitt Civil Contractors, Inc. for work under Bid 17-41 WWTP Influent Structure Bypass for an additional 46 days.

PURPOSE:

The delivery of critical components required for the completion of the job took longer than anticipated and has caused a delay in the completion of the construction as outlined in Bid 17-41.

CONSIDERATION:

The influent headworks structure at the City's wastewater treatment plant processes approximately 6 million gallons of raw sewage every day and it has a maximum capacity of 12 million gallons per day. The influent headworks structure is at the beginning phase of the treatment process. Currently there is no back-up system for this critical structure. Maintenance and equipment replacement is a routine part of maintaining the operations of the plant in accordance with state and federal permits. This project is to construct a permanent emergency bypass system for the influent headworks structure and to replace the existing influent headworks meter.

The project was bid and awarded to Petticoat-Schmitt Civil Contractors Inc. on May 23, 2018. The effective date of the Notice to Proceed was August 1, 2018. The contract was for 150 days to substantial completion and 180 days to final completion (January 28, 2019).

The bid included the supply and installation of (2) 30" and (1) 42" valves. The valves were ordered in June. In September, the manufacturer provided a ship date of

December 11. The contractor and engineer researched an alternative supplier but due to the required material of construction and size of the valves, Dezurik, was the only acceptable manufacturer. The valves did not arrive until late December. No work could be performed until the valves arrived at the job site.

This request is to provide the contractor an additional 46 days to complete the job due to the unforeseen delay in delivery of the valves. There is no monetary impact to the delay.

RECOMMENDATION:

The Public Utilities Department recommends City Council approve Change Order No. 1 to Petticoat-Schmitt Civil Contractors, Inc. for work under Bid 17-41 WWTP Influent Structure Bypass for an additional 46 days.

ANTICIPATED SCHEDULE:

Final construction completion by March 15, 2019.

ATTACHMENTS:

1. Letter from valve manufacturer
2. Copy of Notice to Proceed



250 Riverside Ave N 320-259-2000 p
Sartell MN 56377 USA 320-259-2227 f

Order # : 621927

Customer Acknowledgement (This is Not a Bill)

SOLD TO ADDRESS
MCDADE WATERWORKS INC
PO BOX 16039
TAMPA, FL
33687-6039

DELIVERY ADDRESS
PETTICOAT SCHMITT
@ CITY OF PORT ORANGE WWTP
817 OAK STREET
PORT ORANGE, FL
32127

Date : 09-24-18
Customer : 109698 Tax No Tax USA
Customer P.O.: 74406
Carrier : DeZurik Choice
Project Name :

Order Date : 06-05-2018
Sales Order : 621927 Work Order : 472569
Rep Contact : Lyndsey Anderson
Ship Point : Sartell, MN
Page : 1

Miscellaneous Text : IF PRODUCTS LISTED BELOW REQUIRE MATERIAL SAFETY
DATA SHEETS IN ACCORDANCE WITH OSHA (1910.1200
(B) (5) IV, (C)) THEY WILL ACCOMPANY PRODUCT
SHIPMENT.

*
* THIS IS AN ORIGINAL RELEASE FROM *
* HOLD FOR APPROVAL TO PRODUCTION *
*

* HFA DRAWING ORDER NO. 897345 *

Submittal Text : WO 897345
SUBMIT 1, PACKAGE NUMBER 4 - DRAWINGS AND I.M.'S
+, ATTENTION RICH GEIBERT

Bill of Lading Text : CONTACT: JOSE/PHONE:850-661-8439
NOTIFY PRIOR TO DELIVERY
NO FRIDAY DELIVERIES

Change Order Text : 6/6/18- removed project #622377 from line 1 KMH
CHG 1 7/16/18
NOTE ORDER RELEASED TO PRODUCTION

DEZ	CUST						ACKNOWLEDGED
ITEM	ITEM	ITEM	REV	PROJECT	FF	QUANTITY	SHIP DATE
1		9686213		131		1.00 ea	12-11-2018
		DeZURIK-KGC,42,ES,F1,S2,SMP,S2-NBR*X*D01188					

-MNB-HD30-S1

Change Order Text : Acknowledged Date Changed - Old Date -> - -

THIS ORDER ACKNOWLEDGEMENT INCLUDES THE TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF.



250 Riverside Ave N 320-259-2000 p
Sartell MN 56377 USA 320-259-2227 f

Order # : 621927

Customer Acknowledgement (This is Not a Bill)

Date : 09-24-18
Customer : 109698 Tax No Tax USA
Customer P.O. : 74406
Carrier : DeZurik Choice
Project Name :

Order Date : 06-05-2018
Sales Order : 621927 Work Order : 472569
Rep Contact : Lyndsey Anderson
Ship Point : Sartell, MN
Page : 2

DEZ	CUST							ACKNOWLEDGED
ITEM	ITEM	ITEM	REV	PROJECT	FF	QUANTITY	UNIT	SHIP DATE
2		9672491	001	131		2.00	ea	12-11-2018
		DeZURIK-KGC,30,ES,F1,S2,SMP,S2-NBR*MNB-HD30-S1						

Change Order Text : Acknowledged Date Changed - Old Date -> - -

Delivery : Inland Freight Prepaid, Point of Manufacture
Payment : Net 30 Days

THIS ORDER ACKNOWLEDGEMENT INCLUDES THE TERMS AND CONDITIONS ON THE REVERSE SIDE HEREOF.

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, A Florida municipal Corporation ("Owner") and Petticoat-Schmitt Civil Contractors, Inc., Jacksonville, Florida ("Contractor").

The Effective Date of this Agreement shall be May 23, 2018. (If no date is specified then the Effective Date shall be the date on which the Agreement is signed by the last of the two parties.)

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction of the temporary bypass pumping, new valves, piping, and appurtenances for a permanent influent structure bypass.

ARTICLE 2 – THE PROJECT

- 2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

ITB 17-41 WWTP Influent Structure Bypass

ARTICLE 3 – ENGINEER

- 3.01 The Project has been designed by Brad T. Blais, P.E. 47130, Mead & Hunt Inc. (Engineer), which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

Cont. # CA 6478

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within 150 days after the date when the Contract Times commence to run as provided in Paragraph 2.03 of the General Conditions and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 30 days after the date when the Contract Times commence to run.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$2,000.00 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$2,000.00 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.
- B. Owner may withhold Contractor's final payment in order to offset the liquidated damages that Contractor owes Owner. Owner may also withhold progress payments if Owner reasonably believes that Contractor's final payment will not sufficiently cover the liquidated damages that Contractor owes Owner.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

- A. For all Work other than Unit Price Work, a lump sum of: \$ 433,600.00

Any allowances specifically identified and called for in the Contract Documents are included in the above price in accordance with Paragraph 11.02 of the General Conditions.

- B. For all Unit Price Work in accordance with Paragraph 11.03 of the General Conditions, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item:

UNIT PRICE WORK

<u>Item No.</u>	<u>Description</u>	<u>Unit</u>	<u>Estimated Quantity</u>	<u>Bid Unit Price</u>	<u>Bid Price</u>
-----------------	--------------------	-------------	---------------------------	-----------------------	------------------

See attached 00310 Schedule of Unit Prices

Total of all Bid Prices (Unit Price Work)

\$433,600.00

The Bid Unit Prices set forth above are guaranteed prices. Although the Estimated Quantities are estimates and may increase or decrease based on determinations of Engineer, Contractor agrees and understands that the Bid Unit Prices shall remain the same irrespective of the quantities. Contractor understands that in agreeing to any Bid Unit Price it is agreeing to bear the risk associated with any material price increase or escalation. Owner agrees and understands that in agreeing to any Bid Unit Price it is agreeing to bear the risk associated with any material price decrease or reduction.

C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment not more than monthly in accordance with Article 14 of the General Conditions and Paragraph 6.02 below.

6.02 Progress Payments; Retainage

A. Progress payments shall be made on account of the Contract Price on the basis of Contractor's Applications for Payment during performance of the Work in accordance with Paragraph 14.02 of the General Conditions. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed). Progress payments will be made in an amount equal to the percentage of the work completed in accordance with the Schedule of Values, less the aggregate of payments previously made, less the retainage, and less such amounts as Engineer may determine Owner may withhold, including, but not limited to, liquidated damages.

B. Owner shall withhold 10 percent of each progress payment as retainage until 50 percent completion. After 50 percent completion, Owner shall reduce retainage to 5 percent of each progress payment. Fifty (50%) percent completion is the point in which Owner has expended 50 percent of the Contract Price, together with all increases in the Contract Price through allowable change orders. However, if Contractor elects to withhold more than 5 percent

retainage from a subcontractor(s), it may not request the release of such retained funds from Owner.

6.03 Final Payment

- A. Final Payment inclusive of retainage shall be made to Contractor in accordance with Paragraph 14.07 of the General Conditions.

ARTICLE 7 – INTEREST

- 7.01 All monies not paid in strict accordance with Florida Statute §218.735 shall bear interest as provided for therein.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Agreement and in determining the Contract Price, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data." Contractor's receipt and study of such reports shall not relieve it of visiting the Site and becoming familiar with and satisfied with the Site conditions that may affect cost, progress, and performance of the Work.
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

A. The Contract Documents consist of the following:

- 1. This Agreement (pages 1 to 9, inclusive).
- 2. Combination Payment and Performance Bond (pages 1 to 3, inclusive).
- 3. Other bonds (N/A).
- 4. General Conditions (pages 1 to 75, inclusive).
- 5. Supplementary Conditions (pages 1 to 14, inclusive).
- 6. Specifications as listed in the table of contents of the Project Manual.
- 7. Drawings consisting of 7 sheets with each sheet bearing the following general title: WWTP Influent Structure Bypass.
- 8. Addendum No. 1 (pages 1 to 4, inclusive).
- 9. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 73, inclusive).
 - b. Documentation submitted by Contractor prior to Notice of Award (N/A).
- 10. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed (pages 1 to 1 inclusive).

- b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions and parts shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 *Contractor's Certifications*

- A. Contractor certifies that in the event a Lien is recorded on the Project by any person or entity providing labor, services, or materials with respect to any portion of the Work, it will immediately transfer such lien to its payment bond or take other appropriate action to immediately remove the encumbrance.

10.06 *No-Damage-for-Delay*

Contractor shall not be entitled to any damages (including, without limitation, expenses, costs, fees, extended field overhead and general conditions, equipment costs, home/office overhead, lost productivity and inefficiency damages, additional payroll and labor costs, etc.) for any delay to its Work. Contractor's sole and exclusive remedy for a delay to its Work that is not caused by Contractor (or a person or entity performing a portion of Contractor's scope of Work) shall be an extension of time to substantially complete and finally complete the Project; provided, however, that Owner granting Contractor an extension of time is not a condition precedent to this no-damage-for-delay provision. Contractor shall also not be entitled to any damages for disruption or interference to its Work or for having to accelerate or incur additional labor or payroll costs in order to make up or overcome a delay to its Work so that it can maintain the dates for Substantial Completion and Final Completion. Contractor agrees that in determining and agreeing to the Contract Price it considered this no-damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

10.07 *No Intended Third-Party Beneficiaries*

- A. There are no intended third-party beneficiaries to the Contract.

10.08 *Additional Provisions*

- A. In the event of any conflict between the Agreement and the General Conditions, the terms of this Agreement shall govern.
- B. In the event of any conflict between the Agreement and Supplementary Conditions, the terms of this Agreement shall govern. However, if there is any conflict between the terms of the General Conditions and the terms of the Supplementary Conditions, the Supplementary Conditions shall govern provided that the indemnification set forth in Paragraph 6.20 of the General Conditions shall govern over any indemnification set forth in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

CITY OF PORT ORANGE

Owner


By: Donald O. Burnette

Title: Mayor

Date: 5/23/18


Attest: Robin L. Fenwick, CMC

Title: City Clerk

Address for giving notices:

1000 City Center Circle
Port Orange, Florida 32129

Petticoat-Schmitt Civil Contractors, Inc.

Contractor

By: _____

Ryan Schmitt

Title: President

Date: 04.20.2018

*(If Contractor is a corporation, partnership or
Joint venture, attach evidence of authority to
Sign.)*

Attest: _____

Title: Assistant Project Manager

Address for giving notices:

6380 Phillips Hwy.

Jacksonville, FL 32216

License No.: CGC057651/CUC057440

City of Port Orange Water Reclamation Facility
817 Oak Street, Port Orange, FL 32127

Full Parcel ID:
41-16-33-04-01-0341

Short Parcel ID:
6341-04-01-0341

Legal Description:
A portion of the Parcel ID listed above.

EXHIBIT "A"

RETURN RECORDED DOCUMENT TO:

City Clerk
1000 City Center Circle
Port Orange, Florida 32129-4144

FRONT PAGE FOR BOND REQUIRED BY SECTION 255.05, F.S.

PAYMENT AND PERFORMANCE BOND

(Public Works)

Notice and Time Limitations Must Be In Accordance
With Section 255.05(2), (8) and (10), Florida Statutes

BOND NO. 30026645

PRINCIPAL:

Developer or Contractor: Petticoat-Schmitt Civil Contractors, Inc.
Principal Business Address: 6380 Phillips Highway
Jacksonville, FL 32216
Contact Person: Ryan Schmitt, President
Phone Number: (904) 751-0888

SURETY:

Address: Western Surety Company
333 S. Wabash Ave
Chicago, IL 60604
Contact Person: William Hardaker
Phone Number: (904) 421-8600

OWNER:

City of Port Orange, Florida, a chartered municipal corporation
1000 City Center Circle
Port Orange, Florida 32129-4144
Contact Person: City Manager
Phone Number: (386) 506-5501

Amount: \$433,600.00

City Case/Project No. ITB 17-41

Description of Work: Construction of the temporary bypass pumping, new valves, piping, and appurtenances for a permanent influent structure bypass.

Project Location: 817 Oak Street, Port Orange, Volusia County, Florida

Legal Description: 817 Oak Street, Port Orange, Volusia County, Florida
Parcel ID#: 6341-04-01-0341
See Attached Exhibit "A"

Front Page

All other pages are subsequent to this page regardless of any numbers that may be printed thereon.

RETURN RECORDED DOCUMENT TO:

City Clerk
1000 City Center Circle
Port Orange, Florida 32129-4144

ITB 17-41 WWTP Influent Structure Bypass

Bond No. 30026645

**COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION**

per Section 255.05, Florida Statutes
Guaranty for Construction of Public Improvements

BY THIS BOND, We, Petticoat-Schmitt Civil Contractors, Inc. as Principal, and Western Surety Company, a corporation, as Surety, are bound to CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of FOUR HUNDRED THIRTY-THREE THOUSAND SIX HUNDRED AND 00/100 DOLLARS (\$433,600.00), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain EJCDC Agreement having an effective date of May 23, 2018, entered into by and between the Principal and the City, for Influent Structure Bypass, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and
3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

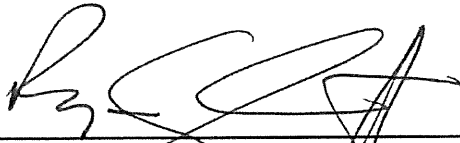
Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.02(2), (8) and (10), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

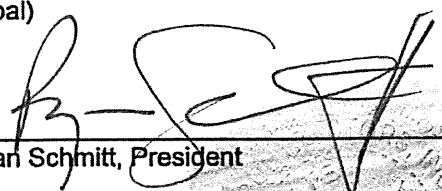
IN WITNESS WHEREOF, this performance and payment bond is executed in duplicate originals, each of which shall be deemed an original, this 23rd, day of May, 2018.

Attest:

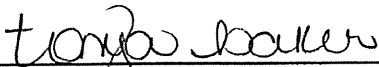
Petticoat-Schmitt Civil Contractors, Inc.
(Principal)



(As to Corporate Principal) Secretary

By: 

Ryan Schmitt, President

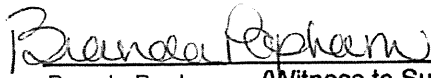


(Witness to Principal)

(Corporate Seal)

Western Surety Company

(Surety)



Branda Popham (Witness to Surety)

By: 

Name: Edra Ann Waller
(Attorney-in-Fact)

(Corporate Seal)

NOTE: Date of BOND must not be prior to date of Contract. If Developer/Principal is Partnership, all partners should execute BOND. All BONDS signed by an agent must be accompanied by a certified copy of the authority to act.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

Western Surety Company

POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

Teresita A Love, William R Hardaker, Michael David Sihle, Edra Ann Waller, Individually

of Jacksonville, FL, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

- In Unlimited Amounts -

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Vice President and its corporate seal to be hereto affixed on this 5th day of April, 2017.

WESTERN SURETY COMPANY



Paul T. Bruflat
Paul T. Bruflat, Vice President

State of South Dakota }
County of Minnehaha } ss

On this 5th day of April, 2017, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

June 23, 2021



J. Mohr

J. Mohr, Notary Public

CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 23rd day of May, 2018.



WESTERN SURETY COMPANY

L. Nelson

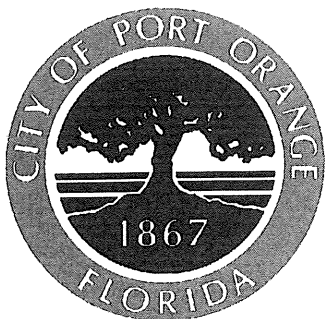
L. Nelson, Assistant Secretary

Authorizing By-Law

ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.



CITY OF PORT ORANGE

1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE (386) 506-5500
FAX (386) 756-5699

Notice to Proceed

June 21, 2018

Ryan M. Schmitt, President
Petticoat-Schmitt Civil Contractors, Inc.
6380 Philips Hwy.
Jacksonville, FL 32216

**Notice to proceed on: WWTP Influent Structure Bypass
ITB # 17-41**

You are hereby notified that the Contract Time under the above contract will commence to run on August 01, 2018. On this date, you are to start performing the work and your other obligations under WWTP Influent Structure ByPass ITB # 17-41. Based on the Contract Time stated in the Agreement, the final completion date is January 27, 2019.

Please acknowledge receipt of this notice by signing below. Please send a copy via email with the original to follow via US Mail. If there are any questions, please contact me.

City's Representative:

Kenny Ho, P.E.
Utilities Engineering and Construction Manager
Tel: 386.506.5754

JUNE 22, 2018

Acknowledgement

Receipt of the above "NOTICE TO PROCEED" is hereby acknowledge by

Petticoat-Schmitt Civil Contractors

(Firm's Name)

on this 27th day of June, 2018

By: Lauren Bedford, Title: Assistant Project Manager

RECEIVED

RECEIVED

JUL 03 2018

www.port-orange.org

CITY OF PORT ORANGE
PUBLIC UTILITIES

CITY OF PORT ORANGE
PUBLIC UTILITIES



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/18/2018

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 have ADDITIONAL INSURED provisions or 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
GHG Insurance
1000 Riverside Ave Suite 500
Jacksonville FL 32204

CONTACT NAME: Edra Waller
PHONE (A/C, No. Ext): 904-421-8612 FAX (A/C, No): 904-421-8601
E-MAIL: ewaller@ghgins.com
ADDRESS:

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Lloyds of London

15792

INSURER B: Travelers Indem Co. of America

25666

INSURER C: Travelers Property & Casualty Co. of America

36161

INSURER D:

INSURER E:

INSURER F:

INSURED
PETTI-5
Petticoat-Schmitt Civil Contractors, Inc.
6380 Phillips Hwy
Jacksonville FL 32216

COVERAGES

CERTIFICATE NUMBER: 825211819

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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:	Y	Y	CO7H048539	11/12/2017	11/12/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
C	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☒ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ NON-OWNED AUTOS ONLY	Y	Y	8106H44681A	11/12/2017	11/12/2018	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
C	☒ UMBRELLA LIAB ☒ EXCESS LIAB ☐ DED ☒ RETENTION \$0 ☒ OCCUR ☐ CLAIMS-MADE	Y	Y	CUP7H048539	11/12/2017	11/12/2018	EACH OCCURRENCE \$5,000,000 AGGREGATE \$5,000,000 \$ PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				
A	Contractors Pollution Liability Occurrence Coverage Form	Y	Y	B0621PPETT000518	1/12/2018	1/12/2019	PER CLAIM 1,000,000 AGGREGATE 3,000,000 PER CLAIM DEDUCTIBLE 25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Contractors Pollution Liability and Professional Liability Share Coverage Limits
ITB #17-41WWTP Influent Structure Bypass

As Regards to General Liability and when required by written contract The City of PORT ORANGE, elected officials and employees are included as Additional Insured - Owners, Lessees or Contractors per endorsement CG20100413 and Additional Insured - Owners, Lessees or Contractors - Completed Operations per endorsement CG20370413. The coverage provided the additional insured is primary and non-contributory per endorsement CGD604. When required by written contract The City of PORT ORANGE, elected officials and employees are included as Designated Insured under the Automobile Liability per endorsement CAT353. When required by written contract Waiver of Subrogation included for additional insureds per endorsements CGD316 and CAT353. When required by written contract The City of PORT ORANGE, elected officials and employees are included as additional insured under the Contractors Pollution Liability and See Attached...

CERTIFICATE HOLDER

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

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.



PETTIC

SBRUNSON

DATE (MM/DD/YYYY)
05/03/2018

CERTIFICATE OF LIABILITY INSURANCE

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 UNDERLYING THIS CERTIFICATE OF INSURANCE. THIS CERTIFICATE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER
W. Powell & Company
1. Newnan Street
Jacksonville, FL 32202

CONTACT NAME: Susan Brunson, CIC, CLCS, ACSR
PHONE (A/C, No, Ext): (904) 353-3181 FAX (A/C, No): (904) 353-5722
E-MAIL ADDRESS: SBRunson@cwpowellins.com

INSURER(S) AFFORDING COVERAGE
INSURER A: Bridgefield Casualty Ins Co NAIC # 10335
INSURER B:
INSURER C:
INSURER D:
INSURER E:
INSURER F:

PRODUCER

Petticoat-Schmitt Civil Contractors, Inc.
6380 Philips Highway
Jacksonville, FL 32216

COVERAGE

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, CONDITIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$
CLAIMS-MADE ☐ OCCUR ☐						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
						GENERAL AGGREGATE \$
						PRODUCTS - COMP/OP AGG \$
GEN'L AGGREGATE LIMIT APPLIES PER:						\$
POLICY ☐ PRO-JECT ☐ LOC ☐						
OTHER:						
AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
ANY AUTO OWNED AUTOS ONLY ☐						BODILY INJURY (Per person) \$
HIRED AUTOS ONLY ☐						BODILY INJURY (Per accident) \$
						PROPERTY DAMAGE (Per accident) \$
						\$
UMBRELLA LIAB ☐						EACH OCCURRENCE \$
EXCESS LIAB ☐						AGGREGATE \$
DED ☐ RETENTION \$ ☐						\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER STATUTE ☒ OTH-ER ☐
ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N ☐	N/A ☐	X 0196-38457	02/01/2018	02/01/2019	E.L. EACH ACCIDENT \$ 1,000,000
If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
						E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
17-41 WWTP Influent Structure Bypass

Waiver of Subrogation applies per the attached endorsement.

Day Notice of Cancellation Applies, Except 10 Days Notice for Non Payment

CERTIFICATE HOLDER

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

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: Yes

SUBJECT: (B8) Approval to Submit Grant Application for St. Johns River Water Management District's FY2019-2020 Cost Share Program and authorizing the execution of the Cost Share Agreement

DEPARTMENT: Public Works

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve submission of a grant application for St. Johns River Water Management District's FY2019-2020 Cost Share Grant Program and authorizing the Mayor and the City Clerk to execute the Cost Share Agreement as approved by the City Attorney.

SUMMARY: The Grants Manager requests permission to submit an application for the FY2019-2020 St. Johns River Water Management District's FY2019-2020 Cost Share Grant program. The Cost Share program assists with up to 33% of construction costs. The application will be for the Howes Street and Orange Avenue Drainage Project which is shovel ready. This project will assist with stormwater runoff resulting in a reduction in flooding as well as an increase in water quality.

Project No.: Funding Account No.:

Presenter: Amanda Lasecki

ATTACHMENTS:

1.	Overview Districtwide Cost Share Funding FY19_20	Overview Districtwide Cost Share Funding FY19_20.pdf
2.	SAMPLE Cost Share Agreement_2020	SAMPLE Cost Share Agreement_2020.pdf

Amanda Lasecki
Julia Wiggins
Tom DiEulio
Ronny Buttrum
Lynn Stevens
Lori Bockelman
Margaret Roberts
Jake Johansson

Created/Initiated - 12/31/2018
Approved - 12/31/2018
Approved - 12/31/2018
Approved - 01/02/2019
Approved - 01/03/2019
Approved - 01/10/2019
Approved - 01/14/2019
Approved - 01/15/2019

Robin Fenwick

Final Approval - 01/15/2019



St. Johns River
Water Management District



District cost-share funding

► Local governments

The St. Johns River Water Management District offers several cost-sharing programs throughout the year for projects that assist in creating sustainable water resources, provide flood protection and enhance conservation efforts. Funding may be available for local governments, agricultural interests and other entities.

In general, projects considered for funding shall benefit one or more of the four district core mission areas, including:



Water supply

Projects might include water conservation, alternative water supply development or water resource development.



Water quality

Projects might include water quality/nutrient-loading reduction.



FY2019-2020 General cost-share	Districtwide Cost-share Funding, FY 2019–2020 The St. Johns River Water Management District will accept applications for cost-share funding for projects that benefit the district's core missions from Jan. 4, 2019, through 5 p.m. on Feb. 15, 2019. New for the FY2020 Districtwide Cost-Share Program - Water conservation projects – Software for planning and data collection purposes that does not lead to a calculated and direct conservation benefit is no longer reimbursable. - Applicants should include information to demonstrate that funds are identified and available for the portion of the project cost that is not funded in this program (i.e. the funding match). - The level of funding will be determined by the Governing Board at its April 2019 meeting. - Projects are eligible for a maximum district cost-share of \$1.5 million per project or per applicant. - Funding is limited exclusively to construction-related costs. - Projects may span a maximum of two years, but must start by June 30, 2020, or be completed by Sept. 30, 2021. - Projects that are permitted and ready to begin construction will receive a higher score during the review process. - The district will fund up to 33 percent of the construction costs for selected alternative water supply, water quality, flood protection and natural systems projects and up to 50 percent for water conservation projects. - REDI communities may submit a waiver of matching funds letter. Disclaimer: The district reserves the right to recommend projects for funding that best meet the strategic needs of the district and water resources at the time of procurement. Applicants are highly encouraged to set up a preapplication meeting to discuss any questions prior to application submittal.	Application instructions and guidelines For additional information about applications received for springs funding consideration, please contact Mark Brandenburg at mbrandenburg@sjrwmd.com. Contacts Dale Jenkins: Phone: 386-312-2304 Email: drjenkins@sjrwmd.com Mark Brandenburg: Phone: 407-659-4806 Email: mbrandenburg@sjrwmd.com
FY2018-2019 General cost-share		
FY2017-2018 General cost-share		
FY2016-2017 General cost-share		
FY2015-2016 General cost-share		
FY2018-2019 REDI / Innovative		
FY2017-2018 REDI / Innovative		
FY2016-2017 REDI / Innovative		
FY2015-2016 REDI / Innovative		
FY2017-2018 Springs Septic Replacement		
Silver Springs Ag BMP cost-share		
2018 Agricultural cost-share		
2017 Agricultural cost-share		
TCAA resources		
Other ag programs		

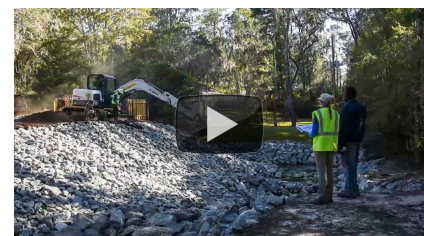
Action date	Event	Status
Jan. 4 – Feb. 15, 2019	FY 2019-2020 cost-share begins. Application preparation and applicant meetings with bureau staff	
Feb. 15, 2019	Applications due at 5 p.m.	
Feb. 16 – March 8, 2019	Staff evaluation and ranking of applications	
April 9, 2019	Staff recommendation to Governing Board: Consider approval of cost-share projects for funding	

Help available to identify water system failures needed for grant applications

Rural Economic Development Initiative (REDI) communities are eligible for funding for operation and maintenance activities and local flood protection projects for the district's cost-share funding program. Often, the first step in developing an application that properly addresses operation and/or maintenance shortcomings of water and wastewater systems is to identify and quantify system failures and resulting needs. The Florida Rural Water Association (FRWA) is one resource available to assist with system assessments.

FRWA provides technical assistance to water and wastewater systems operators across Florida. FRWA helps water and wastewater utilities to stay in compliance with the Florida Department of Environmental Protection (DEP) and the water management districts. FRWA will help train water utilities employees to perform water audits using a water audit spreadsheet.

Learn more about FRWA <http://www.frwa.net/> or contact:



Sharing funding to help protect water resources. See video.

Main telephone:
800-872-8207
850-668-2746

Tom Gustafson — Management — Financial Circuit Rider — Central and South Florida
tom.gustafson@frwa.net

Fred Handy — DEP State Circuit Rider — Northeast DEP Circuit Rider
fred.handy@frwa.net

David Hanna — DEP State Circuit Rider — DEP Central District
david.hanna@frwa.net

[Contact us](#)[Civil rights
statement](#)[SJRWMD's
Regulatory Plan](#)[Tell us how we're
doing](#)[Employee portal](#)

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**COST-SHARE AGREEMENT
BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND RECIPIENT**

THIS AGREEMENT ("Agreement") is entered into by and between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (the "District"), whose address is 4049 Reid Street, Palatka, Florida 32177, and _____ ("Recipient"), Address, City, Florida Zip Code. All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

RECITALS

The waters of the state of Florida are among its basic resources, and it has been declared to be the policy of the Legislature to promote the conservation, development, and proper utilization of surface and ground water. Pursuant to chapter 373, Fla. Stat., the District is responsible for the management of the water resources within its geographical area.

The District 2019-2020 cost-share funding program is designed to fund the construction of local stormwater management and alternative water supply projects as well as conservation implementation projects. Its goals are to contribute to: (1) reduction in water demand through indoor and outdoor conservation measures; (2) development of alternative or non-traditional water supply sources; such as reclaimed water, surface water, or seawater; (3) water quality improvements (for example, nutrient-loading reduction in springsheds or other surface-water systems); and (4) water resource development opportunities (for instance, increasing available source water through expansion or development of surface-water storage). The current cost-share funding program also recognizes the importance of providing funding opportunities for construction of flood protection and natural-systems restoration projects, which are important components of the District's core mission focus.

The District has determined that providing cost-share funding to Recipient for the purposes provided for herein will benefit the water resources and one or more of the District's missions and initiatives.

At its April 2019 meeting, the Governing Board selected Recipient's proposal for cost-share funding. The parties have agreed to jointly fund the following project in accordance with the funding formula further described in the Statement of Work, Attachment A (hereafter the "Project"):

_____ Project

In consideration of the above recitals, and the funding assistance described below, Recipient agrees to perform and complete the activities provided for in the Statement of Work, Attachment A. Recipient shall complete the Project in conformity with the contract documents and all attachments and other items incorporated by reference herein. This Agreement consists of all of the following documents: (1) Agreement, (2) Attachment A — Statement of Work; and (3) all other attachments, if any. The parties hereby agree to the following terms and conditions.

1. **TERM; WITHDRAWAL OF OFFER**

- (a) The term of this Agreement is from the date upon which the last party has dated and executed the same ("Effective Date") until _____ ("Completion Date"). Recipient shall not commence the Project until any required submittals are received and approved. Time is of the essence for every aspect of this Agreement, including any time extensions. Any request for an extension of time beyond the Completion Date must be made before _____. Timely requests to extend, for longer than six months, the Completion Date of the Agreement for projects whose District contribution exceeds \$100,000 may only be approved by the District's Governing Board. Notwithstanding specific mention that certain provisions survive termination or expiration of this Agreement, all provisions of this Agreement that by their nature extend beyond the Completion Date survive termination or expiration hereof (e.g., delivery of a final report, will remain in full force and effect after the Completion Date as necessary to effect performance).
- (b) This Agreement constitutes an offer until authorized, signed and returned to the District by Recipient. This offer terminates 90 days after receipt by Recipient; provided, however, that Recipient may submit a written request for extension of this time limit to the District's Project Manager, stating the reason(s) therefor. Request for extension of time after the 90 days will be denied. The Project Manager shall notify Recipient in writing if an extension is granted or denied. If granted, this Agreement shall be deemed modified accordingly without any further action by the parties.
- (c) If the construction project, or the conservation project, which is eligible for District reimbursement, does not begin before June 30, 2019, the cost-share agreement will be subject to termination and the funds subject to reallocation.

2. **DELIVERABLES.** Recipient shall fully implement the Project, as described in the Statement of Work, Attachment A. Recipient is responsible for the professional quality, technical accuracy, and timely completion of the Project. Both workmanship and materials shall be of good quality. Unless otherwise specifically provided for herein, Recipient shall provide and pay for all materials, labor, and other facilities and equipment necessary to complete the Project. The District's Project Manager shall make a final acceptance inspection of the Project when completed and finished in all respects. Upon satisfactory completion of the Project, the District will provide Recipient a written statement indicating that the Project has been completed in accordance with this Agreement. Acceptance of the final payment by Recipient shall constitute a release in full of all claims against the District arising from or by reason of this Agreement.

3. **OWNERSHIP OF DELIVERABLES.** Unless otherwise provided herein, the District does not assert an ownership interest in any of the deliverables under this Agreement.

4. **AMOUNT OF FUNDING.**

- (a) For satisfactory completion of the Project, the District shall pay Recipient ____% of the total estimated construction cost of the Project, but in no event shall the District cost-share exceed \$_____. The District cost-share is not subject to modification based upon price escalation in implementing the Project during the term of this Agreement. Recipient shall be responsible for payment of all costs necessary to ensure completion of the Project. Recipient shall notify the District's Project Manager in writing upon receipt of any additional external funding for the Project not disclosed prior to execution of this Agreement.
- (b) "Construction cost" is defined to include actual costs of constructing Project facilities, including construction management. Land acquisition, engineering design, permitting, and solicitation costs are excluded. Construction cost does not include any costs incurred prior to the Effective Date, unless expressly authorized by the Statement of Work. Costs that are excluded will not be credited toward Recipient's cost-share.

(c) Cooperative funding shall not be provided for expenses incurred after the Completion Date.

5. PAYMENT OF INVOICES

- (a) Recipient shall submit itemized invoices as per the Statement of Work, Attachment A for reimbursable expenses by one of the following two methods: (1) by email to acctpay@sjrwmd.com (preferred) or (2) by mail to the St. Johns River Water Management District, Finance Director, 4049 Reid Street, Palatka, Florida 32177-2571. The invoices shall be submitted in detail sufficient for proper pre-audit and post-audit review. Invoices shall include a copy of contractor and supplier invoices to Recipient and proof of payment. Recipient shall be reimbursed for 100% of approved cost or the not-to-exceed sum of \$_____ whichever is less. The District shall not withhold any retainage from this reimbursement. District reimbursement is subject to annual budgetary limitation, if applicable, as provided in subsection (g). If necessary for audit purposes, Recipient shall provide additional supporting information as required to document invoices.
- (b) **End of District Fiscal Year Reporting.** The District's fiscal year ends on September 30. Irrespective of the invoicing frequency, the District is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice as of September 30, Recipient shall submit, prior to October 30, a description of the additional work on the Project completed between the last invoice and September 30, and an estimate of the additional amount due as of September 30 for such Work. If there have been no prior invoices, Recipient shall submit a description of the work completed on the Project through September 30 and a statement estimating the dollar value of that work as of September 30.
- (c) **Final Invoice.** The final invoice must be submitted no later than 45 days after the Completion Date; provided, however, that when the Completion Date corresponds with the end of the District's fiscal year (September 30), the final invoice must be submitted no later than 30 days after the Completion Date. **Final invoices that are submitted after the requisite date shall be subject to a penalty of ten percent of the invoice. This penalty may be waived by the District, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. Recipient must request approval for delayed submittal of the final invoice not later than ten days prior to the due date and state the basis for the delay.**
- (d) All invoices shall include the following information: (1) District contract number; (2) Recipient's name, address, and authorization to directly deposit payment into Recipient's account (if Recipient has not yet provided the District with a completed Direct Deposit Authorization form); (3) Recipient's invoice number and date of invoice; (4) District Project Manager; (5) Recipient's Project Manager; (6) supporting documentation as to cost and/or Project completion (as per the cost schedule and other requirements of the Statement of Work), in addition, see Attachment D, "CONTRACT PAYMENT REQUIREMENTS FOR STATE FUNDED COST REIMBURSEMENT CONTRACTS," (7) Progress Report (if required); (8) Diversity Report (if otherwise required herein). Invoices that do not correspond with this paragraph shall be returned without action within 20 business days of receipt, stating the basis for rejection. Payments shall be made within 45 days of receipt of an approved invoice.
- (e) **Travel expenses.** If the cost schedule for this Agreement includes a line item for travel expenses, travel expenses shall be drawn from the project budget and are not otherwise compensable. If travel expenses are not included in the cost schedule, they are a cost of providing the service that is borne by Recipient and are only compensable when specifically approved by the District as an authorized District traveler. In such instance, travel expenses must be submitted on District or State of Florida travel forms and shall be paid pursuant to District Administrative Directive 2000-02.

- (f) **Payments withheld.** The District may withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any payment to such an extent as may be necessary to protect the District from loss as a result of: (1) defective work not remedied; (2) failure to maintain adequate progress in the Project; (3) any other material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.
- (g) **Annual budgetary limitation.** For multi-fiscal year agreements, the District must budget the amount of funds that will be expended during each fiscal year as accurately as possible. The Statement of Work, Attachment A, includes the parties' current schedule for completion of the Work and projection of expenditures on a fiscal year basis (October 1 – September 30) ("Annual Spending Plan"). If Recipient anticipates that expenditures will exceed the budgeted amount during any fiscal year, Recipient shall promptly notify the District's Project Manager and provide a proposed revised work schedule and Annual Spending Plan that provides for completion of the Work without increasing the Total Compensation. The last date for the District to receive this request is August 1 of the then-current fiscal year. The District may in its sole discretion prepare a District Supplemental Instruction Form incorporating the revised work schedule and Annual Spending Plan during the then-current fiscal year or subsequent fiscal year(s).
6. **LIABILITY AND INSURANCE.** Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees and agents. Recipient accepts all risks arising from construction or operation of the Project. Nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida beyond the waiver provided for in §768.28, Fla. Stat., as amended. Each party shall acquire and maintain throughout the term of this Agreement such liability, workers' compensation, and automobile insurance as required by their current rules and regulations. If Florida Department of Environmental Protection ("FDEP") funds will be used to fund all of a portion of the Agreement, additional FDEP insurance requirements applicable to the Recipient are included in the insurance attachment to the Agreement.

OR For Private Entities

INDEMNIFICATION. Recipient shall indemnify and hold harmless, release, and forever discharge the District, its public officers, employees, agents, representatives, successors, and assigns, from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Recipient, its employees or sub-contractors, in the performance of the Work and resulting from damages to property, personal injury, or loss of life.

INSURANCE. Recipient shall acquire and maintain all insurance required by Attachment E, Insurance Requirements, and shall not commence Work until it has provided Certificates of Insurance to the District as per Attachment E. Receipt of Certificates of Insurance indicating less coverage than required does not constitute a waiver of the Insurance Requirements. Recipient waives its right of recovery against the District to the extent permitted by its insurance policies. Recipient's insurance shall be considered primary, and District insurance shall be considered excess, as may be applicable to Recipient's obligation to provide insurance. If Florida Department of Environmental Protection ("FDEP") funds will be used to fund all or a portion of the Agreement, additional FDEP insurance requirements applicable to the Recipient are included in the Insurance attachment to the Agreement.

7. **FUNDING CONTINGENCY.** This Agreement is at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) ad valorem tax revenues appropriated by the District's Governing Board; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a

period of more than one Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the District's Governing Board for each succeeding Fiscal Year. Should the Project not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the District shall so notify Recipient and this Agreement shall be deemed terminated for convenience five days after receipt of such notice, or within such additional time as the District may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

8. PROJECT MANAGEMENT

- (a) The Project Managers listed below shall be responsible for overall coordination and management of the Project. Either party may change its Project Manager upon three business days' prior written notice to the other party. Written notice of change of address shall be provided within five business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; or (4) email. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one business day after having been deposited with the courier. Notices via e-mail are deemed delivered on the date transmitted and received.

DISTRICT

, Project Manager

St. Johns River Water Management District

, Florida

Phone:

Email:

RECIPIENT

, Project Manager

Address

Phone:

Email:

- (b) The District's Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating District policies and decisions regarding all matters pertinent to performance of the Project. The District's Project Manager may issue a District Supplemental Instruction (DSI) form, Attachment **C**, to authorize minor adjustments to the Project that are consistent with the purpose of the Project. Both parties must sign the DSI. A DSI may not be used to change the District cost-share or percentage, quantity, quality or the Completion Date of the Project, or to change or modify the Agreement.

9. PROGRESS REPORTS AND PERFORMANCE MONITORING.

- (a) **Progress Reports.** Recipient shall provide to the District quarterly Project update/status reports as provided in the Statement of Work. Reports will provide detail on progress of the Project and outline any potential issues affecting completion or the overall schedule. Recipient shall use the District's Project Progress Report form, Attachment **B**. Recipient shall submit the Project Progress Reports to the District's Project Manager and District's Budget Manager within 30 days after the closing date of each calendar quarter (March 31, June 30, September 30 and December 31).
- (b) **Performance Monitoring.** For as long as the Project is operational, the District shall have the right to inspect the operation of the Project during normal business hours upon reasonable prior notice. Recipient shall make available to the District any data that is requested pertaining to performance of the Project.

10. **Waiver.** The delay or failure by the District to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the District's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

11. FAILURE TO COMPLETE PROJECT

- (a) Should Recipient fail to complete the Project, Recipient shall refund to the District all of the funds provided to Recipient pursuant to this Agreement. However, the District, in its sole judgment and discretion, may determine that Recipient has failed to complete the Project due to circumstances that are beyond Recipient's control, or due to a good faith determination that the Project is no longer environmentally or economically feasible. In such event, the District may excuse Recipient from the obligation to return funds provided hereunder. If the Project has not been completed within 30 days after the Completion Date, Recipient shall provide the District with notice regarding its intention as to completion of the Project. The parties shall discuss the status of the Project and may mutually agree to revise the time for Project completion or the scope of the Project. Failure to complete the Project within 90 days after the Completion Date shall be deemed to constitute failure to complete the Project for the purposes of this provision.
- (b) In the event the Project constitutes a portion of the total functional project, this paragraph shall apply in the event the total functional project is not completed. In such event, the 90-day timeframe provided herein shall commence upon the date scheduled for completion of the total functional project at the time of execution of this Agreement, unless extended by mutual agreement of the parties. Paragraphs 11(a) and 11(b) shall survive the termination or expiration of this Agreement.

12. **TERMINATION.** If Recipient materially fails to fulfill its obligations under this Agreement, including any specific milestones established herein, the District may provide Recipient written notice of the deficiency by forwarding a Notice to Cure, citing the specific nature of the breach. Recipient shall have 30 days following receipt of the notice to cure the breach. If Recipient fails to cure the breach within the 30-day period, the District shall issue a Termination for Default Notice terminating this Agreement without further notice. In such event, Recipient shall refund to the District all funds provided to Recipient pursuant to this Agreement within 30 days of such termination. The District may also terminate this Agreement upon ten days' written notice in the event of any material misrepresentations in the Project Proposal.

Delay or failure by the District to enforce any right, remedy or deadline hereunder shall not impair, or be deemed a waiver of, any such right, remedy or deadline, or impair the District's rights or remedies for any subsequent breach or continued breach of this Agreement.

ADDITIONAL PROVISIONS (Alphabetical)

13. **ASSIGNMENT.** Recipient shall not assign this Agreement, or any monies due hereunder, without the District's prior written consent. Recipient is solely responsible for fulfilling all work elements in any contracts awarded by Recipient and payment of all monies due. No provision of this Agreement shall create a contractual relationship between the District and any of Recipient's contractors or subcontractors.

14. AUDIT; ACCESS TO RECORDS; REPAYMENT OF FUNDS

- (a) **Maintenance of Records.** Recipient shall maintain its books and records such that receipt and expenditure of the funds provided hereunder are shown separately from other expenditures in a format that can be easily reviewed. Recipient shall keep the records of receipts and expenditures, copies of all reports submitted to the District, and copies of all invoices and supporting documentation for at least five years after expiration of this Agreement. In accordance with generally accepted governmental auditing standards, the District shall have access to and the right to examine any directly pertinent books and other records involving transactions related to this Agreement. In the event of an audit, Recipient shall maintain all required records until the audit is completed and all questions are resolved. Recipient will provide proper facilities for access to and inspection of all required records.

- (b) **Repayment of Funds.** District funding shall be subject to repayment after expiration of this Agreement if, upon audit examination, the District finds any of the following: (1) Recipient has spent funds for purposes other than as provided for herein, including but not limited to construction materials not used in the Project; (2) Recipient has failed to perform a continuing obligation of this Agreement; (3) Recipient has received duplicate funds from the District for the same purpose; (4) Recipient has been advanced or paid unobligated funds; (5) Recipient has been paid funds in excess of the amount Recipient is entitled to receive under the Agreement; and/or (6) Recipient has received more than 100% contributions through cumulative public agency cost-share funding.
15. **CIVIL RIGHTS.** Pursuant to chapter 760, Fla. Stat., Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.
16. **COOPERATION WITH THE INSPECTOR GENERAL, PURSUANT TO §20.055(5) FLA. STAT.** Recipient and any subcontractors understand and will comply with their duty, pursuant to §20.055(5), Fla. Stat., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.
17. **DISPUTE RESOLUTION.** Recipient is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute involving performance of this Agreement by submitting a written statement to the District's Project Manager no later than ten business days after the precipitating event. If not resolved by the Project Manager, the Project Manager shall forward the request to the District's Office of General Counsel, which shall issue a written decision within ten business days of receipt. This determination shall constitute final action of the District and shall then be subject to judicial review upon completion of the Project.
18. **DIVERSITY REPORTING.** The District is committed to the opportunity for diversity in the performance of all cost-sharing agreements, and encourages Recipient to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as contractors. The District will assist Recipient by sharing information on W/MBEs. Recipient shall provide with each invoice a report describing: (1) the company names for all W/MBEs; (2) the type of minority, and (3) the amounts spent with each during the invoicing period. The report will also denote if there were no W/MBE expenditures.

19. FLORIDA SINGLE AUDIT ACT

- a. **Applicability.** The Florida Single Audit Act (FSAA), §215.97, Fla. Stat., applies to all sub-recipients of state financial assistance, as defined in §215.97(1)(q), Fla. Stat., awarded by the District through a project or program that is funded, in whole or in part, through state financial assistance to the District. In the event Recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Recipient, Recipient must have a state single or project-specific audit for such fiscal year in accordance with §215.97, Fla. Stat.; 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. In determining the state financial assistance expended in its fiscal year, Recipient shall consider all sources of state financial assistance, including state financial assistance received from the District, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements. Recipient is solely responsible for complying with the FSAA.

If Recipient expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of §215.97, Fla. Stat., is not required. In such event, should Recipient elect to have an audit conducted in accordance with §215.97, Fla. Stat., the cost of

the audit must be paid from the non-state entity's resources (i.e., Recipient's resources obtained from other than State entities).

- b. **Program Information.** This Agreement involves the disbursement of state funding by the (CA - insert name of State of Florida awarding agency; e.g. FDEP) in the amount of \$(CA - insert amount). Funding is provided under the State of Florida (CA - insert name of state program, if applicable; e.g., Water Protection and Sustainability Program). The Florida Catalog of State Financial Assistance (CSFA) number for this program is CSFA No. (CA – insert CFSA number). The District is providing a funding match of \$(CA - insert amount).
- c. **Additional Information.** For information regarding the state program under the above CSFA number, Recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa/catalog.aspx> for assistance. The following websites may be accessed for additional information: Legislature's Website at <http://www.leg.state.fl.us/>, State of Florida's website at <http://myflorida.com>, District of Financial Services' website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.
- d. **Allowable Costs.** Recipient may only charge allowable costs to this Agreement, as otherwise provided herein. Any balance of unobligated cash that have been advanced or paid that is not authorized to be retained for direct program costs in a subsequent period must be returned to the District.
- e. **Audit Requirements.** Recipient shall ensure that the audit complies with the requirements of §215.97(7), Fla. Stat. This includes submission of a financial reporting package as defined by §215.97(2), Fla. Stat., and chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Recipient shall comply with the program requirements described in the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/catalog.aspx>]. The services/purposes for which the funds are to be used are included in the Statement of Work.
- f. **Financial Reporting.** Recipient shall provide the District with a copy of any reports, management letters, or other information required to be submitted in accordance with chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable, no more than 20 days after its preparation. Recipient shall indicate the date the reporting package was delivered to Recipient in correspondence accompanying the reporting package. This information shall be directed to: St. Johns River Water Management District, Finance Director, Office of Financial Services, 4049 Reid Street, Palatka, FL 32177. A copy of the report shall also be provided to 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.
- g. **Monitoring.** In addition to reviews of audits conducted in accordance with §215.97, Fla. Stat., as revised, monitoring procedures may include, but not be limited to, on-site visits by District staff, limited scope audits, and/or other procedures. Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the District. In the event the District determines that a limited scope audit of Recipient is appropriate, Recipient agrees to comply with any additional instructions provided by the District to Recipient regarding such audit. Recipient agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the District's Inspector General or the state Chief Financial Officer or Auditor General.
- h. **Examination of Records.** In addition to the District's audit rights otherwise provided for herein, Recipient shall permit the District or its designated agent, the state awarding agency, the Department of Financial Services, the state's Chief Financial Officer and the state's Auditor General to examine Recipient's financial and non-financial records to the extent necessary to monitor Recipient's use of state financial assistance and to determine whether timely and appropriate corrective actions have

been taken with respect to audit findings and recommendations, which may include onsite visits and limited scope audits.

- i. **Records Retention.** Notwithstanding any other provision of this Agreement to the contrary, Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued, and shall allow the District, or its designee, state Chief Financial Officer, or Auditor General access to such records upon request. Recipient shall ensure that audit working papers are made available for such access for a period of three years from the date the audit report is issued, unless extended in writing by the District.

If substantial performance of the work is in Alachua, Baker, Bradford, Clay, Duval, Nassau, Putnam, and/or St. Johns counties – use Duval County.

If substantial performance of the work is in Brevard, Flagler, Indian River, Lake, Marion, Okeechobee, Orange, Osceola, Seminole, or Volusia counties – Use Orange County.

20. GOVERNING LAW, VENUE, ATTORNEY’S FEES, WAIVER OF RIGHT TO JURY TRIAL.

This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, “shall” is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in _____ County; (2) each party shall bear its own attorney’s fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.

21. **INDEPENDENT CONTRACTORS.** The parties to this Agreement, their employees and agents, are independent contractors and not employees or agents of each other. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent contractors during and after the term of this Agreement. Recipient is not a contractor of the District. The District is providing cost-share funding as a cooperating governmental entity to assist Recipient in accomplishing the Project. Recipient is solely responsible for accomplishing the Project and directs the means and methods by which the Project is accomplished. Recipient is solely responsible for compliance with all labor, health care, and tax laws pertaining to Recipient, its officers, agents, and employees.

22. **CONFLICTING INTEREST IN RECIPIENT.** Recipient certifies that no officer, agent, or employee of the District has any material interest, as defined in §112.312, Fla. Stat., either directly or indirectly, in the business of Recipient to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.

23. **NON-LOBBYING.** Pursuant to §216.347, Fla. Stat., as amended, Recipient agrees that funds received from the District under this Agreement shall not be used for the purpose of lobbying the Legislature or any other state agency.

24. **PERMITS.** Recipient shall comply with all applicable federal, state and local laws and regulations in implementing the Project and shall include this requirement in all subcontracts pertaining to the Project. Recipient shall obtain any and all governmental permits necessary to implement the Project. Any activity not properly permitted prior to implementation or completed without proper permits does not comply with this Agreement and shall not be approved for cost-share funding.

25. **PUBLIC ENTITY CRIME.** 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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit

bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in §287.017, Fla. Stat., for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.

26. **PUBLIC RECORDS.** Records of Recipient that are made or received in the course of performance of the Project may be public records that are subject to the requirements of chapter 119, Fla. Stat. If Recipient receives a public records request, Recipient shall promptly notify the District's Project Manager. Each party reserves the right to cancel this Agreement for refusal by the other party to allow public access to all documents, papers, letters, or other materials related hereto and subject to the provisions of chapter 119, Fla. Stat., as amended.
27. **ROYALTIES AND PATENTS.** Recipient certifies that the Project does not, to the best of its information and belief, infringe on any patent rights. Recipient shall pay all royalties and patent and license fees necessary for performance of the Project and shall defend all suits or claims for infringement of any patent rights and save and hold the District harmless from loss to the extent allowed by Florida law.

IN WITNESS WHEREOF, the St. Johns River Water Management District has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, or duly authorized designee, and Recipient has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached. This Agreement may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

RECIPIENT

By: _____
Ann B. Shortelle, Ph.D., Executive Director (or designee)

By: _____

Typed Name and Title

Date: _____

Date: _____

Attest: _____

Typed Name and Title

Typed Name and Title

Attachments

ATTACHMENT A — STATEMENT OF WORK

**ATTACHMENT B
PROGRESS REPORT**

ATTACHMENT C — DISTRICT'S SUPPLEMENTAL INSTRUCTIONS (sample)**DISTRICT SUPPLEMENTAL INSTRUCTIONS #**

DATE:

TO:

FROM: _____, Project Manager

CONTRACT NUMBER:

CONTRACT TITLE:

The Work shall be carried out in accordance with the following supplemental instruction issued in accordance with the Contract Documents without change in the Contract Sum or Contract Time. Prior to proceeding in accordance with these instructions, indicate your acceptance of these instructions for minor adjustments to the work as consistent with the Contract Documents and return to the District's Project Manager.

1. RECIPIENT'S SUPPLEMENTAL INSTRUCTIONS:

2. DESCRIPTION OF WORK TO BE CHANGED:

- DESCRIPTION OF SUPPLEMENTAL INSTRUCTION REQUIREMENTS: _____.

's approval: (choose one of the items below):

Approved: _____ Date: _____

(It is agreed that these instructions shall not result in a change in the Total Compensation or the Completion Date.)

Approved: _____ Date: _____

(agrees to implement the Supplemental Instructions as requested, but reserves the right to seek a Change Order in accordance with the requirements of the Agreement.)

Approved: _____ Date: _____

_____, District Project Manager

Acknowledged: _____ Date: _____

Carol Miller, District Senior Procurement Specialist

c: Contract file
Financial Services

**ATTACHMENT D – CONTRACT PAYMENT REQUIREMENTS
FOR STATE-FUNDED COST REIMBURSEMENT CONTRACTS**

Invoices for state-funded cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation must be provided for each amount for which reimbursement is being claimed, indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation shall clearly reflect the dates of service. Only expenditures for categories in the approved contract budget will be reimbursed.

Listed below are examples of the types of documentation representing the minimum requirements by cost category:

Salaries: Submit a payroll register or similar documentation showing gross salary charges, fringe benefits, other deductions, and net pay. If an individual is paid by the hour, a document reflecting the hours worked times the rate of pay is acceptable.

Fringe Benefits: Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage, rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

Travel: Reimbursement for travel must be in accordance with §112.061, Fla. Stat., which includes submission of the claim on the approved State of Florida (State) or District travel voucher.

Other direct costs: Reimbursement is based upon paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, F.A.C., regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in §273.02, Fla. Stat., for subsequent transfer to the State.

In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units, times the rate being charged. The rates must be reasonable.

Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

The “Reference Guide for State Expenditures” prepared by the Florida Department of Financial Services can be found at this web address: http://www.fldfs.com/aadir/reference_guide.htm

ATTACHMENT E — INSURANCE REQUIREMENTS

Recipient shall acquire and maintain, and ensure that any sub-recipients, contractors, and subcontractors, similarly acquire and maintain, until completion of the Work the insurance coverage listed below, which constitutes primary coverage. Recipient shall not commence the Work until the District receives and approves Certificates of Insurance documenting required coverage. Recipient's General Liability policy shall include Endorsement CG 20101185, or equivalent, naming the St. Johns River Water Management District (the "District") as Additional Insured. All required policies shall include: (1) endorsement that waives any right of subrogation against the District for any policy of insurance provided under this requirement or under any state or federal worker's compensation or employer's liability act; (2) endorsement to give the District no less than 30 days' written notice (with the exception of non-payment of premium which requires a 10-day notice) in the event of cancellation or material change. Certificates of Insurance must be accompanied by copies of the requested endorsements.

Any deductibles or self-insured retentions above \$100,000 must be declared to and approved by the District. Approval will not be unreasonably withheld. Recipient is responsible for any deductible or self-insured retention. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida and having an A.M. Best rating of A-V or greater. If any work proceeds over or adjacent to water, the Recipient shall secure and maintain, as applicable, any other type of required insurance, including but not limited to, Jones Act, Longshoreman's and Harbormaster's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits not less than \$300,000 each. District receipt of insurance certificates providing less than the required coverage does not waive these insurance requirements.

- (a) **Workers' Compensation Insurance.** Workers' compensation and employer's liability coverage, including maritime workers' compensation, if applicable, in not less than the minimum limits required by Florida law. If Recipient claims an exemption from workers' compensation coverage, Recipient must provide a copy of the Certificate of Exemption from the Florida Division of Workers' Compensation for all officers or members of an LLC claiming exemption who will be participating in the Work. In addition, Recipient must provide a completed District "Affidavit (Non-Construction)" for non-construction contracts. Recipient is solely responsible for compliance with any Federal workers' compensation laws such as Jones Act and USL&H Act, including any benefits available to any workers performing work on this project.
- (b) **General Liability.** Commercial General Liability Insurance on an "Occurrence Basis," with limits of liability not less than \$1,000,000/\$2,000,000, for personal injury, bodily injury, and property damage. Coverage shall include: (1) contractual liability, (2) products and completed operations, (3) independent contractors, and (4) property in the care, control, or custody of the Recipient. Extensions shall be added or exclusions deleted to provide the necessary coverage.
- (c) **Automobile Liability.** Minimum limits of \$100,000/\$300,000/\$50,000.

ATTACHMENT ____ - INSURANCE REQUIREMENTS
Including Florida Department of Environmental Protection Insurance Requirements

Recipient shall acquire and maintain, and ensure that any sub-recipients, contractors, and subcontractors, similarly acquire and maintain, until completion of the Work the insurance coverage listed below, which constitutes primary coverage. Recipient shall not commence the Work until the District receives and approves Certificates of Insurance documenting required coverage. Recipient's General Liability policy shall include Endorsement CG 20101185, or equivalent, naming the St. Johns River Water Management District ("District") as Additional Insured. All required policies shall include: (1) endorsement that waives any right of subrogation against the District for any policy of insurance provided under this requirement or under any state or federal worker's compensation or employer's liability act; (2) endorsement to give the District no less than thirty (30) days written notice (with the exception of non-payment of premium which requires a 10-calendar-day notice) in the event of cancellation or material change. Certificates of Insurance must be accompanied by copies of the requested endorsements. In addition, Recipient's General Liability insurance and Automobile Liability insurance shall include the State of Florida, the Florida Department of Environmental Protection, and the State of Florida Board of Trustees of the Internal Improvement Trust Fund, as Additional Insureds for the entire length of the Agreement. If the Recipient is self-funded for any category of insurance, then the Recipient shall provide documentation that warrants and represents that it is self-funded for said insurance, appropriate and allowable under Florida law, and that such self-insurance offers protection applicable to the Recipient's officers, employees, servants and agents while acting within the scope of their employment with the Recipient for the entire length of the Agreement.

Any deductibles or self-insured retentions above \$100,000 must be declared to and approved by the District. Approval will not be unreasonably withheld. Recipient is responsible for any deductible or self-insured retention. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida and having an A.M. Best rating of A-V or greater. If any work proceeds over or adjacent to water, the Recipient shall secure and maintain, as applicable, any other type of required insurance, including but not limited to, Jones Act, Longshoreman's and Harbormaster's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits not less than \$300,000 each. District receipt of insurance certificates providing less than the required coverage does not waive these insurance requirements.

- (a) **Workers' Compensation Insurance.** Workers' compensation and employer's liability coverage, including maritime workers compensation, if applicable, in not less than the minimum limits required by Florida law. If Recipient claims an exemption from workers' compensation coverage, Recipient must provide a copy of the Certificate of Exemption from the Florida Division of Workers' Compensation for all officers or members of an LLC claiming exemption who will be participating in the Work. In addition, Recipient must provide a completed District "Affidavit (Non-Construction)" for non-construction contracts. Recipient is solely responsible for compliance with any Federal workers' compensation laws such as Jones Act and USL&H Act, including any benefits available to any workers performing work on this project. In case any class of employees engaged in hazardous work under this Agreement is not protected under Worker's Compensation statutes, the Recipient shall provide, and cause each sub-recipient, contractor, or subcontractor, to provide, adequate insurance satisfactory to the District and the Florida Department of Environmental Protection, for the protection of its employees not otherwise protected.

CAs – Maritime workers' compensation insurance may be required if the work involves maritime activities, such as underwater diving, or work adjacent to navigable waters. Please check with the District's Risk Manager if you have any questions.

- (c) **General Liability.** Commercial General Liability Insurance on an "Occurrence Basis," with limits of liability not less than \$1,000,000/\$2,000,000, for personal injury, bodily injury, and property damage. Coverage shall include: (1) contractual liability, (2) products and completed operations, (3) independent contractors, and (4) property in the care, control, or custody of the Recipient. Extensions shall be added or exclusions deleted to provide the necessary coverage.

(d) **Automobile Liability.** Minimum limits of liability shall be as follows:

\$300,000 Automobile Liability Combined Single Limit for Company-Owned Vehicles, if applicable

\$300,000 Hired and Non-owned Automobile Liability Coverage



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: Yes

SUBJECT: (B9) Fee Waiver Request from Spruce Creek High School Softball Team

DEPARTMENT: Parks & Recreation

GOAL:

RECOMMENDED MOTION: Move to approve the request for waiver pursuant to discussions held with the school staff.

SUMMARY: Coach Cameron McClelland from Spruce Creek High School is requesting a partial fee waiver for the use of Coraci Park for their annual fall and spring tournaments. The total rental cost for both events is \$2,440 and staffing is \$1,150 for total of \$3590. The high school would still be responsible for providing liability insurance listing the city as an additional insured.

The City Manager has talked to the athletic Director and Principal and have come to an agreement regarding future applications for waivers to ensure the school is aware of the request. Since the softball team is a pay to play team, provides payment in kind to the city and is not for profit the city manager recommends the requested fees for the temp fence and the concession rental be waived, not to exceed \$1000.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Letter to City 2018	Letter to City 2018.pdf
2.	2019invoicespring	2019invoicespring.pdf
3.	2019invoicefall	2019invoicefall.pdf

Robin Fenwick
Jake Johansson
Robin Fenwick

Created/Initiated - 01/11/2019
Approved - 01/11/2019
Final Approval - 01/11/2019

SPRUCE CREEK HIGH SCHOOL



November 5th, 2018

Mayor Burnette & City Council,

My name is Cameron McClelland and I currently teach and coach at Spruce Creek HS. As head coach of the high school softball program I was absolutely thrilled when Port Orange constructed the Coraci Fields; however, I feel as though the rates to use those fields are too much for a self-sufficient, local program such as ours. The biggest burden is the \$50 fence fee that equates to \$200 per event along with the \$100 concession usage fee. If those fees were waived that would yield a \$1000 savings for our softball program. That is a huge saving for our program since we do not receive any help from other sources within Volusia County or school athletic department. The entry fees that we charge teams are in line with other tournaments hosted around the state and right now those fees just barely cover the costs of the fields. In order generate revenue we have to do a bang-up job on concessions. I am not looking to short change any staff or maintenance fees, but rather I am asking for the council to consider waiving unnecessary fees to help a local, public school softball program.

Fees requested to be waived:

- Fence set up fee
- Concession fee

Also, I'd like to request that the fees paid go towards installation of a batter's box foundation of some sort (i.e. clay bricks, mats, underground turf box) to increase the safety of those participating on Coraci fields.

Thanks for your consideration,

Cameron McClelland

Head Softball Coach

801 Taylor Road
Port Orange, FL 32127
(386) 322-6272 or (386) 756-7200
Fax: (386) 756-7270
<http://www.sprucecreekhigh.com>



**City of Port Orange Parks &
Recreation Department**

4655 City Center Circle

Phone: (386) 506-5851

Fax: (386) 756-5351

parks.port-orange.org

Facility Rental Invoice

Invoice #: 5757
Invoice Date: 09/04/2018
Payment Due: 02/22/2019
Permit #: 18-00490
Use Type: Sport Tournament
Description: Spruce Creek SB

Page 1 of 1

Customer

**Spruce Creek High School
Spruce Creek HS Softball
801 Taylor Road
Port Orange, FL 32127**

Location: Coraci Sport Complex - Coraci Tournament **Hours:** 21.00

Date	Day	Time	Fee Description	Qty	Unit	Rate	Total	Tax
03/01/2019	Fri	11:30 AM-10:00 PM	Tournament Non-Profit Flat Rate	1.00	Each	\$100.00	\$100.00	\$0.00
03/01/2019	Fri	11:30 AM-10:00 PM	Tournament Lights Flat Rate	4.00	Each	\$35.00	\$140.00	\$0.00
03/01/2019	Fri	11:30 AM-10:00 PM	Tournament Field Prep Flat Rate	4.00	Each	\$35.00	\$140.00	\$0.00
03/01/2019	Fri	11:30 AM-10:00 PM	Temporary Fence Flat Rate	4.00	Each	\$50.00	\$200.00	\$0.00
03/01/2019	Fri	11:30 AM-10:00 PM	Athletic Concession Stand Flat Rate	1.00	Each	\$100.00	\$100.00	\$0.00
03/01/2019	Fri	11:30 AM-10:00 PM	Parks Tournament Staff Flat Rate	20.00	Each	\$25.00	\$500.00	\$0.00
03/01/2019	Fri	11:30 AM-10:00 PM	Additional Tournament Field - NP Flat Rate	3.00	Each	\$100.00	\$300.00	\$0.00
03/02/2019	Sat	7:00 AM-5:30 PM	Tournament Non-Profit Flat Rate	1.00	Each	\$100.00	\$100.00	\$0.00
03/02/2019	Sat	7:00 AM-5:30 PM	Tournament Field Prep Flat Rate	4.00	Each	\$35.00	\$140.00	\$0.00
03/02/2019	Sat	7:00 AM-5:30 PM	Athletic Concession Stand Flat Rate	1.00	Each	\$100.00	\$100.00	\$0.00
03/02/2019	Sat	7:00 AM-5:30 PM	Parks Tournament Staff Flat Rate	20.00	Each	\$25.00	\$500.00	\$0.00
03/02/2019	Sat	7:00 AM-5:30 PM	Additional Tournament Field - NP Flat Rate	3.00	Each	\$100.00	\$300.00	\$0.00

Total Hours	21.00
Total Fees	\$2,620.00
Total Tax	\$0.00
Invoice Total	\$2,620.00
Amount Paid	\$0.00
Balance Due	\$2,620.00



**City of Port Orange Parks &
Recreation Department**

4655 City Center Circle

Phone: (386) 506-5851

Fax: (386) 756-5351

parks.port-orange.org

Facility Rental Invoice

Invoice #: 5826
Invoice Date: 10/04/2018
Payment Due: 02/15/2019
Permit #: 18-00548
Use Type: scrimmage game
Description: Spruce Creek Softball

Page 1 of 1

Customer

**Spruce Creek High School
Spruce Creek HS Softball
801 Taylor Road
Port Orange, FL 32127**

Location: Coraci Sport Complex - Coraci Field 1 Hours: 6.00

Date	Day	Time	Fee Description	Qty	Unit	Rate	Total	Tax
02/16/2019	Sat	7:30 AM-1:30 PM	Athletic Field - NP Hourly	6.00	Hours	\$20.00	\$120.00	\$0.00
02/16/2019	Sat	7:30 AM-1:30 PM	Parks Crew Staff Flat Rate	6.00	Each	\$25.00	\$150.00	\$0.00
02/16/2019	Sat	7:30 AM-1:30 PM	Temporary Fence Flat Rate	4.00	Each	\$50.00	\$200.00	\$0.00
02/16/2019	Sat	7:30 AM-1:30 PM	Field Prep Flat Rate	1.00	Each	\$10.00	\$10.00	\$0.00
02/16/2019	Sat	7:30 AM-1:30 PM	Athletic Concession Stand Flat Rate	1.00	Each	\$100.00	\$100.00	\$0.00

Location: Coraci Sport Complex - Coraci Field 2 Hours: 6.00

Date	Day	Time	Fee Description	Qty	Unit	Rate	Total	Tax
02/16/2019	Sat	7:30 AM-1:30 PM	Athletic Field - NP Hourly	6.00	Hours	\$20.00	\$120.00	\$0.00
02/16/2019	Sat	7:30 AM-1:30 PM	Field Prep Flat Rate	1.00	Each	\$10.00	\$10.00	\$0.00

Location: Coraci Sport Complex - Coraci Field 3 Hours: 6.00

Date	Day	Time	Fee Description	Qty	Unit	Rate	Total	Tax
02/16/2019	Sat	7:30 AM-1:30 PM	Athletic Field - NP Hourly	6.00	Hours	\$20.00	\$120.00	\$0.00
02/16/2019	Sat	7:30 AM-1:30 PM	Field Prep Flat Rate	1.00	Each	\$10.00	\$10.00	\$0.00

Location: Coraci Sport Complex - Coraci Field 4 Hours: 6.00

Date	Day	Time	Fee Description	Qty	Unit	Rate	Total	Tax
02/16/2019	Sat	7:30 AM-1:30 PM	Athletic Field - NP Hourly	6.00	Hours	\$20.00	\$120.00	\$0.00
02/16/2019	Sat	7:30 AM-1:30 PM	Field Prep Flat Rate	1.00	Each	\$10.00	\$10.00	\$0.00

Thank you.

Total Hours	24.00
Total Fees	\$970.00
Total Tax	\$0.00
Invoice Total	\$970.00
Amount Paid	\$0.00
Balance Due	\$970.00



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: No

SUBJECT: (F14) Fire Pension Board - Interim member

DEPARTMENT: City Clerk

GOAL:

RECOMMENDED MOTION: Move to approve the interim board appointment.

SUMMARY: Staff recommends Councilman Scott Stiltner be appointed as an interim member of the Fire Pension Board until such time as council directs after the special election for the District 1 Council Member.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

Robin Fenwick
Jake Johansson
Robin Fenwick

Created/Initiated - 01/10/2019
Approved - 01/11/2019
Final Approval - 01/11/2019



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: No

SUBJECT: (G15) Second Reading – Ordinance No. 2018-32 - Amending Chapter 10 of the Code of Ordinances pertaining to Urban Chickens

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance No. 2018-32, amending Chapter 10 of the Code of Ordinances pertaining to Urban Chickens.

SUMMARY: The City Council approved the two-year Temporary Urban Chicken Pilot Program on February 7, 2017 (Ordinance 2017-1) to permit the keeping of up to five (5) chickens (hens) by no more than thirty (30) households.

At their October 2, 2018, meeting, the City Council directed staff to amend the Code of Ordinances to make the Temporary Urban Chicken Pilot Program a permanent program. The proposed Urban Chicken ordinance maintains the same requirements as the pilot program, including a limitation of five (5) chickens (hens) by no more than thirty (30) households, the requirement that the property be an owner-occupied single-family residence, a 6' tall opaque fence for screening of chicken coop and pen, and setbacks for the coop and pen consistent with current shed setbacks. The ordinance also requires the successful completion of a University of Florida Agricultural Extension Service (UF/IFAS) or equivalent class regarding the keeping of chickens prior to permit approval and provides a process for revoking an urban chicken permit if any condition or restriction of the permit is violated. To date, five (5) Temporary Urban Chicken Permits have been issued. Since the program has been in place, there has been one complaint emailed to staff regarding sanitary conditions. Code Enforcement inspected the property and the chicken coop was in a clean and sanitary condition and in compliance with the City's regulations. Animal Control has received some complaints about noise and general concerns, but each time the property was in compliance with the requirements of the program.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Ord. No. 2018-32	Ord. No. 2018-32 Urban ChICKENS.pdf
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Robin Fenwick

Created/Initiated - 01/07/2019

ORDINANCE NO. 2018-32

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, AMENDING THE
CODE OF ORDINANCES, CHAPTER 10, SECTION
10-20 ESTABLISHING A PERMANENT URBAN
CHICKEN PROGRAM; PROVIDING FOR REPEAL
OF CONFLICTING ORDINANCES; PROVIDING FOR
SEVERABILITY; AND PROVIDING AN EFFECTIVE
DATE.

WHEREAS, pursuant to Article VIII, Section 2(b) of the Florida Constitution, and Sections 166.021 and 828.27 of the Florida Statutes, the City has the authority to enact ordinances relating to the ownership, care, and custody of animals; and

WHEREAS, the City Council having recognized the recent demand from residential homeowners to raise chickens on residential property and implementing an Urban Chicken Pilot Program with Ordinance No. 2017-1; and

WHEREAS, the City Council desires to implement the Urban Chicken Program as a permanent program to provide such an opportunity, subject to the regulations established herein; and

WHEREAS, for purposes of this Ordinance text with underlined (underlined) type shall constitute additions to the original text and text with strikethrough (~~strike through~~) 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 of the City of Port Orange, Florida, hereby amends Chapter 10, Section 10-20 of the City of Port Orange Code of Ordinances to read as follows:

Chapter 10 – ANIMALS

Sec. 10-20. – Urban chickens pilot program.

- (a) The intent of this ~~program is to create and implement a two-year temporary~~ section is to regulate Urban Chicken Pilot Program to permit the keeping of up to five chickens per household by no more than thirty households, on owner-occupied single-family properties, subject to the terms and conditions of this section.
- (b) Section 10-12 shall not apply to permitted activities under Section 10-20 relating to the Urban Chickens Pilot Program.
- ~~(c) Regardless of the date a temporary permit is issued for the keeping of chickens, such temporary permit shall terminate and expire on January 31, 2019, unless terminated earlier or extended by City Council action extending the Urban Chicken Pilot Program or implementing a permanent regulation.~~
- (d) *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:
 - (1) *Chicken.* A domesticated fowl of the gallus genus. This term shall include only the female chicken (hen), and shall exclude the male chicken (rooster).
 - (2) *Chicken coop.* The house or cage in which a chicken lives. Inside coops are often nest boxes for egg-laying and perches on which the birds can sleep.
 - (3) *Chicken pen.* The outside area around a coop. An enclosure that is connected to and/or surrounding a chicken coop for the purpose of allowing chickens to leave the coop while remaining in an enclosed predator-safe environment.
 - (4) *Chicken tractor.* A movable chicken coop lacking a floor. Chicken tractors may be a lightly built A-frame which one person can drag about the yard. It may have wheels on one or both ends to make this easier.

(ed) ~~Temporary Urban chicken permit regulations.~~ It shall be unlawful to keep, harbor, raise or maintain chickens without a ~~temporary urban~~ chicken permit. A ~~temporary urban~~ chicken permit shall not be required for keeping chickens in the agricultural (A), flood plain-conservative (F-C), or agricultural preservation (AP) zoning districts. ~~Temporary Urban~~ chicken permits shall include the following conditions and restrictions:

- (1) No more than five chickens may be kept on a single-family detached residential lot.
- (2) A ~~temporary~~ urban chicken permit shall only be issued for a lot with an existing single-family detached residence that is owner-occupied.
- (3) Ducks, geese, turkeys, peafowl, pigeons, roosters or any other poultry or fowl are not permitted under the provisions of this section.
- (4) Chickens and associated activities shall be kept for personal use only. Selling chickens, eggs, feathers, or chicken manure, or the breeding of chickens is prohibited.
- (5) Chickens shall not be slaughtered on premises.
- (6) The coop, pen and enclosure shall be located behind the single-family residence in the rear yard and shall be screened from all adjacent properties and rights-of-way with a six-foot-tall opaque fence. Chicken tractors shall not be permitted.
- (7) The coop, pen, and enclosure shall comply with the standard setbacks for a shed set forth in Chapter 16, Section 3 of the land development code.
- (8) Chicken coops shall provide a minimum of four square feet per chicken to permit free movement of the chickens, shall not exceed 50 square feet, and may have an attached run. The coop shall be tied down for wind resistance. The coop and enclosure shall not be taller than six feet, measured from the natural grade, and shall be easily accessible for cleaning and maintenance.
- (9) The coop, pen and enclosure shall be completely secured from predators, including all openings, ventilation holes, doors and gates. Fencing or roofing is required over the enclosure in addition to the coop, in order to protect the chickens from predators.

- (10) All feed and other items associated with the keeping of chickens that can attract or to become infested with rodents or other pests shall be kept in a rodent and pest-proof container.
 - (11) Chickens shall be secured within a covered chicken coop or fenced pen/run area at all times and shall not be permitted to run at large.
 - (12) Chicken coops, pens, and enclosures shall be cleaned regularly and maintained in a clean and sanitary condition at all times. Chickens shall not be permitted to create a nuisance consisting of odor, noise or pests, or contribute to any other nuisance condition, as defined in the code or State Law.
- (fe) *Procedures for the granting of ~~temporary~~ urban chicken permits.* Application for ~~temporary~~ urban chicken permit shall be submitted to the Community Development Department. Such submittal shall include the application form as provided by the city, together with all documents required under this section.
- (1) No more than 30 ~~temporary~~ urban chicken permits shall be active citywide. Permits shall be issued on a first-come, first-served basis. Once the City has issued the initial 30 ~~temporary~~ urban chicken permits, approved applicants shall be placed on a waiting list. If a participant chooses to ~~leave the program~~ no longer keep chickens, he/she shall provide notice to the City. The City is then authorized to issue a permit to the next qualified applicant on the waiting list. If a ~~participant~~ permit holder is removed from the ~~program~~ approved chicken permit list due to one or more violations of this section, the City shall be authorized to issue a permit to the next qualified applicant on the waiting list.
 - (2) A ~~temporary~~ urban chicken permit shall not be issued for a property with an outstanding code enforcement case or any city imposed liens on said property.
 - (3) The ~~temporary~~ urban chicken permit is personal to the permittee and shall not be assigned.
 - (4) An applicant for a permit shall demonstrate compliance with the criteria in this section in order to obtain a permit. Applicants shall submit photos of the proposed site of the coop/run areas, a survey of the subject property showing the location, and proof of successful completion of a University of Florida Agricultural Extension Service class regarding the keeping of chickens or an equivalent class approved by the Administrative Official.

- (5) The ~~temporary~~ urban chicken permit applicant shall sign a statement acknowledging that the ~~temporary~~ urban chicken permit may be revoked for any violation of this section, and may be revoked if this section is amended in the future, and the City shall not be held responsible or liable for any losses, including the costs of improvements constructed for the keeping of chickens, to the applicant if such chicken permit is revoked.
- (6) If any condition or restriction of the ~~temporary~~ urban chicken permit has been violated, the city may revoke the permit upon seven days' written notice. If the violation is cured within the seven-day notice period, the permit shall not be revoked; however, a repeat offense may result in the city's immediate revocation of the permit. The city is responsible for the determination of compliance with the requirements of this section. In matters of interpretation, the Administrative Official has the authority to determine compliance with this section.
- (g) *Appeal.* A person aggrieved by a decision of the Administrative Official in the issuance, denial or revocation of a ~~temporary~~ urban chicken permit may appeal to the City Manager in writing within five business days of the Administrative Official's written decision by filing an appeal with the City Clerk. Said appeal shall state fully the grounds for the appeal and all facts relied upon by the appellant. A person aggrieved by a decision of the City Manager may appeal to the City Council within five business days of the City Manager's written decision by filing an appeal with the City Clerk. Said appeal shall state fully the grounds for the appeal and all facts relied upon by the appellant. The decision of City Council shall be final.

SECTION 2. 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. 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 4. 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 _____

Passed and adopted on second and final reading on the day of _____

Reviewed and Approved: _____
Matthew J. Jones, Deputy City Attorney



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: No

SUBJECT: (G16) Second Reading – Ordinance 2019-1 - LDC Text Amendment/
Chapter 15 - Residential Subdivision Signage (Case No. 18-25000008)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance 2019-1, amending Chapter 15 of the Land Development Code.

SUMMARY: Planning Commission Action (12/13/18): Recommended Approval

The proposed amendment updates Chapter 15, Sections 4 and 7 of the Land Development Code (LDC) to allow for a freestanding sign(s) with a manual changeable copy reader board to be placed within a residential subdivision. The request to use changeable copy is typically associated with a Home Owner's Association (HOA) wanting to display up to date information such as neighborhood meetings, general messages, and other events within the community. Currently, the LDC allows for residential subdivision entry signage but prohibits the use of manual changeable copy on any residential subdivision sign. The proposed amendment would allow a residential subdivision to install a freestanding sign(s) with a manual changeable copy area, in common area, oriented to face internally towards the subdivision. Any signage installed as a result of the proposed amendment would comply with the design requirements in the LDC regarding material, setbacks, height, and visual clearance angles.

The staff report is attached for more information.

Project No.: Funding Account No.:

Presenter: Penelope Cruz

ATTACHMENTS:

1.	Ord. No. 2019-1	Ord No 2019-1.pdf
2.	Staff Report	Staff Report.pdf

Robin Fenwick

Created/Initiated - 01/07/2019

ORDINANCE NO. 2019-1

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA AMENDING THE LAND
DEVELOPMENT CODE CHAPTER 15 RELATING TO
RESIDENTIAL SUBDIVISION SIGNAGE; PROVIDING FOR
REPEAL OF CONFLICTING ORDINANCES; PROVIDING
FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE
DATE.

WHEREAS, the Planning Commission has recommended amendments to the Land Development Code; and

WHEREAS, the proposed amendments would allow a residential subdivision to install a freestanding sign(s) with a manual changeable copy area, in common area, typically associated with communications within a residential community.

WHEREAS, the proposed amendment is necessary to improve the content of the existing Land Development Code ("Code") in an effort to make zoning requirements of the Code more efficient and consistent in its application.

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 in part the Land Development Code, City of Port Orange, Florida, Chapter 15 – Signs, Section 4 – Permitted signs and Section 7 – Miscellaneous signs, to read as follows:

LAND DEVELOPMENT CODE FO THE CITY OF PORT ORANGE, FLORIDA
Chapter 15 – SIGNS

[No changes to Sections (1) through (3.5)]

Section 4: - Permitted signs.

[No changes to Subsections (a), (b), (c) (d) and (e)]

(f) *Residential zones.*

[No changes to Sub-subsections (1) and (2)]

- (3) *Subdivision signs.* The administrative official may permit residential subdivision entrance signs as part of the subdivision review process, or upon request of property owners after development has occurred. The administrative official's review shall consider size of the sign, color, materials, design, provision for maintenance, size of the subdivision, functional classification of the adjoining roadway(s) and land use in the area. Appeals of the administrative official's decision may be made to the planning commission as provided in chapter 3, section 6 of this code. The location of the sign(s) shall be in compliance with the visual clearance requirements of chapter 16, section 6 of this code.

(a) Signs That include manual changeable copy shall be allowed within a subdivision and shall be oriented, so the manual changeable copy area faces the internal streets within the subdivision.

(1) Maximum height: 8-feet.

(2) Maximum changeable copy area: 20 square-feet.

(3) Minimum setback from the right-of-way: 50-feet from arterial or collector roadway and 5-feet from a local public or private road.

(4) Sign to be located on property or within common area owned by a Homeowner's Association (HOA) and written approval by the HOA shall be included as part of the sign permit application.

[No changes to Sub-subsection (4)]

[No changes to Subsection (g)]

[No changes to Sections 5 through 6]

Section 7: - Miscellaneous signs.

[No changes to Subsections (a) and (b)]

- (c) *Changeable copy signs.* Changeable copy signs shall be regulated under the following guidelines.

(1) *Freestanding signs with manual reader boards.*

- (a) Dunlawton Corridor District and East Volusia Beltline Properties: Changeable copy signs are prohibited except as described herein below.

- (b) Ridgewood Development District: Changeable copy signs shall not comprise more than 50 percent of the permitted sign area and shall be included as part of the permitted sign area, except as described herein below.
- (c) All other parcels: Changeable copy signs shall not comprise more than 25 percent of the permitted sign area and shall be included as part of the permitted sign area, except as described herein below.
- (d) Motor vehicle service stations and convenience stores with gas pumps may utilize up to 100 percent of permitted sign area for changeable prices of gasolines only.
- (e) Movie theaters and other performance/entertainment facilities may utilize up to 80 percent of permitted sign area for display of names of films, plays or other performances currently showing. Such changeable copy areas shall be included as part of the permitted sign area.
- (f) Houses of worship may utilize up to 50 percent of permitted sign area for changeable copy.
- (g) Changeable copy signs shall be prohibited for office, and industrial ~~and residential~~ uses.
- (h) Changeable copy signs shall be prohibited for residential use, except as allowed in Ch. 15, Sec. 4(f)(3).

[No Changes to Sections 8 through 12]

SECTION 2: 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: 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 re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 4: If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of 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: 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: _____
Shannon K. Balmer, Assistant City Attorney



STAFF REPORT

CASE NO. 18-25000008

LDC Amendment/Chapter 15, Sections 4 and 7

REQUEST:	To amend the Land Development Code (LDC) to allow a residential subdivision to install manual changeable copy sign within the subdivision.
APPLICANT:	City of Port Orange
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Briana Conlan-King, Senior Planner (386) 506-5676
PLANNING COMMISSION DATE:	Recommended Approval (December 13, 2018)
CITY COUNCIL DATE:	January 8, 2019

SUMMARY OF PROPOSED AMENDMENT

The proposed amendment is to allow for a freestanding sign(s) with a manual changeable copy reader board to be placed within a residential subdivision. Over the past few years, several Home Owner Associations (HOA) have inquired about installing freestanding signs with a manual changeable copy area near the HOA clubhouse or internally within the subdivision on common area. The request to use changeable copy is typically associated with a HOA wanting to display up to date information such as neighborhood meetings, general messages, and other events within the community. Currently, the LDC allows for residential subdivision entry signage but prohibits the use of manual changeable copy on any residential subdivision sign.

The proposed amendment would allow a residential subdivision to install a freestanding sign(s) with a manual changeable copy area reader subject to the following:

- 1) The sign shall be located within a common area for the HOA;
- 2) The maximum height of the sign shall not exceed 8 feet and the maximum area for the manual changeable copy area shall not exceed 20 square-feet;
- 3) As part of the sign permit application, a letter is required from the HOA documenting the sign has been discussed and voted upon at a recent HOA meeting;
- 4) The sign shall be setback 5' from a local street right-of-way and 50' from an arterial or collector road right-of-way;
- 5) The sign shall comply with all visual clearance requirements in the LDC; and
- 6) The manual changeable copy area shall be oriented to face internally into the subdivision and not outward toward an arterial or collector road or main intersection;
- 7) Only manual changeable copy area, electronic messages would be prohibited.

RECOMMENDATION

Approval of the amendment to the LDC to allow a residential subdivision to install manual changeable copy sign within the subdivision.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: No

SUBJECT: (G17) Second Reading - Ordinance No. 2019-3 - Amending Section 2-275 of the Code of Ordinances relating to Local Preference

DEPARTMENT: City Attorney

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to adopt Ordinance No. 2019-3 amending Section 2-275 of the Code of Ordinances relating to Local Preference.

SUMMARY: The City currently provides for local preference in its purchasing code (sec. 2-275) for expenditure contracts. However, the code does not contemplate local preference for revenue generating contracts. The change included in this ordinance adds language for the application of local preference to revenue generating solicitations when seeking highest and best responsible bids. This change follows along the logic previously incorporated for expenditure contracts.

Specifically, it allows Port Orange, Volusia County or Florida businesses that submitted a bid within 8%, 5% or 3% (respectively) of the highest and best responsible bid to provide a best and final bid of their own that is equal to or higher than the original high bid. This must be done within 5 working days of the bid opening.

As in the expenditure contracts, this allows local businesses an additional opportunity to do business with the City, while not negatively impacting the tax-payers of Port Orange.

Project No.: Funding Account No.:

Presenter: Alan Rosen

ATTACHMENTS:

1.	Ordinance 2019-3 FINAL Local Preference for Revenue Generating	Ordinance 2019-3 FINAL Local Preference for Revenue Generating.pdf
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Robin Fenwick

Created/Initiated - 01/07/2019

ORDINANCE NO. 2019-3

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 2,
ARTICLE VI, DIVISION 2, SECTION 2-275 TO ESTABLISH
A NEW SUB-SECTION REGARDING APPLICATION OF
THE LOCAL PURCHASING PREFERENCE; PROVIDING
FOR REPEAL OF CONFLICTING ORDINANCES;
PROVIDING FOR CODIFICATION; PROVIDING FOR
SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is City Council's intent to clarify the application of Section 2-275 as it relates to revenue-generating solicitations issued by the City of Port Orange; 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: Chapter 2, Article VI, Division 2, Section 2-275 of the Code of Ordinances, City of Port Orange, is hereby amended, in part, to read as follows:

Chapter 2 – ADMINISTRATION

ARTICLE VI. - FINANCE

DIVISION 2. – PURCHASE AND SALE PROCEDURE

Sec. 2-275. – Local Purchasing Preference.

(a) – (b) [*Remain Unchanged*]

(c) *Local preference process.* 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:

(1) *Competitive bids* when seeking lowest and best responsible bid.

- a. Except as set forth in subsection (2), this subsection (1) shall apply to City solicitations for formal bidding procedure in accordance with 2-262, Code of Ordinances.
 - b. Port Orange business. In any competitive bidding process where a bid submitted by a Port Orange business is within eight percent 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 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.
 - c. Volusia County business. In any competitive bidding process where a Volusia County business is within five percent 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 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.
 - d. Florida business. In any competitive bidding process where a Florida business is within three percent 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 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.
 - e. 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.
- (2) Competitive bids when seeking highest and best responsible bid for revenue generating solicitations.
- a. Except as set forth in this subsection (2), revenue-generating solicitations follow the same purchasing guidelines and solicitation requirements for the purchase of goods or services. Revenue-generating solicitations may include audit procedures which have been reviewed by the Finance Department. This subsection (2) shall apply to solicitations issued by the City of Port Orange that seek a revenue generating proposal, including but not limited to the following:
 - 1. Sale or lease of property
 - 2. Roll-offs
 - 3. Wrecker Services
 - 4. Concessions
 - 5. Licensing Services
 - 6. Copyrights

7. Equipment and other personal property

8. Any other solicitations that will generate revenue to the City of Port Orange, consistent with City of Port Orange Code of Ordinances and as otherwise authorized.

- b. *Port Orange business.* In any competitive bidding process where a bid submitted by a Port Orange business is within eight percent of the highest and best responsible bid submitted by a non-Port Orange business, then the Port Orange business shall have the opportunity to submit, within five working days of the bid opening, a best and final bid equal to or higher than the amount of the original high bid. The bid shall then be awarded to the highest and best responsible bidder.
- c. *Volusia County business.* In any competitive bidding process where a Volusia County business is within five percent of the highest 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 working days of the bid opening, a best and final bid equal to or higher than the amount of the original high bid. The bid shall then be awarded to the highest and best responsible bidder.
- d. *Florida business.* In any competitive bidding process where a Florida business is within three percent of the highest and best responsible bid submitted by a non-local business, then the Florida business shall have the opportunity to submit, within five working days of the bid opening, a best and final bid equal to or higher than the amount of the original high bid. The bid shall then be awarded to the highest and best responsible bidder.
- e. *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.

(3) *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:

- a. Port Orange business shall be granted up to eight percent of the available points.
- b. Volusia County business shall be granted up to five percent of the available points.
- c. Florida business shall be granted up to three percent of the available points.
- d. *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.

(d) – (e) *[Remain Unchanged]*

SECTION 2. 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. 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 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 the ordinance.

SECTION 5. This ordinance shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved:

Margaret T. Roberts, City Attorney



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: No

SUBJECT: (G18) Second Reading - Ordinance No. 2019-4 - Amending the Code of Ordinances relating to the Golf Course Advisory Board

DEPARTMENT: City Clerk

GOAL:

RECOMMENDED MOTION: Move to approve Ordinance No. 2019-4.

SUMMARY: Based on Council's discussion on December 4, 2018, the Golf Advisory Board composition shall be changed from seven (7) members to five (5) members and the requirement for a single council member shall be deleted. The proposed Ordinance revision is attached for Council's review. Through recent attrition the board currently has five sitting members.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Ordinance No. 2019-4 - Golf Course Advisory Board	Ord. No. 2019-4.pdf
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Robin Fenwick

Created/Initiated - 01/07/2019

ORDINANCE NO. 2019-4

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING SECTION 50-108, CODE OF ORDINANCES, TO REDUCE THE NUMBER OF MEMBERS ON THE GOLF ADVISORY BOARD AND REMOVE THE CITY COUNCILMEMBER POSITION ON THE GOLF ADVISORY BOARD; AMENDING SECTION 50-109, CODE OF ORDINANCES, TO PROVIDE FOR INITIAL APPOINTMENT TERMS; AMENDING SECTION 50-111, CODE OF ORDINANCES, TO REDUCE THE NUMBER OF BOARD MEMBERS NECESSARY TO FORM A QUORUM; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA:

Section 1. Section 50-108 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 50-108. - Composition and qualifications of members.

- (a) The golf course advisory board shall consist of ~~seven (7)~~ five (5) members appointed by the city council consisting of ~~a single council member and~~ at least one member from each of the following organizations: Cypress Head Master Homeowners' Association, Cypress Head Men's Golf Association and Cypress Head Women's Golf Association. However, In the event that no member(s) from the organizations mentioned above apply for a position to serve on the board, the seat may be filled by appointment of an otherwise qualified candidate by city council.

- (b) Members of the board shall have knowledge of golf course operations. They should be guided by a sincere interest in developing and promoting the operation of the municipal golf course for the city and in accomplishing the purposes and goals set forth herein.
- (c) Appointments shall be made on the basis of experience or interest in the areas of finance, insurance, golf course management, engineering, architecture, golf course maintenance, and construction.

Section 2. Section 50-109 of the Code of Ordinances, City of Port Orange, Florida, is hereby amended to read as follows:

Sec. 50-109. - Appointments and terms.

The initial appointments to the board shall be as follows:

- ~~(a) — Two (2) members shall be appointed for a term expiring April 1, 2017.~~
- ~~(b)~~(a) Two (2) members shall be appointed for a term expiring April 1, ~~2018~~ 2019.
- ~~(c)~~(b) Three (3) members shall be appointed for a term expiring April 1, ~~2019~~ 2020.

Thereafter all appointments shall be made for a term of three (3) years. All terms shall expire on April 1 in the year of their given expiration. A board member may be reappointed for any number of consecutive terms.

Section 3. Section 50-111 of the Code of ordinances, City of Port Orange, Florida is hereby amended to read as follows:

Sec. 50-111. - Organization and procedures.

- (a) – (d) *[Remain unchanged.]*

(e) *Quorum; rules of order.* The presence of ~~four (4)~~ three (3) or more members shall constitute a quorum of the board necessary to take action or conduct business. The board shall adopt Robert's Rules of Order (latest edition) or such other written rules and procedures as may be desirable and necessary to promote and effectuate the purposes, objectives and business of the board in an orderly, timely and productive manner.

(f) *[Remains unchanged.]*

Section 4. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

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 this ordinance which can be given effect without the invalid provision or application, and to this end the provision of this ordinance are declared severable.

Section 6. This Ordinance shall become effective upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Passed on first reading this _____ day of _____, 2019.

Passed and adopted on second reading and final reading on the ____ day of _____, 2019.

Reviewed and approved: _____
Matthew J. Jones, Deputy City Attorney

CA5186



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: No

SUBJECT: (G19) First Reading - Ordinance 2019-5 - LDC Amendment/Chapter 2, 16, 17, and 18 - Wireless Communications Facilities Siting (Case No. 18-25000010)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance 2019-5, amending Chapter 2, 16, 17 and 18 of the Land Development Code.

SUMMARY: Planning Commission Action (12/13/18): Recommended Approval

In September 2018, a moratorium was approved for personal wireless communications governed by Chapter 16, Section 9 of the Land Development Code (LDC), in order to review existing regulations in the LDC related to personal wireless communications, and if necessary, to develop amendments to maintain reasonable and uniform regulations that protect the health, safety and general welfare of the residents of Port Orange.

The proposed amendment is intended to update the regulations in the LDC related to wireless communication facilities siting, to comply with federal and state law to regulate the siting of communication towers, antennas and facilities, update local siting requirements and hierarchy, and minimize adverse impacts on residential zoning districts from the construction of new communication towers and facilities through setbacks, separation requirements, and landscape/screening.

Project No.: Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

1.	Communications Facilities Siting Ordinance No. 2019-5	Wireless Communications Siting Ordinance No. 2019-5.pdf
2.	Staff Report	LDC Ch 2_16_17_18 - Staff Report CC 2 (002).pdf

Tim Burman

Created/Initiated - 12/19/2018

Tim Burman	Approved - 12/19/2018
Matthew Jones	Approved - 01/11/2019
Jake Johansson	Approved - 01/15/2019
Robin Fenwick	Final Approval - 01/15/2019

ORDINANCE 2019-5

AN ORDINANCE OF THE CITY OF PORT ORANGE, FLORIDA AMENDING THE LAND DEVELOPMENT CODE OF THE CITY OF PORT ORANGE TO AMEND CHAPTER 2, SECTION 2 DEFINITIONS; TO REPEAL AND REPLACE CHAPTER 16, MISCELLANEOUS REGULATIONS, SECTION 9, PERSONAL WIRELESS COMMUNICATIONS, WITH A NEW CHAPTER 16, MISCELLANEOUS REGULATIONS, SECTION 9, ENTITLED WIRELESS COMMUNICATIONS FACILITIES SITING, WITH THE FOLLOWING SUBSECTIONS: PURPOSE; GENERAL SITING PREFERENCES; PROCEDURAL REQUIREMENTS; SPECIFIC REGULATIONS AND PROCEDURES FOR PROPOSED FACILITIES MODIFICATION APPLICATIONS; PROTECTION OF THE PUBLIC; AMATEUR RADIO ANTENNAS; ENFORCEMENT; AMENDING CHAPTER 18, SECTION 3(b)(25) ADDRESSING SPECIAL REQUIREMENTS FOR COMMUNICATIONS TOWERS IN RESIDENTIAL DISTRICTS; AMENDING CHAPTER 16, SECTION 4 ADDRESSING HEIGHT; AMENDING CHAPTER 16, SECTION 5 ADDRESSING SPECIAL SETBACKS; AMENDING CHAPTER 17, ZONING REGULATIONS, SECTION 1, IN GENERAL, TO REFERENCE THE WIRELESS COMMUNICATIONS FACILITIES SITING REGULATIONS SET FORTH IN CHAPTER 16, SECTION 9; AMENDING CHAPTER 17, ZONING REGULATIONS, TO REMOVE ALL REFERENCES TO ANTENNAS, CAMOFLAGED ANTENNAS, AND CAMOFLAGED, GUYED, LATTICE AND MONOPOLE COMMUNICATION TOWERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR THE TERMINATION OF MORATORIUM ADOPTED PURSUANT TO ORDINANCE NO. 2018-25; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Telecommunications Act of 1996, 47 U.S.C. §151 et seq. (“96 Act”) and Federal Communications Commission (“FCC”) Orders adopted thereto, provide federal regulation of wireless communications, a technology of wireless voice, video and data communications systems widely used and expanding rapidly, requiring land use facilities that impact planning and zoning concerns in the City of Port Orange ("City") and throughout the United States; and

WHEREAS, Florida statutes apply to the City's regulation the siting of wireless communication facilities; and

WHEREAS, the “Middle Class Tax Relief and Job Creation Act (“Spectrum Act”) (PL-112-96; codified at 47 U.S.C. §1455(a)) and FCC orders promulgated thereto, codified at 47 C.F.R. §1.40001, address, inter alia, local governments’ regulation of the modification of existing wireless antenna support structures and base stations; and

WHEREAS, it is the City's legislative intent to implement the adopted City Comprehensive Plan by continuing to ensure the highest quality living environment possible by developing zoning and development codes based on objectives and policies that will enhance the City's natural and man-made resources while minimizing any damage or threat of degradation to the health, safety and welfare of the City's citizens, native wildlife and environment; and

WHEREAS, it is the City's intent to balance growth, safety, aesthetics, the compatibility of land uses and consistency with community vision; and

WHEREAS, it is the City's intent to establish standards in compliance with applicable federal and state laws; and

WHEREAS, on August 7, 2018, the City Council adopted Ordinance 2018-13, creating Chapter 58, Article IV of the City Code, creating the Port Orange Communications Rights-of-Way Ordinance, providing for the processing of applications for communications facilities in the City public rights-of-way and the regulation of such facilities; and

WHEREAS, on April 29, 1997, the City Council of Port Orange, Florida, adopted Ordinance No. 1997-23, in the City Land Development Code to provide for the regulation of facilities for Personal Wireless Communications; and

WHEREAS, the City has received and expects to receive additional requests from communications service providers to site wireless communication towers, antennas and facilities within the City boundaries and is authorized by federal, state and local law to regulate the siting of such communication towers, antennas and facilities; and

WHEREAS, there have been significant advances in communications technology as well as revisions in applicable federal and state law since the adoption of Ordinance No. 1997-23 in the Land Development Code; and

WHEREAS, the City Council seeks to avoid adverse impacts on residential zoning districts from the construction of new communication towers and facilities; and

WHEREAS, on December 13, 2018, the Planning Commission held a public hearing on this proposed ordinance and recommended that the proposed ordinance be approved; and

WHEREAS, a duly noticed public hearing as required by law was held by the City Council of the City of Port Orange, at which public hearing all residents and interested persons were given an opportunity to be heard; and

WHEREAS, the City Council has reviewed the regulations set forth in this Ordinance and has determined that such regulations are consistent with the City's plans.

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

SECTION 1. The foregoing WHEREAS clauses are ratified and incorporated as the legislative intent of this Ordinance.

SECTION 2. The City Council hereby amends **CHAPTER 2, Definitions and Interpretations, SECTION 2, DEFINITIONS**, of the Port Orange, Florida Land Development Code, City of Port Orange, Florida, to insert alphabetically the definitions as amended herein as follows¹:

Amateur Radio Antenna: An antenna used to engage in amateur radio communications utilized by a Federal Communications Commission (FCC) licensed amateur radio operator.

~~*Antenna.* Any structure or device used to transmit or receive communications as authorized by the Federal Communications Commission, which is mounted on or proposed to be mounted on a communication tower or alternative support structure.~~

Antenna: A transmitting and/or receiving device mounted on a tower, building or structure and used in telecommunications personal wireless services that radiates or captures electromagnetic waves, digital signal, analog signals, and radio frequencies, directional antennas such as panel and microwave dish antennas, and omni-directional antennas such as whips but excluding small wireless facilities as defined in the Port Orange Communications Rights-of-Way Ordinance, Chapter 58, Article IV of the Code of Ordinances, radar antennas, amateur radio antennas, and satellite earth stations.

Applicant [owner, licensed contractor, and/or lessee]: For purposes of Chapter 16, Section 9 of the Land Development Code, a person or entity with property owner authorization, with an application before the City for a permit for a wireless communications facility.

Base Station. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. To the extent not inconsistent with applicable law, this term Base Station does not include a utility pole for the co-location of a small wireless facility in the City's public rights-of-way pursuant to the Port Orange Communications Rights-of-Way Ordinance, Chapter 58, Article IV, of the City Code. The term Base Station does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes but is not limited to:

- (a) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul;
- (b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks); and
- (c) Any structure other than a tower that, at the time the relevant application is filed with the City under Chapter 16, Section 9, supports or houses equipment described in subparagraphs (a)-(b) above, and that has been reviewed and approved under the applicable

¹ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support. Base Station does not include any structure that, at the time the relevant application is filed under Chapter 16, Section 9, does not support or house equipment described in (a) or (b) above.

Broadcasting Facility. Any communication tower built primarily for the purpose of broadcasting licensed AM, FM or television signals pursuant to 47 C.F.R. Part 73 of the FCC rules, as it may be amended.

Building Permit Review. A review for compliance with building constructions standards adopted by the City under Chapter 553, Florida Statutes, and Chapter 14, Art. III of the City Code of Ordinances and does not include a review for compliance with land development regulations.

Camouflage Equipment Building or Antenna Structure. A designed structure that encloses, obscures or conceals the presence of an antenna, equipment building and/or a communication tower such that the tower, equipment building and/or antenna blends into the environment. For example, the following may be determined to be a camouflage tower, equipment building or antenna: towers and antennas integrated into man-made trees that are similar in height, branches and leaf coverage to resemble natural trees occurring on the proposed site, clock towers, bell steeples, light poles, architecturally screened roof mounted antennas, equipment buildings installed below grade or not visible beyond the property as a result of landscaping or other buffering, and similar alternative designs.

Carrier. A company licensed by the Federal Communications Commission (FCC) that provides wireless communications services. A communication tower builder, manager, or owner is not a carrier unless it is licensed to provide wireless communications services.

Co-location. For purposes of an Eligible Facilities Modification as set forth in Chapter 16, Section 9, the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. “Co-location” for all other purposes, means the situation when a second or subsequent wireless carrier use an existing structure to locate a second or subsequent antennas. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of the antenna. ~~The installation of antennas by two or more wireless communication providers on an existing or proposed communication tower or an existing or proposed alternative support structure.~~

Co-location requirements. Specific requirements listed under ~~sub~~Section 9(d) of eChapter 16 which the applicant shall satisfy when applying for a permit to construct a communication tower or to install an antenna.

Communication facility operator. A provider of wireless communications services, or an owner or operator of a wireless communications facility.

Communication tower. A freestanding tower designed and constructed for the sole or primary purpose of supporting one or more antennas and their associated equipment intended for transmitting or receiving wireless communications services, telephone, radio and similar communication purposes, licensed or authorized by the FCC to the extent required. The term shall not include those towers used exclusively for receive-only antennas, or two-way dispatch, or amateur radio (as licensed by the FCC), nor those towers which are under district height limits. To the extent not inconsistent with applicable law, the term communication tower does not include a utility pole for the co-location of a small wireless facility in the City public rights-of-way pursuant to the Port Orange Communications Rights-of-Way Ordinance, Chapter 58, Article IV, of the City Code. A communication tower shall not include the following:

1. A cell-on-wheels or temporary communication tower authorized pursuant to Chapter 16, Section 9,
2. A structure supporting a utility transmission line(s) only,
3. A structure up to one hundred fifty (150) feet in height supporting a 69KV or higher voltage utility transmission line(s), and antenna(e), when located in non-residential zoning districts,
4. An amateur radio antenna or its support apparatus,
5. A Wireless Facilities Support Pole, or
6. A structure supporting a radio, television or satellite receiving antenna for residential uses only.

Communication towers shall be classified as follows:

- (a) *Camouflaged:* A communication tower designed to blend into and conform in appearance with existing or proposed surroundings. An example of a camouflaged communication tower is a tower which is designed and constructed to resemble a tree in form, shape, ~~and~~ color, height, branches and leaf coverage to resemble natural trees occurring on the proposed site.
- (b) *Guyed:* A communication tower which is anchored with guy wires.
- (c) *Lattice:* A communication tower which is self-supporting and has three or more sides of open-framed supports and without the use of guy wires or other supports.
- (d) *Monopole:* A single self-supporting communication tower of spin-cast concrete, concrete, steel, or other similar materials containing no guy wires, ground anchors, or other supports that is constructed or proposed to be constructed on a permanent foundation.

Communication tower height. When referring to a communication tower, the distance measured from the finished grade of a parcel to the highest point on the communications tower, including the base pad and any antenna, but excluding lights and lightning rods or warning devices.

Eligible facilities modification application. A written document submitted to the City pursuant to the Land Development Code for review and approval of a proposed eligible facilities modification.

Eligible facilities modification. Any request for modification of an existing tower or base station that does not result in a substantial change in the physical dimensions of such tower or base station, involving:

- (a) Co-location of new transmission equipment;
- (b) Removal of transmission equipment; or
- (c) Replacement of transmission equipment.

Eligible facilities modification permit. A written document issued by the City pursuant to Chapter 16, Section 9 of the Land Development Code, approving an eligible facilities modification application.

Eligible support structure. Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the City.

Equipment building. The cabinets, shelter, building or other such structure which contains the electronic equipment used in the operation of the antenna. Unless the context indicates otherwise, the term includes generators, generator fuel supplies, cable connections and supports, electrical panels and similar accessory components.

Essential services. Those services provided by the City and other governmental entities that directly relate to the health and safety of residents, including fire, police and rescue.

Existing. For purposes of an Eligible Facilities Modification, a constructed tower or base station that has been reviewed or approved under the applicable zoning or siting process of the City, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

Existing structure. As used in Chapter 16, Section 9, means a structure that exists at the time an application for permission to place antennas on a structure is filed with the City. The term includes any structure that can structurally support the attachment of antennas in compliance with applicable codes.

Fall radius. The greater of the height of a communication tower or the calculated distance measured from the center of the base of a communication tower which defines the maximum circular area into which the tower and any further distance in which any part of a tower may fall in case of structural failure or collapse.

Historic Structure, Site, Object, or District. When used in Chapter 16, Section 9, means any building, resource, structure, site, object, or district that has been officially designated as a historic building, historic resource, historic structure, historic site, historic object, or historic district through a federal, state or local designation program.

Interference or Interfere. For purposes of Chapter 16, Section 9, the impairment of transmission or reception of any desired communications or radio frequencies.

Licensed engineer. A person who satisfies the requirements of Section 471.003, Florida Statutes.

Microwave dish antenna. A dish-shaped device used to transmit and/or receive microwave signals in a straight line to and from similarly earth bound point sources.

Personal wireless service. Commercial mobile services, licensed wireless services, and common carrier wireless exchange access services, and shall include “wireless service” as defined in Section 365.172, Florida Statutes, as amended, as well as “personal wireless services” as defined in 47 USC §322(c)(7)(C)(i), as amended.

Personal wireless service Facilities. Facilities for the provision of personal wireless services. A power, light, or other utility pole used exclusively as such prior to attachment of a personal wireless service facility shall not be considered a personal wireless service facility because of such attachment.

Pre-existing antenna. An antenna for which a permit has been issued prior to the effective date of Ordinance 1997-23, and its amendments, ~~this ordinance~~, or antenna for which a permit has been properly issued and finalized, including antennas that have not yet been constructed so long as such approval and permit is current and not expired.

Pre-existing communication tower. A communication tower for which a permit has been issued prior to the effective date of Ordinance 1997-23, and its amendments, ~~this ordinance~~, or any communication tower for which a permit has been properly issued and finalized, including permitted communication towers that have not yet been constructed so long as such approval and permit is current and not expired.

Proposed facilities modification: Any request for modification of an eligible support structure which the applicant asserts is subject to review under the Middle Class Tax Relief and Job Creation Act (“Spectrum Act”) (PL-122-96; codified at 47 U.S.C. §1455(a)), as amended, and FCC orders promulgated thereto, codified at 47 C.F.R. §1.40001, as amended, and involving:

- (a) Co-location of new transmission equipment;
- (b) Removal of transmission equipment; or
- (c) Replacement of transmission equipment.

Public safety communications facility. Any wireless communications facilities used by a government agency for the primary purpose of providing public safety related communications, including but not limited to, wireless communications for police, fire and emergency services.

Search area. The geographic area, in which a wireless communications facility must be located to provide FCC required coverage of the applicant’s designed service areas, as certified by Radio Frequency (RF) licensed engineer, or other such appropriate technical expert.

Substantial change. A modification that changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (a) For towers other than towers in the public rights-of-way, it increases the height of the tower

by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than ten feet, whichever is greater;

(b) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(c) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in height or overall volume than any other ground cabinets associated with the structure;

(d) It entails any excavation or deployment outside the current site;

(e) It would defeat the concealment elements of the eligible support structure; or

(f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment, provided however that this limitation does not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in sub-paragraphs (a)-(d) above.

Transmission equipment. Equipment that facilitates transmissions for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul and the associated site, and shall not include for example: utility poles, light poles, pedestrian signalized poles or signalized intersection poles, masts, or similar vertical structures that have a primary purpose or function independent of supporting a wireless telecommunications facility.

Wireless communications facility. Any equipment or facility used to provide wireless communications service and may include, but is not limited to, antennas, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility. Such definition shall not include facilities of a governmental entity where such facilities are utilized to provide intra-governmental communications, not generally available to the public, to protect the health, safety and welfare of the public.

Wireless communications service. Personal wireless service or "commercial mobile radio service" as provided under ss. 3(27) and 332(d) of the Telecommunications Act of 1996, 47 U.S.C. §§151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, August 10, 1993, 107 Stat. 312. The term includes service provided by any wireless real-time two-way communication device, including radio-telephone communications used in cellular telephone

service; personal communications service; or the functional or competitive equivalent of a radio-telephone communications line used in cellular telephone service, a personal communications service, or a network radio access line. The term does not include wireless providers that offer mainly dispatch service in a more localized, noncellular configuration; providers offering only data, one-way, or stored-voice services on an interconnected basis; providers of air-to-ground services; or public coast stations.

Wireless facility support pole. A pole or similar structure that resembles and functions as a light or traffic control pole that is no less than ten (10) feet or more than fifty (50) feet in height and is used to support a camouflaged antenna or antennas for wireless communications service, and where electronic equipment associated with the antenna is either contained within the pole or installed below grade so as not to be visible.

SECTION 3. The City Council hereby repeals in its entirety **CHAPTER 16, Miscellaneous, SECTION 9, Personal Wireless Communications**, of the Port Orange, Florida Land Development Code.

SECTION 4. The City Council hereby creates **CHAPTER 16, Miscellaneous, SECTION 9, Wireless Communications Facilities Siting**, of the Port Orange, Florida Land Development Code, to read as follows²:

Section 9: - Wireless Communications Facilities Siting

- (a) Purpose. The purpose of this section is to establish regulations and requirements for the siting of wireless telecommunications facilities. All new towers or antennas in the City shall be subject to these regulations, except where specifically excluded. The section is intended to accomplish the following:
- (1) Protect and promote the public health, safety and general welfare of the residents of the City;
 - (2) Accommodate the growing need and demand for reliable wireless communications services by permitting the siting of wireless communication towers and antennas within the City's boundaries and provide reasonable accommodation to promote and to encourage innovations in technology and fair and reasonable competition among telecommunications service providers or providers of functionally equivalent services on a neutral and nondiscriminatory basis;
 - (3) Minimize potential impacts of towers upon residential areas and land uses;
 - (4) Encourage and promote the location of towers in nonresidential areas, where the adverse impact on the community is minimal;
 - (5) Minimize the total number of towers throughout the community by strongly encouraging the co-location of antennas on new and pre-existing tower sites as a primary option rather than construction of additional single-use towers;
 - (6) Encourage and promote users of telecommunication towers and antennas to configure them in a way that minimizes the adverse visual impact of the

² Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

- communication towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques;
- (7) Minimize potential damage to property from wireless communication towers and telecommunications facilities by requiring such structures be soundly designed, constructed, modified and maintained and in compliance with all requirements of the Florida Building Code applicable to similar structures; and
 - (8) Enhance the ability of the providers of wireless telecommunications services to provide such services to the community through an efficient and timely application process;
 - (9) Encourage the location and co-location of antennas on existing structures thereby minimizing new visual impacts and reducing the need for additional antenna support structures;
 - (10) Further the balance between predictability for the communications industry in the placement of wireless telecommunications facilities and appropriate land use regulations to protect the aesthetic integrity and public safety of the City's residents, visitors and businesses;
 - (11) Establish appropriate zoning requirements, including but not limited to setback and distance separation requirements, aesthetics, landscaping, land use based location priorities, and structural design for wireless communication towers and antennas within the City's boundaries, with due consideration to the City's comprehensive plan, zoning map, existing land uses and environmentally sensitive areas, including hurricane preparedness areas;
 - (12) Establish setback and distance separation requirements for towers that do not exceed the minimum distance necessary to satisfy structural safety or aesthetic concerns;
 - (13) Adopt regulations that are consistent with applicable federal and state laws, including but not limited to the Telecommunications Act of 1996, which as set forth in 47 U.S.C. § 332(c)(7)(B)(iv), expressly preempts, state and local government regulation of the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the FCC's regulations concerning such emissions, and Section 365.172(13), Florida Statutes;
 - (14) Establish procedural requirements and substantive criteria applicable for the review and approval or denial of applications for eligible facilities modification;
 - (15) Ensure that application submittal requirements for eligible facilities modifications are related to information reasonably necessary to the determination of whether or not the proposed modification will result in a substantial change in the physical dimensions of the eligible structure;
 - (16) Exempt facilities modifications approved under this section as eligible facilities requests from zoning and development regulations that are inconsistent with Section 6409 of the Spectrum Act, Middle Class Tax Relief and Job Creation Act ("Spectrum Act") (PL-122-96; codified at 47 U.S.C. § 1455(a)) and FCC orders promulgated thereto, codified at 47 C.F.R. §1.40001;
 - (17) Confirm that this Ordinance shall not apply to wireless communications facilities or applications for wireless facilities in the public rights-of-way. Such facilities

and applications shall be governed by the Port Orange Communications Rights-of-Way Ordinance.

- (18) Confirm that this Ordinance will not govern any communication tower or the installation of any antenna that is for the use of a broadcasting facility or is used exclusively for receiving only antennas.
- (19) Confirm that communications facilities owned by the City shall not be subject to this Ordinance, except as specifically referred to herein to the extent not inconsistent with applicable law.
- (20) Establish specific regulations for Federal Communications Commission (FCC) licensed amateur radio; and
- (21) Preserve the City's right to continue to enforce and condition approvals pursuant to this Section on compliance with generally applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health, safety and welfare.

In furtherance of these goals, the City will at all times give due consideration to the City's Comprehensive Plan, zoning maps, existing land uses, and environmentally sensitive areas, including hurricane preparedness areas, in approving sites for the location of towers and antennas.

(b) General Siting Provisions.

- (1) Hierarchy of siting alternatives. Placement of new antennas, communication towers, and communications facilities shall be in accordance with the following siting alternatives hierarchy. The order of ranking is from highest (a)(1) to lowest (b)(8). Where a lower ranked alternative is proposed, the applicant must demonstrate in its application that higher ranked options are not available. The availability of a less expensive lease on a lower ranked site is not sufficient in and of itself to justify using the lower ranked alternative where a higher ranked alternative is otherwise available.
- (2) Co-location Preference. Consistent with federal and state law, the City hereby establishes a preference for co-location of antennas on existing communication towers and structures, as opposed to constructing a new communication tower. The preference for co-location shall have a secondary priority as follows with the higher preference listed in a(1), followed by a(2), through a(4), the lowest ranked preference.
 - a. Co-location of camouflage antenna(s) on an existing camouflaged communication tower in any zoning district, for example, additional antennas within a camouflaged communication tower designed as a flagpole, co-location of antenna(s) on a communication tower on property used for a municipal purpose including, but not limited to, parks, public service and City maintenance yards, police and fire stations, City Hall, community centers and similar City properties (hereinafter "municipal use property"), or antennas attached to a structure on municipal use property.

- b. Co-location of antennas on existing non-camouflaged communication tower on municipal use property.
 - c. Co-location of antennas on an existing non-camouflaged communication tower on private property or attached camouflage antennas on a structure on private property.
 - d. Attached non-camouflage antennas to an existing structure on private property.
- (3) New Communication Towers. If co-location or attachment of antennas as listed above is not possible as demonstrated through the factors listed below, an applicant may propose a new communication tower. The priority rankings for a new communication tower are set forth below from b(1) highest to b(8) lowest.
- a. Camouflaged communication tower on municipal use property.
 - b. Non-camouflaged communication tower on municipal use property.
 - c. Camouflaged communication tower on light industrial and commercial industrial zoning district private property.
 - d. Non-camouflaged communication tower on light industrial and commercial industrial zoning district private property in the following preferred order: monopole, guyed and lattice.
 - e. Camouflaged communication tower in other zoning districts on private or other governmental property other than residential.
 - f. Non-camouflaged communication tower in the following preferred order monopole, guyed and lattice, in other zoning districts on private or other governmental property other than residential.
 - g. New communication towers are not permitted in a residential zoning district. If an applicant seeks to locate a communication tower in a residential zoning district, the applicant may apply to the City, with payment of the appropriate fee, for the City to cooperate in determining an appropriate site. Such application for cooperation, however, shall not be subject to the timeframes for action on an application as otherwise provided in this Ordinance.
 - h. New communication towers are not permitted in the following zoning districts without a variance approved by the City Council pursuant to

Chapter 16, Section 9(d)(10), following a recommendation of the Planning Commission:

1. The Port Orange Town Center Riverwalk District Community Redevelopment Agency;
2. The PC-A Zoning District (West Town Center and Community Districts);
3. Floodplain Conservation (F-C) District;
4. Agricultural (A) District; and
5. A residential zoning district.

(c) Regulations for communications facilities.

(1) Lease Required for City Property.

- a. Any new construction, installation or placement of a communications facility on any property owned, leased, and/or controlled by the City including municipal use property shall require a Lease Agreement executed by the City and the owner of the facility. The City may refuse to enter into a lease for communications facilities on municipal use property in its sole discretion. Notwithstanding any provision in the City Code to the contrary, subject to applicable state and federal law, communication towers shall not be allowed in the public rights-of-way controlled by the City. The City cannot and hereby expressly does not waive or relinquish any of its land use, regulatory, permitting and police power authority, approval or enforcement rights and obligations, as they may relate to government regulations of general applicability which may govern property subject to a lease or sublease with the City, any improvements thereon, or any operations on the property. Wireless communications facilities shall not interfere with any facilities of the City or governmental entity used to provide essential services. Nothing in any lease or sublease with the City shall be deemed to create an affirmative duty of the City to abrogate its right to exercise its police power and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations and grant agreements, as they may be amended.
- b. The City may require, as a condition of entering into a Lease Agreement with a communications service provider, the dedication of space on the facility for public health and safety purposes or to provide essential services, as well as property improvements on the leased space. Any dedications and improvements shall be negotiated prior to execution of the lease.

- c. No lease granted under this section shall convey any right, title, or interest in the public lands other than a leasehold interest, but shall be deemed only to allow the use of the public lands for the limited purpose and term stated in the lease agreement. No lease granted under this section shall be construed as a conveyance of a fee title interest in the property.
- (2) A proposed communication tower must include the attachment of a wireless communications facility such as antennas to be used for the provision of wireless communications services. A proposed communication tower that does not include wireless communications facilities to be used for the provision of wireless communications service or an executed lease or license for the co-location or attachment of antenna within a reasonable period of time after construction of the tower shall not be approved in any zoning district.
- (3) Subject to the siting priorities above, new communication towers may be located as a permitted use on municipal use property and in the light industrial and commercial industrial districts. A new communication tower in all other districts shall require a variance pursuant to the requirements of this Chapter 16, Section 9(d)(10).

Table

<u>Communication Tower Type</u>	<u>Residential Districts* and Other Districts Prohibited pursuant to Chapter 16, Section 9(b)(3)h. herein.</u>	<u>Municipal Use Property</u>	<u>Light Industrial & Commercial Industrial (LI & CI)</u>
<u>Camouflaged</u>	=	<u>PU</u>	<u>PU</u>
<u>Guyed</u>	=	<u>PU</u>	<u>PU</u>
<u>Lattice</u>	=	<u>PU</u>	<u>PU</u>
<u>Monopole</u>	=	<u>PU</u>	<u>PU</u>

* Includes: A, AP, RR, RMH, R-2D, R-7SF, R-8SF, R-10SF, R-20SF, R-3L, R-3M, R-3H, NP, and PUD.

-- = Not allowed

PU = Permitted Use

(4) Satisfaction of Priority Siting Requirements.

If an applicant is proposing new communications antennas on other than the highest ranked priority or a new communication tower as opposed to co-location or attachment on an existing structure, the applicant shall demonstrate the lack of availability of a higher priority. No new communication tower shall be approved unless the applicant demonstrates to the reasonable satisfaction of the City that no pre-existing tower, structure or economically or technically feasible alternative technology that does not require the use of new communication tower or new structures can accommodate, or be modified to accommodate, the applicant's proposed antenna. Evidence submitted to demonstrate that no higher ranked alternative for a proposed antenna or that a pre-existing communication tower, structure or alternative technology is not available shall consist of any of the following:

- a. An affidavit demonstrating that the applicant made diligent efforts but was unable to obtain permission to install or collocate the applicant's antenna within as applicable, the search area or a one-mile radius of the proposed communication tower site.
- b. An affidavit demonstrating that the applicant made diligent efforts to install or co-locate the applicant's antenna on pre-existing towers or useable antenna support structures on municipal use property or owned by other persons located within as applicable, the search area or a one-mile radius of the proposed communication tower site, but was unable to obtain permission.
- c. Pre-existing towers or structures do not have sufficient structural strength and cannot reasonably be modified to support applicant's proposed antenna and related equipment as demonstrated by supporting plans and calculations by a licensed engineer experienced in the design of wireless communications facilities.
- d. The applicant's proposed antenna would cause interference with the antenna on the pre-existing towers or structures, or the antenna on the pre-existing towers or structures would cause interference with the applicant's proposed antenna and such interference cannot reasonably be eliminated as demonstrated by a licensed engineer.
- e. The fees, costs, or contractual provisions required by the owner to share an existing tower or structure or to adapt an existing tower or structure for co-

location or attachment are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

- f. The applicant demonstrates with support from a licensed engineer that no pre-existing tower or structure located within the search area has the capacity to provide reasonable technical service, is of sufficient height to meet applicable requirements, or there are other limiting factors that render pre-existing towers or structures unsuitable.
 - g. The applicant demonstrates that alternative technology used in the wireless communications industry and within the scope of applicant's FCC license, is economically or technically not feasible.
 - h. Other factors which demonstrate the reasonable need for a new communication tower or for an antenna on a lower ranked priority.
- (5) Communication towers may be located on the same property as another use. A different existing use on the same lot or parcel that is proposed to have a communication tower located on it shall not preclude the installation of that communication tower if the other requirements of this section can be met.
- (6) Communication tower cell sites shall not be required to comply with minimum living area, minimum lot area, minimum lot width, maximum building coverage, or minimum open space requirements, when such cell sites constitute a specified area within a lot or parcel.
- (7) *Principal use.* Every cell site shall be deemed to be a principal use of the parcel or lot which constitutes the cell site or on which the cell site is located. An existing principal use and/or an existing structure on a lot or parcel shall not preclude a specified area within that lot or parcel from being utilized as a cell site as provided herein. For purposes of determining whether a cell site complies with the regulations of the applicable zoning district, including but not limited to setback, lot coverage and other such requirements, the dimensions of the entire lot or parcel shall control, even if the cell site is located on a specified area within such lot or parcel.
- (8) *Setbacks.* The following setback requirements shall apply to all communication towers in addition to the separation requirements in this Chapter 16, Section 9. In establishing these setback requirements, the City Council finds that such setbacks are the minimum distance necessary to satisfy structural safety and aesthetic concerns for owners of adjacent properties, residents, and users of nearby public rights-of-way. Such setbacks shall be measured from the base of said communication towers. Setback standards shall be calculated and applied to communication tower facilities located in the City irrespective of municipal and county jurisdictional boundaries.

- a. All communication towers shall be setback from all property lines of the parcel on which it is to be constructed a minimum distance of 110% of the fall radius of the tower or the minimum setback for the zoning district, whichever is greater.
- b. The setback for the base of any guys for guyed towers and any equipment buildings must satisfy the minimum zoning district setback requirements.
- c. Communication towers shall be set back a minimum of the fall radius or 200 feet from Dunlawton Avenue and 100 feet from all other street rights-of-ways, whichever is greater.
- d. All buildings which are ancillary to communication transmission and reception, shall be set back a minimum of ten feet from property lines or shall meet the minimum setback requirements of the district in which they are located, whichever is greater.

(9) Separation.

In addition to the setback from the property line, the following separation requirements shall apply to all communication towers. Communication tower separation shall be measured from the base of the proposed communication tower to the lot line of the off-site and/or designated areas. The City Council hereby finds that the separation requirements for towers in this section are the minimum distance necessary to satisfy structural safety and aesthetic concerns of nearby existing or potential residents. Communication tower separation standards shall be calculated and applied to communication tower facilities located in the City irrespective of municipal and county jurisdictional boundaries.

- a. For a guyed, lattice or non-camouflaged monopole communication tower, such proposed tower shall be separated at least four times its height from the property line of a lot with any habitable residential structure or from vacant land in a residentially zoned district.
- b. For a camouflaged communication tower, such proposed tower shall be separated at least two times its height from the property line of a lot with any habitable residential structure or vacant land in a residentially zoned district.
- c. A proposed communication tower shall be separated a minimum of one-half mile from existing communication towers.

(10) Height.

- a. Communication towers shall not be required to comply with district height limitations applicable to buildings and structures.
- b. Communication towers (including mounted antennas) shall not exceed 300 feet in height. However, when reviewing an application for a communication tower which would constitute an airport hazard or result in an obstruction within an airport hazard area, the administrative official may reduce the maximum height to less than 300 feet. Appeal of the administrative official's decision to reduce the maximum height shall comply with the provisions of subsection 7.1(b), chapter 3 of this code.
- c. Subject to applicable law, antennas attached to alternative support structures shall not extend more than 20 feet above the overall height of such structures. Buildings may be used as alternative support structures only when they are 45 feet or greater in height.

(11) Spruce Creek Fly-In Airport. Any person proposing to construct a communication tower within the City limits west of Interstate 95 and within a four-mile radius of the ends of the runways of the Spruce Creek Fly-In Airport shall be required to send a copy of the completed application for the communication tower by registered mail to the last known address of the owner, operator or licensee of the Spruce Creek Fly-In Airport by reference to the latest ad valorem tax records. The owner, operator or licensee shall have ten days from receipt of the application to provide written comments to the administrative official relating solely to height and/or lighting concerns arising from the location of the proposed communication tower. The administrative official shall consider such comments and based on such comments shall be authorized to:

- a. Reduce the maximum height allowed for the proposed communication tower if the tower would constitute an airport hazard or result in an obstruction within an airport hazard area, as provided in Section 9(c)(10) of this Chapter 16; or
- b. Impose lighting requirements to eliminate or reduce potential airport hazards, as provided in Section 9(c)(12) of this Chapter 16.

(12) Lighting and Signs.

- a. Communication towers shall not be artificially lighted, unless required by the administrative official, FAA, or other governmental entity having authority over such matters. If lighting is required, the administrative official shall review the permitted lighting alternatives and shall have authority to require as a condition of the building permit that the lighting alternative used balance the need for safety and cause the least adverse impact to adjoining properties.

- b. No commercial signage or advertising shall be permitted on a communication tower unless otherwise required by law or the signage pertains only to the posting of the property relative to trespassing and public safety.
- c. Warning signs may be attached to free standing poles if the content of the signs may be obstructed by landscaping.
- d. The City reserves the right to modify or waive the above requirements to avoid visual clutter and to better apply the goals of this section.
- e. Warning signs shall include the name of the owner(s) and operators and a twenty-four-hour emergency telephone number posted adjacent to the gate.
- f. If high voltage is necessary for the operation of the telecommunications tower or any accessory structures, "HIGH VOLTAGE—DANGER" warning signs shall be permanently attached to the fence or wall surrounding the structure and spaced no more than forty (40) feet apart.
- g. "NO TRESPASSING" warning signs shall be permanently attached to the fence or wall and spaced no more than forty (40) feet apart.
- h. The height of the lettering of the warning signs shall be at least twelve (12) inches in height. The warning signs shall be installed at least five (5) feet above the finished grade.

(13) Compound and Landscaping.

- a. Communication towers shall be enclosed by a wall or fence as prescribed by chapter 14 of this code. The wall or fence shall be not less than six feet in height and shall be equipped with an appropriate anti-climbing device unless the administrative official waives the need for such device based on consideration of public safety. Access to the communication tower through the wall or fence shall be through a locked gate. Vehicles may be parked only while construction or maintenance is occurring.
- b. Landscaping requirements. In addition to the requirements of chapter 13 of this code, the following landscaping and buffering shall be required:
 - 1. Around the perimeter of any wall or fence installed on a cell site, a row of shade trees spaced at ten feet on center shall be planted around the perimeter of the wall or fence. In addition, a continuous hedge at least 30 inches high at planting and capable of growing to at least 36 inches in height within 18 months shall be planted in front of the row of shade trees.

2. In addition to the plantings required in the immediately preceding subsection 1., the required buffer yard design type for a communication tower shall be calculated by assigning a land use intensity factor of nine to the cell site.
3. The minimum amount of planting required adjacent to an equipment building/storage structure located on a cell site shall be the same as in subparagraph 5(a)(1)(a) of chapter 13 of this code.
4. If the tower compound perimeter abuts a public or private street or public right-of-way, the minimum buffer width shall be fifteen (15) feet. Existing mature growth, not including exotics, and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be a sufficient buffer. The administrative official or designee shall be responsible for determining if the existing native perimeter vegetation meets the intent of this Code. All areas disturbed during project construction shall be replanted with vegetation according to this Code.
5. All landscaping shall be properly maintained to ensure good health and viability at the expense of the owner.

(14) Certification and Inspections. All communication towers shall be certified by a licensed engineer to be structurally sound and in conformance with the requirements of the standard building code and all other construction standards set forth by this code, federal and state law. Such certification shall be submitted with the application for letter of completion. Owners and/or operators of towers shall certify that all licenses required by law for the construction and/or operation of a wireless communications system in the City have been obtained and shall file a copy of all required licenses with the City. In addition, for monopole communication towers, such certification shall be submitted every five years after the initial certification, and for lattice and guyed communication towers such certification shall be submitted every two years after initial certification. Notwithstanding this provision, an owner of a communication tower shall provide such certification following recovery from a declaration of a state of emergency by the City or by an appropriate state official that included the area of the tower. In addition to the foregoing, the City shall have authority to require the communication tower owner or operator to submit to more frequent certification submissions if the City has reason to believe that the structural and electrical integrity of the communication tower is jeopardized. The City's officers, employees and agents, shall have the authority to enter onto the property upon which a tower is located, at such times as the City may deem necessary, for the purpose of inspecting the communication tower to determine whether it complies with the standard building code and all other construction standards provided by this code, federal and state law. The City shall have authority to conduct such inspections at any time, upon reasonable notice to the communication tower owner.

All expenses related to such inspections by the City shall be reimbursed by the communication tower owner.

(15) *Design requirements.* Except for design elements that are necessary to enable a communication tower, antennas and/or associated facilities to be camouflage, the following design requirements shall apply.

- a. Communication towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color, so as to reduce visual obtrusiveness.
- b. Antennas shall be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna as visually unobtrusive as possible. If an antenna is installed on a structure other than a communication tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- c. In addition to meeting applicable requirements of chapter 14 of this code, the design of any equipment and/or building(s) ancillary to communication transmission and reception shall use materials, colors and textures that will blend the equipment and/or building(s) into the natural setting and built environment.
- d. Microwave dish antennas located less than sixty-five (65) feet above the ground may not exceed six (6) feet in diameter. Microwave dish antennas located sixty-five (65) feet and higher above the ground may not exceed eight (8) feet in diameter. Ground-mounted microwave dish antennas must be located or screened so as not to be visible from abutting public streets to the extent consistent with applicable law.

(16) *Pre-Existing Communication towers.*

- a. All lawfully constructed communication towers existing on the effective date of this ordinance shall be permitted to continue to be used and maintained as they presently exist.
- b. *Nonconforming structures.* An antenna co-located on or attached to a communication tower or alternative support structure which is deemed nonconforming as provided in Section 8 of Chapter 3 of this code, shall not be deemed to increase the degree of nonconformity notwithstanding the provisions of Section 8 of Chapter 3.

- c. Routine maintenance shall be permitted for any pre-existing communication tower. However, except as provided in subparagraph d. of this paragraph any such communication tower which is undergoing expansion of use or new construction shall comply with all requirements of this code for new communication towers.
- d. Any pre-existing communication tower may be modified to accommodate co-location of additional antennas. In such instance the height restrictions herein of Chapter 16, Section 9 shall apply with respect to the communication tower and all antennas. Any pre-existing communication tower may be rebuilt and relocated on the same lot or parcel and may be moved on site within fifty (50) feet of its existing location to accommodate co-location, subject to applicable setback and separation requirements. However, if it is impossible for a pre-existing communication tower to be rebuilt in compliance with applicable setback requirements, the City Council may approve a variance to such setback and separation requirements to allow the tower to be rebuilt in its exact previous location.
- e. A tower which previously received a conditional use or special exception approval may be rebuilt according to the conditions under which the conditional use or special exception was approved.
- f. After the tower is rebuilt to accommodate co-location, only one (1) tower may remain on the site. The initial tower shall be removed within thirty (30) days following the final inspection for the new tower.

(17) Co-location and Attachment of Antennas on Existing Towers and Structures. A proposed antenna to be attached to an existing tower and that is not subject to Section 9(e) of this Chapter 16, Proposed Facilities Modifications, shall be approved provided such co-location or attachment is accomplished in a manner consistent with the following:

- a. The City shall grant or deny each properly completed application that is not subject to Section 9(e) of this Chapter 16, Proposed Facilities Modifications, as provided in this Section, for the co-location of a wireless communications facility within the City's jurisdiction within the normal time frame for a similar building permit review but in no case later than forty-five (45) business days after the date the application is determined to be properly completed in accordance with the City's application procedures.
- b. Co-locations on towers, including nonconforming towers that meet the requirements in subparagraphs 1. through 3. below, are subject to only building permit review, which may include a review for compliance with this subparagraph, such co-locations are not subject to any design or placement requirements of the City's land development regulations in effect

at the time of the co-location that are more restrictive than those in effect at the time of the initial antennas placement approval, to any other portion of the land development regulations, or to public hearing review. This subparagraph shall not preclude a public hearing for any appeal of the decision on the co-location application, provided the following:

1. The co-location does not increase the communications tower height to which the antennas are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower; and
2. The co-location does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment enclosures and ancillary facilities; and
3. The co-location consists of antennas, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennas placed on the tower and to its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the tower supporting the antenna. Such regulations may include the design and aesthetic requirements, but not procedural requirements, other than those authorized by this section, of the City's land development regulations in effect at the time the initial antennas placement was approved.

c. Except for a historic building, structure, site, object, or district, a co-location on all other existing structures that meet the requirements in subparagraphs 1. through 4. below shall be subject to no more than building permit review, and an administrative review for compliance with this subparagraph. Such co-locations are not subject to any portion of the City's land development regulations not addressed herein, or to public hearing review. Nothing herein shall preclude a public hearing for any appeal of the decision on the co-location application:

1. The co-location does not increase the height of the existing structure to which the antennas are to be attached, measured to the highest point of any part of the structure or any existing antenna attached to the structure;
2. The co-location does not increase the ground space area, otherwise known as the compound, if any, approved in the site plan for equipment enclosures and ancillary facilities;
3. The co-location consists of antenna, equipment enclosures, and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure, but not prohibitions or restrictions on the placement of additional co-locations on the

- existing structure or procedural requirements, other than those authorized by this section, of the City's land development regulations in effect at the time of the co-location application; and
4. The co-location consists of antenna, equipment enclosures, and ancillary facilities that are of a design and configuratin consistent with all applicable restrictions or conditions, if any, that do not conflict with subparagraph 3. and were applied to the initial antenna placed on the structure and its accompanying equipment enclosures and ancillary facilities and, if applicable, applied to the structure supporting the antennas.
- d. If only a portion of the co-location does not meet the requirements of this subparagraph, such as an increase in the height of the proposed antenna over the existing structure height or a proposal to expand the ground space approved in the site plan for the equipment enclosure, where all other portions of the co-location meet the requirements of this subparagraph, the portion of the co-location only may be reviewed under the City's regulations applicable to an initial placement of that portion of the facility, including, but not limited to, its land development regulations, and within the review time frame specified in this chapter for the placement of new communications towers. The rest of the co-location shall be reviewed in accordance with this subparagraph. A co-location proposed under this subparagraph that increases the ground space area, otherwise known as the compound, approved in the original site plan for equipment enclosures and ancillary facilities by no more than a cumulative amount of four hundred (400) square feet or fifty percent (50%) of the original compound size, whichever is greater, shall, however, require no more than administrative review for compliance with the City's regulations, including, but not limited to, land development regulations review, and building permit review, with no public hearing. This subparagraph shall not preclude a public hearing for any appeal of the decision on the co-location application.
- e. The communication facility operator of the existing tower or existing structure on which the proposed antennas are to be co-located shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of the land development regulations to which the existing tower or structure had to comply at the time the tower was permitted, including any aesthetic requirements, provided the condition or requirement is not inconsistent with this paragraph.
- f. An existing tower, including a nonconforming tower, may be structurally modified in order to permit co-location or may be replaced through no more than site plan and building permit review process for approval, and is not subject to public hearing review, if the overall height of the tower is not increased and, if a replacement, the replacement tower is a monopole tower

or, if the existing tower is a camouflaged tower, the replacement tower is a like-camouflaged tower. The subparagraph shall not preclude a public hearing for any appeal of the decision on the application.

- g. An existing tower may be structurally modified or rebuilt up to the same height or to a taller height, to accommodate the co-location of an additional antenna(s), only if the modification or reconstruction is in full compliance with the building code and requirements consistent with the original site approval process including but not limited to submission of a site plan and compliance with any camouflage requirements. The City shall require a modified setback based on the modification or increased height of the tower to accommodate structural safety or aesthetic concerns. The City shall review an application to increase the height of an existing tower or substantially modify an existing tower under the City's regulations, including, but not limited to, land development regulations applicable to the placement of a new tower, to the extent not inconsistent with applicable law.
- h. Antennas to be attached to an existing tower or an alternative support structure that do not satisfy the requirements herein for co-location on an existing tower or alternative support structure shall be subject to review consistent with the review procedures for new towers. Antennas proposed to be attached to an alternative support structure in a zoning district that prohibits new towers shall require a variance to the zoning district as provided in this Chapter 16, Section 9(d)(10). Such antennas proposed to be attached to an alternative support structure shall be camouflage, and finished, screened or designed using architectural features consistent with the structure, or landscaping of sufficient density and maturity at planting to provide opaque screening. Wall-mounted antennas shall be painted to match the wall on which it is mounted or otherwise consistent with the color(s) of the alternative support structure.

(18) *Equipment Storage Facilities.* It is recognized that antennas will have some type of associated electronic support and equipment buildings at or near the communications facility. Depending on the type of facility being erected, the following general standards shall apply, in addition to the other general provisions of the code.

- a. Rooftop mounted wireless communications facilities shall comply with the following requirements:

 - 1. Rooftop equipment buildings and storage cabinets shall be set back a minimum of fifteen (15) feet from the edge of the roof or one-quarter of the distance along the perpendicular axis of the roof, whichever is less. The height of a roof for the installation of wireless communications facilities must be at least forty-five (45) feet.

2. All rooftop wireless communications facilities associated with antennas including cabinets and equipment buildings shall be camouflage, and finished, screened or designed so that they blend into the architecture of the building on which they are located using architectural features consistent with the structure, or landscaping of sufficient density and maturity at planting to provide opaque screening. Wall-mounted facilities and equipment shall be painted to match the wall on which they are mounted or otherwise consistent with the color(s) of the alternative support structure.
 3. All cabinets and equipment buildings shall meet all City design standards and comply with the building codes.
 4. No commercial advertising or logo shall be allowed on an antenna, screen or equipment building.
 5. No signals, lights, or illumination shall be permitted on an antenna or equipment building unless required by the FCC, OSHA, or the FAA. Security lighting around the base of the antenna and equipment building may be provided if such light conforms to the overspill requirement in the City Code.
- b. The only signage that may be permanently attached to the equipment building shall be for the purpose of identifying the party responsible for operation and maintenance of the facility, its address, and telephone number for safety and security and shall comply with this Section.
 - c. Mobile or stationary equipment not located within the building upon which the antenna is mounted, or in an equipment building or cabinet, shall not be stored or parked on the site of a building mounted antenna, unless repairs to the antenna are being made.
 - d. Generators may be used only when other power sources are not available, and as an emergency back-up power source. Generators and fuel storage shall comply with the City Code, including Chapter 14, Section 4(g) of the Land Development Code. Noise emitted by generators shall be limited to allowable thresholds set forth in Chapter 42, Article IV of the Code of Ordinances.
- (19) Wireless Facility Support Poles.
Notwithstanding other provisions of this Chapter 16, Section 9, the City may process an application for a wireless facility support pole on municipal use property subject to a lease approved by the City and in Light Industrial and Commercial Industrial Districts (LI & CI) through a building permit review only. Wireless

facility support poles shall be subject to setback requirements as set forth in this Chapter 16, Section 9(b). Wireless facility support poles may be approved in other zoning districts pursuant to a variance in accordance with Chapter 16, Section 9(d)(10).

(d) Procedural requirements.

- (1) Any person proposing to construct a communication tower shall be required to comply with the site development plan approval process as set forth in chapter 3 of this land development code. The application for site plan approval shall include a full legal description of the lot, parcel, or specified area within a lot or parcel which the applicant proposes to use as a cell site, and a survey of the entire lot or parcel.
- (2) For purposes of reviewing the application for site plan approval and determining the applicability of the provisions of this section, a cell site shall be deemed to be the lot or parcel legally described in the public records unless the applicant demonstrates that the applicant has leased a specified area of the lot or parcel from the owner thereof for the purpose of constructing a communication tower.
- (3) Prior to submitting an application for a new communication tower or antenna, the applicant shall engage in a pre-application meeting with the administrative official or his/her designee consistent with Chapter 3, Section 3 of the Land Development Code, as amended. At the discretion of the administrative official, such meeting may be waived, or may be conducted via telephone or electronic communications. Applicants may request a subsequent or additional pre-application conference with the City.
- (4) Requirement of Site Plan and Engineering Report. All applicants for new communication towers and communication towers which are modified or reconstructed to accommodate additional antennas shall submit a written report certified by a licensed engineer. The report shall include: all information required by Chapter 6 and Chapter 16, Section 9 of the Land Development Code except to the extent such information is determined to be not applicable by the City or otherwise prohibited by applicable state or federal law. In addition, the report shall include the following:
 - a. Site plan development consistent with chapter 6 including, but not limited to:
 1. A tax parcel number, legal description of the parent tract and leased parcel, and total acres of the subject property;
 2. The entire parcel including the leased parcel fully dimensioned, including property lines, setbacks, roads on or adjacent to the subject property, easements;

3. Outline of all existing buildings, including a purpose (i.e., residential buildings, garages, accessory structures, etc.) located within a radius of three times the communication tower height of the proposed tower;
 4. All existing vegetation, by mass or individually by diameter, measured four (4) feet from the ground and each stand-alone tree with a six inch (6") caliper DBH (diameter at breast height) located within a radius of three times the communication tower height of the proposed tower;
 5. Proposed/existing security barrier, indicating type, height, and extent as well as point of controlled entry;
 6. Proposed/existing access easements, utility easements, and parking for the communication tower;
 7. All proposed changes to the subject property, including grading, vegetation removal, temporary or permanent roads and driveways, storm water management facilities and any other construction or development attendant to the communication tower;
- b. Type of tower and specifics of design. Such information shall include all of the following:
1. Scaled renderings of elevations depicting the design of the tower and associated equipment including but not limited to the antennas, mounts, equipment shelters, cable as well as cable runs, fencing, landscaping and security barrier, if any.
 2. A statement that the proposed tower, within a reasonable period following the completion of construction, will be used for the provision of wireless communications services. If the applicant or tower owner is not a carrier or provider of wireless communications services, the application shall include appropriate documentation confirming that the tower will be used for the attachment of wireless communications facilities for the provision of wireless communications services. Such documentation may include a lease or license, with confidential information redacted, between the tower owner and a carrier or provider of wireless communications services. The Administrative Official may deny an application that does not contain satisfactory information to demonstrate that a communication tower will be used for wireless communications service.
 3. Materials of the proposed tower specified by generic type and specific treatment (i.e., anodized aluminum, stained wood, painted fiberglass, etc. These shall be provided for the antennas, mounts,

equipment shelters, cable as well as cable runs, and security barrier, if any.

4. Colors of the proposed tower represented by a color board or equivalent showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment buildings, cable as well as cable runs, and security barrier, if any.
5. Dimensions of the tower specified for all three (3) directions: height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any; and
6. An accurate visual impact analysis, with a minimum of two (2) photo digitalization or photographic superimpositions of the tower within the subject property. The photo digitalization or photographic superimpositions shall be provided for all attachments, including: the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any for the total height, width and breadth, as well as at a distance of two hundred fifty (250) feet and five hundred (500) feet from the subject property line or leased area from all properties within that range, or at other points agreed upon in a pre-application conference.
7. Prior to issuance of a building permit, current wind-loading capacity and a projection of wind-loading capacity using different types of antennas as contemplated by the applicant. No communication tower shall be permitted or be permitted to be modified so as to exceed its wind-loading capacity.
8. A statement that the proposed tower, including reception and transmission functions, will not interfere with the customary transmission or reception of radio, television or similar services as well as other wireless services enjoyed by adjacent residential and nonresidential properties.
9. Specification on decibel levels produced by on-site generator and statement that the proposed generator as constructed will not exceed the applicable noise threshold set forth in Chapter 42, Article IV of the Code of Ordinances.

- c. Non-interference with Public Safety Communications Facilities. A wireless communication facility shall not create interference with any public safety communication facility. Any application for a wireless communications facility or tower pursuant to this Chapter 16, Section 9 shall include a certification from a licensed engineer that the proposed facility is not

expected to interfere with or obstruct transmissions to and from existing public safety communications facilities. In the event that the city manager or his/her designee determines that a proposed wireless communications facility or tower interferes with a public safety communications facility or public safety communications, the city manager or his/her designee may recommend denial of the application and set forth in writing the reasons for the recommendation of denial. In the event that a constructed wireless communications facility or tower does interfere with public safety communication facilities, it shall be the responsibility of the owner and/or permittee of the wireless communications facility or tower which creates the interference or obstruction to make all necessary repairs, and/or accommodations to alleviate the problem at the owner/permittee's expense. The City shall be held harmless in this occurrence. To the extent not inconsistent with applicable law, if the service provider refuses to rectify interference within twenty-four (24) hours of receiving notice, said violation shall be considered a zoning violation and all applicable remedies thereto may be imposed for such violation. In addition, the City may, in addition to the foregoing, file a complaint with the FCC for resolution and/or seek an injunction and pursue other actions including criminal sanctions against the service provider pursuant to Florida law, including but not limited to Florida Statutes, §§ 843.025 and 843.165. Any person who is found to have violated this chapter shall be subject to sanctions as provided by applicable law.

- d. For all towers and antennas attached to existing structures, a statement shall include certification that the structure can support the load superimposed from the communication tower and antennas. Except where provided herein, all towers shall have the capacity to permit multiple users; at a minimum, monopole towers shall be able to accommodate two (2) users and, at a minimum, lattice or guyed towers shall be able to accommodate three (3) users.
- e. Any additional information reasonably deemed necessary by the City to assess compliance with this Code and applicable law.

- (5) Special fee. In addition to the application fee, the City shall have the right to retain independent consultants and/or experts that it deems necessary to properly evaluate applications for communication towers. The special fee shall be based upon the reasonable hourly rate of the independent consultant and/or expert the City deems necessary to properly evaluate applications for a tower or towers. The special fee shall be applied to those applications requiring special assistance, review or evaluation. The special fee shall be paid by the applicant to the City by the deadline established by the City. An application in which the applicant has not paid the special fee by the deadline established by the City shall be considered incomplete

and the City may suspend processing such application or may deny such application.

- (6) The City shall grant or deny each properly completed application for a communication tower or any wireless communications facility, that does not constitute an eligible facilities modification, based on the applicant's compliance with the City's applicable regulations, including but not limited to land development regulations, consistent with this subsection and within the normal time frame for a similar type of review but in no case later than ninety (90) business days for a new communication tower or antenna and forty-five (45) business days for co-location of an antenna after the date the application is determined to be properly completed in accordance with this section.
- (7) Completeness of Applications.
An application is deemed submitted or resubmitted on the date the application is received by the City. If the City does not notify the applicant in writing that the application is not completed in compliance with the City's regulations within twenty (20) business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the application. If the application is not completed in compliance with the City's regulations, the City shall so notify the applicant in writing and the notification must indicate with specificity any deficiencies in the required documents or deficiencies in the content of the required documents or deficiencies in the content of the required documents which, if cured, make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the City shall notify the applicant, in writing, within the normal time frame of review, but in no case longer than twenty (20) business days after the additional information is submitted, of any remaining deficiencies that must be cured. Deficiencies in document type or content not specified by the City do not make the application incomplete. Notwithstanding this subparagraph, if a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the City may continue to request the information until such time as the specified deficiency is cured. The City may establish reasonable time frames within which the required information to cure the application deficiency is to be provided or the application will be considered withdrawn or closed.
- (8) Supplements to Applications.
If an application is subject to a state or federal timeframe for review and determination (i.e. "shot clock"), to allow sufficient time for review, an applicant may not submit corrected, new or supplemental materials without the consent of the administrative official, unless an applicant was notified that the application was incomplete. The administrative official may determine not to review or to provide comment on corrected, new or supplemental materials after the application is scheduled for a public hearing without good cause.

- (9) The time frames specified in this Chapter 16, Section 9 may be extended by the City only to the extent that the application has not been granted or denied because the City's procedure generally applicable to all other similar types of applications permits, require action by the city manager and such action has not taken place within the time frames specified. Under such circumstances, the City will act to either grant or deny the application at its next regularly scheduled meeting. The City may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, a one-time waiver may be required in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the City. The applicant and City may mutually agree to waive the timeframes set forth in this Section.
- (10) Variances.
- a. Applicants may file an application for a variance to the setback, separation and other provisions of this Chapter 16, Section 9, on the form that may be provided by the City with the appropriate review fee. A pre-application conference is required prior to submitting the variance application. The City Administrative Official may waive this mandatory pre-application conference when the application is simple and good cause is shown by the applicant. Notwithstanding other provisions of the City Land Development Code, the City Council shall hear applications for variances to the provisions of this Chapter 16, Section 9, at a public hearing to the extent not prohibited by applicable law.
 - b. A request for a variance shall be filed either prior to or contemporaneously with the application. The request for variance shall contain each provision for which a variance is sought. A request for a variance shall include the following information:
 - 1. A detailed explanation, with supporting engineering information by a licensed engineer or other data as applicable, as to why a variance from the requirements of this Chapter 16, Section 9 is required, including a detailed explanation addressing the relevant engineering criteria;
 - 2. What special conditions exist that create an unreasonable hardship or practical difficulty with complying with the specific requirements for which a variance is requested;
 - 3. Nature and characteristics of the surrounding neighborhood;
 - 4. The impact the variance would have on the surrounding neighborhood, including photo simulations if applicable;
 - 5. Whether the variance requested arises from a condition that is unique and peculiar to the land involved and is not created by the actions of the property owner or applicant;
 - 6. If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed wireless communications facility or within the surrounding neighborhood;

7. Design of the proposed wireless communications facility with particular reference to achieving compatibility with the surrounding neighborhood and eliminating adverse visual impacts;
 8. Whether there is an alternative location or wireless communications facility that would not require a variance or would have less impact than the requested variance;
 9. Any other information the City may reasonably require to process the request for variance.
- c. It is the City's intention that the City's requirements shall not prohibit or have the effect of prohibiting the provision of personal wireless services in violation of federal law, specifically 47 U.S.C. Sections 253(a) and 332(c)(7)(B)(i)(II). If an applicant maintains that compliance with one or more of the provisions of this Chapter 16, Section 9 will prohibit or have the effect of prohibiting the provision of wireless services in violation of federal law, in addition to addressing the criteria above in the application for a variance, the applicant shall include an affidavit from a licensed engineer specifying in detail why such restriction would prohibit or have the effect of prohibiting the provision of personal wireless service and what modifications or exemptions, if any, to the provisions of this Chapter 16, Section 9 may be necessary.
- d. Procedures for Processing Variance Applications.
1. To the extent consistent with applicable law, the timeframes set forth in this Chapter 16, Section 9 for processing applications for wireless communications facilities shall not apply to applications for variances. If the applicant takes the position that applicable state or federal law mandates a specific timeframe for processing the application for a variance, the applicant shall include such information in its application, with citation to the applicable provision setting the timeframe. The timeframes set forth in this Section 9(d)(10) may be extended by mutual consent of the applicant and City or by the City in the event of a force majeure event with impacts the City's permitting processes. Applications that have been scheduled for a hearing by the City Council may be continued by the City Council. The City may engage its own licensed engineer and consultants, at the applicant's expense, to assist the City's review and processing of the application.
 2. The City Administrative Official shall review an application for a variance for completeness and shall notify the applicant as to whether the application is complete or additional information is required within thirty (30) days.
 3. Notwithstanding the language in Chapter 19 of the City Land Development Code, the City Council shall consider the information

as applicable identified above in Chapter 16, Section 9(d)(10)b. for a variance to Chapter 16, Section 9.

4. Special requirements for variances from the setback requirements or to the separation requirements to habitable residential structures, and to vacant residentially zoned land. No variance shall permit a separation or setback distance that will be detrimental or injurious to surrounding properties or will endanger public safety.
5. The City Administrative Official, may, in the exercise of discretion, or at the request of the applicant, schedule a variance application for a public hearing by the Planning Commission to make a recommendation to the City Council. Applications to construct a communications tower or antennas in a zoning district where such wireless communications facility may only be permitted by variance shall require a public hearing before the Planning Commission, which shall make a recommendation to the City Council.
6. The City Council shall consider an application for a variance at a public hearing to be held within ninety (90) days of submission of a complete application. The City Council may grant, grant with conditions or deny the application for variance by resolution that shall be provided to the applicant substantially contemporaneously with the decision. If denied, the resolution shall include a basis for the denial.

- (11) No person shall commence construction of a wireless communications facility including a communications tower prior to obtaining a building permit.

(e) Specific Regulations and Procedures for Proposed Facilities Modification Applications.

- (1) The City shall approve Proposed Facilities Modification Applications that do not result in a substantial change of a tower or base station and comply with the requirements as set forth in this subsection.
- (2) This subsection shall not apply to proposed facility modifications to an eligible support structure that is not a legal conforming, or legal nonconforming structure at the time a completed eligible facilities modification application is filed with the City.
- (3) This subsection shall not apply to a proposed facility modification to a structure, other than a tower, that does not, at the time of submittal of the application, already house or support transmission equipment lawfully installed within, or upon, or attached to, the structure.
- (4) Eligible Facilities Modification Application Requirements. Applications for eligible facilities modification must meet the following standards:

- a. All applications for eligible facilities modification shall be in writing and accompanied by the applicable application and fee established by resolution of the City Council and attested to by the authorized person submitting the application on behalf of the applicant, certifying the truth and accuracy of the information provided in the application.
- b. No application for eligible facilities modification shall be approved unless it includes the following information:
 - 1. The legal and dba names, mailing address, tax Identification number, and contact phone number(s) of applicant.
 - 2. If a corporation, the name and address of the registered agent of applicant in the State of Florida and the State of incorporation of the applicant.
 - 3. If applicant is an entity, other than a corporation, such a partnership or limited liability company, the names and business addresses of the principles.
 - 4. An assertion that the proposed facilities modification is subject to review under Section 6409 of the Spectrum Act and that the modification does not constitute a substantial change to the tower or base station.
 - 5. If the applicant is not the owner or person in control of the eligible support structure and/or site, the following shall be required:
 - (i) An attestation that the owner or person in control of the eligible support structure and/or site has consented to the proposed facilities modification.
 - (ii) If the eligible support structure is located in a public right of way, the Applicant must also attest that Applicant has authorization to install, maintain and operate transmission equipment in, under and above the public right of way.
 - 6. If the applicant proposes a modification that will result in an increase in height of the eligible support structure, the application shall include record drawings, as built plans, or the equivalent, showing the height of the eligible support structure, (1) as originally constructed and granted approval by the City or other applicable local zoning or similar regulatory authority, or (2) as of the most recent modification that received City, or other local zoning or regulatory approval, prior to the passage of the Spectrum Act, whichever height is greater.

7. If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing restrictions or requirements imposed by a reviewing official or decision-making body pursuant to authority granted under the City Code, or an ordinance or a municipal code of another local government authority, the application shall include a copy of the document (e.g., permit or conditional approval) setting forth such pre-existing restrictions or requirements together with a certification that the proposed facilities modification conforms to such restrictions or requirements; provided that, such certification shall have no application to the extent the proposed facilities modification relates solely to an increase in height, increase in width, addition of cabinets, or new excavation, that does not result in a substantial change in the physical dimensions of the eligible support structure.
8. If the applicant proposes a modification to an eligible support structure, which structure, or proposed modification of the same, is subject to pre-existing concealment restrictions or requirements, or was constructed with concealment elements, the following shall be required:

 - (i) Applicant shall set forth the facts and circumstances demonstrating that the proposed modification would not defeat the existing concealment elements of the eligible support structure.
 - (ii) If the proposed modification will alter the exterior dimensions or appearance of the eligible support structure, applicant shall include a detailed visual simulation depicting how the eligible support structure will appear after the proposed modification is complete. The visual simulation shall depict to scale the eligible support structure in relation to the trees, landscaping and other structures adjacent to, or in the immediate vicinity of, the eligible support structure.
9. If the applicant proposes a modification that will protrude from the edge of a non-tower eligible support structure, the application shall include record drawings, as-built plans, or the equivalent, showing at a minimum the edge of the eligible support structure at the location of the proposed modification.
10. If the applicant proposes a modification to an eligible support structure that will include any excavation or would result in a protrusion from the edge of a tower that exceeds an existing protrusion of any transmission equipment attached to a tower, or

would protrude from the edge of a non-tower eligible support structure, the following shall be required:

- (i) A description of the boundaries of the site together with a scale drawing based on an accurate traverse, with angular and lineal dimensions, depicting the boundaries of the site in relation to the tower or base station proposed to be modified and depicting the proposed location, elevation and dimensions of the new or replacement transmission equipment.
- (ii) The City may require a survey by a land surveyor licensed in the state of Florida when, in the judgment of the approval authority, a survey is reasonably necessary to verify the boundaries of the site to determine if the proposed facilities modification would result in a substantial change in the physical dimensions of the eligible support structure.

11. If the applicant proposes a modification to the eligible support structure that includes hardening through structural enhancement, the following shall be required:

- (i) A technical report by a qualified licensed engineer, demonstrating that the structural enhancement is performed in connection with and is necessary to support the proposed co-location, removal, or replacement of transmission equipment and conforms to applicable code requirements.
- (ii) The City may retain the services of an independent technical expert to review, evaluate, and provide an opinion regarding the applicant's demonstration of necessity.

12. If the applicant proposes a modification to a tower, the following shall be required:

- (i) A stamped report by a licensed engineer demonstrating that the tower with the proposed modifications will comply with applicable structural, electrical and safety codes, including by way of example, and not limitation, EIA/TIA-222-Revision G, published by the American National Standards Institute (as amended), allowable wind speed for the applicable zone in which the tower is located, and describing the general structural capacity of the tower with the proposed modifications, including:
 - i. The number and type of antennas that can be accommodated;
 - ii. The basis of calculation of capacity; and
 - iii. A written statement that the proposed complies with all federal guidelines regarding interference and

ANSI standards as adopted by the FCC, including but not limited to nonionizing electromagnetic radiation (NIER) standard.

- (ii) The City may retain, at the expense of the applicant, the services of an independent technical expert to review, evaluate and provide an opinion regarding the applicant's demonstration of compliance.

13. If the applicant proposes a modification to a base station, the application shall include a stamped report by a Florida licensed engineer demonstrating that the base station, with the proposed modifications, will comply with applicable structural, electrical and safety codes.

14. If the applicant proposes a modification requiring, alteration to the eligible support structure, excavation, installation of new equipment cabinets, or any other activities impacting or altering the land, existing structures, fencing, or landscaping on the site, the following shall be required:

- (i) A detailed site plan and drawings, showing the true north point, a graphic scale and, drawn to an appropriate decimal scale, indicating and depicting:
 - i. The location, elevation and dimensions of the existing eligible support structure;
 - ii. The location, elevation and dimensions of the existing transmission equipment,
 - iii. The location, elevation and dimensions of the transmission equipment, if any, proposed to be collocated or that will replace existing transmission equipment,
 - iv. The location, elevation and dimensions of any proposed new equipment cabinets and the intended use of each;
 - v. Any proposed modification to the eligible support structure,
 - vi. The location of existing structures on the site, including fencing, screening, trees, and other significant site features, and
 - vii. The location of any areas where excavation is proposed showing the elevations, depths, and width of the proposed excavation and materials and dimensions of the equipment to be placed in the area excavated.

15. Copies of any environmental documents required by any federal agency. These shall include the environmental assessment required by 47 C.F.R. Part 1 (PART 1 – PRACTICE AND PROCEDURE), Section 1.1307, as amended, or, in the event that an FCC environmental assessment is not required, a statement that described the specific factors that obviate the requirement for an environmental assessment.

(5) Review of Application.

- a. The City shall review applications for Eligible Facilities Modification pursuant to this section, to determine whether the application qualifies.
- b. The City shall notify the applicant within thirty (30) days after the date the application is initially submitted or additional information resubmitted, whether the application is properly completed in compliance with the City's requirements. If the application is not completed in compliance with the City's requirements, the City shall so notify the applicant in writing delineating all missing documents and information required in the application that if are cured would deem the application properly completed.
- c. Upon resubmission of information to cure the stated deficiencies, the City shall notify the applicant, in writing, no later than 10 days after the additional information is submitted, of any remaining deficiencies that must be cured, delineating missing information. If a specified deficiency is not properly cured when the applicant resubmits its application to comply with the notice of deficiencies, the City may continue to request the information until such time as the specified deficiency is cured, or may establish a reasonable time frame within which the required information to cure the application deficiency is to be provided. The timeframe is tolled in the case of second or subsequent notices pursuant to the procedures identified herein. If the curative information is not provided within such time frame, the application will be considered withdrawn or closed and the application will be denied.
- d. *Completeness review; time limitation.* The City shall grant or deny a properly completed application for Eligible Facilities Modification within sixty (60) days of the date of the applicant's submission of an application seeking approval under this subsection (e), after it is determined to be properly completed. An application is deemed submitted or resubmitted on the date the application is received by the City. The sixty (60) day review period begins to run when the application is filed and may be tolled by mutual agreement of the City and the applicant or in cases where the City determines that the application is incomplete. The timeframe is not tolled by a moratorium on review of applications.

- (6) Eligible Facilities Modification Permit: An eligible facilities modification permit issued pursuant to this subsection, and any deemed approved application, shall be valid for a term of 180 days from the date of issuance, or the date the application is valid for a term of 180 days from the date of issuance, or the date the application is deemed approved.
- (f) Public Safety Considerations.
- (1) Building Codes/Safety Standards. The construction, maintenance, operation and repair of communications facilities are subject to the supervision of the City to the extent not otherwise prohibited by F.S. § 365.172, the Telecommunications Act of 1996, or the Spectrum Act, and shall be performed in compliance with all applicable laws, ordinances, departmental rules and regulations and practices affecting such structures including, but not limited to, land development codes, building codes, and safety codes, and as provided below.
- a. All communication towers must meet or exceed current standards and regulations of the FAA, the FCC, OSHA including radio frequency emission standards and regulations of the state or federal government with the authority to regulate towers. If such applicable standards and regulations are changed, then the owners or operators of the communication towers governed by this Ordinance shall bring such towers and antennas into compliance with such revised standards within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Unless otherwise prohibited by applicable federal or state law, failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute a violation of this Ordinance and grounds for the removal of the tower at the expense of the owner. All owners and operators of communication towers and their contractors shall comply with applicable Occupational Safety and Health Administration (OSHA) standards and regulations and standards and regulations of any other agency of the federal government with the authority to regulate communications facilities.
- b. To ensure the structural integrity of communication towers, the owner shall construct and maintain the communication tower in compliance with all applicable building codes, other applicable codes and standards as amended from time to time. A statement shall be submitted to the City by a licensed engineer certifying compliance with this subsection. Where a preexisting structure, including light and power poles, is requested as a camouflage facility by the owner, the facility, and all modifications thereof, shall comply with all requirements as provided in this section.
- c. Although the City will not require wireless providers to provide evidence of a wireless communication facility's compliance with federal regulations

except evidence of compliance with applicable FAA requirements, and evidence of proper FCC license or other evidence of FCC authorized spectrum use, the City may request the FCC to provide information as to a wireless provider's compliance with federal regulations, as authorized by federal law.

(2) Temporary communication towers.

a. Notwithstanding any other provisions of this Chapter 16, Section 9, the administrative official may allow the installation of a temporary communication tower including a cell-on-wheels in accordance with the following:

1. During documented states of emergency as declared by the City,
2. To continue the provision of personal wireless service during construction or maintenance of a wireless communications facility,
3. For testing purposes,
4. For city-recognized special events, or
5. As otherwise authorized by the FCC, the State or the City.

b. The administrative official is limited to allowing the installation of each temporary communication tower for up to thirty (30) total days. Approval by the administrative official of a COW or temporary communication tower on City property shall not convey any title, equitable or legal, in City property. The City Council may extend the period of time in which a temporary communication tower is allowed for good cause by resolution. The owner of the temporary communication tower shall agree to indemnify the City and shall provide appropriate evidence of insurance and the security fund in compliance with this chapter.

(3) Security Fund. Every communication facility operator or owner shall establish a cash security fund, or provide the City with an irrevocable letter of credit acceptable to the City Attorney in the same amount, to secure the cost of removing a communication tower, an antenna, antenna array, or equipment cabinet that has been determined to be abandoned, in the event the owner fails to comply with the provisions of this chapter. The security fund shall be submitted to the City prior to the issuance of a building permit and shall be returned to the operator or owner upon the removal of the applicable communications facility, less any amounts drawn down by the City as provided herein. The amount of the cash security fund or letter of credit to be provided as follows:

<u>1.</u>	<u>For each communication tower, cell-on-wheels, temporary communication tower</u>	<u>\$25,000</u>
<u>2.</u>	<u>For each set of co-located or attached communication provider's antenna or antenna array; for each set of equipment enclosures, cabinets or buildings associated with antennas</u>	<u>\$5,000</u>

(4) Indemnification and insurance requirements.

a. Indemnification

1. The City shall not enter into any lease agreement or otherwise allow tower siting by a communication service provider until and unless the City obtains adequate indemnification from such provider. This indemnification must at least:
2. Release the City from and against any and all liability and responsibility in or arising out of the construction, operation, or repair of the communication facility. Each communication facility operator must further agree not to use or seek any money or damages from the City in connection with the above-mentioned matter;
3. Indemnify and hold harmless the City, its elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorney's fees, liabilities, damages, orders, judgments or decrees, sustained by the City or any third party arising out of, or by reason of, or resulting from, or out of each communication facility operator's, or its agent's, employee's, or servant's negligent acts, errors, or omissions; and,
4. Provide that the covenants and representations relating to the indemnification provision shall survive the term of any agreement and continue in full force and effect as to the responsibility of the party to indemnify.

b. Insurance

1. The City may not enter into any lease agreement, or otherwise authorize a tower site by any communication service provider until and unless the City obtains assurance that such operator (and those acting on its behalf) have adequate insurance as determined by the

City Risk Manager. At a minimum, the following insurance requirements shall be satisfied:

- (i) A communication facility operator shall not commence construction or operation of the facility without obtaining all insurance required under this section and approval of such insurance by the City Personnel/Risk Manager, nor shall a communication facility operator allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the same has been obtained and approved by the City Personnel/Risk Manager. The required insurance must be obtained and maintained for the entire period the communications facility is in existence. If the operator, its contractors or subcontractors do not have the required insurance, the City may order such entities to cease operation of the facility until such insurance is obtained and approved.
- (ii) Certificate(s) of such insurance, reflecting evidence of the required insurance shall be filed with the City personnel/Risk Manager. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage.
- (iii) The certificate(s) of insurance shall contain a provision that coverages afforded under such policies shall not be cancelled until at least thirty (30) days prior written notice has been given to the City. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida.
- (iv) Where applicable, in the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the term of the lease agreement with the City, then in that event the communication facility operator shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage remains in effect for the balance of the lease term.
- (v) A communications facility operator and its contractors or subcontractors engaged in work on the operator's behalf, shall maintain minimum insurance, in the amounts determined by the City Personnel/Risk Manager, to cover liability, bodily injury and property damage. The insurance shall cover the following exposures: premises, operations, and certain contracts. Such coverage shall be written on an occurrence basis and shall also be required under any lease

agreement between the City and the communication facility operator.

- (5) *Removal of Abandoned Wireless Communication Towers, Facilities and Antennas.*
Any communication tower, wireless communication facility or antenna that is not used or operated for a continuous period of six (6) consecutive months shall be considered abandoned, and the owner or operator of such communication tower, facility or antenna shall remove the same at its cost within ninety (90) days of receipt of notice from the City notifying the owner of such abandonment and in accordance with applicable permits. Failure to remove an abandoned communication tower, facility or antenna within the ninety (90) days shall be grounds for the City to remove the tower, facility, or antenna at the expense of the owner or for the City to allow another person to remove the facility at the owner's expense. Following notice to the owner, the City may draw down the security fund to pay for the costs of removal. The owner of the communication facility shall be responsible for all damage to property, facilities or utilities damaged as a result of such removal and shall restore or pay for restoration as required in the City code. If there are two (2) or more users of a single communication tower or facility, the communication tower or facility shall not be considered abandoned until all users cease using the communication tower or facility for a continuous period of six (6) consecutive months. Upon determination by a tower, facility or antenna owner that its tower, facility or antenna is to be abandoned, the owner shall notify the City no later than ninety (90) days from such determination, or no later than thirty (30) days following such abandonment, whichever is sooner. The City may independently establish that a wireless communications facility has been abandoned. In reaching such determination, the City may request documentation and/or affidavits from the owner of the wireless communications facility regarding the active use of the facility. If the owner fails to provide the requested documentation within thirty (30) days, a rebuttable presumption shall exist that the owner has abandoned the wireless communications facility.
- (6) *Amateur Radio Antennas And Support Apparatus Utilized By FCC Licensed Amateur Radio Operator.*
- a. Applicability and Findings: Amateur radio antennas and their support apparatus are subject solely to the regulations contained in this subsection to the extent not inconsistent with applicable federal or state law, and are not subject to other provisions of this Chapter, including but not limited to priority siting, setback, camouflage and separation requirements. The City Council recognizes that the amateur radio service is a voluntary, noncommercial communication service that plays an important role in providing emergency communications. Moreover, the amateur radio service provides a reservoir of trained operators, technicians and electronic experts who can be called on in times of national or local emergencies. Accordingly, the regulations adopted herein are designed to

protect the ability to operate amateur radio antennas while protecting important public safety and aesthetic interests.

- b. Amateur radio antennas and their support apparatus shall be limited to maximum height measured from the finished grade of the parcel to the highest point of the amateur radio antenna of 70 feet except where a higher antenna is allowed pursuant to the FCC's preemptive ruling PRB-1 (Federal Preemption of State and Local Regulations Pertaining to Amateur Radio Facilities, Memorandum Opinion and Order, PRB-1, 101 FCC 2d 952 (1985) (PRB-1)) and provided that an administrative determination is made by the City Administrator or designee, based on evidence submitted by the applicant, that the proposed height is technically necessary to engage in amateur radio communications.
- c. A building permit from the City shall be required for the installation or substantial modification to the installation of an amateur radio antenna and its support apparatus. A building permit shall not be required for:
 - 1. Adjustment, replacement or repair of the elements of an amateur radio antenna array affixed to the antenna support apparatus;
 - 2. Amateur radio antenna facilities erected temporarily for less than 24 hours for test purposes or for emergency communications; or
 - 3. Co-location of additional amateur radio antenna on an existing amateur radio antenna support apparatus installed pursuant to a permit or pre-existing amateur radio antenna support apparatus installed prior to the effective date of this Ordinance.
- d. The following requirements shall apply provided they do not prohibit the operation of the amateur radio antennas.
 - 1. Building site location. Amateur radio antennas and their support apparatus shall be located behind the required primary/principal building within the rear and interior side yard of the property. They are prohibited within the front and side street yard areas. Amateur radio antennas and their support apparatus shall not be installed in City public rights-of-way.
 - 2. Setbacks. Amateur radio antennas and their support apparatus shall maintain the same rear and side setbacks as required for the principal building of the building site and shall be installed a minimum of eight (8) feet from any overhead utility line(s) and power line(s). Where such amateur radio antennas and their support apparatus are located on a building site which is fronting upon two or more streets and/or alleys, the amateur radio antennas and support apparatus shall maintain the same primary/principal building setback as required from each such street or alley.

3. As with the height limit, the administrative official or designee may allow an exception to the building site location and setback requirements if technically necessary to engage in amateur radio communications.
- e. Installation. The installation or substantial modification of an amateur radio antennas and their support apparatus and foundation shall be in accordance with the manufacturer's prescribed installation and safety procedures and shall meet all applicable City, State and Federal requirements, as amended including but not limited to the Florida Building Code, City Code, National Electric Code and FCC regulations.
- f. Notwithstanding the provisions of this subsection, existing amateur radio antennas and their support apparatus. installed prior to the effective date of this Ordinance shall be allowed to continue operations and to undergo routine maintenance without having to comply with the provisions of this Ordinance. Existing amateur radio antennas and their support structures installed prior to the effective date of this Ordinance shall not require a permit unless they are being replaced or substantially modified.
- (g) Enforcement. Any person, firm or corporation who knowingly breaches any provision of this Chapter 16, Section 9, as it may be amended shall upon receipt of written notice from the City be given a time schedule to cure the violation. Failure to commence to cure within thirty (30) days and to complete a cure, to the City's satisfaction, within sixty (60) days, or such longer time as the City may specify, shall result in revocation of any permit or license and the City shall seek any remedy or damages to the full extent of the law. This shall not preclude other penalties allowed by law.

SECTION 4. The City Council hereby amends **CHAPTER 18, Conditional Uses, Special Exceptions and Permitted Uses with Special Development Requirements, SECTION 3, Special requirements for special exception uses, (b) Special requirements, (25) Communication towers (guyed, lattice and monopole) (A, AP, RR, RMH, R-2D, NP, R-7SF, R-8SF, R-10SF, R-20SF, R-3L, R-3M, R-3H, PO, NC, CC, HC, ICD, CI, RD, GPU)**, to delete subsection 25 in its entirety as follows³:

~~(25) Communication towers (guyed, lattice and monopole) (A, AP, RR, RMH, R-2D, NP, R-7SF, R-8SF, R-10SF, R-20SF, R-3L, R-3M, R-3H, PO, NC, CC, HC, ICD, CI, RD, GPU).~~

~~In residential districts (A, AP, RR, RMH, R-2D, NP, R-7SF, R-8SF, R-10SF, R-20SF, R-3L, R-3M, R-3H), the design of the communication tower shall be camouflaged, unless a camouflaged design is impractical due to structural height limitations associated with the camouflaged~~

³ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

communication tower design. If the city determines that a camouflaged design is impractical due to such limitations, the permitted tower shall be monopole unless a monopole design is impractical due to structural height limitations associated with the monopole design. If the city determines that a monopole design is impractical due to such limitations, the permitted tower shall be lattice unless a lattice design is impractical due to structural height limitations associated with the lattice design.

SECTION 5. The City Council hereby amends **CHAPTER 16, Miscellaneous Regulations, SECTION 4, Height**, to delete the following⁴:

(b) Established height for specific structures:

Antenna and tower: (receive only, two-way dispatch and amateur radio)		
	Residential uses	40 feet
	Nonresidential uses	70 feet

Communication tower —(including mounted antenna)	300 feet, except as provided in <u>Section 9</u> paragraph <u>9(c)(4)</u> of this chapter
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SECTION 6. The City Council hereby amends **CHAPTER 16, Miscellaneous Regulations, SECTION 5, Special Setbacks**, as follows⁵:

Antenna, tower (2)	15 feet from property line
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SECTION 7. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 1**, as follows⁶:

⁴ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

⁵ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

⁶ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

Section 1: - In general.

- (a) Dimensional requirements for each zoning district, except NP and GPU districts, are specified in the table in section 27 of this chapter, entitled "schedule of dimensional requirements."
- (b) Accessory uses and structures for each zoning district are those customarily associated with, dependent on, and incidental to the principle uses permitted in that district. Provisions regarding accessory uses and structures are addressed in chapter 16 of this code.
- (c) Special exception uses for each district shall be permitted in accordance with provisions for such in chapter 18, sections 2 and 3 of this code. The subsection number indicated in parenthesis following each use listed below in this chapter refers to the additional criteria for that use, described in chapter 18, section 3.
- (d) Permitted uses with special development requirements shall be permitted in accordance with the applicable provisions of chapter 18, section 4 of this code. The subsection number indicated in parentheses following each use listed below in this chapter refers to the special development requirements for that use described in chapter 18, section 4.
- (e) No more than one single-family dwelling is permissible on any lot or lot of record within the following zoning districts: Agriculture (A), Agricultural Preservation (AP), Rural Residential (RR), Single-Family Residential (R-20SF), (R-10SF), (R-8SF), (R-7SF), Residential Mobile Home (RMH), Neighborhood Preservation (NP) and Planned Unit Development (PUD), unless specifically stated in the Master Development Agreement.
- (f) Interim permitted use for agriculture uses. Any property that is in agricultural use at the time of rezoning shall be allowed to continue said agriculture uses, including *agriculture: field crops/wholesale nurseries and/or agriculture: pasture/forestry*, as an interim use on land that has not received final site plan or subdivision approval. However, livestock feeding pens, livestock feed lots, and poultry operations to include any feathered animals (e.g. chickens, emus, ducks, ostriches, etc.) are prohibited within 1,000 feet of proposed or existing development. Agricultural uses on any portion of land rezoned to a nonagricultural zoning category that has received final site plan and/or subdivision approval shall cease within 90 days after such approval.
- (g) All land development regulations related to wireless communications facilities siting, including but not limited to a list of zoning districts in which such facilities are a permitted use, are only set forth in Chapter 16, Section 9 of this code.
- (gh) Any use not specifically permitted herein shall be prohibited and any use prohibited by the Florida Statutes, the City of Port Orange, Florida, Code of Ordinances and Land Development Code shall be prohibited.

SECTION 8. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 4**, as follows⁷:

Section 4: - Agricultural preservation (AP) district.

- (a) *Purpose and intent.* The agricultural preservation (AP) district is intended to preserve prime agricultural lands and provide opportunities for the continuance of agricultural pursuits.
- (b) *Permitted uses.*
 - (1) Agriculture: field crops/wholesale nurseries.
 - (2) Agriculture: pasture/forestry.
 - (3) Agriculture: processing/hatcheries.
 - ~~(4) Antennas.~~
 - ~~(5) Camouflaged communication towers.~~
 - ~~(64)~~ Commercial stables.
 - ~~(75)~~ Single-family detached dwellings.
- (bb) *Permitted uses with special development requirements (chapter 18, section 4).*
 - (1) Kennels (subsection 8).
 - (2) Community gardens (subsection 5.1).
- (c) *Special exception uses (chapter 18, section 3).*
 - (1) Cemeteries (subsection 4).
 - (2) Farmers/flea markets (subsection 5).
 - ~~(3) Guyed, lattice and monopole communication towers (subsection 5).~~
 - ~~(43)~~ Houses of worship (subsection 8).
 - ~~(54)~~ Mobile homes (subsection 11).
 - ~~(65)~~ Retail nurseries and garden supplies (subsection 19).
 - ~~(76)~~ Veterinary clinics (subsection 24).

⁷ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

SECTION 9. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 5**, as follows⁸:

Section 5: - Agricultural (A) district.

- (a) *Purpose and intent.* The agricultural (A) district is intended to serve as an interim use agriculture area until development is proposed to a higher intensity land use, as indicated on the future land use map in the comprehensive plan.
- (b) *Permitted uses.*
 - (1) Agriculture: field crops/wholesale nurseries.
 - (2) Agriculture: pasture/forestry.
 - ~~(3) Antennas.~~
 - ~~(4) Camouflaged communication towers.~~
 - (5) Commercial stables.
 - (6) Single-family detached dwellings.
- (bb) *Permitted uses with special development requirements (chapter 18, section 4).*
 - (1) Kennels (subsection 8).
 - (2) Community gardens (subsection 5.1).
- (c) *Special exception uses (chapter 18, section 3).*
 - (1) Cemeteries (subsection 4).
 - (2) Farmers/flea markets (subsection 5).
 - ~~(3) Guyed, lattice and monopole communication towers (subsection 5).~~
 - (4) Houses of worship (subsection 8).
 - (5) Private schools (subsection 16).
 - (6) Retail nurseries and garden supplies (subsection 19).
 - (7) Veterinary clinics (subsection 24).

SECTION 10. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 6**, as follows⁹:

Section 6: - Rural residential (RR) single-family residential district.

- (a) *Purpose and intent.* The rural residential (RR) district is intended to provide low-density residential development in those areas only suitable for such development due to their location

⁸ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

⁹ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

adjacent to agricultural areas, environmentally sensitive areas, or existing large lot residential development; or in those areas that, due to their inaccessibility from adequate urban services, fail to justify higher densities.

(b) *Permitted uses.*

~~(1) Antennas.~~

~~(2) Camouflaged communication towers.~~

(3) Single-family detached dwellings.

(bb) *Permitted uses with special development requirements (chapter 18, section 4).*

(1) Horses (subsection 7).

(2) Community gardens (subsection 5.1).

(c) *Special exception uses (chapter 18, section 3).*

~~(1) Guyed, lattice and monopole communication towers (subsection 5).~~

(2) Houses of worship (subsection 8).

SECTION 11. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 7**, as follows¹⁰:

Section 7: - R-20SF single-family residential district.

(a) *Purpose and intent.* The R-20 single-family residential district is intended to serve as a transitional zone between rural low density areas and medium/high density areas, both to protect agricultural pursuits and rural residences as well as to provide for desirable suburban residential densities.

(b) *Permitted uses.*

~~(1) Antennas.~~

~~(2) Camouflaged communication towers.~~

(3) Single-family detached dwellings.

(bb) *Permitted uses with special development requirements (chapter 18, section 4).*

(1) Community gardens (subsection 5.1).

~~(c) *Special exception uses (chapter 18, section 3).*~~

~~(1) Guyed, lattice and monopole communication towers (subsection 5).~~

¹⁰ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

SECTION 12. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 8**, as follows¹¹:

Section 8: - R-10SF single-family residential district.

- (a) *Purpose and intent.* The R-10SF single-family residential district is intended to protect existing suburban development and provide for future development of a similar nature, where locations away from urban activity centers suggest suburban densities.
- (b) *Permitted uses.*
 - (1) ~~Antennas.~~
 - (2) ~~Camouflaged communication towers.~~
 - (3) Single-family detached dwellings.
- (bb) Permitted uses with special development requirements (chapter 18, section 4).
 - (1) Community gardens (subsection 5.1).
- (c) ~~Special exception uses (chapter 18, section 3).~~
 - (1) ~~Guyed, lattice and monopole communication towers (subsection 5).~~

SECTION 13. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 9**, as follows¹²:

Section 9: - R-8SF single-family residential district.

- (a) *Purpose and intent.* The R-8SF single-family residential district is intended to provide for smaller lot single-family residences in areas located near urban activity centers.
- (b) *Permitted uses.*
 - (1) ~~Antennas.~~
 - (2) ~~Camouflaged communication towers.~~
 - (3) Single-family detached dwellings.
- (bb) Permitted uses with special development requirements (chapter 18, section 4).
 - (1) Community gardens (subsection 5.1).
- (c) ~~Special exception uses (chapter 18, section 3).~~
 - (1) ~~Guyed, lattice and monopole communication towers (subsection 5).~~

¹¹ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

¹² Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

SECTION 14. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 9.5**, as follows¹³:

Section 9.5: - R-7SF single-family residential district.

- (a) *Purpose and intent.* The R-7SF single-family residential district is intended to provide for medium-density, smaller-lot residences in existing neighborhoods located near urban activity centers.
- (b) *Permitted uses.*
 - (1) ~~Antennas.~~
 - (2) ~~Camouflaged communication towers.~~
 - (3) Single-family detached dwellings.
- (bb) Permitted uses with special development requirements (chapter 18, section 4).
 - (1) Community gardens (subsection 5.1).
- (c) *Special exception uses (chapter 18, section 3).*
 - (1) Garage apartments (subsection 7.5).
 - (2) ~~Guyed, lattice and monopole communication towers (subsection 25).~~
 - (3) Houses of worship (subsection 8).
 - (4) Private schools (subsection 16).

SECTION 15. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 10**, as follows¹⁴:

Section 10: - Two-family residential (R-2D) district.

- (a) *Purpose and intent.* The two-family residential (R-2D) district is intended to provide relatively affordable, urban density housing, and it is intended to serve as a transitional zone between multifamily and single-family residential uses.
- (b) *Permitted uses.*
 - (1) ~~Antennas.~~
 - (2) ~~Camouflaged communication towers.~~
 - (3) Two-family dwellings.
- (bb) *Permitted uses with special development requirements (chapter 18, section 4).*
 - (1) Community gardens (subsection 5.1).

¹³ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

¹⁴ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

- (2) Single-family dwellings (subsection 15.6).
- ~~(c) Special exception uses (chapter 18, section 3).~~
- ~~(1) Guyed, lattice and monopole communication towers (subsection 5).~~
- ~~(d) Single-family attached dwelling subdivision regulations.~~
- (1) Utility easements allowing service to each unit shall be provided.
- (2) Access easements for maintenance of common walls and other facilities shall be provided.
- (3) Legal covenants, restrictions and similar provisions for the joint maintenance of structure shall be submitted to the department to be recorded contemporaneously with the plat.
- (4) Where two-family dwelling development is proposed, plans shall be presented for both units simultaneously.

SECTION 16. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 11**, as follows¹⁵:

Section 11: - Low density multifamily residential (R-3L) district.

- (a) *Purpose and intent.* The low density multifamily residential (R-3L) district is intended to provide low density multifamily development on relatively large tracts of land in single or common ownership.
- (b) *Permitted uses.*
 - ~~(1) Antennas.~~
 - ~~(2) Camouflaged communication towers.~~
 - (3) Multifamily dwellings (eight units per gross acre maximum allowable density).
- (bb) *Permitted uses with special development requirements (chapter 18, section 4).*
 - (1) Assisted living facilities (subsection 1).
 - (2) Child care centers (subsection 4).
 - (3) Clubs, lodges, and fraternal organizations (subsection 5).
 - (4) Nursing homes (subsection 10).
 - (5) Community gardens (subsection 5.1).
- (c) *Special exception uses (chapter 18, section 3).*
 - ~~(1) Guyed, lattice and monopole communication towers (subsection 5).~~
 - (2) Houses of worship (subsection 8).
 - (3) Private schools (subsection 16).

¹⁵ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

- (d) *Project access.* Any R-3L district development shall have direct access to an arterial or collector road as designated under the functional classification system in the comprehensive plan.
- (e) *Building spacing requirements.* Twenty-five feet between sides of buildings, 25 feet between sides and rears of adjacent buildings, 25 feet between fronts and sides of buildings, 50 feet between any combination of fronts or rears of adjacent buildings.

SECTION 17. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 12**, as follows¹⁶:

Section 12: - Moderate density multifamily residential (R-3M) district.

- (a) *Purpose and intent.* The moderate density multifamily residential (R-3M) district is intended to provide moderate density multifamily development on relatively large tracts of land in single or common ownership.
- (b) *Permitted uses.*
 - (1) ~~Antennas.~~
 - (2) ~~Camouflaged communication towers.~~
 - (3) Multifamily dwellings (12 units per gross acre maximum allowable density).
- (bb) *Permitted uses with special development requirements (chapter 18, section 4).*
 - (1) Assisted living facilities (subsection 1).
 - (2) Child care centers (subsection 4).
 - (3) Clubs, lodges, and fraternal organizations (subsection 5).
 - (4) Nursing homes (subsection 10).
 - (5) Community gardens (subsection 5.1).
- (c) *Special exception uses (chapter 18, section 3).*
 - (1) ~~Guyed, lattice and monopole communication towers (subsection 5).~~
 - (2) Houses of worship (subsection 8).
 - (3) Private schools (subsection 16).
- (d) *Project access.* Any R-3M district development shall have direct access to an arterial or major collector road as designated under the functional classification system in the comprehensive plan.
- (e) *Building spacing requirements.* Twenty-five feet between sides of buildings, 25 feet between sides and rears of adjacent buildings, 25 feet between fronts and sides of buildings, 50 feet between any combination of fronts or rears of adjacent buildings.

¹⁶ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

SECTION 18. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 13**, as follows¹⁷:

Section 13: - High density multifamily residential (R-3H) district.

- (a) *Purpose and intent.* The high density multifamily residential (R-3H) district is intended to provide high density multifamily development on relatively large tracts of land in single or common ownership.
- (b) *Permitted uses.*
 - (1) Assisted living facilities.
 - ~~(2) Antennas.~~
 - ~~(3) Camouflaged communication towers.~~
 - (4) Multifamily dwelling (16 units per gross acre maximum allowable density).
- (bb) *Permitted uses with special development requirements (chapter 18, section 4).*
 - (1) Child care centers (subsection 4).
 - (2) Clubs, lodges, and fraternal organizations (subsection 5).
 - (3) Nursing homes (subsection 10).
 - (4) Community gardens (subsection 5.1).
- (c) *Special exception uses (chapter 18, section 3).*
 - ~~(1) Guyed, lattice and monopole communication towers (subsection 5).~~
 - (2) Houses of worship (subsection 8).
 - (3) Private schools (subsection 16).
- (d) *Project access.* Any R-3H district development shall have direct access to an arterial road as designated under the functional classification system in the comprehensive plan.
- (e) *Building spacing requirement.* Twenty-five feet between sides of buildings, 25 feet between sides and rears of adjacent buildings, 25 feet between fronts and sides of buildings, 50 feet between any combination of fronts or rears of adjacent buildings.

SECTION 19. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 19**, as follows¹⁸:

Section 19: - Professional office (PO) district.

- (a) *Purpose and intent.* The professional office (PO) district is intended to provide areas for business, government, industry, medical, professional, or service offices.

¹⁷ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

¹⁸ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

(b) *Permitted uses.*

~~(1) Antennas.~~

(21) Business services.

~~(3) Camouflaged and monopole communication towers.~~

(42) Financial services.

(53) Fleet-based services.

(64) Funeral homes (freestanding uses only).

(75) Medical office/clinics.

(86) Offices.

(97) Veterinary clinics.

(108) Xerographic and offset printing.

(bb) *Permitted uses with special development requirements (chapter 18, section 4).*

(1) Assisted living facilities (subsection 1.5).

(2) Banks (subsection 3).

(3) Child care centers (subsection 4).

(4) Health/exercise clubs (subsection 6).

(5) Nursing homes (subsection 1.5).

(6) Office supplies (subsection 11).

(7) Office/warehouse facilities (subsection 12).

(8) Pain management clinics.

(9) Personal services.

(10) Restaurants.

(11) Community gardens.

(c) *Special exception uses (chapter 18, section 3).*

~~(1) Guyed and lattice communication towers.~~

(21) Houses of worship (subsection 9).

(32) Private schools (subsection 16).

SECTION 20. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 20**, as follows¹⁹:

Section 20: - Neighborhood commercial (NC) district.

- (a) *Purpose and intent.* The neighborhood commercial (NC) district is intended to provide for limited commercial uses within easy walking and biking distance of residential neighborhoods. Development standards and allowed uses are designed to insure compatibility with adjacent residential uses. Individual NC districts should generally be limited to a maximum area of two acres.
- (b) *Permitted uses.*
 - ~~(1) —Antennas.~~
 - (2) Beauty/barber shops.
 - ~~(3) —Camouflaged and monopole communication towers.~~
 - (4) Convenience stores with or without fuel operations.
 - ~~(5)~~ (3) Laundry and dry cleaning retail stores.
 - ~~(6)~~ (4) Multi-tenant retail centers of six tenant spaces or less (the maximum size of any tenant space, excluding convenience stores, shall not exceed 2,500 square feet).
 - ~~(7)~~ (5) Newsstands/bookstores.
 - ~~(8)~~ (6) Offices.
- (b) *Permitted uses with special development requirements (chapter 18, section 4).*
 - (1) Child care centers (subsection 4).
 - (2) Restaurants (subsection (14)).
 - (3) Community gardens (subsection 5.1).
- ~~(c) —Special exception uses (chapter 18, section 3).~~
 - ~~(1) —Guyed and lattice communication towers.~~
- ~~(d)~~ (c) *Project access.* Any NC district development shall have direct access to an arterial or major collector road, as designated in the functional classification system in the comprehensive plan.
- ~~(e)~~ (d) *Off-street parking and driveway requirements.* No parking area or internal driveways shall be permitted in the front or side yard setbacks. Driveway connections shall be permitted in the front yard setback, in accordance with chapter 12 of this code.

¹⁹ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

SECTION 21. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 21**, as follows²⁰:

Section 21: - Community commercial (CC) district.

- (a) *Purpose and intent.* The community commercial (CC) district is intended to provide for community scale businesses that customarily require freestanding buildings on individual sites.
- (b) *Permitted uses.*
 - (1) Adult/vocational education.
 - ~~(2) Antennas.~~
 - (32) Appliance/electronic repair shops.
 - (43) Banks.
 - (54) Business services.
 - (65) Clubs, lodges, and fraternal organizations.
 - ~~(7) Camouflaged and monopole communication towers.~~
 - (86) Convenience stores with or without fuel operations.
 - (97) Financial services.
 - ~~(108)~~ Fleet-based services.
 - (119) Funeral homes.
 - ~~(1210)~~ Furniture and appliance stores.
 - ~~(1311)~~ Health/exercise clubs.
 - (1412) Medical offices/clinics.
 - ~~(1513)~~ Motor vehicle service stations.
 - ~~(1614)~~ Offices.
 - (1715) Office supplies.
 - ~~(1816)~~ Personal services.
 - ~~(1917)~~ Restaurants.
 - ~~(2018)~~ Retail home building materials.
 - (2119) Retail nurseries and garden supplies.
 - ~~(2220)~~ Retail sales and services.
 - (2321) Veterinary clinics.

²⁰ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

(bb) *Permitted uses with special development requirements (chapter 18, section 4).*

- (1) Athletic/sports facilities (subsection 2).
- (2) Brewery (subsection 3.7).
- (3) Child care centers (subsection 4).
- (4) Craft food and beverage producer (subsection 5.15).
- (5) Community gardens (subsection 5.1).
- (6) Microbrewery (subsection 9.57).
- (7) Theaters (subsection 17).

(c) *Special exception uses (chapter 18, section 3).*

- (1) Bars, lounges, and night clubs (subsection 3).
- (2) Fortune tellers, astrologers, and palm readers (subsection 6).
- (3) Game/recreation facilities (subsection 7).
- ~~(4) Guyed and lattice communication towers.~~
- ~~(5)~~ Marina, recreational (subsection 9.6).
- ~~(6)~~ Mini-warehouses (subsection 10).
- ~~(7)~~ Motor vehicle and boat storage facilities (subsection 12).

(d) *Project access.* Any CC district development shall have direct access to any arterial or major collector road, as designated in the functional classification system in the comprehensive plan.

SECTION 22. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 22**, as follows²¹:

Section 22: - Highway commercial (HC) district.

(a) *Purpose and intent.* The highway commercial (HC) district is intended to provide for highway oriented businesses, regional scale facilities, and those retail uses that are undesirable in close proximity to residential areas.

(b) *Permitted uses.*

- (1) Adult/vocational education.
- ~~(2) Antennas.~~
- ~~(3)~~ Appliance/electronic repair shops.
- ~~(4)~~ Athletic/sports facilities.
- ~~(5)~~ Auction houses.
- ~~(6)~~ Banks.

²¹ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

- (76) Bars, lounges, and night clubs.
 - (87) Boat sales.
 - (98) Business services.
 - ~~(10) Camouflaged and monopole communication towers.~~
 - (119) Commercial/industrial equipment and supplies.
 - (1210) Convenience stores with or without fuel operations.
 - (1311) Equipment rental.
 - (1412) Financial services.
 - (1513) Fleet-based services.
 - (1614) Fortune tellers, astrologers, and palm readers.
 - (1715) Furniture and appliance stores.
 - (1816) Game/recreation facilities.
 - (1917) Health/exercise clubs.
 - (2018) Hotels/motels.
 - (2119) Maintenance contractors.
 - (2220) Medical offices/clinics.
 - (2321) Mobile home sales.
 - (2422) Motor vehicle and boat storage facilities.
 - (2523) Motor vehicle sales.
 - (2624) Motor vehicle service centers.
 - (2725) Motor vehicle service stations.
 - (2826) Offices.
 - (2927) Office supplies.
 - (3028) Pawn shops.
 - (3129) Personal services.
 - (3230) Restaurants.
 - (3331) Retail home building materials.
 - (3432) Retail sales and services.
 - (3533) Tattoo establishment.
 - (3634) Theaters.
 - (3735) Truck/trailer/automobile rental.
- (bb) *Permitted uses with special development requirements (chapter 18, section 4).*

- (1) Brewery (subsection 3.7).
 - (2) Community gardens (subsection 1.5).
 - (3) Craft food and beverage producer (subsection 5.15).
 - (4) Laundry/dry cleaning plants (subsection 9).
 - (5) Microbrewery (subsection 9.57).
 - (6) Taxidermy (subsection 16).
- (c) *Special exception uses (chapter 18, section 3).*
- ~~(1) Guyed and lattice communication towers (subsection 25).~~
 - (21) Mini-warehouses (subsection 10).
 - (32) Motor vehicle repair facilities (subsection 13).
- (d) *Project access.* Any HC district development shall be located along or near the intersection of principal arterial roads where not adjacent to major residential areas and along an arterial road where adjacent to industrial areas, based on the functional classification system in the comprehensive plan.

SECTION 23. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 22.5**, as follows²²:

Section 22.5: - Interchange commercial development (ICD) district.

- (a) *Purpose and intent.* The interchange commercial development (ICD) district is intended to provide for a variety of land uses designed to meet the commercial needs of the local community, traveling motorist, and businesses within the adjoining commercial/industrial areas. The district is designed to meet the following objectives:
- (1) Provide for land uses generally situated at interstate interchanges;
 - (2) Provide for land uses necessary for the development of sub-regional commercial nodes which serve both Port Orange and surrounding communities;
 - (3) Provide for land uses necessary to accommodate the neighborhood and community commercial needs of the nearby residential neighborhoods;
 - (4) Provide for the establishment of employment centers which offer professional, technical and skilled opportunities in addition to service-related positions;
 - (5) Provide for flexibility to accommodate mixed-use development; and
 - (6) Provide for innovative site and building design.
- (b) *Permitted uses.*
- ~~(1) Antennas.~~

²² Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

- (21) Athletic/sports facilities.
- (32) Banks.
- (43) Business services.
- ~~(5) Camouflaged and monopole communication towers.~~
- (64) Clubs, lodges, and fraternal organizations.
- (75) Convenience stores with or without fuel operations.
- (86) Financial services.
- (97) Fleet-based services.
- (108) Furniture and appliance stores.
- (119) Game/recreation facilities.
- (1210) Health/exercise clubs.
- (1311) Hotels/motels.
- (1412) Medical offices/clinics.
- (1513) Motor vehicle service stations.
- (1614) Offices.
- (1715) Office supplies.
- (1816) Personal services.
- (1917) Restaurants.
- (2018) Retail home building materials.
- (2119) Retail nurseries and garden supplies.
- (2220) Retail sales and services.
- (2321) Tattoo establishment.
- (2422) Theaters.
- (2523) Veterinary clinics.

(bb) *Permitted uses with special development requirements (chapter 18, section 4).*

- (1) Brewery (subsection 3.7).
- (2) *Child care centers (subsection 4).*
- (3) *Craft food and beverage producer (subsection 5.15).*
- (4) *Community gardens (subsection 5.1).*
- (5) *Microbrewery (subsection 9.57).*
- (6) *Office/warehouse facilities (subsection 12.2).*

(c) *Special exception uses (chapter 18, section 3).*

- (1) Bars, lounges, and night clubs (subsection 3).
- ~~(2) Guyed and lattice communication towers.~~
- ~~(32)~~ Mini-warehouses (subsection 10.5).
- ~~(43)~~ Motor vehicle repair facilities (subsection 13).
- ~~(54)~~ Truck stops (subsection 21).
- (d) *Project access and location.* Any ICD district development shall have direct frontage on the roadway which accesses the interstate highway system and be located no more than one-half mile from the intersection of the centerlines of the interstate and the crossing roadway.

SECTION 24. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 23**, as follows²³:

Section 23: - Commercial industrial (CI) district.

- (a) *Purpose and intent.* The commercial industrial (CI) district is intended to provide development of those less intense storage, repair, industrial service and limited manufacturing uses that have fewer potential impacts on surrounding properties, yet are logically segregated from general commercial areas for aesthetic and economic reasons.
- (b) *Permitted uses.*
 - (1) Adult/vocational education.
 - (2) Antennas.
 - (3) Appliance/electronic repair shops.
 - (4) Boat repair, engine.
 - (5) Business services.
 - ~~(6) Camouflaged and monopole communication towers.~~
 - ~~(76)~~ Commercial/industrial equipment and supplies.
 - ~~(87)~~ Commercial/industrial services.
 - ~~(98)~~ Commercial/industrial warehouses.
 - ~~(109)~~ Construction contractor's yard and storage.
 - ~~(1110)~~ Fleet-based services.
 - ~~(1211)~~ Greenhouses and nurseries (wholesale and retail).
 - ~~(1312)~~ Laboratory, research and development.
 - ~~(1413)~~ Laundry and dry cleaning plants.
 - ~~(1514)~~ Maintenance contractors.

²³ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

- (~~16~~15) Manufacturing: craftsman shops.
 - (~~17~~16) Manufacturing: fabrication.
 - (~~18~~17) Manufacturing: limited.
 - (~~19~~18) Mini-warehouses.
 - (~~20~~19) Motor vehicle and boat storage facilities.
 - (~~21~~20) Motor vehicle repair facilities.
 - (~~22~~21) Motor vehicle service stations.
 - (~~23~~22) Motor vehicle towing and impoundment.
 - (~~24~~23) Offices.
 - (~~25~~24) Taxidermy.
 - (~~26~~25) Transportation services.
 - (~~27~~26) Truck/trailer/automobile rental.
 - (~~28~~27) Wholesalers and distributors.
- (c) *Permitted uses with special development requirements (chapter 18, section 4).*
- (1) Brewery (subsection 3.7).
 - (2) Kennels (subsection 8).
 - (3) Health/exercise club (subsection 6).
- (d) *Special exception uses (chapter 18, section 3).*
- (1) Adult entertainment (subsection 1).
 - (~~2~~) ~~Guyed and lattice communication towers.~~
 - (~~3~~2) Used motor vehicle parts yards (subsection 23).

SECTION 25. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 24**, as follows²⁴:

Section 24: - Light industrial (LI) district.

- (a) *Purpose and intent.* The light industrial (LI) district is intended to provide development for limited industrial operations engaged in the fabricating, repair, or storage of manufactured goods, where no objectionable by-products of the activity (such as odors, smoke, dust, refuse, electromagnetic interference, noise in excess of that customary to loading, unloading, and handling of goods and materials) are noticeable beyond the lot on which the facility is located. No hazardous materials may be utilized by the industrial operations permitted in this district.

²⁴ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

(b) *Permitted uses.*

- (1) Airport and related activities.
- (2) Antennas.
- (3) Boat repair, body.
- (4) Boat repair, engine.
- ~~(5) Camouflaged, guyed, lattice and monopole communication towers.~~
- (6) Commercial/industrial warehouse.
- (7) Construction contractor's yard and storage.
- (8) Crematoriums.
- (9) Greenhouses and nurseries (wholesale only).
- ~~(10) Laboratory, research and development.~~
- ~~(11) Laundry and dry cleaning plants.~~
- ~~(12) Manufacturing, craftsman shops.~~
- ~~(13) Manufacturing, limited.~~
- ~~(14) Manufacturing, fabrication.~~
- ~~(15) Manufacturing, processing.~~
- ~~(16) Motor vehicle repair facilities.~~
- ~~(17) Motor vehicle towing and impoundment.~~
- ~~(18) Offices.~~
- ~~(19) Trucking terminals.~~

(c) *Permitted uses with special development requirements (chapter 18, section 4).*

- (1) Brewery (subsection 3.7).
- (2) Health/exercise club (subsection 6).

(d) *Special exception uses (chapter 18, section 3).*

- (1) Marina, commercial/industrial (subsection 9.5).
- (2) Truck stops (subsection 21).

SECTION 26. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 25**, as follows²⁵:

Section 25: - Ridgewood development (RD) district.

- (a) *Purpose and intent.* The Ridgewood Development District is designed to encourage the development and redevelopment, modernization, and beautification of the Ridgewood Avenue corridor, while maintaining its traffic capacity, and protecting the integrity of adjoining residential areas. It is intended to accommodate a mixture of office, commercial, warehouse/storage, and limited industrial uses based on a strategy for the corridor.
- (b) *Permitted uses.*
- (1) Adult/vocational education.
 - ~~(2) Antennas.~~
 - ~~(3)~~ (2) Appliance/electronic repair shops.
 - ~~(4)~~ (3) Athletic/sports facilities.
 - ~~(5)~~ (4) Auction houses.
 - ~~(6)~~ (5) Banks.
 - ~~(7)~~ (6) Boat sales.
 - ~~(8)~~ (7) Business services.
 - ~~(9) Camouflaged and monopole communication towers.~~
 - ~~(10)~~ (8) Clubs, lodges, and fraternal organizations.
 - ~~(11)~~ (9) Commercial/industrial equipment and supplies.
 - ~~(12)~~ (10) Convenience stores with or without fuel operations.
 - ~~(13)~~ (11) Equipment rental.
 - ~~(14)~~ (12) Financial services.
 - ~~(15)~~ (13) Fleet-based services.
 - ~~(16)~~ (14) Fortunetellers, astrologers, and palm readers.
 - ~~(17)~~ (15) Funeral homes.
 - ~~(18)~~ (16) Furniture and appliance stores.
 - ~~(19)~~ (17) Greenhouses and nurseries (wholesale and retail).
 - ~~(20)~~ (18) Health/exercise club.
 - ~~(21)~~ (19) Hotels.
 - ~~(22)~~ (20) Houses of worship.

²⁵ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

- (~~23~~21) Laboratory, research and development.
- (~~24~~22) Maintenance contractors.
- (~~25~~23) Manufacturing: craftsman shops.
- (~~26~~24) Manufacturing, limited.
- (~~27~~25) Medical offices/clinics.
- (~~28~~26) Mobile home sales.
- (~~29~~27) Motor vehicle sales.
- (~~30~~28) Motor vehicle service centers.
- (~~31~~29) Motor vehicle service stations.
- (~~32~~30) Offices.
- (~~33~~31) Pawn shops.
- (~~34~~32) Personal services.
- (~~35~~33) Restaurants.
- (~~36~~34) Retail home building materials.
- (~~37~~35) Retail sales and services.
- (~~38~~36) Tattoo establishment.
- (~~39~~37) Taxidermy.
- (~~40~~38) Theaters.
- (~~41~~39) Veterinary clinics.
- (~~42~~40) Wholesalers and distributors.
- (~~43~~41) Xerographic and offset printing.

(bb) *Permitted uses with special development requirements (chapter 18, section 4).*

- (1) Assisted living facilities (subsection 1).
- (2) Brewery (subsection 3.7).
- (3) Child care centers (subsection 4).
- (4) Community gardens (subsection 5.1).
- (5) Craft food and beverage producer (subsection 5.15).
- (6) Microbrewery (subsection 9.57).
- (7) Nursing homes (subsection 10).

(c) *Special exception uses (chapter 18, section 3).*

- (1) Bars, lounges and night clubs (subsection 3).
- (2) Boat repair, engine (chapter 18, paragraph 3(b)(3.5)).

- (3) Farmers/flea markets (subsection 5.5).
- (4) Game/recreation facilities (subsection 7).
- ~~(5) Guyed and lattice communication towers.~~
- (65) Manufacturing: fabrication.
- (76) Marina, recreational (subsection 9.6).
- (87) Mini-warehouses (subsection 10).
- (98) Motor vehicle repair facilities (subsection 13).
- (109) Multifamily dwellings (16 units per gross acre maximum allowable density) (subsection 14).
- (d) *Reserved.*
- (e) *Special landscape provisions.*
 - (1) Special landscape provisions for development within this district are described in chapter 13, specifically subsection 3(c), subsection 3(d)(3), subsection 3(e), subsection 4(b) and subsection 5(d).
- (f) *Special signage provisions.* Special signage provisions for development within this district are described in chapter 15, specifically subsection 6(b) and subsection 7(c)(1)(b).
- (g) *Special vehicular use provisions.* The use of alternative surfaces for parking and other vehicular use areas shall be permitted as provided in subsection 6(f)(3) of chapter 12 of this Code.
- (h) *Special owner-occupancy provisions.* The residential occupancy by a business owner and the owner's family of a structure being used for a permitted use or permitted use with special development requirements shall be permitted as provided in subsection 2(d) of chapter 20 of this Code.

SECTION 27. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 26**, as follows²⁶:

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.

²⁶ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

- ~~(2) Antennas.~~
- ~~(3) Camouflaged and monopole communication towers.~~
- (42) Cemeteries.
- (53) Charitable organization offices.
- (64) Hospitals.
- (75) Houses of worship.
- (86) Nursing homes.
- (97) Private schools.
- (108) 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.~~
- (21) 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 28. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 29**, as follows²⁷:

Section 29: - Planned community—Agricultural (PC-A) district.

[No changes to intro text, subsection (a), Figure 17:1, and Figure 17:2]

(b) *West Town Center District.*

- (1) *Purpose and intent.* This district is established to create a compatible mixture of commercial, cultural, educational, governmental uses in a pedestrian-oriented town center. This district will be a focal point for the community and will draw all elements of the project together to form a cohesive mixed-use environment. The West Town Center is dedicated to collective social activity, education, and recreation in a traditional commercial and residential environment which nurtures a unified sense of community.

²⁷ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

It is the goal of this district to provide for "traditional town development," bringing together a variety of housing types, offices, shopping and professional services, and public facilities to support a heterogeneous resident population. Planning, design, and development objectives of this district include:

- (a) A strong sense of community identity, based upon a shared, coherent, and functionally efficient mixed-use environment.
 - (b) Building, open spaces, and other visual features that act as landmarks, symbols, and activity centers to establish community identity.
 - (c) On-street parking and centralized parking facilities to collectively support principal uses in the district.
 - (d) A coordinated transportation system with a hierarchy of facilities designed for pedestrians, bicycles, public transit, and the automobile.
 - (e) A built environment that is pedestrian-friendly and handicapped-accessible.
 - (f) Compatibility of buildings and other improvements as determined by their arrangement, bulk, form, character, landscaping, and architectural style to establish a diverse, livable and harmonious urban form.
- (2) *Permitted uses.*
- (a) Those uses permitted in the GPU zoning district, as described in section 26 of this chapter, including public schools, post offices, and municipal buildings.
 - (b) Agricultural uses as defined by section 29(f).
 - (c) Those uses permitted in R-3H, PO, and CC zoning districts, unless specifically prohibited herein.
 - (d) Multi-use buildings (provided that the individual uses are approved herein).
 - (e) Bed and breakfast inns of less than 10,000 s.f.
 - (f) Parking garages.
 - (g) Community recreational facilities.
 - ~~(h) Camouflaged antennae.~~

[No changes to subsections 3 through 10]

[No changes to subsection (c) and all corresponding subsections]

[No changes to subsection (d) and all corresponding subsections]

[No changes to subsection (e) and all corresponding subsections]

- (f) *Agricultural uses.* The entire planned community-agricultural area is currently in agricultural use. Said agricultural use shall be allowed to continue as an interim use on all lands throughout the PC-A area which have not received final site plan or subdivision approval. Agricultural

uses on any portion of a micro region that has received final site plan and/or subdivision approval shall cease within 90 days after such approval.

- (1) *Permitted uses.* Permitted uses shall be the same as for the "A" zoning district.
- (2) *Special exception uses.* Special exception uses shall be limited to the following uses, unless otherwise specified under the requirements for each district. Such uses shall be consistent with the permitted uses in each district.
 - ~~(a) Guyed, lattice and monopole communication towers.~~
 - (b) Houses of worship.
 - (e) Private schools.
 - ~~(d)~~ Retail nurseries and garden supplies.
 - (e) Veterinary clinics.

Such uses shall meet all of the applicable special development criteria as outlined in chapter 18, section 3 of this code.

- (3) *Special restrictions.* The following uses are prohibited within 1,000 feet of proposed or existing development within any micro region:
 - (a) Livestock feeding pens.
 - (b) Livestock feed lots.
 - (c) Poultry operations to include any feathered animals...e.g. chickens, emus, ducks, ostriches, etc.
- (4) *Prohibited uses.*
 - (a) Cemeteries.
 - (b) Commercial stables.
 - (c) Farmers/flea markets.

[No changes to subsections (g) through (q) and all corresponding subsections, and Figure 17:3]

SECTION 29. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 30**, as follows²⁸:

Section 30: - Planned community—Port Orange Riverwalk (PC-R) district.

[No changes to subsections (a) through (c)]

- (d) *Mixed-use.* The mixed-use development shall comply with the district-wide regulations and the following regulations for onsite improvements.

[No changes to subsections (d)(1) through (3)]

²⁸ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

(4) *Prohibited uses.*

Adult entertainment

Automobile oriented uses

Discount and factory outlet stores

Appliance/electronic repair shops

Assisted living facilities

Auction houses

Boat repair

Boat sales

Cemeteries

Childcare centers

Commercial/industrial equipment and supplies

Construction contractor's yard and storage

Convenience stores with fuel operations

Drive-thru facilities

Equipment rentals

Fleet-based services

Fortunetellers, astrologers, and palm readers

Funeral homes

Greenhouses and nurseries (wholesale and retail)

~~Cuved and lattice communication towers~~

Hospitals

Houses of worship

Maintenance contractors

Manufacturing: fabrication

Mini-warehouses

Mobile home sales
Motor vehicle and boat storage facilities
Motor vehicle repair facilities
Motor vehicle sales
Motor vehicle service centers
Motor vehicle service stations
Nursing homes
Office/warehouse facilities
Pawn shops
Public utility stations/plants
Retail home building materials
Tattoo parlors
Taxidermy
Veterinary clinics
Wholesalers and distributors
Xerographic and offset printing

[No changes to subsection (d)(5)]

[No changes to subsections (e) through (g) and Figure 17:4]

SECTION 30. The City Council hereby amends **CHAPTER 17, ZONING DISTRICT REGULATIONS, SECTION 33**, as follows²⁹:

Section 33: - Recreation (REC) district.

- (a) Purpose and intent. The Recreation (REC) district is intended to provide areas for primarily outdoor recreational uses.
 - (b) *Permitted uses.* Those uses with special development requirements are identified with an asterisk (*). These special development requirements are identified in chapter 18, section 4.
- ~~(1) —Antennas.~~

²⁹ Words ~~stricken through~~ are intended to be deleted; words underlined are intended to be added.

- (21) Archery ranges.
- (32) Boat ramps/launches.
- ~~(4) Camouflaged and monopole communication towers.~~
- (53) Gymnasiums.
- (64) Marina, recreational *.
- (75) Outdoor facilities for civic and public functions.
- (86) Outdoor active recreation (public/private) facilities.
- (97) Outdoor passive recreation.
- (108) Sports complexes.

SECTION 31. It is the intention of the City Council that the provisions of this Ordinance shall become and be made a part of the City Land Development Code, which provisions may be renumbered or re-lettered and the ordinance be changed to “section,” “article,” or other appropriate word to accomplish such intention.

SECTION 32. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict. Ordinance No. 2018-25, imposing a moratorium, as it may have been extended, is hereby repealed upon the effective date of this Ordinance.

SECTION 33. 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.

[REMAINDER OF PAGE LEFT BLANK]

SECTION 34. 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 _____, 2019.

Passed and adopted on second and final reading on the __ day of _____, 2019.

Reviewed and Approved: _____
Matthew J. Jones, Deputy City Attorney



STAFF REPORT - WIRELESS COMMUNICATION FACILITIES SITING

CASE NO. 18-25000010

LDC Amendment/Chapters 2, 16, 17 and 18

REQUEST: Amend Chapters 2, 16, 17 and 18 of the Land Development Code related to Wireless Communication Facilities Siting

APPLICANT: City of Port Orange

**PLANNING COMMISSION
RECOMMENDATION:** **APPROVAL**

STAFF RECOMMENDATION: APPROVAL

STAFF CONTACT: Tim Burman, Community Development Director
(386) 506-5675

CITY COUNCIL DATE: January 22, 2019

SUMMARY OF PROPOSED AMENDMENT

In September 2018, a moratorium was approved for personal wireless communications governed by Chapter 16, Section 9 of the Land Development Code (LDC), in order to provide time to review the existing regulations in the LDC related to personal wireless communications, and if necessary, to develop amendments to maintain reasonable and uniform regulations that protect the health, safety and general welfare of the residents of Port Orange.

The proposed amendment is intended to update the regulations in the LDC related to wireless communication facilities siting, to comply with federal and state law to regulate the siting of communication towers, antennas and facilities, update local siting requirements, and minimizing adverse impacts on residential zoning districts from the construction of new communication towers and facilities through setbacks, separation requirements, and landscape/screening. The proposed amendments to the City's code requirements for personal wireless communications would:

1. Update and add definitions to Chapter 2 related to terms associated with personal wireless communications;
2. Establish that the City's first preference to siting new antennas is to co-locate on an existing communication tower or structure instead of constructing a new tower or structure;

3. Establish a hierarchy for siting antennas and communication towers/structures. The City's first preference for installation of new antennas is to co-locate on an existing communication tower/structure instead of constructing a new tower/structure. If co-location on an existing tower/structure is not an option and is demonstrated by an applicant. An applicant can propose to construct a new tower/structure in a location according to the siting hierarchy outlined in the code. The proposed siting hierarchy for a new communication tower/structure is as follows:
 - a. Camouflaged communication tower on municipal use property;
 - b. Non-camouflaged communication tower on municipal use property;
 - c. Camouflaged communication tower on light industrial and commercial industrial zoning district private property;
 - d. Non-camouflaged communication tower on Light Industrial (LI) and Commercial Industrial (CI) zoning district private property in the following preferred order: monopole, guyed and lattice;
 - e. Camouflaged communication tower in other zoning districts on private or other governmental property other than residential (requires approval of variance by City Council); and
 - f. Non-camouflaged communication tower in the following preferred order: monopole, guyed and lattice, in other zoning districts on private or other governmental property other than residential (requires approval of variance by City Council).

The siting hierarchy is designed to have new towers/structure built on property owned by the City, industrial zoned property (CI or LI), and other zoned property. The code also places a preference to camouflaged towers being constructed instead of monopole, guyed, or lattice towers. If an applicant selects a lower ranked site on the siting hierarchy list, the applicant shall demonstrate that the higher ranked sites on the siting hierarchy list are not available. Specific criteria is provided in the code that the applicant must use to demonstrate that an existing tower to co-locate an antenna onto is not available or a higher ranked site on the siting hierarchy list is not available.

4. Restrict new tower/structure construction in all residential zoning districts, the Port Orange Town Center Community Redevelopment Agency (CRA) boundary, the Floodplain Conservation (F-C) and Agricultural (A) zoning district, the West Town Center, Neighborhood, and Community Districts of the Planned Community-Agricultural (PC-A) zoning district without a variance being approved by the City Council;
5. Provide dimensional requirements for a new tower/structure and associated equipment and buildings. The setback for a communication tower is 110% of the tower/structure height or the minimum zoning district setback, whichever is greater, from all property lines. The setbacks for any buildings, equipment, or generator associated with a tower and/or antenna is 10 feet or the minimum setback requirement for a specific zoning district, whichever is greater. The maximum height for a tower will remain at 300 feet;

6. Provide a separation requirement between the base of a communication tower/structure to the property line of a lot with a residential structure or vacant land with residential zoning. A new camouflaged tower would need to be separated at least two times its height and guyed, lattice, and monopole communication towers separated at least four times their height from a residential lot. In addition, all communication towers are to be separated a minimum of one-half mile from another communication tower;
8. Provide the review process and submittal requirements to co-locate an antenna on an existing communication tower/structure, construct a new communication tower, install or replace communication equipment or building, and re-construct or structurally modify an existing communication tower/structure or antenna;
9. Establish guidelines and criteria for permitting and installing a wireless facility support pole on municipal use property or property zoned Light Industrial (LI) and Commercial Industrial (CI). A wireless facility support pole is a structure that resembles and functions as a light or traffic control pole that is no more than fifty (50) feet in height and is used to support a camouflaged antenna for wireless communications service.
10. Require the submittal of a visual impact analysis that consists of a photographic superimposition that includes the tower/structure, antennas, equipment, buildings, cables as well as cable runs, and security barrier, at a specified distance of from a subject property line;
11. Maintain the requirement to install a wall or fence around a tower site, install perimeter landscaping along the wall or fence, and install a landscape buffer adjacent to rights-of-way or property lines;
12. Establish a special fee in addition to a site plan or building permit processing fee so the City can hire an independent consultant and/or expert to assist in the evaluation of an application(s);
13. Establish a security fund that all applicants constructing a new tower or installing an antenna on an existing tower are required to pay at the permitting stage. The security fund is for the City to use to remove or repair a tower, antenna, or equipment that is abandoned or determined to be a hazard or nuisance by the City and the owner fails to address the issue. The City would be able use this fund to remove the nuisance as the City pursues legal action with the property owner to recover the cost;
14. Establish guidelines and criteria for an applicant to request a variance to the setback, separation, specific zoning district where such use is not allowed, and other provisions in Chapter 16, Section 9, of the LDC. The procedures for processing a variance in Chapter 19 shall apply, with the exception that the Planning Commission shall consider the application for a variance at a noticed public hearing and shall make a recommendation to the City Council, which shall consider the application for a variance at a noticed public hearing; and

15. Remove setback and height requirements in Chapter 16 (Section 4 and 5) to eliminate possible conflicting requirements in Chapter 16, Section 9 (wireless communication facilities siting). Remove references to antenna, camouflaged, guyed, lattice, and monopole in Chapter 17 (Section 3 – 33) and 18 (Section 3 and 4).

RECOMMENDATION

Approval of the amendment (Ordinance 2019-5) to the LDC related to Wireless Communication Facilities Siting.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: No

SUBJECT: (H20) Ratification and approval of Task Authorization No 20 with Mead and Hunt for the Taylor Road Bridge at B-19 and Sweetwater Emergency Repairs

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to ratify and approve Task Authorization No. 20 under the Master Contract for Engineering Services with Mead and Hunt, Inc. for services relating to the Taylor Road Bridge at B-19 and Sweetwater Branch Emergency Repairs for an amount not to exceed \$45,392; authorize the Mayor and City Clerk to execute all required documents.

SUMMARY: On December 2, 2018, the Field Operations crews, as division of the Public Works & Utilities Department, responded to a water main break located on at the B-19 canal and Sweetwater Branch. The main break has caused extensive damage to the roadway, approach slab, drainage structures and water main adjacent to the Taylor Road bridge.

The Public Works & Utilities Department has requested Mead and Hunt, Inc. to provide a scope of services that includes project approach development, approvals from Volusia County Road and Bridge Department, design, permitting, contractor price/scope negotiation assistance, contraction contract administration and inspection services. On December 18, 2018, the Public Works & Utilities Director received the Scope of Services and Fee Estimate.

Task Authorization No 20 will provide rehabilitation plans on an expedited schedule to repair the damage to Taylor Road at the B-19 Canal caused by the broken water main. Mead and Hunt, Inc. will provide plans and details on a two-phase approach. This approach will allow repair crews to begin work within days. Phase One will provide for erosion control, removal of debris and stabilization. Phase Two will provide for the complete rehabilitation of the site to the original condition using a combination of flowable fill, structural backfill materials, and replacement of the concrete approach slab as well as other required items.

Project No.: URP011 Funding Account No.: 403 0800 533 6397

Presenter: Lynn Stevens

ATTACHMENTS:

1.	Task Authorization No 20 - Taylor Rd	Task Authorization No 20 - Taylor Rd
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	Emergency Repairs Signed by DAK	Emergency Repairs Signed by DAK.pdf
2.	Public Utilities Department - Mead and Hunt - Task No 20 Taylor Road Main Break	Public Utilities Department - Mead and Hunt - Task No 20 Taylor Road Main Break.pdf
3.	Taylor Road Bridge Proposal 12.14.18	Taylor Road Bridge Proposal 12.14.18.pdf

Julia Wiggins	Created/Initiated - 12/20/2018
Julia Wiggins	Approved - 12/20/2018
Richard Colby	Approved - 12/20/2018
Rick Wilson	Approved - 12/20/2018
Lynn Stevens	Approved - 12/26/2018
Lori Bockelman	Approved - 12/31/2018
Margaret Roberts	Approved - 01/07/2019
Jake Johansson	Approved - 01/08/2019
Robin Fenwick	Final Approval - 01/09/2019

TASK AUTHORIZATION NO. 20
Master Contract for Engineering Services dated March 17, 2015
Between the City of Port Orange, Florida and Mead and Hunt, Inc.
Pursuant to merger with Quentin L. Hampton Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **Mead and Hunt, Inc. Pursuant to Merger with QUENTIN L. HAMPTON ASSOCIATES, INC.**, a Wisconsin corporation with its principal place of business at 2440 Deming Way, Middleton, Wisconsin 53562-1562 ("Contractor"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated March 17, 2015, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. The Public Utilities Department Head, Lynn Stevens, shall perform contract administration for this **Task Authorization No 20**, and may be contacted at (386) 506-5750.
3. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to the **Taylor Road Bridge at B-19 and Sweetwater Branch Emergency Repairs**; as more particularly described in the Scope of Services attached hereto and incorporated herein as **Task Authorization No 20 Exhibit "A."**
4. **Task Authorization No 20** must be completed by **February 28, 2019**.
5. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in **Task Authorization No 20 Exhibit "A"** attached hereto and made a part hereof for all purposes, subject to a limit up to but not to exceed **Forty-Five Thousand Three Hundred and Ninety-two Dollars and no cents (\$45,392.00)**. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
6. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.

IN WITNESS WHEREOF, the Parties have made and executed this Task Authorization for the purposes herein expressed on the dates set forth below.

Witnesses:

MEAD AND HUNT, INC. PURSUANT TO MERGER WITH
QUENTIN L. HAMPTON ASSOCIATES, INC.


Printed Name: Bernadette Fox

By: 
David A. King, PE Vice President/Business Unit Leader


Printed Name: Tabitha Russell

Date: December 27, 2018

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Donald O. Burnette, Mayor

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

[CA 4619]

TASK AUTHORIZATION NO 20

EXHIBIT "A"

MEAD AND HUNT, INC.

**TAYLOR ROAD BRIDGE AT B-19 AND SWEETWATER
BRANCH EMERGENCY REPAIRS**



4401 Eastport Parkway
Port Orange, FL 32127
386-761-6810

December 18, 2018

Lynn Stevens
Public Works and Utilities Director
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Email: lstevens@port-orange.org
Hard Copy Mailed Only on Request

**RE: CITY OF PORT ORANGE
TAYLOR ROAD BRIDGE AT B-19/SWEETWATER BRANCH EMERGENCY REPAIRS**

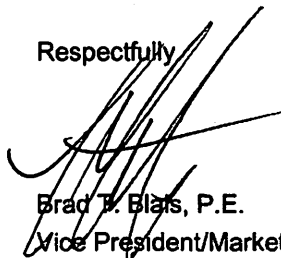
Dear Lynn,

In accordance with your request, we are pleased to offer the enclosed scope of services and engineering fee estimate for the above referenced project. The design scope of this project includes project approach development, approvals from Volusia County Road and Bridge Department, design, permitting, contractor price/scope negotiation assistance, construction contract administration and inspection services.

The project is required to make emergency repairs to the roadway, approach slab, drainage structures and water main adjacent to the Taylor Road bridge.

The enclosed engineering Scope of Services and fee estimate is based upon the established utilities contract. This is a lump sum proposal and it includes the work completed to date along with the remaining work to complete. Thank you for this opportunity to continue to be of service. If you have additional questions, do not hesitate to call.

Respectfully



Brad T. Blais, P.E.
Vice President/Market Leader



David A. King, P.E.
Vice President/Business Unit Leader

BTB/DAK:bf

Enclosures: Scope of Services and Fee Estimate

**CITY OF PORT ORANGE
TAYLOR ROAD BRIDGE AT B-19/SWEETWATER BRANCH REPAIRS
SCOPE OF SERVICES**

GENERAL: The City of Port Orange (CITY) and Mead & Hunt entered into a Professional Continuous Utility Engineering Consulting Services Contract pursuant to RFQ #14-23, dated effective March 17, 2015.

PROJECT SCOPE:

Mead & Hunt has been requested to provide rehabilitation plans on an expedited schedule to repair damage to Taylor Road at the B-19 Canal caused by a broken water main. The soil erosion has created a void of approximate 30 feet in length by 20 feet in width with an approximate depth of 15 feet. The existing concrete approach slab was not damaged by the water main failure.

Mead & Hunt will provide design, permitting, construction contract administration and construction inspection services under this task assignment.

Rehabilitation Plans

Mead & Hunt will provide plans and details on a two-phase approach. This approach will allow repair crews to begin work within days. Phase One will provide for erosion control, removal of debris and stabilization of the bottom of the void. Phase Two will provide for the complete rehabilitation of the site to its original condition using a combination of flowable fill, structural backfill material, and replacement of the concrete approach slab as well as other required items.

Phase 2 plans will also include design of the replacement of a limited portion of the 12" watermain.

FDEP permit is not required for the project. Removal of any sediment from the channel would be covered under Volusia County's existing ditch maintenance permit/authority. Mead & Hunt will apply to Volusia County for a County Use Permit.

Specifications will be by FDOT or Volusia County as appropriate, plan sheet form only.

Deliverables

Phase 1: Plans will be produced on 11x17 sheets in electronic format for review. Three (3) sets of hard copies will be provided upon resolution of all review comments.

Phase 2: Plans will be produced on 11x17 sheets in electronic format for review. Three (3) sets of hard copies will be provided upon resolution of all review comments.

Contract Administration/Coordination

During the construction phase, Mead & Hunt will:

1. Meet with Contractor and CITY staff to confirm project scope and pricing strategy.
2. Provide engineering oversight and assistance for expedited completion of repairs.
3. Review Contractor pay requests.
4. Attend substantial and final completion inspections with County and CITY staff.
5. Prepare punch list of final work/corrective items.
6. Verify completion of punch list and establish final completion.

Inspection

Mead & Hunt will provide an on-site Resident Project Representative (RPR) to oversee the repairs for conformance with plans and specifications. RPR services will be billed on a time and material basis at the established contract rate. Overtime will be billed at 1.5 times the contract rate.

Daily inspection reports will be prepared and distributed.

Geotechnical, Bridge Inspection and Miscellaneous Expenses

Mead & Hunt will engage ECS Florida, LLC for geotechnical and materials testing for design related work completed by the Contractor.

Mead & Hunt will engage Ayres and Associates to perform a bridge inspection following completion of construction. Ayres to be compensated by FDOT under their current FDOT continuing contract.

Printing and other expenses will be billed at actual cost.

Exclusions

The proposed scope excludes all services not specifically described herein.

Compensation

Taylor Road Bridge Repairs
Engineering Fee Estimate

<u>Task #</u>		<u>Unit</u>	<u>Price</u>
1	Site Visits and initial correspondence	Lump Sum	\$5,268
2	Approach Development and approvals	Lump Sum	\$5,058
3	Plan Production and Agency Approvals	Lump Sum	\$14,770
4	Contract Administration/Coordination	Lump Sum	\$4,636
5	Inspection (\$68/hr. regular, \$102/hr over-time)	Time & Expense	\$8,160
6.	Geotechnical Bridge Inspection and	Actual Cost	<u>\$7,500</u>
	Miscellaneous Expenses Allowance		
TOTAL ESTIMATED FEES			\$45,392



City of Port Orange Public Works & Utilities Department

TO: M.H. Johansson, City Manager

THRU: Lynn Stevens, Public Works & Utilities Director
Julia Wiggins, Business Manager

FROM: Dick Colby, Project Manager

DATE: December 19, 2018

SUBJECT: Mead & Hunt, Inc. – Task Authorization No 20
Taylor Road Bridge At b-19 / Sweetwater Branch Emergency Repairs

REQUEST:

The Public Works & Utilities Department is requesting Council to approve Task Authorization No 20 under the Master Contract for Engineering Services with Mead and Hunt, Inc. for services relating to the Taylor Road Bridge at B-19 and Sweetwater Branch Emergency Repairs for an amount not to exceed \$45,392.

PURPOSE:

The purpose of this request is to provide engineering assistance for emergency repairs due to a water main break.

CONSIDERATION:

On December 2, 2018, the Field Operations crews, as division of the Public Works & Utilities Department, responded to a water main break located on at the B-19 canal and Sweetwater Branch. The main break has caused extensive damage to the roadway, approach slab, drainage structures and water main adjacent to the Taylor Road bridge.

The Public Works & Utilities Department has requested Mead and Hunt, Inc. to provide a scope of services that includes project approach development, approvals from Volusia County Road and Bridge Department, design, permitting, contractor price/scope negotiation assistance, contraction contract administration and inspection services. On December 18, 2018, the Public Works & Utilities Director received the Scope of Services and Fee Estimate.

Task Authorization No 20 will provide rehabilitation plans on an expedited schedule to repair the damage to Taylor Road at the B-19 Canal caused by the broken water main.

Mead and Hunt, Inc. will provide plans and details on a two-phase approach. This approach will allow repair crews to begin work within days. Phase One will provide for erosion control, removal of debris and stabilization. Phase Two will provide for the complete rehabilitation of the site to the original condition using a combination of flowable fill, structural backfill materials, and replacement of the concrete approach slab as well as other required items.

Task Authorization No 20, 2018 will be for an amount not to exceed \$45,392 and set to expire on February 28, 2019. A Budget Transfer has been prepared and sent to Finance for processing.

FUNDING:

Water Main Replacement

Project No: URP011

Account No: 403 0800 533 6397

Budget: \$45,392

Actual: \$45,392

RECOMMENDATION

Public Works & Utilities Department recommends Council to approve Task Authorization No 20 under the Master Contract for Engineering Services with Mead and Hunt, Inc. for services relating to the Taylor Road Bridge at B-19 and Sweetwater Branch Emergency Repairs for an amount not to exceed \$45,392.

ANTICIPATED SCHEDULE:

- a.) Council Approval – January 22, 2019
- b.) Executed Task Authorization – As soon as Possible
- c.) Purchase Order issued – 12/21/2018

ATTACHMENTS:

- a.) Draft Task Authorization No 20 documents
- b.) Scope of Services

CC: Rick Wilson, Deputy Director of Public Utilities



4401 Eastport Parkway
Port Orange, FL 32127
386-761-6810

December 18, 2018

Lynn Stevens
Public Works and Utilities Director
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Email: lstevens@port-orange.org
Hard Copy Mailed Only on Request

**RE: CITY OF PORT ORANGE
TAYLOR ROAD BRIDGE AT B-19/SWEETWATER BRANCH EMERGENCY REPAIRS**

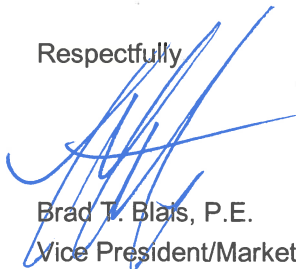
Dear Lynn,

In accordance with your request, we are pleased to offer the enclosed scope of services and engineering fee estimate for the above referenced project. The design scope of this project includes project approach development, approvals from Volusia County Road and Bridge Department, design, permitting, contractor price/scope negotiation assistance, construction contract administration and inspection services.

The project is required to make emergency repairs to the roadway, approach slab, drainage structures and water main adjacent to the Taylor Road bridge.

The enclosed engineering Scope of Services and fee estimate is based upon the established utilities contract. This is a lump sum proposal and it includes the work completed to date along with the remaining work to complete. Thank you for this opportunity to continue to be of service. If you have additional questions, do not hesitate to call.

Respectfully

A blue ink signature of Brad T. Blais, consisting of several overlapping loops and a long horizontal stroke at the end.

Brad T. Blais, P.E.
Vice President/Market Leader

A blue ink signature of David A. King, featuring a large, stylized 'D' and 'K' with a horizontal line through the middle.

David A. King, P.E.
Vice President/Business Unit Leader

BTB/DAK:bf

Enclosures: Scope of Services and Fee Estimate

**CITY OF PORT ORANGE
TAYLOR ROAD BRIDGE AT B-19/SWEETWATER BRANCH REPAIRS
SCOPE OF SERVICES**

GENERAL: The City of Port Orange (CITY) and Mead & Hunt entered into a Professional Continuous Utility Engineering Consulting Services Contract pursuant to RFQ #14-23, dated effective March 17, 2015.

PROJECT SCOPE:

Mead & Hunt has been requested to provide rehabilitation plans on an expedited schedule to repair damage to Taylor Road at the B-19 Canal caused by a broken water main. The soil erosion has created a void of approximate 30 feet in length by 20 feet in width with an approximate depth of 15 feet. The existing concrete approach slab was not damaged by the water main failure.

Mead & Hunt will provide design, permitting, construction contract administration and construction inspection services under this task assignment.

Rehabilitation Plans

Mead & Hunt will provide plans and details on a two-phase approach. This approach will allow repair crews to begin work within days. Phase One will provide for erosion control, removal of debris and stabilization of the bottom of the void. Phase Two will provide for the complete rehabilitation of the site to its original condition using a combination of flowable fill, structural backfill material, and replacement of the concrete approach slab as well as other required items.

Phase 2 plans will also include design of the replacement of a limited portion of the 12" watermain.

FDEP permit is not required for the project. Removal of any sediment from the channel would be covered under Volusia County's existing ditch maintenance permit/authority. Mead & Hunt will apply to Volusia County for a County Use Permit.

Specifications will be by FDOT or Volusia County as appropriate, plan sheet form only.

Deliverables

Phase 1: Plans will be produced on 11x17 sheets in electronic format for review. Three (3) sets of hard copies will be provided upon resolution of all review comments.

Phase 2: Plans will be produced on 11x17 sheets in electronic format for review. Three (3) sets of hard copies will be provided upon resolution of all review comments.

Contract Administration/Coordination

During the construction phase, Mead & Hunt will:

1. Meet with Contractor and CITY staff to confirm project scope and pricing strategy.
2. Provide engineering oversight and assistance for expedited completion of repairs.
3. Review Contractor pay requests.
4. Attend substantial and final completion inspections with County and CITY staff.
5. Prepare punch list of final work/corrective items.
6. Verify completion of punch list and establish final completion.

Inspection

Mead & Hunt will provide an on-site Resident Project Representative (RPR) to oversee the repairs for conformance with plans and specifications. RPR services will be billed on a time and material basis at the established contract rate. Overtime will be billed at 1.5 times the contract rate.

Daily inspection reports will be prepared and distributed.

Geotechnical, Bridge Inspection and Miscellaneous Expenses

Mead & Hunt will engage ECS Florida, LLC for geotechnical and materials testing for design related work completed by the Contractor.

Mead & Hunt will engage Ayres and Associates to perform a bridge inspection following completion of construction. Ayres to be compensated by FDOT under their current FDOT continuing contract.

Printing and other expenses will be billed at actual cost.

Exclusions

The proposed scope excludes all services not specifically described herein.

Compensation

Taylor Road Bridge Repairs
Engineering Fee Estimate

<u>Task #</u>		<u>Unit</u>	<u>Price</u>
1	Site Visits and initial correspondence	Lump Sum	\$5,268
2	Approach Development and approvals	Lump Sum	\$5,058
3	Plan Production and Agency Approvals	Lump Sum	\$14,770
4	Contract Administration/Coordination	Lump Sum	\$4,636
5	Inspection (\$68/hr. regular, \$102/hr over-time)	Time & Expense	\$8,160
6.	Geotechnical Bridge Inspection and Miscellaneous Expenses Allowance	Actual Cost	<u>\$7,500</u>
TOTAL ESTIMATED FEES			\$45,392



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 01/22/2019

Consent item: No

SUBJECT: (H21) Ratification of emergency PO to P&S Paving for Taylor Road Repairs

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to ratify and approve purchase order)74458 to P&S Paving for work relating to the Taylor Road Bridge Emergency Repairs for an amount not to exceed \$374,670.71; authorize the Mayor and City Clerk to execute all required documents.

SUMMARY: On December 2, 2018, the Field Operations crews responded to a water main break located on at the B-19 canal on Taylor Road. The 12" main break caused extensive damage to the roadway, bridge approach, drainage structures, and the water main adjacent to the Taylor Road bridge.

In accordance with the purchasing procedures, the repairs were deemed an emergency and the City Manager authorized an emergency purchase order (#074458) to P&S Paving in an amount not to exceed \$374,670.71.

Project No.: URP011 Funding Account No.: 403 0800 533 6397

Presenter: Lynn Stevens

ATTACHMENTS:

1.	Dept Justification Memo - Ratification of PS Paving Emergency PO	Dept Justification Memo - Ratification of PS Paving Emergency PO.pdf
2.	Revised Scope Taylor Road Emergency Repair 12.21.2018	Revised Scope Taylor Road Emergency Repair 12.21.2018.pdf
3.	Taylor Road Repair L7	Taylor Road Repair L7.pdf
4.	Taylor Road Repair REV 1 Danus	Taylor Road Repair REV 1 Danus.pdf

Julia Wiggins
Richard Colby
Rick Wilson
Lynn Stevens
Lori Bockelman
Margaret Roberts

Created/Initiated - 01/09/2019
Approved - 01/09/2019
Approved - 01/09/2019
Approved - 01/09/2019
Approved - 01/10/2019
Approved - 01/10/2019

Jake Johansson
Robin Fenwick

Approved - 01/11/2019
Final Approval - 01/11/2019



City of Port Orange Public Works & Utilities Department

TO: M.H. Johansson, City Manager

THRU: Lynn Stevens, Public Works & Utilities Director

FROM: Julia Wiggins, Business Manager

DATE: January 8, 2019

SUBJECT: Ratification of Purchase Order 074458 for Taylor Road Repair

REQUEST:

The Public Works & Utilities Department is requesting City Council ratify a purchase order to P&S Paving for work performed to repair Taylor Road in an amount not to exceed \$374,670.71.

PURPOSE:

The purpose of this request is to ratify emergency expenditures associated with the repair of Taylor Road.

CONSIDERATION:

On December 2, 2018, the Field Operations crews, as division of the Public Works & Utilities Department, responded to a water main break located on at the B-19 canal on Taylor Road. The 12" main break caused extensive damage to the roadway, bridge approach, drainage structures, and the water main adjacent to the Taylor Road bridge.

Three contractors submitted a base price for the preliminary scope of work. P&S Paving was the lowest, responsive quote. In accordance with the purchasing procedures, the repairs were deemed an emergency and the City Manager authorized an emergency purchase order in an amount not to exceed \$374,670.71.

On January 8, 2019, Taylor Road was reopened to traffic. Minor restoration remains to be completed prior to the final invoice and payment.

FUNDING:

Water Main Replacement

Project No: URP011

Account No: 403 0800 533 6397

Budget: \$451,000

Actual: \$374,670.71

RECOMMENDATION

Public Works & Utilities Department recommends City Council ratify a purchase order to P&S Paving for work performed to repair Taylor Road in an amount not to exceed \$374,670.71; and to authorize the Mayor and City Clerk to execute all required contract documents.

ANTICIPATED SCHEDULE:

a.) Council Approval – January 22, 2018



December 21, 2018

City of Port Orange
Richard Colby
1000 City Center Circle
Port Orange, FL 32129

RE: Taylor Road Emergency Repair

Mr. Richard Colby,

P&S Paving, Inc. has reviewed the plans dated December 19, 2018 prepared by Mead & Hunt, Inc. for the above referenced project. As you are aware the scope of the project has increased from the original scope letter provided on December 5, 2018. Below is a breakdown of added scope and pricing:

County Requested modifications to original RFP

- A. *Remove (approximately 910 SF) of Asphalt and (17) CY of Concrete approach.*
 - a. **Concrete removal increased to (30) CY of Concrete**
- B. *Remove (approximately 71 LF) of concrete F curb.*
 - a. **Increased to 126 LF of F curb removal**
- C. *Place and compact (approximately 200 CY) of City fill material.*
 - a. **Decreased to (70 CY)**
- D. *Adjust existing concrete headwall.*
 - a. **Increased to remove headwall and remove 1st joint and replace**
- E. *Remove (approximately 162 LF) of existing water main.*
 - a. **Increased to (182 LF)**
- F. *Install (162 LF) of new 12-inch ductile iron water main pipe class 350 standard cement lined. Including pressure testing and disinfection.*
 - a. **Increased to (182 LF) and revised materials to include stainless steel accessories, spool connections and flanged pipe**
- G. *Install (3) ductile iron class 350 solid sleeves with mega lugs*
 - a. **Decreased by (1) sleeve**
- H. *Install (4) ductile iron class 350 45-degree bends with mega lugs.*
 - a. **Increased to (6) 45-degree bends with mega lugs.**



- I. Mill 1 ½ inches of existing pavement (approximately 2700 SF).
 - a. **Decreased to 1-inch mill**
- J. Install (approximately 112 LF) of DOT TYPE F concrete curb.
 - a. **Increased to 126 LF**
- K. Place (17) CY of Concrete Bridge Approach 6-inches thick (4000 PSI).
 - a. **Increased to 11" thick rebar reinforced Concrete (30) CY**
- L. Place (3780 SF) of 2-inch asphalt type SP 9.5.
 - a. **Decreased to 1-inch**
- M. (LS) Replace existing pavement markings.
 - a. Not changed
- N. Sodding, restoration all disturbed areas
 - a. **Increased to include South Side of Taylor Road**

County Requested Changes not in Original RFP

- 1. Install 12" Gate Valve & Box (2) Each
- 2. Approximately (10 LF) of Cement-Sand Head Wall
- 3. Approximately (18 SY) of Rip Rap Stream Bank Stabilization
- 4. Expansion Joint @ Bridge
- 5. 2" Air Release Valve with accessories (1) Each
- 6. Install 2 lifts @ 2" of SP 12.5 Asphalt (106) SY
- 7. Install 12" of Stabilized Subgrade (144) SY
- 8. Install 8" of Lime Rock Base Course (144) SY
- 9. Remove & Replace sidewalk (52) LF
- 10. Remove sediment in stream bed

Original Lump Sum Price	\$ 173,437.00
Change Order Proposal	<u>\$ 151,233.71</u>
Total	\$ 324,670.71

This change order proposal does not include work performed between December 17-21, 2018. The work performed during these dates was excluded from the above proposal. We will submit total T&M costs by December 28, 2018.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Robert W. Ackley, Jr.', is positioned above the printed name.

Robert W. Ackley, Jr.
Utility Division Manager



CITY OF PORT ORANGE

1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5500
FAX 386-756-5290
www.Port-Orange.org

December 3, 2018

Emergency repair to approximately 162 LF of 12-inch water main. All proposals must be submitted by December 5, 2018.

The City of Port Orange would like to have the existing 12-inch water main on Taylor Road removed and replaced with 12-inch ductile iron water pipe, ductile iron fittings with mega lugs, remove a section of Taylor Road, place compacted fill, mill 1 1/2 -inches of asphalt from the areas shown, remove and replace sections of concrete curb FDOT Type F and restripe. The work will need to be completed by December 28, 2018. Please provide a lump sum quote. The City of Port Orange will only be providing the MOT package and fill material to be loaded and hauled from the City's well field but will not be providing any other materials or services for the job described below.

I. Repair to the existing 12-inch water main.

- A. Remove (approximately 910 SF) of Asphalt.
- B. Remove (approximately 71 LF) of concrete F curb.
- C. Place and compact (approximately 200 CY) of City fill material.
- D. Adjust existing concrete headwall.
- E. Remove (approximately 162 LF) of existing water main.
- F. Install (162 LF) of new 12-inch ductile iron water main pipe class 350 standard cement lined. Including pressure testing and disinfection.
- G. Install (3) ductile iron class 350 solid sleeves with mega lugs
- H. Install (4) ductile iron class 350 45-degree bends with mega lugs.
- I. Mill 1 1/2 inches of existing pavement (approximately 2700 SF).
- J. Install (approximately 112 LF) of DOT TYPE F concrete curb.
- K. Place and compact (approximately 945 SF) of crushed concrete (LBR 130) 15-inches thick in 2 lifts.
- L. Place (3780 SF) of 2-inch asphalt type SP 9.5.
- M. (LS) Replace existing pavement markings.
- N. Sodding, restoration all disturbed areas.

Lump sum price quote \$ 397,000

Contractor Name L7 CONSTRUCTION, INC.

Date 12/5/18

Signature of Contractor Brian Brach **BRIAN BRACH**
If emailing quote send to: rcolby@port-orange.org



CITY OF PORT ORANGE

1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5500
FAX 386-756-5290
www.Port-Orange.org

December 5, 2018

Emergency repair to approximately 162 LF of 12-inch water main. All proposals must be submitted by December 5, 2018.

The City of Port Orange would like to have the existing 12-inch water main on Taylor Road removed and replaced with 12-inch ductile iron water pipe, ductile iron fittings with mega lugs, remove a section of Taylor Road, place compacted fill, mill 1 1/2 -inches of asphalt from the areas shown, remove and replace sections of concrete curb FDOT Type F and restripe. The work will need to be completed by December 28, 2018. Please provide a lump sum quote. The City of Port Orange will only be providing the MOT package and fill material to be loaded and hauled from the City's well field but will not be providing any other materials or services for the job described below.

I. Repair to the existing 12-inch water main.

- A. Remove (approximately 910 SF) of Asphalt and (17) CY of Concrete approach.
- B. Remove (approximately 71 LF) of concrete F curb.
- C. Place and compact (approximately 200 CY) of City fill material.
- D. Adjust existing concrete headwall.
- E. Remove (approximately 162 LF) of existing water main.
- F. Install (162 LF) of new 12-inch ductile iron water main pipe class 350 standard cement lined. Including pressure testing and disinfection.
- G. Install (3) ductile iron class 350 solid sleeves with mega lugs
- H. Install (4) ductile iron class 350 45-degree bends with mega lugs.
- I. Mill 1 1/2 inches of existing pavement (approximately 2700 SF).
- J. Install (approximately 112 LF) of DOT TYPE F concrete curb.
- K. Place (17) CY of Concrete Bridge Approach 6-inches thick (4000 PSI).
- L. Place (3780 SF) of 2-inch asphalt type SP 9.5.
- M. (LS) Replace existing pavement markings.
- N. Sodding, restoration all disturbed areas.

Lump sum price quote \$ 424,771.00

Contractor Name Danus Utilities Inc

Date 12-5-18

Signature of Contractor

If emailing quote send to: rcolby@port-orange.org