



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

JUNE 4, 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 by Rev. Bob Kemp-Baird of Daytona Beach Drive In Christian Church
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. May 22, 2019 - Regular City Council Meeting
 - b. May 28, 2019 - City Council Workshop
7. Bid Awards and Contract Items
 - a. Ratification and approval of Volusia County Cooperative ITB #19-B-70EM for Bulk Fuel Purchases from Mansfield Oil, Petroleum Traders, and Gentry Oil
 - b. Ratification of an emergency purchase with SPX Flow US for Mixer Drive Boxes for the Water Reclamation Facility
8. Resolution No. 19-23 - Adopting Inventory List of Real Property to which City holds Fee Simple Title for Use as Affordable Housing (Required by Florida Statutes Section 166.0451)
9. Resolution No. 19-24 - Supporting the Reduction of Single-Use Plastic Straws in the City of Port Orange
10. Renters Utility Accounts Write Offs

11. Approval of Interlocal Agreement with Ormond Beach for Therapeutic Recreation Programs (Camp-T)

12. Lien Recovery Agreement – 713 Sheldon Circle

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

D. COUNCIL COMMENTS

13. Comments/Concerns from Council Members

E. SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

14. Port Orange Get Fit Winners Recognition

15. Port Orange Police Pension Plan Valuation Report Presentation

F. PUBLIC HEARING

16. First Reading - Ordinance No. 2019-17 - Palmer Series 2019B Bond

G. REGULAR AGENDA

17. City Attorney Evaluation and Compensation

18. City Manager Evaluation Debrief

H. COMMENTS

19. City Attorney Comments

20. City Manager Comments

I. COUNCIL COMMITTEE REPORTS

21. City Council Committee Reports

a. River to Sea TPO

b. General Employees' Pension Fund

J. 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

Regular City Council Meeting

6/4/2019

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32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 1-800-955-8771.

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

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

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
MAY 22, 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.

Invocation by Pastor Austin Trammell / Salty Church New Smyrna Beach

Pledge of Allegiance

Roll Call

Present: Interim Council Member Jack Wiles
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

CITY RECOGNITION

4. POPD Commendations/Awards Ceremony

Thomas Grimaldi, Police Chief, presented commendations and awards to staff members and citizens for their efforts.

5. Recognition for Graduates of the 2019 Youth Leadership Program

Alan Rosen, Assistant City Manager, presented certificates to the graduates of the 2019 Youth Leadership Program.

CONSENT AGENDA

6. Public Comments on Consent Agenda Items Only

There were no public comments and no changes requested by Council.

7. Agenda Approval

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

8. Approval of Minutes
 - a. May 7, 2019 - Regular City Council Meeting
9. Bid Awards and Contract Items
 - a. Intent to Award ITB 19-05 for the purchase of Anionic Polymer and Sodium Bisulfite for the Water Treatment Plant and the Water Reclamation Facility
 - b. Intent to award ITB 19-01 for the Police Shooting Range to Carr & Collier Inc.
 - c. Intent to Award ITB 19-09 Removal & Replacement of Fire Station 71 & 74 Kitchen Cabinets to A.G. Pifer Construction Company.
 - d. Approval of Task Authorization No 14 under the Master Contract for Engineering Services with Kimley-Horn & Associates for services relating to the Utility System Hydraulic Modeling.
 - e. Renewal of Environmental Legal Liability and Storage Tank Insurance with Aspen Specialty Insurance Company
 - f. Approval of Amendment to SunTrust Banking Services Contract
 - g. Approval of Change Order No. 1 to the Standard Contract for Services with Universal Engineering Sciences, Inc.
10. Resolution No. 19-14 - Budget Appropriation
11. Resolution No. 19-21 -Ratifying Election Results for the Primary Election held April 30, 2019
12. Approval of Memorandum of Understanding (MOU), Article 16 with the Police Benevolent Association Lieutenants (PBA Lt.)
13. Retirement of Loki and transfer of ownership to Greg Cook

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

CITIZEN PARTICIPATION (Agenda)

14. Feral Cats - Richard Scheibel

Richard Scheibel, citizen, expressed concern over the feral cats defecating in his yard and otherwise tearing it up. He doesn't believe he should be burdened and live with it because of the cats. He takes care of his dogs and cleans up after them, the same should be true for feral cats. Sherry Scheibel, citizen, discussed her concerns with the feral cats and rabies issues.

Shailesh Patel, business owner, agreed with the comments and explained the issues they are having at the businesses. He encouraged Council to change their policy on feral cats.

Councilman Drew Bastian asked if Council has options. Margaret Roberts, City Attorney, said yes, Staff is working with the Police Department on providing those options. Mayor Don Burnette agreed with the concerns mentioned and would like a

workshop to discuss the options. Jake Johansson, City Manager, asked for time to determine the options, while Staff addresses the nuisance aspect of the program and agreed a workshop is needed for long term solutions.

CITIZEN PARTICIPATION (Non-Agenda – 15 minutes)

Robert Reinhausen, citizen, asked Council to reconsider the digitization of the quarterly newsletter. He believes citizens would be more informed if they were mailed to them.

Nancy Beth Goren, Port Orange/South Daytona Chamber of Commerce Economic Development Committee, is here to observe and take issues back to the committee as needed.

Andrew Burns, citizen, expressed his concerns on various issues including feral cats and the First Step Shelter. He asked if Council even looked more into the muffler noise issue. Mr. Johansson provided details of what the Port Orange Police Department can do as far as ticketing a motorist if the officer hears the loud muffler.

COUNCIL COMMENTS

15. Comments/Concerns from Council Members

Councilman Wiles had questions about the parking at the boat ramps at Dunlawton Causeway. Mayor Burnette didn't know the answers but will find out.

Councilman Bastian asked for an update on the work being done on the Dunlawton bridge.

Councilman Stiltner addressed the questions regarding parking at the Dunlawton Causeway. He explained the green areas have irrigation and parking on them break the heads. He met with Parks & Recreation Staff for options. One area was opened for additional parking and once the bridge work is completed, more spots will open back up.

Mayor Burnette asked Council to think about the price (\$85,000) to print and mail the quarterly newsletter, which is about a tenth of a mill. He recognized Amy Hall as Citizen of the Year for the Volusia League of Cities, as well as Frank Flagg, who has been selected for the Public Utilities/Works Service Award, and Josh Long and Robert Matassa, who have been selected as the Parks & Recreation Service Award winners.

SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

16. Annual Report from ArtHaus

Cameron Vincent, Executive Director of ArtHaus, provided details from the Annual Report. Council thanked them for their report and service to the community.

17. Citizen Advisory Committee for TPO

Bobby Ball, CAC Member, provided an update from the recent meeting.

18. Planning Commission Appointment

Christina Berry introduced herself and provided her background details. She is trying to get involved in the community. She currently serves on the Civil Service Board for the City. Council thanked Ms. Berry for her current service and willingness to be involved.

Mayor Burnette asked for nominations.

Vice Mayor Chase Tramont nominated Richard Barker and Councilman Scott Stiltner seconded the nomination.

Councilman Drew Bastian nominated Jonathan Foley and Councilman Scott Stiltner seconded the nomination.

Councilman Jack Wiles nominated Stan Schmidt and Vice Mayor Chase Tramont seconded the nomination.

Written ballots were provided by the City Clerk, collected by the City Clerk and read aloud.

Stan Schmidt was appointed to the Planning Commission with Councilman Jack Wiles, Mayor Don Burnette, and Vice Mayor Chase Tramont voting to appoint Mr. Schmidt, and Councilmen Scott Stiltner and Drew Bastian voting to appoint Jonathan Foley.

PUBLIC HEARING

19. Appeal of Planning Commission denial of variance at 5807 Clover Lane.

Penelope Cruz, Planning Manager, provided details of the variance request, the code enforcement case as there is no permit, and the discussion and decisions by the Planning Commission. They approved an alternate option, but the applicant did not accept it.

Mark Belyus, applicant, spoke regarding his appeal and asked Council to approve the request for a variance.

Councilman Wiles would not entertain approving the variance without a permit.

Ms. Roberts advised Council can approve or deny the appeal or approve the amendment that the Planning Commission approved, and the applicant did not accept.

Motion to approve the appeal request
was made by Councilman Drew Bastian
and Seconded by Vice Mayor Chase

Tramont.

Councilman Scott Stiltner is concerned with creating an exception and others wanting to do the same. He wants to be consistent.

Motion failed 2-3 by roll call vote with Councilman Scott Stiltner, Councilman Jack Wiles, and Mayor Don Burnette voting no.

Motion to approve the modified option as approved by Planning Commission was made by Councilman Scott Stiltner and Seconded by Councilman Jack Wiles. Motion carried unanimously by roll call vote.

Applicant must accept or file for a new variance and pay the fees again as this is considered a new variance request.

20. Resolution No. 19-22 - 1389 Reed Canal Rd./Brownfield Area Designation Request

Mayor Burnette read Resolution No. 19-22.

RESOLUTION NO. 19-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, DESIGNATING THE PROPERTY LOCATED 1389 REED CANAL ROAD, IN THE CITY OF PORT ORANGE, AS A BROWNFIELD AREA FOR THE PURPOSE OF ENVIRONMENTAL REMEDIATION, REHABILITATION AND ECONOMIC DEVELOPMENT; DIRECTING THE CITY CLERK TO NOTIFY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION OF SAID DESIGNATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Motion to consider Resolution 19-22 at a duly advertised public hearing on June 18, 2019 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian.

Ms. Cruz provided details of the Resolution and the process of declaring a property as a Brownfield property.

Motion carried unanimously by roll call vote.

21. First Reading - Ordinance No. 2019-18 - Administrative Rezoning/119 Howes Street

Mayor Burnette read Ordinance No. 2019-18.

ORDINANCE NO. 2019-18

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, REZONING PROPERTY CONSISTING OF APPROXIMATELY +0.34 ACRES FROM VOLUSIA COUNTY R-5 (SINGLE-FAMILY RESIDENTIAL) TO NP (NEIGHBORHOOD PRESERVATION) LOCATED AT 119 HOWES STREET; AUTHORIZING REVISION OF THE OFFICIAL ZONING ATLAS; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2019-18 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian.

Ms. Cruz provided details of the Ordinance.

Motion carried unanimously by roll call vote.

REGULAR AGENDA

22. Discussion on Palmer College Bond Issue

Tom Tiemeier, Treasurer of Palmer College of Chiropractic, discussed the College's request for the City to serve as its conduit issuer for a proposed tax-exempt refinancing on behalf of the College.

Mr. Reinhagen believes the City should stay out of Palmer's business.

23. First Reading - Ordinance No. 2019-19 - Fire Assessment Procedure

Mayor Burnette read Ordinance No. 2019-19.

ORDINANCE NO. 2019-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, FLORIDA, AMENDING CHAPTER 30 OF THE CITY OF PORT ORANGE CODE OF ORDINANCES TO ESTABLISH A NEW ARTICLE III RELATING TO THE FUNDING OF FIRE PROTECTION SERVICES, FACILITIES, AND PROGRAMS THROUGHOUT THE INCORPORATED AREAS OF PORT ORANGE, FLORIDA;

AUTHORIZING THE IMPOSITION AND COLLECTION OF FIRE PROTECTION ASSESSMENTS AGAINST REAL PROPERTY; PROVIDING DEFINITIONS AND FINDINGS; ESTABLISHING A PROCEDURE FOR IMPOSING FIRE PROTECTION ASSESSMENTS; AUTHORIZING THE IMPOSITION OF INTERIM ASSESSMENTS; PROVIDING THAT ASSESSMENTS CONSTITUTE A LIEN ON ASSESSED PROPERTY UPON ADOPTION OF THE ASSESSMENT ROLL; DESCRIBING THE PROCEDURE FOR ADMINISTERING THE FIRE PROTECTION ASSESSMENT FROM YEAR TO YEAR AND FOR CORRECTING ERRORS AND OMISSIONS; PROVIDING FOR COLLECTION OF THE ASSESSMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2019-19
was made by Vice Mayor Tramont and
Seconded by Councilman Bastian.

Alan Rosen, Assistant City Manager, explained this ordinance allows the City to add a fire assessment fee but does not obligate it.

Motion carried 3-2 by roll call vote with
Councilman Wiles and Vice Mayor
Tramont voting no.

24. Use of First Step Funding

Move to approve the use of \$35,000.00, previously provided to the First Step Shelter, for Capital with no expectation of additional funding from Port Orange through at least the first year of operations, subject to City Manager's receipt and execution of a written agreement was made by Vice Mayor Tramont and Seconded by Councilman Stiltner.

Vice Mayor Tramont doesn't believe the funds should be used for anything other than for capital.

Motion withdrawn by Tramont.
Seconded withdrawn by Stiltner. Died
for lack of motion.

25. City Manager Evaluation Debrief

Mayor Burnette asked Council if they have met with the City Manager. Most had not and will need to before any further debrief.

COMMENTS

26. City Attorney Comments - Annual City Attorney Evaluation

Ms. Roberts asked for questions as to the process for the City Attorney's evaluation for the previous year.

27. City Manager Comments

There was nothing further.

COUNCIL COMMITTEE REPORTS

28. City Council Committee Reports

- a. First Step - Vice Mayor Tramont reported on the recent happenings. Positive events have occurred recently to move the project forward.
- b. Port Orange/South Daytona Chamber of Commerce - Mayor Burnette provided details of upcoming events.
- c. Roundtable of Elected Officials - Did not meet in May.

ADJOURNMENT - 10:07 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, CMC
City Clerk

CITY COUNCIL WORKSHOP MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
MAY 28, 2019

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

Silent Invocation

Pledge of Allegiance

Roll Call

Present: Interim Council Member Jack Wiles
Councilman Drew Bastian
Councilman Scott Stiltner
Vice Mayor Chase Tramont (arrived at 5:12 p.m.)
Mayor Donald Burnette

Also Present: City Manager Jake Johansson (left at 6:30 p.m.)
Assistant City Manager Alan Rosen
City Attorney Margaret Roberts
City Clerk Robin Fenwick

DISCUSSION ITEMS

4. Proposed Halifax Trail Project

Tim Burman, Community Development Director, presented details of the proposed Halifax Trail project and asked Council to provide direction as to the PD&E study that is currently being done by FDOT. Mr. Burman answered questions from Council.

Citizens from the Halifax Drive area expressed their concerns with the project. They are concerned with riparian rights, parking, traffic in front of Aunt Catfish's Restaurant, safety issues because of the parking issues, flooding, and tree removal.

Council addressed the concerns from the citizens and asked questions of Mr. Burman. Council directed Staff to work with FDOT on the Spruce Creek Road option rather than Halifax Drive. Mayor Burnette explained the resolution Council passed for a one-way street was to examine the option for a one-way street. It did not commit the City to making it such.

5. FY20 Operating Budget Discussion

Scott Neils, Finance Director, presented the preliminary FY 2020 Budget, to include the economic overview, review of the top 10 general fund revenues, taxable property value, ad valorem and millage history, review of the preliminary FY20 revenues and

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May 28, 2019

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expenditures, and FY20 CIP requests and asked Council for guidance regarding the FY20 General Fund Budget.

Mayor Burnette asked Council to discuss the budget based on items not on the millage rate. He believes that is their decision, not Staff's.

Alan Rosen, Assistant City Manager, asked Council to provide direction on the philosophy to use moving forward. Council would like a hybrid approach that includes a millage range beginning at roll back.

ADJOURNMENT – 8:57 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, CMC
City Clerk

1.	Vol County 19 B 70EM Bulk Fuel Bulk Fuel Bid Package	Vol County 19 B 70EM Bulk Fuel Bulk Fuel Bid Package.pdf
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2.	Vol County 19 b 70EM Attachment A Price Sheet	Vol County 19 b 70EM Attachment A Price Sheet.xlsx
3.	Vol County 19 B 70EM Attachment B Fuel Sites	Vol County 19 B 70EM Attachment B Fuel Sites.pdf
4.	Vol County 19 b 70EM Exhibit I General Conditions and Instructions	Vol County 19 b 70EM Exhibit I General Conditions and Instructions.pdf
5.	Vol County 19 b 70EM Exhibit II Insurance Requirements	Vol County 19 b 70EM Exhibit II Insurance Requirements.pdf
6.	Vol County 19 B 70EM Addendum No 1	Vol County 19 B 70EM Addendum No 1.pdf
7.	Vol County 19 B 70EM Addendum No 2	Vol County 19 B 70EM Addendum No 2.pdf
8.	Vol County 19 B 70EM Bulk Fuel Recommendation of Award	Vol County 19 B 70EM Bulk Fuel Recommendation of Award.pdf
9.	Justification Memo Bulk Fuel Purchases Vol County CoOp Bid 19 B 70EM	Justification Memo Bulk Fuel Purchases Vol County CoOp Bid 19 B 70EM.docx
10.	MASTER AGMT Vol County Gentry Oil 19B70EM Bulk Fuel 5 7 2019 to 5 7 2022	MASTER AGMT Vol County Gentry Oil 19B70EM Bulk Fuel 5 7 2019 to 5 7 2022.pdf
11.	MASTER AGMT Vol County Mansfield Oil 19B70EM Bulk Fuel 5 7 2019 to 5 7 2022	MASTER AGMT Vol County Mansfield Oil 19B70EM Bulk Fuel 5 7 2019 to 5 7 2022.pdf
12.	MASTER AGMT Vol County 19B70EM Bulk fuel 5 7 2019 to 5 7 2022 Petroleum Traders	MASTER AGMT Vol County 19B70EM Bulk fuel 5 7 2019 to 5 7 2022 Petroleum Traders.pdf

Kynah Cockcroft
 Kynah Cockcroft
 Julia Wiggins
 Jeff Fontane
 Ronny Buttrum
 Lynn Stevens
 Scott Neils
 Margaret Roberts
 Jake Johansson
 Robin Fenwick

Created/Initiated - 5/6/2019
 Approved - 5/6/2019
 Approved - 5/7/2019
 Approved - 5/7/2019
 Approved - 5/13/2019
 Approved - 5/13/2019
 Approved - 5/15/2019
 Approved - 5/23/2019
 Approved - 5/23/2019
 Final Approval - 5/23/2019

SUBMIT TO:

**COUNTY OF VOLUSIA
PURCHASING & CONTRACTS
123 W. INDIANA AVE., RM. 302
DELAND, FL 32720-4608**

AN EQUAL OPPORTUNITY EMPLOYER



INVITATION TO BID

www.volusia.org/purchasing

CONTACT PERSON:

Eddie Molina 386-822-5772
Email: emolina@volusia.org

DELAND: 386-736-5935
DAYTONA BEACH: 386-257-6000
NEW SMYRNA BEACH: 386-423-3300

TITLE:

Bulk Fuel

NUMBER:

19-B-70EM

SUBMITTAL DEADLINE:

**Tuesday, April 16,
2019,
at 3:00 p.m., EST**

DO NOT RESPOND TO THIS SOLICITATION ON LINE – SEE SECTION 2.4, *DELIVERY OF BIDS*

PRE BID DATE, TIME AND LOCATION:

A pre-bid conference will be held in the Purchasing Conference Room, 123 W. Indiana Avenue, 3rd Floor, DeLand, FL, at 10:00 a.m., EST, Wednesday, March 20, 2019

*SUBMITTALS RECEIVED AFTER
ABOVE DATE AND TIME WILL NOT
BE CONSIDERED*

FIRM'S NAME:**MAILING ADDRESS:****CITY – STATE – ZIP:****E-MAIL ADDRESS:****PHONE NUMBER:****FAX NUMBER:**

The Contractor acknowledges that information provided in this Bid is true and correct and agree to all terms and conditions contained in this Bid and related Exhibits.

x

Authorized Signature

Date

Printed Name

Title

FEDERAL I.D. or SOCIAL SECURITY NUMBER:

THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE

CONTENT OF INVITATION/RESPONSE: The contents of this ITB, all terms, conditions, specifications, and requirements included herein and the accepted and awarded response thereto may be incorporated into an agreement to purchase and become legally binding. Any terms, conditions, specifications, and/or requirements specific to the item or service requested in this invitation to bid shall supersede the requirements of Exhibit I "GENERAL CONDITIONS AND INSTRUCTIONS."

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The purpose of this Invitation to Bid (ITB) is to solicit competitive sealed Bids to furnish
Bulk Fuel for the County of Volusia, Florida.

1.0 SCOPE OF WORK

The following entities, who from this point forward shall be known as the Consortium, are seeking qualified fuel Contractors to supply bulk fuel.

- County of Volusia
- Volusia County School Board
- VOTRAN (Volusia County's mass transit system)
- The City Of Daytona Beach
- The City Of Port Orange
- The City Of South Daytona
- The City Of New Smyrna Beach
- The City of Ormond Beach
- The City of DeLand
- Flagler County

Contractor shall supply bulk fueling to all Consortium members upon request. The Contractor shall email the Oil Price Information Service (OPIS) pricing to the Volusia County Project Manager each day by 8:00 a.m. The Pad 1 report for Orlando, Florida Terminal 6:45 a.m. report shall be used. The Contractor shall email the same report to the project manager for each Consortium member, if requested.

The following quantities are being provided as estimates only and in no way represent a guarantee of future expenditures. The Consortium will not be obligated to purchase any minimum or maximum amount of fuel during the term of the Agreement resulting from this ITB. The Consortium reserves the right to add or remove members at any time.

<i>Estimated Annual Usage in Gallons</i>					
	Volusia County	Volusia County School Board	VOTRAN	City of Daytona Beach	City of South Daytona
Diesel	769,000	687,000	872,000	66,000	10,000
Unleaded	1,080,000	56,000	308,000	421,000	43,000
	City of Ormond Beach	City of New Smyrna Beach	City of Port Orange	City of DeLand	Flagler County
Diesel	48,000	14,000	65,000	32,000	175,000
Unleaded	109,000	110,00	140,000	150,000	375,000

1.1 Fuel Requirements

- A. Ultra Low Sulfur Diesel Fuel with sulfur content between 0 ppm - 15 ppm.
- B. Ethanol (10%)
- C. No. 2 Red-Dyed fuel for off-road use with sulfur content between 0ppm – 15ppm.

1.2 Pricing

- A. All prices shall be based on OPIS pricing and invoiced as net gallons. The Consortium is seeking an OPIS Daily low and OPIS Daily average price plus markup, not inclusive of taxes, but including delivery to all locations, overhead, profit, and any other costs incurred by the Contractor. All pricing submitted on Attachment A shall be verified next to 6 months of OPIS data to confirm the best interest for the Consortium. The months used for verification will be: February 2018, May 2018, June 2018, July 2018, December 2018 and January 2019. All data collected for evaluation originated from OPIS Pad 1 report for Orlando, Florida terminal. The Consortium will choose which submitted pricing mark up, OPIS Daily Low or Daily Average, to accept.
- B. Daily pricing shall be based on the 6:45 a.m. OPIS Report. This pricing shall be in effect until the prices change at 6 p.m. the same calendar day. Any deliveries loaded 6 p.m. or after shall be priced based on the 6:45 a.m. OPIS report for the following day. **OPIS** documentation may be requested and required in settling of any pricing errors through the term of the bid. Contractor shall bid full loads (8,000 or 7,500 for diesel only deliveries) and short drops (less than 8,000 or 7500 for diesel only deliveries).
- C. Contractors shall provide invoices and bill of lading for all fuel drops electronically no later than six (6) business days following the date of the delivery. Invoices shall be sent to each Consortium member who are responsible for paying their own invoices.
- D. Contractors shall complete Attachment A and submit with bid. Attachment A shall include the following information:
 - 1. **Pricing-** Bidders shall submit pricing as a markup over OPIS Daily low and OPIS Daily average as detailed in Section 1.6.
 - 2. **Terminal-** Bidder shall define which terminal will be utilized to supply fuel (i.e. Tampa, Orlando, Jacksonville, Port Canaveral, Port Everglades, or other).
 - 3. **Delivery Times:** Delivery shall be required no later than one (1) calendar day from receipt of release order.
 - 4. **Additional fees:** Bidder may submit pricing on any other fees that will be part of the Contractor mark up such split loads, above ground tank delivery, and tank wagon drop charges.

1.3 Fuel site and pumps

Attachment B provides the Facility Identification (FACID) number and current location of each fuel site, including tank attributes, hours of operation, and the project manager assigned to each location. The breakdown of storage for both unleaded, diesel fuels is included.

1.4 Quality Standards/EPA Violations

All fuel provided shall comply with governmental regulations and conform to all specifications in regards to environmental and quality standards set forth by the State of

Florida. In addition, the Environmental Protection Agency (EPA) has directed that fines will be levied for any fuel found not to be in compliance with the Sulfur content on the Ultra Low Sulfur Diesel fuel. The Contractor shall be responsible for any fines, freight costs and replacement of fuel product for fuel found to be in non-compliance by the EPA.

1.5 Conditions for Emergency, Hurricane, or disaster

Before, during, and after a public emergency, disaster, hurricane, fire, flood, or other acts of God, the Contractor shall provide fuel to all Consortium members on a “first priority” basis. All Consortium members shall be given priority when allocations become available.

The Consortium expects to pay a fair and reasonable price for all fuel in the event of a disaster, emergency, fire, or hurricane. In the event that fuel is provided to the Consortium from areas outside of the contracting ports, additional freight costs may be allowed. This shall be communicated and agreed upon by both the Contractor and the Consortium Project Managers before deliveries are made. Contractor shall furnish a twenty-four (24) hour phone number in the event of such an emergency.

1.6 Delivery and Penalties

Delivery shall be no later than one (1) calendar day from receipt of release order, unless stated otherwise from the ordering entity. Failure to deliver fuel during within 24-hours may result in the Contractor covering any costs arising from having to order fuel from an alternate vendor. Penalties may include any extra price per gallon over agreed upon contract pricing and any additional freight costs incurred. This is for normal operations only.

1.7 Exhibits and Attachments

- A. Exhibit I General Conditions
- B. Exhibit II Insurance
- C. Attachment A - Price Sheet
- D. Attachment B - Facility Identification

2.0 Bid Closing Date

Bids must be received by the Volusia County Purchasing and Contracts Office, Room 302, Third Floor, 123 West Indiana Avenue, DeLand, FL, 32720-4608, no later than 3:00 p.m., EST, on Tuesday, April 16, 2019. Bids received after this time will not be considered.

2.1 Proposed Schedule

March 8, 2019 Invitation to Bid Available
March 20, 2019 Pre-bid Conference
April 2, 2019 Last Day to Receive Written Questions
April 15, 2019 Bid Closing Date

2.2 Point of Contact

All inquiries regarding this solicitation shall be directed to the procurement analyst in charge of this project as listed below:

Eddie Molina, Procurement Analyst
Telephone: 386-822-5772
Fax: 386-736-5972
E-mail: emolina@volusia.org

2.3 Questions, Exceptions, and Addenda

It is incumbent upon each Bidder to carefully examine this solicitation's specifications, scope of work/service, terms, and conditions. Questions and exceptions concerning any Section of this Bid shall be directed by letter, facsimile transmission or by e-mail to the Procurement Analyst named above in section 2.2 who shall be the official point of contact for this Bid.

Questions and exceptions shall be submitted no later than fourteen (14) days before the closing date. Thereafter, no further questions or exceptions will be accepted or reviewed by the County and Bidders' right to submit questions or exceptions will terminate and any questions or exceptions not previously made shall be deemed waived. The issuance of a written addendum is the only official method by which interpretation, clarification, or additional information can be given and oral representations will not be binding on the County.

If it becomes necessary for the County to revise any part of this ITB, an addendum will be posted on the County's web site. It is each Bidder's responsibility to check the Volusia County web site for any addenda at www.volusia.org/bidlist. Each Bidder should ensure that they have received all addenda to this ITB before submitting their proposal. In their proposals, Bidders must provide proof of receipt of each addendum by signing and returning each addendum to the County. Failure to provide this proof may cause Bidder's proposal to be rendered non-responsive. Each addendum issued by the County shall become a material part of this solicitation.

2.4 Delivery of Bids

DO NOT RESPOND TO THIS SOLICITATION ON LINE

All Bids shall be sealed and delivered or mailed to (faxes/e-mails will *not* be accepted):

County of Volusia, Florida
Purchasing and Contracts Office, Room 302
123 West Indiana Avenue, 3rd floor
DeLand, Florida 32720-4608
Mark package(s) "**Bid #19-B-70EM, Bulk Fuel**"

Note: Please ensure that if a third party carrier (Federal Express, UPS, etc.) is used, that the third party is properly instructed to deliver the Bid Submittal **only** to Room 302, in the Purchasing and Contracts Office on the third (3rd) floor at the above address.

Bids mailed to 123 West Indiana Avenue via the United States Postal Service (USPS) are delivered to the Post Office, not to the physical address and, therefore, may not meet the requirements of Section 2.0. To be considered, a Bid must be received and accepted in the Purchasing and Contracts Office before the Bid closing date and time.

2.5 Pre-bid Conference

- A. A pre-bid conference will be held in the Purchasing Conference Room, 123 W. Indiana Avenue, 3rd Floor, DeLand, FL, at 10:00 a.m., EST, Wednesday, March 20, 2019. While this is not mandatory, all interested parties are encouraged to attend and participate.
- B. In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the County's ADA Coordinator at 386-248-1760 for assistance, at least two (2) business days before any meeting date.

Assisted listening system receivers are available for the hearing impaired, and can be obtained from the Deputy Clerk by contacting the County's ADA Coordinator at 386-248-1760.

Read the full ADA Notice under The American with Disabilities Act (Title II), at www.volusia.org/core/fileparse.php/4175/urlt/ADANotice.pdf.

Read the [County of Volusia Grievance Procedure](#) under The Americans with Disabilities Act (Title II).

2.6 Bid Submittal Form

- A. See *Submittal Requirements* for complete details.
- B. Each Bidder shall submit three (3) complete sets of the Bid Submittal:
 - **One (1)** hard copy marked "ORIGINAL"
 - **One (1)** hard copy marked "COPY"

Note: It is not necessary to return every page of the original solicitation document with the hard copies of the Bid Submittal ORIGINAL and COPY(ies); return only the pages that require signatures or information as detailed in Section 4.0.

 - **One (1)** COMPLETE electronic copy on a CD or USB drive in PDF format (Excel spreadsheets shall not be recorded in PDF). The electronic copy of the Bid Submittal shall include all submittal requirements as detailed in Section 4.0.

Note the solicitation number and name of company on the CD or USB drive.
Do not send confidential information, proprietary information, or trade secrets.

The Invitation to Bid page and the Bid Submittal Form must be signed by an official authorized to legally bind the Bidder to all Bid provisions. The Bid Submittal Form (Section

5.0) shall be signed by an authorized agent of the firm with documentation, such as a Memorandum of Authority, that the individual is authorized to commit the firm to a contract.

2.7 Definition of Responsive and Responsible for this Bid

Each Bid submittal shall be evaluated for conformance as responsive and responsible using the following criteria:

- A. Proper submittal of ALL documentation as required by this Bid. (Responsive)
- B. The greatest benefits to Volusia County as it pertains to: (Responsible)
 - 1. Total Cost;
 - 2. Delivery in accordance with Section 1.6;
 - 3. Past Performance. In order to evaluate past performance, all Bidders are required to submit a list of three (3) references / relevant projects completed within the last three (3) years that are the same or similar in magnitude to this ITB. The County of Volusia shall not be listed as a reference;
 - 4. Ability to provide fuel that meets the requirements of Section 1.1;
 - 5. Financial Stability: A Dun and Bradstreet report may be used by the County to evaluate Respondent's financial stability. All Respondents shall be prepared to supply a financial statement upon request, preferably a certified audit of the last available fiscal year.

Bidders are reminded that award may not necessarily be made to the lowest Bid. Rather, award will be made to the most responsive, responsible, Bidder whose Bid represents the best overall value to the County when considering all evaluation factors.

2.8 Local Preference Availability

This project is not funded by monies that prohibit the local preference provision and local preference does apply per Exhibit I, General Conditions and Instructions section 10. Local Preference.

2.9 Payment Terms

- A. The County will remit full payment on all undisputed invoices within forty-five (45) days from receipt by the appropriate person(s) (to be designated at time of Agreement) of the invoice(s) or receipt of all products or services ordered.
- B. Pursuant to Chapter 218, Florida Statutes, the County will pay interest not to exceed one percent (1%) per month on all undisputed invoices not paid within thirty (30) days after the due date.
- C. The County has the capability of Electronic Funds Transfer (EFT). List any discounts for prompt payment and/or willingness to accept Electronic Funds Transfer (EFT) and the discount to be applied to such payments. Contractors offering prompt payment discounts, for example 1% - net 10, the discount shall be taken if the check issue date is within specified time period from date of invoice.

By submitting a Bid (offer) to the County of Volusia, Florida, the Contractor expressly agrees that, if awarded an Agreement, the County may withhold from any payment monies

owed by the Contractor to the County for any legal obligation between the Bidder and the County including, but not limited to, real property taxes, personal property taxes, fees, and commissions.

2.10 Award Term

The County is looking to promote partnership relationships within the policies and procedures of public procurement. Pursuant toward that end, the successful Contractor(s) shall be awarded an Agreement for an initial three (3) year term with the option for two (2) subsequent one (1) year renewals. All renewals will be contingent upon mutual written agreement and, when applicable, approval of County Council.

2.11 Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions

This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency and Contractors shall be prepared to comply with the requirements of the FEMA Super Circular CFR 200.318-326 and Appendix II Contract Provisions as amended. These documents can be found on the Internet at:

<https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-318>

2.12 Termination

- A. County may terminate this Agreement upon at least thirty (30) days prior written notice to Contractor.
- B. Contractor may terminate this Agreement upon at least one hundred eighty (180) days prior written notice to County.
- C. Upon receipt of notice of termination by the County from Contractor or upon delivery of notice of termination from the County to Contractor, Contractor shall:
 - 1. Stop work under the Agreement on the date and to the extent specified in County's Notice of Termination.
 - 2. Inform County of the extent to which performance is completed.
 - 3. Place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the Services under the Agreement as is not terminated and with the prior approval of the County.
 - 4. Assign to the County, in the manner, at the times, and to the extent directed by the County, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated.
- D. For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Section 2.10 - Award Term, Section 2.9 - Payment Terms and this Section 2.12 - Termination, the County shall cause

payments to be made to Contractor within forty five (45) days of receipt of invoice. Contractor shall invoice the County for any sums Contractor claims to be owed by County under this Agreement for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment and County shall pay any undisputed amount within forty five (45) days.

- E. With the approval of the County and to the extent required by the County, the Contractor shall, upon termination, settle all outstanding liabilities and all claims arising out of such termination. County's approval of such settlements shall be final for all the purposes of a termination under this Section 2.12- Termination. In addition, Contractor shall transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County, Deliverables, work-in-progress, reports, models, studies, and other materials produced as a part of, or acquired in connection with the performance of the services terminated.
- F. If Contractor fails to cure a breach within ten (10) calendar days after receipt of notice from the County of said breach, the County may take over the services and complete the services, and the Contractor shall be liable to the County for any increased cost of the Project reasonably incurred by the County to complete the Contractor's unfinished services. As such, the County may apply unpaid Compensation due and owing to the Contractor prior to the default as a set off against the costs incurred by the County for taking over such services.
- G. The right of termination provided to the County and the Contractor herein shall be cumulative of all other remedies available at law.
- H. All provisions of this Agreement which impose or contemplate continuing obligations on a party will survive the expiration or termination of this Agreement.

2.13 New Material

Unless otherwise provided for in this specification, the Contractor represents and warrants that the goods, materials, supplies, or components offered to the County under this Agreement are new, not used or reconditioned, and are not of such age or so deteriorated as to impair their usefulness or safety and that the goods, materials, supplies, or components offered are current production models of the respective manufacturer. If the Contractor believes that furnishing used or reconditioned goods, materials, supplies, or components will be in the County's interest, the Contractor shall so notify the County Procurement Analyst in writing no later than fourteen (14) working days prior to the date set for opening of Bids in accordance with section 2.3. The notice shall include the reasons for the request and any benefits that may accrue if the County authorizes the bidding of used or reconditioned goods, materials, supplies, or components.

2.14 Damages

Due to the nature of the services to be provided and the potential impact to the County for loss, the Contractor cannot disclaim consequential or special damages related to the performance of this Agreement. The Contractor shall be responsible and accountable for any and all damages, directly or indirectly, caused by the actions or inaction of its employees, staff, or Subcontractors. There are no limitations to this liability.

3.0 DEFINITIONS

As used in this Bid, the following terms shall have the meanings set forth below:

Agreement: Result from this solicitation between the County and the Contractor, which is this Bid, along with any written addenda and other written documents, which are expressly incorporated by reference.

Agreement Administrator: The Director of Purchasing and Contracts or designee shall serve as Agreement Administrator. The Agreement Administrator shall be responsible for addressing any concerns within the scope of the Agreement. Any changes to the resulting Agreement shall be made in writing and authorized by the Director of Purchasing and Contracts.

Bid: A Contractor's offer to the County in response to an invitation to bid (ITB) issued by a purchasing authority.

Bidder: One who submits a response to an invitation to bid (ITB).

Contractor: The person or entity duly authorized, upon award of an invitation to bid (ITB), to have an Agreement with the County to provide the product and/or services set forth herein and incurring liability for the same.

Contractor's Project Manager: The Project Manager has responsibility for administering this Agreement for the successful Bidder(s) and will be designated prior to the issue of the resulting Master Agreement or Purchase Order.

County: Shall mean the County of Volusia (a body corporate and politic and a subdivision of the State of Florida) including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.

County's Project Manager(s): The Project Manager(s) have responsibility for the day-to-day administration of the resulting Agreement for the County and will be designated prior to award of the resulting Master Agreement or Purchase Order.

Day: The word "day" means each calendar day or accumulation of calendar days.

Director: The Director of Purchasing and Contracts for the County of Volusia, FL.

Master Agreement: The payment vehicle through with the successful Bidder(s) shall be compensated. This Agreement will be issued in accordance with the specifications, terms, and conditions of this Bid document and shall be valid for a specified period of time with a specific dollar value, which shall not be exceeded annually.

Person or Persons: An individual, firm, partnership, corporation, association, executor, administrator, trustee, or other legal entity, whether singular or plural, masculine or feminine, as the context may require.

Preference: The method of the reducing the proposed Bid or quote price by a designated percentage for the sole purpose of determining the lowest price when compared to other prices submitted during a competitive solicitation.

Protest: See process at www.volusia.org/purchasing.

Purchase Order: The County's written document to the Contractor formalizing the proposed transaction, such as a description of item(s)/services, delivery location, payment terms, invoice address and transportation. If there are any conflicts between the Purchase Order and the resulted awarded ITB the terms of the ITB shall prevail.

Subcontractor: A person other than a materialman or laborer who enters into a contract with a Contractor for the performance of any part of the Agreement documents.

4.0 SUBMITTAL REQUIREMENTS (*Submit in the following order*)

It is not necessary to return every page of this document with the Proposal; return *only* the pages that require signatures or information requested below.

- ☐ **Completed Invitation to Bid Cover Page** signed by an authorized agent of the firm, as listed on the Florida Department of State, Division of Corporations' Sunbiz report available at www.sunbiz.org (Sunbiz), shall be required. If anyone other than the officers listed on the Sunbiz website will be signing this ITB, a memorandum of authority signed by an officer of the firm allocating authorization shall be required. If firm is not currently registered as a Contractor in the State of Florida (Sunbiz), include documentation designation of contracting authority. The memorandum of authority shall be on the firm's letterhead and shall clearly state the name, title and contact information for the individual designated by the firm.
- ☐ **Required Copies and Electronic Copy on CD or USB drive** (see Section 2.6)
- ☐ **Provide a Florida Department of State, Division of Corporations' Sunbiz report** available at www.sunbiz.org.
- ☐ **Completed Bid Submittal Form** (use attached form Section 5.0).
- ☐ **References** - List at least three (3) recent references where the proposed product has been provided within the past three (3) years. Use of the attached form (Section 6.0) will aid in evaluation. Unless specifically asked by the County, the County of Volusia shall not be listed as a reference.
- ☐ **Business Tax Receipt (BTR)**

To be responsive to this solicitation, each Bidder who is currently required to have a Business Tax Receipt (BTR) at the time of submittal shall provide a copy of their current BTR in their response to this solicitation.

There are two exceptions to this Bid submission requirement:

1. If Bidder's business does not have a physical location in Lake, Orange, Osceola, Seminole, or Volusia County, no submission is required, *OR*
2. If Bidder's business type is exempt, submit with proposal a *Proof of Exemption* approved by the Volusia County Revenue Director (see Section 14.0).

For more information and to access *Ch. 114, Article I, Sect. 114-1* of the Volusia County Code of Ordinances, see

https://library.municode.com/fl/volusia_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH11_4TA_ARTIINGE

- ☐ **Insurance** - (See Exhibit II) Evidence of required insurance coverage or proof of insurability in the amounts indicated. If available, a properly completed ACORD Form is preferable. Final forms must contain the correct solicitation and/or project number and Volusia County contact person. Contractor shall provide the required insurance detailed in Exhibit II for the entire Term of the agreement. Regardless of anything submitted as proof of insurance, Contractor shall comply with all requirements of Exhibit II.

Firms that have owner/operators that have filed a "Notice of Election to be Exempt" shall submit a copy with the proposal.

Incorporated and unincorporated firms that qualify for an exemption under the Florida Workers' Compensation law in Chapter 440, Florida Statutes, shall submit an executed *Hold Harmless Agreement* (see Section 15.0) relieving the County of liability in the event they and/or their employees are injured while providing goods and/or services to the County.

- ☐ **Conflict of Interest Form** (use attached form Section 7.0) All Bidders shall properly complete, have notarized, and include with their Bid Submittal the attached statement disclosing any potential conflict of interest that the Bidder may have due to ownership, other clients, contracts, or interests associated with this project.
- ☐ **Addenda** issued subsequent to the release of this solicitation must be signed and returned with the firm's Bid. Failure to return signed addenda may be cause for the Bid to be considered non-responsive.
- ☐ **W-9** Include a completed W-9 form. If the firm is not registered with Volusia County, on-line registration is available at www.volusia.org/purchasing under Contractor Self Service, which links to the registration site and the W-9 form can be accessed through this site as well.
- ☐ **Certification Affidavit by Local Business (use attached forms 11.0 and 12.0)** All Bidders shall complete, have notarized, and include with their Bid Submittal the attached statement(s) confirming Local Preference Eligibility.
- ☐ **Drug-Free Work Place form** (use attached form Section 8.0).
- ☐ **Certification Regarding Debarment – Prime** (use attached form Section 9.0).

☐ **Certification Regarding Debarment – Sub** *if applicable* (use attached form Section 10.0).

☐ **CERTIFICATION REGARDING PROHIBITION AGAINST CONTRACTING WITH SCRUTINIZED COMPANIES** (use attached form in Section 15.0)

All Bidders shall be prepared to supply a financial statement upon request, preferably a certified audit, but a third party prepared financial statement and the latest D & B report will be accepted.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

5.0 BID SUBMITTAL FORM

_____, 2019

TO: County of Volusia, Florida
Office of Director of Purchasing and Contracts
123 W. Indiana Avenue, Room 302
DeLand, FL 32720-4608

The undersigned hereby declare(s) that [firm name] _____
_____ has carefully examined the specifications to furnish Bulk Fuel, for
which Bid Submittals were advertised to be received **no later than 3:00 p.m., EST, on Tuesday,
April 16, 2019**, and further declares that the firm will furnish the Bulk Fuel according to
specifications.

Complete Attachment A and return with bid submittal

(Open Attachment A from website, perform "file save as" and save spreadsheet to your
computer. Fill in pricing, preferably electronically.)

**Include Attachment A in Excel format (not pdf) on CD with the rest of your submittal
documents.**

The County reserves the right to negotiate with the awarded Contractor for additional services
similar in nature not known at the time of Bid closing.

Sole Proprietor ☐ Yes ☐ No

Total number employees _____

F.O.B. Destination

Can fuel be delivered within one (1) calendar day from receipt of release order? ☐ YES ☐ NO

Prompt payment discount, if applicable: _____ %, _____ Days; Net 45 Days

Do you accept electronic funds transfer (EFT)? ☐ YES ☐ NO

Do you offer a discount for electronic funds transfer (EFT)? ☐ YES, _____ % ☐ NO

The County of Volusia reserves the right to reject any or all proposals, to waive informalities, and
to accept all or any part of any proposal as may be deemed to be in the best interest of the County.

I hereby certify that I have read and understand the requirements and terms and conditions of
this Invitation to Bid No. 19-B-70EM, "**Bulk Fuel**", including all exhibits and attachments (as
amended) and that I, as the Bidder, will comply with all requirements, and that I am duly authorized
to execute this proposal/offer document and any Agreement(s) and/or other transactions required
by award of this ITB.

Further, as attested to by below signature, I will provide the required insurance, per Exhibit II,
Insurance, upon notification of recommendation of award.

The Contractor acknowledges that information provided in this Bid is true and correct:

✕

Authorized Signature

Printed Name

Title

Date

Company Name

Full Address

Telephone

Fax

E-mail Address

Dunn & Bradstreet #

Federal I.D. #

6.0 REFERENCES

Agency #1	
Address	
City, State, ZIP	
Contact Person	
E-mail	Phone:
Date(s) of Service	
Type of Service	
Comments:	
Agency #2	
Address	
City, State, ZIP	
Contact Person	
E-mail	Phone:
Date(s) of Service	
Type of Service	
Comments:	
Agency #3	
Address	
City, State, ZIP	
Contact Person	
E-mail	Phone:
Date(s) of Service	
Type of Service	
Comments:	

7.0 CONFLICT OF INTEREST FORM

I HEREBY CERTIFY that

1. I, *(printed name)* _____, am the *(title)* _____ and the duly authorized representative of the firm of *(Firm Name)* _____ whose address is _____, and that I possess the legal authority to make this affidavit on behalf of myself and the firm for which I am acting; and,
2. Except as listed below, no employee, officer, or agent of the firm have any conflicts of interest, real or apparent, due to ownership, other clients, contracts, or interests associated with this project; and,
3. This Bid Submittal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a Bid for the same services, and is in all respects fair and without collusion or fraud.

EXCEPTIONS to items above (List): _____

Signature: _____

Printed Name: _____

Firm Name: _____

Date: _____

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this ____ day of _____, 20____, by _____, who is/are personally known to me **or** who has/have produced _____ as identification.

NOTARY PUBLIC – STATE OF _____

Type or print name:

Commission No.: _____

Commission Expires: _____

(Seal)

8.0 DRUG-FREE WORK PLACE

The undersigned firm, in accordance with Florida statute 287.087, hereby certifies that

_____ does:
(Name of Firm)

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

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

Name and Title

Date

Signature

Firm

Street address

City, State, Zip

9.0 CERTIFICATION REGARDING DEBARMENT

Certification Regarding Debarment, Suspension, And Other Responsibility Matters Primary Covered Transactions

TO BE COMPLETED BY CONTRACTOR

- A. The prospective primary participant (contractor) certifies to the best of its knowledge and belief, that it and its principals (subcontractors and suppliers):
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 2. Have not within a three (3) year period preceding this bid proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (A) (2) of this certification; and
 4. Have not within a three-year period preceding this bid proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid proposal.

Name and Title

Date

Signature

Firm

Street address

City, State, Zip

10.0 CERTIFICATION REGARDING DEBARMENT (SUB)

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion
TO BE COMPLETED BY ALL SUB-CONTRACTORS**

- A. The prospective participant (sub-contractor) certifies to the best of its knowledge and belief, that it and its principals (subcontractors and suppliers):
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 2. Have not within a three (3) year period preceding this bid proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (A) (2) of this certification; and
 4. Have not within a three-year period preceding this bid proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- B. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid proposal.

Name and Title

Date

Signature

Firm

Street address

City, State, Zip

11.0 CERTIFICATION AFFIDAVIT BY CONTRACTOR AS LOCAL BUSINESS

This form must be signed and sworn to in the presence of a notary public or other official authorized to administer oaths.

A. This sworn statement is submitted to County of Volusia, FL, Purchasing and Contracts;

By: _____
(Authorized individuals name and title)

For: _____
(Name of Company/Individual submitting sworn statement)

B. Local Preference Eligibility

1. Contractor has been in business for a minimum of six (6) months prior to the date of Bids or quote ☐ Yes ☐ No
2. Contractor has proof of local business in the form of a business tax receipt from a local jurisdiction per Volusia County Local Preference ordinance ☐ Yes ☐ No

I understand that the submission of this form to the contracting officer for Volusia County, Florida, is valid through the end of term of the awarded Agreement. I also understand that failure to notify the County of Volusia of a change in address out of the local area may result in breach of Agreement.

(Signature)

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this _____ day of _____, 20____, by _____, who is/are personally known to me **or** who has/have produced _____ as identification.

NOTARY PUBLIC – STATE OF _____

Type or print name:

Commission No.: _____

Commission Expires: _____

(Seal)

12.0 CERTIFICATION AFFIDAVIT BY SUB CONTRACTOR AS LOCAL BUSINESS

This form must be signed and sworn to in the presence of a notary public or other official authorized to administer oaths.

A. This sworn statement is submitted to County of Volusia, FL, Purchasing and Contracts;

By: _____
(Authorized individuals name and title)

For: _____
(Name of Company/Individual submitting sworn statement)

B. Local Preference Eligibility

1. Contractor has been in business for a minimum of six (6) months prior to the date of Bids or quote ☐ Yes ☐ No
2. Contractor has proof of local business in the form of a business tax receipt from a local jurisdiction per Volusia County Local Preference ordinance ☐ Yes ☐ No

I understand that the submission of this form to the contracting officer for Volusia County, Florida, is valid through the end of term of the awarded Agreement. I also understand that failure to notify the County of Volusia of a change in address out of the local area may result in breach of Agreement.

(Signature)

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this _____ day of _____, 20____, by _____, who is/are personally known to me **or** who has/have produced _____ as identification.

NOTARY PUBLIC – STATE OF _____

Type or print name:

Commission No.: _____

Commission Expires: _____

(Seal)

13.0 NOTIFICATION REGARDING PUBLIC ENTITY CRIME & DISCRIMINATORY CONTRACTOR LIST REQUIREMENTS & DISQUALIFICATION PROVISION

A. Pursuant to Florida Statutory requirements, potential Bidders are notified:

287.133(2)(a) A person or affiliate who has been placed on the convicted Contractor 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 s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted Contractor list.

287.133(2)(b) A public entity may not accept any Bid, proposal, or reply from, award any contract to, or transact any business in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO with any person or affiliate on the convicted Contractor list for a period of 36 months following the date that person or affiliate was placed on the convicted Contractor list unless that person or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with a person at the time of the commission of a public entity crime resulting in that person being placed on the convicted Contractor list may not accept any Bid, proposal, or reply from, award any contract to, or transact any business with any other person who is under the same, or substantially the same, control as the person whose name appears on the convicted Contractor list so long as that person's name appears on the convicted Contractor list.

287.134(2)(a) An entity or affiliate who has been placed on the discriminatory Contractor list 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.

287.134(2)(b) A public entity may not accept any Bid, proposals, or replies from, award any contract to, or transact any business with any entity or affiliate on the discriminatory Contractor list for a period of 36 months following the date that entity or affiliate was placed on the discriminatory Contractor list unless that entity or affiliate has been removed from the list pursuant to paragraph (3)(f). A public entity that was transacting business with an entity at the time of the discrimination resulting in that entity being placed on the discriminatory Contractor list may not accept any Bid, proposal, or reply from, award any contract to, or transact any business with any other entity who is under the same, or substantially the same, control as the entity whose name appears on the discriminatory Contractor list so long as that entity's name appears on the discriminatory Contractor list.

B. By submitting a proposal, the Bidder represents and warrants that the submission of its proposal does not violate Section 287.133, Florida Statutes (2005), nor Section 287.134, Florida Statutes (2005).

C. In addition to the foregoing, the Bidder represents and warrants that Bidder, Bidder's subcontractors and Bidder's implementer, if any, is not under investigation for violation of such statutes.

D. Bidder should read carefully all provisions of 287.133 and 287.134, Florida Statutes (2005).

14.0 PROOF OF EXEMPTION



BUSINESS SERVICES

REVENUE DIVISION

123 W. INDIANA AVE. • ROOM 103 • DELAND, FL 32720-4602

PHONE: 386-736-5938 • FAX: 386-822-5729

www.volusia.org/revenue

I certify that the business known as (*business name*) _____,
providing _____ services, which is located at (*street address*) _____
_____, (*city*) _____, falls under the business tax exemption described in:

☐ Florida Statute 205. 063

☐ Florida Statute 205. 064

☐ Florida Statute 205. 065

☐ Florida Statute 205. 162

☐ Florida Statute 205. 171

☐ Florida Statute 205. 191

☐ Florida Statute 205. 192

https://library.municode.com/fl/volusia_county/codes/code_of_ordinances?nodeId=PTIICOOR_CH114TA_ARTIINGE

OR is the type of business indicated below:

☐ Child Care – Residential

☐ Commercial Rentals

☐ Door to Door/Peddler Sales

☐ Insurance Adjuster, Agent,
or Company

☐ Pharmacist/Pharmacy
(Prescription Drugs Only)

☐ Radio/Television Station

☐ Religious Institution

☐ Residential Rentals over 6months

☐ Sale of Alcoholic Products only

(Authorized Signature)

(Printed Name)

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this _____ day of _____, 20____, by
_____, who is/are personally known to me **or**
who has/have produced _____ as identification.

NOTARY PUBLIC – STATE OF _____

Type or print name:

Commission No.: _____

Commission Expires: _____

(Seal)

A business that falls under one of the exempt classifications listed above is not required to have a Volusia County Business Tax Receipt.

Revenue Director/Designee

**15.0 CERTIFICATION REGARDING PROHIBITION AGAINST CONTRACTING WITH
SCRUTINIZED COMPANIES**

I hereby certify that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit have been placed on the Scrutinized Companies that Boycott Israel List created pursuant to s. 215.4725 of the Florida Statutes, or are engaged in a boycott of Israel.

In addition, if this solicitation is for a contract for goods or services of one million dollars or more, I hereby certify that neither the undersigned entity, nor any of its wholly owned subsidiaries, majority- owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit are on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473 of the Florida Statutes, or are engaged in business operations in Cuba or Syria as defined in said statute.

I understand and agree that the County may immediately terminate any contract resulting from this solicitation upon written notice if the undersigned entity (or any of those related entities of respondent as defined above by Florida law) are found to have submitted a false certification or any of the following occur with respect to the company or a related entity: (i) it has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, or (ii) for any contract for goods or services of one million dollars or more, it has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or it is found to have been engaged in business operations in Cuba or Syria.

Name of Respondent: _____

By: _____

(Authorized Signature)

Title: _____

Date: _____

16.0 HOLD HARMLESS AGREEMENT

I, _____, (*print owner's name*), am the owner of _____ (*print company name*), an incorporated / unincorporated business operating in the State of Florida. As such, I am bound by all laws of the state of Florida, including but not limited to those regarding the workers' compensation law.

I hereby affirm that I or [the above-named business] employs fewer than four employees, all of whom are listed below, including myself, and therefore, the business is exempt from the statutory requirement for workers' compensation insurance for its employees. I certify that I will provide the County of Volusia with the name of each new employee together with all required waivers and releases for each prior to any employee being allowed to work to provide services under the contract set forth below. If any such employee is allowed to work without a signed waiver and release, such action will be a material breach of this Agreement. All signed waivers and releases shall be furnished before the commencement of any work by an employee or the undersigned to the County Project Manager or designated county representative.

On _____, 20____, the County of Volusia and I or [the above-named business] entered into a contract for _____ (*please insert name of contract*), (hereinafter "Agreement") which is incorporated by reference herein.

On behalf of myself, my business, and the employees listed below, I and they hereby agree to waive and release any and all workers' compensation claims or liens under Chapter 440, Florida Statutes, against the County of Volusia and its agents, officials and employees, arising from any work or services provided under the Agreement whether or not it shall be alleged or determined that the act was caused by intention, or through negligence or omission of the County of Volusia or its agents, officials and employees or subcontractors.

In the event that a workers' compensation claim or lien is made against the County of Volusia and/or its agents, officials or employees by myself or my employees or agents as a result of any work or services performed under the Agreement, I agree to indemnify, keep and hold harmless the County of Volusia, Florida, its agents, officials and employees, against all injuries, deaths, losses, damages, claims, liabilities, judgments, costs and expenses, direct, indirect or consequential (including, but not limited to, fees and charges of attorneys and other professionals) arising out of the Agreement with the County of Volusia, whether or not it shall be alleged or determined that the act was caused by intention or through negligence or omission of the County of Volusia or its employees, agents, or subcontractors. I or the above-named business shall pay all charges of attorneys and all costs and other expenses incurred in connection

with the indemnity provided herein, and if any judgment shall be rendered against the County of Volusia in any action indemnified hereby, I or the above-named business shall, at my or its own expense, satisfy and discharge the same. The foregoing is not intended nor should it be construed as, a waiver of sovereign immunity of the COUNTY OF VOLUSIA under Section 768.28, Florida Statutes.

Owner: _____ (print name) _____ (signature)

Employee 1: _____ (print name) _____ (signature)

Employee 2: _____ (print name) _____ (signature)

Employee 3: _____ (print name) _____ (signature)

STATE OF _____

COUNTY OF _____

Sworn to and subscribed before me this ____ day of _____, 20____, by _____, who is/are personally known to me **or** who has/have produced _____ as identification.

NOTARY PUBLIC – STATE OF

Type or print name:

Commission No.: _____

Commission Expires: _____

(Seal)



19-B-70EM Bulk Fuel Attachment A

Bidders shall complete all fields shaded in blue.

Company Name:

Fuel Type		Markup over OPIS daily low		Markup over OPIS daily average
Ultra Low Sulfur Diesel +/- 7500 gallons				
Ultra Low Sulfur Diesel less than 7500 gallons				
E-10 Fuel +/- to 8000 gallons				
E-10 Fuel less than 8000 gallons				
Gross No.2 Red-Dyed Fuel (Off Road) +/- 7500 gallons				
Gross No.2 Red-Dyed Fuel (Off Road) less than 7500 gallons				

Any additional fee for split loads:

If YES, please state fee:

List any additional fee for “above” vs. “below” ground tanks:

Drop Charge for tank wagon delivery, if any:

If YES, please state fee:

Which terminal will be utilized to supply fuel?

YES /
NO

NO



19-B-70EM Fuel Sites Attachment B

Fuel Site Information

Volusia County:							
FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel
9809259	Indian Lake Road 1336 Indian Lake Road, Daytona Beach 32724	1 ea. 12,000 Gal. Vehicular Gasoline, double walled (DW), steel AST. 1 ea. 10,000 Gal. Vehicular Diesel, double walled (DW) steel AST 1 ea. 10,000 Gal. Vehicular Gasoline, double walled (DW), steel AST	24 Hours, 7 days	Yes	Name:Michelle Leigh Phone: 386-248-1760 Ext. 11263 email: mleigh@volusia.org	None	42,000 gallons ULSD
9103512	Tomoka Landfill 1990 Tomoka Farms Road, Daytona Beach 32124	1 ea. 12,000 Gal. Vehicular Diesel ASTs, DW, Steel. 1 ea. 10,000 Vehicular Off- Road Diesel, double walled (DW) 1 ea 12,000 Gal. Vehicular Gasoline, double walled (DW) steel AST	7am-5pm M-F	No	Name:Michelle Leigh Phone: 386-248-1760 Ext. 11263 email: mleigh@volusia.org	None	65,000 gallons ULSD 213,000 gallons Off Road Diesel
9046676	Walker St. Road & Bridge 455 Walker Street, Holly Hill 32117	1 ea. 12,000 Gal. Vehicular Gasoline UST, DW, Fiberglass. 1 ea. 12,000 Vehicular Diesel UST, DW, Fiberglass.	24 Hours, 7 days	No	Name:Michelle Leigh Phone: 386-248-1760 Ext. 11263 email: mleigh@volusia.org	None	43,000 gallons ULSD
8622777	Deland Road & Bridge 2560 West Highway 44, Deland 32720	1 ea. 10,000 Gal. Vehicular Gasoline UST, DW, Fiberglass. 1 ea. 10,000 Gal. Vehicular Diesel UST, DW, Fiberglass	7am - 5pm M-F	No	Name:Michelle Leigh Phone: 386-248-1760 Ext. 11263 email: mleigh@volusia.org	None	99,000 gallons ULSD
8522683	Osteen Road & Bridge 200 North Highway 415, Osteen 32764	1 ea. 12,000 Gal. Compartmented AST, 6/6 Vehicular Diesel/Vehicular Gasoline. DW, Steel.	24 Hours, 7 days	Yes	Name:Michelle Leigh Phone: 386-248-1760 Ext. 11263 email: mleigh@volusia.org	None	18,000 gallons ULSD
8622679	NSB Road & Bridge 534 North Old Dixie Highway, New Smyrna Beach 32168	1 ea. 12,000 Gal. Compartmented AST, 6/6 Vehicular Diesel/Vehicular Gasoline. DW, Steel.	24 Hours, 7 days	Yes	Name:Michelle Leigh Phone: 386-248-1760 Ext. 11263 email: mleigh@volusia.org	None	77,000 gallons ULSD
9810955	Transfer Station 261 Deland Crossings Blvd. Deland 32724	1 ea 12,000 Gal. Vehicular Diesel AST, DW, Steel. 1 ea. 12,000 Gal. Vehicular Gasoline AST, DW Steel.	24 Hours, 7 days	Yes	Name:Michelle Leigh Phone: 386-248-1760 Ext. 11263 email: mleigh@volusia.org	None	105,000 gallons ULSD
9400111	EVAC 122 Carswell Ave. 112 Carswell Ave. Holly Hill, 32017	1 ea. 4,000 gallon Vehicular Diese AST, DW, Steel	24 Hours, 7 days	No	Name:Michelle Leigh Phone: 386-248-1760 Ext. 11263 email: mleigh@volusia.org	An 18 wheeler truck cannot make deliveries to this location due to the small area to turn around in. A tank wagon style truck can. The fuel is then pumped into a fill that is located on top of the tank with a nozzle style hose. There is a ladder on site so the driver can reach the fill.	100,000 gallons ULSD

Flagler County							
FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel
9807845	Flagler County 1769 E. Moody Blvd. Bunnell, FI 32110	1 ea 30,000 Gal above ground double wall for Unleaded fuel and 1 ea. 30,000 Gal. above ground double wall for Diesel. Electronic monitoring of interstice and continuous automatic tank gauge system.	24 hours, 7 days	Yes	Name: Andrew Pearson Phone: 386-313-4178 Email: apearson@flaglercounty.org	None	We only receive ULS diesel and the annual usage is 175,000 gallons.

City of Daytona Beach:							
FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel
9700983	Bethune Point WWTP 1 Shady PL Daytona Beach, FL 32114	1 ea.6,000 gal. Vehicular Diesel AST, DW 1 ea.1,000 gal. Vehicular Diesel, AST, DW.	7am-5pm, 5 days	Yes	Name: Robert Campbell Phone: 386-671-8684 Cell: 386-451-2620 Email: campbellr@codb.us	None	ULSD
8631491	Fire Station #3 945 N. Halifax Ave. Daytona Beach, FL 32114	1 ea. 1,000 gal. Vehicular Diesel Double walled (DW) fiberglass UST	7am-5pm, 5 days	Yes	Name: Robert Campbell Phone: 386-671-8684 Cell: 386-451-2620 Email: campbellr@codb.us	None	8315 net gallons ULSD
8631488	Sewer Lift Station #1134 510 Ora Street Daytona Beach, FL 32114	1ea. 500 gal. Vehicular Diesel Double Walled (DW) steel AST.	7am-5pm, 5 days	Yes	Name: Robert Campbell Phone: 386-671-8684 Cell: 386-451-2620 Email: campbellr@codb.us	None	ULSD
8622691	Westside Regional WWTP 3651 LPGA Blvd. Daytona Beach, FL 32117	2 ea. 6,000 gal. Vehicular diesel Double walled (DW) steel AST. 1 ea. 4,000 gal. Vehicular Diesel Double walled (DW) steel AST. 1 ea. 12,000 gal. Vehicular Diesel Double walled (DW) steel UST. 1 ea. 12,000 gal. Unleaded Gas Double Walled (DW) steel UST.	7am-5pm, 5 days	Yes on 6,000 and 4,000 gallons tanks. No on the 12,000 gallon tanks.	Name: Robert Campbell Phone: 386-671-8684 Cell: 386-451-2620 Email: campbellr@codb.us	None	50.7 net gallons ULSD
8622689	Public Works Complex 950 Bellevue Avenue Daytona Beach, FL 32114	2 ea. 12,000 gal. Unleaded gas Double walled (DW) steel AST. 1 ea. 12,000 gal. Double walled (DW) steel AST. 1 ea. 2,000 gal. Unleaded gas. Double walled (DW) steel AST.	7am-5pm, 5 days	Yes	Name: Robert Campbell Phone: 386-671-8684 Cell: 386-451-2620 Email: campbellr@codb.us	None	37,225 net gallons ULSD
8517330	Golf & Country Club 600 Wilder Blvd. Daytona Beach, FL 32114	1 ea. 1,000 gallon Vehicular Diesel Double walled (DW) steel AST. 1ea. 2,000 gal.Unleaded Gas Double walled (DW) steel AST.	7am-5pm, 5 days	Yes	Name: Brian Jaquet Phone: 386-671- 3502 Cell: Email: jaquetbrian@codb.us	None	ULSD
9300590	Lift Station #1110 1612 Richard Petty Blvd Daytona Beach, FL 32115	1 ea. 1,000 gal. Vehicular Diesel Double walled (DW) steel AST.	7am-5pm, 5 days	Yes	Name: Robert Campbell Phone: 386-671-8684 Cell: 386-451-2620 Email: campbellr@codb.us	None	ULSD
8631492	Fire Station #4 1675 Mason Ave. Daytona Beach, FL 32114	1 ea. 1,000 gal. Vehicular Diesel Double walled (DW) steel AST.	7am-5pm, 5 days	Yes	Name: Robert Campbell Phone: 386-671-8684 Cell: 386-451-2620 Email: campbellr@codb.us	None	11,272 net gallons ULSD
9300589	Lift Station #1162 2020 Beville Road Daytona Beach, FL 32115	1 ea. 1,000 gal. Vehicular Diesel Double walled (DW) steel AST.	7am-5pm, 5 days	Yes	Name: Robert Campbell Phone: 386-671-8684 Cell: 386-451-2620 Email: campbellr@codb.us	None	ULSD
9300588	Lift Station #1105 647 Shady Place Daytona Beach, FL 32114	1 ea. 1,000 gal. Vehicular Diesel Double walled (DW) steel AST.	7am-5pm, 5 days	Yes	Name: Robert Campbell Phone: 386-671-8684 Cell: 386-451-2620 Email: campbellr@codb.us	None	ULSD

City of Ormond Beach:							
FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel

9100520	Fleet Operations 500 N Orchard St Ormond Beach, FL 32174	1 ea. 12,000 Gal. Vehicular Gasoline, double walled (DW), steel UST. 1 ea. 12,000 Diesel, DW steel UST 1 ea. 6,000 AGT, Gasoline, Concrete DW	7am-3 pm, 5 days	Yes	Name: Kevin Gray Phone: 386-676-3265 Cell : 386-316-7725 Email: kevin.gray@ormondbeach.org	None	44,626 gallons of diesel
8622685	TRANSFER STATION & WW PLT 550 N ORCHARD ST ORMOND BEACH	1 ea 6,000 Gal. Off-Road Diesel UGT, SW. 1 ea. 2000 Gal. Off-Road Diesel, SW 1 ea. 4,000 Gal. Off-Road Diesel SW, AGT 1 ea. 6500 Gal Off-Road Diesel, SW Steel AGT	7am-3pm, 5 days	Yes	Name: Kevin Gray Phone: 386-676-3265 Cell : 386-316-7725 Email: kevin.gray@ormondbeach.org	None	6,174 gallons of dyed diesel
9801353	WATER PLANT 301 JEFFERSON ST ORMOND BEACH	1 ea. 6,000 Gal. Off-Road Diesel, DW Concrete AGT. 1 ea. 5,200 Off-Road Diesel, DW Concrete AGT 1 ea. 2,000 Off-Road Diesel , SW Steel AGT	7am-3pm, 5 days	Yes	Name: Kevin Gray Phone: 386-676-3265 Cell : 386-316-7725 Email: kevin.gray@ormondbeach.org	None	2,000 gallons of dyed diesel

School Board:

FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel
8631507	Daytona Transportation 1648 Hancock Blvd. Daytona Beach, FL 32114	1 ea. 10,000 Gal. Vehicular Gasoline, double walled (DW), Steel AST 3 ea. 10,000 Diesel, DW Steel AST	Monday - Friday 0500 - 1700	No	Name: Chris Boyer Phone: 386-258-4677 ext. 50542 Cell Phone: 386- 717-0665 email: ciboyer@volusia.k12.fl.us	None	236,747 gallons ULSD
8841492	New Smyrna Beach Transportation 1294 Turnbull Bay Rd. New Smyrna Beach, FL 32169	1 ea. 10,000 Gal. Vehicular Gasoline, double walled (DW), FG UST. 1 ea. 10,000 Diesel, DW FG UST	Monday - Friday 0500 - 1700	No	Name: Chris Boyer Phone: 386-258-4677 ext. 50542 Cell Phone: 386- 717-0665 email: ciboyer@volusia.k12.fl.us	None	108,779 gallons ULSD
9202882	Deltana Transportation 2101 Eutaw Ave. Deltana, FL 32725	1 ea. 10,000 Gal. Vehicular Gasoline, double walled (DW), FG UST. 1 ea. 6,000 Diesel, DW FG UST. 1 ea. 20,000 Gal. Diesel DW Steel AST	Monday - Friday 0500 - 1700	No	Name: Chris Boyer Phone: 386-258-4677 ext. 50542 Cell Phone: 386- 717-0665 email: ciboyer@volusia.k12.fl.us	None	203,144 gallons ULSD
9047255	Deland Transportation 1301 Shapiro Dr. Deland, FL 32724	1 ea. 10,000 Gal. Vehicular Gasoline, double walled (DW), FG UST. 1 ea. 10,000 Diesel, DW FG UST	Monday - Friday 0500 - 1700	No	Name: Chris Boyer Phone: 386-258-4677 ext. 50542 Cell Phone: 386- 717-0665 email: ciboyer@volusia.k12.fl.us	None	127,174 gallons ULSD
8631509	Pierson Transportation 1 West First Street (Behind Old Pierson Elem) Pierson, FL 32180	1 ea. 10,000 Diesel, DW FG UST	As requested	No	Name: Chris Boyer Phone: 386-258-4677 ext. 50542 Cell Phone: 386- 717-0665 email: ciboyer@volusia.k12.fl.us	None	10,491 gallons ULSD

City of Port Orange:

FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	New Smyrna Beach Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel
8731587	Public Works 407 Virginia Avenue Port Orange, FL 32127	1 ea. 12,000 Gal. Vehicular Gasoline, double walled (DW), steel UST. 1 ea. 12,000 Low Sulfur Diesel, DW steel UST	7am-4pm, Mo-Fr	Yes	Name: Jeff Fontane Phone: 386-506-5579 Cell : 386-527-6834 Email: jfontane@port- orange.org	None	Gasoline: 45,000 gals ULS Diesel: 55,000 gals
8944554	City Center Annex 1395 Dunlawton Ave Port Orange, FL 32129	1 ea. 12,000 Gal. Vehicular Gasoline, double walled (DW), steel UST. 1 ea. 2,000 Gal. Low Sulfur Dyed Diesel for backup generator only.	8am-4pm, 5 days	Yes	Name: Jeff Fontane Phone: 386-506-5579 Cell : 386-527-6834 Email: jfontane@port- orange.org	None	Gasoline: 95,000 gals ULS Dyed Diesel: 2,000 gals
9803333	Fire Station 74 6701 Airport Road Port Orange, FL 32128	1 ea. 3,000 Gal. Low Sulfur Diesel, double walled (DW) steel UST.	7am-4pm, 5 days	Yes	Name: Jeff Fontane Phone: 386-506-5579 Cell : 386-527-6834 Email: jfontane@port- orange.org	None	ULS Diesel: 5,000 gals
8942981	Cambridge Basin Generator 5839 Trailwood Dr. Port Orange, FL 32129	1 ea. 3,000 Gal. Low Sulfur Dyed Diesel, double walled (DW) steel AST.	8am-4pm, Mo-Fr	Yes	Name: Jeff Fontane Phone: 386-506-5579 Cell : 386-527-6834 Email: jfontane@port- orange.org	None	Backup generator site. Usage will vary because of hurricanes and storms.
9811682	Port Orange Police Dept. 4545 S. Clyde Morris Blvd. Port Orange, FL 32129	2 ea. 2,500 Gal. Low Sulfur Dyed Diesel, double walled (DW) steel AST.	8am-4pm, 5 days	Yes	Name: Jeff Fontane Phone: 386-506-5579 Cell : 386-527-6834 Email: jfontane@port- orange.org	None	Backup generator site. Usage will vary because of hurricanes and storms.
8731583	Garnsey Water Plant 4400 Wellfield Dr. Port Orange, FL 32129	1 ea. 5,200 Gal. Low Sulfur Dyed Diesel, double walled (DW) steel AST.	7am-4pm, 5 days	Yes	Name: Christina Potts Phone: 386-506-5773 Cell : N/A Email: cpotts@port- orange.org	None	Backup generator site. Usage will vary because of hurricanes and storms.
9103196	Port Orange Wastewater Plant 817 Oak St. Port Orange, FL 32127	2 ea. 4,000 Gal. Low Sulfur Dyed Diesel, double walled (DW) steel AST for Generators	7am-4pm, 5 days	Yes	Name: Steve Parnell Phone: 386-506-5786 Cell : N/A Email: sparnell@port- orange.org	None	Backup generator site. Usage will vary because of hurricanes and storms.

City of New Smyrna Beach:

FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel
8622701	NSB Public Works 124 Industrial Park Ave NSB, FL 32168	1 ea. 10,000 Gal Vehicular Gasoline, SW, steel AST 1 ea. 10,000 Gal Vehicular Diesel, SW, steel AST	7am - 2pm M-F	Yes	Name: Garrett Mccafferty Phone: 386-424-2210 Cell 386-427-7308 email: gmcafferty@cityofnsb.com	None	90,000 Gallons Unleaded 35,000 Gallons USLD
9807269	NSB Fire Station 51 151 Williamson Blvd. NSB, FL 32168	1 ea. 1,000 Vehicular Diesel, DW	24 Hours, 7 Days	No	Name: Brenda Hendrickson Phone: 386-424-2210 Cell 386-427-7308 email: bhendrickson@cityofnsb.com	None	Backup generator site. Usage will vary because of hurricanes and storms.
9811632	NSB Fire Station 52 500 E. Third Ave. NSB, FL 32168	1 ea. 1,000 Vehicular Diesel, DW	24 Hours, 7 Days	No	Name: Brenda Hendrickson Phone: 386-424-2210 Cell 386-427-7308 email: bhendrickson@cityofnsb.com	None	Backup generator site. Usage will vary because of hurricanes and storms.
9812197	NSB Police Station 246 Industrial Park Ave NSB, FL 32168	1 ea. 6,500 Gal Off Road Diesel, DW	24 Hours, 7 Days	No	Name: Brenda Hendrickson Phone: 386-424-2210 Cell 386-427-7308 email: bhendrickson@cityofnsb.com	None	Backup generator site. Usage will vary because of hurricanes and storms.

9812196	NSB Fire Station 53 238 Industrial Park Ave NSB, FL 32168	1 ea. 2,000 Gal Off Road Diesel, DW	24 Hours, 7 Days	No	Name: Brenda Hendrickson Phone: 386-424-2210 Cell 386-427-7308 email: bhendrickson@cityofnsb.co m	None	Backup generator site. Usage will vary because of hurricanes and storms.
8734991	NSB Golf Course 1000 Wayne Ave NSB, FL 32168	1 ea. 1,000 Gal Compartmented AST 5/5 Vehicular Gasoline/ Off Road Diesel, DW	7am - 2pm M-TH	No	Name: Brenda Hendrickson Phone: 386-424-2210 Cell 386-427-7308 email: bhendrickson@cityofnsb.co m	None	4000 Gallons Unleaded 3000 Gallons Dyed Diesels
Non-regulated	NSB Sports Complex 1800 Turnbull Bay Rd NSB, FL 32168	1 ea. 500 Gal Compartmented AST 2.5/2.5 Vehicular Gasoline/Off Road Diesel, DW, steel AST	7am - 2pm M-F	No	Name: Brenda Hendrickson Phone: 386-424-2210 Cell 386-427-7308 email: bhendrickson@cityofnsb.co m	None	1500 Gallons Unleaded 1200 Gallons Dyed Diesel

Votran:

FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel
8517745	Volusia County Transit 950 Big Tree Road, South Daytona, FL 32119	2 ea. 15,000 Gal. Vehicular Diesel UST, DW, Fiberglass. 1 ea. 2,500 Gal. Vehicular Gasoline UST,DW,Fiberglass	22 Hours, 7 days. (Closed 2am-4am)	No	Name: Rick Kazawitch Phone: 386-756-7496 Ext.4121. Cell Phone: 386- 566-5560 email: rkazawitch@volusia.org	None	
9806496	924 E. Rhode Island Ave Orange City, FL 32763	2 ea. 12,000 gallon diesel AST's 1 ea. 5,000 gallons unleaded AST	24 hours	Yes	Name: Rick Kazawitch Phone: 386-756-7496 Ext.4121. Cell Phone: 386- 566-5560 email: rkazawitch@volusia.org	None	

City of South Daytona:

FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel
8622688	City of South Daytona 1770 Segrave St. South Daytona, FL	1 ea. 10,000 Gal. 3/7 Vehicular Diesel, Gasoline DW AST.	7 am - 3:30pm M-F	Yes	Name: Mark Smith Phone: 386 322-3084 Cell phone:386-233-5701 msmith@southdaytona.org	Need a small tank wagon truck	9500 gallons ulsd 1000 gallons of red dye off road depending on severity of hurricane season

City of DeLand:

FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel
8622696	City of DeLand, Public Works. 1102 S Garfield Ave, DeLand, FL, 32724	1 ea. 3,000 gallon Vehicular Diesel, DW AST 1 ea. 10, 000 Vehicular Unleaded DW AST	2 Hours, 7 days	Yes	Name: Brian Glenn Phone: 386-626-7206 Cell phone:386-233-5701 glennb@deland.org	None	32000 ULSD

Daytona Beach International Airport

FACID	Site Name	Tank Attributes	Hours of Operation	Requires Truck with Pump	Datona Beach International Airport Project Manager	Special Delivery Requirements	Estimated Annual Usage ULS Diesel/ Red-Dyed Diesel
648517331	DBIA Fire Pump Gen. 700 Catalina Ave. Daytona Beach 32114- 3815 (Adjacent to Terminal Building) Escort Required	1 ea. 600 Gal. Emergency Generator Diesel AST, Vaulted Steel.	7am - 3:30 pm Monday - Friday	Yes	Name: Jerry Slaydon Phone: 386-547-0038 email: jslaydon@co.volusia.fl.us	Special access requirement but no equipment requirements.	
649806958	DBIA Gate TC-20 700 Catalina Drive, Daytona Beach 32114 (Adjacent to International Building) Escort Required	1 ea. 1000 Gal. Vehicular Gasoline AST, Vaulted Steel. 1 ea. 1000 Gal. Vehicular Diesel AST, Vaulted Steel.	7am - 3:30 pm Monday - Friday	Yes	Name: Jerry Slaydon Phone: 386-547-0038 email: jslaydon@co.volusia.fl.us	Special access requirement but no equipment requirements.	
649806958	DBIA Main Terminal Generator 700 Catalina Avenue #300, Daytona Beach 32114 (At service entrance to terminal) Escort Required	1 ea. 2000 Gal. Emergency Generator Diesel. DW, Steel.	7am - 3:30 pm Monday - Friday	Yes	Name: Jerry Slaydon Phone: 386-547-0038 email: jslaydon@co.volusia.fl.us	Special access requirement but no equipment requirements.	
649813448	DBIA Air Cargo Building 401 Innovation Way, Daytona Beach 32114 (Entrance requires escort)	1 ea. 1300 Emergency Generator, DW, Steel	7am - 3:30 pm Monday - Friday	Yes	Name: Jerry Sladon Phone: 386-547-0038 email: jslaydon@co.volusia.fl.us	Special access requirement but no equipment requirements.	
649806809	DBIA Electrical Vault 700 Catalina Ave. # 300, Daytona Beach 32114 (Adjacent to Fire Station 17) Escort	1 ea. 1000 Gal. Emergency Generator Diesel AST, Vaulted Steel DW.	7am - 3:30 pm Monday - Friday	Yes	Name: Jerry Sladon Phone: 386-547-0038 email: jslaydon@co.volusia.fl.us	Special access requirement but no equipment requirements.	
649809474	DBIA TSA Generator M- 20 700 Catalina Ave. # 300, Daytona Beach 32114 (Adjacent to Terminal Building) Escort Required	1 ea. 800 Gal. Emergency Generator Diesel AST, DW Steel.	7am - 3:30 pm Monday - Friday	Yes	Name: Jerry Slaydon Phone: 386-547-0038 email: jslaydon@co.volusia.fl.us	Special access requirement but no equipment requirements.	
649815378	DBIA Fuel Farm 301 Innovation Way,Daytona Beach, 32114 Escort Required	1 ea. 2000 Gal. Vehicular Gasoline AST, Vaulted Steel. 1 ea. 2000 Gal. Vehicular Diesel AST, Vaulted Steel.	7am - 3:30 pm Monday - Friday	Yes	Name: Jerry Slaydon Phone: 386-547-0038 email: jslaydon@co.volusia.fl.us	Special access requirement but no equipment requirements.	

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1. **SUBMISSION OF OFFERS:** All offers shall be submitted in a sealed envelope or package. The Invitation to Bid (ITB) number, title, and opening date shall be clearly displayed on the outside of the sealed envelope or package. The delivery of responses to the Volusia County Purchasing and Contracts Division Office prior to the specified date and time is solely and strictly the responsibility of the Bidder. Any submittal received in the Purchasing and Contracts Division Office after the specified date and time will not be considered.

Responses shall be submitted on forms provided by the County. Additional information may be attached to the submittal. Facsimile or electronic submissions are NOT acceptable. No offer may be modified after acceptance.

2. **BIDDER'S RESPONSIBILITY:** The Bidder, by submitting a Bid, represents that:

- A. The Bidder has read and understands the ITB in its entirety and that the Bid is made in accordance therewith;
- B. The Bidder possesses the capabilities, resources, and personnel necessary to provide efficient and successful service to the County;
- C. The Bidder has made all investigations and examinations necessary to ascertain site and/or local conditions and requirements affecting the full performance of the Agreement and to verify any representations made by the County of Volusia, Florida, upon which the Bidder will rely. If the Bidder receives an award because of its Bid Submittal, failure to have made such investigations and examinations will in no way relieve the Bidder from its obligations to comply in every detail with all provisions and requirements of the Agreement, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim by the Bidder for additional compensation or relief; and,
- D. The Bidder will be held responsible for any and all discrepancies, errors, etc., in discounts or rebates which are discovered during the Agreement term or up to and including three (3) fiscal years following the County's annual audit.

3. **EXECUTION OF OFFER:** Offer shall contain a manual signature in the space(s) provided of a representative authorized to legally bind the Bidder to the provisions therein. All spaces requesting information from the Bidder shall be completed. Responses shall be typed or printed in ink. Use of erasable ink or pencil is not permitted. Any correction made by the Bidder to any entry must be initialed.

4. **OPENING:** Pursuant to Section 119.071, Florida Statutes, Bids or proposals ("responses") and the completed tabulation will be available for inspection within thirty (30) days of response opening. Contact the Purchasing and Contracts Office during regular business hours to inspect responses and the completed tabulation or go to www.volusia.org/bidlist for inspection of the completed tabulation. The foregoing notwithstanding, if, prior to the County's making responses available for inspection, the County rejects all responses and concurrently provides notice of the County's intent to reissue the solicitation, then the County may avail itself of the exemption for rejected responses set forth in Section 119.071, Florida Statutes, to the extent such Section may apply.

In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the County's ADA Coordinator at 386-248-1760 for assistance at least two (2) business days before any meeting date.

Assisted listening system receivers are available for the hearing impaired, and can be obtained from the Deputy Clerk by contacting the County's ADA Coordinator at 386-248-1760. Read the full ADA Notice under The American with Disabilities Act (Title II), at www.volusia.org/core/fileparse.php/4175/urllt/ADANotice.pdf. Read the [County of Volusia Grievance Procedure](#) under The Americans with Disabilities Act (Title II).

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5. **Public Records Law.** Pursuant to section 119.0701(2)(a), Florida Statutes, the County is required to provide Contractor with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-736-5935, purchasing@volusia.org, by mail, Purchasing and Contracts Division, Attn: Public Records Custodian, 123 W. Indiana Ave. Rm. 302 DeLand, FL 32720.

By entering into this Contract, Contractor acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any Contractor entering into a contract for services with the County is required to:

- A. Keep and maintain public records required by the County to perform the services and work provided pursuant to this Contract.
- B. Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion or termination of the Contract if the Contractor does not transfer the records to the County.
- D. Upon completion or termination of the Contract, transfer, at no cost, to the County all public records in the possession of the Contractor or keep and maintain public records required by the County to perform the service. If the Contractor transfers all public records to the County upon completion or termination of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion or termination of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.

Requests to inspect or copy public records relating to the County's Contract for services must be made directly to the County. If Contractor receives any such request, Contractor shall instruct the requestor to contact the County. If the County does not possess the records requested, the County shall immediately notify the Contractor of such request, and the Contractor must provide the records to the County or otherwise allow the records to be inspected or copied within a reasonable time.

Contractor acknowledges that failure to provide the public records to the County within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. Contractor further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the County. Contractor shall indemnify, defend, and hold the County harmless for and against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising

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therefrom. Contractor authorizes County to seek declaratory, injunctive, or other appropriate relief against Contractor from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

6. **CLARIFICATION/CORRECTION OF ENTRY/MINOR IRREGULARITIES:** The County of Volusia reserves the right to allow for the clarification of questionable entries and the correction of OBVIOUS MISTAKES. The County reserves the right to waive minor irregularities in Bid Submittals, providing such action is in the best interest of the County. Minor irregularities are defined as those that have no adverse effect on the County's best interests, and will not affect the outcome of the selection process by giving the Bidder an advantage or benefit not enjoyed by other Bidders.
7. **QUESTIONS, EXCEPTIONS, AND ADDENDA:** It is incumbent upon each Bidder to carefully examine this solicitation's specifications, scope of work/service, terms, and conditions. Questions and exceptions concerning any Section of this Bid shall be directed by letter, facsimile transmission or by e-mail to the Procurement Analyst named in the ITB who shall be the official point of contact for this Bid.

Questions and exceptions shall be submitted no later than fourteen (14) days before the closing date. Thereafter, no further questions or exceptions will be accepted or reviewed by the County and Bidders' right to submit questions or exceptions will terminate and any questions or exceptions not previously made shall be deemed waived. The issuance of a written addendum is the only official method by which interpretation, clarification, or additional information can be given and oral representations will not be binding on the County.

If it becomes necessary for the County to revise any part of this ITB, an addendum will be posted on the County's web site. It is each Bidder's responsibility to check the Volusia County web site for any addenda at www.volusia.org. Each Bidder should ensure that they have received all addenda to this ITB before submitting their proposal. In their proposals, Bidders must provide proof of receipt of each addendum by signing and returning each addendum to the County. Failure to provide this proof may cause Bidder's proposal to be rendered non-responsive. Each addendum issued by the County shall become a material part of this solicitation.

8. **INCURRED EXPENSES:** This ITB does not commit the County to make an award nor shall the County be responsible for any cost or expense which may be incurred by any Bidder in preparing and submitting a reply, or any cost or expense incurred by any Bidder prior to the execution of a purchase order or Contract/Agreement.
9. **DISADVANTAGED BUSINESSES:** The County Council has adopted policies, which assure and encourage the full participation of Disadvantaged Business Enterprises (DBE) in the provision of goods and services. The County encourages joint ventures between majority-owned firms and qualified disadvantaged / minority / women-owned firms.
10. **LOCAL PREFERENCE:** The County Council has established a policy to encourage participation of local businesses in the provision of goods and services. The County will endeavor to assist local businesses to achieve this goal.

Effective January 1, 2012, Volusia County adopted a local Bid preference. A Bidder or prime contractor which has a permanent location at least six (6) months prior to the Bid closing, as proven by a business tax receipt, as stated in Volusia County Ordinance 2-269.5 in Lake, Orange, Osceola, Seminole or Volusia County ("Local"), shall be granted a preference of three percent (3%) of the total Bid price or quote. A Bidder which is a prime contractor and is utilizing subcontractors, and the Bid price or quote of the work to be performed by all subcontractors, that qualify as a local business, constitutes fifty-one percent (51%) or greater of the total work to be performed through subcontracting, a two percent (2%) Bid preference will apply. In the event that a prime contractor qualifies for a preference and subcontractor qualifies for a preference, the preference shall not exceed a total of five percent (5%). Preference shall not be given to Bids where the difference of the total Bid price or quote exceeds twenty-five thousand dollars (\$25,000.00) from the nearest competing Bid price or quote for that solicitation or if a county listed in 2-269.5 does not reciprocate, as stated in 2-269.5, the County will not offer a preference to this County.

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This Section 10 does not apply to any purchase that is funded, in whole or in part, by an entity prohibiting local preference by grant agreement or applicable federal, state, or local law. Solicitations for emergency purchases subject to Section 2-275 of the Code are additionally exempt. All Bidders, including prime and subcontractors, awarded an Agreement as a part of this process must maintain its status as a local business through the term of the Agreement. Any Bidder, including prime and subcontractors, awarded an Agreement as a result of this preference will be required to post any job openings for this project with the Center for Business Excellence (CBE). Noncompliance with the requirements of this Section 10 will be deemed as a material breach and may be subject to Agreement termination or disqualification from bidding on future projects.

11. **PRICING:** Unless otherwise specified prices offered shall remain firm for a period of at least ninety (90) days from the date of bid opening prior to award; all pricing of goods shall include FOB DESTINATION, all packing, handling, shipping charges and delivery to any point(s) within the County to a secure area or inside delivery; all prices of services shall include all expenses necessary to provide the service at the location specified.
12. **UNUSUAL COSTS:** The Contractor may petition the County at any time for an additional rate adjustment on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year. If the Contractor petitions for such an increase, the Contractor shall also petition for a rate reduction on the basis of extraordinary and unusual changes in the costs of operation that could not reasonably be foreseen by a prudent operator and which, by all reasonable expectations, will continue for at least one (1) year; failure to make such petition may be grounds for Agreement termination.

The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The County may request from the Contractor, and the Contractor shall provide, such further information as may be reasonably necessary in making its determination. The County shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the County. Any price redetermination shall be solely based upon the documentation provided and the County reserves the right to rescind any price relief granted should the circumstances change and prices go down.
13. **ADDITIONAL TERMS & CONDITIONS:** The County of Volusia reserves the right to reject offers containing terms or conditions contradictory to those requested in the ITB specifications.
14. **TAXES:** County is exempt from Manufacturers' Federal Excise Tax (Exemption# 49-6000-885) and Florida sales tax (Exemption# 85-8012622393C-9). Certificates are available at www.volusia.org/purchasing. After accessing the foregoing website, select, "Doing Business with Volusia County" and "Consumer Certificate of Tax Exemption" from the available menu screens to see a copy of the certificates.
15. **PAYMENT TERMS:** Unless otherwise stated in the Special Conditions, the County will remit full payment on all undisputed invoices within forty-five (45) days from receipt by the appropriate person(s) (to be designated at time of Agreement) of the correct invoice(s) or receipt of all products or services ordered in accordance with F.S.S. 218.74
16. **DISCOUNTS:** All discounts except those for prompt payment shall be considered in determining the lowest net cost for evaluation purposes. All discounts shall remain firm for the term of the Agreement
17. **MEETS/MINIMUM SPECIFICATIONS:** The specifications listed in the scope of service are the minimum required performance specifications for this ITB; they are not intended to limit competition nor specify any particular Bidder, but to ensure that the County receives quality services. The Bidder represents that all offers to this ITB shall meet or exceed the minimum requirements specified.
18. **BRAND NAME OR EQUAL:** If items requested by this ITB have been identified in the specifications by a Brand Name "OR EQUAL" description, such identification is intended to be descriptive and not restrictive and is to indicate the quality and characteristics of products that will be acceptable. Offers proposing "equal" products will

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be considered for award if such products are clearly identified in the offer and are determined by the County to meet fully the salient characteristic requirements listed in the specifications.

Unless the Bidder clearly indicates in his/her offer that he/she is proposing an "equal" product, the offer shall be considered as offering the same brand name product referenced in the specifications.

If the Bidder proposes to furnish an "equal" product, the brand name of the product to be furnished shall be clearly identified. The evaluation of offers and the determination as to equality of the product offered shall be the responsibility of the County and will be based on information furnished by the Bidder. The Purchasing and Contracts Division is not responsible for locating or securing any information which is not identified in the response and reasonably available to the Purchasing and Contracts Division. To insure that sufficient information is available the Bidder shall furnish as part of the response all descriptive material necessary for the Purchasing and Contracts Division to determine whether the product offered meets the salient characteristics required by the specifications and establish exactly what the Bidder proposes to furnish and what the County would be binding itself to purchase by making an award.

- 19. SAMPLES:** When required, samples of products shall be furnished with response to the County at no charge. Samples may be tested and will not be returned to the Bidder. The result of any and all testing shall be made available upon written request.
- 20. SILENCE OF SPECIFICATIONS:** The apparent silence of these specifications or any supplemental specifications as to details or the omission from same of any detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail and that only materials of first quality and correct type, size, and design are to be used. All workmanship shall be first quality. All interpretations of specifications shall be made upon the basis of this statement.
- 21. CHANGE IN SCOPE OF WORK/SERVICE:**
- A. The County may order changes in the work/service consisting of additions, deletions, or other revisions within the general scope of the Agreement. No claims may be made by the Contractor that the scope of the project or of the Contractor's services has been changed, requiring changes to the amount of compensation to the Contractor or other adjustments to the Agreement, unless such changes or adjustments have been made by written amendment or change order to the Agreement signed by the County Representative, County Director of Purchasing and Contracts, and the Contractor.
 - B. If the Contractor believes that any particular work/service is not within the scope of work/service of the Agreement, is a material change, or will otherwise require more compensation to the Contractor, the Contractor must immediately notify the County's Representative in writing of this belief. The Contractor and County shall negotiate modifications to the Agreement in good faith and agree upon equitable adjustment for any changes in services or other obligations required of the Contractor due to such modifications. The Contractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order.
 - C. The County reserves the right to negotiate with the awarded Contractor(s) without completing the competitive bidding process for materials, products, and/or services similar in nature to those specified within this ITB for which requirements were not known when the ITB was released.
- 22. GOVERNING LAWS/VENUE:** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. Jurisdiction over and venue for any controversies or legal issues arising out of this Agreement shall, if in state court, be exclusively in the 7th Judicial Circuit in and for Volusia County, Florida, or, if in federal court, in the Middle District of Florida, Orlando Division. By entering into this Agreement, Contractor and County hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this Agreement, and, unless otherwise expressly provided herein, each agrees to bear its own costs and attorney's fees relating to any dispute arising under this Agreement.

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- 23. ASSIGNMENT:** Contractor may not assign or otherwise convey Contractor's rights and/or obligations under this Agreement without obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to, requiring the Contractor or his/her proposed successor in interest to post a performance bond. Any consent by the County under this Section shall be by written amendment to the Agreement in a form and substance specified by the County in its sole discretion. If Contractor desires to assign or otherwise convey its rights and/or obligations under this Agreement, Contractor shall no less than thirty (30) days prior to the assignment's proposed effective date, provide County with a written request for County's consent. Failure to provide such notice may result in the County assessing a processing fee of Five Hundred Dollars (US \$500.00); however, payment of such fee shall not entitle the Contractor to the County's acceptance or approval of its request for assignment.

Nothing herein shall preclude the right of the County to waive its rights under this Section but no waiver shall be granted by the County without a written and duly executed amendment to the Agreement.

- 24. CONTENT OF INVITATION/RESPONSE:** The contents of this ITB, all terms, conditions, specifications, and requirements included herein and the accepted and awarded response thereto may be incorporated into an agreement to purchase and become legally binding. Any terms, conditions, specifications, and/or requirements specific to the item or service requested herein shall supersede the requirements of these "GENERAL CONDITIONS AND INSTRUCTIONS."

- 25. DISCLOSURE OF BID CONTENT:** All material submitted becomes the property of the County and may be returned only at the County's option. The County has the right to use any or all ideas presented in any reply to this Bid. Selection or rejection of any Bid Submittal does not affect this right. The County of Volusia, Florida, is governed by the Public Record Law, Chapter 119, Florida Statutes (F.S.).

- 26. LIMITATION OF LIABILITY/INDEMNIFICATION:** The Contractor shall indemnify, defend and hold harmless the County, including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees, arising out of, resulting from, or incident to Contractor's performance of its obligations in whole or part of this Agreement, unless such injury or damage is occasioned solely by the fault, negligence, or willful misconduct of the County.

In all claims against County, no indemnification obligation shall be limited in any way by any limitation on the amount or type of damages, compensation or any benefits payable by or for Contractor, or its employees, agents, contractors, or subcontractors.

- 27. INFRINGEMENT CLAIM:** For all licensed software or derivative works of the licensed software used by County under the resulting Agreement, Contractor agrees to protect, defend, indemnify, and hold harmless County, its agents, elected officials and employees of County from and against any and all claims, demands, actions, and causes or action which may arise asserting that all or any part of Contractor's licensed software or applications that are owned and licensed by Contractor to County for use thereof by County, infringes or misappropriates any third party's valid state patent, copyright, trademark, or any trade secret protected under United States law. In the event of an infringement claim, Contractor shall have the option: (i) to procure for County the right to continue using any product or service found to be infringing; (ii) to replace any such infringing product or service with a non-infringing product or service; or (iii) to modify such infringing product or service to make it non-infringing. Contractor shall have no obligation under this Section 27, if the Infringement Claim is based upon the use of the system in combination with other hardware or software applications not furnished by Contractor, or if such a claim arises from County's modification of the system without the authorization of Contractor.

- 28. SOVEREIGN IMMUNITY:** County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any Section of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the County beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature and the cap on the amount and liability of the County for damages,

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regardless of the number or nature of claims in tort, equity, or contract, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

- 29. PATENTS, COPYRIGHT, AND ROYALTIES:** The supplier/provider, without exception, shall indemnify and save harmless the County of Volusia, its officers, agents and employees from liability of any nature of kind, including cost and expenses for or on account of any copyrighted, registered, patented, or unpatented invention, process, or article manufactured or used in the provision of goods and/or services, including use by the County of Volusia. If the supplier/provider uses any design, device, or materials covered by letters, patent, copyright, or registration, it is mutually agreed and understood without exception that the quoted price shall include all royalties or costs arising from the use of such design, device, or materials in any way involved.
- 30. USE OF COUNTY LOGO:** The County owns and retains all proprietary rights in its logos, trademarks, trade names, and copyrighted images (Intellectual Property). As such, nothing in this solicitation permits or shall be construed as authorizing Bidder to use or display County's Intellectual Property on Bidder's submittal documents or proposal (including any exhibits attached thereto) submitted to County by or on behalf of Bidder in response to this solicitation. The County has the right to redact the County Logo displayed on any proposal submitted.
- 31. TRAINING:** Unless otherwise specified suppliers/providers may be required at the convenience of and at no expense to the County to provide training to County personnel in the operation and maintenance of any item purchased as a result of this ITB.
- 32. ACCEPTANCE:** Products purchased as a result of this ITB may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at Bidder's expense. Those items and items not delivered by the delivery date specified in accepted offer and/or purchase order may be purchased on the open market. Any increase in cost may be charged against the Bidder.
- 33. SAFETY WARRANTY:** Any awarded Contractor including dealers, distributors, and/or manufacturers shall be responsible for having complied with all Federal, State, and local standards, regulations, and laws concerning the product or service specified, and the use thereof, applicable and effective on the date of manufacture or use or date in service including safety and environmental standards as apply to both private industry and governmental agencies.
- 34. SAFETY:** The Contractor shall take the necessary precautions and bear the sole responsibility for the safety of the methods employed by the Contractor in performing the work. The Bidder shall at all times comply with the regulations set forth by federal, state, and local laws, rules, and regulations concerning "OSHA" and all applicable state labor laws, regulations, and standards. The Contractor shall indemnify and hold harmless the County from and against all liabilities, suits, damages, costs, and expenses (including attorney's fees and court costs) which may be imposed on the County because of the Contractor, Subcontractor, or supplier's failure to comply with the regulations.
- 35. WARRANTY:** The Bidder agrees that, unless otherwise specified, the product and/or service furnished as a result of this ITB and award thereto shall be covered by the most favorable commercial warranty the Bidder gives to any customer for comparable quantities of such products and/or services and that the right and remedies provided herein are in addition to and do not limit any rights afforded to the County of Volusia by any other provision of the ITB/offer.
- 36. AWARD:** The County reserves the right to award the Agreement to the Bidder(s) that the County deems to offer the lowest/most responsive and responsible Bid(s), as defined the solicitation. The County is therefore not bound to accept a Bid based only on lowest price. In addition, the County has the sole discretion and reserves the right to cancel this ITB, to reject any/all Bids, to waive any/all informalities and/or irregularities, or to re-advertise with either the identical or revised specifications, if it is deemed to be in the best interest of the County to do so. Nothing prohibits the County from rejecting / rebidding when responses exceed budget and the County must change the solicitation to lower costs. The County also reserves the right to make multiple awards based on

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experience and qualifications or to award only a portion of the items and/or services specified, if deemed to be in the County's best interest or award only a portion of the solicitation.

- 37. OTHER AGENCIES:** All Contractors awarded Agreements from this Bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the Agreement under the same prices, terms, and conditions, if agreed to by both parties. It is understood that at no time will any city, municipality, or other agency be obligated for placing an order for any other city, municipality, or agency; nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further, it is understood that each agency will issue its own purchase order to the awarded Contractor(s).
- 38. FOB DESTINATION:** The F.O.B. point for this Agreement and for all purchases made under it shall be as specified by the using department (in accordance with the Bid Submittal Form), in Volusia County, Florida. Delivery will not be complete until the using department has accepted each item. Delivery to a common carrier shall not constitute delivery to the ordering agency. All disputes shall be between the Contractor and the carrier.
- 39. SPECIAL CONDITIONS:** County facilities are administrative facilities that provide services to the Volusia County public and any agencies that it serves. As such, activities in all buildings are critical to the provisioning of services to the public and shall not be interrupted by the Contractor's work activities.
- 40. LICENSES, CERTIFICATES, AND PERMITS**
- A. The County reserves the right to require proof that the Bidder is an established business and is abiding by the ordinances, regulations, and laws of their community and the state of Florida, such as but not limited to: Business Tax Receipts, business licenses, Florida sales tax registration, Federal Employers Identification Number, Registration with the Florida Department of State, Division of Corporations' Sunbiz at www.sunbiz.org, AND;
- B. The Bidder shall be required, upon notification of recommendation of award, to register with the Florida Department of State Division of Corporations at www.sunbiz.org in order to provide services under the resulting Agreement.
- C. If a license is required, the Bidder shall be licensed to perform the required work in accordance with the laws of the State of Florida and local ordinances. Bidder shall also verify that his/her subcontractors are licensed to perform the work in accordance with the laws of the State of Florida and local ordinances.
- 41. RECORDS & RIGHT TO AUDIT:** County shall have the right to audit the books, records, and accounts of Contractor and its Subcontractors that are related to the resulting Contract. Contractor and its Subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the resulting Contract. Contractor shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for a retention period of five (5) years after completion or termination of the Contract, and any renewals, as required by Item 65, General Records Schedule GS1-SL for State and Local Government Agencies, effective February 19, 2015 and the Florida Public Records Act (Chapter 119, Florida Statutes). Contractor shall, by written Contract, require its Subcontractors to agree to the requirements and obligations of this Section 40 Audits will be subject to applicable privacy and confidentiality laws and regulations and Contractor's privacy and confidentiality policies and procedures.
- 42. CLAIM NOTICE:** The Contractor shall immediately report in writing to the County's designated representative or agent any incident that might reasonably be expected to result in any claim under any of the coverage mentioned herein. The Contractor agrees to cooperate with the County in promptly releasing reasonable information periodically as to the disposition of any claims, including a résumé of claims experience relating to all Contractor operations at the County project site. The designated representative for the County shall be:

Name: County of Volusia, Florida
Personnel/Risk Management Division

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Address: 230 North Woodland Boulevard, Suite 250
DeLand, Florida 32720
Telephone: 386-736-5963
Fax: 386-822-5006

43. WAIVER OF CLAIMS: Once this Agreement expires, or final payment has been requested and made, the awarded Contractor shall have no more than thirty (30) calendar days to present or file any claims against the County concerning this Agreement. After that period, the County will consider the Contractor to have waived any right to claims against the County concerning this Agreement.

44. COMPLIANCE WITH LAWS AND REGULATIONS: The Contractor shall be responsible to know and to apply all applicable federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the work, or which in any way affect the conduct of the work. Contractor shall observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees for all work or services performed under this Agreement. The Contractor shall protect and indemnify County and all its officers, agents, servants, or employees against any liability or claim made against the County arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by Contractor, its representatives, Subcontractors, sub-consultants, professional associates, agents, servants, or employees.

At time of Bid submittal, Contractor shall hold the required licensure to be the prime Contractor for all work to be performed under the resulting Agreement. If Contractor proposes to use a Subcontractor or sub-consultant to perform any work under the resulting Agreement such subcontractor and/or sub-consultant shall, at the time of Bid submittal, hold the required licensure for all work to be performed under the resulting Agreement as a subcontractor and shall maintain such license(s) in full force and effect during the term of the resulting Agreement. All licenses and permits required to perform Contractor's duties under the resulting Agreement whether such license or permit is required by the federal government, State of Florida, Volusia County, or any municipality, shall be at Bidder's sole cost and expense, and shall not be a cost of the County. All required licenses and permits shall be maintained in full force and effect during the term of the resulting Agreement.

45. SCRUTINIZED COMPANIES-FL STATUTE SECTION 287.135 AND 215.473: Contractor must certify that the company is not participating in a boycott of Israel. For Contracts for goods or services of one million dollars or more, Contractor must also certify that Contractor is not on the Scrutinized Companies that Boycott Israel List, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has not been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law. The County will not contract for the provision of goods or services with (i) any company participating in a boycott of Israel, and, (ii) for Contracts for goods or services of one million dollars or more, any other scrutinized company as described above. Contractor must submit the certification form (See Section 15.0). Submitting a false certification shall be deemed a material breach of contract. The County shall provide notice, in writing, to the Contractor of the County's determination concerning the false certification. The Contractor shall have five (5) Calendar days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the County's determination of false certification was made in error then the County shall have the right to terminate the Contract and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

46. MODIFICATIONS DUE TO PUBLIC WELFARE OR CHANGE IN LAW: The County shall have the power to make changes in the Agreement as the result of changes in law and/or ordinances of Volusia County to impose new rules and regulations on the Contractor under the Agreement relative to the scope and methods of providing services as shall, from time to time, be necessary and desirable for the public welfare. The County shall give the Contractor notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Contractor. In the event any future change in Federal, State or County law or the ordinances of Volusia County materially alters the

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obligations of the Contractor, or the benefits to the County, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Contractor, then the Contractor or the County shall be entitled to an adjustment in the rates and charges established under the Agreement. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. The County and Contractor agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the Agreement, the County and the Contractor shall negotiate in good faith, a reasonable and appropriate adjustment for any changes in services or other obligations required of the Contractor directly and demonstrably due to any modification in the Agreement under this clause.

47. RIGHT TO REQUIRE PERFORMANCE:

- A. The failure of the County or Contractor at any time to require performance by the other of any provision hereof shall in no way affect the right of the County or Contractor thereafter to enforce same, nor shall waiver by the County of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.
- B. In the event of failure of the Contractor to deliver services in accordance with the Agreement terms and conditions, the County, after due written notice, may procure the services from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the County may have.

48. FORCE MAJEURE: Neither party shall be liable for any failure or delay in the performance of its obligations under the Agreement to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Agreement, acts of God, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:

- A. Upon the occurrence of Force Majeure Event, the non-performing party shall be excused from any further performance of those obligations under this Agreement that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- B. Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Agreement. Such notice shall be delivered or otherwise communicated to the other party within two (2) business days following the failure or delay caused by the Force Majeure Event, or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.
- C. In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Agreement.

49. CONTRACTOR'S PERSONNEL: During the performance of the Agreement, the Contractor agrees to the following:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, handicap, or national origin, except when such condition is a bona fide occupational qualification reasonably necessary for the normal operations of the Contractor. The

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Contractor agrees to post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an Equal Opportunity Employer;

- B. The Contractor shall be responsible for ensuring that its employees, agents, and subcontractors comply with all applicable laws and regulations and meet federal, state, and local requirements related to their employment and position;
- C. The Contractor certifies that it does not and will not during the performance of the Agreement employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986, as amended;
- D. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 49;
- E. The Contractor shall include the provisions of the foregoing paragraphs A, B, C, and D, above, in every subcontract or purchase order so that the provisions will be binding upon each Contractor;
- F. The Contractor and any Subcontractor shall pay all employees working on this Agreement not less than minimum wage specified in the Fair Labor Standards Act (29 CFR 510-794) as amended;
- G. Any information concerning the County, its products, services, personnel, policies, or any other aspect of its business learned by the Contractor or personnel furnished by the Contractor in the course of providing services pursuant to the Agreement and exempt from disclosure pursuant to Section 119.01, F.S., shall be held in confidence and shall not be disclosed by the Contractor or any employee or agents of the Contractor or personnel furnished by the Contractor, without the prior written consent of the County; and
- H. Both Contractor and Subcontractors awarded an Agreement as a result of Section 10 **Local Preference**, shall register all open positions related to this Agreement with the Center for Business Excellence (CBE), and submit appropriate affidavit (see Special Conditions Section 11.0 and 12.0) showing compliance.

50. COUNTY/CONTRACTOR RELATIONSHIP:

- A. Any awarded Contractor shall provide the services required herein strictly under a contractual relationship with the County and is not, nor shall be, construed to be an agent or employee of the County. As an independent Contractor the awarded Contractor shall pay any and all applicable taxes required by law; shall comply with all pertinent Federal, State, and local statutes including, but not limited to, the Fair Labor Standards Act, The Americans with Disabilities Act, the Federal Civil Rights Act, and any and all relevant employment laws. The Contractor shall be responsible for all income tax, FICA, and any other withholdings from its employees' or Subcontractor's wages or salaries. Benefits for same shall be the responsibility of the Contractor including, but not limited to, health and life insurance, mandatory Social Security, retirement, liability/risk coverage, and workers' and unemployment compensation.
- B. The Contractor shall hire, compensate, supervise, and terminate members of its work force; shall direct and control the manner in which work is performed including conditions under which individuals will be assigned duties, how individuals will report, and the hours individuals will perform.
- C. The Contractor shall not be provided special space, facilities, or equipment by the County to perform any of the duties required by the Agreement, nor shall the County pay for any business, travel, or training expenses or any other Agreement performance expenses not explicitly set forth in the specifications.

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D. The Contractor, except as expressly set forth herein, shall not be exclusively bound to the County and may provide professional services to other private and public entities as long as it is not in direct conflict and does not provide a conflict of interest with the services to be performed for the County.

51. DISQUALIFICATION OF BIDDERS: One (1) Bid: Only one (1) Bid submittal from an individual firm, partnership or corporation under the same or under different name will be considered. If a Bidder submitted more than one (1) Bid for the work involved, all Bids submitted from such Bidder will be rejected. Collusion among Bidders: If it is believed that collusion exists among the Bidders, the Bids of all participants in such collusion shall be rejected and no participants in such collusion will be considered in future proposals for the same work.

52. DEBARMENT: Purpose and Intent. The county endeavors to solicit offers from, award contracts to, and consent to subcontracts with responsible vendors and contractors only. To further this policy, the county asserts its authority to debar certain vendors and contractors from participating in solicitations pursuant to the policies and procedures herein. The serious nature of debarment requires that this sanction be imposed only when it is in the public interest for the county's protection and not for purposes of punishment. Debarment is intended as a remedy in addition to, and not in substitution of, the evaluation of the responsibility of county vendors and contractors, and this policy and the procedures provided for herein shall not supplant or supersede county's authority to reject or otherwise terminate vendors or contractors based on findings of non-responsibility on a case-by-case basis. Further information regarding the County's policies and procedures in regards to DEBARMENT may be found at <https://www.volusia.org/core/fileparse.php/5896/urlt/Debarment-Policy-final-3-27-17.pdf>

53. For purposes of this ITB and evaluation of responses hereto the following shall apply: unit prices shall prevail over extended prices; written matter shall prevail over typed matter; numbers spelled in word form shall prevail over Arabic numerals ("one" over "1"). When not inconsistent with context words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

54. DISPUTE RESOLUTION

Good Faith Efforts to Resolve. The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section 53, Dispute Resolution. The Contractor and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Agreement and any applicable statement of Work or Services. Issues shall be escalated to successive management levels as needed.

Informal Dispute Resolution. If a dispute develops between the parties concerning any provision of this Agreement, or the interpretation thereof, or any conduct by the other party under these agreements, and the parties are unable to resolve such dispute within five (5) business days or longer, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.

Discovery and Negotiation / Recommended Procedures. Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within five (5) County Work Days of issuance of the Dispute Notice, or such other time as may be mutually allowed by the Project Managers as being necessary given the scope and complexity of the dispute, the Project Managers may, depending upon the nature, scope, and severity of the dispute, escalate the dispute as indicated below:

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County Work Days	Contractor's Representative	County Representative
10	Contractor's Project Manager	County's Project Manager
10	Contractor's Sr. Vice President of Sales	Director of Purchasing and Contracts
20	Contractor's COO or President	Deputy County Manager

Formal Dispute Resolution. At any point after issuance of a Dispute Notice under this section, either party may request and initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation or such longer time as may be agreed upon by both parties as being necessary for the mutual selection of a mediator and scheduling of such mediation. Any such mediation shall be convened and conducted in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize any pending termination remedies and commence litigation in a court of competent jurisdiction. Each party shall bear its own costs and attorney's fees for mediation or arbitration of an issue arising under this Agreement.

Right to Terminate Reserved. Regardless of the dispute resolution procedures provided for in this Section 53, Dispute Resolution, nothing herein shall affect, delay, or otherwise preclude a party from terminating this Agreement in accordance with the provisions of Special Conditions, Termination, it being understood that these dispute resolution procedures are intended as a means of resolving disputes both during the term of this Agreement and after termination or expiration thereof.

1. Required Types of Insurance

The Contractor shall purchase and maintain at its own expense, during the term of the Agreement, the types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to the County are detailed in *Figure 1* below. *Figure 1* is a listing and general summary of insurance policies required and is not intended to be comprehensive as to the requirements of each specific policy. Contractors shall review the additional requirements in this Exhibit II and ensure that the insurance policies comply with the specific terms and conditions therein.

Figure 1:

TYPE OF INSURANCE		
WORKERS COMPENSATION ☒ Waiver of Subrogation		
Florida Statutory Coverage		
COMMERCIAL GENERAL LIABILITY - Broad form ☒ Occurrence Basis ☒ Blanket Contractual Liability ☒ County Additional Insured ☒ Waiver of Subrogation	EACH OCCURRENCE	\$ 1,000,000
	GENERAL AGGREGATE	\$ 2,000,000
	Premises-Operations	\$ 1,000,000
	Products & Completed Ops	\$ 1,000,000
	Personal & Adv Inj.	\$ 1,000,000
	Fire Damage	\$
		\$
AUTO LIABILITY ☒ Any Auto ☒ CA 99 48 Broadened Pollution Liability Endorsement ☒ Pollution liability coverage including unloading of fuel. Transportation Pollution Liability endorsement or policy. ☒ Contractor, its subcontractors & independent contractors shall name as Additional Insureds: County, Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City of DeLand, Flagler County ☒ Waiver of Subrogation in favor of County, Volusia County School Board, VOTRAN, City of Daytona Beach, City of Port Orange, City of South Daytona, City of New Smyrna Beach, City of DeLand, Flagler County	Combined Single Limit	\$ 1,000,000
	Bodily Injury (Per person)	\$
	Bodily Injury (Per accident)	\$
	Property Damage (Per Accident)	\$
		\$
CANCELLATION: Thirty (30) days written notice of cancellation is required to the Certificate Holder:		
Certificate Holder: County of Volusia Purchasing & Contracts Division 123 W. Indiana Avenue, Room 302 DeLand, FL 32720 ATTN: <u>Eddie Molina</u>		Risk Management Division

- A. For the purposes of indemnification of the County or an endorsement or insurance coverage under this Agreement/Contract under which the County is a "named insured", "additional named insured", or "additional insured", the term "County" includes the County of Volusia (a body corporate and politic and a subdivision of the State of Florida), including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the County has agreed by contract to provide additional insured status.
- B. Subcontractors and Independent Contractors. All subcontractors & independent contractors utilized by Contractor to provide services to County and its employees under this Agreement/Contract shall be required to maintain all insurance policies with the same terms, conditions, and requirements required of the Contractor in Figure 1 above and described below in this Exhibit.
- C. Claims Made Basis Insurance Policies. All insurance policies written on a Claims Made Form shall maintain a retroactive date prior to or equal to the effective date of the Agreement. The Contractor shall purchase a Supplemental Extended Reporting Period ("SERP") with a minimum reporting period of not less than three (3) years in the event the policy is canceled, not renewed, switched to occurrence form, or any other event which requires the purchase of a SERP to cover a gap in insurance for claims which may arise under or related to the Agreement. The Contractor's purchase of the SERP shall not relieve the Contractor of the obligation to provide replacement coverage. In addition, the Contractor shall require the carrier immediately inform the Contractor, the County Risk Manager, and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under the Agreement.
- D. Risk Retention Groups and Pools. Contractor shall not obtain an insurance policy required under this Agreement from a Risk Retention Group or Pool.
- E. Minimum Required Policies and Limits. Minimum underlying policies, coverages, and limits shall include all policies listed in *Figure 1*.
- F. Additional Insured, Policies, Coverages, Limits, Primary and Non-Contributory Basis. Under all insurance policies where the County is required to be an additional insured, the coverage and limits provided to the County under Contractor's insurance policies shall be that listed in *Figure 1* or the Contractor's actual limits, whichever is higher. All coverage provided to the County as an additional insured by said policies shall be primary and shall not be additional to or contributing with any other insurance carried by or for the benefit of the County with any other insurance available to the County. The Contractor shall utilize ISO Form CG 20 38 04 13 and CG 20 37 04 13 or equivalent to provide additional insured status to the County and any party to whom the County is contractually bound to provide additional insured status under a commercial general liability policy.
- G. If the services provided require the disposal of any hazardous or non-hazardous materials off the job site, the disposal site operator must furnish a certificate of insurance for Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under the Agreement.

- H. Workers' Compensation. Workers' Compensation insurance is required for all employees of the Contractor, employed or hired to perform or provide work or services under the Agreement or that is in any way connected with work or services performed under the Agreement, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory. Policy shall include a waiver of subrogation in favor of the County. If Contractor is using a "leased employee" or an employee obtained through a professional employer organization ("PEO"), Contractor is required to have such employees covered by worker's compensation insurance in accordance with Florida Worker's Compensation law and the insurance carrier of the PEO execute a waiver of subrogation in favor of the County, its employees and insurers.
- i. Contractor and its Subcontractors, or any associated or subsidiary company doing work on County property or under the Agreement must be named in the Workers' Compensation coverage or provide proof of their own Workers' Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Contractor's Subcontractors fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Subcontractor of the Contractor, the Contractor shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).
- I. Commercial General Liability Insurance. The Contractor shall acquire and maintain Commercial General Liability insurance, with limits of not less than the amounts shown above. Contractor shall not obtain an insurance policy wherein the policy limits are reduced by defense and claim expenses. Such insurance shall be issued on an occurrence basis and include coverage for the Contractor's operations, independent Contractors, Subcontractors and "broad form" property damage coverages protecting itself, its employees, agents, Contractors or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, and products liability/completed operations including what is commonly known as groups A, B, and C. Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Contractor or by any of its Subcontractors arising from work or services performed under the Agreement. Public liability coverage shall include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Contractor's Agreement to indemnify, defend and hold harmless the County as provided in the Agreement. The commercial general liability policy shall provide coverage to County when it is required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of any endorsements excluding or limiting coverage for Bodily Injury, Property Damage, Products/Completed Operations, Independent Contractors, Property of County in Contractor's Care, Custody or Control or Property of County on which contracted operations are being performed, Explosion, Collapse or Underground hazards

(XCU Coverage, Contractual Liability or Separation of Insureds. When County is added as additional insured by endorsement, ISO Endorsements CG 20 38 and CG 20 37 or their equivalent shall be used and shall provide such additional insured status that is at least as broad as ISO form CG 20 10 11 85. If County has agreed by separate contract to require Contractor to name another party as an additional insured, Contractor shall add said party as an additional insured to the commercial general liability policy by ISO Endorsement CG 20 38. Contractor shall require its subcontractors performing work under this Agreement to add the County and any other party that the County has agreed by separate contract to require Contractor to name as an additional insured to their Commercial General Liability policy as an additional insured by ISO Endorsement CG 20 38. All commercial general liability policies shall provide a waiver of subrogation in favor of the County and any other party required by this Agreement to be named as an additional insured.

- J. Motor Vehicle Liability. The Contractor shall secure and maintain during the term of the Agreement motor vehicle coverage in the split limit amounts of no less than the amounts shown in *Figure 1* per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above **with “Any Auto”, Coverage Symbol 1, providing coverage for all autos operated regardless of ownership, and** protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle. The County shall be an additional insured under this policy when required in *Figure 1*.
- K. Transportation Pollution Liability. Contractor shall purchase coverage for liability caused by pollution conditions arising out of the operations of Contractor and its subcontractors. The County shall be named as additional insured. Coverage shall apply to bodily injury, sickness, disease, mental anguish or shock, including death and medical monitoring; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy shall provide coverage for loading, transporting, and unloading from the project site to the final disposal location. Policy shall include Non-owned Disposal Site coverage by endorsement. All activities contemplated in the Agreement shall be specifically scheduled on the policy as “covered operations”. Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, provided such conditions are not naturally present in the environment in the concentration or amounts discovered. Policy shall include a severability of interest or separation of insured provision (no insured vs. insured exclusion) and be endorsed to be primary and non-contributory with any other coverage or self-insurance maintained by the County. Should Contractor’s policy or endorsement providing transportation pollution liability be modified to exclude or reduce the coverage required herein, Contractor shall promptly notify County and provide such coverage under another policy or form with the County included as an additional insured.

- L. Primary and Excess Coverage. Any insurance required may be provided by primary and excess insurance policies.

2. Insurance Requirements

A. General Insurance Requirements:

- i. All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- and a Financial category size of VIII or greater in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
- ii. Approval by County of any policy of insurance shall not relieve Contractor from its responsibility to maintain the insurance coverage required herein for the performance of work or services by the Contractor or its Subcontractors for the entire term of the Agreement and for such longer periods of time as may be required under other clauses of the Agreement.
- iii. Waiver of Subrogation. The Contractor hereby waives all rights against the County and its Subcontractors for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of the Agreement. The Contractor shall require similar waivers from all its Subcontractors. Contractor's insurance policies shall include a waiver of subrogation in favor of the County. This provision applies to all policies of insurance required under the Agreement (including Workers' Compensation, and general liability).
- iv. County Not Liable for Paying Deductibles. For all insurance required by Contractor, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the Contractor's business or any Subcontractor performing work or services on behalf of the Contractor or for the Contractor's benefit under the Agreement.
- v. Cancellation Notices. During the term of the Agreement, Contractor shall be responsible for promptly advising and providing the County Risk Manager and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under the Agreement within two (2) business days of receipt of such notice or change.
- vi. Deductibles. Contractors that maintain and administer a self-insured retention or a large deductible program exceeding the insurance requirements listed in this solicitation using a formal program to fund either program may submit an exception in accordance with Section 2.3 of ITB #19-B-70EM, Questions, Exceptions, and Addenda, to be considered for this solicitation.

The request must include a summary of the program's design, funding method, and the program's supporting financial information. If additional information is necessary, the County will request more specific information, which must be provided by the Contractor. The County Risk Manager will

review the information submitted and determine whether the program is acceptable to the County.

Contractors with no formal risk management program in place to manage and fund deductibles or self-insured retentions may not be considered. Subject to County approval, Contractor may obtain a letter of credit in the amount equivalent to the deductible, which shall remain in effect during the term of the Agreement at no additional cost to the County.

- vii. Contractor's obligations or services shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity or insurance defense of additional or named insureds which would otherwise exhaust or be unavailable as to a party or person described in this Contract.

3. Proof of Insurance

- A. The Contractor shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.
 - B. The Contractor shall furnish proof of insurance acceptable to the County prior to or at the time of execution of the Agreement and the Contractor shall not commence work or provide any service until the Contractor has obtained all the insurance required under the Agreement and such insurance has been filed with and approved by the County. Upon request from the County, the Contractor shall furnish copies of all requested policies and any changes or amendments thereto, immediately, to the County, the County Risk Manager, and Purchasing and Contracts Divisions, prior to the commencement of any contractual obligations. The Agreement may be terminated by the County, without penalty or expense to County, if at any time during the term of the Agreement proof of any insurance required hereunder is not provided to the County.
 - C. All certificates of insurance shall clearly indicate that the Contractor has obtained insurance of the type, amount and classification required by this Section. No work or services by Contractor or its Subcontractors shall be commenced until County has approved these policies or certificates of insurance. Further, the Contractor agrees that the County shall make no payments pursuant to the terms of the Agreement until all required proof or evidence of insurance has been provided to the County. The Agreement may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.
 - D. The Contractor shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of the Agreement. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Contractor's expense or terminate the Agreement but County has no obligation to renew any policies.
4. The provisions of this Exhibit II, shall survive the cancellation or termination of the Agreement.



**COUNTY OF VOLUSIA
PURCHASING & CONTRACTS DIVISION**
123 West Indiana Avenue, Room 302
DeLand, Florida 32720-4608
(386) 736-5935 ♦ Fax: (386) 736-5972
www.volusia.org

March 14, 2019

**ADDENDUM NO. 1
Bulk Fuel
ITB No. 19-B-70EM**

TO: All firms interested in providing the required products

The purpose of this addendum is to provide the following clarifications, changes, modifications and/or additions to the solicitation documents. This addendum is an integral part of the Solicitation/Contract Documents and shall take precedence over what was previously stated in the solicitation document.

****NOTICE****

Attachments:

- Attached to this addendum is an invoice in response to question 7.

Questions Received:

Question 1: 1. Can you please specify the estimated annual amount of Diesel fuel broken down Ultra Low Sulfur Diesel Fuel and No. 2 Red-Dyed Diesel?

Response 1: The estimated annual usage of ULS diesel is 596,000 gallons and the No 2 Red-Dyed diesel usage is 217,000 gallons.

Question 2: Will the pre-bid meeting be available via conference call?

Response 2: Unfortunately we are not able to accommodate conference calls. However, it is not mandatory.

Question 3: Can you please clarify that the City of New Smyrna Beach estimated annual usage of unleaded fuel is supposed to read 110,000 gallons?

Response 3: Yes. 110,000 gallons is correct.

Question 4: What is the name of the current Incumbent?

Response 4: Gentry Oil LLC, Glover Oil Company LLC, and Mansfield Oil Company

Question 5: May I have a copy of the current contract?

Response 5: All associated documents with the previous bid are available at www.volusia.org/purchasing. Search for ITB 14-B-72VO.

Question 6: May I have a bid tabulation of the last award?

Response 6: All associated documents with the previous bid are available at www.volusia.org/purchasing. Search for ITB 14-B-72VO.

Question 7: May I have copies of the most recent Unleaded, Ultra Low Sulfur Diesel Fuel and No. 2 Red-Dyed Diesel invoices?

Response 7: Please see attached invoice.

Question 8: Are there any Diversity goals?

Response 8: All goals associated with this contract are published within the bid document.

Question 9: What are the estimated gallons of fuel purchased annually?

Response 9: The estimates are outlined in section 1.0. This information is provided for informational purposes only and in no way represents a guarantee of future expenditures.

Question 10: Are there fuel tanks at your site? If yes, can you please tell me their sizes and if they are above or below ground?

Response 10: Attachment B to the bid document outlines all of the facilities with fuel tanks. AST indicates above ground and UST indicates underground.

Question 11: Is fuel purchased through another entity such as a state or county? If so, please provide the name.

Response 11: The Consortium includes local and county government entities as listed in section 1.0.

Question 12: Can you please provide the Estimated Annual Usage PER TANK and the Average Load Size PER TANK?

Response 12: This information is unavailable.

Question 13: Can you please provide the specific fuel specifications PER TANK?

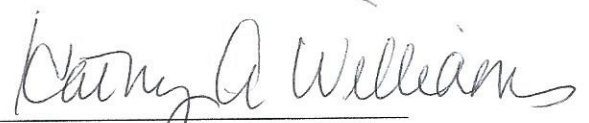
Response 13: Please see Attachment B.

All other terms and conditions remain unchanged.

END OF ADDENDUM NO. 1

Total Pages: 5

If there are any questions, please contact the staff member responsible for this project, Kathy Williams, Procurement Manager, at phone: (386) 822-5772 or via E-mail: emolina@volusia.org.



Kathy Williams, CPPO, CPPB, MBA
Procurement Manager
Purchasing and Contracts Division

Please sign and return with proposal 18-B-46KW

Vendor: _____

Signed by (Name/Position): _____

Phone No.: _____ Date: _____

FAILURE TO RETURN THIS FORM WITH THE BID SUBMITTAL MAY CAUSE THE PROPOSAL TO BE RENDERED NON-RESPONSIVE

***** PLEASE PAY *****
***** FROM THIS *****
***** ORIGINAL *****
***** INVOICE *****

INVOICE # 369430

SHIP TO:
VOLUSIA COUNTY
INDIAN LAKE ROAD
1336 INDIAN LAKE ROAD
DAYTONA BEACH.V, FL 32124-1051

REMIT TO:
MANSFIELD OIL COMPANY
PO BOX 733706
DALLAS, TX 75373-3706
FEIN 58-1091383

ACCOUNT # 13921-04-369430
ORDER # 6625

BILL TO: VOLUSIA COUNTY
1270 INDIAN LAKE ROAD

DAYTONA BEACH, FL 32124

----- CONTROL # -----
369430

TERMS:	SHIP VIA:	TERMINAL:	REL #	DEL DATE	INV DATE
Net 30	SUN FUELS INC	ORLANDO, FL	144-095	03/05/2019	03/08/2019

B/L NO	DESCRIPTION	GROSS	NET	PRICE	AMOUNT
4311126	87 UNL W/10%ETH	07:48	6501	1.795000	11,606.47
	VOLUSIA CO GAS TAX			.198000	1,280.27
	FED EXC LUST GOVT TA			.001000	6.47
	FL INSPECTION FEE			.001250	8.08
	FL MTR FUEL TAX			.181000	1,170.35
	FL POLLUTION TAX			.020714	133.94
				=====	
				AMOUNT DUE	\$14,205.58

DUE DATE 4/04/2019

4/17 RH Confirmed 24 Hour Access

PLEASE SEE UPDATED BANK INFORMATION IN THE "REMIT TO" SECTION ABOVE! THANK YOU.

2 /
OK DS
OK mp
✓CCG

Glover Oil Co. Inc.

P.O. Box 790
3109 S. Main St
MELBOURNE, FL 32902

(321) 723-3953

Invoice

Invoice No: 4314445-1

Invoice Date: 03/11/19

Branch: 1

Sold To: 77520099
VOLUSIA COUNTY- TOMOKA LANDFIL
ATTN: DIXIE SIMMONS
1270 INDIAN LAKE DRIVE
DAYTONA BEACH, FL 32124

Shipped To: 77520099-1
VOLUSIA COUNTY-TOMOKA LANDFILL
1990 TOMOKA LANDFILL ROAD
DAYTONA BEACH, FL 32128

Salesperson	Delivery Date	Truck	Shipped Via	Purchase Order	Terms	User	
None	03/11/19	COTRK	HGLOVER		Net 30	br	
Product			SC	Quantity	Price	Disc	Amount
1	ULS – ULTRA LOW SULPHER DIESEL		G	2837.00 Gallon	2.16280		6,135.86
				Products Total			\$6,135.86
COUNTY TAX L-S COLLECTED				2837.00	0.14800		419.88
LUST TAX				2837.00	0.00100		2.84
POLLUTANT TAX COLLECTED				2837.00	0.02071		58.75
STATE EXCISE TAX L-S COLLECTED				2837.00	0.18100		513.50
				Taxes and Fees Total			\$994.97
					Invoice Balance	\$7,130.83	

Invoice

1 Units HM. Fuel Oil No. 2 Combustible Liq. 3. NA1993. PGIII

IN ANY EMERGENCY INVOLVING THIS SHIPMENT WHICH ENDANGERS LIFE OR PROPERTY:
*****CALL 1-800 -342-7121 DAY OR NIGHT*****

Customer Copy

Glover Oil Co. Inc.

P.O. Box 790
3109 S. Main St
MELBOURNE, FL 32902

(321) 723-3953

Invoice

Invoice No: 4314445C

Invoice Date: 03/11/19

Branch: 1

Sold To: 77520099
VOLUSIA COUNTY- TOMOKA LANDFIL
ATTN: DIXIE SIMMONS
1270 INDIAN LAKE DRIVE
DAYTONA BEACH, FL 32124

Shipped To: 77520099-1
VOLUSIA COUNTY-TOMOKA LANDFILL
1990 TOMOKA LANDFILL ROAD
DAYTONA BEACH, FL 32128

Salesperson	Delivery Date	Truck	Shipped Via	Purchase Order	Terms	User
None	03/11/19	COTRK	HGLOVER		Net 30	br
Product	SC	Quantity	Price	Disc	Amount	
1 ULSD – ULTRA LOW SULFER DYED DIESEL	G	4477.00 Gallon	2.16660		9,699.87	
Products Total					\$9,699.87	
LUST TAX		4477.00	0.00100		4.48	
POLLUTANT TAX COLLECTED		4477.00	0.02071		92.72	
Taxes and Fees Total					\$97.20	
Invoice Balance					\$9,797.07	

Invoice

1 Dyed Diesel Fuel. Nontaxable Use Only.
Penalty for taxable use.

IN ANY EMERGENCY INVOLVING THIS SHIPMENT WHICH ENDANGERS LIFE OR PROPERTY:
*****CALL 1-800 -342-7121 DAY OR NIGHT*****

Customer Copy



COUNTY OF VOLUSIA
PURCHASING & CONTRACTS DIVISION
123 West Indiana Avenue, Room 302
DeLand, Florida 32720-4608
(386) 736-5935 ♦ Fax: (386) 736-5972
www.volusia.org

April 3, 2019

ADDENDUM NO. 2
Bulk Fuel
ITB No. 19-B-70EM

TO: All firms interested in providing the required products

The purpose of this addendum is to provide the following clarifications, changes, modifications and/or additions to the solicitation documents. This addendum is an integral part of the Solicitation/Contract Documents and shall take precedence over what was previously stated in the solicitation document.

****NOTICE****

Attachments:

- Current OPIS Report dated 3/28/19

Clarification:

- Section 2.1, Proposed Schedule has April 15, 2019 as the Bid Closing Date. The correct date is April 16, 2019.
- Attachment B (Revision 1) has been posted to the county website. The contact information provided on this attachment is for informational purposes only. Please ensure that all questions are routed to the Procurement Analyst at emolina@volusia.org.

Questions Received:

Question 1: Could you please clarify how you want pricing presented for the subject bid? Will the OPIS differential be based as an adder to the Orlando OPIS or do we choose which OPIS we will use based on where the product will come from?

Response 1: Pricing will be based on the Orlando OPIS in accordance with section 1.2

Question 2: The pricing sheet only provides for transport pricing....I see numerous tanks in the list that would be considered tank wagon deliveries or less than transport load deliveries.....are you going to add tank wagon pricing for this bid?

Response 2: The portion of Attachment "A" where it lists less than 8,000 for unleaded and less than 7500 for diesel is intended to be what the Contractor should fill out for tankwagon. These amounts are considered less than full transport loads therefore should be used for tankwagon pricing.

Question 3: When is the anticipated award date?

Response 3: The anticipated award date is May 7.

Question 4: Will the award be decided at a board meeting?

Response 4: The award will be made during a Volusia County Council meeting.

Question 5: Can you confirm the contract period?

Response 5: Per section 2.10, the contract period is for an initial three (3) year term with the option of two (2) subsequent one (1) year renewals.

Question 6: Are renewals on a member by member basis or as the consortium as a whole?

Response 6: Renewals will be handled by the County of Volusia. Consortium members are free to pursue their own fuel bid at anytime, however they have not done so over the past five (5) years.

Question 7: Do any of the locations have special requirements for delivery vehicles, for example are there sites that do not have enough room to fit a full sized 18 wheeled semi-truck? Are there sites that will require trucks to bring extra lengths of hose to reach the tanks, or will site require any special fittings for delivery?

Response 7: Please see Attachment B (Revision 1)- Special Requirements have been added.

Question 8: Can you please provide the estimated annual usage of ULS Diesel and Red-Dyed Diesel broken down by location and by product?

Response 8: Please see attached Amended Attachment B (Revision 1). This information is provided as an estimate only and in no way represents a guarantee of future expenditures.

Question 9: Will the bid opening be open to the public and what information will be read aloud?

Response 9: The bid opening is open to the public. The name of each bidder will be read aloud. The complete tabulation will be available in 30 days or when there is a recommendation of award, whichever comes first.

Question 10: How often are split loads utilized in transport deliveries?

Response 10: Volusia County- 3-4 times a month

Volusia County School Board- Less than a dozen a year...VCSB often split a load between Deland and Pierson

City of Ormond Beach- Approximately twice a year

City of DeLand- Orders one truck of diesel and splits that between two separate locations. This occurs approximately once a quarter.

VOTRAN- Very seldom, and only in emergency situations.

City of New Smyrna Beach- Typically deliver is made to all fire stations in one day from the same truck.

City of Daytona Beach- 2-3 times a year; unleaded gas and premium. Twice in 2018.

Flagler County- Never.

City of Port Orange- Last year the City of Port Orange only had 3 split loads and that was for hurricane prep.

Question 11: May we please have a copy of the previous bid tabulations?

Response 11: All information for the previous solicitation can be found at www.volusia.org/bidlist . Search for 14-B-72VO.

Question 12: May we please have copies of invoices and BOLs?

Response 12: Refer to Addendum 1.

Question 13: Is this bid all or nothing or can vendors "no bid" some items?

Response 13: It is NOT all or nothing. The county reserves the right to award to multiple vendors as determined to be in the best interest of the Consortium.

Question 14: Will the award be split by fuel type?

Response 14: The award will be made in the best interest of the Consortium and will not be based solely on fuel type.

Question 15: Will the award be split by delivery size?

Response 15: The award will be made in the best interest of the Consortium and will not be based solely on delivery size.

Question 16: Can or will deliveries be split between locations?

Response 16: In some instances yes. Vendors may submit a charge on Attachment A, Price Sheet to account for the extra freight cost for split deliveries.

Question 17: Can or will deliveries be split between products to a single location?

Response 17: Yes. Two types of fuel may be ordered regularly for a single location delivery.

Question 18: How many consecutive years has the current vendor been awarded?

Response 18: The current Contractors have been under contract for five (5) consecutive years.

Question 19: Can we please have a list of bidders invited to submit a proposal?

Response 19: Bidding is open to any qualifying firm who wishes to respond to this Invitation to Bid.

Question 20: Could you provide a copy of the OPIS report that you want to use for the pricing?

Response 20: Please see attached.

Question 21: We, as well as every other OPIS subscriber in the petroleum industry, have been notified by OPIS that due to copyright considerations, a vendor is forbidden from providing on-going copies of OPIS data. You will need to obtain your own subscription.

Response 21: The requirement for copies of OPIS data has been removed from the scope of work.

All other terms and conditions remain unchanged.

END OF ADDENDUM NO. 2

Total Pages: 6

If there are any questions, please contact the staff member responsible for this project, Eddie Molina, Procurement Analyst, at phone: (386) 822-5772 or via E-mail: emolina@volusia.org.



Kathy Williams, CPPO, CPPB, MBA
Procurement Manager
Purchasing and Contracts Division

Please sign and return with proposal 19-B-70EM

Vendor: _____

Signed by (Name/Position): _____

Phone No.: _____ Date: _____

FAILURE TO RETURN THIS FORM WITH THE BID SUBMITTAL MAY CAUSE THE PROPOSAL TO BE RENDERED NON-RESPONSIVE

OPIS Report

Account #147241

To align the following data, change the font size to 9 in Courier New.

ORLANDO, FL

2019-03-28 06:45:40 EDT

OPIS GROSS CLEAR PRICES

9.0 RVP

	Terms	Unl	Move	Mid	Move	Pre	Move	Date	Time
FlntHlsRs	u N-10	-- --	-- --	-- --	-- --	226.00	- 5.00	03/27	18:00
Huguenot	u N-10	-- --	-- --	-- --	-- --	227.22	- 3.77	03/27	18:00
Marathon	b 1-10	-- --	-- --	-- --	-- --	236.26	- 4.65	03/27	18:00
Marathon	u N-10	-- --	-- --	-- --	-- --	232.90	- 4.60	03/27	18:00
Shell-Mot	b 125-3	-- --	-- --	237.72	- 4.25	-- --	-- --	03/27	18:00
LOW RACK		-- --		237.72		226.00			
HIGH RACK		-- --		237.72		236.26			
RACK AVG		-- --		237.72		230.60			
OPIS GULF COAST SPOT MEAN - 03/27									
FOB COLONIAL		187.455		-- --		-- --			
OPIS GULF WATERBORNE DELIVERED SPOT (SRI)									
FOB ORLANDO		-- --		199.24		210.64			
BRD LOW RACK		-- --		237.72		236.26			
BRD HIGH RACK		-- --		237.72		236.26			
BRD RACK AVG		-- --		237.72		236.26			
UBD LOW RACK		-- --		-- --		226.00			
UBD HIGH RACK		-- --		-- --		232.90			
UBD RACK AVG		-- --		-- --		228.71			
CONT AVG-03/27		-- --		241.97		235.10			
CONT LOW-03/27		-- --		241.97		230.99			
CONT HIGH-03/27		-- --		241.97		240.91			

ORLANDO, FL

2019-03-28 06:45:40 EDT

OPIS GROSS CBOB ETHANOL(10%) PRICES

9.0 RVP

	Terms	Unl	Move	Mid	Move	Pre	Move	Date	Time
Huguenot	u N-10	175.39o	- 1.01	188.39o	+ 1.35	212.75o	+ 2.25	03/27	18:00
Vitol	u N-10	193.00	- 4.50	211.00	- 4.50	231.00	- 4.50	03/27	18:00
FlntHlsRs	u N-10	193.75	- 4.75	206.75	- 4.75	218.75	- 4.75	03/27	18:00
Motiva	u N-10	193.85	- 5.00	211.85	- 5.00	238.85	- 5.00	03/27	18:00
Marathon	u N-10	194.25	- 4.60	208.25	- 4.60	236.25	- 4.60	03/27	18:00
Valero	u N-10	194.30	- 3.95	212.30	- 3.95	241.30	- 1.95	03/27	18:00
TransMont	u N-10	196.17	- 4.27	-- --	-- --	247.04	- 3.82	03/27	18:00
Citgo	u 1-10	197.15	- 4.24	214.32	- 4.25	242.61	- 4.24	03/27	18:00
Citgo	b 1-10	198.56	- 4.02	213.76	- 4.02	247.04	- 4.02	03/27	18:00
Mystik	b 1-12	198.56	- 4.02	213.76	- 4.02	247.04	- 4.02	03/27	18:00
Valero	b 1-10	198.70	- 3.70	214.70	- 3.70	248.20	- 3.70	03/27	18:00
Sunoco	b 125-3	198.82	- 3.97	214.32	- 3.97	248.70	- 3.98	03/27	18:00
XOM	b 125-3	198.88	- 4.66	215.59	- 4.66	249.01	- 4.66	03/27	19:00
Marathon	b 1-10	199.04	- 3.79	215.54	- 3.78	248.54	- 3.78	03/27	18:00
BP	b 125-3	199.20	- 3.89	216.40	- 3.89	250.30	- 3.89	03/27	18:00
76-Mot	b 125-3	199.29	- 3.65	216.51	- 3.64	246.89	- 3.64	03/27	18:00
Shell-Mot	b 125-3	199.70	- 3.79	216.91	- 3.80	251.34	- 3.80	03/27	18:00
Chevron	b 1t45c	200.00	- 3.50	215.90	- 3.50	250.50	- 3.50	03/27	18:00
Texaco	b 1t45c	200.00	- 3.50	215.90	- 3.50	250.50	- 3.50	03/27	18:00
LOW RACK		193.00		206.75		218.75			
HIGH RACK		200.00		216.91		251.34			
RACK AVG		197.40		213.75		244.10			
OPIS GULF WATERBORNE DELIVERED SPOT (SRI)									
FOB ORLANDO		185.70		-- --		202.36			
BRD LOW RACK		198.56		213.76		246.89			
BRD HIGH RACK		200.00		216.91		251.34			
BRD RACK AVG		199.16		215.39		248.91			
UBD LOW RACK		193.00		206.75		218.75			
UBD HIGH RACK		197.15		214.32		247.04			
UBD RACK AVG		194.64		210.75		236.54			
CONT AVG-03/27		201.50		217.84		248.07			
CONT LOW-03/27		197.50		211.50		223.50			
CONT HIGH-03/27		203.54		220.71		255.14			

o=out of product

ORLANDO, FL

LOW RETAIL	249.23
AVG RETAIL	272.74
LOW RETAIL EX-TAX	195.67
AVG RETAIL EX-TAX	219.14

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OPIS GROSS PURE ETHANOL PRICES

	Terms	w/out	with	Move	Date	Time
Vitol	u N-10	166.00	- 3.00	-- --	03/27	18:00
LOW RACK		166.00	-- --			

HIGH RACK	166.00	-- --
RACK AVG	166.00	-- --
UBD LOW RACK	166.00	-- --
UBD HIGH RACK	166.00	-- --
UBD RACK AVG	166.00	-- --
CONT AVG-03/27	169.00	-- --
CONT LOW-03/27	169.00	-- --
CONT HIGH-03/27	169.00	-- --

TOTAL ETHANOL AVG 166.00

ORLANDO, FL 2019-03-28 06:45:40 EDT

OPIS GROSS ULTRA LOW SULFUR DISTILLATE PRICES

	Terms	No.2	Move	No.1	Move	Pre	Move	Move	Date	Time
Vitol	u N-10	205.75	- 2.25	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Motiva	u N-10	206.05	- .30	-- --	-- --	-- --	-- --	-- --	03/27	18:00
FlntHlsRs	u N-10	206.80	- .70	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Valero	u N-10	207.15	- 2.30	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Huguenot	u N-10	207.94	- .05	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Marathon	u N-10	208.15	- .70	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Motiva	b 125-3	208.99	- .30	-- --	-- --	-- --	-- --	-- --	03/27	18:00
76-Mot	b 125-3	209.38	- .36	-- --	-- --	-- --	-- --	-- --	03/27	18:00
XOM	b 125-3	209.76	- 2.00	-- --	-- --	-- --	-- --	-- --	03/27	19:00
Citgo	b 1-10	209.81	- 1.75	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Citgo	u 1-10	209.81	- 1.75	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Mystik	b 1-12	209.81	- 1.75	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Shell-Mot	b 125-3	210.24	- .36	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Coastal	b 125-3	210.99	- 1.27	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Sunoco	b 125-3	210.99	- 1.27	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Valero	b 1-10	211.10	- 1.05	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Marathon	b 1-10	211.11	- .71	-- --	-- --	-- --	-- --	-- --	03/27	18:00
BP	b 125-3	211.75	- 1.13	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Chevron	b 1t45c	212.00	- 1.20	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Texaco	b 1t45c	212.00	- 1.20	-- --	-- --	-- --	-- --	-- --	03/27	18:00
LOW RACK		205.75		-- --		-- --				
HIGH RACK		212.00		-- --		-- --				
RACK AVG		209.48		-- --		-- --				
OPIS GULF COAST SPOT MEAN - 03/27										
FOB COLONIAL		193.640		-- --		-- --				
OPIS GULF WATERBORNE DELIVERED SPOT (SRI)										
FOB ORLANDO		197.27		-- --		-- --				
BRD LOW RACK		208.99		-- --		-- --				
BRD HIGH RACK		212.00		-- --		-- --				
BRD RACK AVG		210.61		-- --		-- --				
UBD LOW RACK		205.75		-- --		-- --				
UBD HIGH RACK		209.81		-- --		-- --				
UBD RACK AVG		207.38		-- --		-- --				
CONT AVG-03/27		210.60		-- --		-- --				
CONT LOW-03/27		206.35		-- --		-- --				
CONT HIGH-03/27		213.20		-- --		-- --				

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OPIS GROSS ULTRA LOW SULFUR RED DYE DISTILLATE PRICES

	Terms	No.2	Move	No.1	Move	Pre	Move	Move	Date	Time
Vitol	u N-10	206.10	- 2.25	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Motiva	u N-10	206.55	- .30	-- --	-- --	-- --	-- --	-- --	03/27	18:00
FlntHlsRs	u N-10	207.55	- .70	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Valero	u N-10	207.65	- 2.30	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Huguenot	u N-10	208.44	- .05	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Marathon	u N-10	208.65	- .70	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Citgo	b 1-10	210.21	- 1.75	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Citgo	u 1-10	210.21	- 1.75	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Mystik	b 1-12	210.21	- 1.75	-- --	-- --	-- --	-- --	-- --	03/27	18:00
XOM	b 125-3	211.19	- 1.34	-- --	-- --	-- --	-- --	-- --	03/27	19:00
Coastal	b 125-3	211.49	- 1.27	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Sunoco	b 125-3	211.49	- 1.27	-- --	-- --	-- --	-- --	-- --	03/27	18:00
Marathon	b 1-10	211.62	- .70	-- --	-- --	-- --	-- --	-- --	03/27	18:00
BP	b 125-3	212.25	- 1.13	-- --	-- --	-- --	-- --	-- --	03/27	18:00
LOW RACK		206.10		-- --		-- --				
HIGH RACK		212.25		-- --		-- --				
RACK AVG		209.54		-- --		-- --				
OPIS GULF WATERBORNE DELIVERED SPOT (SRI)										
FOB ORLANDO		197.62		-- --		-- --				
BRD LOW RACK		210.21		-- --		-- --				
BRD HIGH RACK		212.25		-- --		-- --				
BRD RACK AVG		211.21		-- --		-- --				
UBD LOW RACK		206.10		-- --		-- --				
UBD HIGH RACK		210.21		-- --		-- --				
UBD RACK AVG		207.88		-- --		-- --				
CONT AVG-03/27		210.78		-- --		-- --				
CONT LOW-03/27		206.85		-- --		-- --				
CONT HIGH-03/27		213.38		-- --		-- --				

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OPIS GROSS SPECIALTY DISTILLATE PRICES

	Terms	JET	Move	MARINE	Move	Date	Time
--	-------	-----	------	--------	------	------	------

PSX	b N-10	230.16	+ 1.31	-- --	-- --	03/26 00:01
LOW RACK		230.16		-- --		
HIGH RACK		230.16		-- --		
RACK AVG		230.16		-- --		
BRD LOW RACK		230.16		-- --		
BRD HIGH RACK		230.16		-- --		
BRD RACK AVG		230.16		-- --		
CONT AVG-03/27		230.16		-- --		
CONT LOW-03/27		230.16		-- --		
CONT HIGH-03/27		230.16		-- --		

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OPIS GROSS WHOLESALE B0-5 SME BIODIESEL PRICES

	Terms	ULS No.2	ULS2 RD	Move Date	Time
Motiva	u N-10	206.05	206.55	03/27	18:00
Marathon	u N-10	208.15	208.65	03/27	18:00
76-Mot	b 125-3	209.38	-- --	03/27	18:00
Motiva	b 125-3	209.38	-- --	03/27	18:00
Shell-Mot	b 125-3	210.24	-- --	03/27	18:00
Marathon	b 1-10	211.11	211.62	03/27	18:00
Chevron	b 1t45c	212.00	-- --	03/27	18:00
Texaco	b 1t45c	212.00	-- --	03/27	18:00
XOM	b 125-3	212.20	211.19	03/27	19:00
LOW RACK		206.05	206.55		
HIGH RACK		212.20	211.62		
RACK AVG		210.06	209.50		
BRD LOW RACK		209.38	211.19		
BRD HIGH RACK		212.20	211.62		
BRD RACK AVG		210.90	211.41		
UBD LOW RACK		206.05	206.55		
UBD HIGH RACK		208.15	208.65		
UBD RACK AVG		207.10	207.60		
CONT AVG-03/27		210.78	210.26		
CONT LOW-03/27		206.35	206.85		
CONT HIGH-03/27		213.54	212.53		

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OPIS GROSS WHOLESALE B5 SME BIODIESEL PRICES

	Terms	ULS No.2	ULS2 RD	Move Date	Time
Vitol	u N-10	205.40	-- --	03/27	18:00
Motiva	u N-10	206.05	206.55	03/27	18:00
76-Mot	b 125-3	209.38	-- --	03/27	18:00
Motiva	b 125-3	209.38	-- --	03/27	18:00
Shell-Mot	b 125-3	210.24	-- --	03/27	18:00
LOW RACK		205.40	206.55		
HIGH RACK		210.24	206.55		
RACK AVG		208.09	206.55		
BRD LOW RACK		209.38	-- --		
BRD HIGH RACK		210.24	-- --		
BRD RACK AVG		209.67	-- --		
UBD LOW RACK		205.40	206.55		
UBD HIGH RACK		206.05	206.55		
UBD RACK AVG		205.73	206.55		
CONT AVG-03/27		208.82	206.85		
CONT LOW-03/27		206.35	206.85		
CONT HIGH-03/27		210.60	206.85		

ORLANDO, FL 2019-03-28 06:45:40 EDT

OPIS GROSS WHOLESALE B10 SME BIODIESEL PRICES

	Terms	ULS No.2	Move Date	Time
Vitol	u N-10	205.05	03/27	18:00
LOW RACK		205.05		
HIGH RACK		205.05		
RACK AVG		205.05		
UBD LOW RACK		205.05		
UBD HIGH RACK		205.05		
UBD RACK AVG		205.05		
CONT AVG-03/27		207.30		
CONT LOW-03/27		207.30		
CONT HIGH-03/27		207.30		

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OPIS GROSS WHOLESALE B20 SME BIODIESEL PRICES

	Terms	ULS No.2	Move Date	Time
Vitol	u N-10	204.35	03/27	18:00
LOW RACK		204.35		
HIGH RACK		204.35		
RACK AVG		204.35		
UBD LOW RACK		204.35		
UBD HIGH RACK		204.35		
UBD RACK AVG		204.35		
CONT AVG-03/27		206.60		
CONT LOW-03/27		206.60		
CONT HIGH-03/27		206.60		

Copyright, Oil Price Information Service



COUNTY OF VOLUSIA, FL
Recommendation of Award

BID NUMBER: 19-B-70EM
BID TITLE: Bulk Fuel

OPENING DATE/TIME: 4/16/2019
3:00 p.m.

ALL BIDS ACCEPTED BY THE COUNTY OF VOLUSIA ARE SUBJECT TO THE COUNTY'S TERMS AND CONDITIONS. ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE BIDDERS ARE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. BID DOCUMENTS FROM THE VENDORS LISTED HEREIN ARE THE ONLY BIDS RECEIVED TIMELY AS OF THE OPENING DATE AND TIME. ALL OTHER BID DOCUMENTS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE.

No.	Item	Mansfield Oil Company	Petroleum Traders Corp.	Indigo Energy Partners	Gentry Oil, LLC	Glover Oil Company, Inc	James River Solutions
		Markup over OPIS daily low	Markup over OPIS daily low	Markup over OPIS daily low	Markup over OPIS daily low	Markup over OPIS daily low	Markup over OPIS daily low
1	Ultra Low Sulfur Diesel +/- 7500 gallons	\$0.0526	\$0.0527	\$0.0745		\$0.2000	\$0.0584
2	Ultra Low Sulfur Diesel less than 7500 gallons	\$0.2824	\$0.3000	\$0.2850	\$0.1700	\$0.2650	
3	E-10 Fuel +/- to 8000 gallons	\$0.0512	\$0.0474	\$0.0699		\$0.1900	\$0.0574
4	E-10 Fuel less than 8000 gallons	\$0.3084	\$0.3000	\$0.2850	\$0.1700	\$0.2550	
5	Gross No 2 Red-Dyed Fuel (Off Road) +/- 7500 gallons	\$0.0526	\$0.0527	\$0.0745		\$0.2000	\$0.0584
6	Gross No 2 Red-Dyed Fuel (Off Road) less than 7500 gallons	\$0.4835	\$0.3000	\$0.2850	\$0.1700	\$0.2650	
TOTAL BASE BID		\$1,2307	\$1,0528	\$1,0739	\$0,5100	\$1,3750	\$0,1742
7	Any additional fee for split loads	\$55.00	\$50.00	\$65.00	\$0.00	\$50.00	\$40.00
8	Additional fee for "above" vs. "below" ground tanks	\$55.00	\$55.00	\$65.00	\$0.00	\$0.00	\$50.00
9	Drop Charge for tank wagon delivery	\$45.00	\$0.00	\$0.00	\$50.00	\$0.00	\$0.00
TOTAL ADDITIONAL FEES		\$155.00	\$105.00	\$130.00	\$50.00	\$50.00	\$90.00

Opened and Tabulated by: Eddie Molina, Procurement Analyst/ Andrew Kokitus, Sr. Procurement Analyst
Recommendation of Award: Mansfield Oil Company, Petroleum Traders Corp., and Gentry Oil, LLC.
County Council Meeting Date: 5/7/19
Posted: 4/22/19

Reviewed by: 
Jeanine Jennings, CPPO, CPPB
Director of Purchasing & Contracts



City of Port Orange Public Works & Utilities Department

TO: M.H. Johansson, City Manager

THRU: Lynn Stevens, Public Works & Utilities Director

THRU: Julia Wiggins, Public Works & Utilities Business Manager

FROM: Jeff Fontane, Fleet Manager

DATE: May 1, 2019

SUBJECT: Bulk Fuel Co-op

REQUEST:

The Public Works & Utilities Department requests City Council approve the purchase of bulk fuel from Manfield Oil, Petroleum Traders Corporation, and Gentry Oil based on pricing and terms as provided in the Volusia County consortium bid, ITB 19-B-70EM.

PURPOSE:

The purpose of this contract is to allow for purchase and delivery of bulk fuel for City vehicles, equipment and facilities.

CONSIDERATION:

In May 2014, the City of Port Orange participated in Volusia County's consortium bid for the purchase of bulk fuel. The initial term of the contract was May 14, 2014 through May 13, 2017 with the option to renew for two (2) one-year terms. The contract expires May 2019.

On March 8, 2019, Volusia County advertised for bulk fuel on behalf of the consortium members which include the Volusia County, Volusia School Board, Votran, Flagler County and the City's of Daytona Beach, Port Orange, South Daytona, New Smyrna Beach, Ormond Beach, and Deland. All pricing submitted was compared to six months of Oil Price Information Service (OPIS) data and a third-party pricing index that is a widely accepted benchmark for supply contracts and used by the county for the past 15 years. The pricing submitted is the cost per gallon.

On May 7, 2019, Volusia County Council awarded contracts to Mansfield Oil, Petroleum Traders Corporation, and Gentry Oil. The initial term of the contract is three years with the option of two (2) subsequent one (1) year renewals.

Participation in the consortium for the purchase of fuel is in the best interest of the City to ensure the City is purchasing fuel at the lowest price available. The city contract will be issued with an annual spending authority not to exceed the fiscal year budget appropriation approved by the Port Orange City Council for the then-current fiscal year.

FUNDING:

General Fund Fuel Account: 001-1000-519-5202

Water Treatment Plant Fuel Account: 401-0200-533-5210

Water Reclamation Facility Fuel Account: 401-0400-535-5210

RECOMMENDATION:

The Department of Public Works & Utilities recommends City Council approve the purchase of bulk fuel from Manfield Oil, Petroleum Traders Corporation and Gentry Oil based on pricing and terms as provided in the Volusia County consortium bid, ITB 19-B-70EM.

ANTICIPATED SCHEDULE:

- a) Placed on Civic Clerk – May 2019
- b) Council Award – June 4, 2019
- c) Purchase orders issued – June 2019

ATTACHMENTS:

- a) Volusia county documents for ITB 19-B-70EM, Bulk Fuel



Master Agreement

NO. 870 32389 - 1

TERM: 2019-05-07 to 2022-05-07

Page 1 of 2

Date Issued: 05/13/2019

Vendor contact: Name: BOB GILMORE Phone: 386-734-4239 E-mail:		County contact: Name: MICHELLE LEIGH Phone: 386-248-1760 E-mail: mleigh@volusia.org	Bill To: County of Volusia AS REQUIRED BY USING DEPARTMENT VOLUSIA COUNTY, FL 32720
Vendor Name: GENTRY OIL LLC 1761 LANGLEY AVE DELAND, FL 32724-2180		Vendor No. 95012300010	Ship To: AS REQUIRED BY USING DEPARTMENT VOLUSIA COUNTY, FL 32720
Solicitation Number: 19-B-70EM Award Date: 2019-05-07 Award Authorization: COUNCIL		Purchasing Phone: EDDIE MOLINA 386-822-5772 E-mail: emolina@volusia.org Payment Terms: Net 45 Days, FOB Dest, Freight allowed	
Document Description: Bulk Fuel			

Line Item	Commodity Code	Unit	Description	Unit Price or Contract Amount
1	40500	EA	per attached price sheet	0.000000

Jeaniene Jennings CPPB
Purchasing & Contracts Director

County of Volusia
Sales Tax Exemption Number
85-8012622393C-9

Remainder of page is blank

A delivery order is required for the release of items / services from the referenced Master Agreement. If a solicitation number is referenced then the terms and conditions of said solicitation become part of the Master Agreement. Deviation from prices stated is not permitted without a signed corrected Change Order.

If vendor terms and conditions conflict with Count of Volusia Terms and Conditions, the County's Terms and Conditions prevail. See reverse side for terms and conditions.

Purchase Order (PO) or Master Agreement (MA) Terms and Conditions

Providing any good or service constitutes acceptance of this entire PO or MA without exception.
In the event this document is issued based on a solicitation or quote, the terms and conditions of the solicitation or quote prevail.

Acceptance. Products/Services purchased as result of this PO or MA may be tested for compliance with specifications. Items delivered not in conformance with the specifications may be rejected and returned at the Provider's expense. Those items and items not delivered by the delivery date specified in the accepted offer and/or PO or MA may be purchased on the open market.

Cancellation of Order. A request by either party to PO to cancel the order at no cost.

Delivery. Title and risk of loss shall pass when items have been received, inspected, and accepted by County of Volusia ("County"). All associated shipping, insurance, and other related costs shall be borne by Provider.

Discontinued. Provider shall give County 30 (thirty) days advance notice of a discontinued item(s) so that County can purchase additional quantities of discontinued item(s). County must give written approval of replacement(s) if they exceed previous price or fail to meet quality, form, fit, or function of the discontinued item. Time is of the essence regarding Performance of Services and this PO or MA can be terminated by the County for convenience, non-appropriation of funds, or non-performance.

Disputes. If such dispute arises under this PO or MA and is not resolved informally by the parties within five (5) business days, the party bringing a claim ("Disputing Party") shall deliver to the first level representative of the other party a written statement ("Dispute Notice") describing the dispute. If the respective representatives cannot resolve the dispute within ten (10) days, the dispute shall be escalated through two higher levels of management. If the dispute has not been resolved within 25 (twenty-five) calendar days after delivery of the Disputing Party's notice, either party may give written notice to the other party declaring the resolution process terminated and pursue other legal recourse or initiate formal non-binding mediation before a single mediator, which shall be completed within 30 (thirty) days of initiation, in accordance with rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700, et seq., of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction.

Compliance with FEMA 2 CFR 200.318-326 and Appendix II Contract Provisions. This Agreement and the products/services provided may be utilized in the event of declared State/Federal Emergency and Contractors shall be prepared to comply with the requirements of the FEMA Super Circular CFR 200.318-326 and Appendix II Contract Provisions as amended. These documents can be found on the Internet at: <https://www.gpo.gov/fdsys/granule/CFR-2014-title2-vol1/CFR-2014-title2-vol1-sec200-318>

Governing Law/Jurisdiction/Venue. This PO or MA shall be governed by the laws of the State of Florida and venue for any litigation arising from this PO or MA shall be in the County of Volusia, Florida, and any trial shall be non-jury. Provider shall comply with all applicable laws and regulations.

Insurance. For goods and services delivered or performed by Provider on County premises, Provider certifies it maintains comprehensive general liability insurance and auto insurance in the amounts identified in the solicitation and/or contract and any amendments thereto pertaining to this PO or MA, or from an A.M. Best "A -" or better rated insurance firm authorized by the State of Florida Insurance Commissioner. The County reserves the right to require the "County of Volusia" be named as additional insured for projects when deemed necessary. For services performed off County premises and goods delivered by third party carriers, the Provider shall use such carriers that maintain such insurance coverage as set forth above.

Intellectual Property. Provider agrees to protect, defend, indemnify, and save the County, its agents, officials, including elected officials, and employees of the County harmless from and against any and all claims, demands, actions, and causes of action which may arise asserting that a copyright, trademark, trade secret, or patent ("Intellectual Property"), as provided under this PO or MA, infringes or misappropriates any third party's Intellectual Property. If Provider must pay a third party any license, royalty, or other such usage fee in order to deliver the item(s) under this PO or MA, such third party and usage fee must be specified in the Provider's offer to sell to the County.

Indemnification. The Contractor shall indemnify, defend and hold harmless the County and its employees, officers, elected and appointed officials, agents, attorneys, representatives, volunteers, divisions, departments, districts, authorities, and associated entities from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees, arising out of or resulting from the performance of this Agreement to the extent that any such claim, damage, loss and expense is caused by any negligent act or omission of the Contractor, anyone directly or indirectly employed by Contractor.

Modification & Assignment. County may unilaterally change, at no additional cost, the quantity and receiving point within the County for items not yet shipped. All other items must be mutually agreed upon in writing. County is not required to pay for defective items, back-orders, late deliveries, those quantities exceeding the PO or MA quantity, or items shipped at a higher price than stated on the PO or MA. Neither this PO or MA nor any interest herein shall be assigned, transferred, or encumbered by Provider except as authorized in writing by the County.

Notices. All notices given by one party to the other party under this PO or MA shall be delivered to the receiving party's address set forth on this PO either by hand, qualified courier, or e-mail and shall be deemed received the day after it is transmitted. For the County, it shall be addressed to the Purchasing and Contracts Department, 123 West Indiana Avenue, 3rd Floor, DeLand, Florida, 32720 or purchasing@volusia.org.

No Waiver. Except as expressly set forth herein, no failure or delay on the part of County in exercising any right, power, or remedy hereunder shall operate as or be deemed a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy preclude any other or further exercise thereof, or the exercise of any other right, power, or remedy.

Order of Precedence. In the event of conflict between this PO or a Master Agreement (MA), the originating Volusia County contract and amendments thereto shall be controlling. This control shall pertain to all specifications and scopes of work included in the originating Volusia County contract and any amendments thereto.

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Master Agreement

NO. 870 32390 - 1

TERM: 2019-05-07 to 2022-05-07

Page 1 of 2

Date Issued: 05/15/2019

Vendor contact: Name: LIBBY NORRIS Phone: 678-450-2081 E-mail:		County contact: Name: MICHELLE LEIGH Phone: 386-248-1760 E-mail: mleigh@volusia.org	Bill To: County of Volusia AS REQUIRED BY USING DEPARTMENT VOLUSIA COUNTY, FL 32720
Vendor Name: MANSFIELD OIL COMPANY 1025 AIRPORT PKWY SW GAINESVILLE, GA 30501-6813		Vendor No. MAO45690000	Ship To: AS REQUIRED BY USING DEPARTMENT VOLUSIA COUNTY, FL 32720
Solicitation Number: 19-B-70EM Award Date: 2019-05-07 Award Authorization: COUNCIL		Purchasing Phone: EDDIE MOLINA 386-822-5772 E-mail: emolina@volusia.org Payment Terms: Net 45 Days, FOB Dest, Freight allowed	
Document Description: Bulk Fuel			

Line Item	Commodity Code	Unit	Description	Unit Price or Contract Amount
1	40500	EA	per attached price sheet	0.000000

Jeaniene Jennings CPPB
Purchasing & Contracts Director

County of Volusia
Sales Tax Exemption Number
85-8012622393C-9

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If vendor terms and conditions conflict with Count of Volusia Terms and Conditions, the County's Terms and Conditions prevail. See reverse side for terms and conditions.

Purchase Order (PO) or Master Agreement (MA) Terms and Conditions

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In the event this document is issued based on a solicitation or quote, the terms and conditions of the solicitation or quote prevail.

Acceptance. Products/Services purchased as result of this PO or MA may be tested for compliance with specifications. Items delivered not in conformance with the specifications may be rejected and returned at the Provider's expense. Those items and items not delivered by the delivery date specified in the accepted offer and/or PO or MA may be purchased on the open market.

Cancellation of Order. A request by either party to PO to cancel the order at no cost.

Delivery. Title and risk of loss shall pass when items have been received, inspected, and accepted by County of Volusia ("County"). All associated shipping, insurance, and other related costs shall be borne by Provider.

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Master Agreement

NO. 870 32391 - 1

TERM: 2019-05-07 to 2022-05-07

Page 1 of 2

Date Issued: 05/13/2019

Vendor contact: Name: BILL MINNICK Phone: 800-348-3705 E-mail:		County contact: Name: MICHELLE LEIGH Phone: 386-248-1760 E-mail: mleigh@volusia.org	Bill To: County of Volusia AS REQUIRED BY USING DEPARTMENT VOLUSIA COUNTY, FL 32720
Vendor Name: PETROLEUM TRADERS CORP 7110 POINTE INVERNESS WAY FORT WAYNE, IN 46804-7928		Vendor No. 98020200020	Ship To: AS REQUIRED BY USING DEPARTMENT VOLUSIA COUNTY, FL 32720
Solicitation Number: 19-B-70EM Award Date: 2019-05-07 Award Authorization: COUNCIL		Purchasing Phone: EDDIE MOLINA 386-822-5772 E-mail: emolina@volusia.org Ext: 15772 Payment Terms: Net 45 Days, FOB Dest, Freight allowed	
Document Description: Bulk Fuel			

Line Item	Commodity Code	Unit	Description	Unit Price or Contract Amount
1	40500	EA	per attached price sheet	0.000000

Jeaniene Jennings CPPB
Purchasing & Contracts Director

County of Volusia
Sales Tax Exemption Number
85-8012622393C-9

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CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/4/2019

Consent item: Yes

SUBJECT: (B7b) Ratification of an emergency purchase with SPX Flow US for Mixer Drive Boxes for the Water Reclamation Facility

DEPARTMENT: Public Works

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve the ratification of an emergency purchase order to SPX Flow US in the amount of \$28,774 and to authorize the Mayor and City Clerk to execute all required contract documents.

SUMMARY: The Public Works & Utilities Department is requesting City Council to approve the ratification of an emergency purchase order to SPX Flow US in the amount of \$28,774 for the purchase of two (2) Lighting Mixer gear box units.

Three of the 12 mixer units failed due to rags accumulating on the mixers. Staff replaced one (1) unit with a spare from stock. Management deemed this an emergency due to the treatment process being affected by the loss of the mixing units.

Quotes for replacement units were provided by vendor. SPX Flow US in the authorized Sole Source distributor for Lighting Mixers. A letter of Sole Source was provided by the vendor.

Project No.: SSP002 Funding Account No.: 403 0400 535 6397

Presenter: Lynn Stevens

ATTACHMENTS:

1.	Public Works Utilities Department Memo - SPX Flow US Memo 5-2-19	Public Works Utilities Department Memo - SPX Flow US Memo 5-2-19.pdf
2.	Repair Recommendations	Repair Recommendations.pdf
3.	Spx Flow Sole Source Rep letter	Spx Flow Sole Source Rep letter.pdf
4.	Ryan Herc Flow Sol - Quote	Ryan Herc Flow Sol - Quote.pdf
5.	Memo from WRF Manager	Memo from WRF Manager.pdf
6.	Vendor Packet Information	Vendor Packet Information.pdf

Julia Wiggins
Steve Parnell

Created/Initiated - 5/6/2019
Approved - 5/6/2019

Lynn Stevens	Approved - 5/7/2019
Scott Neils	Approved - 5/7/2019
Margaret Roberts	Approved - 5/16/2019
Jake Johansson	Approved - 5/16/2019
Robin Fenwick	Final Approval - 5/17/2019



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: Steve Parnell, Deputy Director of Public Utilities

DATE: May 2, 2019

SUBJECT: Ratification of Purchase Order 074781- SPX Flow US
Treatment Mixers at Water Reclamation Facility

REQUEST:

The Public Works & Utilities Department is requesting City Council to approve the ratification of an emergency purchase order to SPX Flow US in the amount of \$28,774 for the purchase of two (2) Lightin Mixer gear box units.

PURPOSE:

The purpose of this request is to ratify emergency expenditures associated with the purchase of two (2) Lightin mixers for the Water Reclamation Facility.

CONSIDERATION:

On February 11th, 2019 maintenance staff at the WRF was informed that three mixers on the treatment structure were inoperable. After troubleshooting, maintenance was able to replace one (1) unit with a spare unit from stock. Staff concluded the other mixers needed to be sent out for evaluation.

On February 26th, 2019 staff received a quote from SPX Flow US. The quote deemed the mixers damaged beyond repair. Quotes for replacement units were provided by vendor. SPX Flow US is the authorized Sole Source distributor for Lightin Mixers. A letter of Sole Source was provided by the vendor.

Management deemed this an emergency due to the treatment process being affected by the loss of the mixing units. Florida Department of Environmental Protection (FDEP) requires proper treatment of wastewater prior to effluent disposal. These mixers are key components in achieving the level of treatment required for permit compliance.

FUNDING:

Sewer Plant Replacement

Project# SSP002

403 0400 535 63-97

Budget: \$1,196,691.54

Actual: \$28,774

RECOMMENDATION:

The Public Works & Utilities Department recommends City Council to approve the ratification of an emergency purchase order to SPX Flow US in the amount of \$28,774 and to authorize the Mayor and City Clerk to execute all required contract documents.

ANTICIPATED SCHEDULE:

a.) Council Approval – May 22nd, 2019

ATTACHMENTS:

- a) Letter of Sole Source
- b) Quote for SPX Flow US
- c) Memo from WRF Manager

RGA Number: 151602488	Model No.: 73-Q-5	Date: Rcv'd.: 2/26/2019
Customer Name and Address:	Serial No.: 01F8937921902	Contact: Brent Reed
City of Port Orange	Ratio: 20.9	Phone No.: 386-506-5784
817 Oak Street	RPM: 56	Sales Rep: RHFS
Port Orange, FL 32127	Tank #:	Rep Phone #: 407-399-5146
	Svc. Ord. #:	Sales Order #:

General Condition of Equipment as Received

This unit was received in poor condition without the high speed shaft and high speed pinion and had water inside the unit. The unit did come with mounting plate still attached. All gearing shows signs of excessive wear and rust due to the water contamination inside the unit. The low speed shaft has damage on the lower seal area and can not be repaired, also the lower bore on the housing is damaged. The mounting plate is good but will need to be sandblasted.

Repair Recommendations

Due to the cost of repair Lightnin is recommending an exchange unit. An exchange unit is a reconditioned unit to factory specifications and is warranted against defects in material or workmanship for one year after shipment. In addition to the exchange unit the mounting plate will be sandblasted and painted and reused on the unit.

Item #	Part Number	Description	Qty.	In Stock	Price Each	Discount If Applicable	Subtotal
		Total cost of exchange	1		14,217.00		\$14,217.00
	600101psp	basic	1				\$0.00
	601016psp	change gear kit	1				\$0.00
	279981psp	name plate	1				\$0.00
	600152psp	high speed kit	1				\$0.00
	sandblast	sandblast mounting plate	1				\$0.00
							\$0.00
							\$0.00
							\$0.00

LEAD TIME: 1 week

TOTAL PRICE: \$14,217.00

DATE OF EVALUATION:

2/28/2019

LABOR HOURS FOR INSPECTION:

4

LABOR HOURS FOR ASSEMBLY: (IF APPROVED)

4

EVALUATION BY:

Juan Espinoza

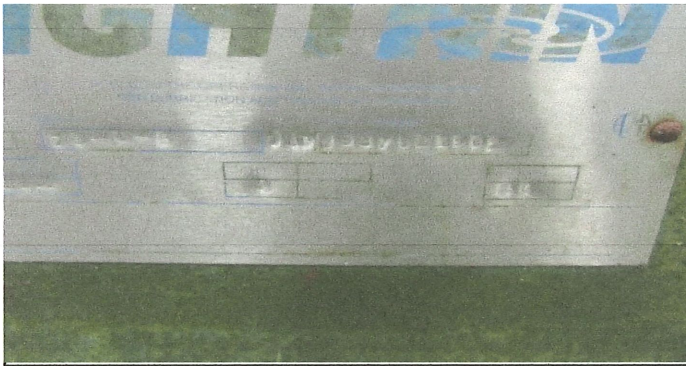
PICTURES AS RECEIVED AND OF DAMAGED PARTS



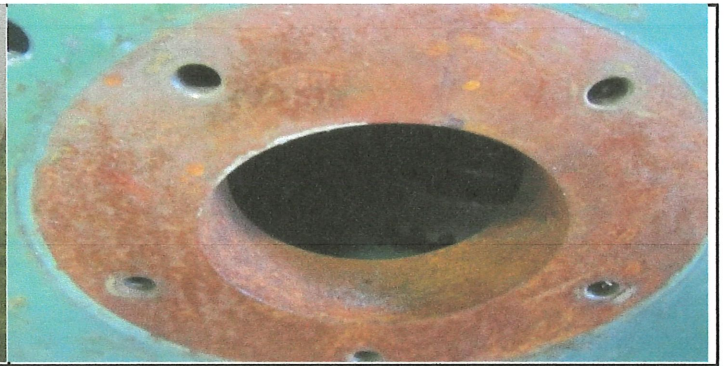
How the unit came in



no high speed shaft



name plate



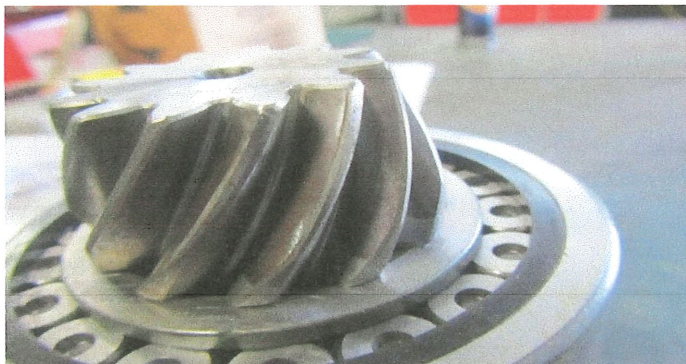
high speed shaft outer bore



change gear



change gear



low speed pinion



low speed pinion

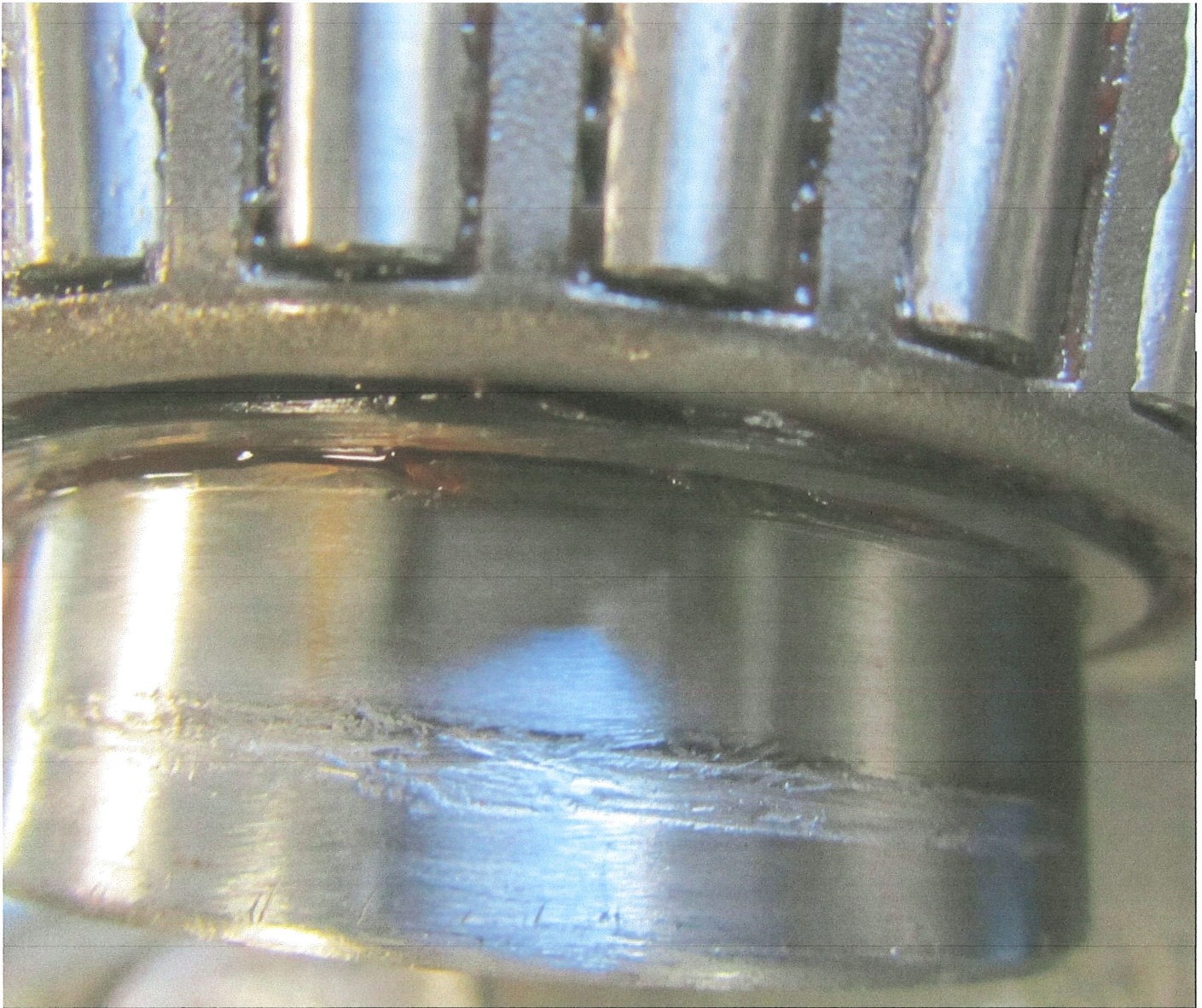
PICTURES AS RECEIVED AND OF DAMAGED PARTS



low speed gear

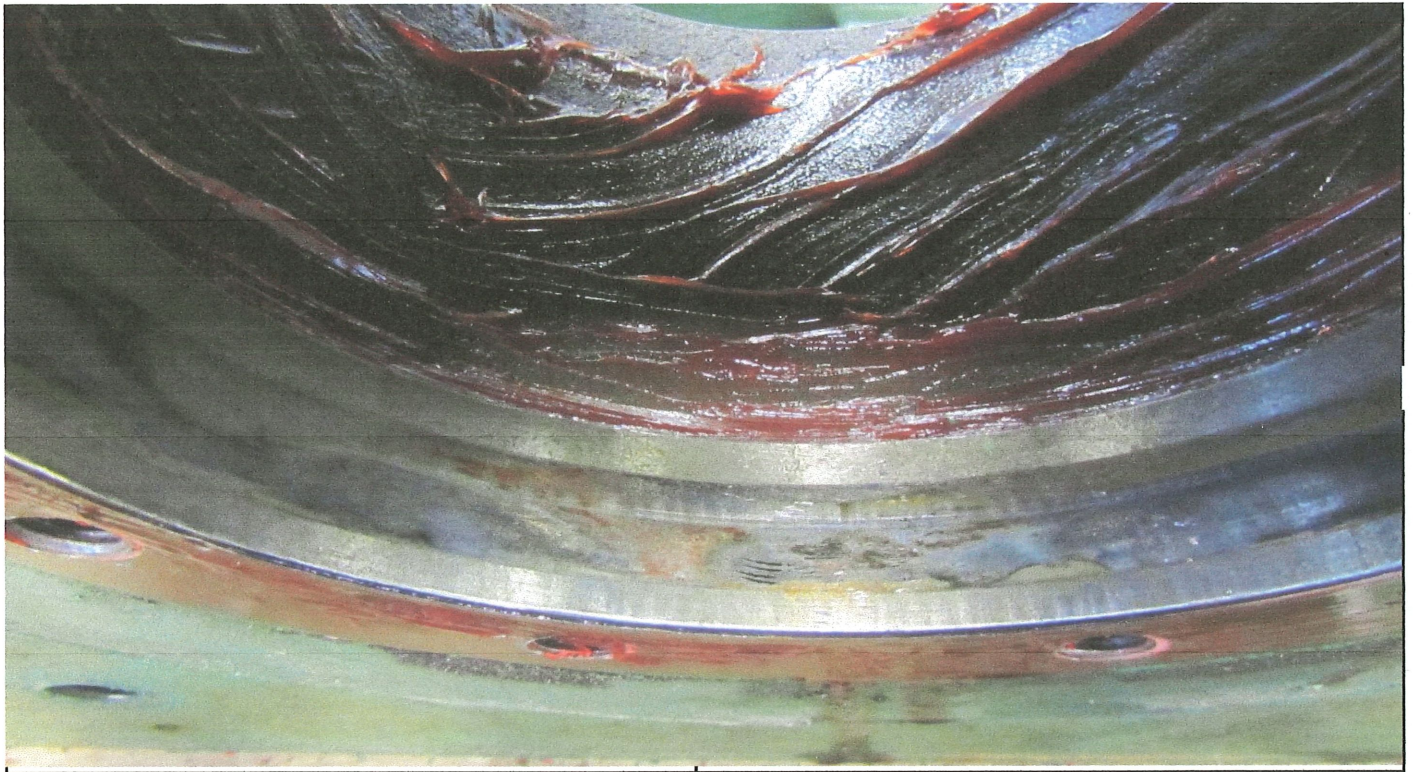


low speed gear

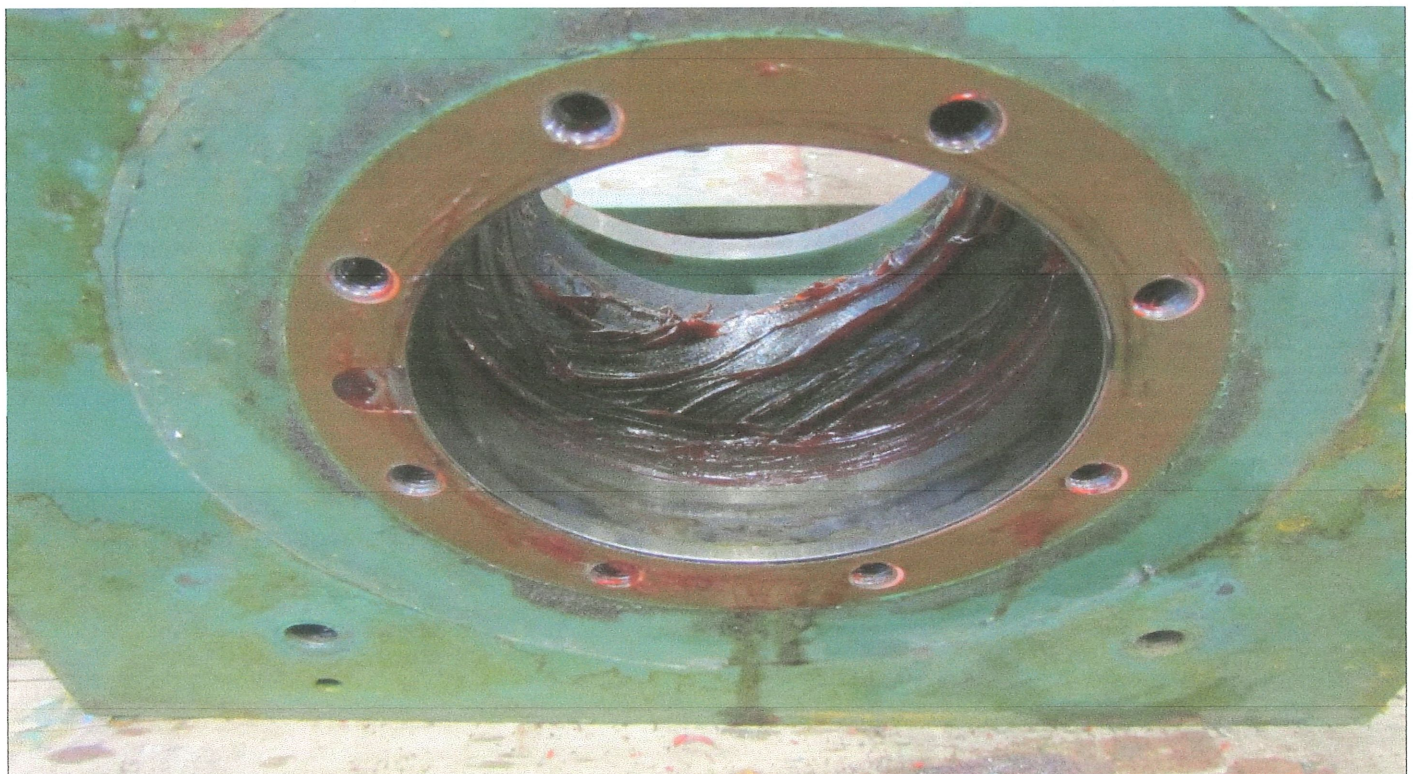


low speed shaft

PICTURES AS RECEIVED AND OF DAMAGED PARTS



low speed housing lower bore



low speed housing lower bore

SPXFLOW

10/12/18

To whom it may concern,

It is my pleasure to announce that SPXFLOW/Lightnin's sole source representative in Florida, for all counties east of the Apalachicola River is Ryan Herco Flow Solutions/Sunsource. They represent our Lightnin, Plenty, and Nettco products and our aftermarket services for the industrial and municipal market place.

Their contact information is:

Ford-Gelatt & Associates
18359 Petroleum Avenue
Baton Rouge, LA 70809
Phone: (225)752-0267
Fax: (225)751-3016

Ryan Herco Flow Solutions
7001 McCoy Road Suite 100
Orlando, FL 32822

Email: bbreeden@sunsrce.com
bbaker@rhfs.com

Bo's Cell: (225)270-6774
Brandon's Cell: (407)399-5146

Ryan Herco Flow Solutions /Sunsource and SPXFLOW are committed to giving our customers in Florida value added products and service that exceed your expectations.

Thank you for allowing Ryan Herco Flow Solutions /Sunsource and SPXFLOW Lightnin to continue to meet your future needs. Please feel free to contact me directly regarding this or any other requirements.

Best Regards,

Mike Giralico 
Regional Sales Manager
SPX Flow – Lightnin
Phone: 585-527-1218
Cell: 585-298-7249
Email: mike.giralico@spxflow.com

›Lightnin®
›Plenty®



>Lightnin'
>Plenty

Ryan Herco Flow Solutions
7001 McCoy Road, Suite 100
Orlando | Florida | 32822 | United States

Attention: Brent Reed
City of Port Orange

Date: 3/5/2019

Port Orange, Florida 32127 United States
Phone: 386 506-5784

Project Name: City of Port Orange 73Q repair

Quote Number: 151602488
Rev A – add freight, combine repairs

Comments:

Please see attachment for additional information.

Parts for Model Number(s): 73Q5
Reference Serial Number(s): 01F8937921902 & 03
Reference Order Number(s): 379219

Proposal Summary

Primary Solution

Item	Size/Description/Scope of Supply	Price	Qty.	Sub Total
1	Repair: 73Q5, 20.9 ratio	\$14,217.00	2	\$28,434.00
	Exchange drive recommended for repair – see inspection report			
	Freight cost – shipment of both exchange drives to Port Orange, FL	\$340.00		\$340.00
Total (US Dollars)				\$28,774.00

Commercial Terms / Terms of Delivery

Note: In the absence of any specifications, we reserve the right to review any additional requirements and amend our offer accordingly

Commercial Terms

Unless otherwise expressly agreed to in writing by SPX FLOW, this quote and any resulting order shall be governed solely and exclusively by the SPX FLOW Standard Terms and Conditions of Sale attached hereto (and also available at <http://www.spxflow.com/terms-conditions>). SPX FLOW hereby expressly rejects the applicability of any and all terms and conditions of Buyer.

Available to Ship In:	5 Working Days After Receipt of Order
Delivery Terms*:	FOB Origin – Mulberry, FL 33860
Freight Terms:	Prepay and Add to Invoice
Terms of Payment:	30 Days from Invoice Date
Quote Expiration Date:	4/4/19

Delivery lead times quoted are based on current production capacity, are subject to stock materials remaining unsold and will be calculated from receipt of clear and actionable order (approval time -if any - is excluded)

Tariffs

The quoted price has been based on the cost of materials and components ("**Materials**") at the date of this proposal. If, due to the imposition of any tariffs (regardless of the country imposing said tariffs), the cost to SPX FLOW of performing its obligations under any Order arising from this proposal increases between the date of this proposal and the date of Order, the quoted price shall be increased.

Such increase shall be determined by SPX FLOW taking into account the applicable tariff imposed on Material(s) as at the date of the Order.

Brexit

SPX FLOW shall not be liable to Buyer for any delay arising out of or connected with the United Kingdom ceasing to be a member of the European Union ("**Brexit**") and all costs and expenses reasonably incurred by SPX FLOW in connection with Brexit shall be reimbursed by Buyer.

Order Placement

Please Address Purchase Order To:

SPX Flow US, LLC, Lightnin Mixers

c/o Ryan Herco Flow Solutions
7001 McCoy Road, Suite 100
Orlando, Florida 32822 United States

Thank You,

Chris Rahtes
Sales Engineer

These Terms and Conditions of Sale ("Terms") shall govern all quotations, orders and contracts for the sale of goods and services of SPX FLOW to Buyer. These Terms supersede and exclude any prior written or oral agreement, understanding, representation or promise, and any pre-printed or standard terms and conditions contained in Buyer's request for quote, purchase order, invoice, order acknowledgement, contract or other similar document. These Terms may not be amended, supplemented, changed or modified except by concurrent or subsequent written agreement, signed by an authorized representative of SPX FLOW and Buyer. SPX FLOW's acknowledgement of Buyer's order shall not constitute acceptance of any terms and conditions contained therein, regardless of how such terms and conditions may be prefaced or described.

1. DEFINITIONS: "SPX FLOW" means the SPX FLOW, Inc. entity named in the order which is providing the goods and/or services. "Buyer" means the company who accepted SPX FLOW's offer or is named in the order.

2. PRICES: Unless otherwise mutually agreed to in writing, prices are net, Free Carrier (INCOTERM 2010) SPX FLOW facility. Stenographic, clerical and mathematical errors are subject to correction. Prices are exclusive of expenses related to special packaging or procedures to cover unique circumstances of shipment or storage unless specifically noted. Until acceptance of order on these Terms, quoted prices are subject to change.

3. DELIVERY AND PERFORMANCE: Unless otherwise specifically agreed in writing by the parties, all goods shall be delivered Free Carrier (INCOTERM 2010) SPX FLOW facility. Title shall pass to the Buyer upon delivery, or upon payment in full, whatever is later, provided that the only rights that SPX FLOW retains in relation to title are those enabling recovery of the goods in the event of Buyer's default on payment. Dates for the furnishing of services and/or delivery or shipment of goods are approximate only and are subject to change, and SPX FLOW shall use commercially reasonable efforts to meet such dates; provided, however, that SPX FLOW shall not be liable in damages or otherwise, nor shall Buyer be relieved of its performance hereunder, because of SPX FLOW's failure to meet them. If liquidated damages or a penalty have been agreed for delay, such liquidated damages or penalty shall only become due if the delay is solely due to the fault of SPX FLOW, the Buyer suffers damage due to this delay, and the Buyer has notified SPX FLOW in writing after the expiry of the time during which delivery could have been reasonably expected. Unless specifically agreed otherwise, it shall be calculated based on the value of the delayed part of the delivery, and the aggregate liability of SPX FLOW for all liquidated damages/penalties shall be limited to 5% of the total order value. Such liquidated damages/penalty shall be the Buyer's sole remedy and SPX FLOW's sole liability in case of delay. For the avoidance of doubt, if the order is subject to the laws of the Netherlands, "liquidated damages" or "penalty" shall mean a contractual penalty which is meant to be a compensation for damages. Additionally, SPX FLOW shall not be liable, directly or indirectly, for any delay in or failure to perform caused by carriers or suppliers; labor difficulties, shortages, strikes or stoppages of any sort; difficulty in obtaining materials; Buyer requested order changes; fires, floods, storms, accidents, or acts of God; any statute, sanction, injunction or other governmental restraint or prohibition or political unrest; or other causes beyond SPX FLOW's reasonable control. In the event of any such delay, the date of delivery shall be extended for a length of time at least equal to the period of the delay. All goods for which SPX FLOW does not receive notice of rejection for within seven (7) days after receipt, will be deemed accepted.

4. SHORTAGE, DAMAGE, ERRORS IN SHIPMENT: SPX FLOW's responsibility ceases upon making the goods available for pickup at SPX FLOW's facility. Buyer shall note receipt for goods that are not in accordance with bill of lading or express receipt and Buyer shall make claim against such carrier for any shortage, damage or discrepancy in the shipment promptly. Partial and transshipments are allowed.

5. TAXES: The quotation and order price excludes all assessments, taxes, levies and charges of whatsoever nature present or future, due or becoming due. This exemption shall include but not be limited to value added tax, income tax, withholding tax, profits tax, turnover tax, goods and services tax and any other consumption or environmental taxes applicable, tax payable on the income of expatriate employees, port dues, import and custom duties on the components and services and all export duties payable on the repatriation of any SPX FLOW components at the end of an order, where applicable. On the basis that an order is tax exclusive SPX FLOW reserve the right to invoice by way of an addition to such order price, such taxes as may be applicable under the relevant jurisdiction's tax regulations, together with SPX FLOW's external costs of dealing with these taxes.

6. CREDIT AND PAYMENT: Unless otherwise agreed in writing by SPX FLOW, payment of goods shall be net thirty (30) days, in the currency of the country of SPX FLOW. For orders in excess of two hundred and fifty thousand dollars (\$250,000 USD) or the local equivalent payment terms shall be as follows: (a) twenty percent (20%) down payment, (b) forty percent (40%) upon SPX FLOW's purchase of raw materials/components, and (c) forty percent (40%) at the time of delivery. Down payment shall be due within five (5) of SPX FLOW's acceptance of the order, with the remaining two payments being net thirty (30) days. Prorated payments shall become due with partial shipments, and Buyer shall not be entitled to any retention or holdback; provided, however, if SPX FLOW agrees in writing to a retention or holdback, SPX FLOW may provide such retention or holdback in the form of a bond, letter of credit or bank guarantee in no event to extend

more than thirty (30) days beyond expiry of the warranty period. SPX FLOW retains all remedies for Buyer's insolvency including, but not limited to, the right to stop delivery, reclaim any goods delivered, or withhold delivery except for cash. Failure to pay invoices at maturity date, at SPX FLOW's election, makes all subsequent invoices immediately due and payable and SPX FLOW may withhold all subsequent deliveries until the full account is settled and SPX FLOW shall not, in such event, be liable for non-performance of contract in whole or in part. Buyer agrees to pay, without formal notice, one and one-half percent (1.5%) per month of the amount not paid when due, or, if such rate is in excess of applicable governing law, Buyer agrees to pay the maximum permitted rate. No deduction, whether by way of set-off, counterclaim or otherwise, shall be made by Buyer. If prerequisites for any payment (such as delivery, completion or formal acceptance) cannot be satisfied due to Buyer's breach, such payment shall nevertheless become due and payable at the time agreed to and SPX FLOW's further right to seek damages shall remain unaffected.

7. CANCELLATIONS AND CHANGES: All orders are binding upon acceptance. In the event that SPX FLOW, in its sole discretion, agrees to cancellation of an order by Buyer, Buyer shall be liable for a cancellation charge equal to the greater of (i) twenty-five percent (25%) of the purchase price and (ii) any loss or cost incurred by SPX FLOW, including, but not limited to, cost of materials, labor, engineering, reconditioning and a reasonable profit margin. Buyer is responsible for all reasonable storage, insurance, and all other expenses incurred by SPX FLOW as a result of Buyer's cancellations and/or changes. No changes to the specification or the order are accepted without the prior written consent of both parties. In the event Buyer requests a change, SPX FLOW will provide a quotation to Buyer within a reasonable time of no less than ten (10) working days detailing the corresponding change in delivery, price, materials, and similar. SPX FLOW shall not be obligated to implement the requested change until the quotation is agreed by the parties.

8. LIMITED WARRANTY: Unless otherwise mutually agreed to in writing, (a) SPX FLOW goods, auxiliaries and parts thereof are warranted to the Buyer against defective workmanship and material for a period of twelve (12) months from date of installation or eighteen (18) months from date of delivery, whichever expires first, and (b) SPX FLOW services are warranted to Buyer to have been performed in a workmanlike manner for a period of ninety (90) days from the date of performance. If the goods or services do not conform to the warranty stated above, then as Buyer's sole remedy, SPX FLOW shall, at SPX FLOW's option, either repair or replace the defective goods or re-perform defective services. If Buyer makes a warranty claim to SPX FLOW and no actual defect is subsequently found, Buyer shall reimburse SPX FLOW for all reasonable costs which SPX FLOW incurs in connection with the alleged defect. Third party goods furnished by SPX FLOW will be repaired or replaced as Buyer's sole remedy, but only to the extent provided in and honored by the original manufacturer's warranty. Unless otherwise agreed to in writing, SPX FLOW shall not be liable for breach of warranty or otherwise in any manner whatsoever for: (i) normal wear and tear; (ii) corrosion, abrasion or erosion; (iii) any good or services which, following delivery or performance by SPX FLOW, has been subjected to accident, abuse, misapplication, improper repair, alteration (including modifications or repairs by Buyer, the end customer or third parties other than SPX FLOW), improper installation or maintenance, neglect, or excessive operating conditions; (iv) defects resulting from Buyer's specifications or designs or those of Buyer's contractors or subcontractors other than SPX FLOW; or (v) defects resulting from the manufacture, distribution, promotion or sale of Buyer's products; (vi) damage resulting from the combination, operation or use with equipment, products, hardware, software, firmware, systems or data not provided by SPX FLOW, if such damage or harm would have been avoided in the absence of such combination, operation or use; or (vii) Buyer's use of the goods in any manner inconsistent with SPX FLOW's written materials regarding the use of such product. In addition, the foregoing warranty shall not include any labor, dismantling, re-installation, transportation or access costs, or other expense associated with the repair or replacement of SPX FLOW goods. THE WARRANTIES CONTAINED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES AVAILABLE TO BUYER AND SPX FLOW HEREBY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ANY PERFORMANCE OR PROCESS OUTCOME DESIRED BY THE BUYER AND NOT SPECIFICALLY AGREED TO BY SPX FLOW. THE FOREGOING REPAIR, REPLACEMENT AND REPERFORMANCE OBLIGATIONS STATE SPX FLOW'S ENTIRE AND EXCLUSIVE LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM IN CONNECTION WITH THE SALE AND FURNISHING OF SERVICES, GOODS OR PARTS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION OR OPERATIONS.

9. INTELLECTUAL PROPERTY: In the event of a successful infringement claim by a third party, at SPX FLOW's option, SPX FLOW shall either (i) modify the goods sold hereunder so that they perform comparable functions without infringement, (ii) obtain a royalty-free license for Buyer to continue using the infringing goods or (iii) refund to Buyer the then-depreciated fair market value of the infringing component. SPX FLOW shall have no obligation under this Article to the extent a claim is based upon (a) the combination, operation or use of the goods with equipment, products, hardware, software, systems or data that was not provided by SPX FLOW, if such infringement would have been avoided in the absence of such combination, operation or use, or (b) Buyer's use of the product in any manner inconsistent with SPX FLOW's written materials regarding the use of such product or (c) infringement resulting from Buyer's specifications or designs or those of Buyer's contractors or subcontractors other than SPX FLOW. This Section

states SPX FLOW's entire liability and Buyer's exclusive remedy with respect to any actual or alleged infringement arising from the use of the goods or services sold hereunder or any part thereof and is subject to the other limitations contained in these Terms.

10. LIMITATION OF LIABILITY: NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN: (A) IN NO EVENT SHALL SPX FLOW BE LIABLE FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (COLLECTIVELY DEFINED AS "CONSEQUENTIAL DAMAGES"), WHETHER FORESEEABLE OR NOT, INCLUDING WITHOUT LIMITATION, THIRD PARTY CHARGES AND COSTS, LOST PROFITS (WHETHER DIRECT OR INDIRECT), PRODUCT, PRODUCTION, BUSINESS OR BUSINESS OPPORTUNITY, REGARDLESS OF THE CAUSE, INCLUDING WITHOUT LIMITATION, THE NEGLIGENT ACTS OR OMISSIONS, BREACH OF CONTRACT, WARRANTY (EXPRESS OR IMPLIED) OR DUTY (STATUTORY OR OTHERWISE) OR STRICT LIABILITY OF SPX FLOW GROUP OR ANY OTHER THEORY OF LEGAL LIABILITY; AND (B) SPX FLOW'S AGGREGATE LIABILITY ARISING FROM OR IN CONNECTION WITH ALL ORDERS AND CONTRACTS FOR GOODS AND SERVICES UNDER THESE TERMS SHALL (SAVE FOR LIABILITIES WHICH CANNOT BE LIMITED BY APPLICATION OF LAW) NOT EXCEED THE CONTRACT PRICE FOR THE GOODS AND/OR SERVICES FOR WHICH LIABILITY IS CLAIMED. ANY ACTION FOR BREACH OF CONTRACT BY BUYER MUST BE COMMENCED WITHIN 30 DAYS OF THE EXPIRY OF THE WARRANTY PERIOD. BUYER SHALL BE SOLELY RESPONSIBLE FOR ANY AND ALL AGREEMENTS MADE WITH THIRD PARTIES THAT ARE OUTSIDE THE SCOPE OF THESE TERMS AND WHICH ARE CONTRARY TO THE LIMITATIONS OF LIABILITY AND/OR WARRANTY INCLUDED HEREIN.

11. GOODS FOR EXPORT: Buyer acknowledges that the goods may be subject to export restrictions, and that Buyer will comply with all such applicable laws and regulations. If the goods are intended for export, Buyer shall designate country of destination on its order. In the event that Buyer purchases goods for export without so notifying SPX FLOW, SPX FLOW reserves the right to cancel the order at no penalty or liability for breach in the event that SPX FLOW objects to the ultimate destination of the goods. Buyer will have sole liability and shall defend, indemnify and release SPX FLOW for any loss or damage (including without limitation, claims of governmental authorities) arising from the export or import of such goods, including, without limitation, those related to packaging, labeling, marking, warranty, contents, use, or documentation of the goods. Buyer has sole responsibility for obtaining any required export licenses. Buyer will not take, and will not solicit SPX FLOW to take, any action which would violate any anti-boycott or any export or import statutes or regulations applicable to the order, of any governmental authorities, and shall defend, indemnify, and reimburse SPX FLOW for any loss or damage arising out of or related to such actions. To the extent SPX FLOW is required to obtain an export license for any goods: (1) SPX FLOW obligation to fulfill an order with goods requiring such a license will be directly subject to the granting of the license; (2) SPX FLOW will use commercially reasonable effort to obtain such license; (3) Buyer shall make available all necessary information and documentation required for SPX FLOW to obtain such license; and (4) Buyer shall reimburse SPX FLOW for its reasonable expenses incurred in connection with obtaining such license.

12. PROPRIETARY INFORMATION: SPX FLOW shall retain title to all engineering and production prints, drawings, technical data, and other intellectual property, information and documents that relate to the goods or services sold to Buyer. All such information and documents disclosed or delivered by SPX FLOW to Buyer: (i) are to be deemed proprietary to SPX FLOW; (ii) shall not be disclosed to any third party for any reason without the express prior written consent of SPX FLOW; and (iii) shall be used by Buyer solely for the purpose of inspection, installation, use and maintenance of the goods and services sold to Buyer under these Terms.

13. APPLICABLE LAW; VENUE; DISPUTE RESOLUTION: For sales of goods sold or to be delivered or services to be performed within the United States: The rights and duties of the parties hereunder shall be governed by the laws of the State of North Carolina, United States of America, excluding its conflicts law and choice of laws principles. Any action or proceeding with respect to any dispute or controversy involving or arising out of this order, at SPX FLOW's sole discretion, (i) shall be brought in any State court in Mecklenburg County, North Carolina or the Federal courts of the Western District of North Carolina, United States of America, and Buyer and SPX FLOW submit to and accept generally and unconditionally the jurisdiction of those courts with respect to such party's person and property, or (ii) shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Rules, which award shall be final and binding on the parties and may be entered and enforced in any court having jurisdiction. Buyer and SPX FLOW hereby irrevocably waive any objection to the laying of venue of any action or proceeding in the above-described courts. For sales of goods sold or to be delivered or services to be performed outside of the United States: The rights and duties of the parties hereunder shall be governed by and construed in accordance with the law of the jurisdiction of the SPX FLOW entity providing the goods or services for this order. The United Nations Convention on Contracts for the International Sale of Goods and the conflict rules of international private law shall not apply. Any action or proceeding with respect to any dispute or controversy involving or arising out of this order, at SPX FLOW's sole discretion, (i) shall be brought in any competent court of the jurisdiction in which the SPX FLOW entity providing the goods or services is located, or (ii) shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with said Rules, with English serving as the language of the

arbitration proceeding and award. Notwithstanding any other limitations contained in these Terms, SPX FLOW reserves the right to initiate proceedings in any court of competent jurisdiction, and Buyer shall indemnify SPX FLOW for all costs, fees and expenses (including reasonable attorneys' fees) SPX FLOW incurs in connection with enforcing its rights pursuant to this order.

14. RESALE: Buyer further agrees that upon resale of the goods, it will include in the contract for resale provisions which limit recoveries against SPX FLOW in accordance with these Terms. If Buyer fails to include such provisions in any such contract for resale, (a) SPX FLOW may reject Buyer's order related to such contract for resale, and (b) Buyer shall indemnify, defend and hold harmless SPX FLOW against any claim, liability, loss, cost, damage, or expense (including reasonable attorneys' fees) arising out of or resulting from such failure.

15. BUYER CAUSED DELAYS; WAIVER OF RIGHTS: If Buyer fails to perform any of its obligations under an order, SPX FLOW shall be entitled to suspend its performance under the order until such time as Buyer performs such obligations, and any dates for the delivery of goods or performance of services shall be extended for an amount of time determined in SPX FLOW's discretion.

Delays caused by Buyer which prevent SPX FLOW from achieving the original order performance requirements includes but is not limited to: (a) the construction of buildings, structures or other parts of the site within which SPX FLOW's goods are to be located; (b) changes in scope of an order introduced by Buyer; (c) completion of approvals, consents or delivery of critical information by Buyer beyond the periods provided in an order; (d) any specified site facilities and working conditions not being maintained by Buyer; (e) failure of Buyer to arrange carriage of the goods under an order, where Buyer has such obligation, or any other inability or refusal of Buyer to accept delivery in accordance with order delivery dates; (f) delays in obtaining customs clearance (where applicable) of the order deliveries; and (g) delay by Buyer in providing any required security to SPX FLOW in the form of a letter of credit, bank guarantee or otherwise. In the event of such Buyer delays, SPX FLOW shall in addition to an extension of remaining milestones, be entitled to an increase in the total order price to reflect the increase in cost to SPX FLOW directly caused by Buyer delays. Additionally, SPX FLOW shall be entitled to submit invoices for any order milestone for which completion has been frustrated due to Buyer delays. Such invoices shall be paid within 30 days of the date of SPX FLOW's invoice.

Any engineering, technical or other submittal drawings submitted by SPX FLOW to Buyer which are not expressly rejected in writing within ten (10) business days of Buyer's receipt, will be deemed accepted by Buyer. Buyer's right to conduct any agreed upon pre-shipment inspections (i) which Buyer does not schedule within ten (10) business days of receipt of notice of readiness to inspect from SPX FLOW or (ii) which Buyer delays for more than ten (10) business days from the date originally scheduled, will be waived, so long as SPX FLOW certifies in writing that the goods successfully passed SPX FLOW's standard pre-shipment inspection. Where Buyer delays taking shipment of any goods or otherwise fails to engage or otherwise dispatch a freight forwarder or transit company within ten (10) business days of notification that the goods are ready to ship, SPX FLOW shall be entitled to change the delivery term to Ex Works (INCOTERM 2010) SPX FLOW facility.

16. NO OTHER CONTRACT PROVISIONS; OTHER: No dealer, broker, branch manager, agent, employee or representative of SPX FLOW has any power or authority except to take orders for SPX FLOW goods or services and to submit the same to SPX FLOW for SPX FLOW's approval and acceptance on the terms herein or rejection. There are no representations, agreements, obligations, or conditions, expressed or implied, statutory or otherwise, relating to the subject matter hereof, other than contained herein. For the avoidance of doubt and not in limitation of the foregoing, SPX FLOW shall not be bound by the terms of any contract between Buyer and any third party or other flow down provisions, regardless of whether Buyer notifies SPX FLOW of such terms unless SPX FLOW expressly agrees to be bound by such terms in writing by an authorized representative of SPX FLOW. If any provision hereof is invalid or not enforceable under applicable law, the remaining provisions shall remain in full force and effect.

SPX FLOW reserves the right to transfer or assign its obligations, rights and responsibilities hereunder, so long as such successor or assign agrees to these Terms. Any assignment of Buyer's rights hereunder without SPX FLOW's consent (which shall not be unreasonably withheld) shall be void. SPX FLOW's failure to require Buyer's performance of any of these Terms shall not serve as a waiver of or diminish SPX FLOW's rights to require strict performance of these Terms.

RGA Number: 151604818	Model No.: 73-Q-5	Date: Rcv'd.: 2/25/2019
Customer Name and Address:	Serial No.: 01F8937921903	Contact: Brent Reed
City of Port Orange	Ratio: 20.9	Phone No.: 386-506-5784
817 Oak Street	RPM: 56	Sales Rep: RHFS
Port Orange, FL 32127	Tank #:	Rep Phone #: 407-399-5146
	Svc. Ord. #:	Sales Order #:

General Condition of Equipment as Received

This unit was received in fair condition and still had the mounting plate attached. During disassembly we found the high speed shaft seal area was undersized and grooved as well as the low speed shaft seal areas both upper and lower are undersized with deep grooves. Upon further inspection the unit will need new change gears due to a broken tooth as well as the low speed bevel gears which also had a broken tooth.

Repair Recommendations

Due to the cost of repair Lightnin is recommending an exchange unit. An exchange unit is a reconditioned unit to factory specifications and is warranted against defects in material or workmanship for one year after shipment. In addition to the exchange unit the mounting plate will be sandblasted and painted for reuse on the unit.

Item #	Part Number	Description	Qty.	In Stock	Price Each	Discount If Applicable	Subtotal
		Total cost of exchange	1		14,217.00		\$14,217.00
	600101psp	73 basic	1				\$0.00
	601016psp	change gear kit	1				\$0.00
	600152psp	high speed kit	1				\$0.00
	279981psp	nameplate	1				\$0.00
	sandblast	sandblast mounting plate	1				\$0.00
		Labor	3				\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00

LEAD TIME: 1 week

TOTAL PRICE: \$14,217.00

DATE OF EVALUATION:

2/26/2019

LABOR HOURS FOR INSPECTION:

4

LABOR HOURS FOR ASSEMBLY: (IF APPROVED)

4

EVALUATION BY:

Juan Espinoza

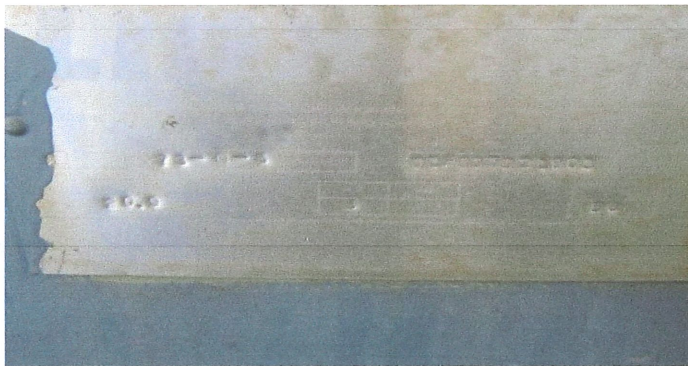
PICTURES AS RECEIVED AND OF DAMAGED PARTS



Unit as received



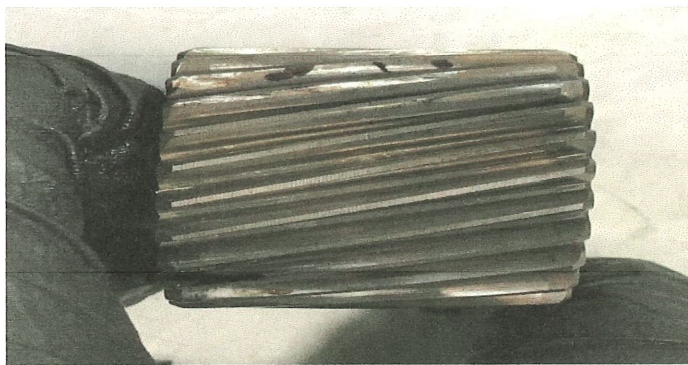
Unit as received



Nameplate



Mounting plate



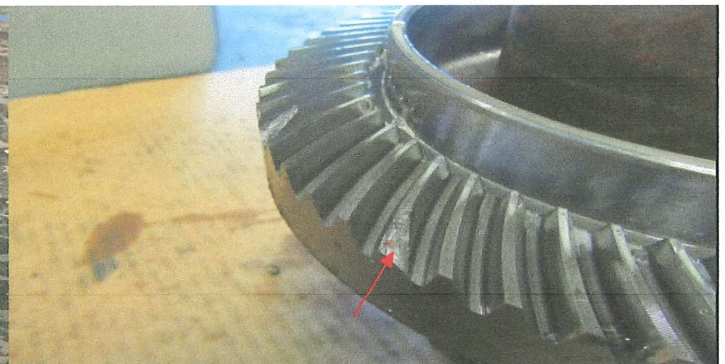
Change gear pinion



Broken tooth on change gear

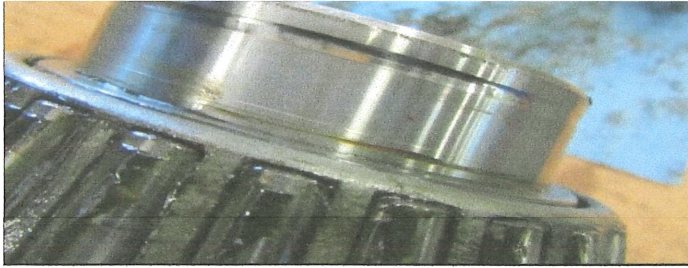


Broken tooth on change gear

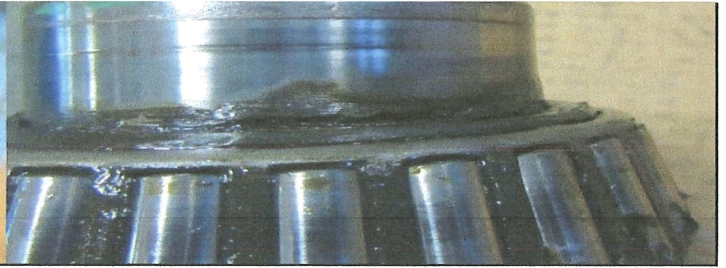


Broken tooth low speed gear (bevel gear)





Upper oil seal area LS shaft (grooved/undersized)



Lower oil seal area LS shaft (grooved/undersized)



City of Port Orange Public Utilities Department

TO: Michael Johansson, City Manager

THRU: Lynn Stevens, Public Utilities Director

THRU: Julia Wiggins, Public Utilities Budget Analyst

FROM: Steve Parnell, Reclaimed Water Production Manager *SP*

DATE: March 6, 2019

SUBJECT: Purchase with Ryan Herco Flow Solutions

REQUEST:

The Public Utilities Department is requesting the approval of a purchase order with Ryan Herco Flow Solutions to replace two critical mixers at the WRF.

PURPOSE:

These mixers keep anoxic tanks in the treatment structure mixed and keep solids from settling out on the bottom. These anoxic zones are critical for proper nutrient removal and to maintain FDEP compliance.

CONSIDERATION:

NA

FUNDING:

Reclaim Water Plant Contract Services – 403 0400 535 6397, Project # SSP002

RECOMMENDATION:

Public Utilities recommends the approval of a purchase order in the amount of \$28,774.00 with Ryan Herco Flow Solutions to purchase replacement mixers for the WRF.

ANTICIPATED SCHEDULE:

a.) Enter on Boardsync –

ATTACHMENTS:

a.) Letter of Sole Source

NOTES



CITY OF PORT ORANGE

Vendor Application and Agreement

City of Port Orange
Attn: Purchasing Division
(386) 506-5718
PurchDiv@port-orange.org
1000 City Center Circle
Port Orange, FL 32129

Please complete the following information:

Name of Individual or Business: SPX FLOW US, LLC Lightnin & Plenty Mixers

Payment Remit to Name: SPX FLOW US, LLC

Contact Person and Title: Representative

Phone Number: 704-808-3800 **Fax Number:** _____

Email Address: SPX.AMSSC.Remittance@SPXFLOW.COM

Taxpayer Identification Number (TIN): 47-2822028

Tax Classification:

- | | |
|---|---|
| ☐ Individual/Sole Proprietor/Single Member LLC | ☐ S Corporation |
| ☐ Partnership | ☒ C Corporation |
| ☐ Other (Explain) _____ | ☐ Trust/Estate |

Current W-9 Attached (Required) ☒ Yes

Type of Commodity/Services manufacture of mixers and agitators

Does your company accept Purchasing Cards (i.e. Visa)? ☒ Yes ☐ No

Permanent Address:

Address 135 Mt. Read Blvd.
City Rochester State NY Zip Code 14611

Remit to Address (if different from above):

Address PO Box 277886
City Atlanta State GA Zip Code 30384-7886

Please inform the Purchasing Division of all address, contact information and insurance changes.

PURCHASING GENERAL TERMS AND CONDITIONS

The City objects in advance to the inclusion of any additional terms and conditions proposed by the vendor in its acceptance or acknowledgement of any order. The inclusion of terms and conditions, or reference thereto, by the vendor shall be of no significance, shall not be binding on the City, and the City's acceptance of the vendor's goods or services shall not be deemed as acceptance of such terms and conditions. The terms and conditions contained in a Supplemental Document, as defined hereinafter, to the Purchase Order shall only control if and when a Supplemental Document to the Purchase Order is signed by the City Manager or Mayor. The terms and conditions contained in a Supplemental Document fully executed by the City Manager or Mayor are incorporated herein by this reference. **In the event that a vendor contracts with the City via a Supplemental Document and there is a conflict between the general terms and conditions set forth herein and the Supplemental Document, the terms and conditions of the Supplemental Document shall control. Supplemental Document shall be defined as to include invitation to bid, proposal, quote, and contract.** Unless otherwise stated on the face of a purchase order, the following terms and conditions shall apply:

1. **ACCEPTANCE.** The Purchase Order ("PO") issued by the City of Port Orange ("the City") and made apart hereof by reference, becomes a binding contract, subject to the terms and conditions set forth herein, upon confirmation of the PO by the Vendor; or by the commencement of the work set forth in the PO; or by acceptance of payment for the work set forth in the PO. Any change, addition or modification to the terms set forth on the face of the PO must be agreed to in writing by the City.
2. **ASSIGNMENT.** Neither the PO nor any interest under such PO may be assigned by Vendor without the prior written consent of City.
3. **CHANGES.** City shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery and method of transportation. If any such changes cause an increase or decrease in the costs or the time required for Vendor's required performance, an equitable adjustment will be made and the PO will be modified, in writing, accordingly.
4. **COMPLIANCE WITH LAWS.** Vendor warrants that all goods and services applicable under the PO will have been produced, sold, delivered and furnished in strict compliance with all applicable Federal and State laws and regulations. Vendor shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required in agreements of this character are incorporated by this reference.
5. **FREIGHT.** Vendor shall ensure that shipper complies with the shipping terms and instructions stated on the face of the PO. Failure to accurately follow the shipping terms and instructions as stated may result in one of the following: (i) a chargeback for any freight cost increase; or (ii) a chargeback for the full cost of the freight.
6. **INSPECTION.**
 - a. All goods and/or services, purchased are subject to City's inspection, test and approval at destination, whether or not prior payments have been made or inspections have been performed by the City. All goods and/or services not in accordance with specifications may be rejected and held subject to shippers' orders. Shipper must pay all expenses, including freight both ways, on rejected goods.
 - b. If goods and/or services provided hereunder are rejected, in whole or in part by the City by reason of the Vendor's failure to comply with any of the terms, conditions and/or specifications contained herein and on the face of the PO, City, after notifying Vendor in writing may (i) return the rejected portion of such goods and/or services to Vendor at Vendor's expense or hold the same for such disposal as Vendor shall indicate, without invalidating the remainder of the PO; (ii) may reject the

entire shipment of goods and cancel the PO for any undelivered goods; or (iii) to cause Vendor to pay City promptly for expenses incurred in remedying the defective or nonconforming goods and/or services (including without limitation, the purchase of substitute (or functionally equivalent) goods and/or services), or to cause Vendor, at Vendor's expense, to expeditiously replace, upgrade, or repair any defective or rejected goods. If the option set forth in (i) is exercised, City may, in its discretion, reduce the quantity specified in the PO by the number of goods and/or services returned or rejected.

7. INDEMNIFICATION. The City reserves the right to add in a Supplemental Document, as previously defined to include invitation to bid, proposal, quote, and contract, the following clause or substantially similar language:

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

8. INTELLECTUAL PROPERTY INDEMNIFICATION. Vendor warrants that there has been no violation or infringement of any copyright, trade name, trademark, patent or related intellectual property right, as a result of manufacturing, producing or selling the goods. Vendor further agrees to defend and indemnify City, its officers, agents and employees from all claims, expenses and liabilities arising from any actual or alleged intellectual property violation or infringement.

9. INSURANCE. THE DEPARTMENT HEAD HAS THE RIGHT TO WAIVE CERTAIN INSURANCE REQUIREMENTS AND SHALL PROVIDE THE WAIVER WITH THE REQUEST FOR PURCHASE ORDER. IF INSURANCE IS REQUIRED, THE FOLLOWING TERMS SHALL APPLY:

Vendor shall maintain all insurance as required by the City. Vendor shall provide to the City a certificate of insurance evidencing coverage and identifying the City as an additional insured. Failure of the Vendor to provide a certificate of insurance shall not relieve the Vendor from its responsibility to maintain the insurance coverage required by the City. The certificates shall clearly indicate that the Vendor has obtained insurance of the type, amount and classification required by the City. Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. For worker's compensation coverage, the Vendor's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the City as an additional insured for Workers' Compensation. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Vendor shall not commence work until the City has received a certificate or certificates of insurance and endorsements evidencing the required insurance. Vendor shall be solely responsible to provide the City the written original certificate, notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change. If insurance policies required are not provided to the City within thirty (30) days of the date requested, this Vendor Application and Agreement may be terminated.

10. INVOICING. Vendor agrees to submit an invoice with each shipment showing the PO number. All invoices should be issued to the City c/o Accounts Payable. The discount period of any cash discounts available to the City will commence on the date of the invoice. When freight is prepaid by Vendor, Vendor must show freight charges separately; before adding freight charges, and submit a copy of the freight bill with the invoice. No allowance will be made for boxes, reels, drums or other returnable containers unless so stated on the face of the PO and invoiced separately.

11. JURISDICTION AND VENUE. For any suit or proceeding to enforce the provisions of the PO, Vendor irrevocably consents to the jurisdiction of the Courts of the State of Florida. Furthermore, Vendor agrees that the PO will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Florida, without giving effect to its principles of conflicts of law.

12. OVERSHIPMENT. Quantities in excess of that shown on the face of the PO, if rejected, will be returned to Vendor at Vendor's risk and expense. Any excess quantities that City accepts will be billed at the PO price.

13. TERMINATION. City reserves the right to cancel all or any part of the PO without penalty.

14. TIME. Time is of the essence of the PO. The City reserves the right to cancel the PO (or any portion) without penalty in the event that deliveries are not made within the specified time, without liability for deliveries previously made and accepted by City.

15. TITLE. Unless the face of the PO provides for the City's assumption of ownership at the point of shipment, title to the goods purchased under the PO remains with the Vendor until such goods are off-loaded at the City facility or site specified on the face of the PO; provided, however, that in all cases, Vendor shall bear all risks of loss or damage in transit until such goods are delivered to City's facility or site and accepted by City or its designee.

16. WARRANTY. Vendor expressly warrants that all goods, services, workmanship, and title furnished and/or delivered pursuant to the PO and the terms and conditions stated herein will be free from defects in material, workmanship and title. Further Vendor warrants all goods and/or services will conform in all respects to all applicable specifications, drawings, and shall be fit for its intended use and service. All goods and/or services shall be new and not secondhand, of good quality and free from defects whether latent or patent in material or workmanship; all material and workmanship is warranted for a minimum of one (1) year from date of acceptance by City unless otherwise stipulated herein. Upon notification by City, Vendor shall correct any defect either by repair or replacement of the defective goods subject to the approval of the City, at Vendor's expense, provided that City's continued use of said defective goods pending repair or replacement shall not constitute a waiver by City under the PO. Further warrants that all goods and/or services covered by the PO meet or exceed the safety standards established and promulgated under the Federal Occupational Safety and Health Law (Public Law 91-956) and its regulations in effect as of the date of the PO. These warranties shall survive acceptance of and payment for the goods and/or services furnished.

17. PAYMENT. Vendor agrees that payment will be made subject to "Local Government Prompt Payment Act", Sections 218.70-218.74, Florida Statutes, and in accordance with the City's policies and procedures, including but not limited to the requirement that Vendor shall be required to maintain a Current Vendor Application on file with the City. Prior to release of payment, Vendor shall be required to make current the vendor application on file with the City. For purposes set forth herein, a "Current Vendor Application" shall include the following: 1) an updated, completed, and executed current vendor application; 2) proof of current and updated insurance, if required; 3) updated and completed W-9, and 4) any other documentation that may be required by the City or otherwise required by law.

18. PUBLIC RECORDS COMPLIANCE. Vendor shall also be defined as to include the term set forth in Chapter 119.0701(1)(a), Florida Statutes. Vendor shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Vendor does not transfer the records to the City.
- (d) Upon completion of the Contract, Vendor shall transfer to the City, at no cost, all public records in possession of the Vendor and destroy any duplicate public records that are exempt from public records disclosure requirements. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- (e) Comply with the City's request for records within a reasonable time. Failure to comply with the City's request for records within a reasonable time may subject Vendor to penalties set forth in Chapter 119.10, Florida Statutes.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 TELEPHONE: (386) 506- 5563 E-MAIL: CITYCLERK@PORT-ORANGE.ORG

19. SEVERABILITY. Vendor understands and agrees that if any provision, term, or condition stated herein or on the face of the PO is by the courts held to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be affected, and the rights and obligations of the Vendor and the City shall be construed and enforced as if the PO and this Vendor Application and Agreement did not contain the particular provision, term or condition held to be invalid.

20. COUNTERPARTS; FACSIMILE SIGNATURES. This Vendor Application and Agreement 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. Any party may effect the execution and delivery of this Vendor Application and Agreement by signing the same and sending a copy thereof to the City by facsimile, email or other electronic mean and so executed, shall have the full force and effect as an original.

*[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]
[SIGNATURES FOLLOW ON NEXT PAGE]*

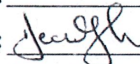
ACKNOWLEDGEMENT AND AUTHORIZATION

Vendor acknowledges, authorizes, and agrees to the following:

1. The Vendor, as also defined to include principals and officers authorized to legally bind and obligate the Vendor for purposes set forth herein, does hereby certify under penalty of law that this Vendor Application and Agreement and all attachments provided are correct and were prepared under Vendor direction or supervision. Furthermore, Vendor is legally authorized to sign this Vendor Application and Agreement and by such execution does hereby approve and accept all of the terms and conditions contained herein.
2. The Vendor does hereby certify that Vendor has read and understands the Vendor Application and Agreement and Purchasing General Terms and Conditions contained herein.
3. The Vendor does hereby certify that no person (or concern) in connection with the Vendor, so far as is known, is disqualified from public contracting or purchasing from any agency of the federal government, State of Florida or City of Port Orange. Vendor further certifies that Vendor will notify the City of Port Orange should any person (or concern) in connection with the Vendor, so far as is known, becomes disqualified while Vendor contracts with the City of Port Orange.
4. Vendor acknowledges and agrees to be bound by the terms and conditions set forth in the Current Vendor Application form approved by the City Finance Director, posted on the City's website, www.port-orange.org, as of the date of issuance on the face of the PO and as otherwise referenced herein. Furthermore, it shall be the Vendor's responsibility to maintain a current Vendor Application, as defined in Section 16 of this Vendor Application and Agreement, on file with the City. **Vendor agrees that the City is not required to make payment until the current Vendor Application is filed.**

SPX FLOWS Special Terms and Conditions attached hereto shall apply.

Name of Vendor: SPX FLOW US, LLC

Signature: 

Printed Name: Dean Graunke

Title: Inside Sales Manager

Date: 3/7/19

Please return the completed Vendor Application and Agreement along with the required documentation to:

City of Port Orange
Attn: Purchasing Division
1000 City Center Circle
Port Orange, FL 32129

Or email: PurchDiv@port-orange.org

Any questions, please call the Purchasing Division at (386) 506-5718.



SPECIAL TERMS AND CONDITIONS – PURCHASE ORDER # _____

The following special terms and conditions are supplementary to any other terms and conditions and shall apply in precedence of such other terms and conditions, or otherwise under any applicable law. These special terms and conditions shall survive termination of the order/contract for whatever reason.

TITLE / RISK OF LOSS / DELIVERY: Unless otherwise stated on the face of the PO, the goods shall be delivered Free Carrier (FCA) Seller's facility (INCOTERMS 2010), and title to the goods and risk of loss shall pass to Buyer upon delivery. If Buyer cancels all or part of the order/contract other than for cause, Buyer will reimburse Seller for its expenses incurred to fulfil the order/contract through the cancellation date, including, without limitation, materials and labor, plus a reasonable profit. Dates for the furnishing of services and/or delivery or shipment of goods are approximate only and are subject to change, and Seller shall use commercially reasonable efforts to meet such dates; provided, however, that Seller shall not be liable in damages or otherwise, nor shall Buyer be relieved of its performance hereunder, because of Seller's failure to meet them. Additionally, Seller shall not be liable, directly or indirectly, for any delay in or failure to perform caused by carriers or suppliers; labor difficulties, shortages, strikes or stoppages of any sort; difficulty in obtaining materials; customer requested order changes; fires, floods, storms, accidents, or acts of God; any statute, sanction, injunction or other governmental restraint or prohibition; or other causes beyond Seller's reasonable control. In the event of any such delay, the date of delivery shall be extended for a length of time at least equal to the period of the delay.

WARRANTY: For a period of twelve (12) months from initial start-up or eighteen (18) months from the date of delivery of goods or performance of services, whichever occurs earlier, Seller warrants the goods manufactured by Seller to be free from defects in material and workmanship, and the services performed by Seller to be in accordance with the specifications of Seller's proposal. If within such period any goods are defective or any services are nonconforming, such goods shall, at Seller's option, be repaired or replaced, and such services corrected or a substitute obtained. This warranty shall not apply to (i) any loss or damage resulting from normal wear and tear or alteration, misuse, abuse or neglect, (ii) improper installation, operation or maintenance by Buyer or a third party or (iii) any labor, dismantling, reinstallation, transportation or access costs, or other expense associated with the repair or replacement of the goods or services. **THE FOREGOING WARRANTIES STATE SELLER'S ENTIRE WARRANTY OBLIGATION (EXCEPT TITLE) AND BUYER'S SOLE AND EXCLUSIVE REMEDY RELATED TO SUCH GOODS AND SERVICES. EXCEPT AS EXPRESSLY SET FORTH ABOVE, SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, AND SELLER EXPRESSLY DISCLAIMS ANY WARRANTIES IMPLIED BY LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

SELLER'S PROPRIETARY INFORMATION: All intellectual property, patents, trademarks, know-how, copyrights, models, formulae, software, source codes, designs, trade secrets, and trade names furnished, supplied or applied by Seller or invented, created or developed by Seller (including any improvement or derivative of Seller's products) in connection with the order/contract shall remain the exclusive property of Seller, or where applicable the exclusive property of a third party supplier to Seller. Seller hereby grants to Buyer a nonexclusive license and right to use software and documentation only in connection with the order/contract and the use, operation and maintenance of the goods or services. Buyer further agrees not to reverse engineer, de-compile, or disassemble Seller's goods or any software/firmware contained therein.

THIRD PARTY TERMS AND COMPLIANCE WITH LAWS: Seller shall not be bound by the terms of any contract between Buyer and any third party or subject to other flow down provisions, regardless of whether Buyer notifies Seller of such terms. Seller shall not be bound by any term or condition that violates any applicable law and Buyer will not take, and will not solicit Seller to take, any action which would violate any applicable law, including, without limitation, anti-boycott, export, anti-bribery, antitrust or data privacy laws. Seller shall be excused from performing this order/contract or delivery of goods hereunder without liability or consequence if such performance or delivery is or becomes prohibited by any applicable statute, sanction, injunction or other governmental restraint.

INSURANCE AND INDEMNITY: Seller shall maintain insurance coverage consistent with its existing programs but shall not name Buyer as an additional insured nor waive any rights of subrogation Seller or such insurers may have against Buyer or its affiliates. Seller shall provide Buyer with its standard certificate of insurance upon request. Seller shall only indemnify Buyer from and against claims to the extent directly caused by the negligence or wilful misconduct of Seller, its employees, contractors or agents.

LIMITATION OF LIABILITY: NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, EXCEPT AS OTHERWISE PROHIBITED BY LAW: (A) NEITHER SELLER NOR BUYER SHALL BE LIABLE, WHETHER BY WAY OF INDEMNITY OR BY REASON OF ANY BREACH OF CONTRACT OR OF STATUTORY DUTY OR BY REASON OF TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), FOR ANY LOSS OF PRODUCTS, LOSS OF PROFIT, LOSS OF REVENUE, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF CONTRACTS, LOSS OF BUSINESS, OR FOR ANY SPECIAL OR INCIDENTAL COSTS, OR FOR ANY FINANCIAL OR ECONOMIC LOSS, OR FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOSSES WHATSOEVER; AND (B) EACH OF SELLER'S AND BUYER'S MAXIMUM AGGREGATE LIABILITY ARISING FROM OR RELATED TO THE ORDER/CONTRACT SHALL NOT EXCEED THE TOTAL VALUE OF THE ORDER/CONTRACT.

AGREED TO FOR AND ON BEHALF OF BUYER

Signature: _____

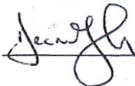
Name: _____

Title: _____

Date: _____

REV 17 Nov. 2016

AGREED TO FOR AND ON BEHALF OF SELLER

Signature:  _____Name: Dean GraunkeTitle: Inside Sales ManagerDate: 3/7/19



SPX FLOW US, LLC COMPANY INFORMATION

Business Unit Shipping Address:

SPX FLOW US, LLC – Lightnin and Plenty Mixers
135 Mt. Read Blvd.
Rochester, NY 14611
585-436-5550

Send Purchase Orders to:

SPX FLOW US, LLC – Lightnin and Plenty Mixers
C/O [insert Local Sales Rep]
[Insert Local Sales office Mailing Address}
Or
SPX FLOW US, LLC – Lightnin and Plenty Mixers
135 Mt. Read Blvd.
Rochester, NY 14611

Send Correspondence to:

SPX FLOW US, LLC – Lightnin and Plenty Mixers
P. O. Box 31370
Rochester, NY 14603

Send payments to:

SPX FLOW US, LLC
P. O. Box 277886
Atlanta, GA 30384-7886

Send invoices to:

SPX FLOW US, LLC
Suite 500R0
13320 Ballantyne Corporate Place
Charlotte, NC 28277-2706

Shipping Addresses:

1. *Manufacturing Locations:*

SPX FLOW US, LLC – Lightnin and Plenty Mixers

135 Mt. Read Blvd.
Rochester, NY 14611

1000 Millstead Way
Rochester, NY 14624

2. *Service Centers:*

Midwest Service Center
1714 Hobbs Dr.
Delevan, WI 53115

Northeast Service Center
135 Mt. Read Blvd.
Rochester, NY 14611

Southern Service Center
399 North Prairie Industrial
Pkwy.
Mulberry, FL 33860

>Lightnin>Plenty



East Coast Service Center
Rt. #1 825 Fairview Rd.
Wytheville, VA 24382

West Coast Service Center
4771 Northstar Way
Modesto, CA 95356

SPX FLOW, INC CORPORATE HEADQUARTERS

SPX FLOW, Inc.
13320 Ballantyne Corporate Place
Charlotte, NC 28277-2706
704-752-4400
www.spxflow.com

PRESIDENT AND CEO: Marc Michael,

YEARS IN BUSINESS: 80+

FINANCIAL INFORMATION

As a wholly owned division of a publicly owned corporation, individual financial information cannot be provided. A copy of the corporate Annual Report can be obtained by writing to the Corporate Secretary, SPX Flow Inc., 13320 Ballantyne Corporate Place, Charlotte, NC 28277 or print one from the website: www.spxflow.com

FEDERAL TAX ID#: 47-3110748

DUNS NUMBER: DUNS #07-980-0324 (formerly #00-602-4129)

BANK REFERENCES:

Bank of America
Credit Inquiry Services
P. O. Box 100289
Columbia, SC 29202-3289
Tel: 803-765-4882
Account #: 3750343292

TRADE REFERENCES:

Klein Steel Service Inc. 105 Vanguard
Parkway Rochester, NY 14606 Tel: 585-
647-5103 Fax: 585-647-5175

Flowserve
222 Cameron Dr #200 Phillipsburg, NJ
08865
Tel: 908-859-7331

Applied Industrial Technologies, Inc.
600 Colfax Street
Rochester, NY 14606
Tel: 585-254-1630
Fax: 585-254-0146



SPX Flow US, LLC

***** This is only for payments — DO NOT send Purchase Orders to this address ****

PAYMENT INSTRUCTIONS FOR DOMESTIC CUSTOMERS (LIGHTNIN & Plenty Brand Mixers)

Checks:

SPX Flow US LLC
P.O. Box 277886
Atlanta, GA 30384-7886
Fed ID# 47-2822028

Checks sent via over-night courier

SPX Flow US LLC
C/O Bank of America —Lockbox 277886
6000 Feldwood Rd.
College Park, GA 30349
Bank Contact: Susy Acosta
Bank Phone: (888) 715-1000 x51307

*****These checks must be in U.S. Dollars and the checks must be drawn on an U.S. Bank.
Please make sure to reference P.O. Box 277886 as this is our lock box account number.**

Wire Transfers

Bank Name: Bank of America
6000 Feldwood Rd
College Park, GA 30349
Routing Transit: 026009593
Swift Code: BOFAUS3N
Account Number: 3750343292
Account Name: SPX Flow US LLC

ACH Transfers

Bank Name: Bank of America
6000 Feldwood Rd
College Park, GA 30349
Routing Transit: 111000012
Swift Code: BOFAUS3N
Account Number: 3750343292
Account Name: SPX Flow Receivables LLC
Checking Account

*****All funds transferred must be in U.S. Dollars.**

***** CCD Fax or email address for remittance detail. Remittance detail sent directly to SPX Flow via fax or email;
payment transmitted to bank.**

**To avoid delay in having your funds applied to your account correctly, please include a list of invoices with
your payment or send a telex/fax directly to the Accounts Receivable Department on the day you make the
payment.**

Accounts Receivable Department Phone: 704-808-3800
Accounts Receivable Department Email: spx.amssc.ARinquiry@spxflow.com

Remittance email address for PDF file is SPX.AMSSC.Remittance@SPXFLOW.COM

DUNS # 07-980-0324

FEDERAL TAX ID#: 47-2822028

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. SPX FLOW, INC.		
	2 Business name/disregarded entity name, if different from above SPX FLOW US, LLC		
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☒ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ► _____		4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ (Applies to accounts maintained outside the U.S.)
	5 Address (number, street, and apt. or suite no.) See instructions. 13320 BALLANTYNE CORPORATE PLACE		Requester's name and address (optional)
	6 City, state, and ZIP code CHARLOTTE, NC 28277-3607		
	7 List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
			-				-	
or								
Employer identification number								
4	7	-	3	1	1	0	7	4

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ► <i>N. Bales</i>	Date ► <i>1/1/19</i>
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

Approved - 5/8/2019

Scott Neils
Margaret Roberts
Jake Johansson
Robin Fenwick

Approved - 5/9/2019
Approved - 5/23/2019
Approved - 5/23/2019
Final Approval - 5/23/2019

RESOLUTION NO. 19-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ADOPTING
AN INVENTORY LIST OF MUNICIPAL PROPERTY
APPROPRIATE FOR USE AS AFFORDABLE HOUSING AS
REQUIRED BY FLORIDA STATUTES, SECTION 166.0451;
AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes Section 166.0451 requires municipalities every three years to prepare an inventory list of all real property within its jurisdiction to which the municipality holds fee simple title that is appropriate for use as affordable housing; and

WHEREAS, the City's inventory list of real property was reviewed by a representative from Community Development and the City's Right-of-Way Agent; and

WHEREAS, no real property held in fee simple by the City of Port Orange was identified that met the criteria established by the State of Florida for use as affordable housing.

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

SECTION 1. The City of Port Orange hereby adopts an inventory list of municipal property appropriate for use as affordable housing as required by Florida Statutes, Section 166.0451. The inventory list has no property appropriate for use as affordable housing, attached hereto as **Exhibit "A"**.

SECTION 2. This Resolution shall take effect immediately upon its final passage and adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the ____ day of _____ 2019.

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

Exhibit “A”

INVENTORY LIST
OF
MUNICIPAL REAL PROPERTY APPROPRIATE FOR USE AS AFFORDABLE
HOUSING PER FLORIDA STATUTES, SECTION 166.0451 (2018)

No real property held in fee simple title by the City of Port Orange has been identified as meeting the criteria established by the State of Florida for use as affordable housing.

Review Period: July 2016 through and including May 1, 2019.



CITY OF PORT ORANGE

Public Utilities Department
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129-4144
TELEPHONE 386-506-5750
FAX 386-756-5370
www.Port-Orange.org

MEMORANDUM

TO: Jake Johansson, City Manager

THRU: Lynn Stevens, Director of Public Works & Utilities
Junos Reed, Construction & Engineering Manager

FROM: Linda Johnson, Right of Way Agent

DATE: May 6, 2019

RE: Inventory List of City-owned Real Property Appropriate for Affordable Housing per Florida Statutes, Section 166.0451.

In compliance with F.S. Sec. 166.0451, Disposition of municipal property for affordable housing, staff has reviewed the inventory of real property held by the City and within its jurisdiction. After close scrutiny, no properties have been deemed suitable as meeting the established criteria for affordable housing.

Criteria for "affordable" is set forth in F.S. Sec. 420.0004(3); "Affordable" means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households as indicated in subsection (9) "extremely-low-income persons;" subsection (11) "low-income persons;" subsection (12) "moderate-income persons;" and subsection (17) "very-low-income persons."

One property was identified as having conceivable potential for development as multi-family low-income housing; specifically, PID# 6305-01-00-0040, more particularly described as: Lots 4 and 5, Magnolia Grove Company's Subdivision, per map filed at Map Book 2, Page 69, Public Records of Volusia County, Florida. The City holds fee simple title to this vacant 28-acre (+/-) parcel behind Sumner Hardware, 3406 Nova Road. Geographically, the site is in proximity to high density residential mobile home properties: Lighthouse Pointe to the south, and Lamplighter Mobile Home Community and Elmwood Mobile Home Park to the north. However, the site has geographically restrictive access to Nova Road and the volume of historic oak trees on the site renders development as multi-family, affordable housing economically unfeasible.

/lj



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/4/2019

Consent item: No

SUBJECT: (B9) Resolution No. 19-24 - Supporting the Reduction of Single-Use Plastic Straws in the City of Port Orange

DEPARTMENT: City Manager

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 19-24 in Support of the reduction of single-use plastic straws in the City of Port Orange.

SUMMARY: On May 7th, 2019, the Youth Leadership Program participants provided a report to the City Council regarding single-use plastic straws. Council gave direction to staff to draft a resolution in support of reducing single-use plastic straws throughout the City. Staff has prepared the resolution for the review and approval by City Council. Staff recommends adoption of the resolution.

Project No.: Funding Account No.:

Presenter: Alan Rosen

ATTACHMENTS:

1.	Reso. No. 19-24	Reso. No. 19-24.pdf
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Alan Rosen
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 5/13/2019
Approved - 5/23/2019
Approved - 5/28/2019
Final Approval - 5/28/2019

RESOLUTION NO. 19-24

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, DISCOURAGING THE USE OF PLASTIC DRINKING STRAWS, STYROFOAM, PLASTIC STIR STICKS, AND SIMILAR PLASTIC ITEMS; ENCOURAGING BUSINESSES AND RESIDENTS TO DISCONTINUE THE USE OF PLASTIC DRINKING STRAWS, STYROFOAM, PLASTIC STIR STICKS, AND SIMILAR PLASTIC ITEMS IN WORKING TOWARD A CLEANER AND SAFER ENVIRONMENT, BEACH, OCEAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Port Orange, in the regular meeting of May 7, 2019 examined certain plastics and the impacts on our environment; and

WHEREAS, maintaining and enhancing the quality of the waters of the Halifax River, Rose Bay, Spruce Creek and the Atlantic Ocean is important to the quality of life enjoyed by the City of Port Orange residents, businesses, and visitors, as well as the health of the flora and fauna in those waters, shoreline and beaches; and

WHEREAS, plastic drinking straws are provided by most establishments that offer cold drinks and plastic stirring sticks for hot drinks offered; and

WHEREAS, plastic drinking straws, plastic stirring sticks, and similar plastic items are not biodegradable and break down into smaller pieces of plastic that become more difficult to manage and clean up; and

WHEREAS, plastic drinking straws, plastic stirring sticks, and similar plastic items deposited in our city end up in our waterways, in the Atlantic Ocean, and in many cases pose a great threat to marine and other wildlife; and

WHEREAS, the cost of making our waterways and the ocean clean and safe increases, due in part, to the need to remove plastic drinking straws, plastic stirring sticks, and similar plastic items.

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

SECTION 1. All businesses are encouraged to discontinue providing plastic drinking straws, plastic stirring sticks, and similar plastic items.

SECTION 2. Businesses that provide a product for which a plastic straw, plastic stirring stick and similar plastic items would be desired are encouraged to offer paper straws, metal straws or other biodegradable items as substitutes, and to provide a plastic straw, or plastic stirring stick only upon individual request.

SECTION 3. City residents are encouraged to discontinue the use of plastic drinking straws, plastic stirring sticks, and similar items.

SECTION 4. The discontinuation of the use of plastic drinking straws, plastic stirring sticks, and similar plastic items is encouraged to be a part of everyone's effort to go "plastic free" in working towards a cleaner and safer environment, beach and ocean.

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the ____ day of _____ 2019.

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



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/4/2019

Consent item: No

SUBJECT: (B10) Renters Utility Accounts Write Offs

DEPARTMENT: Finance

GOAL:

RECOMMENDED MOTION: Move to approve the finance director writing off as uncollectible the attached accounts.

SUMMARY: Request for approval to write off Rental customer account balances over one year old.

The accounts were sent to Penn Credit on 3//29/18. After a year of unsuccessful attempts to collect of debt, we close the account with the agency and write off the balance.

If the customer reapplies for utility service with the city, we will re-coop the write off prior to them setting up new service.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Copy of Port Orange Active Inventory 5-10-19	Copy of Port Orange Active Inventory 5-10-19.pdf
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Cherie Cadenhead
Scott Neils
Shannon Balmer
Jake Johansson
Robin Fenwick

Created/Initiated - 5/13/2019
Approved - 5/20/2019
Approved - 5/22/2019
Approved - 5/23/2019
Final Approval - 5/23/2019

Proposed Utility Account Write-Offs

RENTER ACCOUNTS

#	CUSTOMER ID	STREET ADDRESS	TERMINATION DATE	BALANCE OF ACCT.	REASON FOR WRITE OFF
1	127721-17861	40 FREDERICK AVE	6/26/2017	\$ 85.01	DECEASED
2	75649-19264	204 LOQUAT LN	8/15/2017	\$ 162.35	DECEASED
3	157037-20898	805 LOUISVILLE	2/16/2017	\$ 164.39	DECEASED
4	174191-31306	1066 CRYSTAL CREEK DR	8/8/2017	\$ 262.70	DECEASED
5	144573-24606	4035 NOVA ROAD B	7/31/2017	\$ 964.75	DECEASED
6	77933-10147	315 JEFFERSON AVE	10/3/2017	\$ 10.62	Uncollectible small balances
7	127149-1809	3556 IRISH LN	11/1/2017	\$ 28.65	Uncollectible small balances
9	163487-26467	796 PHEASANT RUN CT	11/6/2017	\$ 33.81	Uncollectible small balances
10	176021-24421	3960 WILLOW TRAIL RUN B5	7/2/2018	\$ 43.86	Uncollectible small balances
11	151889-18990	153 ORCHID LN	8/30/2018	\$ 44.16	Uncollectible small balances
12	172961-20806	752 TARRYTOWN TR	5/1/2017	\$ 50.36	COLLECTION AGENCY-UNCOLLECTIBLE
13	161899-26905	3727 SUNRISE OAK	6/9/2017	\$ 50.66	COLLECTION AGENCY-UNCOLLECTIBLE
14	167923-26207	5828 RIVERSIDE DR	8/15/2017	\$ 50.75	COLLECTION AGENCY-UNCOLLECTIBLE
15	167247-10750	5822 SOUTHPORT	8/2/2017	\$ 52.91	COLLECTION AGENCY-UNCOLLECTIBLE
16	166117-17302	284 VAGABOND	12/5/2017	\$ 52.91	COLLECTION AGENCY-UNCOLLECTIBLE
17	33415-4250	1402 TOMPKINS	6/29/2017	\$ 53.45	COLLECTION AGENCY-UNCOLLECTIBLE
18	17505-11049	696 LONE OAK DRIVE	11/11/2016	\$ 54.14	COLLECTION AGENCY-UNCOLLECTIBLE
19	172567-21521	1203 DEER SPRINGS RD	11/7/2017	\$ 54.33	COLLECTION AGENCY-UNCOLLECTIBLE
20	174131-25362	5227 ISABELLE	11/2/2017	\$ 54.74	COLLECTION AGENCY-UNCOLLECTIBLE
21	173223-14576	5618 RIDGEWOOD AVE	9/23/2017	\$ 55.23	COLLECTION AGENCY-UNCOLLECTIBLE
22	138945-24411	3538 FOREST BRANCH DR E	5/5/2017	\$ 55.44	COLLECTION AGENCY-UNCOLLECTIBLE
23	143331-1355	126 ALOHA TERR	7/6/2017	\$ 58.70	COLLECTION AGENCY-UNCOLLECTIBLE
25	173261-23978	3780 CLYDE MORRIS	7/31/2017	\$ 59.90	COLLECTION AGENCY-UNCOLLECTIBLE
26	162383-11064	5827 SPRUCE CREEK RD	1/18/2017	\$ 61.58	COLLECTION AGENCY-UNCOLLECTIBLE
27	172227-6901	430 LAURIE DRIVE	9/12/2017	\$ 61.66	COLLECTION AGENCY-UNCOLLECTIBLE
28	174823-10823	5930 HATTERAS DR	9/28/2017	\$ 61.86	COLLECTION AGENCY-UNCOLLECTIBLE
29	147683-11630	509 NEWTON RD	2/20/2017	\$ 62.31	COLLECTION AGENCY-UNCOLLECTIBLE
30	174687-5456	5408 OATES. AVE	6/15/2017	\$ 64.41	COLLECTION AGENCY-UNCOLLECTIBLE
31	171619-24409	3960 OAK TRAIL RUN	12/1/2017	\$ 66.45	COLLECTION AGENCY-UNCOLLECTIBLE
32	160939-18017	60 E BAYSHORE	6/2/2017	\$ 66.56	COLLECTION AGENCY-UNCOLLECTIBLE
33	172313-36484	6806 AMICI CT	1/9/2017	\$ 68.11	COLLECTION AGENCY-UNCOLLECTIBLE
34	174897-12990	35 SPRINGWOOD S1	11/6/2017	\$ 68.16	COLLECTION AGENCY-UNCOLLECTIBLE
35	64803-22805	2209 MARIPOSA	8/19/2017	\$ 69.10	COLLECTION AGENCY-UNCOLLECTIBLE
36	148871-30825	1784 ARASH CT	5/18/2017	\$ 70.88	COLLECTION AGENCY-UNCOLLECTIBLE
37	167013-20205	416 PLUMOSA AVE	1/11/2017	\$ 72.95	COLLECTION AGENCY-UNCOLLECTIBLE
38	138147-21525	1301 DEER SPRINGS RD	4/7/2017	\$ 73.67	COLLECTION AGENCY-UNCOLLECTIBLE
39	60213-12339	95 FLAMINGO	11/20/2017	\$ 74.61	COLLECTION AGENCY-UNCOLLECTIBLE
40	169317-25528	5420 WOOD ST	4/5/2017	\$ 77.19	COLLECTION AGENCY-UNCOLLECTIBLE
42	8919-19209	198 WALTON	1/9/2017	\$ 77.97	COLLECTION AGENCY-UNCOLLECTIBLE
43	171347-3611	52 LEMONTWIST LN	7/11/2017	\$ 79.18	COLLECTION AGENCY-UNCOLLECTIBLE
44	166287-21155	896 STONYBROOK CIR	4/6/2017	\$ 80.75	COLLECTION AGENCY-UNCOLLECTIBLE
45	173573-24396	3960 OAK TRAIL RUN	5/5/2017	\$ 82.84	COLLECTION AGENCY-UNCOLLECTIBLE
46	170089-5456	5408 OATES ST	2/7/2017	\$ 84.01	COLLECTION AGENCY-UNCOLLECTIBLE
47	173361-4618	718 SLEEPY HOLLOW DR	8/10/2017	\$ 86.88	COLLECTION AGENCY-UNCOLLECTIBLE
49	54047-13014	59 SPRINGWOOD SQ	6/7/2017	\$ 88.70	COLLECTION AGENCY-UNCOLLECTIBLE
50	137179-32108	781 CROSSWINDS	1/26/2017	\$ 90.54	COLLECTION AGENCY-UNCOLLECTIBLE
51	166743-9869	5907 BOGGS FORD RD	1/11/2017	\$ 92.50	COLLECTION AGENCY-UNCOLLECTIBLE
52	137659-12906	100 MOON STONE CT	5/1/2017	\$ 95.05	COLLECTION AGENCY-UNCOLLECTIBLE
53	170053-23999	3780 CLYDE MORRIS BLVD	4/4/2017	\$ 95.33	COLLECTION AGENCY-UNCOLLECTIBLE
54	123561-7894	764 SANDY HILL CIR	6/2/2017	\$ 99.12	COLLECTION AGENCY-UNCOLLECTIBLE
55	171397-19800	307 CHARLES ST	6/19/2017	\$ 100.52	COLLECTION AGENCY-UNCOLLECTIBLE
56	171999-37265	3713 HUGH ST	8/4/2017	\$ 100.56	COLLECTION AGENCY-UNCOLLECTIBLE
57	169029-13058	103 SPRINGWOOD	4/6/2017	\$ 102.04	COLLECTION AGENCY-UNCOLLECTIBLE
58	113669-25954	5636 ORANGE AVE	2/27/2017	\$ 105.38	COLLECTION AGENCY-UNCOLLECTIBLE
59	166115-19815	308 WELLMAN	9/26/2017	\$ 105.78	COLLECTION AGENCY-UNCOLLECTIBLE
60	153135-28131	4690 SPRUCE CREEK RD	1/7/2018	\$ 110.32	COLLECTION AGENCY-UNCOLLECTIBLE

61	176007-7508	972 SANDLEWOOD	12/15/2017	\$	111.24	COLLECTION AGENCY-UNCOLLECTIBLE
62	107671-25565	501 COMMONWEALTH	3/17/2017	\$	111.73	COLLECTION AGENCY-UNCOLLECTIBLE
63	130273-19298	208 TROPIC DRIVE	4/10/2017	\$	111.76	COLLECTION AGENCY-UNCOLLECTIBLE
64	153725-13032	77 SPRINGWOOD	1/20/2018	\$	114.55	COLLECTION AGENCY-UNCOLLECTIBLE
65	127609-9612	737 TUMBLEBROOK	1/6/2018	\$	114.81	COLLECTION AGENCY-UNCOLLECTIBLE
66	172809-28569	3873 LONG GROVE LN	2/20/2017	\$	115.33	COLLECTION AGENCY-UNCOLLECTIBLE
67	172805-24394	3960 OAK TRAIL RUN	12/6/2017	\$	118.41	COLLECTION AGENCY-UNCOLLECTIBLE
68	163579-6708	5413 WOOD ST	7/21/2017	\$	120.68	COLLECTION AGENCY-UNCOLLECTIBLE
69	174961-2558	5420 WOOD ST	11/14/2017	\$	122.74	COLLECTION AGENCY-UNCOLLECTIBLE
70	164479-19474	231 MANGO LN	9/14/2017	\$	124.44	COLLECTION AGENCY-UNCOLLECTIBLE
71	174233-22640	1450 MADELINE AVE	6/27/2017	\$	129.17	COLLECTION AGENCY-UNCOLLECTIBLE
72	177163-19845	313 GREENWAY	10/31/2017	\$	129.20	COLLECTION AGENCY-UNCOLLECTIBLE
73	164975-21527	1303 DEER SPRINGS RD	1/13/2017	\$	132.72	COLLECTION AGENCY-UNCOLLECTIBLE
74	149787-13710	3752 HUGH ST	3/1/2017	\$	133.90	COLLECTION AGENCY-UNCOLLECTIBLE
75	168485-26558	3779 SWEET GROVE CT	2/7/2017	\$	136.27	COLLECTION AGENCY-UNCOLLECTIBLE
76	128715-8015	835 CLEAR LAKE DR	5/10/2017	\$	136.47	COLLECTION AGENCY-UNCOLLECTIBLE
77	168763-3734	175 BRANDY HILLS DRIVE	1/20/2018	\$	137.23	COLLECTION AGENCY-UNCOLLECTIBLE
78	174857-26276	5887 AZALEA ST	10/16/2017	\$	139.67	COLLECTION AGENCY-UNCOLLECTIBLE
79	157835-1915	1116 VIKING DR	8/11/2017	\$	144.81	COLLECTION AGENCY-UNCOLLECTIBLE
80	165869-8802	1098 DONNELL DR	9/18/2017	\$	148.76	COLLECTION AGENCY-UNCOLLECTIBLE
81	172549-1871	1116 MEDITATION LOOP	7/19/2017	\$	151.57	COLLECTION AGENCY-UNCOLLECTIBLE
82	12339-19845	313 GREENWAY	3/24/2017	\$	151.85	COLLECTION AGENCY-UNCOLLECTIBLE
83	140733-3909	1077 YORK WAY	1/30/2017	\$	153.16	COLLECTION AGENCY-UNCOLLECTIBLE
84	164885-37770	5318 COQUINA	7/5/2017	\$	153.37	COLLECTION AGENCY-UNCOLLECTIBLE
85	173429-30353	321 ACACIA DR	9/23/2017	\$	159.61	COLLECTION AGENCY-UNCOLLECTIBLE
86	171877-25492	5410 TAYLOR	2/16/2018	\$	159.73	COLLECTION AGENCY-UNCOLLECTIBLE
87	49679-25822	5613 ISABELLE AVE	11/27/2017	\$	162.35	COLLECTION AGENCY-UNCOLLECTIBLE
88	171329-17777	30 BAYSHORE DR	6/6/2017	\$	168.02	COLLECTION AGENCY-UNCOLLECTIBLE
89	130805-20473	582 TAYLOR ROAD	11/14/2017	\$	171.50	COLLECTION AGENCY-UNCOLLECTIBLE
90	105367-4886	884 STONYBROOK	9/15/2017	\$	171.66	COLLECTION AGENCY-UNCOLLECTIBLE
91	174217-8265	5592 MOSSY OAK LN	6/30/2017	\$	177.95	COLLECTION AGENCY-UNCOLLECTIBLE
92	158679-17770	29 ELDA LN	11/20/2017	\$	178.94	COLLECTION AGENCY-UNCOLLECTIBLE
93	172111-22440	1371 DEXTER	7/27/2017	\$	196.33	COLLECTION AGENCY-UNCOLLECTIBLE
94	130367-21700	1115 SOUTH HAMPTON DR	9/5/2017	\$	202.27	COLLECTION AGENCY-UNCOLLECTIBLE
95	171461-13447	6140 DEL MAR	1/9/2017	\$	209.54	COLLECTION AGENCY-UNCOLLECTIBLE
96	31139-17963	52 N GREENWAY	4/10/2017	\$	209.78	COLLECTION AGENCY-UNCOLLECTIBLE
97	166035-12606	3755 HUGHES ST	1/3/2018	\$	216.28	COLLECTION AGENCY-UNCOLLECTIBLE
98	173087-37522	5150 PINELAND CT	6/9/2017	\$	218.34	COLLECTION AGENCY-UNCOLLECTIBLE
99	173207-19556	244 ORCHARD ST	11/27/2017	\$	222.13	COLLECTION AGENCY-UNCOLLECTIBLE
100	174997-20389	513 COMMONWEALTH	9/18/2017	\$	227.70	COLLECTION AGENCY-UNCOLLECTIBLE
101	174027-20338	495 LESLIE	9/12/2017	\$	229.43	COLLECTION AGENCY-UNCOLLECTIBLE
102	164513-21506	803 DEER SPRINGS RD	4/18/2017	\$	236.13	COLLECTION AGENCY-UNCOLLECTIBLE
103	121243-5838	5221 FREDERICK	10/13/2017	\$	242.83	COLLECTION AGENCY-UNCOLLECTIBLE
104	157755-23804	3656 JACKSON ST	10/11/2017	\$	253.33	COLLECTION AGENCY-UNCOLLECTIBLE
105	172347-1781	1147 CARYA CIRCLE	1/3/2017	\$	258.16	COLLECTION AGENCY-UNCOLLECTIBLE
106	175055-5750	5258 PINELAND	7/25/2017	\$	269.38	COLLECTION AGENCY-UNCOLLECTIBLE
107	56567-6942	432 LESLIE	7/3/2017	\$	292.00	COLLECTION AGENCY-UNCOLLECTIBLE
109	176397-6942	432 LESLIE	10/27/2017	\$	375.51	COLLECTION AGENCY-UNCOLLECTIBLE
110	50455-25495	5411 DURANT	11/17/2017	\$	411.29	COLLECTION AGENCY-UNCOLLECTIBLE
111	72131-2370	1131 HARMS WAY	9/18/2017	\$	412.04	COLLECTION AGENCY-UNCOLLECTIBLE
112	170501-17695	20 ROYAL PALM CIR	5/26/2017	\$	430.56	COLLECTION AGENCY-UNCOLLECTIBLE
113	168395-26337	5934 RIDGEWOOD AVE	5/15/2017	\$	463.13	COLLECTION AGENCY-UNCOLLECTIBLE
114	127525-21931	1213 LA PALOMA DR	3/27/2018	\$	720.55	COLLECTION AGENCY-UNCOLLECTIBLE
115	160789-32412	5204 ROGERS AVENUE	4/6/2017	\$	721.15	COLLECTION AGENCY-UNCOLLECTIBLE
116	166397-568	3400 NOVA RD	1/25/2018	\$	890.20	COLLECTION AGENCY-UNCOLLECTIBLE

TOTAL RENTER ACCOUNTS

\$ 17,926.09



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/4/2019

Consent item: Yes

SUBJECT: (B11) Approval of Interlocal Agreement with Ormond Beach for Therapeutic Recreation Programs (Camp-T)

DEPARTMENT: Parks & Recreation

GOAL:

RECOMMENDED MOTION: Move to approve the Interlocal Agreement with Ormond Beach, subject to the Deputy City Attorney's approval of the of the final executed agreement and completion of recording.

SUMMARY: Interlocal Agreement for the reciprocal use of municipal recreation facilities and provision for the Therapeutic Recreation program for special needs children with disabilities.

Camp-T is for children of the ages of 7-18 and the program runs for two, three week sessions in the summer. Parks and Recreation only accepts children who are Port Orange residents. Any other child who qualifies for this program must register with Ormond Beach Parks and Recreation.

Children who register with our department get dropped off at the Port Orange Gymnasium, and are bussed to the Nova Community Center in Ormond Beach, where the program is held. Transportation is provided by Volusia County Transportation whom we already have an agreement with.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Summer Camp Interlocal w-Port Orange Reciprocal (P19-0077)	Summer Camp Interlocal w-Port Orange Reciprocal (P19-0077).pdf
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Peter Ferreira
Susan Lovallo
Matthew Jones
Jake Johansson
Robin Fenwick

Created/Initiated - 5/15/2019
Approved - 5/15/2019
Approved - 5/23/2019
Approved - 5/23/2019
Final Approval - 5/23/2019

**INTERLOCAL AGREEMENT FOR THE
RECIPROCAL USE OF MUNICIPAL RECREATION FACILITIES
AND PROVISION FOR THERAPEUTIC RECREATION PROGRAM FOR
SPECIAL NEEDS CHILDREN WITH DISABILITIES**

THIS AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the City of Ormond Beach and the City of Port Orange, each a Florida municipal corporation (hereinafter “City”, “Cities”, “public agency(ies)”, “user agency”, or “owner”, as the context so requires), who agree as follows:

WHEREAS, Section 163.01, *Florida Statutes*, known as the Florida Interlocal Cooperation Act of 1969, permits any public agency of the State of Florida to exercise jointly with any other public agency, any power, privilege, or authority which said agencies share in common and which each might exercise separately, and

WHEREAS, the acquisition, ownership, custody, operation, maintenance, lease, or sale of real or personal property is one of the permitted purposes of an interlocal agreement under the Florida Interlocal Cooperation Act of 1969, and

WHEREAS, the City of Ormond Beach and the City of Port Orange have in the past frequently made use of each other’s facilities for recreational and other programs, to the mutual benefit of each such public agency, and

WHEREAS, in order to obviate the necessity of executing separate agreements each time a participating city desires to use one of the other city’s facilities, the cities deem it to be in their best interest and in the best interest of the people whom they serve to have one agreement in effect regarding the reciprocal use of their respective facilities in the future,

NOW THEREFORE, in consideration of mutual covenants hereinafter set forth, the said public agencies agree as follows:

1. That the City of Ormond Beach hereby grants the City of Port Orange Parks & Recreation Department the privilege to use any of its facilities as set forth in Schedule “A”, attached hereto and incorporated herein by reference, for joint recreation purposes including, but not limited to, use by residents of Port Orange registered in Therapeutic Recreation summer camp programs, subject to the terms and conditions set forth hereinafter.

2. That the City of Port Orange hereby grants the City of Ormond Beach Leisure Services Department the privilege to use any of its facilities as set forth in Schedule “B”, attached hereto and incorporated herein by reference, for joint recreation-related purposes including but not limited to, use by residents of the City of Ormond Beach registered in Therapeutic Recreation summer camp programs, subject to the terms and conditions set forth hereinafter.

3. That a request for the use of the listed facilities by one public agency to another public agency shall be communicated to the chief administrative officer of the agency, or his/her designee, as far in advance of the anticipated date of use as possible, and shall be approved or rejected by such officer or designee at his or her sole discretion.

4. That the parties hereto, by their chief administrative officers, may mutually agree to amend Schedules “A” and “B” by the addition of other facilities or the deletion of listed facilities at any time during the term of this Agreement.

5. That upon approval of the request for use of a specified facility, the owner agency’s chief administrative officer, or his/her designee, may establish a fee for the use of the facility by calculating the cost directly attributable to such use by the user agency. The owner agency agrees to invoice the user agency and the user agency shall pay the invoice within thirty (30) days of receipt thereof. In the event of any dispute arising out of any invoice, the chief administrative officers of both agencies, or their designees, shall meet and make every effort to resolve the matter

in an amicable fashion. If the parties are unable to negotiate a resolution of the dispute, the decision of the chief administrative officer of the owner agency shall be final.

6. That each agency shall at all times maintain liability insurance in the amount of no less than \$200,000 per injury and \$300,000 per accident, or such higher limits as may be imposed by any future amendments to Section 768.28, *Florida Statutes*. Such insurance may be provided by a self-insurance reserve program.

7. Nothing in this agreement shall be deemed as a waiver of sovereign immunity of any of the parties beyond any statutorily-limited waiver which may have been adopted by the Florida Legislature and nothing in this agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity.

8. Within the sovereign immunity limits set forth in Section 768.28, *Florida Statutes*, the user agency shall assume all risk and liability to itself, its agents, assigns, or employees, and shall be responsible to fully defend, indemnify and hold the owner agency harmless from and against any and all claims arising from or related to the use of the facilities by the user agency, and caused by the act or acts, negligence, or failure to exercise proper precautions of and by the user agency, its agents, assigns or employees while occupying, using or visiting the facilities and/or property of the owner agency. Each public agency agrees to provide the other with written notice of any claim subject to this provision, within ten (10) working days of its receipt, and to cooperate fully in the defense of any claim. Notice of claim shall be deemed to be given on the date of mailing thereof by US Mail, First Class delivery.

9. By entering into this agreement, the user agency is not undertaking to hold harmless, indemnify and/or defend the owner agency from and against any and all claims for any injury to

person or damage to property resulting from the conduct of the owner agency, its agents, assigns, or employees for any loss, damage or expense resulting from any act or acts of negligence, or the failure to exercise proper precautions of and by the owner agency, its agents, assigns or employees.

10. That the user agency agrees to repair any of the owner agency's facilities or property which may become damaged as a direct result of use by the user agency. The user agency shall notify the owner agency immediately should any damage occur during use by the user agency. The owner agency shall notify the user agency, in writing, within five (5) days of the discovery of any damage allegedly caused by the user agency. Upon prior approval of the owner agency, repairs shall be made as expeditiously as possible by the user agency.

11. That this agreement shall become effective upon execution by all parties and shall remain in full force and effect for (5) years and may be extended for additional terms of five (5) years upon written approval of the parties. This agreement may be terminated by any of the parties, with or without cause, thirty (30) days after a majority vote to so terminate by that party's governing body and written communication of that vote to the other public agencies.

12. That any notice required to be given by this agreement shall be directed to the following addresses:

CITY OF ORMOND BEACH
Office of the City Manager
22 Beach Street
Ormond Beach, FL 32174

CITY OF PORT ORANGE
Office of the City Manager
1000 City Center Circle
Port Orange, FL 32129

13. That in the event it becomes necessary to institute litigation to enforce any of the terms of this agreement, the prevailing party shall be entitled to recover all out-of-pocket expenses and a reasonable attorney's fee, from the date of filing until the termination of the litigation.

14. That this Agreement shall be filed with the Clerk of Circuit Court in and for Volusia County, Florida, pursuant to Section 163.01(11), *Florida Statutes*.

IN WITNESS WHEREOF, the parties hereto by their duly authorized officers have set their hands and seal the day and year first above written.

Witnesses:

CITY OF ORMOND BEACH

Print: _____

By: _____
BILL PARTINGTON
Mayor

Print: _____

Attest: _____
JOYCE A. SHANAHAN
City Manager

Witnesses:

CITY OF PORT ORANGE

Print: _____

By: _____
DONALD O. BURNETTE
Mayor

Print: _____

Attest: _____
JAKE JOHANSSON
City Manager

SCHEDULE "A" – CITY OF ORMOND BEACH PARKS & AMENITIES

PARK NAME	Gazebo	Rest Rooms	Playground	Family Picnic	Group Picnic	Picnic Pavilion	Outdoor Grill	Open Space	Outdoor Basketball	Outdoor Tennis	Outdoor Handball	Baseball	Softball	Football/Soccer	Shuffleboard/Horseshoes	Walking/Jogging	Pedestrian/Bike Path	Fitness Stations	Boat Ramp	Canoe/Non-motor Boats	Fishing	Pier/Dock	Swimming	Concession	Community Center	Meeting Room	Gymnasium	Kitchen	Weight Room	Maintenance Yard	Parking	Special Feature/Artwork	PARK HOURS	
Ames Park	x	x		x																	x	x									x	Sunrise to Sunset		
Bailey Riverbridge Gardens Park																					x	x								x	5:00am to midnight			
Birthplace of Speed Park		x		x			x	x																						x	Sunrise to Sunset			
Casements																									x			x		x	varies			
Cassen Park (Riverfront)	x	x		x															x											x	5:00am to midnight			
Central Park I	x	x	x	x			x	x							x		x	x				x								x	Sunrise to 11:00PM			
Central Park II		x	x	x			x	x									x	x				x								x	Sunrise to Sunset			
Central Park III			x	x			x	x		x							x	x				x										Sunrise to Sunset		
Fortunato Park	x	x	x	x			x															x									x	Sunrise to 10:00pm		
Memorial Gardens Park	x																														x	Sunrise to Sunset		
Nova Community Park		x	x	x	x	x	x	x	.5U	2L 4U	4L	4.5 L	2 L				x	x	x						x	x				x		6:00am to 11:00pm		
O.B. Middle School Park			x					x	8 U	2 U	2 U																						Sunrise to Sunset	
O.B. Performing Arts Center		x		x																												x	6:00am to Midnight	
Optimist Park							x	x																									6:00am to 11:00pm	
Ormond Beach Sports Complex	x	x	x	x				x				2L8U	5L	5L 3U	12L	x					x									x			6:00am to 11:00pm	
Ormond Beach Tennis Center	x									8L																							varies	
Ormond Mem. Art Museum	x																																10:am to 4:00pm	
Osceola School Park	x	x	x				x	2 U	2 U	2 U	4 U		2 U			x	x	x															Sunrise to Sunset	
Riverbend Nature Park	x	x		x	x		x									x																	Sunrise to Sunset	
Riviera Park			x	x			x	x								x	x																	Sunrise to 11:00pm
Rockefeller Gardens Park																																		6:00am to 10:00pm
Sanchez Park		x	x	x	x		x	x											x															Sunrise to Sunset
Senior Citizen Center		x																																6:00am to 11:00pm
So. Ormond Neighbhrd Park		x	x	x			x	x	1 L	2 U			1 L			x	x																	6:00am to 11:00pm
Tomoka State Park	x	x	x	x	x		x	x								x	x																	Sunrise to Sunset

L = Lighted

U = Unlighted

SCHEDULE "B" – CITY OF PORT ORANGE PARKS & AMENITIES

City Center Sports Complex – 4625 City Center Drive (42.5 acre Active Park)

2 lighted competition baseball/softball fields, 200 & 300 ft. 2 lighted soccer fields, 4 batting cages, Children's playground, Restrooms, Concession Stand, Sacco Park picnic area.

This sports complex hosts the cities baseball program, women's, men's & girls softball, soccer and PAL program. Playground is open to the public and sports fields during non-competition days.

Silver Sands Middle School – 1300 Herbert St. (23-acre city run park at Volusia County Schools)

5 practice baseball fields, 1 football/soccer field, Track, 4 lighted tennis courts, 6 lighted outdoor racquetball courts, Multi-purpose athletic fields, 8 lighted outdoor basketball courts, Restrooms
This park hosts the POP Warner football program. Practice fields for city baseball program. All facilities are open to public.

Willow Run Park – 1351 School House Drive (10-acre Active Park)

2 practice baseball fields, Multi-purpose athletic fields, Children's playground, 2 lighted tennis courts, Restrooms, Covered picnic areas, 8 outdoor-lighted basketball courts, Pavilion
All facilities are open to the public. City tennis leagues play here, along with baseball, basketball and soccer practices.

Spruce Creek High School – 801 Taylor Rd. (10 acre city run park at Volusia County Schools)

1 lighted competition softball & baseball field, 4 lighted tennis courts, 8 outdoor racquetball courts. This park hosts the cities fall baseball program & girls softball. Spruce Creek High baseball & softball program play home games here. Tennis and racquetball courts are open to public after school hours.

Spruce Creek Elementary School – 642 Taylor Rd. (11-acre city run park at Volusia Cty Schools)

2 multi-purpose/soccer fields, 2 outdoor racquetball courts, 1 practice baseball field, playground, 4 outdoor basketball courts, Pavilion with restrooms and picnic tables.

This park hosts the Port Orange Soccer club and the cities summer playground program. All facilities are open to public. Pavilion area can be reserved for a fee.

Spruce Creek Recreational Facility – 5959 S. Spruce Creed R. (40 acre Active Park)

2 lighted competition baseball/softball fields, 300 ft., 6 lighted outdoor tennis courts
Outdoor basketball court, All Children's Park Playground, Concession stand, Restrooms, Press Box, Pavilion, Boardwalk, Picnic areas. This park/sports complex hosts the cities baseball program, women's softball, men's softball, and girl's softball. Playground is open to the public and sports fields during non-competition days.

Memorial Park – 3801 Jackson St. (10-acre Passive Park)

Boardwalk/Fishing piers, Park benches and picnic tables, 7/10 mile lighted walkway around a lake. A beautiful park open to public. Walking, running, roller blading and picnicking are popular activities. Pets are welcome. Just remember to clean up after your pet.

Riverside Pavilion Park – 3431 S. Ridgewood Ave. (5 acre Passive Park)

Fishing pier, Children's Playground, Picnic tables. A very nice area on the Halifax River. Fishing pier on the river and picnic areas. Port Orange Chamber of Commerce building is also located here.

Port Orange Causeway Park – 93 Dunlawton Ave. (30 acre Passive Park)

7 boat ramps, 3 fishing piers, Picnic tables with grills, Covered pavilions, Restrooms
Vehicle with boat trailer parking lot. A beautiful park located on the Halifax river at the Port Orange Bridge. A major boat ramp facility. Very nice fishing piers and picnicking. Open to the public.

White Place Park – 210 White Place 5-acre Active Park

1-lighted competition ball field , Children's Playground, 2 lighted tennis courts, Multi-purpose athletic field, Picnic area with tables and grill, 2 lighted bocce ball courts, 4 lighted shuffleboard courts, Horseshoe pits, Park is open to the public. Ball field hosts the cities youth baseball program.

Southwinds Soccer Complex 4790 South Ridgewood Ave. 5000 sq. ft. building

2 regulation size soccer fields, Open to the public. Complex hosts the cities youth soccer program.

Adult Activity Center 4790 South Ridgewood Ave. 5000 sq. ft. building

Open floor space, Rest rooms, Kitchen, Offices, This facility houses the cities Program staff. Dances, classes, meetings and other activities are all here. Facility can be reserved for a fee.

Senior Center 3738 Halifax Drive 2600 sq. ft air conditioned building

Open floor space, Rest rooms, Kitchen. This facility is used for classes, meetings & fronts the Halifax River. Facility can be reserved for a fee.

Port Orange Gymnasium 4655 City Center Circle 20,000 sq. ft. building

Administration Offices, 2 indoor air conditioned basketball courts, Rest rooms, Snack machines This facility houses the Parks and Recreation administration staff. The cities youth basketball program is held here along with open basketball play for the public. Other exercise programs are here also. Open for public use.

Kenneth W. Parker Performing Arts Center 2001 City Center Circle 5-acre site

Performing stage, Spectator seating, Rest rooms. This facility is used for a variety of special events and concerts. Facility can be reserved for a fee.

Port Orange Y.M.C.A. 4701 City Center Parkway 38,000 sq. ft. building

Air-conditioned basketball court, 4 indoor racquetball courts, Men and women's locker rooms Free weight room, Nautilus room, Heated swimming pool, 50 meter x 25 yds, Boy and girl's locker rooms, Steam room, Sauna. Everything you need to stay in shape is here. Membership fee required.

Golf Course At Cypress Head 6231 Palm Vista

18 hole municipal golf course, 6,800 yds, Clubhouse, Dining/banquet facilities, Lighted driving range. A beautiful golf course open to the public.

Allen Green Civic Center

Offices, Meeting rooms, Auditorium, Kitchen. This facility is used for meetings, classes, special events and is also used as the Port Orange Pre-school program. Facility can be reserved for a fee.

Skate Park 4655 City Center Circle 1 acre

Skake park for scooters, skateboards, rollerblades and BMX bikes.

Airport Road Park 6751 Airport Road 25 acres

Childrens Playground, 8 lighted tennis Courts, 2 outdoor basketball courts, Restroom Facility 2 soccer Fields, Picnic tables and benches

Gamble House Taylor Road west of I-95 175 acres

Packing house, Snow White's house, Lookout building, Fishing dock, Canoe launch, Scenic Trails

Buschman Park 4575 Spruce Creek Road 23 acres PHASE 1 Improvements completed:

Walk Path, Pavillion, Walk-over Bridge, Lake, Parking, Picnic Facility Planned PHASE 2 Improvements: Playground, Restrooms, Water Fountain.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/4/2019

Consent item: No

SUBJECT: (B12) Lien Recovery Agreement - 713 Sheldon Circle

DEPARTMENT: Finance

GOAL:

RECOMMENDED MOTION:

SUMMARY: The owner passed away and the property was the subject of probate action. The current owners would like to get the water turned on in order to fix up the property. They are requesting to pay the balance of the lien over time with an agreement. We have secured the City's position with a lien. If they fail to make a payment under the terms of the agreement, the water will be turned off and the interest and penalties suspended under the agreement will be reinstated.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Agreement - Signed by Long	Agreement - Signed by Long.pdf
2.	Claim of Lien - Book 7072 Page 332	Claim of Lien - Book 7072 Page 332.pdf

Robin Fenwick

Created/Initiated - 5/30/2019

AGREEMENT FOR LIEN RECOVERY

This Agreement for Lien Recovery ("Agreement") is made and entered into this ____ day of _____, 2019 (the "effective date"), by and between **Kimberly Ann Long** ("Utility Account Holder") and the Finance Director on behalf of the **City of Port Orange**, Florida, a Florida municipality ("City"), collectively referred to as the "Parties."

WHEREFORE, the Utility Account Holder is the owner of the property located at **713 Sheldon Circle, Port Orange, Florida, Parcel No. 6315-04-11-0650** ("Subject Property"), where utility services are requested; and

WHEREFORE, the Utility Account Holder declares their intent to permanently reside at the Subject Property, referenced herein. Furthermore, Utility Account Holder declares said Subject Property shall be designated as their homestead; and

WHEREFORE, this Agreement is to pay the balance due and owing on an existing Claim of Lien ("Lien") against the Subject Property, bearing the date of December 16, 2016, recorded in Official Records Book 7072, Page 332 in the public records of Volusia County, Florida; and

WHEREFORE, the above referenced Lien is valid against the real property referenced herein and is superior and paramount to the interest in such land or premises of any owner, lessee, tenant, mortgagee or any other person, except the liens of state, county, and municipal taxes, and shall be on parity with the liens of such, pursuant to Section 159.17, Florida Statutes.

NOW THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the Parties hereto mutually agree as follows:

1. The City agrees to the establishment of utility service at Subject Property with the existing Lien balance, subject to the execution of this Agreement.
2. The outstanding Lien balance on the effective date of this Agreement is Three Thousand Thirty and 22/100 Dollars (\$3,030.22). The Utility Account Holder agrees to make payments of the Lien balance to the City as follows: Thirty-Five (35) successive monthly payments in the amount of Eighty-Four and NO/100 Dollars (\$84.00) and a final payment of Ninety and 22/100 Dollars (\$90.22). The initial payment shall be made upon execution of this Agreement and at the time service is established for the Subject Property.
3. The Lien recovery payment shall constitute a utility charge. Payment of the Lien shall be invoiced monthly commencing after the execution of this Agreement and established service at the Subject Property. Any payments for utility charges at the Subject Property shall be applied first to the Lien amount, with any remaining monies being applied to the current utility services account balance.
4. Upon establishing service, the City shall suspend any further accrual of penalties, interest, and late fees with regard to the outstanding balance of said Lien.
5. If any one of the monthly payments under this Agreement is not paid as and when due, and remains unpaid for 30 days or more after the due date, then the

Utility Account Holder shall be considered in default of this Agreement. In the event of a default of this Agreement, the City shall cause the accrual of penalties, interest, and late fees, previously suspended in consideration of this Agreement, to be reinstated as to the remaining balance of said Lien from date of default. In addition, in the event of default of this Agreement, there shall be a discontinuance of utility services without further notice to the Utility Account Holders.

6. Upon proof of receipt of full payment of the Lien amount, as referenced in Paragraph (1), the City shall immediately deem the Lien satisfied and shall execute and record a Satisfaction of Lien in the public records of Volusia County within the time permitted under the Florida Statutes.

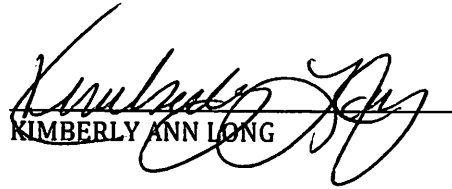
This Agreement incorporates and makes a part hereof the above-referenced Claim of Lien. Furthermore, as it relates to said Lien, this Agreement shall be construed and enforced according to the provisions of Chapters 2 and 74, Code of Ordinances, City of Port Orange, and Section 159.17, Florida Statutes, and any other applicable laws of the State of Florida.

This Agreement forms the entire agreement between the Parties and supersedes any prior discussions or correspondence. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.

Utility Account Holder has read the foregoing Agreement in its entirety, and voluntarily agrees to each of its terms with full knowledge thereof. Furthermore, they acknowledge and understand that they have the opportunity to have outside counsel of their choice review this Agreement.

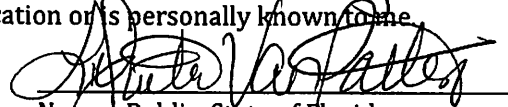
[THIS PAGE LEFT BLNK INTENTIONALLY – SIGNATURE PAGES TO FOLLOW]

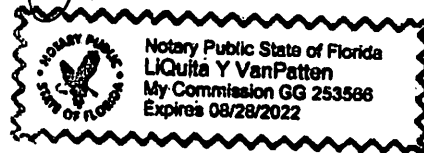
IN WITNESS THEREOF, the Parties, intending to be legally bound, have executed this Agreement as of the date above.


KIMBERLY ANN LONG

State of Florida
County of Volusia

The foregoing instrument was acknowledged before me this 17th day of MAY, 2019, by KIMBERLY ANN LONG, who has produced identification or is personally known to me.


Notary Public, State of Florida
Printed Name, Stamped Commission, Seal, and Term



City of Port Orange

By: _____
Dr. Scott R. Neils, Finance Director

State of Florida
County of Volusia

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Dr. Scott R. Neils, as Finance Director for the City of Port Orange, a Florida municipality, on behalf of the city and who is personally known to me.

Notary Public, State of Florida
Printed Name, Stamped Commission, Seal, and Term

Reviewed by Attorney: _____ Date: _____

Long, Kimberly Ann
713 Sheldon Cir

01/12/2015 09:15 AM
Instrument# 2015-004513 # 1
Book : 7072
Page : 332
Diane M. Matousek
Volusia County, Clerk of Court

Prepared By:
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

CLAIM OF LIEN

STATE OF FLORIDA
COUNTY OF VOLUSIA

Before me the undersigned authority personally appeared Tracey Riehm, who being duly sworn, says that she is the Interim Finance Director of the City of Port Orange, a Florida municipality, the Lienor herein, whose address is 1000 City Center Circle, Port Orange, Florida 32129. Lienor furnished labor, services of materials consisting of utility services as provided for in chapter 74, Code of Ordinances, City of Port Orange, Florida and Section 159.17, Florida Statutes, to real property affected or served by the utility systems of the City of Port Orange, Volusia County, Florida.

Parcel LD.No. 6315-04-11-0650

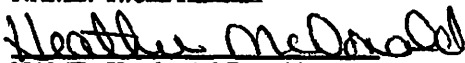
Lot 65 Blk 11 Commonwealth Mobile Estd First Add, according to the map or plat thereof as recorded in Map Book 29, Page 47, of the public records of Volusia County, Florida.

Believed to be owned by Kimberly Ann Long & Diedre Ann Bruining, 518 Ridge Blvd, South Daytona, FL 32119 of a total value of (\$366.96) Three Hundred Sixty Six Dollars and Ninety Six Cents of which there remains unpaid (\$ 366.96) Three Hundred Sixty Six Dollars and Ninety Six Cents and furnished the same on or until December 29th, 2014.

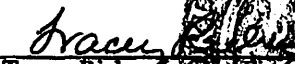
This Claim of Lien is filed in accordance with the provisions of Chapter 74, Code of Ordinances, City of Port Orange, Florida and Section 159.17, Florida Statutes. You are further notified that the undersigned will prosecute and foreclose a lien against any real property for any amount owing and unpaid to the undersigned for more than 30 days for such labor, services or material, together with interest, cost and reasonable attorney's fees.

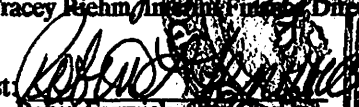
WITNESSES:


NAME: Iwona Kalisiak


NAME: Heather McDonald

CITY OF PORT ORANGE

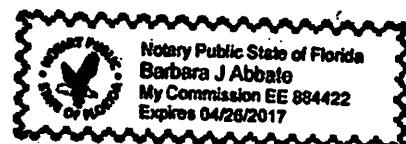
BY: 
Tracey Riehm, Interim Finance Director

Attest: 
Robin Fenwick, Clerk

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 29th day of December, 2014, by Tracey Riehm, as Interim Finance Director of the City of Port Orange, a Florida municipality, on behalf of the city. She is personally known to me.


NOTARY PUBLIC, STATE OF FLORIDA
At large



2019 Final Get Fit Numbers

Average and total weight loss was relatively low this year for participants who completed the final weigh in. There were a few standouts, and our winning numbers were as high as they have been in the past, but on average, the group numbers were low. Participation in workouts and other activities saw an all-time high in 2019, but the weight loss aspect was not as positive. For reference, the average weight loss in 2018 was 5.65% or 14.33 lbs.

For 2019 participants who completed the final weigh-in:

Average Weight Loss: 3.14%

Average Weight Loss: 6.86 lbs

Total Weight Loss: 514.2 lbs

All 6 years of Get Fit:

Total Participation: 856

Average Weight Loss: 10.07 lbs

Total Weight Loss: 4,195

2019 Winners:

1st Place Team: In It To Slim It (Renee Bergin, Frank Bergin, Crisinda Mann, Michael Mann)

- Percent Lost: 6.56%

2nd Place Team: Team Ponce (Becky Scales, Emma Scales, Dan Scales, Amy Zengotita, Luis Zengotita)

- Percent Lost: 2.01%

1st Place Male: Joseph Cianfarra, 17.18%

2nd Place Male: Brian Miseveth, 11.13%

1st Place Female: Tari Cox, 14.16%

2nd Place Female: Becky Vering, 13.71%

3rd Place Female: Shannon Weston, 12.71%

4th Place Female: Jennifer Sisk, 11.78%



Freiman Little Actuaries, LLC
4105 Savannahs Trail
Merritt Island, FL 32953

(321) 453-6542 office
(321) 453-6998 facsimile

City of Port Orange

Police Pension Fund

Actuarial Valuation as of October 1, 2018



ANNUAL VALUATION PRESENTED TO AND APPROVED BY
PORT ORANGE POLICE PENSION BOARD ON FEBRUARY 21, 2019

February 4, 2019

REPORT TO DETERMINE MINIMUM FUNDING REQUIREMENTS
FOR THE PLAN AND FISCAL YEAR
ENDING SEPTEMBER 30, 2020



February 4, 2019

Board of Trustees
City of Port Orange Police Pension Fund
Port Orange, Florida

RE: Actuarial Valuation as of October 1, 2018

Dear Board Members:

We are pleased to present the actuarial valuation as of October 1, 2018 for the City of Port Orange Police Pension Fund (the Plan). This report provides a review of the current funded status of the Plan, establishes the minimum funding requirements for the fiscal year ending September 30, 2020 and provides an analysis of experience since the last valuation. In addition to providing the summary and derivation of actuarial findings, this report describes the data, assumptions, and methods used to create these results.

Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period or additional cost or contribution requirements based on the plan's funded status); and changes in plan provisions or applicable law.

Statement by Enrolled Actuary:

"This actuarial valuation and/or cost determination was prepared and completed by me or under my direct supervision, and I acknowledge responsibility for the results. To the best of my knowledge, the results are complete and accurate, and in my opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of Part VII, Chapter 112, Florida Statutes. There is no benefit or expense to be provided by the plan and/or paid from the plan's assets for which liabilities or current costs have not been established or otherwise taken into account in the valuation. All known events or trends which may require a material increase in plan costs or required contribution rates have been taken into account in the valuation."

We look forward to the presentation of these results to you in person and we are always available to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad M. Little".

Chad M. Little, ASA, EA
Partner, Consulting Actuary
Enrollment Number 17-6619

A handwritten signature in black ink, appearing to read "Paula C. Freiman".

Paula C. Freiman, ASA, EA
Partner, Consulting Actuary
Enrollment Number 17-5796

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Section

1

Board Summary

This report presents the results of the October 1, 2018 actuarial valuation of the City of Port Orange Police Pension Fund (the Plan).

Summary of Principal Valuation Results

A summary of the key valuation findings as of October 1, 2018 are compared with the results of the prior valuation below.

Fiscal Year Ending September 30,	2019	2020
As a Dollar Amount		
Estimated Minimum Required City Contribution	\$2,842,943	\$2,900,634
Estimated State Contribution	<u>397,680</u>	<u>444,090</u>
Total Minimum Funding Requirement (City plus State)	\$3,240,623	\$3,344,724
As a Percentage of Payroll		
Estimated Minimum Required City Contribution	57.88%	57.85%
Estimated State Contribution	<u>8.10%</u>	<u>8.86%</u>
Total Minimum Funding Requirement (City plus State)	65.98%	66.71%
Valuation Date October 1,		
	2017	2018
Accrued Liability (AL)	\$48,774,256	\$51,784,659
Actuarial Value of Assets	<u>34,941,463</u>	<u>38,301,511</u>
Unfunded Accrued Liability (UAL)	\$13,832,793	\$13,483,148
Funded Percentage	71.64%	73.96%
Valuation Date October 1,		
	2017	2018
Assumed Rate of Investment Return	7.45%	7.35%
Individual Salary Increases	7.50%	7.25%
Long-term Payroll Inflation	3.50%	1.00%
Payroll Inflation for Amortization of Unfunded	1.00%	1.00%
Funding Method	Entry Age	Entry Age

Note: We recommend the deposit of at least the minimum required contributions as a dollar amount shown above.

Summary of Significant Events

Determination of the funded status of the Plan and minimum funding requirements are based on participant data, asset information, Plan provisions, actuarial methods and assumptions, as well as contributions made to the Plan by the State of Florida. Any significant events associated with these items are discussed in the following.

In preparing our report we relied, without audit, on information (some oral and some written) supplied by the City and the Plan Administrator. This information includes, but is not limited to, statutory provisions, employee census, and financial information. In our examination of these data, we have found them to be reasonably consistent and comparable with data used for other purposes. Since the valuation results are dependent on the integrity of the data supplied, the results can be expected to differ if the underlying data is incomplete or missing. It should be noted that if any data or other information is inaccurate or incomplete, our calculations may need to be revised.

Participant Data

The number of active members increased from 86 to 87 with an average individual salary increase of 3.1% as compared to the 7.5% assumption used in the valuation. Actual total payroll increased 1.9% on average over the last 10 years as compared to the 1% payroll growth assumption used to amortize the unfunded accrued liability and the 3.5% increase assumption used to project total payroll to the funding year. The average annual payroll growth for the last ten years is shown below.

Fiscal Year	Payroll	Increase
2018	4,855,965	5.0 %
2017	4,622,671	8.1 %
2016	4,275,349	(0.4)%
2015	4,293,316	8.8 %
2014	3,944,464	10.3 %
2013	3,575,109	3.3 %
2012	3,460,703	7.7 %
2011	3,212,337	(23.7)%
2010	4,211,533	(2.7)%
2009	4,329,474	7.4 %
2008	4,032,313	
10-Year Geometric Average		1.9 %

There was a demographic loss on an actuarial accrued liability basis mostly due to termination less than expected along with retirement experience offset by the gain associated with corrections to service dates since the prior valuation. A table of historical actuarial gains and losses by source since October 1, 2006 is included in Section 2 of this report. In general, should a pattern of consistent gains or losses develop, assumptions may require revision.

Assets

Whereas the assets were assumed to achieve a 7.45% investment return net of expenses, the return on the market value of assets was 8.50% producing a gain on a market value basis. Due to the smoothing method used to produce the actuarial value of assets which recognizes market value gains and losses over a five-year period, a 6.39% return was achieved on the actuarial value of assets such that an actuarial investment related loss was experienced for the year ended September 30, 2018. The following

provides a summary of the actual return on investments for the 12-month periods ending on the date specified.

	Year Ended 9/30	Market Investment Return	Actuarial Investment Return	Assumed Net Return
1	1996	13.1 %	13.1 %	8.50%
2	1997	18.4 %	18.4 %	8.50%
3	1998	3.7 %	3.7 %	8.50%
4	1999	8.2 %	8.2 %	8.50%
5	2000	11.4 %	11.4 %	8.50%
6	2001	(11.3)%	(11.3)%	8.50%
7	2002	(7.3)%	(7.3)%	8.50%
8	2003	21.0 %	21.0 %	8.50%
9	2004	8.1 %	8.1 %	8.50%
10	2005	7.7 %	7.7 %	8.50%
11	2006	6.2 %	6.2 %	8.50%
12	2007	10.6 %	10.6 %	8.00%
13	2008	(12.1)%	(12.1)%	8.00%
14	2009	8.2 %	3.3 %	8.00%
15	2010	8.4 %	4.2 %	8.00%
16	2011	(0.6)%	3.4 %	8.00%
17	2012	17.5 %	5.0 %	8.00%
18	2013	11.1 %	8.9 %	7.75%
19	2014	7.6 %	8.8 %	7.75%
20	2015	(0.1)%	7.0 %	7.75%
21	2016	6.0 %	7.1 %	7.65%
22	2017	10.0 %	6.4 %	7.55%
22	2018	8.5 %	6.4 %	7.45%
23-Year Average		6.4 %	5.7 %	8.15%
10-Year Average		7.5 %	6.0 %	7.79%

The average return on the Market Value of Assets has been 6.4%, when looking over the last 23 valuations performed and 7.5% over the last 10 years, as shown above.

Net investment returns less than the assumed rate of return result in increased annual minimum required contributions.

Plan Provisions

Ordinance No. 2017-32 adopted effective December 12, 2017 amended the plan to provide that all annual premium tax revenues received pursuant to Chapter 185 and all accumulated excess Chapter 185 premium tax revenues as of October 1, 2016 are used to offset the City's pension contributions. For this October 1, 2017 actuarial valuation of the Plan the \$7,192 accumulated excess was released into the actuarial value of assets as if the funding had been received for the year ending September 30, 2017. This ordinance also created a defined contribution plan component commonly referred to as the Share Plan. Our letter dated December 12, 2017 indicated that the increase in cost to the City would be equal to any contributions made to the Share Plan in the future. As currently the City of Port Orange and the union representing police officers have mutually agreed that no Chapter 185 premium tax revenues will be allocated to the Share Plan, there is no impact for the Share Plan at this time.

Ordinance No. 2018-19 adopted effective July 17, 2018 modified language relating to the percentage of assets that may be invested in common stocks. Our statement of no impact was issued February 16, 2018.

Methods

There have been no changes in methods since the prior valuation of the Plan.

Assumptions

A review of experience was performed for the five-year period from October 1, 2012 to October 1, 2017. As a result of this review, the Board of Trustees adopted revised assumptions. However, the Board of Trustees adopted the change in termination assumptions described below to be phased in over a three-year period. For each liability component, the difference between the value of that component determined under the revised assumptions not including the revision to termination assumptions and under all revised assumptions was determined. One-third of the change has been reflected in this valuation. The remaining change in assumptions for the change in termination rates will be recognized in valuation results over a three-year period as follows:

As of October 1,	Recognized	Unrecognized
2018	33%	67%
2019	67%	33%
2020	100%	0%

The assumptions changed were the total payroll growth assumption, the individual salary increase assumption, a marital assumption for actives at retirement, as well as rates of retirement and termination, as follows.

Salary Increase – Total Payroll: The increase in valuation payroll to the fiscal year in which contributions are payable has been revised to 1.0% per year in comparison to 3.5% per year used in the prior valuation. This assumption is now in sync with the 1% payroll growth assumption used to amortize unfunded accrued liability as a level percent of payroll.

Salary Increase – Individual: Individual salary growth was lower than expected until members reach 22 to 23 years of service. High salary increases at later service levels have more impact. The individual salary increase assumption has been changed to 7.25% per year (revised from 7.5% per year in the prior valuation).

Percentage Married at Retirement: Actuarial assumptions used to determine optional forms of benefit differ from the assumptions used in the actuarial valuation of the Plan. The actuarial valuation has been revised to assume 40% of actives are married and elect a 100% joint & survivor form of benefit at retirement.

Mortality: Mortality assumptions are not revised from that used in the prior valuation and are determined by state statute.

Retirement: Due to the actual incidence of retirement prior to normal retirement eligibility, rates of retirement were revised for members hired before January 31, 2011, as follows:

Age	Prior Rates Service			Current Rates Service		
	<10	10-24	25+	<10	10-24	25+
<=44	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
45	0.00%	0.00%	100.00%	0.00%	10.00%	100.00%
46	0.00%	0.00%	100.00%	0.00%	5.00%	100.00%
47	0.00%	0.00%	100.00%	0.00%	2.50%	100.00%
48	0.00%	0.00%	100.00%	0.00%	25.00%	100.00%
49-51	0.00%	0.00%	100.00%	0.00%	2.50%	100.00%
52+	0.00%	100.00%	100.00%	0.00%	100.00%	100.00%

Termination: Due to the actual incidence of termination much lower than expected, unisex rates of termination are revised as follows:

<u>Service</u>	<u>Prior Rate</u>	<u>Current Rate</u>	<u>Service</u>	<u>Prior Rate</u>	<u>Current Rate</u>
0	23%	24%	11	5%	3%
1	23%	21%	12	5%	3%
2	23%	18%	13	4%	3%
3	8%	13%	14	4%	3%
4	8%	12%	15	3%	3%
5	8%	8%	16	3%	2%
6	8%	8%	17	2%	1%
7	8%	7%	18	2%	1%
8	8%	6%	19	1%	1%
9	8%	5%	>=20	0%	0%
10	30%	5%			

Disability: Rates of disability were not revised from those used in the prior valuation. Whereas one member was deemed disabled in the last five years, 0.57 disabilities were expected.

Net Assumed Investment Return: The net assumed rate of investment return was revised from 7.45% used in the October 1, 2017 actuarial valuation to 7.35% for this October 1, 2018 actuarial valuation of the Plan as directed by the Board of Trustees. The 7.35% assumed return is a prescribed assumption as defined by Actuarial Standard of Practice No. 27 (ASOP 27), as it is set by the Board. The prescribed assumption significantly conflicts with our judgment regarding what would constitute a reasonable assumption for the purpose of the measurement as discussed in ASOP 27. As discussed with the Board we recommend lowering the net assumed return further.

An Example: Normal Cost Determination with 3-Year Phase In: Whereas the normal cost was \$1,267,065 after all assumption changes were made, the normal cost would have been \$1,110,365 if all assumption changes were made except the revision to termination assumptions. The resulting normal cost as of October 1, 2018 is \$1,162,598 after reflecting one-third of the increase in normal cost for the change in termination assumptions. The present value of future benefits, accrued liability, normal cost, present value of future salary, and accrued benefit obligation shown in this report as of October 1, 2018 all reflect the same type of calculation for the three-year phase in of termination assumptions.

State Contributions

The Estimated Minimum Required City Contribution assumes that the premium tax money received from the State will be in the same amount received in the prior year. Should the amount received in the fiscal years ending September 30, 2019 and 2020 be less than expected, the City will need to contribute any potential shortfall to the Plan.

Section

2

Results Derivation

In this section, the assets and liabilities of the Plan are shown in detail. Assets and liabilities are then compared to determine the funded status and minimum funding requirements. Finally, analysis is performed to explain movement in results from the prior valuation.

While asset information is based on the fair market value of assets, along with any techniques used to smooth out market fluctuations, liabilities are determined through a combination of the benefit provisions, participant census data which contains information for the members who will receive those benefits, and the methods and assumptions used with regard to how benefits will be paid to members. A summary of participant data, an outline of the benefit provisions, and a description of the methods and assumptions used in this valuation are described in Section 4.

Financial Information

Over the life of the Plan, the majority of assets are typically generated from investment return. In this section, we describe how the assets of the Plan are invested, show how the actuarial value of assets is derived, and review the investment results since the prior valuation.

Investment Allocation

Valuation Date	October 1, 2017		October 1, 2018	
Equity securities	\$20,858,735	61%	\$25,162,597	65%
Fixed income	8,747,724	25%	9,561,649	25%
Real estate	2,879,056	8%	3,097,437	8%
Cash and cash equivalents	1,663,095	5%	774,147	2%
Net receivables	<u>235,119</u>	<u>1%</u>	<u>(171,870)</u>	<u>0%</u>
Fair Market Value of Assets	\$34,383,729	100%	\$38,423,960	100%

Note: The report of the auditor shows \$34,724,246 in "mutual fund" investments as of October 1, 2018. We have split this into the portion representing equity securities and the portion which is fixed income based on asset statements provided by the Plan administrator. Information as of October 1, 2017 has been revised from that shown in the prior valuation by combining the categories shown supplemented with information from the 2017 annual report to the State of Florida regarding the portion of mutual funds which were equity and the portion which were fixed income.

Reconciliation of Market Value of Assets

Year Ending September 30,	2017	2018
1. Market Value of Assets Beginning of Year	\$30,105,688	\$34,383,729
2. Contributions		
a. City	\$2,824,801	\$2,813,517
b. State	397,680	444,090
c. Plan Members	<u>355,777</u>	<u>375,306</u>
d. Total Contributions	\$3,578,258	\$3,632,913
3. Investment earnings		
a. Realized gains and (losses)	\$282,913	\$228,408
b. Unrealized gains and (losses)	2,542,552	1,959,587
c. Interest and dividends	475,423	820,854
d. Investment expense	<u>(237,571)</u>	<u>(60,229)</u>
e. Net investment income	\$3,063,317	\$2,948,620
4. Deductions		
a. Regular pension benefits	\$(2,245,308)	\$(2,396,855)
b. DROP distributions	0	0
c. Contribution refunds	(11,688)	(28,302)
d. Administrative expenses	<u>(106,538)</u>	<u>(116,145)</u>
e. Total Deductions	\$(2,363,534)	\$(2,541,302)
5. Net Increase	<u>\$4,278,041</u>	<u>\$4,040,231</u>
6. Market Value of Assets End of Year	\$34,383,729	\$38,423,960
7. Actual Return on Market Value of Assets	10.04 %	8.50 %

Note: As of October 1, 2018, we have used the unrealized gain from the asset statements provided by the Plan administrator and have solved for the realized gain based on the net appreciation in fair value of investments provided by the auditor.

Development of Actuarial Value of Assets

The market value of assets is adjusted to recognize gains and losses over a five-year period. However, the Actuarial Value of Assets is limited to no more than 120% or less than 80% of the market value of assets.

Determination of Actuarial Value of Assets for the Plan Year Ended September 30, 2018

1.	Market Value of Assets as of October 1, 2018			\$38,423,960
2.	Phase-In Gains (Losses) Over Five Year Period			
		Original Gain (Loss)	Percent Unrecognized	Unrecognized Gain (Loss)
a.	Year Ending 9/30/2018	\$362,912	80%	\$290,329
b.	Year Ending 9/30/2017	759,494	60%	455,696
c.	Year Ending 9/30/2016	(460,853)	40%	(184,341)
d.	Year Ending 9/30/2015	(2,196,177)	20%	<u>(439,235)</u>
e.	Total			\$122,449
3.	Preliminary Actuarial Value of Assets as of October 1, 2018			\$38,301,511
4.	Corridor Around Market Value			
a.	Minimum = 80% of Market Value of Assets			\$30,739,168
b.	Maximum = 120% of Market Value of Assets			\$46,108,752
c.	Corridor Adjustment to Preliminary Actuarial Value			\$0
5.	Actuarial Value of Assets as of October 1, 2018 (3. + 4.c.)			\$38,301,511

Development of Historical Gain or Loss on Market Value of Assets

	2018	2017
1. Market Value of Assets - Beginning of Year	\$34,383,729	\$30,105,688
2. Contributions	3,632,913	3,578,258
3. Benefit Payments plus Administrative Expense	(2,541,302)	(2,363,534)
4. Expected Return on Assets	<u>2,585,708</u>	<u>2,303,823</u>
5. Expected Value of Assets at End of Year	\$38,061,048	\$33,624,235
6. Market Value of Assets - End of Year	\$38,423,960	\$34,383,729
7. Gain (Loss) for Plan Year = (6) - (5)	\$362,912	\$759,494
	2016	2015
1. Market Value of Assets - Beginning of Year	\$28,157,398	\$28,294,900
2. Contributions	3,527,880	3,403,714
3. Benefit Payments plus Administrative Expense	(3,268,422)	(3,519,988)
4. Expected Return on Assets	<u>2,149,685</u>	<u>2,174,949</u>
5. Expected Value of Assets at End of Year	\$30,566,541	\$30,353,575
6. Market Value of Assets - End of Year	\$30,105,688	\$28,157,398
7. Gain (Loss) for Plan Year = (6) - (5)	\$(460,853)	\$(2,196,177)

State Contributions

Year Ending September 30	State Contributions	Recurring Cost Benefit Improvements	Base Plus Benefit Improvements	Recognized State Funding	Cumulative Balance Available Upon Benefit Improvement
2018	\$444,090	\$0	\$699,961	\$444,090	\$0
2017	397,680	0	699,961	397,680	0
2016	373,343	0	699,961	373,343	7,192
2015	345,822	0	699,961	345,822	7,192
2014	331,402	0	699,961	331,402	7,192
2013	316,074	0	699,961	316,074	7,192
2012	314,094	0	699,961	314,094	7,192
2011	303,356	0	699,961	303,356	7,192
2010	302,888	0	699,961	302,888	7,192
2009	314,162	0	699,961	314,162	7,192
2008	293,562	0	699,961	293,562	7,192
2007	296,758	0	699,961	296,758	7,192
2006	279,159	0	699,961	279,159	7,192
2005	267,203	0	699,961	267,203	7,192
2004	245,105	0	699,961	245,105	7,192
2003	198,169	454,127	699,961	198,169	7,192
2002	165,823	0	245,834	165,823	7,192
2001	135,870	121,320	245,834	135,870	7,192
2000	121,555	0	124,514	121,555	7,192
1999	131,706	0	124,514	124,514	7,192
1998	124,514	0	124,514	124,514	0

Note: The \$7,192 cumulative balance as of September 30, 2017 has been released into the actuarial valuation of assets per the collective bargaining agreement and Ordinance No. 2017-32.

Present Value of Benefits

Valuation as of October 1,	2017	2018
1. Active Members		
a. Retirement Benefits	\$21,450,575	\$22,773,648
b. Deferred Benefits	2,046,753	1,662,693
c. Survivor Benefits	206,774	186,876
d. Disability Retirement	<u>448,278</u>	<u>434,916</u>
e. Total	\$24,152,380	\$25,058,133
2. Inactive Members		
a. Retirement and DROP	\$27,103,336	\$30,071,503
b. Terminated Vested	1,362,308	804,016
c. Beneficiaries	1,158,301	1,165,035
d. Disability Retirement	<u>1,682,435</u>	<u>2,094,558</u>
e. Total	\$31,306,380	\$34,135,112
3. Present Value of Benefits (PVB)	<u>\$55,458,760</u>	<u>\$59,193,245</u>

Accrued Liability

Valuation as of October 1,	2017	2018
1. Active Members		
a. Retirement Benefits	\$16,678,481	\$17,076,397
b. Deferred Benefits	509,494	332,240
c. Survivor Benefits	144,512	124,488
d. Disability Retirement	<u>135,389</u>	<u>116,422</u>
e. Total	\$17,467,876	\$17,649,547
3. Inactive Members		
a. Retirement and DROP	\$27,103,336	\$30,071,503
b. Terminated Vested	1,362,308	804,016
c. Beneficiaries	1,158,301	1,165,035
d. Disability Retirement	<u>1,682,435</u>	<u>2,094,558</u>
e. Total	\$31,306,380	\$34,135,112
3. Accrued Liability (AL)	<u>\$48,774,256</u>	<u>\$51,784,659</u>

Normal Cost – Entry Age Normal

Valuation as of October 1,	2017	2018
1. Preliminary Normal Cost		
a. Retirement Benefits	\$669,642	\$814,238
b. Deferred Benefits	211,130	177,200
c. Survivor Benefits	8,587	8,741
d. Disability Retirement	<u>44,185</u>	<u>46,274</u>
e. Total	\$933,544	\$1,046,453
2. Total Normal Cost		
a. Preliminary Normal Cost	\$933,544	\$1,046,453
b. Estimated Administrative Expense	<u>106,538</u>	<u>116,145</u>
c. Total Normal Cost	\$1,040,082	\$1,162,598
d. Total Normal Cost as a % of Pay	21.92 %	23.42 %
3. Normal Cost Net of Actual Employee Contributions		
a. Preliminary Normal Cost	\$933,544	
b. Actual Administrative Expense	116,145	
c. Actual Employee Contributions	<u>(375,306)</u>	
d. Actual Employer Normal Cost	\$674,383	
4. Valuation Payroll	\$4,745,191	\$4,964,332

Unfunded Accrued Liability

Valuation as of October 1,

2018

Unfunded Actuarial Liability

1. Accrued Liability	\$51,784,659
2. Actuarial Value of Assets	<u>38,301,511</u>
3. Unfunded Accrued Liability	\$13,483,148

Determination of Expected Unfunded Accrued Liability

1. Unfunded Accrued Liability as of Prior Year	\$13,832,793
2. Normal Cost (Net of Employee Contributions)	674,383
3. Interest on UAL and NC	1,080,785
4. Contributions	
a. City	\$(2,813,517)
b. State of Florida	<u>(444,090)</u>
c. Total	\$(3,257,607)
5. Interest on Contribution for Time on Deposit	(104,804)
6. Change in Plan, Methods or Assumptions	<u>485,735</u>
7. Expected UAL as of Current Year	\$12,711,285

Calculation of (Gain) or Loss

1. Actual Unfunded Accrued Liability	\$13,483,148
2. Expected UAL	<u>12,711,285</u>
3. Total (Gain) or Loss	\$771,863
4. Breakdown of (Gain) or Loss	
a. Investment Experience	\$358,822
b. Demographic Experience	<u>413,041</u>
c. Total (Gain) or Loss	\$771,863

Calculation of Actuarial Asset Gain or (Loss)

1. Actuarial Value of Assets - Beginning of Year	\$34,941,463
2. Contributions	3,632,913
3. Benefit Payments plus Administrative Expense	(2,541,302)
4. Expected Return on Assets	<u>2,627,259</u>
5. Expected Value of Assets at End of Year	\$38,660,333
6. Actuarial Value of Assets - End of Year	\$38,301,511
7. Gain (Loss) for Plan Year = (6) - (5)	\$(358,822)
8. Actual Investment Income	\$2,268,437
9. Actual % Return	6.39%

Amortization of Unfunded Liability

The Unfunded Actuarial Accrued Liability is being amortized as a level percentage of payroll based on the interest and payroll growth assumptions. In the October 1, 2014 valuation, unfunded accrued liability from changes in Plan provisions, actuarial assumptions, or changes in methods was amortized over 30 years and unfunded accrued liability from actuarial gains or losses was amortized over 15 years. Effective October 1, 2015 all new bases are amortized over 25 years.

Amortization Bases

				Remaining Balance Adjusted for Actual Contributions	Years Remain	Amort.
10/1	Source	Original Balance	Remaining Balance			
1.	2002 Fresh Start	\$2,755,021	\$1,244,643	\$1,216,734	4	\$332,543
2.	2002 Plan Amendment	1,976,338	1,944,886	1,901,276	14	195,885
3.	2004 Actuarial Loss	1,824,146	264,082	258,160	1	258,160
4.	2005 Actuarial Loss	613,985	150,926	147,542	2	76,019
5.	2005 Plan Amendment	333,316	334,551	327,049	17	29,978
6.	2006 Actuarial Loss	854,961	299,748	293,027	3	103,688
7.	2006 Method Change	753,708	759,481	742,451	18	65,912
8.	2006 Assumption Change	2,579,202	2,598,959	2,540,683	18	225,553
9.	2007 Actuarial Loss	1,227,859	521,117	509,432	4	139,232
10.	2007 Method Change	581,177	562,560	549,946	19	47,418
11.	2008 Actuarial Loss	2,599,494	1,289,153	1,260,246	5	283,683
12.	2008 Method Change	(1,970,274)	(1,881,094)	(1,838,914)	20	(154,376)
13.	2009 Actuarial Loss	1,538,368	869,825	850,321	6	164,165
14.	2010 Actuarial Loss	121,763	75,282	73,594	7	12,530
15.	2010 Plan Amendment	(2,045,217)	(1,921,821)	(1,878,728)	22	(150,476)
16.	2011 Actuarial Loss	190,481	128,051	125,180	8	19,182
17.	2012 Actuarial Loss	680,484	491,357	480,339	9	67,276
18.	2012 Plan Amendment	607,166	569,329	556,563	24	42,837
19.	2012 Assumption Change	1,502,286	1,408,670	1,377,083	24	105,989
20.	2013 Actuarial Gain	(181,623)	(140,395)	(137,247)	10	(17,784)
21.	2013 Assumption Change	53,066	50,142	49,018	25	3,707
22.	2014 Actuarial Loss	278,366	229,680	224,530	11	27,180
23.	2014 Assumption Change	56,887	54,459	53,238	26	3,961
24.	2015 Actuarial Loss	801,046	764,141	747,007	22	59,831
25.	2015 Assumption Change	568,624	542,428	530,265	22	42,472
26.	2016 Actuarial Gain	(809,648)	(783,779)	(766,204)	23	(60,110)
27.	2016 Assumption Change	771,544	746,891	730,143	23	57,281
28.	2017 Actuarial Loss	756,776	751,153	734,310	24	56,517
29.	2017 Assumption Change	585,900	581,546	568,506	24	43,756
30.	2018 Actuarial Loss	771,863	771,863	771,863	25	58,368
31.	2018 Assumption Change	485,735	485,735	<u>485,735</u>	25	<u>36,731</u>

Scheduled Amortization Payment

\$2,177,108

Unfunded Accrued Liability

\$13,483,148



Projected Unfunded Accrued Liability and Amortization Payments

Valuation as of October 1,	Unfunded Accrued Liability	Amortization Payment
2018	\$13,483,148	\$2,177,108
2019	12,137,034	1,938,137
2020	10,948,516	1,879,971
2021	9,735,083	1,791,940
2022	8,526,964	1,318,929
2023	7,737,826	1,033,964
2024	7,196,596	870,039
2025	6,791,559	865,305
2026	6,361,833	853,187
2027	5,913,532	788,140
2028	5,502,108	815,666
2029	5,030,896	793,499
2030	4,548,846	801,434
2031	4,022,846	809,448
2032	3,449,583	592,378
2033	3,067,209	598,302
2034	2,650,372	604,285
2035	2,196,475	574,824
2036	1,740,843	231,937
2037	1,619,810	176,971
2038	1,548,887	367,109
2039	1,268,638	370,780
2040	963,851	434,451
2041	568,311	442,352
2042	135,217	130,486
2043	5,079	5,079

Actions Taken to Reduce Unfunded Actuarial Accrued Liability

The required contributions calculated each year include a payment for the amortization of the unfunded accrued liability. This payment is designed to reduce the unfunded accrued liability in an orderly fashion. The Unfunded Actuarial Accrued Liability is being amortized as a level percentage of payroll based on the interest and payroll growth assumptions. In the October 1, 2014 valuation, unfunded accrued liability from changes in Plan provisions, actuarial assumptions, or changes in methods was amortized over 30 years and unfunded accrued liability from actuarial gains or losses was amortized over 15 years. Effective October 1, 2015 all new bases are amortized over 25 years.

Minimum Funding Requirements

Valuation as of October 1, Required Contribution for FYE September 30,	2017 2019	2018 2020
1. Normal Cost	\$1,040,082	\$1,162,598
2. Amortization of Unfunded Actuarial Liability	<u>2,193,918</u>	<u>2,177,108</u>
3. Minimum Required Contribution at Valuation Date [1. + 2.]	\$3,234,000	\$3,339,706
4. Minimum Required Contribution Projected to Beginning of Budget Year	\$3,474,933	\$3,585,174
5. Interest for Periodic Payments	<u>144,255</u>	<u>148,075</u>
6. Minimum Required Contribution Adjusted for Periodic Payments [4. + 5.]	\$3,619,188	\$3,733,249
7. Expected Employee Contributions	\$378,565	\$388,525
8. Expected State Contribution	397,680	444,090
9. Estimated City Contribution	<u>2,842,943</u>	<u>2,900,634</u>
10. Minimum Required Contribution for Funding Year	\$3,619,188	\$3,733,249
11. City Plus State Contribution	\$3,240,623	\$3,344,724
12. Expected Employee Contribution Rate	7.71%	7.75%
13. Expected State Contribution Rate	8.10%	8.86%
14. Estimated City Contribution Rate	<u>57.88%</u>	<u>57.85%</u>
15. Minimum Required Contribution Rate	73.69%	74.46%
16. City Plus State Contribution Rate	65.98%	66.71%
17. Payroll		
a. Valuation Payroll	\$4,745,191	\$4,964,332
b. Projected Valuation Payroll	\$4,911,273	\$5,013,975
c. Hired < January 31, 2011	2,867,394	2,518,483
d. Hired > January 31, 2011	2,043,879	2,495,492
18. Assumptions		
a. Net Assumed Investment Return	7.45%	7.35%
b. Contribution Projected to Next FY	7.45%	7.35%
c. Total Payroll Inflation	3.50%	1.00%
d. Payroll Inflation for Amortization of UAL	1.00%	1.00%

Reconciliation of Unfunded Accrued Liability

	Unfunded Accrued Liability	Funded Percentage	Change in Unfunded Accrued Liability	Change in Funded Percentage
As of October 1, 2017:	\$13,832,793	71.64 %		
Changes due to:				
Normal Operation of Plan	\$12,225,550	75.97 %	\$(1,607,243)	4.33 %
Investment Experience	12,584,372	75.27 %	358,822	(0.70)%
Demographic Experience	12,997,413	74.66 %	413,041	(0.61)%
Assumption Changes	13,483,148	73.96 %	<u>485,735</u>	<u>(0.70)%</u>
Total			\$(349,645)	2.32 %
As of October 1, 2018:	\$13,483,148	73.96 %		

Reconciliation of City Minimum Required Contribution

	Dollar Amount	Percent of Pay
For Fiscal Year Ending September 30, 2019:	\$2,842,943	57.88 %
Changes due to:		
Normal Operation of Plan	\$(36,866)	(2.68)%
Administrative Expense Change	10,707	0.22 %
State Contribution Increase	(44,682)	(0.89)%
Investment Experience	30,494	0.60 %
Contributions More Than Expected	(53,377)	(1.05)%
Demographic Experience	41,526	0.11 %
Assumption Changes	<u>109,889</u>	<u>3.66 %</u>
Total	\$57,691	(0.03)%
For Fiscal Year Ending September 30, 2020:	\$2,900,634	57.85 %

Historical Actuarial Gains and Losses

Valuation Date		Total	Investment Related	Demographic
10/01/2007	Actuarial Loss	1,227,859	(278,370)	1,506,229
10/01/2008	Actuarial Loss	2,599,494	2,579,310	20,184
10/01/2009	Actuarial Loss	1,538,368	661,567	880,810
10/01/2010	Actuarial Loss	121,763	591,163	(469,400)
10/01/2011	Actuarial Loss	190,481	805,498	(615,017)
10/01/2012	Actuarial Loss	680,484	578,926	101,558
10/01/2013	Actuarial Gain	(181,623)	(255,604)	73,981
10/01/2014	Actuarial Loss	278,366	(279,250)	557,616
10/01/2015	Actuarial Loss	801,046	191,273	609,773
10/01/2016	Actuarial Gain	(809,648)	141,056	(950,704)
10/01/2017	Actuarial Loss	756,776	359,073	397,703
10/01/2018	Actuarial Loss	771,863	358,822	413,041

Section
3

Accounting Information

Information Required by GASB 67/68

A supplemental report provides information under the Governmental Accounting Standards Board No. 67/68.

Statement of Accumulated Plan Benefits (FASB 35)

The following table is based on prior accounting standards and is required by the State. The actuarial present value of accumulated plan benefits is an estimate of the liability for all benefits accrued to date.

Year Beginning October 1,	2017	2018
1. Actuarial present value of accumulated plan benefits		
a. Participants currently receiving benefits	\$29,944,072	\$33,331,096
b. Other participants	<u>11,887,475</u>	<u>11,660,966</u>
c. Total vested plan benefits	\$41,831,547	\$44,992,062
d. Total non-vested plan benefits	<u>1,139,207</u>	<u>1,544,370</u>
e. Total accumulated plan benefits	\$42,970,754	\$46,536,432
2. Change in present value of accumulated plan benefits		
a. Accumulated plan benefits beginning of year		\$42,970,754
b. Increase (decrease) during year due to:		
i. Plan amendment		\$0
ii. Change in assumptions or methods		948,098
iii. Increase for interest and probability of payment due to decrease in discount period and benefits accrued		5,042,737
iv. Benefits paid		(2,425,157)
v. Other changes		<u>0</u>
vi. Net increase (decrease)		\$3,565,678
c. Accumulated plan benefits end of year		\$46,536,432

Other Disclosures Required by the State of Florida

Year Beginning October 1,	2017	2018
Present value of active member:		
Future salaries (attained age)	\$35,244,191	\$36,289,008
Future contributions (attained age)	\$2,722,821	\$2,823,329
Active Member accumulated contributions	\$1,799,003	\$1,972,216

Required Disclosure Under F.S. 112.664(1)

As required under F.S. Section 112.664(1) we have produced the following information:

- (a) Total pension liability calculated based on mortality used in one of the last two Florida Retirement System (FRS) valuations. This actuarial valuation assumes mortality as used in the July 1, 2016, 2017, and 2018 actuarial valuation for special risk members of FRS.
- (b) Total pension liability calculated using an assumed interest rate that is 200 basis points lower than that assumed in the valuation of the Plan.
- (c) Determination of the number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits.
- (d) Recommended contribution to the Plan using the most recent valuation and the contributions necessary prepared pursuant to (a) and (b) stated as a dollar amount and % of payroll.

	2% Decrease (5.35%)	Current Discount Rate (7.35%)	2% Increase (9.35%)
Total pension liability	\$66,891,072	\$51,784,659	\$41,586,923
Plan fiduciary net position	<u>(38,423,960)</u>	<u>(38,423,960)</u>	<u>(38,423,960)</u>
Net pension liability	<u>\$28,467,112</u>	<u>\$13,360,699</u>	<u>\$3,162,963</u>
Plan fiduciary net position as a percentage of the total pension liability	57.44%	74.20%	92.39%
Years of benefit payments:			
Expected for current members:	100	100	100
Paid for with current assets:	13.58	16.16	20.84
City Plus State Contribution Requirement, Plus Expected Employee Contributions			
Dollar Amount	\$5,157,684	\$3,733,249	\$2,570,649
Percent of Payroll	102.87%	74.46%	51.27%

Required Disclosure Under F.S. 112.664(2)(b)2.

F.S. Section 112.664(2)(b)2. - For the previous five years, beginning with 2013, a side-by-side comparison of the plan's assumed rate of return compared to the actual rate of return, as well as the percentages of cash, equity, bond and alternative investments in the plan portfolio. The actual rate of return is as provided by the investment monitor.

Year Ending September 30,	2018	2017	2016	2015	2014
Assumed rate of return	7.45%	7.55%	7.65%	7.75%	7.75%
Actual rate of return	8.50%	10.04%	6.01%	(0.08%)	7.55%
Percentages of assets in:					
Cash	2%	6%	1%	0%	2%
Equity	65%	56%	59%	57%	57%
Bond	25%	25%	25%	25%	25%
Alternative	8%	13%	15%	18%	16%
Total	100%	100%	100%	100%	100%

Section

4

Supplementary
Information

Summary of Participant Data

Member Statistics

Year Beginning October 1,	2017	2018
<u>Active Participants</u>		
Number	86	87
Average Age	36.4	36.5
Average Credited Service	8.3	8.2
Percent Male	90.7	90.8
Average Valuation Salary	\$56,915	\$59,437
Actual Total Payroll - Annual Report	\$4,622,671	\$4,855,965
Total Valuation Salary	\$4,894,714	\$5,171,041
Payroll Covered in Valuation	\$4,745,191	\$4,964,332
<u>Terminated With Rights to Deferred Benefits</u>		
Number	7	4
Average Age	42.2	41.4
Percent Male	85.7	75.0
Average Monthly Benefit (Estimate)	\$1,926	\$2,112
<u>DROP</u>		
Number	0	0
Average Age	0.0	0.0
Percent Male	0.0	0.0
Average Monthly Benefit	\$0	\$0
DROP Balances	\$0	\$0
<u>Service Retirements</u>		
Number	44	50
Average Age	60.8	60.2
Percent Male	95.5	96.0
Average Monthly Benefit	\$3,838	\$3,733
<u>Beneficiaries</u>		
Number	3	3
Average Age	68.6	69.6
Percent Male	33.3	33.3
Average Monthly Benefit	\$2,643	\$2,726
<u>Disability Retirements</u>		
Number	4	5
Average Age	51.1	51.3
Percent Male	100.0	100.0
Average Monthly Benefit	\$3,369	\$3,355

Number of Active Members by Age and Service as of October 1, 2018

Age	Service							Total
	< 1	< 5	< 10	< 15	< 20	< 25	25+	
< 20								
< 25	2	1						3
< 30	1	12	2					15
< 35	3	11	7	2				23
< 40	2	3	6	8				19
< 45			1	3	6	1		11
< 50		1	1	4	4	2	1	13
< 55			1		1	1		3
< 60								
60+								
Total	8	28	18	17	11	4	1	87

Active Valuation Pay by Age and Service as of October 1, 2018

Age	Service							Total
	< 1	< 5	< 10	< 15	< 20	< 25	25+	
< 20								
< 25	48,377	49,738						48,831
< 30	43,901	50,060	53,355					50,089
< 35	44,224	46,501	54,831	62,017				50,088
< 40	45,690	47,938	53,988	70,658				59,178
< 45			55,954	75,116	72,289	86,434		72,861
< 50		47,581	54,405	68,485	80,222	71,855	114,395	73,455
< 55			59,274		88,822	92,314		80,137
< 60								
60+								
Total	45,588	48,335	54,671	69,917	76,677	80,615	114,395	59,437

Reconciliation of Plan Participants

	Active	Vested Terms	DROP	Retired	Survivor	Disability	Total
As of October 1, 2017	86	7	0	44	3	4	144
Nonvested Termination	(3)						(3)
Disability	(1)					1	0
Retired	(3)	(3)		6			0
New Hires	8	0	0	0	0	0	8
As of October 1, 2018	87	4	0	50	3	5	149

Reconciliation of DROP Account Balances

1.	Beginning Balance as of October 1, 2017	\$0
2.	Monthly Benefit Additions	0
3.	Interest Earned	0
4.	Distributions	<u>0</u>
5.	Ending Balance as of September 30, 2018	\$0

Outline of Plan Provisions

Plan Type: Single-employer Defined Benefit Pension Plan

Effective Date: The Plan was originally effective September 28, 1993. Prior to the Effective Date, Members were part of a "Chapter Plan" where a slightly different level of benefits was effective. The most recent amendments to the Plan were Ordinance No. 2017-32 adopted effective December 12, 2017 and Ordinance No. 2018-19 adopted effective July 17, 2018.

Legal Authority: The Plan was established and is amended by local ordinance.

Plan Administrator: The Board of Trustees

Board Composition: Two members are elected from among the police employees of the City, who are members of the plan, two city residents appointed by the Commission and one person is chosen by a majority of the previous four members.

Plan Year: The 12-month period from October 1st to the following September 30th.

Funding Requirements: Employer contributions are actuarially determined and subject to State statute. Employee contributions are as described below and may be amended by ordinance.

Member: Full-time employees who satisfy the definition of a police officer in F.S. Section 185.02(11) become Members immediately upon hire.

Credited Service: Years and completed months of full-time employment as a police officer of the city during which a person contributes to the Plan. Credited Service also includes certain military service. Additional Credited Service may be purchased at full actuarial cost. Credited Service purchased after January 31, 2011 is not counted towards vesting.

Vesting: 100% upon earning ten years of Credited Service.

Compensation: Prior to Ordinance No. 2012-4, Monthly salary paid for work performed including overtime payments from a salary fund up to 300 hours in a calendar year, 50% of accumulated sick and annual leave payouts, amounts withheld for tax sheltered annuities, tax deferred compensation, and payments in addition to the employee's base rate of pay if the payments are paid according to a formal written policy that applies to all eligible employee equally, payments are paid for as long as the employee continues employment, and payments are paid at least annually.

Effective with Ordinance No. 2012-4, Monthly salary paid for work performed including overtime payments from a salary fund up to 300 hours in a calendar year, lump sum payments for accumulated sick and annual leave for employees hired on or before January 31, 2011 (but not to exceed the hours of sick and annual leave accumulated as of March 1, 2011 plus 50% of the hours of sick and annual leave accumulated between March 1, 2011 and March 1, 2012, and excluding lump sum payments for accumulated sick and annual leave accumulated on or after March 1, 2012), amounts withheld for tax sheltered annuities, tax deferred compensation, and payments in addition to the employee's base rate of pay if the payments are paid according to a formal written policy that applies to all eligible employee equally, payments are paid for as long as the employee continues employment, and payments are paid at least annually.

Employee Contributions: 7.5% of Compensation for members hired on or before January 31, 2011 and 8.0% for members hired after that date. A Member who terminates non-vested is entitled to refund of



accumulated Employee Contributions without interest. Contributions may be repaid with interest upon reentry into the Plan due to rehire.

Average Final Compensation: For members hired on or before January 31, 2011, one-twelfth the average of Compensation for the three highest years of Credited Service. For members hired after January 31, 2011, one-twelfth of the average of Compensation for the five highest years of Credited Service.

Normal Retirement Date: For members hired on or before January 31, 2011, the first day of the month coincident with or next following the earlier of (i) age 48 and ten years of Credited Service, or (ii) age 45 and 25 years of Credited Service. For members hired after January 31, 2011, the Normal Retirement Date is the first day of the month coincident with or next following the date the member attains age 48 and ten years of Credited Service.

Accrued Benefit (for Members Hired On or Before January 31, 2011): $3\% \times \text{Average Final Compensation} \times \text{Credited Service}$, plus, for Members who retire (i) with ten years of Credited Service prior to October 1, 2002, (ii) after having attained age 50 with ten years of Credited Service by October 1, 2002, (iii) with 20 years of Credited Service between October 1, 2002 and January 31, 2011, or (iv) with 25 years of Credited Service after January 31, 2011, a Supplemental Benefit (commonly referred to as a "health subsidy") is payable as follows:

- (a) \$200 per month
- (b) $\$20 \times \text{Credited Service Over 10 Years}$ (Maximum \$400) per month
- (c) Where (a) plus (b) is not more than \$600 per month

For Members who retired prior to October 1, 1993 the monthly benefit was defined as $2\% \times \text{Average Final Compensation} \times \text{Credited Service}$ (hereafter referred to as the "2% Multiplier Formula") plus the Supplemental Benefit defined above (the lesser of \$600 and $\$200 + (\$20 \times \text{Credited Service Over 10, but no more than } \$400)$). A cost-of-living adjustment (CPI COLA) is payable annually effective January 1, 1994 on the portion of the benefit determined under the 2% Multiplier Formula. The amount of the CPI COLA is the increase in the Consumer Price Index (urban wage earner as calculated by the United States Department of Labor) between July of the immediately preceding year as compared to July of the prior year. The CPI COLA is granted until the participant's benefit determined under the 2% Multiplier Formula reaches the benefit amount provided for members who retire after October 1, 1993 ($3\% \times \text{Average Final Compensation} \times \text{Credited Service}$) plus the Supplemental Benefit (the lesser of \$600 and $\$200 + (\$20 \times \text{Credited Service Over 10, but no more than } \$400)$). This portion of Plan provisions was applicable to only one Member of the Plan. The last time the CPI COLA was paid was on January 1, 2006. The Plan provision defining the CPI COLA will not apply to Plan participants after January 1, 2006.

Effective October 1, 2001, Members who retired prior to October 1, 2002 (including disability retirees) are granted a 1% cost-of-living adjustment annually commencing the January 1 following the first anniversary of retirement annuity commencement (1% COLA). For a DROP retiree, the 1% COLA is granted commencing on the January 1 following the first anniversary of actual annuity commencement after the end of the DROP period. The 1% COLA is not payable to any participant eligible to receive the 3% COLA, as described in the following.

Effective October 1, 2002, retirees are granted a deferred annual 3% cost-of-living adjustment (3% COLA) as follows: (i) Members who are retired on October 1, 2002 and had earned at least 20 years of Credited Service, (ii) Members who are actively employed on October 1, 2002 and had attained age 50 with ten years of Credited Service at that date, (iii) Members who are actively employed on October 1, 2002 with 20 years of Credited Service at that date, (iv) Members who attain 20 years of Credited Service after October 1, 2002 and who retire or enter the DROP by January 31, 2011, and (v) Members who

attain 25 years of Credited Service after January 31, 2011. The deferred 3% COLA is payable annually commencing as specified in the following:

- (a) 5 years after retirement (or DROP) for participants who retire (or DROP) on or before January 31, 2011 upon attaining age 45 and 25 years of Credited Service or age 50 and 20 Years of Credited Service.
- (b) The later of 5 years after retirement (or DROP) or age 59 for participants who were hired prior to January 1, 2003 and who retire (or DROP) on or before January 31, 2011 upon attaining age 48 and 20 years of Credited Service.
- (c) On the first day of the month coincident with or next following attainment of age 59
 - a. for participants who were hired prior to January 1, 2003 and who separate employment on or before January 31, 2011 with 20 years of Credited Service but before reaching age 48.
 - b. for participants hired on or after January 1, 2003 who retire (or DROP) on or before January 31, 2011 with at least 20 years of Credited Service (but prior to age 45 and 25 Years of Credited Service and prior to age 50).
 - c. for participants who retire after January 31, 2011.
- (d) 5 years after commencement of disability benefits on or before January 31, 2011 if 20 years of Credited Service have been earned during employment.

For members actively employed on January 31, 2011, in no event will the annual benefit payable exceed \$95,000, inclusive of any COLAs to which the member may be entitled.

Accrued Benefit (for Members Hired After January 31, 2011): $3\% \times \text{Average Final Compensation} \times \text{Credited Service}$, plus a Supplemental Benefit (commonly referred to as a "health subsidy") is payable as follows:

- (a) \$100 per month
- (b) $\$10 \times \text{Credited Service Over 10 Years (Maximum \$100)}$ per month
- (c) Where (a) plus (b) is not more than \$200 per month

No COLA is payable for members hired after January 31, 2011.

In no event will the annual benefit exceed \$95,000.

Late Retirement Benefit: The higher of the benefit determined using the Average Final Compensation and Credited Service at the actual date of retirement from employment, or the benefit that would have been paid had the Member retired at the Normal Retirement Date increased actuarially from the Normal Retirement Date to the actual date of retirement.

Early Retirement Date: The first day of the month coincident with or next following the date the Member earns ten years of Credited Service and attains age 45.

Early Retirement Benefit: The Accrued Benefit reduced by 3% for each year the Member is younger than the Normal Retirement Date.

Disability Benefits: Members are eligible for service-connected Disability Benefits immediately upon hire. The monthly service-connected Disability Benefit is the greater of (i) the Accrued Benefit and (ii) 51% of average monthly compensation for the most recent 12 months of full-time employment. Members are eligible for a non-service-connected Disability Benefit after earning at least ten years of Credited Service. The monthly non-service-connected disability benefit is the greater of (i) the Accrued Benefit and (ii) 25% of average monthly compensation for the most recent 12 months of full-time employment. Disability Benefits are offset by disability income received from workers' compensation only to the extent by which the total of the workers' compensation benefit plus the Disability Benefit payable exceeds the employee's average monthly compensation at disability. However, any offset for workers' compensation will not result in less than 42% of average monthly compensation, in the event of service-connected disability, or in less than 25% of average monthly compensation, in the event of non-service-connected disability.

Pre-Retirement Survivor Benefits: Vested Members who die prior to the commencement of benefits shall have a survivor benefit payable on their behalf. The amount of the monthly income payable is the (i) Accrued Benefit at the date of death payable at the Normal Retirement Date, or (2) the actuarial equivalent of this Accrued Benefit payable on the first day of the month following death, as elected by the designated beneficiary.

Optional Forms of Benefit: Pension benefits described above are payable in the form of a 10 year certain and continuous annuity. Members may optionally choose an actuarially equivalent single life annuity, or joint and survivor annuity (with 50%, 66 2/3, 75%, or 100% continuance). Actuarial equivalence for healthy lives is determined based the RP-2000 mortality table projected using Scale AA to 2010 (50% male blend) and an 8.0% annual interest assumption. The RP-2000 mortality table for disabled retirees projected using Scale AA to 2010 (50% male blend) is used for disabled lives.

Deferred Retirement Option Plan (DROP): Members hired on or before January 31, 2011 are eligible to enter the DROP upon earning 25 years of Credited Service. The Accrued Benefit is frozen and no further Employee Contributions are payable at DROP entry. The Accrued Benefit accumulates with interest at the fund's assumed rate of investment return in the DROP account (credited quarterly) and is payable as a single-lump sum within 60 days following DROP exit. The maximum DROP participation duration is 60 months. DROP participants are not eligible for pre-retirement death or disability benefits. No DROP is available to members hired after January 31, 2011.

Share Plan: Ordinance No. 2017-32 adopted effective December 12, 2017 amended the plan to provide that all annual premium tax revenues received pursuant to Chapter 185 and all accumulated excess Chapter 185 premium tax revenues as of October 1, 2016 are used to offset the City's pension contributions. This ordinance also created a defined contribution plan component commonly referred to as the Share Plan. Currently, the City of Port Orange and the union representing police officers have mutually agreed that no Chapter 185 premium tax revenues will be allocated to the Share Plan. At such time that the City of Port Orange and the union mutually agree to allocate premium tax revenues to the Share Plan, the details will be negotiated.

Description of Assumptions and Methods

A review of experience was performed for the five-year period from October 1, 2012 to October 1, 2017. As a result of this review, the Board of Trustees adopted revised assumptions. However, the Board of Trustees adopted the change in termination assumptions described below to be phased in over a three-year period. For each liability component, the difference between the value of that component determined under the revised assumptions not including the revision to termination assumptions and under all revised assumptions was determined. One-third of the change has been reflected in this valuation.

Assumed Rate of Investment Return: 7.35% per year net of investment expenses (revised from 7.45% in the prior valuation)

Inflation: 2.0% per year

Salary Increase – Total Payroll: 1.0% per year (revised from 3.5% per year in the prior valuation)

The payroll growth assumption used to amortize unfunded accrued liability as a level percent of payroll is 1.0%.

Salary Increase – Individual: 7.25% per year (revised from 7.5% per year in the prior valuation)

Members hired after January 31, 2011 are assumed to have no payout for accrued hours includable in their pension.

For Members hired on or before January 31, 2011 the final year of Salary is increased to account for the number of accrued hours available at March 1, 2011 plus half of the number of accrued hours between March 1, 2011 and March 1, 2012, assuming members typically work 2,184 hours in a year.

Mortality: The mortality table is that used for special risk employees in the valuation of FRS as of July 1, 2016, 2017, and 2018, as required by state statute. The mortality rates are as follows:

Healthy mortality (Pre-retirement):

Males: 10% RP-00 Combined Healthy White Collar +
90% RP-00 Combined Healthy Blue Collar
Females: 100% RP-00 Combined Healthy White Collar
Both male and female rates fully generational using Scale BB

Healthy mortality (Post-retirement):

Males: 10% RP-00 Annuitant White Collar +
90% RP-00 Annuitant Blue Collar
Females: 100% RP-00 Annuitant White Collar
Both male and female rates fully generational using Scale BB

Disabled mortality:

Males: 60% RP-00 Disabled Retiree Set Back 4 Years +
40% RP-00 Annuitant White Collar
Females: 60% RP-00 Disabled Retiree Set Forward 2 Yrs +
40% RP-00 Annuitant White Collar
No mortality improvement is assumed for disabled lives.

Retirement: Unisex rates, as follows:

Rates of retirement were revised for members hired before January 31, 2011, as follows:

<u>Age</u>	<u>Prior Rates</u>			<u>Current Rates</u>		
	<u>Service</u>			<u>Service</u>		
	<u><10</u>	<u>10-24</u>	<u>25+</u>	<u><10</u>	<u>10-24</u>	<u>25+</u>
<=44	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
45	0.00%	0.00%	100.00%	0.00%	10.00%	100.00%
46	0.00%	0.00%	100.00%	0.00%	5.00%	100.00%
47	0.00%	0.00%	100.00%	0.00%	2.50%	100.00%
48	0.00%	0.00%	100.00%	0.00%	25.00%	100.00%
49-51	0.00%	0.00%	100.00%	0.00%	2.50%	100.00%
52+	0.00%	100.00%	100.00%	0.00%	100.00%	100.00%

Members Hired After January 31, 2011: 100% at Age 48 and 10 Years of Service

Termination: Unisex rates of termination were revised as follows:

<u>Service</u>	<u>Prior Rate</u>	<u>Current Rate</u>	<u>Service</u>	<u>Prior Rate</u>	<u>Current Rate</u>
0	23%	24%	11	5%	3%
1	23%	21%	12	5%	3%
2	23%	18%	13	4%	3%
3	8%	13%	14	4%	3%
4	8%	12%	15	3%	3%
5	8%	8%	16	3%	2%
6	8%	8%	17	2%	1%
7	8%	7%	18	2%	1%
8	8%	6%	19	1%	1%
9	8%	5%	>=20	0%	0%
10	30%	5%			

Disability: Unisex rates, as follows:

<u>Age</u>	<u>Rate</u>	<u>Age</u>	<u>Rate</u>	<u>Age</u>	<u>Rate</u>	<u>Age</u>	<u>Rate</u>
15	0.050%	29	0.106%	43	0.186%	57	0.704%
16	0.054%	30	0.110%	44	0.193%	58	0.746%
17	0.058%	31	0.114%	45	0.200%	59	0.788%
18	0.062%	32	0.118%	46	0.242%	60	0.830%
19	0.066%	33	0.122%	47	0.284%	61	0.872%
20	0.070%	34	0.126%	48	0.326%	62	0.914%
21	0.074%	35	0.130%	49	0.368%	63	0.956%
22	0.078%	36	0.137%	50	0.410%	64	0.998%
23	0.082%	37	0.144%	51	0.452%	65	1.040%
24	0.086%	38	0.151%	52	0.494%	66	1.082%
25	0.090%	39	0.158%	53	0.536%	67	1.124%
26	0.094%	40	0.165%	54	0.578%	68	1.166%
27	0.098%	41	0.172%	55	0.620%	69	1.208%
28	0.102%	42	0.179%	56	0.662%	70+	1.250%

100% of disabilities are assumed to be service connected.

Percentage Married at Retirement: Effective for the October 1, 2018 actuarial valuation, 40% of active Members are assumed to be married at retirement and elect the 100% joint & survivor form of benefit.

Marital Age Difference Assumption: Husbands are assumed to be three years older than wives.

Plan Expenses: The prior year administrative expense is added to the normal cost.

Funding Method: Entry Age (level percent of salary)

Glossary of Actuarial Terms

Present Value of Benefits (PVB): The present value, as of the valuation date, of all benefits that will become payable by the Plan for the current group of members in the census.

Normal Cost (NC): The value of the portion of the total benefit for active members which accrues in the year following the valuation date. Under the Entry Age Normal (Level Percent of Salary) funding method, the NC is a constant fraction of salary from the member's date of entry into the Plan to the member's assumed date of termination, retirement, disability or death.

Accrued Liability (AL): This is the portion of the PVB attributable to the past at the valuation date. For active members, AL is the annual NC accumulated from date of entry to the valuation date for each member. For retired and terminated members, the PVB and the AL are equal. The AL is the estimated liability owed by the pension fund at the valuation date.

Unfunded Accrued Liability (UAL): Any excess of the Accrued Liability over the fund assets. A negative UAL indicates fund assets are greater than the Accrued Liability, otherwise known as a surplus.

Actuarial Value of Assets: The market value of assets is adjusted to recognize gains and losses over a five-year period. The Actuarial Value of Assets shall not be more than 120% or less than 80% of the market value of assets.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/4/2019

Consent item: No

SUBJECT: (F16) First Reading - Ordinance No. 2019-17 - Palmer Series 2019B Bond

DEPARTMENT: Finance

GOAL:

RECOMMENDED MOTION: Move to approve Ordinance No. 2019-17 for Palmer Series 2019B Bond

SUMMARY: Palmer representatives provided information to Council at the May 22, 2019 meeting regarding the College's request for the City to serve as its conduit issuer for a proposed tax-exempt refinancing on behalf of the College. The new Series 2019 Bonds will refinance the College's Series 2010 tax-exempt Bonds – also issued through the City - and will be issued in an amount not to exceed \$19.0 million. The refinancing bonds will replace the current \$18.2 mm in bonds outstanding, will be placed directly with a bank, and will mature in 2037.

While the refinancing will not involve any construction at the Port Orange campus, Mr. Tiemeier and Ms. Randazzo will discuss how the refinancing fits into the College's overall strategic plans. They will also discuss Palmer's intermediate-term plans for construction of a new building on its campus in Port Orange.

Finally, along with input from the City's bond counsel and the City's financial advisor, the Palmer representatives will address how, similar to the Series 2010 Bonds, Palmer alone will be responsible for making payments on the debt, and the City will have no obligations for payment. They will also discuss how, again similar to the Series 2010 Bonds, all of the City's costs for reviewing documents will be paid by the College.

The public hearing will be held during the 2nd reading at the next council meeting. The ordinance making this process possible is attached to this item and staff is recommending approval. The bond documents will be revised by the City's Bond Counsel as required prior to the bond closing to reflect the final bond issuance details.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Ord. No. 2019-17	Ord. No. 2019-17.pdf
2.	Ord. No. 2019-17 Exhibit A Commitment Letter	Exhibit A Commitment Letter -.pdf
3.	Ord. No. 2019-17 Exhibit B Loan Agreement	Exhibit B Loan Agreement -.pdf

4.	Ord. No. 2019-17 Exhibit C - Indenture of Trust	Exhibit C - Indenture of Trust.pdf
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Alan Rosen	Created/Initiated - 5/9/2019
Scott Neils	Approved - 5/9/2019
Margaret Roberts	Approved - 5/23/2019
Jake Johansson	Approved - 5/28/2019
Robin Fenwick	Final Approval - 5/28/2019

ORDINANCE NO. 2019-17

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, PROVIDING FOR AND AUTHORIZING THE ISSUANCE BY THE CITY OF ITS PRIVATE COLLEGE FACILITY REVENUE BONDS (PALMER COLLEGE OF CHIROPRACTIC PROJECT), SERIES 2019B, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$19,000,000, AND FOR A LOAN BY THE CITY TO PALMER UNIVERSITY FOUNDATION, AN IOWA NOT FOR PROFIT CORPORATION, IN AN EQUAL PRINCIPAL AMOUNT, TO FINANCE THE COST OF REFUNDING THE OUTSTANDING CITY OF PORT ORANGE, FLORIDA TAX-EXEMPT REVENUE NOTE, SERIES 2010 (PALMER COLLEGE PROJECT); PROVIDING THAT SAID REVENUE NOTE SHALL NOT CONSTITUTE A DEBT, LIABILITY OR OBLIGATION OF THE CITY BUT SHALL BE PAYABLE SOLELY FROM THE REVENUES HEREIN PROVIDED; AUTHORIZING A NEGOTIATED SALE AND AWARD OF SAID BONDS TO U.S. BANK NATIONAL ASSOCIATION; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS; PROVIDING CERTAIN OTHER DETAILS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AUTHORITY FOR THIS ORDINANCE. This Ordinance is adopted pursuant to Chapter 166, *Florida Statutes*, Chapter 159, Part II, *Florida Statutes*, and other applicable provisions of law.

SECTION 2. DEFINITIONS. Unless the context otherwise requires, all terms under herein in capitalized forms shall have the meanings specified in this section. Words importing the singular shall include the plural, words importing the plural shall include the singular, and words importing persons shall include corporations and other entities or associations.

“Act” means Chapter 166, *Florida Statutes*, Chapter 159, Part II, *Florida Statutes*, and other applicable provisions of law.

“Bank” means U.S. Bank National Association, as purchaser of the Bonds, and its successors and assigns in that capacity.

“Bond Counsel” means the law firm of Akerman LLP, Jacksonville, Florida.

“Borrower” means Palmer University Foundation, a Iowa not for profit corporation, and an organization described in Section 501(c)(3) of the Code, and any successor, surviving, resulting or transferee Person as provided in the Loan Agreement.

“City” means the City of Port Orange, Florida.

“City Manager” means the City Manager of the City or his designee.

“Clerk” means the City Clerk or the Deputy City Clerk of the City.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and the Regulations thereunder, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

“Commitment Letter” means the proposal from the Bank to the Borrower dated _____, 2019, as may be amended and supplemented from time to time, a copy is attached as **Exhibit A**.

“County” means Volusia County, Florida.

“Loan Agreement” means the Loan Agreement to be executed by and between the City and the Borrower, substantially in the form currently on file in the Clerk’s office and incorporated herein by reference.

“Indenture” means the Indenture of Trust to be executed by and between the City and U.S. Bank National Association, as trustee, substantially in the form currently on file in the Clerk’s office and incorporated herein by reference.

“Mayor” means the Mayor or Vice Mayor of the City.

“Person” or words importing persons means firms, associations, partnerships (including, without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Prior Note” means City of Port Orange, Florida Tax Exempt Revenue Note, Series 2010 (Palmer College Project), as heretofore amended.

“Project” means the project of the Borrower described in Section 3(B) of this Ordinance and in the Loan Agreement.

“Refunding” means the refinancing of the Prior Note as provided herein and in the Indenture.

“Series 2019B Bonds” means the obligations of the City to be designated “City of Port Orange, Florida Private College Facility Revenue Bonds (Palmer College of Chiropractic Project), Series 2019B”, in the principal amount of not to exceed \$19,000,000, substantially in the form and with the rates of interest, maturity dates and other details provided for herein and in the Indenture, to be issued by the City and delivered pursuant to the indenture.

“State” means the State of Florida.

SECTION 3. FINDINGS. The City hereby finds, determines and declares as follows:

A. The City is a local governmental body existing under and pursuant to Chapter 166, Florida Statutes, as amended and supplemented. The City is duly authorized and empowered by the Act to provide for the issuance of and to issue and sell its industrial development revenue bonds for the purpose of financing or refinancing all or any part of the cost of educational facilities, in order to promote and foster the economic growth and development of the County and the State, to enhance and expand industry and other economic activity in the County and the State, and to increase purchasing power and opportunities for gainful employment, to improve living conditions and to advance and improve the prosperity and the welfare of the State and its inhabitants, to foster the industrial and business development of the City, the County and the State, and to otherwise provide for and contribute to the health, safety and welfare of the people of the City, the County and the State.

B. The Borrower has requested that the City deliver the Series 2019B Bonds for the purpose of paying the financing costs of the Series 2019B Bonds including a swap termination payment, in connection with the cancellation of a hedging agreement associated with the Prior Note if any, and refinancing the Prior Note presently outstanding in the principal amount of approximately \$18,200,000, the proceeds of which were loaned to the Borrower to finance or refinance the cost of the financing, acquisition, construction and equipping of certain capital improvements (the “Project”).

C. The City has been advised that the interest on the Series 2019B Bonds will be excluded from gross income for federal income tax purposes under Section 103(a) of the Code, based in part on a certificate to be obtained from the Borrower; and the Series 2019B Bonds will not be issued unless the City has received a satisfactory opinion of Bond Counsel to the effect (among other things) that the interest on the Series 2019B Bonds will be excluded from gross income for federal income tax purposes at the time of delivery of the Series 2019B Bonds.

D. The Borrower has shown that the Refunding will preserve existing jobs in the City, will foster the economic growth and development in the industrial and business development of the City and the United States and will serve other predominantly public purposes as set forth in Act. It is desirable and will further the public purposes of the Act, and it will most effectively serve the purposes of the Act, for the City to finance the Refunding and to issue and sell the Series 2019B Bonds for the purpose of providing funds therefor, all as provided in the documents referred to herein, which contain such provisions as are necessary or convenient to effectuate the purposes of the Act.

E. The Project is appropriate to the needs and circumstances of, and will continue to make a significant contribution to the economic growth of the City and other affected governmental units; shall provide or preserve gainful employment or shall serve a public purpose by advancing the economic prosperity, public health or general welfare of the State and its people, as stated in Section 159.26, Florida Statutes, as amended.

F. The City, the other affected governmental units and other local agencies in the State will be able to cope satisfactorily with the impact of the Project and will be able to provide, or cause to be provided when needed, the public facilities, including utilities and public service, that will be necessary for the construction, operation, repair and maintenance of the Project and on account of any increases in population or other circumstances resulting therefrom.

G. The Borrower is willing to fulfill its obligations under the Loan Agreement and any other agreements to be made in connection with the issuance of the Series 2019B Bonds and the use of the Series 2019B Bonds proceeds for the refinancing the Prior Note, including the obligation to pay loan payments or other payments in an amount sufficient in the aggregate to pay all of the principal of, premium, if any, and interest on the Series 2019B Bonds, in the amounts and at the times required, the obligation to operate, repair and maintain the Project at the Borrower's own expense, and to serve the purposes of the Act and such other responsibilities as may be imposed under such agreements. The payments to be made by the Borrower to the City and the other security provided by the Loan Agreement and any other agreements to be made in connection with the issuance of the Series 2019B Bonds are adequate for the security of the Series 2019B Bonds.

H. Adequate provision has been made in the documents referenced herein for the operation, repair and maintenance of the Project at the expense of the Borrower, for the payment of the principal of, and interest on the Series 2019B Bonds when and as the same become due and payable, and for the payment by the Borrower of all other costs incurred in connection with the Project which are not paid out of the proceeds from the sale of the Series 2019B Bonds or otherwise.

I. The City is not obligated to pay the Series 2019B Bonds except from the proceeds derived from the repayment of the loan to the Borrower, or from the other security pledged therefor by the Borrower, and neither the faith and credit nor the taxing power of the City, the State or any political subdivision thereof is pledged to the payment of the principal or, premium, is any, or the interest on the Series 2019B Bonds.

J. The payments to be made by the Borrower under the Loan Agreement will be sufficient to pay principal of, and interest on the Series 2019B Bonds, when and as the same shall become due, and all other costs incurred in connection with the Project, except as may be paid out of the proceeds of sale of the Series 2019B Bonds or otherwise, and to make all other payments required by the Loan Agreement.

K. The Series 2019B Bonds will be secured by (i) an obligation of the Borrower in the Loan Agreement to make payments sufficient to pay, among other things, the principal of and premium, if any, and interest on such Series 2019B Bonds when and as the same shall become due, (ii) a mortgage and security agreement on certain property of the Borrower (the "Mortgage") and (iii) a guaranty by Palmer College of Chiropractic - West.

L. A negotiated sale of the Series 2019B Bonds is required and necessary and is in the best interest of the City for the following reasons: the Series 2019B Bonds will be a special and limited obligation of the City payable out of moneys derived by the City from payments from the

Borrower; the Borrower will be required to pay all costs of the administration of the Project and to operate and maintain the Project at its own expense; the cost of issuance of the Series 2019B Bonds, which must be borne directly by the Borrower, would most likely be greater if the Series 2019B Bonds is sold at public sale by competitive bids than if the Series 2019B Bonds is sold at negotiated sale, and there is no basis for, considering prevailing marketing conditions, or any expectation that, the terms and conditions of a sale of the Series 2019B Bonds at public sale by competitive bids would be any more favorable than at negotiated sale; because prevailing market conditions are uncertain, it is desirable to sell to the Series 2019B Bonds at a predetermined price; and revenue notes having the characteristics of the Series 2019B Bonds are typically sold at negotiated sale; the Borrower has indicated that it may be unwilling to proceed with the Project unless a negotiated sale of the Series 2019B Bonds is authorized by the City; and authorization of a negotiated sale of the Series 2019B Bonds is necessary in order to serve the purposes for which the Series 2019B Bonds is to be issued.

M. The Bank has submitted a proposal to make a loan as evidenced by the Series 2019B Bonds pursuant to the Commitment Letter.

N. All requirements precedent to the enactment of this Ordinance, of the Constitution and other laws of the State, including the Act, have been complied with.

O. It is necessary and desirable and in the best interests of the City that the City and Borrower enter into a Memorandum of Agreement (the “Memorandum of Agreement”) attached hereto as **Exhibit D** and incorporated herein by reference, providing among other things for the issuance of the Series 2019B Bonds by the City and for the loan of the proceeds of the sale of the Series 2019B Bonds to the Borrower pursuant to the Loan Agreement, which requires the Borrower to pay the loan in installments sufficient to pay all of the interest, principal, redemption premiums (if any) and other costs due under and pursuant to the Series 2019B Bonds when and as the same become due and payable, to operate, repair and maintain the Project at the Borrower's own expense, and to pay all other costs incurred by the City in connection with the financing, construction and administration of the Project and the refinancing of the Prior Note which are not paid out of the Series 2019B Bonds or otherwise.

Q. In order to satisfy certain requirements of Section 147(f) if the Internal Revenue Code of 1986, as amended (the “Code”), the City Council held a public hearing on the date hereof for the proposed issuance of the Series 2019B Bonds for the purposes herein stated, which date is more than 14 days following the first publication of notice of such public hearing in a newspaper of general circulation in the City (a true and accurate copy of the affidavit of publication of such notice is attached hereto as **Exhibit E**), which public hearing was conducted in a manner that provided a reasonable opportunity for persons with differing views to be heard, both orally and in writing, on the issuance of such Series 2019B Bonds and the location and nature of the Project and was held in a location which, under the facts and circumstances, was convenient for the residents of the City, such notice was reasonably designed to inform residents of the City of the proposed issue, stated and generally contained the information required by Section 147(f) of the Code and applicable regulations thereunder; and such period of 14 days was adequate for notice to be brought to the attention of all interested persons, exceeds the

normal periods for notice of public hearings conducted by the City Council and provided sufficient time for interested persons to prepare for and to express their views at such hearing.

SECTION 4. FINANCING AUTHORIZED. The financing by the City of the Project and the refinancing of the Prior Note, in the manner provided herein, is hereby authorized.

SECTION 5. AUTHORIZATION OF SERIES 2019B BONDS. For the purpose of providing funds to (i) refund the Prior Note, and (ii) pay a part of the cost of issuing the Series 2019B Bonds, and (iii) make a termination payment in connection with the cancellation of a hedging agreement associated with the Prior Note, and subject and pursuant to the provisions hereof, the issuance of the Series 2019B Bonds in an aggregate principal amount of not to exceed \$19,000,000 is hereby authorized.

The Series 2019B Bonds shall be dated such dates, shall bear interest at such rates (tax-exempt or taxable), shall be payable or shall mature on such dates and in such amounts, shall be issued in such denominations, in such series or subseries, shall be subject to optional and mandatory redemption and tender at such time or times, and upon such terms and conditions, shall be payable at the place or places and in the manner, shall be executed, authenticated and delivered, shall otherwise be in such forms, and subject to such terms and conditions, all as provided in the Indenture.

Subject to full satisfaction of the conditions set forth in this Section, the City hereby authorizes a private placement sale of the Series 2019B Bonds with the Bank in accordance with the terms of the Commitment Letter, the Indenture and the Loan Agreement. Series 2019B Bonds shall be privately placed with the Bank, shall not exceed, in aggregate, \$19,000,000, shall bear interest at an initial rate of interest not exceeding the maximum rate permitted by law and shall mature not later than December 31, 2037.

The Series 2019B Bonds and the premium, if any, and the interest thereon shall not be deemed to constitute a general debt, liability or obligation of the City or of the State or of any political subdivision thereof, or a pledge of the faith and credit of the City or of the State or of any political subdivision thereof, but shall be payable solely from the revenues received from the Borrower in repayment of the loan, and the City is not obligated to pay the Series 2019B Bonds or the interest thereon except from the revenues and proceeds received from the Borrower in repayment of the loan and neither the faith and credit nor the taxing power of the City, the State or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the Series 2019B Bonds.

SECTION 6. VALIDATION. The Series 2019B Bonds shall not be required to be validated pursuant to Chapter 75, Florida Statutes, as amended.

SECTION 7. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE INDENTURE AND LOAN AGREEMENT. In order to secure the payment of the principal and purchase price of, premium, if any, and the interest on the Series 2019B Bonds herein authorized, according to its tenor, purport and effect, and in order to secure the performance and observance of all of the covenants, agreements and conditions in said Series 2019B Bonds, the

City Manager is hereby authorized and directed to execute and deliver the Loan Agreement and the Indenture, proposed forms of which are attached hereto as **Exhibit B** and **Exhibit C**, respectively. The forms of the Indenture and the Loan Agreement are hereby approved, subject to such changes, insertions and omissions and such filing of blanks therein as may be approved and made in such forms, including any changes, insertions or omissions recommended by Bond Counsel or counsel to the City, by the officer of the City executing the same, in a manner consistent with the provisions of this Ordinance, such execution to be conclusive evidence of such approval.

SECTION 8. AUTHORIZATION OF EXECUTION AND DELIVERY OF THE MEMORANDUM OF AGREEMENT. The Mayor is hereby authorized and directed to execute the Memorandum of Agreement, a proposed form of which is attached hereto as **Exhibit D**, in the name of and on behalf of the City, and to deliver the Memorandum of Agreement to the Borrower.

SECTION 9. AUTHORIZATION OF EXECUTION OF OTHER CERTIFICATES AND OTHER INSTRUMENTS. The Mayor, the City Manager and the Clerk are hereby authorized and directed, either alone or jointly, under the official seal of the City, to execute and deliver (i) certificates of the City certifying such facts as the City's counsel or Bond Counsel shall require in connection with the issuance, sale and delivery of the Series 2019B Bonds, (ii) such certificates as may be required under Section 103 of the Code or under the provisions of Florida law, and (iii) such other instruments, including but not limited to, deeds, assignments, bills of sale and financing statements, as shall be necessary or desirable to perform the City's obligations under the Loan Agreement, and to consummate the transactions hereby authorized.

SECTION 10. NO PERSONAL LIABILITY. No representation, statement, covenant, warranty, stipulation, obligation or agreement herein contained, or contained in the Bonds or the documents referred to herein or any certificate or other instrument to be executed on behalf of the City in connection with the issuance of the Series 2019B Bonds, shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member, officer, employee or agent of the City in his or her individual capacity, and none of the foregoing persons nor any officer of the City executing the Bonds or any document referred to herein or any certificate or other instrument to be executed in connection with the issuance of the Series 2019B Bonds shall be liable personally thereon or be subject, to any personal liability or accountability by reason of the execution or delivery thereof.

SECTION 11. NO THIRD PARTY BENEFICIARIES. Except as otherwise expressly provided herein, in the Series 2019B Bonds or in the documents referred to herein, nothing in this Ordinance, the Series 2019B Bonds or in the documents referred to herein, express or implied, is intended or shall be construed to confer upon any person, firm, corporation or other organization, other than the City, the Borrower and the Bank (and subsequent holders from time to time of the Series 2019B Bonds) any right, remedy or claim, legal or equitable, under and by reason of this Ordinance or any provision hereof, or of the Series 2019B Bonds or the documents referred to herein, all provision hereof and thereof being intended to be and being for the sole and exclusive benefit of the City, the Borrower, and the Bank (and subsequent holders from time to time of the Series 2019B Bonds).

SECTION 12. PREREQUISITES PERFORMED. All acts, conditions and things relating to the passage of this Ordinance, to the issuance, sale and delivery of the Series 2019B Bonds, to the execution and delivery of the Indenture and the Loan Agreement required by the Constitution or other laws of the State, to happen, exist and be performed precedent to the passage hereof, and precedent to the issuance, sale and delivery of the Series 2019B Bonds, to the execution and delivery of the Indenture and the Loan Agreement, have either happened, exist and have been performed as so required or will have happened, will exist and will have been performed prior to such execution and delivery.

SECTION 13. COMPLIANCE WITH CHAPTER 218, PART III, FLA. STATUTES. The City hereby approves and authorizes the completion, execution and filing with the Division of Bond Finance of the State Board of Administration of the State of Florida, at the expense of the Borrower, of advance notice of the impending sale of the Series 2019B Bonds, of Bond Information Form BF 2003/2004 and of a copy of Internal Revenue Service Form 8038, and any other acts as may be necessary to comply with Chapter 218, Part III, Florida Statutes, as amended.

SECTION 14. LIMITED APPROVAL. For the purpose of Section 147(f) of the Code, the City hereby approves the issuance of the Series 2019B Bonds for the purposes recited in the recitals to this Ordinance. The foregoing approval shall be solely for the purpose of satisfying the requirements of Section 147(f) of the Code and shall not be construed as (i) an endorsement of the creditworthiness of the Borrower or its financial viability, (ii) a recommendation to any prospective purchaser to purchase the Series 2019B Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Series 2019B Bonds, or (iv) approval of any rezoning application or approval or acquiescence to the alteration of existing zoning or land use or approval for any regulatory permit relating to the Project, or creating any vested right with respect to any land use regulations, and the City shall not be construed by virtue of its adoption of this Ordinance to have made any such endorsement, finding or recommendation or to have waived, or be estopped from asserting, any rights or responsibilities it may have in that regard.

SECTION 15. GENERAL AUTHORITY. The officials of the City and its officers, attorneys, engineers or other agents or employees are hereby authorized to do all acts and things required of them by the Ordinance, the Series 2019B Bonds, the Indenture and the Loan Agreement, and to do all acts and things which are desirable and consistent with the requirements hereof or of the Series 2019B Bonds, the Indenture and the Loan Agreement, for the full, punctual and complete performance of all the terms, covenants and agreements contained herein or in the Indenture and the Loan Agreement.

SECTION 16. LIMITED OBLIGATION. THE ISSUANCE OF THE SERIES 2019B BONDS SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE CITY, THE STATE OF FLORIDA NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF TO LEVY OR TO PLEDGE ANY FORM OF TAXATION WHATEVER, OR TO LEVY AD VALOREM TAXES ON ANY PROPERTY WITHIN THEIR TERRITORIAL LIMITS TO PAY THE PRINCIPAL OR PREMIUM, IF ANY, OR INTEREST

ON SUCH SERIES 2019B BONDS OR OTHER PECUNIARY OBLIGATIONS OR TO PAY THE SAME FROM ANY FUNDS THEREOF OTHER THAN THE AMOUNTS RECEIVED FROM THE BORROWER IN REPAYMENT OF THE LOAN AND THE SERIES 2019B BONDS SHALL NOT CONSTITUTE A LIEN UPON ANY PROPERTY OWNED BY THE CITY, THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF, OTHER THAN THE CITY'S INTEREST IN THE LOAN AGREEMENT AND BORROWER PAYMENTS PLEDGED THEREFOR UNDER AND AS PROVIDED IN THE INDENTURE AND ANY OTHER AGREEMENTS SECURING THE SERIES 2019B BONDS.

SECTION 17. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions, and shall in no way affect the validity of any of the other provisions hereof or of the Series 2019B Bonds.

SECTION 18. REPEALING CLAUSE. All resolutions or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 19. EFFECTIVE DATE. This Ordinance shall become effective immediately.

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: _____
Margaret T. Roberts, City Attorney

EXHIBIT A
COMMITMENT LETTER

EXHIBIT B

FORM OF LOAN AGREEMENT

EXHIBIT C
FORM OF INDENTURE OF TRUST

EXHIBIT D

FORM OF MEMORANDUM OF AGREEMENT

_____, 2019

Palmer University Foundation
1000 Brady Street
Davenport, Iowa

Re: Proposed Revenue Bond Financing

Ladies and Gentlemen:

The City of Port Orange, Florida (the “City”) has been requested by Palmer University Foundation (the “Borrower”), to approve, for purposes set forth herein, the issuance of revenue bonds in an aggregate principal amount not to exceed \$19,000,000 to be issued by the City and to be known as the Private College Facility Revenue Bonds (Palmer College of Chiropractic Project), Series 2019B (Palmer College Project) (the “Series 2019B Bonds”), the proceeds of which will be lent to the Borrower to finance the cost of (i) refinancing the outstanding City of Port Orange, Florida Tax-Exempt Revenue Note, Series 2010 (the “Refunding”) (ii) issuing the Series 2019B Bonds, and (iii) making a termination payment in connection with the cancellation of a hedging agreement associated with the Prior Note, (collectively, the “Financed Costs”).

As a result of our discussions with your officers and agents, we have determined that the City’s willingness to issue its revenue bonds or other appropriate obligations (the “Series 2019B Bonds”) to assist the Borrower in the Refunding will develop and promote the public good and general welfare of the citizens and inhabitants in the jurisdiction of the City, Volusia County, Florida (the “County”), the State of Florida and the United States, and it is therefore the conclusion of the City that in assisting with the Refunding the City will be acting in furtherance of the public purposes of the City.

In order to induce the Borrower to proceed with the Project in the City and in order to carry out the public purposes of the City, we hereby make the following proposals:

1. The City will issue its Series 2019B Bonds in one or more series in a total principal amount not to exceed \$19,000,000 for the purpose of paying the Financed Costs.
2. The terms of the Series 2019B Bonds (maturity schedule, interest rates, denominations, redemption provisions, security etc.) must be satisfactory to the Borrower and the City and will be determined by an indenture of trust to be entered into between the City and a corporate trustee in form satisfactory to the City and the Borrower (the “Indenture”).
3. (a) Simultaneously with the delivery of the Series 2019B Bonds, the City will loan the proceeds from the sale of the Series 2019B Bonds to the Borrower to pay the Financed Costs, and the terms and provisions of the loan agreement to be entered by the City and the Borrower in connection therewith (the “Loan Agreement”) shall be substantially in the form

generally utilized in connection with such financial undertakings, as agreed upon by the City and the Borrower.

(b) The Loan Agreement will be dated contemporaneously with the Series 2019B Bonds, and the term of the Loan Agreement will equal or exceed the term of the Series 2019B Bonds.

(c) The amounts payable under the Loan Agreement will be paid directly to the purchaser of the Series 2019B Bonds, at such times and in such amounts as shall be timely and sufficient to pay the principal of, redemption premium (if any) and interest on the Series 2019B Bonds as the same become due and payable. The duty of the Borrower to make all payments required under the Loan Agreement shall be absolute and unconditional after the delivery of the Series 2019B Bonds.

(d) The proceeds from the sale of the Series 2019B Bonds to be applied to the payment of the Financed Costs will be deposited in a fund to be held by the trustee and disbursed pursuant to requisitions in accordance with the requirements of the Indenture.

(e) The Borrower will pay any taxes, assessments or utility charges which may be lawfully levied, assessed or charged upon the Borrower, the City, the Project refinanced or the payments under the Loan Agreement if such would result in a lien or charge upon the Project or the revenues of the City therefrom.

(f) The Loan Agreement will require the Borrower to keep the Project insured against loss or damage or perils generally insured against by industries similar to the Borrower and to carry public liability insurance covering personal injury, death or property damage with respect to the Project and may permit the Borrower to be self-insured.

(g) The Loan Agreement shall provide that in the performance of the covenants contained therein on the part of the City, any obligations it may incur for the payment of money shall not be a general debt on its part or on the part of the City, the State of Florida, Volusia County or any other political subdivision or municipality, but shall be payable solely from the specific payments received under such Agreement or from Bond proceeds, insurance proceeds and/or condemnation awards.

(h) The Loan Agreement shall contain covenants providing for the indemnification of the City and the individual members and officers thereof for all expenses incurred by them and for any loss suffered or damage to property or any injury or death of any person occurring in connection with the Project.

4. The City will assist in the prompt preparation of the Indenture and the Loan Agreement and, where requested, any security deed, promissory note or guaranty agreement, which must be in form and content satisfactory to the City.

6. Upon delivery of the Series 2019B Bonds, the provisions of this agreement shall have no further effect and, in the event of any inconsistency between the terms of this agreement, the Loan Agreement, the Indenture, mortgage, promissory note, guaranty agreement or any other security documents, such Loan Agreement, Indenture, security deed, promissory note, guaranty agreement or other security documents shall control.

7. If for any reason the Series 2019B Bonds is not delivered within six month of the date hereof, the provisions of this agreement shall, at the option of the City, to be evidenced in

writing, be canceled, and neither party shall have any rights against the other, and no third parties shall have any rights against either party except:

- (a) the Borrower will pay the City for all reasonable expenses, including legal fees, which have been incurred by the City in connection with the Refunding; and
- (b) the Borrower will assume and be responsible for any contracts entered into by the City at the request or direction of the Borrower in connection with the Refunding.

8. Whether or not the Series 2019B Bonds is issued, the Borrower will pay any out-of-pocket expenses of officers or employees of the City incurred in connection with the Refunding and the proposed issuance of the Series 2019B Bonds and will pay the legal fees and expenses of counsel for the City and bond counsel related to the Refunding and the proposed issuance of the Series 2019B Bonds.

9. The Borrower, in accepting this proposal, agrees (a) to indemnify, defend and hold the City and its respective individual City Council members, officers, agents and attorneys harmless against any loss or damage to property or any injury or death of any person or persons occurring in connection with the Project or the issuance of the Series 2019B Bonds and (b) to reimburse or otherwise pay, on behalf of the City, any and all reasonable and necessary expenses not hereinbefore mentioned that are incurred by the City and approved by the Borrower in connection with the Refunding and the issuance of the Series 2019B Bonds. This indemnity shall be superseded by a similar indemnity in the Loan Agreement, and if the Series 2019B Bonds are not issued and delivered, this indemnity shall survive the termination of this agreement.

10. This agreement shall inure to the benefit of and be binding upon the Borrower and the City and their respective legal representatives, successors and assigns.

If the foregoing proposal is satisfactory to you, the Borrower may so indicate by having the following acceptance executed by a duly authorized officer of the Borrower and returning a copy to the City. This proposal and acceptance will then constitute an agreement with respect to the matters herein contained.

Yours very truly,

CITY OF PORT ORANGE, FLORIDA

By: _____
Mayor

ACCEPTANCE OF PROPOSAL

The terms and conditions contained in the within Memorandum of Agreement are hereby accepted this __ day of _____, 2019.

PALMER UNIVERSITY FOUNDATION

By: _____
Chancellor

EXHIBIT E

NOTICE OF PUBLIC HEARING

City of Port Orange, Florida

Notice is hereby given that the City of Port Orange, Florida (the “City”) will conduct a public hearing concerning the proposed issuance by the City of its City of Port Orange, Florida Private College Facility Revenue Bonds (Palmer College of Chiropractic Project), Series 2019B (Palmer College Project) (the “Bonds”), in an aggregate principal amount not to exceed \$19,000,000. The proceeds of the Bonds will be used to make a loan the corporation described below to refinance the acquisition and construction of the facilities described below:

Owner: Palmer University Foundation.

Existing facility to be refinanced: Palmer College of Chiropractic, consisting of classrooms, offices, clinic and other educational facilities, aggregating approximately 94,000 square feet, located at 4777 City Center Parkway, Port Orange, Florida.

The public hearing will be held at the following time and location:

TIME	LOCATION
_____ P.M. _____, 2019	City Council Chamber 1000 City Center Circle Florida, 32129

The Bonds will be a limited obligation of the City payable solely from the payments to be made the owner of the facility under the financing documents and from the other sources specified in such financing documents.

The public hearing is required by Section 147(f) of the Internal Revenue Code (the “Code”). Any person interested in the proposed issuance of the Bonds or the project to be financed may appear and be heard. Subsequent to the hearing, the City Council will consider whether to approve the issuance of the Bonds, as required by Section 147(f) of the Code.

Interested persons are invited to submit written comments or present oral comments at the hearing regarding the proposed issuance of the Bonds. Written comments should be received by the City on or before May __, 2019 or may be submitted at the hearing. Oral comments will be limited to no more than 10 minutes per person. Written comments or notice of intent to present oral comments should be directed to:

City of Port Orange, Florida

1000 City Center Circle
Port Orange, Florida, 32129
Attention: City Manager

SECTION 286.0105, FLORIDA STATUTES STATES THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY A BOARD, AGENCY, OR COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT A MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

COMMITMENT LETTER

March 8, 2019

Palmer College of Chiropractic
1000 Brady Street
Davenport, Iowa 52803
Attention: Tom Tiemeier

Re: Iowa Higher Education Authority
Revenue Bonds, Series 2019A
(Palmer College of Chiropractic)

and

City of Port Orange, Florida
Revenue Refunding Bonds, Series 2019B
(Palmer College of Chiropractic)
(collectively, the "*Bonds*")

Dear Mr. Tiemeier:

U.S. Bank National Association ("*U.S. Bank*" or the "*Bank*") is pleased to commit to provide Palmer College of Chiropractic ("*you*" or the "*Borrower*") a commitment of U.S. Bank to purchase up to \$40,000,000 par amount of one or more series of Bonds (the "*Purchase*"), whether fully funded at closing or as a draw-down bond, upon and subject to the terms and conditions set forth in this letter (this letter, together with the attached indicative terms and conditions set forth in Exhibit A hereto, being referred to herein as the "*Commitment Letter*").

Such Purchase would be provided pursuant to commercial loan documents incorporating provisions deemed by U.S. Bank to be customary and appropriate in transactions of this type. This Commitment Letter does not include the conditions, business and financial covenants, representations, warranties, defaults, definitions and other terms to be contained in the financing documents, which must be developed and agreed upon by U.S. Bank and the Borrower. If such provisions cannot be agreed to or if any other material business or legal issues arise prior to initial funding, such issues must be resolved to the satisfaction of U.S. Bank or this Commitment Letter will become null and void. The loan documents shall contain all of the terms of the Purchase, and such terms shall supersede this Commitment Letter.

This Commitment Letter and all commitments and undertakings of U.S. Bank hereunder will expire at 5:00 p.m. (central time) on June 30, 2019, unless you execute this Commitment Letter and return it to us prior to that time (which may be by facsimile transmission or electronic mail), whereupon this Commitment Letter (which may be signed in one or more counterparts) shall become a binding agreement.

By executing this Commitment Letter, you agree to reimburse U.S. Bank from time to time on demand for all reasonable out-of-pocket fees and expenses including, but not limited to, (a) the reasonable fees and disbursements of Chapman and Cutler LLP, as counsel to U.S. Bank and (b) due diligence expenses incurred in connection with the contemplated Purchase and the preparation of the definitive documentation therefor.

To the extent permitted by law, you agree to indemnify and hold harmless U.S. Bank and each of its affiliates and their respective officers, directors, employees, agents, advisors and other representatives (each, an "*Indemnified Party*") from and against, and to pay within thirty (30) days after demand, any and all claims, damages, losses, liabilities and expenses (including, without limitation, the reasonable fees, disbursements and other charges of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (a) any matters contemplated by this Commitment Letter or any related transaction or (b) the Purchase and any other financings, or any use made or proposed to be made with the proceeds thereof except to the extent such claim, damage, loss, liability or expense is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct.

Anything in this Commitment Letter to the contrary notwithstanding, in the event the Borrower does not fulfill its commitment to close this transaction or any of the conditions set forth above are not fulfilled to the complete satisfaction of U.S. Bank on or before June 30, 2019, U.S. Bank may elect not to proceed with this transaction upon notice to the Borrower and thereupon this Commitment Letter and all commitments and undertakings of U.S. Bank hereunder shall terminate, but the applicable fees, reimbursement and indemnity obligations described above and/or in the attached indicative terms and conditions set forth in Exhibit A hereto shall survive such termination.

This Commitment Letter and the contents hereof are confidential and, except for disclosure hereof on a confidential basis to your members, officers and employees on a need-to-know basis and your accountants, attorneys and other professional advisors retained by you in connection with the Purchase or as otherwise required by law. This letter is for your benefit only and may not be relied upon by, and does not create any rights in favor of, any other person or entity, including those who are authorized to receive copies hereof. The Bank hereby notifies you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "*Act*"), it is required to obtain, verify and record information that identifies you, which information includes your name and address and other information that will allow the Bank to identify you in accordance with the Act.

In connection with all aspects of each transaction contemplated by this Commitment Letter, you acknowledge and agree that: (a) (i) the services described herein regarding the Purchase are arm's-length commercial transactions between you, on the one hand, and the Bank, on the other hand, (ii) you have consulted your own legal, accounting, regulatory and tax advisors to the extent you have deemed appropriate, and (iii) you are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby; (b) (i) the Bank has been,

is, and will be acting solely as a principal and, except as otherwise expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for you or any other person or entity and (ii) the Bank has no obligation to you with respect to the transaction contemplated hereby except those obligations expressly set forth herein; and (c) the Bank and its affiliates may be engaged in a broad range of transactions that involve interests that differ from yours, and the Bank has no obligation to disclose any of such interests to you. To the fullest extent permitted by law, you hereby waive and release any claims that you may have against the Bank with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by this Commitment Letter.

This Commitment Letter shall be governed by, and construed in accordance with, the laws of the State of Iowa. Each party hereto hereby irrevocably waives any and all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Commitment Letter, the transactions contemplated hereby and thereby or the actions of the Bank in the negotiation, performance or enforcement hereof.

This Commitment Letter may be executed in counterparts which, taken together, shall constitute an original. Delivery of an executed counterpart of this Commitment Letter by telecopier, electronic mail, or facsimile shall be effective as delivery of a manually executed counterpart thereof.

We at U.S. Bank appreciate your business and look forward to this new opportunity.

Very truly yours,

U.S. BANK NATIONAL ASSOCIATION

By 
Name: Bruce Christensen
Title: Vice President

ACCEPTED AND AGREED TO
AS OF THE DATE FIRST ABOVE WRITTEN:

PALMER COLLEGE OF CHIROPRACTIC

By: _____
Name: Tom Tiemeier
Title: Chief Financial Officer

EXHIBIT A

U.S. BANK NATIONAL ASSOCIATION TERM SHEET FOR DIRECT PURCHASE OF TAX EXEMPT BONDS

SUMMARY OF PRELIMINARY TERMS AND CONDITIONS

Date: March 8, 2019

- ISSUER:** Series 2019A – Iowa Higher Education Loan Authority (the “*Series 2019A Issuer*”).
- Series 2019B – City of Port Orange, Florida (the “*Series 2019B Issuer*” and, together with the Series 2019B Issuer, the “*Issuer*”).
- OBLIGOR:** Palmer College Foundation (the “*Obligor*”).
- GUARANTOR:** Palmer College of Chiropractic – West (the “*Guarantor*”).
- PURPOSE:** Series 2019A – Financing for renovations to the Academic Health Center, B.J. Palmer Hall, David D. Palmer Health Sciences Library, and the Library Plaza.
- Series 2019B – Restructure and replace existing outstanding Series 2010 Note into a new direct placement.
- ISSUE:** Variable Rate Revenue Bonds, Series 2019A (the “*2019A Bonds*”) and Variable Rate Revenue Refunding Bonds, Series 2019B (the “*2019B Bonds*” and, together with the Series 2019A Bonds, the “*Bonds*”).
- SECURITY:** Gross Revenue Pledge of the Obligor, on parity with the 2010 swap agreement (as amended and potentially novated), with further guaranty of the Guarantor. Additionally, there will be a negative pledge on all assets of the Obligor and the Guarantor.
- TAX TREATMENT:** Interest on the Bonds shall be excludable from gross income for federal income tax purposes. The Obligor shall take all steps necessary to maintain such tax-exempt status. The Bank shall be provided an opinion of tax counsel satisfactory to the Bank which concludes that interest on the Bonds is excludable from gross income for federal income tax purposes.

TRANSACTION DOCUMENTATION: Each series of Bonds will be purchased by the Bank in accordance with and subject to the provisions of a Continuing Covenant Agreement (the "*Continuing Covenant Agreements*"), each between the Bank and the Obligor containing standard conditions precedent to purchase and closing, representations and warranties, covenants, events of default and remedies customarily used in facilities of this type. The Guarantor will guaranty each series of Bonds pursuant to the terms of a Guaranty Agreement (the "*Guaranty Agreements*"), each between the Guarantor and the Bank. The Bonds, the Bond Indentures, the Loan Agreements, the Continuing Covenant Agreements and the Guaranty Agreements are herein collectively referred to as the "Transaction Documents."

PURCHASER/BANK: U.S. Bank National Association or any subsidiary or affiliate of the Bank (the "*Bank*").

PAR AMOUNT: Series 2019A – \$21,600,000 or as mutually agreed upon.
Series 2019B – \$18,400,000 or as mutually agreed upon.

AMORTIZATION: Series 2019A – Interest only during the construction period of up to 2 years followed by monthly interest and principal payments based on a 25-year monthly level debt service amortization.
Series 2019B – Monthly interest and principal payments based on an 18-year level debt service amortization.

INTEREST RATES AND OTHER KEY PROVISIONS:

INTEREST RATE MODES: The Bond Indentures shall include an Index Rate Mode, the terms of which are described below. All other standard interest rate modes may be contained in the Bond Indentures.

INDEX RATE: The Bonds shall initially bear interest at a per annum rate of interest equal to the sum of (i) the Bank Index times the Applicable Factor and (ii) the Applicable Spread (the "*Index Rate*"), subject to adjustment as provided below.

The *Bank Index* shall be LIBOR, which Bank Index shall be reset on the first Business Day of each month (the "*Reset Date*") based upon LIBOR two New York Banking Days prior to such Reset Date.

The *Applicable Factor* shall be 84.76%.

The *Applicable Spread* shall be as follows:

<u>Initial Term</u>	<u>Applicable Spread</u> ¹ (With Ancillary Business)	<u>Interest Rate Hedge Requirement</u>
5 Year	0.53%	Assumes \$40,000,000 hedged
5 Year	0.63%	Assumes \$20,000,000 hedged

(1) Assumes U.S. Bank as discretionary asset manager for the majority of the College's endowment.

**INTEREST RATE
HEDGING:**

The Obligor shall hedge the Bonds by maintaining an interest rate swap with U.S. Bank (or with another swap dealer acceptable to U.S. Bank), all upon terms and conditions acceptable to U.S. Bank. If such transaction is with U.S. Bank, such terms and conditions shall include, without limitation, requirements that the Obligor's obligations be cross defaulted, coterminous, and secured on a parity basis with the Bonds. The Obligor shall enter into such transaction not later than the closing date of the Bonds.

Please see Exhibit A for further information on Interest Rate Hedging.

COMPUTATION BASIS:

Computations of interest shall be calculated on a 360-day basis and actual days elapsed.

**EVENT OF
TAXABILITY:**

In the event a determination of taxability shall occur, in addition to the amounts required to be paid with respect to the Bonds under the Transaction Documents, the Obligor shall be obligated to pay to the Bank an amount equal to the positive difference, if any, between the amount of interest that would have been paid during the period of taxability if the Bonds had borne interest at the Taxable Rate (*i.e.*, the product of the (i) interest rate and (ii) the quotient of (a) one divided by (b) one minus the Maximum Federal Corporate Tax Rate in effect as of such day) and the interest actually paid to the Bank as the owner of the Bonds.

**MANDATORY
TENDER:**

The Bonds shall be subject to mandatory tender for purchase at par plus accrued interest by the Obligor on the Mandatory Tender Date.

On the Mandatory Tender Date, the Obligor may attempt to remarket the Bonds to the Bank for a new interest rate period or to new investors at any of the interest rate options provided for in the Transaction

Documents. The Bank shall not be obligated to purchase the Bonds for an additional interest period on the Mandatory Tender Date.

MANDATORY TENDER DATE: On the last day of the Initial Term as selected by the Obligor.

OPTIONAL REDEMPTION/CONVERSION: At the option of the Obligor, the Bonds may be optionally redeemed or converted to another interest rate mode to be effective on any interest payment date prior to the Mandatory Tender Date upon 30 days prior written notice to the Bank and compliance with the applicable provisions of the Transaction Documents; provided that voluntary redemptions or conversions of Bonds made on a date other than a LIBOR reset date shall be subject to the payment of customary LIBOR breakage costs, if any.

OTHER FEES AND EXPENSES:

BANK COUNSEL: Chapman and Cutler LLP. The Obligor will be required to pay all Bank's Counsel fees associated with the financing. Legal fees of Bank Counsel are estimated at \$40,000, plus disbursements.

BANK'S OUT-OF-POCKET EXPENSES: Up to \$5,000 which will relate primarily to travel expenses, if any.

ADMINISTRATIVE FEES: The Obligor shall pay to the Bank an amendment fee for each amendment of a Transaction Document or in connection with any waiver or consent of the Bank with respect to any amendment to any of the Transaction Documents in a minimum amount of \$2,500 plus reasonable attorney's fees and expenses.

UP-FRONT FEE: Waived

PAYMENT OF FEES AND EXPENSES:

TIMING / COMPUTATION OF PAYMENTS: All fees are non-refundable. Bank Counsel's fees and expenses and the Bank's Out-of-Pocket Expenses are payable at closing in immediately available funds. Additionally, Bank Counsel's fees and expenses and the Bank's Out-of-Pocket Expenses shall be paid by the Obligor regardless of whether the transaction is closed. Any termination or reduction fee is payable on the date of such termination or reduction, as applicable.

FEES AND EXPENSES VALID FOR 90 DAYS: All fees and expenses, including those of Bank Counsel, are subject to increase if the transaction is not closed within 90 days from the date the

Bank receives the mandate from the Obligor. In addition, the fees and expenses payable to Bank Counsel may be increased if the security and/or structure of the transaction changes materially once documentation has commenced.

INTEREST RATES:

BASE RATE: The greatest of: (i) Prime Rate plus 1.0%;
(ii) Federal Funds Rate plus 2.0%;
(iii) 7.5%.

DEFAULT RATE: Base Rate plus 3.0%.

CLAWBACK AMOUNTS: The Bond Indentures and the Continuing Covenant Agreements will include customary interest rate recapture language allowing the Bank to recover interest in excess of any maximum interest rate imposed by law.

INCREASED COSTS AND CAPITAL ADEQUACY; TAXES:

Standard increased costs, capital adequacy and tax provisions will be provided for in final documentation, including Dodd-Frank and Basel III provisions.

DOCUMENTATION:

Documentation will include the Continuing Covenant Agreements and the Guaranty Agreements prepared by Bank Counsel. The Continuing Covenant Agreements and the Guaranty Agreements will include, but not be limited to, the terms and conditions outlined herein as well as provisions that are customary and standard with respect to conditions precedent, representations and warranties, covenants, events of default and remedies.

CONDITIONS PRECEDENT TO CLOSING:

The Continuing Covenant Agreements shall include conditions precedent customary for transactions of this nature, including, without limitation, the following:

(i) all requisite approvals and incumbency certificates of officers of the Obligor and the Guarantor executing any of the transaction documents;

(ii) delivery of all required legal opinions including opinions of Bond Counsel, Obligor's Counsel and Guarantor's Counsel addressed to the Bank and in form and substance satisfactory to the Bank and its counsel;

(iii) delivery of executed or certified copies, as applicable, of all Transaction Documents (including an executed original of the Bond);

(iv) delivery of organizational documents (articles, bylaws, good standing certificates, etc.) of the Obligor;

(v) delivery of audited financial statements, any unaudited financial statements since the most recent audited financial statements, investment policy and swap policy;

(vi) delivery of a certificate evidencing that (a) no Default or Event of Default shall have occurred, (b) all representations, warranties, and covenants shall be true and correct and (c) no material adverse change has occurred with respect to the Obligor or the Guarantor since the date of the most recent audited financial statements delivered to the Bank; and

(vii) payment of all closing fees and expenses.

Additional conditions:

The Bonds shall not be rated by any rating agency, shall not be initially registered to participate in DTC, shall not be assigned a CUSIP number and shall not be marketed during any period in which the Bond is held by the Bank pursuant to any official statement, offering memorandum or any other disclosure documentation.

REPRESENTATIONS AND WARRANTIES:

Each of the Continuing Covenant Agreements and the Guaranty Agreements shall contain standard representations and warranties for facilities of this type, including, but not limited to, the following: due authorization and organization; validity and enforceability of Transaction Documents; accuracy of financial statements; security (to the extent applicable); compliance with laws; accuracy of disclosure and other financial information; no litigation; no default; no usury restrictions; no margin stock; no proposed legal changes; environmental matters; status of trustee; tax-exempt status of Bonds; absence of material adverse change, absence of material litigation, absence of

default or potential default; continued accuracy of representations; no investment company; no transactions with affiliates on less than marketable terms; title to assets; insurance; and incorporation of representations and warranties from Transaction Documents.

COVENANTS:

Each of the Continuing Covenant Agreements and the Guaranty Agreements shall contain standard covenants for facilities of this type, including, but not limited to, the following: performance of obligations under the Transaction Documents; maintenance of existence; further assurances; books and records; reporting requirements; compliance with laws; insurance; restrictions on additional debt; restrictions on investments, acquisitions, loans and advances; restrictions on sale of assets; restrictions on merger and consolidations; restrictions on burdensome contracts with affiliates; restrictions on liens; restrictions on amendments to Transaction Documents; incorporation of covenants from Transaction Documents; ERISA/Pension Plan compliance; most favored nations; use of proceeds; inspection and field audit; maintenance of tax-exempt status of Bonds; notice requirements; and restrictions on substitute trustee.

FINANCIAL AND REPORTING COVENANTS:

FINANCIAL COVENANTS BASED ON THE CONSOLIDATED RESULTS OF THE OBLIGOR AND THE GUARANTOR:

Unrestricted Cash & Investments to Debt as of each June 30 & December 31 not less than 0.50:1.00.

Debt Service Coverage Ratio as of each June 30 and December 31 not less than 1.25:1.00.

Debt Service Coverage Ratio shall mean, on a trailing twelve-month basis, the ratio of: (i) Cash Flow of the Obligor and the Guarantor plus interest expense to (ii) the total of Current Maturities of the Obligor and the Guarantor plus interest expense.

Cash Flow shall mean the increase/decrease in net assets without donor restrictions plus depreciation plus amortization plus/minus other non-cash items.

Current Maturities shall mean the scheduled payments of principal due during the trailing twelve-month period.

Additional Indebtedness not subject to Bank approval if Borrower is in compliance with other covenants on pro forma basis, using prior year's audit.

REPORTING COVENANTS:

Audited financial statements with compliance certificate within 150 days of each Fiscal Year end.

Quarterly financial statements within 45 days of the end of each fiscal quarter of each Fiscal Year.

Board approved annual operating budget for the upcoming Fiscal Year within 30 days of the end of each prior Fiscal Year.

Annual enrollment numbers, including applications, acceptances, matriculation and retention rates, consolidated with Guarantor, within 45 days of each Fiscal Year end.

EVENTS OF DEFAULT:

Each of the Continuing Covenant Agreements and the Guaranty Agreements shall include events of default customary for transactions of this nature, including, without limitation, the following: failure to pay principal and interest on the Bonds and other obligations under the Continuing Covenant Agreements and under the Guaranty Agreements; cross default/cross acceleration to other Series of Bonds; cross default/cross acceleration to any debt of the Obligor; bankruptcy or insolvency (voluntary or involuntary) of the Obligor or the Guarantor; material inaccuracy of any representation and warranty; failure to comply with covenants following applicable grace periods, if any; invalidity or contest of the Obligor's obligations under either Continuing Covenant Agreement or the Guarantor's obligations under either Guaranty Agreement or any document related to the Bonds; failure to pay final, non-appealable judgments in an amount, singularly or collectively, of \$500,000 million or greater by Obligor or the Guarantor; and defaults related to employee benefit plans.

REMEDIES:

The Bank may direct the Trustee to accelerate or cause a mandatory tender of the Bonds and the Bank may declare any and all amounts outstanding under the Continuing Covenant Agreements immediately due and payable; exercise any other rights and remedies available at law or in equity; or direct the Trustee to take such action provided for in the Transaction Documents. Interest shall accrue daily at the Default Rate on all amounts outstanding under the Continuing Covenant Agreements and shall be payable on demand.

POSTING ON EMMA: To maintain transparency with its existing bondholders, the Obligor shall consider posting the Bond Indentures, Loan Agreements and Continuing Covenant Agreements on the MSRB's EMMA site following the closing of the transaction, provided that pricing and certain other information contained therein, as directed by the Bank, shall be redacted prior to such posting.

CHOICE OF LAW / JURY TRIAL / VENUE:

GOVERNING LAW: The Continuing Covenant Agreements, and any other documents to which the Bank shall become a party will be governed by the laws of the State of New York; provided that the duties and obligations of the Obligor under the Continuing Covenant Agreements will be governed by the laws of the State of Iowa.

JURY TRIAL: The Obligor agrees to waive a jury trial in any proceeding including the Bank.

VENUE: The parties to the Continuing Covenant Agreements shall agree to the non-exclusive jurisdiction of the state and federal courts of the State of New York.

INDEMNIFICATION: Customary indemnification in all cases except where the Bank are proven to have been guilty of gross negligence or willful misconduct.

TRANSFERS: While the Bank is purchasing the Bonds for its own account without a present interest to transfer them, the Bank reserves the right in its sole discretion to assign, sell, pledge or participate interests in the Bonds without the consent of the Obligor.

ADDITIONAL TERMS: The terms and conditions contained in this proposal are not intended to be comprehensive. The definitive Transaction Documents may include additional terms and conditions required by the Bank, subject to mutual agreement of the parties, which are not included herein.

CREDIT APPROVAL: Any commitment to purchase the Bonds (including the terms and conditions proposed herein) or to extend credit is subject to all of the Bank's internal approvals and due diligence procedures. In obtaining credit approval, the Bank reserves the right to modify and/or supplement any of the terms and conditions stated herein.

NO ADVISORY OR FIDUCIARY ROLE: The Obligor acknowledges and agrees that: (i) the Bank has not assumed any advisory or fiduciary responsibility to the Obligor with respect to the transaction contemplated hereby and the discussions,

undertakings and procedures leading thereto (irrespective of whether the Bank or any of its affiliates has provided other services or is currently providing other services to the Obligor on other matters); (ii) the only obligations the Bank has to the Obligor with respect to the transaction contemplated hereby are expressly set forth in this term sheet; and (iii) the Obligor has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

**PROPOSAL
EXPIRATION:**

Unless otherwise extended by the Bank, this proposal shall expire at 5:00 p.m. CST on June 30, 2019.

CONFIDENTIALITY:

This Summary of Preliminary Terms and Conditions contains confidential and proprietary structuring and pricing information. Except for disclosure on a confidential basis to your accountants, attorneys and other professional advisors retained by you in connection with the proposed purchase of Bonds or as may be required by law, the contents of this Summary of Preliminary Terms and Conditions may not be disclosed in whole or in part to any other person or entity without our prior written consent, provided that nothing herein shall restrict disclosure of information relating to the tax structure or tax treatment of the proposed purchase of Bonds.

ADDRESS OF BANK:

U.S. Bank National Association
201 W 2nd Street
Davenport, IA 52801

BANK:

Bruce Christensen
Vice President, Commercial Banking
Tel: (563) 328-3161
Fax: (563) 328-3040
Email: bruce.christensen@usbank.com

BANK COUNSEL:

Matthew Huebsch
Chapman and Cutler LLP
Tel: (312) 845-3279
Email: huebsch@chapman.com

AGREEMENT BY THE ISSUER / OBLIGOR:

The Obligor hereby agrees to engage the Bank to purchase the Bonds pursuant to the terms and conditions stated herein.

Please evidence your acceptance of the foregoing by signing and returning a copy of the document to the Bank.

ACCEPTED AND AGREED TO:

By: _____

Date: _____

LOAN AGREEMENT

Dated as of June 1, 2019

BETWEEN

CITY OF PORT ORANGE, FLORIDA

as Issuer

and

PALMER COLLEGE FOUNDATION, INC.

as Borrower

LOAN AGREEMENT

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(This Table of Contents is not a part of the Loan Agreement and is only for convenience of reference.)

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This Loan Agreement (as amended, restated, supplemented, or otherwise modified from time to time, the “Loan Agreement” or the “Agreement”), dated as of June 1, 2019 by and between the CITY OF PORT ORANGE, FLORIDA (together with any successors and assigns, the “Issuer”), a body corporate and politic and a municipal corporation organized and existing under the laws of the State of Florida, and the PALMER COLLEGE FOUNDATION, a nonprofit corporation organized and existing under the laws of the State of Iowa, also known as Palmer College Foundation, Inc. for the purposes of conducting its affairs in the State of Florida (the “Borrower”);

W I T N E S S E T H:

WHEREAS, the Florida Industrial Development Financing Act, Chapter 159, Part II, Florida Statutes (the “Act”), has been enacted by the Legislature of Iowa; and

WHEREAS, the Act provides that the Issuer is authorized and shall have the power to enter into loan agreements pursuant to which the Issuer loans the proceeds from the sale of its revenue bonds to private educational institutions for the purpose of financing the cost of a project (as defined in Section 159.27(5) of the Act); and

WHEREAS, the Act provides that the Issuer may issue revenue bonds and loan the proceeds thereof to one or more parties for the purpose of financing or refinancing any such project, payable solely out of the payments to be made by the Borrower; and

WHEREAS, the Issuer has determined to issue its Private College Facility Revenue Bonds (Palmer College of Chiropractic Project), Series 2019B (the “Bonds”) in the aggregate principal amount of \$[PAR AMOUNT] pursuant to an Indenture of Trust (as amended, restated, supplemented, or otherwise modified from time to time, the “Indenture”) dated as of June 1, 2019 between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”) and will loan the proceeds thereof to the Borrower under this Loan Agreement, for the purpose of purpose of (i) re-financing the outstanding City of Port Orange, Florida Tax-Exempt Revenue Note, Series 2010 (Palmer College Project) previously issued by the Issuer to finance or re-finance the acquisition and construction of certain educational facilities (collectively, the “Project”), on the campus of the College at 4777 City Center Parkway, Port Orange, Florida, 32129 and (ii) paying costs of issuance of the Bonds; and

WHEREAS, the Bonds are secured by an assignment to the Trustee of this Loan Agreement and the payments due hereunder (except Unassigned Rights), and by all the moneys and securities in the related Funds and Accounts established under the Indenture for the benefit of the Bonds; and

WHEREAS, the Issuer has arranged for the sale of the Bonds to U.S. Bank National Association (together with its successor and assigns, the “Purchaser”); and

NOW, THEREFORE, the parties hereto in consideration of the premises and the mutual covenants and agreements hereinafter contained, do hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. Defined terms not otherwise defined herein shall have the meanings set forth in the Indenture. In this Loan Agreement and any agreement supplemental hereto (except as otherwise expressly provided or unless the context otherwise requires) terms used as defined terms in the recitals hereto shall have the same meanings throughout this Loan Agreement, and in addition, the following terms shall have the meanings specified below:

“Affiliate” shall mean any Person which controls, is controlled by or is under common control with the Borrower. For the purposes of the foregoing, one Person shall be deemed to control another if it owns more than 50% of the voting stock or other equity interest in the other Person or possesses the power (through membership or otherwise) to elect more than 50% of the other Person’s governing body.

“Authorized Borrower Representative” shall mean the President or any Vice President of the Borrower or the Chairperson of the Borrower Board or the Secretary or Assistant Secretary or the Treasurer or Assistant Treasurer of the Borrower or any person authorized from time to time in writing by the Borrower, or its successors and assigns, to perform a designated act or execute a designated document.

“Authorized Issuer Representative” shall mean the Mayor or Vice Mayor or City Manager of the Issuer, or any other officer of the Issuer authorized by a duly adopted resolution of the Board of the Issuer.

“Bond Counsel” means Akerman LLP, Jacksonville, Florida or other attorney at law or a firm of attorneys, acceptable to the Issuer and the Borrower, of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on bonds issued by states and their political subdivisions duly admitted to the practice before the highest court of any state of the United States of America.

“Bond Fund” means the Bond Fund created under the Indenture.

“Bonds” means the Issuer’s Private College Facility Revenue Bonds (Palmer College of Chiropractic Project), Series 2019B in the aggregate principal amount of \$[PAR AMOUNT] authorized pursuant to the Indenture.

“Bond Year” shall mean the one-year period ending on the Interest Payment Date immediately preceding the first anniversary of the date of issuance of the Bonds and each succeeding one-year period.

“Borrower” shall mean the Borrower identified in this Loan Agreement, and its successors and assigns and any surviving, resulting or transfer corporation.

“Borrower Board” shall mean the then-current legally governing body vested with the power of management of the Borrower.

“Business Day” shall have the meaning as defined in the Indenture.

“Certified Public Accountant” shall mean a Person, who shall be Independent, appointed by the Borrower Board, actively engaged in the business of public accounting and duly certified as a certified public accountant under the laws of the State, and not unsatisfactory at any time to the Issuer.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and any successor thereto.

“Continuing Covenant Agreement” shall have the meaning as defined in the Indenture.

“Cost of Issuance Fund” means the Cost of Issuance Fund created under the Indenture.

“Counsel” shall mean an attorney or firm of attorneys (which may include counsel to the Issuer, the Borrower or any Affiliate) not unsatisfactory to the Issuer.

“Default Rate” has the meaning set forth in the Continuing Covenant Agreement, and if such agreement is not in effect, then the meaning as set forth in any credit agreement, if applicable.

“Determination of Taxability” means and shall be deemed to have occurred on the first to occur of the following:

- (i) on the date when the Borrower files any statement, supplemental statement or other tax schedule, return or document which discloses that an Event of Taxability shall have in fact occurred;

- (ii) on the date when the Bondholder or any former Bondholder notifies the Issuer and the Borrower that it has received or applied for a written opinion by a nationally recognized firm of attorneys of substantial expertise on the subject of tax-exempt municipal finance to the effect that an Event of Taxability shall have occurred unless, within one hundred eighty (180) days after receipt by the Borrower of such notification from the Bondholder or any former Bondholder, the Borrower shall deliver to the Bondholder and any former Bondholder a ruling or determination letter issued to or on behalf of the Issuer or the Borrower by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other governmental official exercising the same or a substantially similar function from time to time) to the effect that, after taking into consideration such facts as form the basis for the opinion that an Event of Taxability has occurred, an Event of Taxability shall not have occurred;

- (iii) on the date when the Issuer or the Borrower shall be advised in writing by the Commissioner of the Internal Revenue Service or the Director of Tax-Exempt Bonds of the Tax-Exempt and Government Entities Division of the Internal Revenue Service (or any other government official or agent exercising the same or a substantially similar function from time to time) that, based upon filings of the Borrower, or upon any review

or audit of the Borrower or upon any other ground whatsoever, an Event of Taxability shall have occurred; or

(iv) on the date when the Borrower shall receive notice from the Bondholder or any former Bondholder that the Internal Revenue Service (or any other government official or agency exercising the same or a substantially similar function from time to time) has assessed as includable in the gross income of such Bondholder or such former Bondholder the interest on the Bonds due to the occurrence of an Event of Taxability;

provided, however, no Determination of Taxability shall occur under subparagraph (iii) or (iv) hereunder unless the Borrower has been afforded the opportunity, at its expense, to contest any such assessment, and, further, no Determination of Taxability shall occur until such contest, if made, has been finally determined; *provided further, however*, that upon demand from the Bondholder or former Bondholder, the Issuer shall promptly reimburse, but solely from payments made by the Borrower, such Bondholder or former Bondholder for any payments, including any taxes, interest, penalties or other charges, such Bondholder (or former Bondholder) shall be obligated to make as a result of the Determination of Taxability.

"Eligible Costs" with respect to the Project shall be deemed to include those items included in the cost of acquiring and installing any part of the Project within the meaning of the Act, including, but not limited to:

(i) payment to the Borrower of such amounts, if any, as shall be necessary to reimburse the Borrower in full for all advances and payments made by it at any time prior to or after the delivery of the Bonds for expenditures in connection with the acquisition of any portion of the Project Site, and preparation, clearing, landscaping, or other expenses incident to the improving of the Project Site;

(ii) payment for labor, services, materials, and supplies used or furnished for site preparation and in the installation and remodeling of the Project, payment for the cost of the acquisition of any equipment and the installation thereof in connection with the Project, payment for the cost of the construction, acquisition, expansion and installation of utility services or other facilities and all real and personal property deemed necessary in connection with the Project and payment for the miscellaneous expenses incidental to any of the foregoing items;

(iii) the cost of performance bonds or other bonds necessary in connection with the acquisition and installation of the Project and any and all types of insurance that may be necessary or appropriate to have in effect during the course of the acquisition and installation of the Project;

(iv) all expenses incurred in connection with the issuance of the Bonds, including, without limitation, the compensation and expenses of Trustee, feasibility studies, compensation to any financial consultants, placement agents, or underwriters, issuer's fees, legal fees and expenses including fees and expenses of Bond Counsel, counsel

to the Issuer, counsel to Borrower, and counsel to the Purchaser, costs of printing and engraving, and all recording and filing fees;

(v) all costs which Borrower shall be required to pay under the terms of any contract or contracts for acquisition and installation of the Project;

(vi) interest on the Bonds for a reasonable period prior to acquisition of the Project, during installation and for up to six (6) months after completion of installation; and

(vii) any sums required to reimburse Borrower for advances made for any of the above items or for any other costs incurred, including interim financing, and for work done which are properly chargeable to the Project and permitted under the Act.

“Event of Taxability” means a (i) change in law or fact or the interpretation thereof, or the occurrence or existence of any fact, event or circumstance (including, without limitation, the taking of any action by the Borrower, or the failure to take any action by the Borrower, or the making by the Borrower of any misrepresentation herein or in any certificate required to be given in connection with the issuance, sale or delivery of the Bonds) which has the effect of causing interest paid or payable on the Bonds to become includable, in whole or in part, in the gross income of the Bondholder or any former Bondholder for federal income tax purposes or (ii) the entry of any decree or judgment by a court of competent jurisdiction, or the taking of any official action by the Internal Revenue Service or the Department of the Treasury, which decree, judgment or action shall be final under applicable procedural law, in either case, which has the effect of causing interest paid or payable on the Bonds to become includable, in whole or in part, in the gross income of the Bondholder or any former Bondholder for federal income tax purposes with respect to the Bonds.

“Facilities” means the real estate and the buildings located thereon which constitute the campus of the Borrower in Port Orange, Florida.

“Fiscal Year” with reference to the Borrower shall mean the period of twelve months beginning _____ 1 of each year or such other period of 12 months as may be adopted from time to time by the Borrower as its fiscal year.

“Generally Accepted Accounting Principles” or “GAAP” shall mean those accounting principles, as in effect from time to time, applicable in the preparation of financial statements of institutions of higher education as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board, which are applicable to the circumstances as of the date of determination.

“Government Obligations” shall have the meaning set forth in the Indenture.

“Indenture” shall mean the Indenture of Trust dated as of June 1, 2019 of the Issuer to the Trustee as amended, restated, supplemented or otherwise modified from time to time as therein provided.

“Independent” shall mean a Person who is not a member of the Issuer’s Board, the Borrower’s Board, or the board of an Affiliate, an officer or employee of the Issuer or an officer or employee of the Borrower or an Affiliate, or which is not a partnership, corporation or association having a partner, director, officer, member or substantial stockholder who is a member of the Issuer’s Board or the Borrower’s Board or the board of an Affiliate, or an officer or employee of the Issuer or the Borrower or an Affiliate; provided, however, that the fact that such Person is retained regularly by or transacts business with the Issuer or the Borrower or an Affiliate shall not make such Person an employee within the meaning of this definition.

“Interest Payment Date” means any date on which interest payments are due on the Bonds as set forth in the Indenture.

“Loan” shall mean the loan of the proceeds of the Bonds to the Borrower pursuant to this Agreement.

“Loan Documents” shall mean collectively, singularly, or in any combination, as the context in which the phrase is used so indicates, the Indenture, the Continuing Covenant Agreement and this Loan Agreement, and any other agreement, document or instrument, made or executed pursuant to this Loan Agreement or in connection with the issuance of the Bonds.

“Loan Payments” means, unless the context otherwise requires, the payments required to be made by Borrower pursuant to Sections 5.2 and 5.3 of this Loan Agreement.

“Net Proceeds”, when used with respect to any insurance proceeds from policies referred to in Section 6.2 of this Agreement or any condemnation award, means any amount remaining after deducting all expenses (including attorneys fees) incurred in the collection of such proceeds or award from the gross proceeds thereof.

“Person” shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust, any unincorporated organization, a governmental body or any other political subdivision, a municipality, a municipal authority or any other group or entity.

“Principal Payment Date” means any date on which principal payments are due on the Bonds as set forth in the Indenture.

“Project” means the facilities described in the preambles of this Agreement to be financed with a portion of the proceeds of the Bonds.

“Project Site” means each of the parcels of real estate on which the individual components of the Project are or will be situated.

“Purchaser” or “Bank” means U.S. Bank National Association, as initial purchaser of the Bonds and any other person that is the “Bank” as set forth in the Indenture.

“Qualified Investments” shall mean any of the following which are at the time of investment legal investments under the laws of the State for the moneys proposed to be invested therein:

- (i) Government Obligations;
- (ii) bonds, participation certificates or other obligations of Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation and Federal Home Loan Banks;
- (iii) certificates of deposit, bankers' acceptances or other obligations issued by commercial banks or savings and loan associations which are fully insured by the Federal Deposit Insurance Corporation or certificates of deposit, bankers' acceptances or other obligations issued by commercial banks whose unsecured obligations are rated at the time of investment in one of the three highest rating categories by either Moody's Investors Service or Standard & Poor's Ratings Services;
- (iv) commercial paper rated at the time of investment in one of the three highest categories by either Moody's Investors Service or Standard & Poor's Ratings Services;
- (v) obligations issued or guaranteed by a state or political subdivision of a state rated at the time of investment in one of the three highest rating categories by either Moody's Investors Service or Standard & Poor's Ratings Services;
- (vi) housing authority bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States;
- (vii) investments in a taxable or tax-exempt money market fund having a rating at the time of investment by Moody's Investors Service of "Aaa" or by Standard & Poor's Ratings Services of "AAA";
- (viii) investment agreements with financial institutions whose unsecured debt obligations are rated at the time of time of investment by Standard & Poor's Ratings Services and Moody's Investors Service in one of the three highest rating categories or that are collateralized by investments of the type described in clause (i) of this definition having an aggregate fair market value at all times of not less than 100% of the original principal amount of such investment;
- (ix) repurchase agreements with a term of one year or less with any institution with debt rated at the time of investment "A" or commercial paper rated "A-2" (in each case by Standard & Poor's Ratings Services);
- (x) repurchase agreements collateralized by Government Obligations described in clause (i) of the definition thereof with any registered broker/dealer subject to the Securities Investors' Protection Corporation jurisdiction or any commercial bank, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed obligations rated at the time of investment "Prime-2" or "A" or better by Moody's Investors Service, and "A-2" or "A-" or better by Standard & Poor's Ratings Services, provided:

(a) a master repurchase agreement or specific written, repurchase agreement governs the transaction;

(b) the securities are held free and clear of any lien by the Trustee or an independent third party acting solely as agent for the Trustee, and such third party is (1) a Federal Reserve Bank, or (2) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than \$25 million, and the Trustee shall have received written confirmation from such third party that it holds such securities, free and clear of any lien, as agent for the Trustee;

(c) a perfected first security interest under the Uniform Commercial Code, or book entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.0 et seq. in such securities is created for the benefit of the Trustee;

(d) the repurchase agreement has a term of thirty days or less, or the Trustee will value the collateral securities no less frequently than monthly and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two Business Days of such valuation;

(xi) forward delivery agreements with financial institutions whose unsecured debt obligations are rated at the time of investment by Standard & Poor's Ratings Services and Moody's Investors Service in one of the three highest rating categories that deliver investments of the type described in clause (i) through (iv).

"Rating Agency" means a nationally recognized securities rating agency which at the time in question is rating any of the Bonds.

"Refunded Note" means the City of Port Orange, Florida Tax-Exempt Revenue Note, Series 2010 (Palmer College Project)

"State" means the State of Florida.

"Trustee" shall mean U.S. Bank National Association, as trustee under the Indenture, and any successors and assigns.

"Trust Estate" shall mean all of the Issuer's right, title and interest in and to (i) this Loan Agreement assigned for the benefit of the holders of the Bonds (except Unassigned Rights) and all revenues and security granted therefor under this Loan Agreement, (ii) all moneys and securities held from time to time in the Funds and Accounts pledged under the Indenture for the benefit of the holders of the Bonds, except the Rebate Fund, (iii) all amounts derived by the Issuer or the Trustee from the exercise of its rights under this Loan Agreement assigned for the benefit of the holders of the Bonds, and (iv) all other property held by the Trustee and pledged under the Indenture for the benefit of the holders of the Bonds.

"Unassigned Rights" shall mean the right of the Issuer to be paid fees and expenses related to the Bonds under this Loan Agreement and the right of the Issuer to receive indemnification from

the Borrower pursuant to this Loan Agreement, which rights are not assigned to the Trustee pursuant to the Indenture.

Section 1.2 Rules of Interpretation. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) “This Agreement” or “this Loan Agreement” means this instrument as originally executed and as it may from time to time be supplemented or amended pursuant to the applicable provisions hereof.

(b) All references in this instrument to designated “Articles”, “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein”, “hereof”, “hereunder” and “herewith” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with Generally Accepted Accounting Principles.

(e) The terms defined elsewhere in this Agreement shall have the meanings therein prescribed for them.

(f) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(g) The headings used in this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

(h) Whenever the term “principal office” is used herein, it shall mean the office designated as such by the applicable entity via a writing to the Trustee.

(i) As used herein, references to the “knowledge” of a person mean the actual knowledge of the person as well as such knowledge as the person would have had in the exercise of such care as would be exercised by an ordinarily prudent person in similar circumstances.

(j) As used herein, the term “material,” when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable person would attach importance in determining whether to make a loan to the Borrower.

(End of Article I)

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties by the Borrower. The Borrower makes the following representations, warranties, covenants and agreements to the Issuer and the Bondholders:

(a) Existence and Rights. The Borrower is a nonprofit corporation duly incorporated, validly existing and in good standing under the laws of the State and the Borrower is duly qualified to transact operations in all places where such qualification is necessary. The Borrower has the power and adequate authority, rights and franchises to own its property and to carry on its business as now conducted. The Borrower has the power, adequate authority and legal right to enter into this Loan Agreement and each of the Loan Documents and to perform its obligations hereunder and thereunder.

(b) Organization for Educational Purposes. The Borrower is organized and operated exclusively for educational purposes and not for pecuniary profit, and no part of the net income of the Borrower inures to the benefit of any person, private stockholder or individual. The Borrower is an organization described in Section 501(c)(3) of the Code and is exempt from federal taxation under Section 501(a) of the Code, and the Borrower is not a private foundation within the meaning of Section 509(a) of the Code. To the knowledge of the officers of the Borrower, there is no fact which materially adversely affects the status of the Borrower as an organization exempt from taxation under Section 501(a) of the Code.

(c) Loan Agreement Authorized. The making and performance by the Borrower of this Loan Agreement and each of the Loan Documents: (i) have been duly authorized by all necessary corporate action, (ii) do not require the consent or approval of, or any declaration or filing with, any governmental body, regulatory authority, court or official, (iii) do not violate or contravene or constitute a default under any provision of law or regulation or the charter or bylaws of the Borrower or of any judgment, injunction, order, or mortgage, security agreement, indenture or other agreement or instrument, to which the Borrower is a party or by which the Borrower or any of its property may be bound or affected, and (iv) will not result in the creation or imposition of any lien or security interest on any property of the Borrower. This Loan Agreement and each of the other Loan Documents are the valid, legal and binding obligations of the Borrower enforceable in accordance with their terms.

(d) Financial Information. The statement of financial position of the Borrower as of June 30, 2018 and the related statement of activities and statement of cash flows for the fiscal year then ended, a copy of which has been delivered to the Purchaser, fairly present, in conformity with Generally Accepted Accounting Principles, the financial position of the Borrower as of such date and its results of operations and changes in financial position for such fiscal year. Since such date there has been no material adverse change in the business, financial position, results of operation or prospects of the Borrower.

(e) Permits and Licenses. The Borrower has, to the best of its knowledge, all necessary permits, licenses, accreditations and certifications or other necessary approvals which are currently obtainable to conduct its business as it is presently being conducted, subject to minor exceptions and deficiencies that are not material and do not affect the conduct of its business.

(f) Litigation. There is no suit, tax claim or other proceeding pending against, or to the knowledge of the officers of the Borrower, threatened against or affecting, the Borrower or any of its property before any court or by or before any governmental authority, which, if adversely determined, would have a material and adverse effect on the financial condition or operations of the Borrower or would materially affect the Borrower's ability to make and perform its obligations under this Loan Agreement and each of the Loan Documents.

(g) No Event of Default. No Event of Default or other event which, with the giving of notice or the lapse of time or both, would become an Event of Default, has occurred and is continuing or will occur by reason of the execution, filing or recordation of any of the Loan Documents or the borrowing of the Loan.

(h) Usury. The obligations of the Borrower under this Loan Agreement are not subject to any law, rule or regulation prescribing a maximum rate of interest.

(i) Taxes. The Borrower has filed all federal, state, and local income, sales and other tax returns required to have been filed by it and has paid all taxes which have become due pursuant to such returns and the Borrower does not know of any basis for additional assessment in respect of such taxes.

(j) Amount Financed. The amount of Bond proceeds to be used to re-finance the Eligible Costs of the Project through the refunding of the Refunded Note is \$_____. The balance of the Bond proceeds will be used to pay costs of issuance and a termination payment in connection with the cancellation of a hedging agreement associated with the Refunded Note.

(k) Use of Project. The Borrower agrees not to use or occupy, nor permit any use of, the Project or any part thereof contrary in any material respect to any applicable law, ordinance or governmental regulation now or hereafter in force, including any lawful contract provisions, rule or regulation imposed by the United States of America on the Issuer or the Borrower in connection with any grant or other federal aid for the construction of the Project, if any. The Borrower covenants and agrees that throughout the term of this Agreement, at its sole cost and expense, it shall comply promptly, in all material respects, with all applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state, county and municipal governments, and appropriate departments, commissions, boards and officers thereof, whether or not requiring structural repairs or alterations to the Project or relating to the use or occupancy or manner of use of the Project. Borrower shall also observe and comply, in all material respects, with the requirements respecting the Project of all policies of insurance at any time in force with respect to any

of the buildings, improvements, machinery or equipment constituting a part of the Project. Borrower will not use or occupy the Project or permit its use or occupancy for any unlawful purpose or in any material violation of any law or regulation or any applicable contractual provision or in such manner as may provide a basis for claims, or adverse use or possession by the public or implied dedication to public use of any material part of the Project which may impair the efficient operation, use or control of the Project. Nothing herein shall prohibit Borrower from contesting in good faith any law, ordinance, rule, regulation, order, or contract provision described herein.

(l) Tax-Exempt Status. In order to preserve the tax-exempt status of the Bonds, Borrower covenants that it shall take such actions as are required to prevent the interest on the Bonds from becoming taxable for federal income tax purposes to the holders of the Bonds (other than a holder who is a “substantial user” of the Project or “related person” thereto within the meaning of Section 147(a) of the Code) including, but not limited to, taking all actions required of it under Section 148 of the Code. To this end, Borrower shall:

(1) maintain records identifying all “gross proceeds” attributable to the Bonds; the yield at which such gross proceeds are invested, any arbitrage profit derived therefrom (earnings in excess of the yield on the Bonds) and any earnings derived from the investment of such arbitrage profit;

(2) make, or cause to be made as of the end of each fifth bond year (or more frequently, if required by applicable tax law), the determinations of the amount, if any, of excess arbitrage required to be paid to the United States by Issuer;

(3) pay, or cause to be paid, to the United States at least once every five years the amount, if any, which is required to be paid to the United States, including the last installment which shall be made no later than 60 days after the day on which the Bonds are paid in full;

(4) not invest, or permit to be invested, “gross proceeds” in any acquired nonpurpose obligations so as to deflect arbitrage otherwise payable to the United States as a “prohibited payment” to a third party;

(5) refrain from investing any “gross proceeds” allocable to the Bonds in acquired nonpurpose obligations at a yield greater than the yield on the Bonds to the extent such “gross proceeds” exceed in any Bond Year more than 150% of the debt service requirements for the Bonds in that year; and

(6) retain all records of the annual determination of the foregoing amounts until six (6) years after the Bonds have been fully paid;

all as provided in Section 148 of the Code and any federal income tax regulations (whether proposed, temporary or final) relating thereto. The Borrower shall retain Bond Counsel or other qualified professional to assist the Borrower in complying with the rebate requirements of the Code.

(m) Prohibited Uses. No portion of the proceeds of the Bonds are to be used to provide any airplane, skybox or other private luxury box, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(n) Site. The Borrower is lawfully seized of the fee simple title in and to the site where the Project is located, free and clear of all liens and encumbrances, and the Borrower will defend fee simple title thereto against the lawful claims of all persons.

(o) Conflicts. To the knowledge of the officers of the Borrower, no member of the Issuer or other officer or employee of the Issuer is directly or indirectly interested in this Agreement or any contract, agreement or job hereby contemplated to be entered into or hereby undertaken.

(p) Zoning Restrictions. The Project will comply throughout the Loan term with all presently applicable building and zoning restrictions, health and safety standards and all other industrial requirements or restrictions enacted or permitted by the State of Florida, or any political subdivision thereof, or by the government of the United States, or any agency thereof.

(q) Institution. The Borrower is an "institution" within the meaning of the Act and meets all of the requirements of Section 261A.4(11) of the Act.

(r) Program. The Borrower is empowered to provide a program of education beyond the high school level; is recognized by the Florida Commission for Independent Education as an institution of higher education; and does not, and will not, discriminate on the basis of age, race, sex, color, creed, national origin, religion or disability.

(s) Use of Proceeds. All the proceeds from the sale of the Bonds will be used to refinance the costs of the Project and pay costs of issuance of the Bonds, and no changes shall be made in the Project which will affect the qualification of the Project as a "project" under the Act or impair the exemption of interest on the Bonds from federal income taxation. No proceeds from the sale of the Bonds will be used to reimburse any expenditures which were paid prior to the date of issuance of the Bonds. 60 days before the Borrower shall have adopted an Official Intent Resolution pursuant to Treasury Regulation Section 1.150-2, and then only for costs paid following the date of such Resolution and in accordance with such Resolution. In no event shall more than two percent (2%) of the sale proceeds of the Bonds be used to pay costs of issuance described in Section 147(g) of the Code.

(t) Indemnity. The Borrower will indemnify and save harmless the Issuer and the Trustee and their respective officers, agents, employees, directors and representatives from and against any and all losses, costs, charges, expenses, judgments and liabilities, including reasonable attorneys' fees, incurred by it or them while it or they are acting to carry out the transactions contemplated by this Agreement and the Indenture or to safeguard its or their interests or ascertain, determine or carry out its or their interests or

ascertain, determine or carry out its or their obligations under this Agreement, the Indenture or any law or contract applicable to the transactions contemplated by this Agreement and the Indenture, all as more specifically provided and subject to the limits set forth in Section 8.2 of this Agreement.

All representations of the Borrower contained herein or in any certificate or other instrument delivered by the Borrower pursuant hereto, pursuant to the Indenture, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof and the issuance, sale and delivery of the Bonds as representations of facts existing as of the date of execution and delivery of the instrument containing such representation.

Section 2.2 Representations, Covenants and Warranties of the Issuer. The Issuer represents, covenants and warrants as follows:

(a) The Issuer is a body politic and corporate and a public instrumentality organized and existing under the laws of the State. Under the provisions of the Act, the Issuer is authorized to enter into the transactions contemplated by this Agreement and the Indenture, to issue the Bonds and to carry out its obligations hereunder and under the Indenture. The Issuer has been duly authorized by appropriate proceedings of its governing body to execute and deliver this Agreement and the Indenture and to issue the Bonds.

(b) The Issuer agrees that it will assist in the financing of the Project by loaning to the Borrower the proceeds of the sale of the Bonds. Borrower has estimated that the total of the amount to be used to re-finance the Refunded Note, make a termination payment in connection with the cancellation of a hedging agreement associated with the Refunded Note, and pay costs of issuance equals or exceeds \$_____, and on that basis, Issuer agrees to issue the Bonds in the aggregate principal amount of \$_____. The Issuer shall issue the Bonds concurrently with the execution and delivery of this Agreement.

(c) The Bonds will be issued under the Indenture and will mature at such dates and bear interest at such rates and will be subject to redemption at the time and at the redemption prices as set forth in the Indenture.

(d) The Issuer covenants that it will not assign or pledge the Loan Payments hereunder or any other amounts pledged pursuant to this Agreement or the Indenture other than to secure the Bonds.

(End of Article II)

ARTICLE III

OWNERSHIP OF PROJECT

Issuer and Borrower agree that title to and ownership of the Project shall remain in and be the sole property of Borrower, and Issuer shall have no interest therein. Issuer does hereby covenant and agree that it will not take any action during the term of this Loan Agreement to interfere with Borrower's ownership of the Project or to prevent Borrower from having possession, custody, use and enjoyment of the Project, other than as may be specifically provided for by provisions of this Loan Agreement.

(End of Article III)

ARTICLE IV

ISSUANCE OF THE BONDS; INVESTMENTS

Section 4.1 Agreement to Issue Bonds; Application of Proceeds. In order to provide funds to loan to the Borrower in order to finance the Project, the Issuer, concurrently with the execution of this Loan Agreement, will issue, sell and deliver to the Purchaser the Bonds, the proceeds of which will be deposited pursuant to the provisions of the Indenture.

Section 4.2 Disbursements. Issuer has, in the Indenture, authorized and directed Trustee to apply the proceeds of the Bonds in accordance with the [Closing Memorandum]. Disbursements for costs of issuance of the Bonds shall be made upon receipt by Trustee of a certificate, in the form attached hereto as Exhibit A, signed by Borrower.

Section 4.3 Investment of Moneys. Any moneys held as a part of the Bond Fund or any other fund created pursuant to the Indenture (other than the Rebate Fund) shall be invested by Trustee, at the written direction of the Borrower, in accordance with the provisions of Article VI of the Indenture, in Qualified Investments. The Trustee may make any or all such investments through its own trust or bond departments and in its own savings accounts, certificates of deposit and money market funds. In the absence of written direction from the Borrower, the Trustee shall hold such amounts uninvested in cash, without liability for interest.

The investments so purchased shall be held by the Trustee and shall be deemed at all times a part of the Bond Fund or any other fund, as the case may be, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund and any losses resulting from such investment shall be charged to such fund and paid by the Borrower. The Trustee shall not be required to risk or expend its own funds, nor be responsible for any loss which is the result of an investment.

Section 4.4 Arbitrage. The Borrower covenants to the Issuer and to and for the benefit of the purchasers and holders of the Bonds from time to time outstanding that so long as any of the Bonds remain outstanding, moneys on deposit in any fund or account in connection with the Bonds, whether or not such moneys were derived from the proceeds of the sale of the Bonds or from any other sources, will not be used in a manner which will cause the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and any regulations promulgated or proposed thereunder. The Issuer covenants to the Borrower and to and for the benefit of the purchasers and holders of the Bonds from time to time outstanding not to take any action which would cause the Bonds to be "arbitrage bonds".

Section 4.5 Rebate Fund. The Borrower agrees that it shall comply with the provisions of Section 148 of the Code. Without limiting the generality of the foregoing, the Borrower shall make or cause to be made the calculation(s) required by Section 148 of the Code and shall, upon request, provide such calculations to the Trustee. The Borrower may retain a person to act on its behalf for the purpose of making the calculation(s) required by Section 148 of the Code. The Borrower shall make deposits to the Rebate Fund and shall direct the Trustee to make deposits and disbursements from the Rebate Fund (including rebate payments to the United States required to

be made by Section 148 of the Code), in accordance with Section 148 of the Code and to invest the Rebate Fund pursuant to Section 148 of the Code.

(End of Article IV)

ARTICLE V

PAYMENT PROVISIONS; MAINTENANCE; PAYMENT OF TAXES; INSURANCE

Section 5.1 Loan of Bond Proceeds and Assignment of Issuer's Rights. The Issuer agrees, upon the terms and conditions in this Agreement, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. It is understood that all rights of the Issuer to receive amounts payable under Sections 5.2 and 5.3 (other than 5.3(b)) of this Agreement by Borrower are assigned to Trustee pursuant to the Indenture. The Borrower assents to such assignment. The Issuer hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee (or as otherwise provided in the Indenture) at its principal office all payments by the Borrower pursuant to this Agreement other than those payments the Borrower transfers directly to the Bank as permitted under Section 2.02 of the Indenture.

Section 5.2 Loan Payments and Other Amounts Payable.

(a) The Borrower agrees to pay to the Trustee (or the Bank as permitted under Section 2.02 of the Indenture) in immediately available funds for the account of the Issuer as and for repayment of the Loan, and interest thereon, the following sums on the day when due: (i) on each Interest Payment Date, the amount payable as interest due on the Bonds on that Interest Payment Date until the principal of and interest on the Bonds shall have been fully paid or provisions of the repayment thereof shall have been made in accordance with the Indenture, plus (ii) on each Principal Payment Date, an amount equal to the amount payable as principal, whether at maturity or upon sinking fund redemption, on the Bonds on that Principal Payment Date until the principal of and the interest on the Bonds shall have been paid, or provision for the payment thereof shall have been made in accordance with the Indenture, and (iii) on each acceleration day or optional or mandatory redemption date a sum equal to the amount payable on such date as principal of, premium, if any, and interest on the Bonds as provided in the Indenture. The Borrower shall receive credit under this paragraph for any amounts drawn by the Trustee under any Letter of Credit to pay principal of or premium, if any, or interest on the Bonds; provided that if at any time a Credit Bank should default on its obligations under any Letter of Credit, the Borrower shall remain liable for all amounts due hereunder. The payments due from Borrower hereunder shall be reduced to the extent that investment earnings or amounts other than such payments are on deposit in the Bond Fund.

Each Loan Payment installment paid pursuant to this Section shall at all times be sufficient to pay the total amount of interest and principal and premium, if any, (whether at maturity or upon redemption or acceleration) payable on the Loan Payment date to which it relates; provided, that, any amount held by the Trustee in the Bond Fund on a Loan Payment date shall be credited against the Loan Payment on such date; and provided further, that, if at any time the amount held by the Trustee in the Bond Fund should be sufficient (and remain sufficient) to pay at the times required the principal of, interest and premium, if any, on the Bonds then remaining unpaid, the Borrower shall not be obligated to make any further Loan Payments under the provisions of this Section.

(b) The Borrower also agrees to make the deposits to the Rebate Fund at the times and in the amounts required by Section 4.5 hereof.

In the event the due date of any payment required to be made pursuant to this Section is not a Business Day, such payment shall be due on the next following Business Day.

In the event the Borrower should fail to make any of the payments required in Section 5.2(a) hereof, the item or Loan Payment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon to the extent permitted by law from the due date of said Loan Payment at the Default Rate.

Section 5.3 Additional Payments. The Borrower agrees to pay the following items to the following persons as additional payments under this Agreement:

(a) To the Trustee, when due, all fees of the Trustee for services rendered under the Indenture and all fees and charges of any paying agent, registrars, attorneys, accountants, engineers and others incurred in the performance on request by the Trustee of services under the Indenture for which the Trustee and such other persons are entitled to payment or reimbursement, provided that the Borrower may, without creating a default hereunder, contest in good faith the necessity or reasonableness of any such service, fees or expenses other than the Trustee's fees for ordinary services; and

(b) To the Issuer, all fees and expenses incurred by the Issuer in relation to the issuance of the Bonds which are not otherwise required to be paid by the Borrower under the terms of this Agreement.

(c) To the Credit Bank, if any, the amounts paid by the Credit Bank under the Letter of Credit and other amounts owing to the Credit Bank under any Credit Agreement; and

(d) To the Tender Agent, if any, at the times and in the amounts and manner therein specified, an amount equal to the amount required in order to pay the purchase price of Bonds subject to optional or mandatory tender for purchase pursuant to the Indenture; provided, however, that the amount required to be paid under this paragraph shall be reduced by an amount equal to the sum of the amounts made available for such purpose from the proceeds of the remarketing of such Bonds by the Remarketing Agent or through payments by a Credit Bank under a Letter of Credit, all as contemplated by Section 3.08 of the Indenture. The Borrower authorizes and directs the Trustee to demand money under a Letter of Credit in accordance with the provisions of a Credit Agreement and the Indenture to the extent necessary for the purchase of Bonds pursuant to the Indenture. The Borrower authorizes and directs the Trustee to apply the payments made by the Borrower under this paragraph to the payment of the purchase price of any bonds subject to optional or mandatory tender for purchase under the Indenture; and

(e) To the Person or Persons entitled thereto, any other amounts which the Borrower has agreed to pay under this Loan Agreement.

Section 5.4 Obligations Of Borrower Hereunder Unconditional. This Agreement is a general obligation of the Borrower and the full faith and credit of the Borrower is pledged to the payment of all sums due hereunder. The obligations of Borrower to make the payments required in Sections 5.2 and 5.3 and other sections hereof and to perform and observe the other agreements contained herein shall be absolute and unconditional and shall not be subject to any defense or any right of set-off, counterclaim or recoupment arising out of any breach by Issuer or Trustee or any other party of any obligation to Borrower, whether hereunder or otherwise, or out of any indebtedness or liability at any time owing to Borrower by Issuer or Trustee or any other party and until such time as the principal of and premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture. Borrower (i) will not suspend or discontinue any payments provided for in Sections 5.2 and 5.3 hereof, (ii) will perform and observe all other agreements contained in this Loan Agreement, and (iii) except as provided in Article X hereof, will not terminate the Loan term for any cause including, without limitation, the occurrence of any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, the taking by eminent domain of title to or temporary use of the Project or any portion thereof, any failure of consideration, failure of title or commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State of Florida or any political subdivision of either thereof or any failure of Issuer or Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement, it being the intention of the parties that the payments required hereunder will be paid in full when due without any delay or diminution whatsoever.

(End of Article V)

ARTICLE VI

DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS

Section 6.1 Damage, Destruction And Condemnation. Unless Borrower shall have been required or elects to prepay the Loan pursuant to the provisions of Article X hereof, if prior to full payment of the Bonds (or provisions for payment thereof in accordance with the provisions of the Indenture) (i) the Project or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty, or (ii) title to, or the temporary use of, the Project or any portion thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Borrower shall be obligated to continue to pay the amounts specified in Sections 5.2 and 5.3 hereof.

Section 6.2 Application Of Net Proceeds. Any Net Proceeds from damage, destruction or condemnation of Project shall be applied in one of the following ways as shall be elected by the Borrower:

(a) To the prompt repair, restoration or improvement of the Project by Borrower; or

(b) To the prepayment of the Loan and redemption of the Bonds in accordance with Section 10.1 of this Agreement and the Indenture.

Section 6.3 Insufficiency Of Net Proceeds. To the extent Net Proceeds are insufficient to pay the full cost of any repair, restoration or improvement, Borrower shall not be entitled to any reimbursement therefor from Issuer or from Trustee or from the holders of any of the Bonds, nor shall Borrower be entitled to any diminution or abatement of the amounts payable under Sections 5.2 and 5.3 hereof.

Section 6.4 The Borrower Entitled to Certain Net Proceeds. The Borrower shall be entitled to the Net Proceeds of any insurance proceeds or condemnation award or portion thereof made for damage to or taking of its property not a part of the Project.

(End of Article VI)

ARTICLE VII

SPECIAL COVENANTS

Section 7.1 No Warranty Of Condition Or Suitability By Issuer. Issuer makes no warranty, either express or implied, as to the Project or the condition thereof, or that the Project will be suitable for the purposes or needs of Borrower or that the proceeds from the sale of the Bonds will be sufficient to pay all costs of refunding the Refunded Note.

Section 7.2 Inspection Of Project. Borrower agrees that Trustee and its duly authorized agent and Issuer shall have the right at all reasonable times to examine and inspect the Project. Borrower further agrees that Issuer, Trustee, and their duly authorized agents shall also be permitted, at all reasonable times, to examine the books and records of Borrower with respect to the Project.

Section 7.3 Annual Audit, Financial Statements and Reports. The Borrower agrees that it will have its financial statements audited annually by its Independent Certified Public Accountant within one hundred fifty (150) days after the close of each Fiscal Year. Promptly upon receipt by the Borrower, it shall furnish to the Trustee, upon request, and the Issuer copies of its audited financial statements which shall consist of a statement of financial position and the related statement of activities and statement of cash flows for that Fiscal Year, all certified as to fairness of presentation, in conformity with Generally Accepted Accounting Principles, by an Independent Certified Public Accountant. At the time the year-end financial statements are provided to the Trustee and the Issuer, the Borrower shall furnish to the Trustee, upon request, and the Issuer a copy of any Compliance Certificate (as defined in the Continuing Covenant Agreement) provided to the Purchaser in accordance with the terms of the Continuing Covenant Agreement. Upon request, the Trustee may distribute such financial statements to the Bondholders and, upon request from the Trustee, the Borrower shall furnish to the Trustee sufficient copies of said financial statements.

The Trustee shall have no duty to review or analyze any such financial statements. The Trustee shall not be deemed to have notice of any information contained therein or event of default which may be disclosed in any manner therein.

Section 7.4 Maintenance Of Security Interests. Borrower shall execute all instruments, including financing statements, deemed necessary or advisable in the opinion of Independent Counsel for perfection of and continuance of the perfection and the maintenance of the priority position of the security interests created by this Loan Agreement and the Indenture.

Section 7.5 Further Assurances And Corrective Instruments. Issuer and Borrower agree that they will from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or for carrying out the expressed intention of this Loan Agreement.

Section 7.6 Issuer and Borrower Representatives. Whenever, under the provisions of this Loan Agreement, the approval of Issuer or Borrower is required or Issuer or Borrower are required to take some action at the request of the other, such approval or such request shall be given for Issuer by the Authorized Issuer Representative and for Borrower by the Authorized Borrower Representative, and any party hereto and Trustee shall be authorized to act on any such approval or request and no party hereto shall have any complaint against any other party or against Trustee as a result of any such action taken.

Section 7.7 Use Of Project. Borrower will use the Project only in furtherance of lawful purposes. The Borrower covenants that the proceeds of the Bonds will be used only for the refunding of the Refunded Note, to make a termination payment in connection with the cancellation of a hedging agreement associated with the Refunded Note, and to pay costs of issuance of the Bonds.

Section 7.8 Issuer and Borrower Not To Adversely Affect Exempt Status Of Interest On The Bonds. The Issuer and Borrower each agrees that it will not knowingly take any affirmative action or omit to take any action, which action or omission will adversely affect the exemption from federal income taxation of interest paid on the Bonds, and, in the event any such action or omission shall be brought to the attention of Issuer or Borrower, each will, at the sole expense of Borrower, promptly upon having any such action or omission brought to its attention, take such reasonable actions based upon advice of counsel as may rescind or otherwise negate or cure such action or omission. With the intent not to limit the generality of the foregoing, Borrower represents, covenants and agrees that:

(a) Borrower will continue to conduct its operations in a manner that will result in its continuing to qualify as a Tax-Exempt Organization under Section 501(c)(3) of the Code;

(b) Borrower will not divert any substantial part of its corpus or income for a purpose or purposes other than those for which it is organized and operated as described;

(c) Borrower has not operated during its five most recent Fiscal Years or during the current Fiscal Year to the date hereof, in a manner that would result in its being classified as an “action” organization within the meaning of Treasury Regulations Section 1.501(c)(3)-(1)(c)(3) including, but not limited to, promoting or attempting to influence legislation by propaganda or otherwise as a substantial part of its activities;

(d) No director, officer or incorporator of Borrower or any organization or corporation controlled by such Person, or any other Person or Persons having a personal or private interest in the activities of Borrower has acquired or received, directly or indirectly, any income or assets of Borrower in any form, for its five most recent Fiscal Years or the current Fiscal Year, as of the date hereof, other than as properly reflected in information returns filed with the Internal Revenue Service (the “IRS”) by Borrower;

(e) Borrower is not a “private foundation” within the meaning of Section 509(a) of the Code;

(f) Borrower has not received any indication or notice whatsoever to the effect that its exemption under Section 501(c)(3) of the Code has been revoked or modified, or that the IRS is considering revoking or modifying such exemption, and such exemption is still in full force and effect;

(g) Borrower has timely filed and will in the future timely file with the IRS reports and returns required to be filed by it to maintain Borrower status as an exempt organization under Section 501(c)(3) of the Code, and such reports and returns have not omitted or misstated and will not omit or misstate any material fact;

(h) The proceeds of the Bonds and any investment earnings thereon will be expended for the purposes set forth in this Agreement and in the Indenture and less than five percent (5%) of the Bond proceeds will be used for an unrelated trade or business within the meaning of Section 513(a) of the Code or will be, directly or indirectly, (i) secured by any interest in property used for a private business use or (ii) derived from payments in respect of property or borrowed money used for a private business use.

(i) Borrower will not use the proceeds of the Bonds or any investment earnings thereon in a manner that will result in the Bonds not being classified as qualified 501(c)(3) bonds within the meaning of Section 145 of the Code; and

(j) Borrower shall provide Issuer on the date hereof with all information required to satisfy the informational requirements set forth in Section 149(e) of the Code including the information necessary to complete IRS Form 8038; and

(k) Neither Borrower nor any person related to it within the meaning of Section 147(a)(2) of the Code, pursuant to an arrangement, formal or informal, will purchase the Bonds in an amount related to the total amount payable under and secured by this Agreement.

(l) Borrower agrees, whenever requested by the Issuer, to provide and certify or cause to be provided and certified such information concerning the Project, the Borrower, the finances of the Borrower, and other topics as the Issuer considers necessary to enable Counsel to issue their respective opinions and otherwise advise the Issuer as to the transaction or the capacity of the parties to enter into the same, or to enable Issuer to make any reports or supply any information required by the Indenture, law, governmental regulation or otherwise.

As provided in the Indenture, the Trustee will invest moneys held by the Trustee as directed by the Borrower. The Issuer and the Borrower hereby covenant with each other and with the holders of the Bonds that, notwithstanding any other provisions of this Agreement or any other instrument, they will neither make nor instruct the Trustee to make any investment or other use of the proceeds of the Bonds, or take or omit to take any other action which could cause the Bonds to be arbitrage bonds under Sections 103(b)(2) and 148(a) of the Code and the regulations thereunder, and that they will comply with the requirements of the Code and the regulations thereunder, and that they will comply with the requirements of the Code and applicable regulations

throughout the term of the Bonds so that the interest on the Bonds shall be excluded from gross income for Federal income tax purposes.

Section 7.9 No Establishment of Religion.

(a) Borrower represents that it has not used and has no intention of using the Project or any substantial part thereof primarily as a place of religious worship or as a facility primarily (i) for sectarian instruction or study, or as a place for devotional activities or religious worship, or (ii) in connection with any part of the program of a school or department of divinity for any religious denomination or the training of ministers, priests, rabbis, or other professional persons in the field of religion;

(b) The foregoing restrictions shall not apply to any properties or facilities of Borrower not financed or refinanced from the proceeds of the Bonds.

Section 7.10 Compliance with Laws. The Borrower covenants that all actions heretofore taken by the Borrower to acquire and carry out the acquisition and construction and equipping of the Project, including the making of contracts, have been in full compliance with all pertinent laws, ordinances, rules, regulations and orders applicable to the Borrower. In connection with the operation, maintenance, repair and replacement of the Project, the Borrower covenants that it shall comply with all applicable ordinances, rules, regulations and orders of the government of the United States of America, the State, the municipality in which the Project or any part thereof is located, and any requirement of any insurance company writing insurance on the Project. The Borrower further covenants and represents that the Project is in compliance with all applicable zoning, subdivision, building, land use and similar laws and ordinances. The Borrower covenants that it shall not take any action or request the Trustee to execute any release which would cause such real estate to be in violation of such laws and ordinances.

Section 7.11 Corporate Existence. The Borrower covenants that it will preserve and maintain its existence as a not-for-profit corporation under the laws of the State, and to the extent permitted by law at any given time, free from federal, state and local income, property, franchise and other taxes, and preserve and maintain its authority to operate the Facilities as an institution of higher education in the State.

The Borrower covenants that it will maintain the necessary accreditation to enable it to maintain its authority to operate as an institution of higher education in the State within the meaning of the Act.

The Borrower covenants that during the term of this Agreement it will not initiate any proceedings or take any action whatsoever to dissolve or liquidate or to terminate its existence as a corporation or otherwise dispose of all or a substantial part of its assets, either in a single transaction or in a series of related transactions, except to consolidate or merge with or sell or otherwise transfer all or a substantial part of its assets to any other corporation, all as provided hereinbelow. The Borrower covenants that during the term of this Agreement it will not merge or consolidate with, sell or transfer all or a substantial part of its assets to, any other entity, unless the following conditions shall be met:

(a) the successor formed by such consolidation or merger shall be a not-for-profit corporation organized under the laws of the United States or any state, district or territory thereof, which is exempt from federal income tax under Section 501(c)(3) of the Code and shall be determined to be an institution of higher education as required by the Act;

(b) the successor or transferee shall expressly assume in writing the full and faithful performance of the Borrower's duties and obligations hereunder to the same extent as if such successor or transferee corporation had been the original Borrower under this Agreement;

(c) immediately after such consolidation, merger, sale or transfer, the Borrower, or such successor or transferee, shall not be in default in the performance or observance of any duties, obligations or covenants of the Borrower under this Agreement;

(d) the Issuer and the Trustee shall have received an Opinion of Bond Counsel to the effect that that the merger, transfer, sale or consolidation will not adversely affect the treatment of interest on the Bonds under the Code.

(End of Article VII)

ARTICLE VIII

ASSIGNMENT; INDEMNIFICATION; REDEMPTION

Section 8.1 Assignment. This Agreement may be assigned by Borrower subject, however, to each of the following conditions:

(a) No assignment shall relieve Borrower from primary liability for any obligation under this Agreement and in the event of any such assignment, Borrower shall continue to remain primarily liable for payment of the amounts specified in Sections 5.2 and 5.3 hereof and for performance and observance of the other agreements on its part herein provided to be performed and observed by Borrower to the same extent as though no assignment had been made.

(b) The assignee shall assume the obligations of the Borrower hereunder to the extent of the interest assigned, whereupon the Borrower and the assignee shall be jointly and severally liable for all obligations of the Borrower under this Agreement to the extent of the interest assigned.

(c) Borrower shall, within thirty (30) days after the delivery thereof, furnish or cause to be furnished to Purchaser and Trustee a true and complete copy of each assignment or assumption of obligation.

(d) The Borrower shall, prior to such assignment becoming effective, furnish or cause to be furnished to the Purchaser and the Trustee an Opinion of Bond Counsel, to the effect that such assignment shall not affect the tax-exempt status of any Bond.

(e) The Borrower shall have received the prior written consent of the Purchaser at any time prior to the Bank Purchase Date or while the Bonds are in an Index Rate Period.

Section 8.2 Release and Indemnification Covenant.

(a) Borrower agrees to protect, indemnify and save Issuer and Trustee and their respective members, directors, officers, agents, representatives, and employees harmless from and against all liability, losses, damages, costs, expenses (including attorneys' fees), taxes, causes of action, suits, claims, demands and judgments of any nature and form, by or on behalf of any person, firm, corporation or other legal entity arising in any manner from the transaction of which this Loan Agreement is a part or arising in any manner in connection with the Project including, without limiting the generality of the foregoing, (i) any breach or default on the part of Borrower in the performance of any of its obligations under this Loan Agreement, or (ii) any violation of contract, agreement or restriction by Borrower relating to the Project, or (iii) any violation of law, ordinance or regulation affecting the Project or any part thereof or the ownership or occupancy or use thereof, or (iv) any audit or other inquiry or proceeding potentially impacting the tax-exempt status of the Bonds or any inquiry, initiative or proceeding with respect to the exemption of the Bonds from any registration requirement under the securities laws; provided that the

indemnification provided for herein shall not apply to any losses caused by the negligent acts of the Issuer or Trustee and their respective directors, agents, representatives, members, officers or employees. Upon notice from Issuer or Trustee, Borrower shall defend Issuer or Trustee and their respective directors, agents, representatives, members, officers and employees or any of them in any action or proceeding brought in connection with any of the above.

(b) It is the intention of the parties hereto that Issuer and Trustee and their respective directors, agents, representatives, members, officers and employees shall not incur pecuniary liability by reason of the terms of this Loan Agreement or by reason of the undertakings required of Issuer and Trustee or their respective directors, agents, representatives, members, officers or employees hereunder in connection with the issuance of the Bonds, the execution of the Indenture, the performance of any act required of Issuer or Trustee or their respective directors, agents, representatives, members, officers or employees by this Loan Agreement, or the performance of any act requested of Issuer or Trustee or their respective directors, agents, representatives, members, officers or employees by Borrower or in any way arising from the transaction of which this Loan Agreement is a part or arising in any manner in connection with the Project or the financing of the Project; nevertheless, if Issuer or Trustee or their respective directors, agents, representatives, members, officers or employees should incur any such pecuniary liability, Borrower shall indemnify and hold Issuer and Trustee and their respective directors, agents, representatives, members, officers and employees harmless against all claims by or on behalf of any person, firm or corporation or other legal entity, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from Issuer or Trustee, Borrower shall defend Issuer and Trustee and their respective directors, agents, representatives, members, officers and employees in any such action or proceeding, provided that the indemnification provided for herein shall not apply to any losses caused by the negligent acts of the Issuer or Trustee or their respective directors, agents, representatives, members, officers or employees.

Section 8.3 Assignment Of Interest In This Loan Agreement By Issuer. Any assignment or pledge by Issuer to Trustee pursuant to the Indenture of any interest in the Project or this Loan Agreement or any moneys receivable under this Loan Agreement shall be subject and subordinate to this Loan Agreement and the Indenture.

Section 8.4 Restrictions On Assignment Or Pledge By Issuer. Issuer agrees that except for the assignment or pledge of its interest in this Loan Agreement pursuant to the Indenture, it will not assign, transfer or pledge any interest obtained hereunder during the Loan term.

Section 8.5 Redemption Of Bonds. Upon the agreement of Borrower to deposit moneys in the Bond Fund in an amount sufficient to redeem Bonds subject to redemption, Issuer, at the request of Borrower shall forthwith take all steps (other than the payment of money required for such redemption) necessary under the applicable redemption provisions of the Indenture to effect redemption of all or part of the then outstanding Bonds, as may be specified by Borrower, on the earliest redemption date on which such redemption may be made under such applicable provisions.

Section 8.6 References To Bonds Ineffective After Bonds Paid. Upon payment in full of the Bonds (or provisions for payment thereof having been made in accordance with the provisions of the Indenture) and all fees and charges of Trustee, all references in this Loan Agreement to the Bonds and Trustee shall be ineffective and neither Trustee nor the holders of any of the Bonds shall thereafter have any rights hereunder, except those that shall have theretofore vested.

(End of Article VIII)

ARTICLE IX
EVENTS OF DEFAULT AND REMEDIES

Section 9.1 Events of Default Defined. The following shall be “events of default” under this Loan Agreement and the terms “event of default” and “default” shall mean, whenever they are used in this Loan Agreement, any one or more of the following events:

(a) Failure by Borrower to timely pay the payments required to be paid under Section 5.2 hereof, or failure to provide moneys for the redemption or tender of the Bonds as may be required by the provisions of the Indenture or this Loan Agreement; provided, however, if the Bonds are then bearing interest at an Index Rate, such failure shall have continued for ten (10) Business Days.

(b) Failure by Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in clause (a) of this section for a period of thirty (30) Business Days after written notice, specifying such failure and requesting that it be remedied, shall have been given to Borrower by Issuer or Trustee, or the Purchaser, if any.

(c) If any material representation or warranty made in writing by or on behalf of the Borrower in this Agreement or in any Loan Document or in any other certificate or writing furnished to the Purchaser or the Issuer pursuant to any of the Loan Documents shall prove to have been false or incorrect in any material respect on the date made.

(d) Dissolution or liquidation of the Borrower or the filing by Borrower of a voluntary petition in bankruptcy, or failure by Borrower to promptly satisfy and remove any execution, garnishment or attachment of such consequence as would impair the ability of Borrower to carry on its operation of the Project, or adjudication of Borrower as bankrupt, or assignment by Borrower for the benefit of creditors, or admission in writing by Borrower of its inability to pay its debts generally as they become due, or the entry into an agreement of composition with creditors or appointment of a receiver for Borrower of any portion of the property of Borrower (including any portion of the Project), or a petition shall be filed commencing a case against the Borrower under the United States Bankruptcy Code or any proceeding shall be instituted against the Borrower seeking liquidation of its assets which petition or proceeding shall remain undismissed for ninety (90) days, or the approval by a court of competent jurisdiction of a petition applicable to Borrower in any proceedings instituted under the provisions of the federal bankruptcy laws or under any similar acts which may hereafter be enacted.

(e) A default occurs in the payment of the principal of or interest on any obligation of Borrower for borrowed money (as principal or guarantor or other surety), as and when the same shall become due, or default under any mortgage, agreement or other instrument under or pursuant to which such indebtedness is issued, or under any lease under which Borrower is tenant or lessee, and any such default shall continue beyond the period of grace, if any, allowed with respect thereto, and such default, in the sole discretion of

Trustee, shall materially affect the Project, the rights or security of the Bondholders, or Borrower's ability to timely perform its obligations under this Loan Agreement.

- (f) The occurrence of an "event of default" under the Indenture.

Section 9.2 Remedies On Default. Whenever any event of default referred to in Section 9.1 hereof shall have happened and be continuing, Trustee or Issuer (with the prior written consent of Trustee) may (with the prior written consent of the Bank, if any), and upon the written request of the Bank, if any, or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, shall, proceed to immediately accelerate the Bonds as provided in subparagraph (a) hereof and may take one or any combination of the remedial steps set forth in the following subparagraphs:

- (a) By written notice to Borrower to be effective upon dispatch, declare all amounts immediately due and payable on the Bonds pursuant to Section 5.2 hereof (being an amount sufficient to pay the principal of, premium, if any, and interest accrued on the Bonds), assuming acceleration of maturity (as provided in Section 9.02 of the Indenture), to be immediately due and payable as liquidated damages and not as a penalty.

- (b) Have access to and inspect, examine and make copies of the books and records and any and all accounts, data and income tax and other tax returns of Borrower and any books and records pertaining to the Project.

- (c) Take whatever action at law or in equity as may appear necessary or desirable to collect the Loan Payments then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of Borrower under this Loan Agreement.

- (d) Exercise all rights granted pursuant to any of the Loan Documents, in such order and in such manners as the Trustee may, in its sole and exclusive judgment, determine.

- (e) Waive any available remedy for such event of default.

Any amounts collected pursuant to action taken under this Section 9.2 shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the Bonds have been fully paid (or provision for payment thereof has been made in accordance with the provisions of the Indenture), shall be paid to Borrower.

In addition to the remedies specified above, the Trustee or the Issuer (with the prior written consent of the Trustee) may, and upon the written request of the holders of a majority of the outstanding Bonds, shall require the Borrower to continue to make Loan Payments, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred by the Trustee.

In case there shall be pending proceedings for the bankruptcy of Borrower under the federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Borrower, or in the case of any other similar judicial proceedings relative to the Borrower or to the creditors or property of the Borrower, the Trustee shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount owing and unpaid pursuant to this Agreement and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee allowed in such judicial proceedings relative to the Borrower, its creditors, or its property, and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of his charges and expenses; and any receiver, assignee or trustee in bankruptcy is hereby authorized to make such payments to the Trustee, and to pay to the Trustee any amount due it for compensation and expenses, including counsel fees incurred by it up to the date of such distribution.

Section 9.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to Trustee or Issuer is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Trustee or Issuer to exercise any remedy reserved in this article, it shall not be necessary to give any notice, other than such notice as may be required in this article. Such rights and remedies as are given Trustee or Issuer hereunder shall also extend to Trustee, and Trustee and the holders of the Bonds, subject to the provisions of the Indenture, shall be entitled to the benefit of all covenants and agreements herein contained.

In addition to the other remedies provided herein, the Issuer shall be entitled to the restraint by injunction of the violation, or attempted or threatened violation by the Borrower of any of the covenants, conditions or provisions hereof, or to a decree compelling specific performance of any of such covenants, conditions or provisions.

In case the Trustee, or the Issuer with the written consent of Trustee, shall have proceeded to enforce its rights hereunder and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or Issuer, then and in every such case the Borrower, the Trustee and the Issuer shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Borrower, the Trustee and the Issuer shall continue as though no such proceeding had been taken.

Section 9.4 Rescission of Declaration. If the Trustee makes a declaration pursuant to Section 9.2(a) above, the Trustee, with notice to the Issuer and the prior written consent of the Bank, if any, may rescind such declaration and the consequences thereof at any time by written instrument.

Section 9.5 Agreement To Pay Attorneys' Fees And Expenses. In the event Borrower should default under any of the provisions of this Agreement and Trustee or Issuer should employ

attorneys or incur other expenses for the collection of Loan Payments or the enforcement of performance or observance of any covenant, condition, obligation or agreement on the part of Borrower herein contained, Borrower agrees that it will on demand therefor pay to Trustee or Issuer the reasonable fee of such attorneys and such other expenses so incurred by Trustee or Issuer.

Section 9.6 No Additional Waiver Implied By One Waiver. In the event any agreement contained in the Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No failure by either party to insist upon strict performance hereof or to exercise any remedy upon the occurrence of an event of default shall constitute a waiver of such default or a waiver or modification of any provision hereof.

(End of Article IX)

ARTICLE X

PREPAYMENT OF LOAN AND REDEMPTION OF BONDS

Section 10.1 Extraordinary Option to Prepay Loan. Subject to the terms of the Continuing Covenant Agreement, the Borrower shall have, and is hereby granted, the option to prepay the payments payable hereunder and to terminate the Loan term and this Agreement and to cause the Bonds to be redeemed, in whole or in part from the Net Proceeds of any insurance recovery or condemnation award, upon the occurrence of any of the following events:

- (a) All or a portion of the Project shall be damaged or destroyed and the Borrower determines that it is not practicable or desirable to rebuild, repair or restore the Project.
- (b) All or a portion of the Project shall be condemned or such use or control thereof shall be taken by eminent domain as to render the Project unsatisfactory to the Borrower for continued operation.

Extraordinary optional prepayment as a result of the occurrence of any of the above events shall be accomplished by paying to Trustee a sum sufficient, together with other funds deposited with Trustee and available for such purpose, to pay the principal amount of the outstanding Bonds to be redeemed, plus accrued interest on such Bonds to the redemption date. In addition Borrower shall pay all reasonable and necessary fees and expenses of Trustee accrued and to accrue in connection with such prepayment and redemption, and, upon a prepayment in whole, all other liabilities of the Borrower accrued and to accrue under this Agreement.

Section 10.2 Mandatory Redemption of Bonds and Prepayment of Loan Upon Certain Events. Subject to the terms of the applicable Continuing Covenant Agreement and the Indenture, the Borrower is required to prepay the Loan in whole and not in part and to cause all of the Bonds to be redeemed if any of the following shall have occurred:

- (a) As a result of any changes in the Constitution of the State of Florida or the Constitution of the United States of America or of legislative or administrative action (whether state or federal) or of final decree, judgment or order of any court or administrative body (whether state or federal), this Agreement shall have become void or unenforceable or impossible of performance in accordance with the intent and purpose of the parties as expressed in this Agreement; or
- (b) Upon the occurrence of a Determination of Taxability.

Redemption of Bonds and prepayment of the Loan pursuant to this Section 10.2 shall be accomplished by paying to the Trustee the sum of the following for redemption of the Bonds pursuant to the Indenture:

- (1) a sum sufficient, together with other funds deposited with the Trustee and available for such purposes, to redeem all Bonds then outstanding at a

redemption price equal to 100% of the principal amount of the outstanding Bonds plus an amount equal to interest on such Bonds to the date of redemption;

(2) an additional amount equal to the Trustee's and Paying Agent's fees and expenses under the Indenture accrued and to accrue through the redemption date;

(3) an amount of money sufficient to discharge all other liabilities of the Borrower accrued under this Agreement.

Section 10.3 Optional Prepayment. Subject to the terms of the applicable Continuing Covenant Agreement and the Indenture, the Borrower shall also have the option to prepay the Bonds in accordance with the Indenture at a redemption price of 100% of the principal amount of the outstanding Bonds to be prepaid, plus accrued interest on such Bonds to the redemption date.

Section 10.4 Redemption of Bonds With Prepayment Money. By virtue of the assignment of the rights of the Issuer under this Agreement to the Trustee as is provided in Section 5.1 hereof, the Borrower shall pay any amount required to be paid by it under this Article directly to the Trustee. If a Letter of Credit is in effect, the Trustee shall draw on the Letter of Credit (if permitted by the terms thereof) to accomplish any prepayment provided for herein to the extent that the amount necessary for the prepayment exceeds moneys available for such purpose and use the money so drawn to redeem the Bonds pursuant to Section 3.01(a), (b) or (c) of the Indenture on the redemption date. The Borrower shall receive credit under this Article for any amounts drawn by the Trustee hereunder. If on the redemption date any of the Bonds shall then be unpaid or provision for payment thereof shall not have been made in accordance with the provisions of the Indenture, the Borrower shall pay to the Trustee such additional money as shall be required to pay or redeem all of the Bonds in accordance with the provisions of the Indenture. No further interest shall accrue on any Bonds properly called for redemption after the redemption date if payment therefor has been properly provided.

Section 10.5 Notice. To exercise an option granted in, or to consummate a prepayment required by, this Article X, Borrower shall give written notice to Issuer and Trustee which shall specify therein the date of the prepayment and the redemption date and shall otherwise be in accordance with the Indenture.

Section 10.6 Relative Position Of Provisions of This Article X And Indenture. The rights and options granted to Borrower pursuant to provisions of this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not Borrower is in default hereunder, provided that such default shall be cured prior to or simultaneously with the exercise of such rights or options and will not result in nonfulfillment of any condition to the exercise of any such right or option.

(End of Article X)

ARTICLE XI

LETTER OF CREDIT

Section 11.1 The Letter of Credit. On or before the Conversion Date upon which the Bonds shall bear interest at a Daily Rate or a Weekly Rate, the Borrower shall cause the Letter of Credit to be delivered by the Credit Bank to the Trustee to induce the remarketing of the Bonds. Once the Letter of Credit is in effect, the Borrower shall cause the Letter of Credit to be continuously maintained in full force and effect (except when not required pursuant to Article VII of the Indenture) in an amount equal to the principal amount of the Outstanding Bonds and the amount of interest coverage required by each Rating Agency rating the Bonds thereon at the Maximum Rate and the purchase price therefor as required by Article VII of the Indenture, until all of the Bonds have been paid in full or their payment provided for in accordance with Article VIII of the Indenture.

The Borrower will exercise its best efforts to extend the term of the Letter of Credit currently in effect or to cause an Alternate Letter of Credit or commitment therefor to be delivered by a Credit Bank to the Trustee not less than 30 days prior to the termination date of the Letter of Credit then in effect pursuant to the provisions of Article VII of the Indenture (except when not required pursuant to that Article).

Section 11.2 Direction of Remedies by Credit Bank. Any provision herein to the contrary notwithstanding, unless an Event of Default described in subsections 9.01(a), (b), or (c) of the Indenture shall have occurred and be continuing, the Trustee, as assignee of the Issuer, shall exercise the remedies provided for hereunder only if and as directed in writing by the Credit Bank and shall not waive any event of default without the prior written consent of the Credit Bank; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Agreement and the Indenture.

Section 11.3 Rights of Credit Bank. The provisions set forth in this Agreement relating to the Credit Bank shall apply for so long as the Bonds are Outstanding and the Letter of Credit remains in effect and none of the circumstances set forth in Section 7.06 of the Indenture exist, unless any such provision is waived by the Credit Bank and the Trustee or modified by agreement between the Borrower and the Issuer, with the consent of the Credit Bank and the Trustee. Anything contained in this Agreement or in the Bonds to the contrary notwithstanding, the existence of all rights given to the Credit Bank under this Agreement and the Indenture with respect to the giving of consents or approvals or the direction of proceedings are expressly conditioned upon its timely and full performance of the Letter of Credit. Any such rights shall not apply at any time that any of the circumstances set forth in Section 7.06 of the Indenture exist; provided, that this Agreement shall not in any way limit or affect the rights of the Credit Bank as a bond owner, as subrogee of a bond owner or as assignee of a bond owner or to otherwise be reimbursed and indemnified for its costs and expenses and other payment on or in connection with the Bonds or the Letter of Credit either by operation of law or at equity or by contract.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Loan Term. This Agreement shall remain in full force and effect from the date hereof until such time as all of the Bonds shall have been fully paid or provision made for such payment and the fees and expenses of Issuer, Trustee, and any Paying Agent shall have been fully paid. The Borrower's obligations under this Agreement shall terminate after payment in full of the Loan and all other amounts due under this Agreement; provided, however, that the covenants and obligations provided in Sections 4.4, 4.5, and 8.2 shall survive the payment in full of the amounts due hereunder.

Section 12.2 Notices. Any notice, certificate, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows:

If to Issuer, to:	City of Port Orange, Florida 1000 City Center Circle Port Orange, FL 32129 Attention: City Manager
if to Trustee, to:	U.S. Bank National Association Attention: Corporate Trust Services
if to Borrower, to:	PALMER COLLEGE FOUNDATION, INC. 1000 Brady Street Davenport, Iowa 52803 Attention:

Issuer, Borrower, and Trustee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 12.3 Knowledge of Indenture. The Borrower acknowledges that it has received a copy of the Indenture and that it is familiar with the provisions thereof, and agrees to be bound to the fullest extent permitted by law to all provisions thereof directly or indirectly relating to it and further agrees that it will take all such actions as are required or contemplated of it under the Indenture to preserve and protect the rights of the Trustee and of the Bondholders thereunder and that it will not take any action which would cause a default thereunder or jeopardize such rights. It is agreed by the Borrower and the Issuer that all redemptions of the Bonds prior to maturity shall be effected as provided in the Indenture.

Section 12.4 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Issuer, Borrower and their respective successors and assigns, subject, however, to the provisions of Sections 8.1 and 8.3 hereof.

Section 12.5 Severability. In the event any provision of this Agreement or the application thereof shall be held or deemed to be or shall, in fact, be illegal, inoperative, invalid or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same or the application of such provision to persons other than those as to which it is held illegal, inoperative, invalid or unenforceable to any extent whatever.

Section 12.6 Amounts Remaining In Funds. It is agreed by the parties hereto that any amounts remaining in any fund created pursuant to the Indenture upon expiration or sooner termination of the Loan term, as provided in this Agreement, after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Indenture) and the fees and expenses of Trustee and any Paying Agent in accordance with the Indenture and the payment of any other liabilities of Borrower incurred hereunder, shall belong to, and be paid to Borrower by Trustee.

Section 12.7 Delegation Of Duties By Issuer. It is agreed that under the terms of this Agreement and also under the terms of the Indenture the Issuer has delegated certain of its duties hereunder to the Borrower. The fact of such delegation shall be deemed a sufficient compliance by the Issuer to satisfy the duties so delegated and the Issuer shall not be liable in any way by reason of acts done or omitted by the Borrower. The Issuer shall have the right at all times to act in reliance upon the authorization, representation or certification of the Borrower.

Section 12.8 Amendments, Changes And Modifications. Subsequent to the issuance of Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto and of Trustee and the Purchaser, if any, and in accordance with provisions of the Indenture.

Section 12.9 Issuer's Obligations Limited. No recourse under or upon any obligation, covenant or agreement contained in this Agreement, the Indenture or in any Bond secured by the Indenture, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Agreement or the Indenture, shall be had against the Issuer except from the Project or the Trust Estate.

Section 12.10 Reliance by Bondholders. This Loan Agreement is executed in part to induce the purchase by others of the Bonds and, accordingly, all covenants and agreements on the part of the Borrower and Issuer, as set forth in this Loan Agreement, are hereby declared to be for the benefit of the registered owners from time to time of the Bonds.

Section 12.11 Survival of Representations and Warranties. All agreements, representations and warranties made herein or in any other Loan Document will survive the execution and delivery of the Loan Documents and the making of the Loan.

Section 12.12 Execution In Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.13 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 12.14 Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(End of Article XI)

IN WITNESS WHEREOF, CITY OF PORT ORANGE, FLORIDA has caused this Loan Agreement to be executed in its name and in its behalf by its duly authorized officers and its official seal to be affixed hereunto, and Borrower has caused this Loan Agreement to be executed in its name and in its behalf by its duly authorized officers and its corporate seal to be affixed hereto, all as of the day and year first above written.

CITY OF PORT ORANGE, FLORIDA
(SEAL)

By: _____
Mayor

ATTEST:

City Clerk

(SEAL)

PALMER COLLEGE FOUNDATION, INC.

By: _____
Dennis M. Marchiori, Chancellor and CEO

By: _____

CITY OF PORT ORANGE, FLORIDA

TO

U.S. BANK NATIONAL ASSOCIATION

as Trustee

INDENTURE OF TRUST

Dated as of June 1, 2019

INDENTURE OF TRUST

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INDENTURE OF TRUST

THIS INDENTURE OF TRUST, dated as of June 1, 2019, between the City of Port Orange, Florida, a body corporate and politic and a municipal corporation organized and existing under the laws of the State of Florida (the “Issuer”), and U.S. Bank National Association, a national banking association organized under the laws of the United States with an office located in the City of St. Paul, Minnesota (the “Trustee”).

WITNESSETH:

WHEREAS, the Florida Industrial Development Financing Act, Chapter 159, Part II, Florida Statutes (the “Act”), has been enacted by the Legislature of the State of Florida; and

WHEREAS, the Act provides that the Issuer is authorized and shall have the power to enter into loan agreements pursuant to which the Issuer loans the proceeds from the sale of its revenue bonds to private educational institutions for the purpose of financing the cost of a project (as defined in Section 159.27(5) of the Act); and

WHEREAS, the Act provides that the Issuer may issue revenue bonds and loan the proceeds thereof to one or more parties for the purpose of financing or refinancing any such project, payable solely out of the payments to be made by such parties; and

WHEREAS, the Issuer has determined to issue its Private College Facility Revenue Bonds (Palmer College of Chiropractic Project), Series 2019B (the “Bonds”), in the aggregate principal amount of \$[PAR AMOUNT] pursuant to this Indenture and will loan the proceeds thereof to Palmer College Foundation, an Iowa nonprofit corporation, also known as Palmer College Foundation, Inc. for the purposes of conducting its affairs in the State of Florida (the “Borrower” or the “University”), under a Loan Agreement dated as of June 1, 2019 (as amended, supplemented or otherwise modified from time to time, the “Agreement”) between the Issuer and the Borrower, for the purpose of (i) re-financing the outstanding City of Port Orange, Florida Tax-Exempt Revenue Note, Series 2010 (Palmer College Project) previously issued by the Issuer to finance or re-finance the acquisition and construction of certain educational facilities (collectively, the “Project”), on the campus of the College at 4777 City Center Parkway, Port Orange, Florida, 32129 and (ii) paying costs of issuance of the Bonds; and

WHEREAS, the Borrower has arranged for the Bonds to be initially purchased by U.S. Bank National Association; and

WHEREAS, the Bonds and Trustee’s certificate of authentication to be endorsed on the Bonds are to be in substantially the following form, with appropriate variations, omissions and insertions as permitted or required by this Indenture, to wit:

(FORM OF BOND)

No. _____

\$ _____

UNITED STATES OF AMERICA

STATE OF FLORIDA

CITY OF PORT ORANGE, FLORIDA

PRIVATE COLLEGE FACILITY REVENUE BONDS

(PALMER COLLEGE OF CHIROPRACTIC PROJECT)

SERIES 2019B

THE TRANSFER OF THIS BOND IS RESTRICTED
AS SET FORTH IN THE INDENTURE.

Interest Rate

Maturity Date

Date

CUSIP

REGISTERED OWNER:

PRINCIPAL AMOUNT:

KNOW ALL MEN BY THESE PRESENTS that the City of Port Orange, Florida, a body corporate and politic and a municipal corporation organized and existing under the laws of the State of Florida (the "Issuer"), for value received, promises to pay from the source and as hereinafter provided, to the Registered Owner set forth above, or its registered assigns, the principal amount set forth above in accordance with the schedule set forth as Exhibit A attached hereto with the final payment due on the maturity date set forth above and in like manner to pay interest on the principal amount outstanding from time to time from the date hereof at an Index Rate, a Daily Rate, a Weekly Rate, or a Long-Term Rate, payable on each interest payment date as described in the Indenture referred to herein, until said principal amount is paid, except as the provisions hereinafter set forth with respect to redemption prior to maturity may become applicable hereto. The principal of and interest on this Bond shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts. The principal of and redemption premium, if any, on this Bond shall be payable by check or draft to the Registered Owner at the maturity or redemption date upon presentation and surrender of this Bond at the designated corporate trust office of U.S. Bank National Association, in the City of St. Paul, Minnesota (the "Trustee"), provided that during any Index Rate Period payments of the principal of this Bond shall be made

without the requirement of presentation or surrender except upon the final payment thereof. The interest payable on this Bond on any interest payment date shall be paid by the Trustee to the Registered Owner of this Bond appearing on the bond register maintained by the Trustee at the close of business on the Record Date for such interest, and shall be paid by (1) check or draft of the Trustee mailed to such Registered Owner at his address as it appears on such bond register or at such other address furnished in writing by such Registered Owner to the Trustee, or (2) with respect to Bonds held by a Securities Depository, or at the written request addressed to the Trustee by any Registered Owner of Bonds in the aggregate principal amount of at least \$1,000,000, by electronic transfer in immediately available funds, such request to be signed by such Registered Owner, containing the name of the bank (which shall be in the continental United States), its address, its ABA routing number and the account number to which credit shall be made and be filed with the Trustee no later than 10 Business Days before the applicable Record Date preceding such payment date. Notwithstanding the foregoing during any Index Rate Period, payments may be made directly to the Bank pursuant to the terms of the Indenture.

This Bond is one of an authorized issue of Private College Facility Revenue Bonds (Palmer College of Chiropractic Project), Series 2019B (the “Bonds”), in the aggregate principal amount of \$[PAR AMOUNT] issued in order to re-finance certain capital improvements for the benefit of Palmer College Foundation, an Iowa nonprofit corporation, also known as Palmer College Foundation, Inc. for the purposes of conducting its affairs in the State of Florida (the “Borrower”), in the City of Port Orange, Florida, and to pay costs of issuance of the Bonds. The proceeds of the Bonds have been loaned to the Borrower under the terms of a Loan Agreement dated as of June 1, 2019, between Issuer and Borrower (which Agreement, as from time to time amended and supplemented, is hereinafter referred to as the “Agreement”). Reference is hereby made to the Agreement for a description of the terms and conditions of the loan of the proceeds of the Bonds to the Borrower and the provisions for repayment of the loan.

The Bonds are issued under and are equally and ratably secured by and entitled to the protection of an Indenture of Trust dated as of June 1, 2019, by and between Issuer and Trustee (which Indenture, as from time to time amended and supplemented, is hereinafter referred to as the “Indenture”), duly executed and delivered by Issuer to Trustee and pursuant to which all payments due from Borrower to Issuer under the Agreement are assigned to Trustee to secure the payment of principal of, premium, if any, and interest on the Bonds. The Indenture is on file in the offices of the Issuer and Trustee and reference is hereby made to the Indenture for a more complete description of the property pledged and assigned, the provisions with respect to the nature and extent of the security, the rights, duties and obligations of Issuer, Trustee and the holders of the Bonds, and the terms upon which the Bonds are issued and secured.

This Bond is transferable by the Registered Owner hereof in person or by his attorney duly authorized in writing at the designated office of the Trustee in the City of St. Paul, Minnesota, but only in the manner, subject to limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Bond or Bonds may be issued in authorized denominations for the same aggregate principal amount issued to the transferee in exchange therefore. In the event that this Bond is called for redemption in part only, and upon surrender and cancellation of this Bond, the Issuer shall execute and the Trustee shall authenticate and deliver to the Registered Owner hereof

without charge a new Bond or Bonds of the same series and of the same maturity of authorized denominations in aggregate principal amount equal to the unredeemed portion hereof so surrendered, which new Bond or Bonds shall be fully registered (provided that during any Index Rate Period no surrender and cancellation is required). Issuer and Trustee may deem and treat the Registered Owner hereof as the absolute owner hereof (whether or not this Bond shall be overdue) for the purpose of receiving payment of or on account of principal hereof and premium, if any, and interest due hereon and for all other purposes and neither Issuer nor Trustee shall be affected by any notice to the contrary.

The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State of Florida, particularly Chapter 159, Part II, *Florida Statutes*, and pursuant to an Ordinance duly enacted by the Issuer which also authorizes the execution and delivery of the Agreement and the Indenture. THE BONDS REPRESENT LIMITED OBLIGATIONS OF THE ISSUER. THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE PAYABLE SOLELY OUT OF THE REVENUES DERIVED FROM THE AGREEMENT AND ARE NOT OTHERWISE AN OBLIGATION OF ISSUER. THE BONDS AND THE INTEREST THEREON SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE ISSUER OR THE STATE OF FLORIDA WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION, AND SHALL NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF ISSUER OR THE STATE OF FLORIDA OR A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER OR THE STATE OF FLORIDA OR THE TAXING POWERS OF THE STATE OF FLORIDA. Payments sufficient for the prompt payment when due of the principal of, premium, if any, and interest on the Bonds are to be paid to the Trustee for the account of the Issuer and deposited in a special account created by Issuer, maintained by Trustee and designated “City of Port Orange, Florida Private College Facility Revenue Bond Fund (Palmer College of Chiropractic Project)” and have been duly pledged and assigned by Issuer for that purpose. The rights of Issuer under the Agreement have been assigned to Trustee to secure payment of such principal of, premium, if any, and interest under the Indenture.

Interest Rate Provisions. During the Initial Period, the Bonds shall bear interest at the LIBOR Index Rate from time to time in effect, subject to any adjustments set forth in the Indenture. After the Initial Period, the Bonds may bear interest at an Index Rate, a Daily Rate, a Weekly Rate or a Long-Term Rate, determined as provided in the Indenture, from their date or from the most recent Interest Payment Date to which interest has been paid or duly provided for; provided that, subject to the provisions of the Indenture, in no event will the interest rate on any Bonds exceed the Maximum Rate. The Bonds may operate at any time in any one rate period, provided that all Bonds shall operate in the same Interest Rate Mode at any given time.

Interest shall be payable in arrears on each Interest Payment Date, commencing on August 1, 2019 (for the period from the date of original issuance to, and including June 30, 2019) and during the Initial Period shall be paid on the first Business Day of each month, thereafter. Interest shall be calculated on the basis of (a) with respect to Bonds bearing interest at the Term Rate and LIBOR Index Rate, a 360-day year for the actual days elapsed, (b) with respect to SIFMA Index Rate Bonds, a 365-day year for the actual days elapsed, (c) with respect to Long-Term Rate Bonds, a 360-day year of twelve 30-day months, (d) with respect to Bonds bearing

interest at a Daily Rate, on the basis of a 365- or 366- day year, whichever is applicable, and the number of days actually elapsed, (e) with respect to Bonds bearing interest at a Weekly Rate, on the basis of a 365- or 366- day year, whichever is applicable, and the number of days actually elapsed, and (f) with respect to Bonds bearing interest at a Term Rate, on the basis of a 365- or 366- day year for the number of days actually elapsed.

Determination of Interest Rates.

- (1) All Bonds shall operate in the same Interest Rate Mode.
- (2) Subject to the provisions of the Indenture, interest on the Bonds shall not exceed the Maximum Rate.
- (3) Initially, the Bonds shall bear interest at a LIBOR Index Rate from time to time in effect, subject to any modifications set forth in the Indenture. Subject to the provisions of the Indenture, the interest rate borne by the Bonds may be converted to another Index Rate, a Daily Rate, a Weekly Rate or a Long-Term Rate.
- (4) Index Rate Bonds. The Index Rate shall be determined in accordance with the Indenture. The Calculation Agent shall notify the Trustee and the Borrower of the Index Rate for each applicable period in accordance with the Indenture; provided that, if the Index Rate is converted to a Term Rate, such rate shall be established on or before the first day of the applicable Term Rate Period as provided in the Indenture. All Index Rate Bonds shall bear interest accruing at the same Index Rate.
- (5) Long-Term Rate Bonds. Subject to the further provisions of the Indenture with respect to Long-Term Rates or conversions between Long-Term Rates, the interest rate on the Bonds during any Long-Term Interest Period shall be determined by the Remarketing Agent as provided in the Indenture, and notice thereof shall be given as follows:
 - (A) The interest rate for the Long-Term Interest Period in question shall be determined by the Remarketing Agent on the date or dates and at the time or times required pursuant to Section 2.03(c) of the Indenture. The interest rate to be determined for the Long-Term Interest Period shall be the lowest rate of interest that, in the reasonable judgment of the Remarketing Agent, would cause the Bonds in question to have a price equal to the principal amount thereof under prevailing market conditions for the relevant period as of the date of determination, except as otherwise provided in the Indenture.
 - (B) If the Remarketing Agent fails for any reason to determine the Long-Term Rate for any Long-Term Rate Period, as applicable, when required hereunder, or a court holds that the Long-Term Rate for Long-Term Rate Period, is invalid, illegal or unenforceable and, in each case, then the interest rate on the Bonds shall be equal to the SIFMA Index, until the interest rate on such Bonds is again validly determined by the Remarketing Agent.
 - (C) All Long-Term Rate Bonds shall bear interest accruing at the same Long-Term Rate.

(6) Daily Rates. A Daily Rate shall be determined for each Daily Rate Period as follows:

(A) Daily Rate Periods shall commence on a Daily Rate Conversion Date which shall be a Business Day and thereafter on each Business Day until the type of rate period of the Bonds is converted to another type of rate period, and shall extend to, but not include, the next succeeding Business Day.

(B) The Daily Rate for each Daily Rate Period shall be effective from and including the commencement date thereof and remain in effect to, but not including, the next succeeding Business Day. Each such Daily Rate shall be determined by the Remarketing Agent on the first Business Day of the Daily Rate Period to which it relates and provided to the Trustee by the Remarketing Agent by Electronic Notice by 10:00 a.m., New York City Time, on that same day.

(7) Weekly Rates. A Weekly Rate shall be determined for each Weekly Rate Period as follows:

(A) Weekly Rate Periods shall commence on a Thursday and end on Wednesday of the following week and each Weekly Rate Period shall be followed by another Weekly Rate Period until the rate period of the Bonds is converted to another type of rate period; provided that (i) in the case of a conversion to a Weekly Rate Period from a different rate period, the Weekly Rate Period shall commence on the Weekly Rate Conversion Date and shall end on Wednesday of the following week; (ii) in the case of a conversion from a Weekly Rate Period to a different rate period, the last Weekly Rate Period prior to conversion shall end on the day immediately preceding the Conversion Date to the new rate period; and (iii) the day of the week on which Weekly Rate Periods shall commence may be changed by the Remarketing Agent with the consent of the Borrower, if the scheduled rate determination day has become inappropriate (taking into account general market practice), as determined in the reasonable exercise of the Remarketing Agent's judgment, upon notice to the Trustee and the Tender Agent not less than 14 days before the change, which notice shall promptly be communicated by the Trustee, by first class mail to the Owners of Bonds, provided, that such notice to the Trustee is accompanied by an Opinion of Bond Counsel, which opinion shall also be addressed and delivered to the Issuer and the Trustee, to the effect that the change will not adversely affect the exclusion from gross income of the interest on any Bonds for federal income tax purposes.

(B) The Weekly Rate for each Weekly Rate Period shall be effective from and including the commencement date thereof and remain in effect to and including the last day thereof. Each such Weekly Rate shall be determined by the Remarketing Agent on the Business Day next preceding the commencement date of the Weekly Rate Period to which it relates (or if not a Business Day on the next succeeding Business Day), and provided to the Trustee by the Remarketing Agent by Electronic Notice by 5:00 p.m., New York City Time, on such preceding Business Day.

(8) Unremarketed Bonds. Unremarketed Bonds shall bear interest at the Default Rate determined in accordance with the terms and provisions of the Continuing

Covenant Agreement relating to such Unremarketed Bonds, as more fully set forth in the Indenture.

Conversions.

At the option of the Borrower, the interest rate with respect to all (but not less than all) Bonds may be (i) converted from an Index Rate to a new Index Rate or (ii) converted to a Daily Rate, Weekly Rate or Long-Term Rate, as follows:

(1) Conversion Date. In any such case, the Conversion Date shall be the first day following the last day of an Interest Payment Period for the Interest Rate Mode from which such Bonds are to be converted; provided, however, that for Long-Term Rate Bonds, such conversion shall only occur on a date that such Long-Term Rate Bonds are subject to purchase pursuant to Section 3.09(a)(3) of the Indenture and that for Term Rate Bonds, such conversion shall only occur on a date that such Term Rate Bonds are subject to purchase pursuant to Section 3.09(a)(1). Interest shall accrue on such Bonds at the new interest rate commencing on such Conversion Date, whether or not a Business Day. Any action required to be taken on such Conversion Date, if such day is not a Business Day, may be taken on the next succeeding Business Day as if it had occurred on such Conversion Date.

(2) Notice of Intent to Convert. The Borrower shall give written notice of its intent to exercise its option to effect any such conversion to the Bank, during an Index Rate Period, to the Credit Bank, during a Weekly Rate Period or a Daily Rate Period, the Remarketing Agent, the Tender Agent, and the Trustee by Electronic Notice not fewer than five days (or such shorter period as shall be acceptable to the applicable parties) prior to the date on which the Trustee is required to provide notice to the Holders; provided, however, that during any Index Rate Period the Interest Rate Mode may not be changed to another Interest Rate Mode including, without limitation, a new Index Rate Period without the prior written consent of the Bank and is subject to any conditions set forth in the Agreement. Such notice shall specify the proposed Conversion Date (as well as the Bonds to which the conversion will be applicable). If the Borrower does not elect in a timely fashion to convert to a new Interest Rate Mode, the Interest Rate Mode then in effect shall continue until changed by timely notice.

Additionally, such notice shall confirm the appointment, subject to and in accordance with the requirements of the Indenture (including Section 3.11 thereof) of a qualified Remarketing Agent to act as Remarketing Agent for the Bonds in connection with the mandatory tender of such Bonds by reason of such conversion and the appointment, subject to and in accordance with this Indenture (including Section 3.07 thereof), of a qualified Tender Agent to act as Tender Agent in such connection; provided, however, that no such confirmation and no such appointments shall be required if such Bonds are then Index Rate Bonds or Long-Term Rate Bonds with a Long-Term Rate Period that lasts to maturity and the Market Agent, the Remarketing Agent and the Tender Agent then acting with respect to such Bonds are obligated to perform their duties and responsibilities with respect to the mandatory tender of such Bonds by reason of such conversion. Notwithstanding the forgoing, upon the conversion of the Bonds to an Index Rate Period, such notice shall confirm the appointment, subject to and in accordance with

the requirements of this Indenture, of a qualified Market Agent to act as Market Agent for the Bonds.

In addition, if an Index Rate is to be in effect immediately following such Conversion Date, such notice shall state whether such Index Rate shall be a SIFMA Index Rate, a LIBOR Index Rate or a Term Rate, the new Bank Purchase Date and, in the case of the SIFMA Index Rate or LIBOR Index Rate, the new Applicable Spread. The new Applicable Spread (in the case of a SIFMA Index Rate or LIBOR Index Rate) or, if applicable, the Term Rate, shall be determined by the Market Agent such that the applicable Index Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which a Person will agree to purchase the Bonds on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof. In addition, if a SIFMA Index Rate or LIBOR Index Rate is to be in effect immediately following such Conversion Date, the Borrower shall provide a copy of such notice to the Calculation Agent contemporaneously with the Trustee.

(3) Notice of Conversion and Mandatory Tender. Not fewer than 30 days prior to the proposed Conversion Date (or 7 days in the case of conversions from a Daily Rate Period or a Weekly Rate Period), the Trustee shall give Electronic Notice, confirmed by first class mail, of the conversion and of mandatory tender of the Bonds (except in the case of conversions between Daily and Weekly Rate Periods) to the Holders of such Bonds at their addresses as they appear on the registration books of the Trustee as of the date notice of the election is received by the Trustee from the Borrower. The notice given pursuant to this paragraph shall set forth the information required by Section 3.09(e) of the Indenture.

(4) Opinion of Bond Counsel. Any conversion pursuant to this Section shall be subject to the conditions that, on or before the Conversion Date, the Borrower shall have delivered to the Bank (during an Index Rate Period), the Credit Bank (during a Daily Rate Period or a Weekly Rate Period), the Trustee, and the Market Agent with respect to the affected Bonds or Remarketing Agent, as applicable, an Opinion of Bond Counsel to the effect that the conversion is authorized by this Indenture and will not, in and of itself, cause the interest on the Bonds to be includable in the gross income of Holders for federal income tax purposes.

Redemption of Bonds Prior to Maturity. The Bonds are subject to optional and mandatory redemption prior to the stated maturity, in accordance with the terms and provisions of the Indenture.

Mandatory and Optional Purchase of Bonds.

(a) Bonds shall be subject to mandatory tender for purchase by the Tender Agent at the Purchase Price on the following Purchase Dates with respect to the Bonds:

- (1) Each Bank Purchase Date;

(2) Each Conversion Date for the Bonds (unless such Conversion Date is already a Purchase Date, in which case no separate mandatory tender by operation of this Section 3.09 of the Indenture shall occur);

(3) Each Long-Term Rate Mandatory Purchase Date for such Bonds; and

(4) Upon the 5th Business Day prior to the expiration or termination of the Letter of Credit if the Trustee has not received evidence as required by Sections 7.01 and 7.02 of the Indenture by the 30th day preceding the scheduled Letter of Credit expiration or termination date of either an extension of the then existing Letter of Credit or the issuance of an Alternative Letter of Credit meeting the requirements therefor set forth in the Indenture.

(b) Bonds may be subject to optional tender for purchase by the Tender Agent at the Purchase Price on the following Purchase Dates with respect to the Bonds:

(1) Bonds accruing interest at Daily Rates may be tendered for purchase at the purchase price payable in immediately available funds on any Business Day upon Electronic Notice of tender given to the Tender Agent not later than 10:15 a.m., New York City Time, on the purchase date.

(2) Bonds accruing interest at Weekly Rates may be tendered for purchase at the purchase price payable in immediately available funds on any Business Day upon Electronic Notice of tender given to the Tender Agent not later than 5:00 p.m., New York City Time, on a Business Day not fewer than 7 days prior to the purchase date.

(c) Bonds to be purchased pursuant to Section 3.09 of the Indenture shall be delivered by the Holders thereof to the Tender Agent (together with necessary assignments and endorsements) at or prior to 1:00 p.m. New York City time on the applicable Purchase Date.

(d) Any Bonds to be purchased by the Tender Agent pursuant to Section 3.09 of the Indenture that are not delivered for purchase on or prior to the Purchase Date, for which there has been irrevocably deposited in trust with the Trustee or the Tender Agent an amount sufficient to pay the Purchase Price of such Bonds, shall be deemed to have been tendered to the Tender Agent for purchase, and the Holders of such Bonds shall not be entitled to any payment (including any interest to accrue on or after the Purchase Date) other than the respective Purchase Prices of such Bonds, and such Bonds shall not be entitled to any benefits of this Indenture, except for payment of such Purchase Price out of the moneys deposited for such payment as aforesaid, subject, however, to the defeasance provisions under the Indenture.

Except as provided in the Indenture, Registered Owners of the Bonds are not entitled to enforce the provisions of the Indenture or to institute, appear in or defend any suit, action or proceeding to enforce any provisions of the Indenture or to take any action with respect to any event of default under the Indenture. In certain events, in the condition, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then outstanding may become due or may be declared due and payable before the stated maturity thereof, together with interest thereon.

The Bonds shall not constitute the personal obligation, either jointly or severally, of the members, officers or employees of the Issuer.

The Indenture permits, with certain exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of Issuer and the rights of the holders of the Bonds at any time by Issuer with the consent of the holders of 66-2/3% in aggregate principal amount of the Bonds at the time outstanding, as defined in the Indenture. Any such consent or waiver by the holder of this Bond shall be conclusive and binding upon such holder and upon all future holders of this Bond and of any Bond issued in replacement thereof, whether or not notation of such consent or waiver is made upon this Bond. The Indenture also contains provisions permitting Trustee to waive certain past defaults under the Indenture and their consequences. The Indenture also contains provisions permitting amendment thereof without the consent of the Bondholders in limited instances involving changes to cure defects or ambiguities or which do not prejudice the Bondholders.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; that the issuance of this Bond and the issue of which it forms a part, together with all other obligations of Issuer, does not exceed or violate any constitutional or statutory limitation.

This Bond is issued with the intent that the laws of the State of Florida will govern its construction.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture until the certificate of authentication hereon shall have been signed by Trustee.

IN WITNESS WHEREOF, the City of Port Orange, Florida has caused this Bond to be executed in its name by the manual signature of its Mayor and its corporate seal to be hereunto impressed or imprinted hereon and attested by the manual signature of its City Clerk, all as of the ____ day of June, 2019.

CITY OF PORT ORANGE, FLORIDA

By: _____
Mayor

Attest:

City Clerk

(SEAL)

(Form of Trustee's Certificate of Authentication)

This Bond is one of the Bonds of the issue described in the within mentioned Indenture of Trust.

U.S. BANK NATIONAL ASSOCIATION,
as Trustee

By: _____
Authorized Signatory

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto _____ the within Private College Facility Revenue Bond and does hereby irrevocably constitute and appoint _____ Registrar, attorney in fact to transfer the said Bond on the records kept for registration of the within Bond, with full power of substitution in the premises.

Dated: _____

(Signature of Registered Owner(s))

(Person(s) executing this Assignment sign(s) here)

SIGNATURE)
GUARANTEED) _____

IMPORTANT - READ CAREFULLY

The signature(s) to this Power must correspond with the name(s) as written upon the fact of the certificate(s) or bond(s) in every particular without alteration or enlargement or any change whatever. Signature guarantee should be made by a participant in a recognized signature guaranty medallion program or other signature guarantor acceptable to the Trustee.

INFORMATION REQUIRED FOR REGISTRATION OF TRANSFER

Name of Transferee(s) _____

Address of Transferee(s) _____

Social Security or Tax

Identification Number of

Transferee(s) _____

Transferee is a(n):

Individual* _____ Corporation _____

Partnership _____ Trust _____

*If the certificate is to be registered in the names of multiple individual owners, the names of all such owners and one address and social security number must be provided.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entirety

JT TEN - as joint tenants with right of
survivorship and not as tenants in common

UNIF GIFT MIN ACT -Custodian.....

(Cust) (Minors)

under Uniform Gifts to Minors
Act.....

(State)

(End of Bond form)

WHEREAS, all things necessary to make the Bonds, when authenticated by Trustee and issued as in this Indenture provided, the valid, binding and legal limited obligations of Issuer according to the import thereof, and to constitute this Indenture a valid assignment and pledge of the amounts pledged to the payment of the principal of, premium, if any, and interest on the Bonds, and a valid assignment of the rights of Issuer under the Agreement, have been done and performed, and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH:

GRANTING CLAUSES

That Issuer, in consideration of the premises and the acceptance by Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the holders or owners thereof, and of the sum of one dollar, lawful money of the United States of America, to it duly paid by Trustee and for other good and valuable consideration, the receipt of which is hereby acknowledged, in order to secure the payment of the principal of and premium, if any, and interest on the Bonds according to their tenor and effect and to secure the performance and observance by Issuer of all the covenants expressed or implied herein and in the Bonds, and payment and performance of the obligations of the Borrower under any Credit Agreement in effect or any Continuing Covenant Agreement in effect does hereby assign, sell, pledge, mortgage, convey, transfer and grant a security interest in the following to U.S. Bank National Association, as Trustee, and its successors in trust and assigns forever, for the securing of the performance of the obligations of Issuer hereinafter set forth:

GRANTING CLAUSE FIRST

The Agreement, including all extensions and renewals of the term thereof, if any, together with all right, title and interest of Issuer under the Agreement, including, but without limiting the generality of the foregoing, the present and continuing right to make claim for, collect, receive and receipt for any of the sums, amounts, income, revenues, issues and profits and any other sums of money payable or receivable under the Agreement, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which Issuer under the Agreement or any successor under the Agreement is or may become entitled to.

GRANTING CLAUSE SECOND

All moneys and securities from time to time held by Trustee under the terms of this Indenture, except for moneys and securities held in the Purchase Fund or elsewhere to pay the purchase price of Bonds tendered for purchase pursuant to Article III hereof or deposited with or paid to Trustee for the redemption of Bonds, notice of the redemption of which has been duly given.

EXCEPTED PROPERTY

There is, however, expressly excepted and excluded from the lien and operation of this Indenture amounts held by the Trustee in the Rebate Fund established hereunder.

TO HAVE AND TO HOLD all and singular the Trust estate, whether now owned or hereafter acquired, unto Trustee and its respective successors in said Trust and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all present and future holders and owners of the Bonds, from time to time, issued under or to be issued under and secured by this Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the other Bonds by reason of designation, number, date of authorization, issuance, role, execution or delivery, date of the Bonds or of maturity, or otherwise, so that each and all Bonds shall have the same right, lien and privilege under this Indenture and shall be equally and ratably secured hereby as if all the Bonds had been made, issued and negotiated simultaneously with the delivery of this Indenture;

PROVIDED, HOWEVER, that if Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made on the Bonds as required under Article IV hereof, or shall provide, as permitted herein, for the payment thereof by depositing with Trustee the entire amount due or to become due thereon, and shall well and truly cause to be kept, performed and observed all of its covenants and conditions pursuant to the terms of this Indenture, and shall pay or cause to be paid to Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, and if the Borrower shall pay and perform all of its covenants and obligations under the Continuing Covenant Agreement or Credit Agreement, as applicable, then upon the final payment thereof this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture shall remain in full force and effect.

And it is expressly declared that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said property, rights and interests, including, without limitation, the payments pursuant to the Agreement and other amounts hereby assigned and pledged are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as herein expressed, and Issuer has agreed and covenanted, and does hereby agree and covenant with Trustee and with the respective holders and owners of the Bonds as follows (subject, however, to the provisions of Section 2.05 hereof):

ARTICLE I

DEFINITIONS

All words and phrases defined in Article I of the Agreement shall have the same meaning in this Indenture. Any term defined herein by reference to the Continuing Covenant Agreement (as defined in this Article I) shall have no effect in the event the Continuing Covenant Agreement ceases to be in effect or the term does not exist in the Continuing Covenant Agreement. In addition, the following words and phrases shall have the following meanings:

“Act of Bankruptcy” means any of the following: Dissolution or liquidation of the Borrower or the filing by the Borrower of a voluntary petition in bankruptcy, or failure by the Borrower to promptly satisfy and remove any execution, garnishment or attachment of such consequence as would impair the ability of Borrower to carry on its operation of the Facilities, or adjudication of Borrower as bankrupt, or assignment by Borrower for the benefit of creditors, or admission in writing by Borrower of its inability to pay its debts generally as they become due, or the entry into an agreement of composition with creditors, or appointment of a receiver for Borrower of any portion of the property of Borrower, or the approval by a court of competent jurisdiction of a petition applicable to Borrower in any proceedings instituted under the provisions of the federal bankruptcy laws or under any similar acts which may hereafter be enacted.

“Agreement” means the Loan Agreement dated as of the date of this Indenture between Issuer and Borrower, as amended, restated, supplemented or otherwise modified from time to time.

“Alternate Letter of Credit” means any substitute or replacement letter of credit or other credit facility securing the payment of principal of and interest on the Bonds, and the purchase price of Bonds tendered for purchase, delivered in accordance with Section 7.02 of this Indenture in substitution and replacement for a Letter of Credit.

“Applicable Factor” means (i) during the Initial Period, 84.76%; and (ii) during any other Index Rate Period, 84.76% or such other percentage as may be designated by the Market Agent as the Applicable Factor for such Index Rate Period, subject to an Opinion of Bond Counsel to the effect that the selection of such other percentage as the Applicable Factor will not, in of itself, cause the interest on the Bonds to be includable in the gross income of the Holders for federal income tax purposes.

“Applicable Spread” means, with respect to each Index Rate Period, the following:

- (a) During the Initial Period, _____ basis points (0.____%).
- (b) During any Index Rate Period other than the Initial Period, the number of basis points determined by the Market Agent on or before the first day of such Index Rate Period and designated by the Borrower in accordance with Section 2.03(d)(2) that, when added to the SIFMA Index or the product of the LIBOR Index multiplied by the Applicable Factor, as

applicable, would equal the minimum interest rate per annum that would enable the Bonds to be sold on such date at a price equal to the principal amount thereof (without regard to accrued interest, if any, thereon).

“Authorized Denomination” means (a) during any Index Rate Period, \$250,000 or any integral multiple of \$5,000 in excess thereof, (b) with respect to Long-Term Rate Bonds, \$5,000 or any integral multiple thereof; and (c) with respect to Daily Rate Bonds or Weekly Rate Bonds, \$100,000 or any integral multiple of \$5,000 in excess thereof.

“Bank” means, during any Index Rate Period, the Holder of the Bonds, provided that there is a single Holder of all of the Bonds and provided further that the Bonds are not then held under the Book-Entry System. If there is more than one Holder of the Bonds during any Index Rate Period, “Bank” means Holders owning a majority of the aggregate principal amount of the Bonds then Outstanding. If the Bonds are then held under the Book-Entry System, “Bank” means the Beneficial Owner of the Bonds, provided that there is a single Beneficial Owner of all of the Bonds. If there is more than one Beneficial Owner of the Bonds during any Index Rate Period, “Bank” means Beneficial Owners who are the beneficial owners of a majority of the aggregate principal amount of the Bonds then Outstanding. The initial Bank is U.S. Bank National Association.

“Bank Bonds” means Bonds held by the Bank following a failure to purchase Bonds as described in Section 3.10 hereof.

“Bank Purchase Date” means, (i) the Initial Bank Purchase Date, (ii) during any Index Rate Period (other than the Initial Period), the date designated by the Borrower pursuant to Section 2.03(d)(2), and (iii) the date which is five calendar days (or if such fifth calendar day is not a Business Day, the next Business Day) after the date on which the Trustee receives written notice from the Bank under the Continuing Covenant Agreement which (x) advises the Trustee of the occurrence and continuance of an “Event of Default” under and as defined in the Continuing Covenant Agreement and (y) directs the Trustee to cause a mandatory tender of the Bonds by reason of such “Event of Default.”

“Beneficial Owner” means the person in whose name a Bond is recorded as the beneficial owner on the records of a participant in the Book-Entry System.

“Bondholder” or “Holder” or “owner of the Bonds” means the Registered Owner of any Bond registered as to principal and interest.

“Book-Entry System” means the system maintained by DTC for holding securities in the form of one global certificate for each maturity registered as to principal and interest in the name of DTC or its nominee.

“Borrower Bonds” means (a) Bonds purchased with moneys provided to the Tender Agent for the account of the Borrower, or (b) Bonds registered in the name of the Borrower designated as being held for the account of the Borrower, that are not Pledged Bonds.

“Business Day” means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in New York, New York or the states where the principal corporate office of the Trustee, any Paying Agent or the Tender Agent is located are required or authorized by law to remain closed, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed or (c) a day on which the principal offices of the Calculation Agent or the Bank or Credit Bank are closed.

“Calculation Agent” means the Bank or any other party appointed by the Borrower, with the consent of the Bank.

“Computation Date” means with respect to Index Rate Bonds, bearing interest at the SIFMA Index Rate or the LIBOR Index Rate, (i) during each SIFMA Index Rate Period, Wednesday of each week, or if any Wednesday is not a Business Day, the next preceding Business Day and (ii) during each LIBOR Index Rate Period, the second New York Banking Day preceding each LIBOR Index Reset Date.

“Continuing Covenant Agreement” means during the Initial Period, the Continuing Covenant Agreement dated as of June 1, 2019 between the Borrower and the Bank and related to the Bonds, as the same may be amended, restated, supplemented or otherwise modified from time to time, and during any Index Rate Period other than the Initial Period, any agreement between the Borrower and the related Bank which shall be designated as the Continuing Covenant Agreement.

“Conversion Date” means an (i) Index Rate Conversion Date; (ii) a Long-Term Rate Conversion Date; or (iii) the day on which a Daily Rate or Weekly Rate becomes effective for Bonds which is not immediately preceded by a day on which such Bonds have accrued interest at the same type of interest rate. Each Conversion Date shall be an Interest Payment Date for the rate period from which the Bonds are converted.

“Credit Agreement” means any agreement entered into between the Borrower and the Credit Bank providing for the issuance of a Letter of Credit with respect to the Bonds.

“Credit Bank” means a bank in its capacity as issuer of a Letter of Credit in existence no later than any Conversion Date which causes the Bonds to be in a Daily Rate or a Weekly Rate, and its successors and assigns, and if an Alternate Letter of Credit is issued in accordance with Section 7.02 hereof, “Credit Bank” shall include the issuer or provider of such Alternate Letter of Credit, and its successors and assigns.

“Daily Rate” means the per annum interest rate on the Bonds during a Daily Rate Period determined on a daily basis as provided in Section 2.03(a)(6) hereof.

“Daily Rate Bonds” means Bonds bearing interest at a Daily Rate.

“Daily Rate Conversion Date” means the day on which the Bonds begin to accrue interest at a Daily Rate pursuant to Section 2.03(d) hereof which is immediately preceded by a day on which the Bonds did not accrue interest at a Daily Rate.

“Daily Rate Period” means each period described in Section 2.03(a)(6) hereof during which Bonds accrue interest at a Daily Rate.

The terms “default,” “Default,” “event of default” and “Event of Default” mean any occurrence or event specified in and defined by Section 9.01 hereof.

“Default Rate” has the meaning set forth in the Continuing Covenant Agreement, and if such agreement is not in effect, then the meaning as set forth in any Credit Agreement.

“DTC” means The Depository Trust Company or any successor book-entry securities depository.

“Electronic Notice” means notice transmitted through a time-sharing terminal or facsimile machine, if operative as between any two parties, or if not operative, in writing or by telephone (promptly confirmed in writing).

“Excess Interest” has the meaning set forth in Section 2.03(b)(3)(iii) hereof.

“Fitch” means Fitch, Inc., and any successor rating agency.

“Government Obligations” means the following:

(a) bonds, notes, certificates of indebtedness, treasury bills or other securities constituting direct obligations of, or obligations the full and timely payment of the principal of and interest on which are fully and unconditionally guaranteed by, the United States of America; and

(b) evidences of direct ownership of a proportionate or individual interest in future interest or principal payments on specified direct obligations of, or obligations the payment of the principal of and interest on which are unconditionally guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian in form and substance satisfactory to the Trustee.

“Indenture” means this Indenture of Trust as amended, supplemented or otherwise modified from time to time.

“Index Rate” means the LIBOR Index Rate, the Default Rate, the Taxable Rate, the SIFMA Index Rate or the Term Rate, as applicable.

“Index Rate Bonds” means Bonds that bear interest at an Index Rate.

“Index Rate Conversion Date” means each date on which interest begins to accrue on the Bonds at an Index Rate following conversion or, in either case, the then current Index Rate Period is changed to a new Index Rate Period pursuant to Section 2.03(d).

“Index Rate Period” means any period during which the Bonds bear interest at an Index Rate.

“Initial Bank Purchase Date” means July 1, 2024.

“Initial Period” means the initial Index Rate Period commencing on the date of the initial delivery of the Bonds and ending on the first to occur of (i) the Initial Bank Purchase Date, (ii) the Conversion Date (provided that the Bank shall have consented thereto in writing), (iii) the Maturity Date or other date on which the Bonds are otherwise paid in full, and (iv) a Bank Purchase Date.

“Interest Payment Date” means:

(a) with respect to SIFMA Rate Bonds and LIBOR Rate Bonds, the first Business Day of each month (commencing on August 1, 2019) and any day that is a Conversion Date or a Bank Purchase Date for such Index Rate Bonds;

(b) with respect to Long-Term Rate Bonds and Term Rate Bonds, each January 1 and July 1 and any day that is a Conversion Date for such Bonds and the Maturity Date;

(c) with respect to Daily Rate Bonds, the first Business Day of each calendar month following the Daily Rate Period for which interest is payable, and any such day which is a Conversion Date from a Daily Rate Period;

(d) with respect to Weekly Rate Bonds, the first Business Day of each calendar month following the Weekly Rate Period for which interest is payable, and any day which is a Conversion Date from a Weekly Rate Period.

(e) with respect to the Bonds, the Maturity Date for the Bonds; and

(f) with respect to each Unremarketed Bond, the dates set forth in the Continuing Covenant Agreement relating to the payment of interest on such Unremarketed Bond.

“Interest Payment Period” means:

(a) with respect to Index Rate Bonds, Daily Rate Bonds and Weekly Rate Bonds, the period from and including the date of issuance of the Bonds or the Index Rate Conversion Date, Daily Rate Conversion Date or Weekly Rate Conversion Date, as applicable, to and including the calendar day preceding the first Interest Payment Date (or the calendar day immediately preceding a day that is a Conversion Date for such Index Rate Bonds, Daily Rate Bonds or Weekly Rate Bonds) and thereafter, the period from and including the first calendar day of each month to and including the calendar day preceding the each Interest Payment Date;

(b) with respect to Long-Term Rate Bonds, the period from and including the Long-Term Rate Conversion Date, as applicable, to and including the calendar day immediately preceding the next Interest Payment Date for such Bonds and thereafter, the period from and

including each Interest Payment Date for such Bonds to and including the calendar day immediately preceding the next Interest Payment Date for such Bonds.

“Interest Rate Mode” means the Index Rate, the Long-Term Rate, the Daily Rate or the Weekly Rate, as applicable.

“Letter of Credit” means any irrevocable direct-pay letter of credit issued by the Credit Bank to the Trustee pursuant to any letter of credit and reimbursement agreement entered into between Borrower and the related Credit Bank, and any extensions thereof, and upon the issuance and delivery of an Alternate Letter of Credit in accordance with Section 7.02 hereof, “Letter of Credit” shall include such Alternate Letter of Credit, and any subsequent extensions or replacements thereof.

“Letter of Credit Account” means the account of that name established in the Bond Fund as provided in Section 5.04 hereof.

“LIBOR Accrual Period” means, the period from and including the date of issuance of the Bonds or the LIBOR Index Rate Conversion Date, as applicable, to and including the calendar day preceding the first Interest Payment Date (or the calendar day immediately preceding a day that is a Conversion Date for such Index Rate Bonds) and thereafter, the period from and including the first Business Day of each month to and including the calendar day preceding each Interest Payment Date.

“LIBOR Index” means the rate of interest per annum for United States Dollar deposits in the London Interbank Market, which rate appears on the display designated as Reuters Screen LIBOR01 Page (or other commercially available source providing quotations of such rate as selected by the Calculation Agent), which shall be that one-month LIBOR rate in effect two New York Banking Days prior to the LIBOR Index Reset Date or the LIBOR Index Rate Conversion Date, as the case may be, such rate to be reset monthly on each LIBOR Index Reset Date. If for any reason such rate is not available at such time, then the rate for the applicable period will be determined by such comparable alternate method designed to measure interest rates in a similar manner, as selected by the Calculation Agent. Any successor rate or alternate methodology must be an interest-based index, variations in the value of which can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in United States dollars. In order to account for the relationship of the replacement index to the original one-month LIBOR rate, such alternate method will incorporate any spread to any replacement index as is necessary to ensure that the alternate method will measure interest rates in a manner similar to the original one-month LIBOR rate. If the LIBOR Index, as determined pursuant to this definition is ever less than zero, then for purposes of determining the LIBOR Index Rate, the LIBOR Index shall be deemed to be zero. The Calculation Agent’s internal records of applicable interest rates shall be determinative in the absence of manifest error.

“LIBOR Index Rate” means a per annum rate of interest established on each Computation Date equal to the product of (x) the sum of (a) the Applicable Spread plus (b) the product of (i) the LIBOR Index multiplied by (ii) the Applicable Factor and (y) the Margin Rate Factor

“LIBOR Index Rate Conversion Date” means (a) the date on which the Bonds begin to bear interest at the LIBOR Index Rate or (b) if the Bonds have previously borne interest at the LIBOR Index Rate during a LIBOR Index Rate Period then ending, the Bank Purchase Date occurring at the end of the then ending LIBOR Index Rate Period.

“LIBOR Index Rate Period” means (a) the Initial Period and (b) each period thereafter from and including a LIBOR Index Rate Conversion Date to but excluding the earliest of (i) the immediately succeeding Bank Purchase Date, (ii) the immediately succeeding Conversion Date and (iii) the Maturity Date.

“LIBOR Index Reset Date” means the first Business Day of each calendar month.

“Long-Term Interest Period” means each period during which a particular Long-Term Rate is in effect with respect to the Bonds pursuant to Section 2.03(c)(1).

“Long-Term Rate” means an interest rate for the Bonds that is determined for a term of at least 12 months for such Bonds pursuant to Section 2.03(c)(1) hereof.

“Long-Term Rate Bonds” means Bonds which bear interest at a Long-Term Rate.

“Long-Term Rate Conversion Date” means each day on which interest begins to accrue on the Bonds at a Long-Term Rate following conversion pursuant to Section 2.03(d).

“Long-Term Rate Mandatory Purchase Date” means the first day after the last day of each Long-Term Interest Period.

“Long-Term Rate Period” means a period during which the Bonds are Long-Term Rate Bonds.

“Margin Rate Factor” means, for any day, (a) one minus the Maximum Federal Corporate Tax Rate then in effect divided by (b) one minus the Maximum Federal Corporate Tax Rate in effect on the Closing Date, rounded upward to the fifth decimal place. The effective date of any change in the Margin Rate Factor shall be the effective date of the decrease or increase (as applicable) in the Maximum Federal Corporate Tax Rate resulting in such change.

“Market Agent” means any Person appointed by the Borrower to serve as market agent in connection with a conversion to an Index Rate Period.

“Maturity Date” means July 1, 2037.

“Maximum Federal Corporate Tax Rate” means, for any day, the maximum rate of income taxation imposed on corporations pursuant to Section 11(b) of the Code, as in effect as of such day (or, if as a result of a change in the Code, the rate of income taxation imposed on corporations generally shall not be applicable to the Bank, the maximum statutory rate of federal income taxation which could apply to the Bank as of such day).

“Maximum Rate” means (a) with respect to any Bonds other than Pledge Bonds or Bonds bearing interest at an Index Rate or Unremarketed Bonds, the lesser of (i) 12% per annum and (ii) the maximum nonusurious lawful rate of interest permitted by the laws of the State of Florida, if any, and (b) with respect to Pledged Bonds and Bonds bearing interest at an Index Rate and Unremarketed Bonds, the maximum nonusurious lawful rate of interest permitted by the laws of the State of Florida, if any.

“Moody’s” means Moody’s Investors Service, Inc. and any successor rating agency.

“New York Banking Day” means any day (other than a Saturday or Sunday) on which commercial banks are open for business in New York, New York.

“New York City Time” means the time of day in effect from time to time in the City of New York, New York.

“Opinion of Bond Counsel” when used with reference to this Indenture means a written opinion of Bond Counsel covering the matters set forth in the Section of the Indenture which requires the delivery of such opinion, which opinion may be based on a ruling or rulings of the Internal Revenue Service.

The terms “Outstanding” or “Bonds Outstanding” mean all Bonds which have been authenticated and delivered by Trustee under this Indenture, except:

(a) Bonds canceled after purchase in the open market or because of payment at, or redemption prior to, maturity;

(b) Bonds for the payment or redemption, but not purchase, of which cash funds shall have been theretofore deposited with Trustee (whether upon or prior to the maturity or redemption date of any such Bonds); provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements satisfactory to Trustee shall have been made therefor, or waiver of such notice satisfactory in form to Trustee shall have been filed with Trustee; and

(c) Bonds in lieu of which others have been authenticated under Section 2.09 (Bonds mutilated, lost, stolen or destroyed) hereof.

“Paying Agent” means any bank or trust company at any time designated pursuant to this Indenture to serve in addition to Trustee as the paying agencies or places of payment for the Bonds, and successors designated pursuant to this Indenture.

“Pledged Bonds” means Bonds purchased with moneys provided to the Tender Agent pursuant to a draw on the Letter of Credit.

“Principal Corporate Trust Office” means the office of U.S. Bank National Association located at 60 Livingston Avenue, St. Paul, Minnesota, 55107.

“Purchase Date” means each date on which (i) Bonds are subject to mandatory purchase, pursuant to Section 3.08 and Section 3.09 of this Indenture and (ii) a Bank Purchase Date.

“Purchase Fund” means the fund by that name established pursuant to Section 3.08 of this Indenture (it being expressly stated, for the avoidance of any doubt, that the Purchase Fund shall be separate from the purchase funds for any other series of bonds of the Issuer).

“Purchase Price” means, with respect to an Index Rate Bond or a Bond subject to purchase on a Purchase Date, an amount equal to the principal amount thereof plus, if such Purchase Date is not an Interest Payment Date therefor, accrued and unpaid interest thereon to such Purchase Date.

“Purchaser Letter” means a letter substantively in the form set forth in Exhibit A hereto.

“Rating Agency” means any of S&P, Moody’s and Fitch, as applicable.

“Rating Service” means any nationally recognized securities rating service that issues and maintains a rating on the Bonds.

“Rebate Fund” mean the fund by that name established as provided in Section 5.17 hereof.

“Record Date” means the close of business on either (a) in the case of Bonds accruing interest at an Index Rate, the day (whether or not a Business Day) immediately preceding an Interest Payment Date, or (b) in the case of Bonds accruing interest at a Long-Term Rate, the fifteenth day (whether or not a Business Day) of the calendar month immediately preceding the Interest Payment Date.

“Redemption Price” means, with respect to any Bond (or portion thereof), the principal amount of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and this Indenture.

“Refunding Fund” means the fund so designated in Sections 5.05 and 5.06.

“Registered Owner” or “Owner” means the person or persons in whose name or names a Bond shall be registered as to principal and interest on records of Trustee kept for that purpose in accordance with provisions of this Indenture.

“Remarketing Account” means the account by that name in the Purchase Fund established pursuant to Section 3.08.

“Remarketing Agent” means the remarketing agent appointed with respect to the Bonds pursuant to Section 3.11 or any successor thereto appointed pursuant to Section 3.11.

“Remarketing Agreement” means a remarketing agreement entered into by the Borrower and the Remarketing Agent with respect to such Bonds and any other similar agreement entered into with a successor Remarketing Agent with respect to such Bonds or in conjunction with a

Long Term Rate Conversion Date with respect to such Bonds, in each case, as such agreement may from time to time be amended.

“Responsible Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, and any successor rating agency.

“S&P Weekly High Grade Index” means for a Computation Date, the level of the “S&P Weekly High Grade Index” (formerly known as the J.J. Kenny Index) maintained by Standard and Poor’s Securities Evaluations Inc. for a one-week maturity as published each Wednesday, or if any Wednesday is not a Business Day, on the next succeeding Business Day.

“SIFMA” means the Securities Industry & Financial Markets Association (formerly the Bond Market Association).

“SIFMA Index” means, for any Computation Date, the level of the index which is issued weekly and which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next preceding Business Day. If the SIFMA Index is no longer published, then “SIFMA Index” shall mean the S&P Weekly High Grade Index. If the S&P Weekly High Grade Index is no longer published, then “SIFMA Index” shall mean the prevailing rate determined by the Calculation Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Calculation Agent to be comparable under the circumstances to the criteria used by SIFMA to determine the SIFMA Index immediately prior to the date on which SIFMA ceased publication of the SIFMA Index.

“SIFMA Index Rate” means a per annum rate of interest established on each Computation Date equal to the product of (x) the sum of the Applicable Spread plus the SIFMA Index and (y) the Margin Rate Factor.

“SIFMA Index Rate Conversion Date” means (a) the date on which the Bonds begin to bear interest at the SIFMA Index Rate or (b) if the Bonds have previously borne interest at the SIFMA Index Rate during a SIFMA Index Rate Period then ending, the Bank Purchase Date occurring at the end of the then ending SIFMA Index Rate Period.

“SIFMA Index Rate Period” means each period from and including a SIFMA Index Rate Conversion Date to but excluding the earliest of (i) the immediately succeeding Bank Purchase Date, (ii) the immediately succeeding Conversion Date and (iii) the Maturity Date.

“SIFMA Rate Reset Date” means Thursday of each week.

“Securities Depository” means, initially, The Depository Trust Company, New York, New York, and its successors and assigns.

“Special Record Date” means the date established by the Trustee pursuant to Section 2.02 as a record date for the payment of defaulted interest on Bonds.

“Taxable Date” has the meaning set forth in the Continuing Covenant Agreement.

“Taxable Rate” means an interest rate per annum at all times equal to the product of the Index Rate then in effect multiplied by the Taxable Rate Factor.

“Taxable Rate Factor” means, for each day that the Taxable Rate is determined, the quotient of (i) one *divided by* (ii) one minus the Maximum Federal Corporate Tax Rate in effect as of such day.

“Tax Certificate” means the Tax Certificate and Agreement of the Borrower executed in connection with the issuance of the Bonds.

“Tender Agent” means, initially, the Trustee, and any successor Tender Agent as determined or designated under or pursuant to this Indenture.

“Term Rate” means any fixed rate of interest per annum determined in accordance with Section 2.03(b)(2)(iii) hereof.

“Term Rate Bonds” means Bonds which bear interest at a Term Rate.

“Term Rate Period” means any period in which a Term Rate is in effect.

“Trust Estate” means the property conveyed to Trustee pursuant to the Granting Clauses hereof.

“Trustee” means U.S. Bank National Association, and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder.

“Undelivered Bond” means any Bond which is subject to purchase pursuant to Section 3.08 and Section 3.09 on a Purchase Date and which is not tendered and delivered for purchase on such Purchase Date but as to which the Tender Agent holds in the Purchase Fund sufficient funds to pay the Purchase Price of such Bond, as applicable.

“Undelivered Bond Payment Account” means the account by that name in the Purchase Fund established pursuant to Section 3.08.

“Unremarketed Bonds” means Index Rate Bonds which, on the applicable Purchase Date, have not been remarketed to a party other than the Bank.

“Weekly Rate” means the per annum interest rate on the Bonds during a Weekly Rate Period determined on a weekly basis as provided in Section 2.03(a)(7) hereof.

“Weekly Rate Bonds” means the Bonds bearing interest at a Weekly Rate.

“Weekly Rate Conversion Date” means each day on which Bonds begin to accrue interest at a Weekly Rate pursuant to Section 2.03(d) hereof which is immediately preceded by a day on which such Bonds did not accrue interest at a Weekly Rate.

“Weekly Rate Period” means each period described in Section 2.03(a)(7) during which Bonds accrue interest at a Weekly Rate.

(End of Article I)

ARTICLE II

THE BONDS

Section 2.01 Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The Bonds shall be issued under and secured by this Indenture. The total principal amount of Bonds that may be issued is not to exceed \$[PAR AMOUNT] except as provided in Section 2.16 hereof.

Section 2.02 Issuance of Bonds. The Bonds shall be designated “City of Port Orange, Florida Private College Facility Revenue Bonds (Palmer College of Chiropractic Project), Series 2019B” and shall be issued in the aggregate principal amount of \$[PAR AMOUNT]. The Bonds shall be fully registered Bonds without coupons in Authorized Denominations in substantially the form as set forth above, with such necessary or appropriate variations, omissions and insertions as are permitted or required by this Indenture. The fully registered Bonds shall be lettered and numbered from R-1 consecutively upward.

The Bonds shall initially bear interest at the LIBOR Index Rate from their date of issuance until the Initial Bank Purchase Date payable on each Interest Payment Date. After the Initial Bank Purchase Date (or earlier conversion thereof), the Bonds may also bear interest at another Index Rate, or a Daily Rate, Weekly Rate or Long-Term Rate, payable on each applicable Interest Payment Date. On the date of issuance, the Bonds shall be registered in the name of the Bank. Except as otherwise directed by the Holder thereof, Bonds bearing interest at an Index Rate shall be issued in the form of one single definitive certificated bond for the aggregate principal amount of the Bonds registered in the name of the Holder thereof or as otherwise directed by such Holder. The Bonds shall be dated the date of their original issuance and delivery, and shall bear interest from such date or from the most recent Interest Payment Date to which interest has been paid or duly provided for (or with respect to Index Rate Bonds for such Interest Payment Period), at the interest rates determined in accordance with Section 2.03 hereof, payable on each Interest Payment Date as herein provided until payment of the principal or redemption price thereof is made or provided for, whether at maturity, upon redemption, acceleration or otherwise to bondholders of record on each Record Date. Each Bond bearing interest at an Index Rate shall contain a legend indicating that the transferability of such Bond is subject to the restrictions set forth in the Indenture. Registered ownership of the Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 2.04.

The Bonds shall mature on the Maturity Date. Principal on the Bonds shall be payable on the dates and in the amounts in accordance with the schedule set forth on Exhibit B attached hereto and set forth on Exhibit A to the Bonds.

Interest shall be calculated on the basis of (a) with respect to LIBOR Index Rate Bonds and Unremarketed Bonds, a 360-day year for the actual days elapsed, (b) with respect to SIFMA Index Rate Bonds, a 365-day year for the actual days elapsed, (c) with respect to Bonds bearing interest at a Long-Term Rate, a 360-day year of twelve 30-day months, (d) with respect to Bonds bearing interest at a Daily Rate, on the basis of a 365- or 366- day year for the number of days actually elapsed, (e) with respect to Bonds bearing interest at a Weekly Rate, on the basis of a

365- or 366- day year for the number of days actually elapsed, and (f) with respect to Bonds bearing interest at a Term Rate, on the basis of a 365- or 366- day year for the number of days actually elapsed.

The principal of, redemption premium, if any, and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for the payment of public and private debts.

The principal of and the redemption premium, if any, on all Bonds shall be payable by check or draft at maturity or upon earlier redemption to the Persons in whose names such Bonds are registered on the bond register maintained by the Trustee at the maturity or redemption date thereof, upon the presentation and surrender of such Bonds at the designated corporate trust office of the Trustee or of any Paying Agent named in the Bonds; provided, however, that during any Index Rate Period, or while Bonds constitute Unremarketed Bonds, payments of principal of the Bonds shall be made without the requirement for presentation and surrender by the Bank, provided that principal which is payable at maturity shall be made only upon presentation and surrender at the principal office of the Trustee.

The interest payable on each Bond on any Interest Payment Date shall be paid by the Trustee to the Owner of such Bond as shown on the bond register at the close of business on the Record Date for such interest, (1) by check or draft mailed to such Owner at his address as it appears on the bond register or at such other address as is furnished to the Trustee in writing by such Owner, or (2) with respect to Bonds held by a Securities Depository, or at the written request addressed to the Trustee by any Owner of Bonds in the aggregate principal amount of at least \$1,000,000 or during any Index Rate Period, or while Bonds constitute Unremarketed Bonds, by electronic transfer in immediately available funds, such request to be signed by such Owner, containing the name of the bank (which shall be in the continental United States), its address, its ABA routing number and the account number to which credit shall be made and be filed with the Trustee no later than 10 Business Days before the applicable Record Date preceding such payment date. The Bonds issued under this Indenture shall not be held in book-entry form while bearing interest at an Index Rate unless otherwise required by the Bank, but shall be subject to the procedures of DTC while the Bonds are held in book-entry form.

Notwithstanding anything herein to the contrary, for so long as the Bonds bear interest at an Index Rate, or while Bonds constitute Unremarketed Bonds (the "Bank Direct Payment Period"), the Issuer and the Trustee agree that all amounts payable to the Bank with respect to any Bonds held by the Bank may be made by the Borrower directly to the Bank, upon the Bank's written notice to the Trustee and the Issuer (without any presentment thereof, [except upon the payment of the final installment of principal], and without any notation of such payment being made thereon), in such manner or at such address in the United States as may be designated by the Bank in writing to the Trustee and the Issuer, including by the Bank debiting an account of the Borrower, as may be provided in the Continuing Covenant Agreement, as applicable. During any Bank Direct Payment Period, (i) any payment made shall be accompanied by sufficient information to identify the source and proper application of such payment, (ii) the Bank shall notify the Trustee in writing of any failure of the Borrower to make any payment of the principal of or interest on the Bonds when due, and the Trustee shall not be deemed to have any notice of

such failure unless it has received such notice in writing, and (iii) if any Bonds are sold or transferred, the Bank shall notify the Trustee and the Issuer in writing of the name and address of the transferee, the effective date of the transfer, the principal amount of the Bonds transferred and the payment information notated on the Bonds as hereinafter described, and it will, prior to delivery of such Bonds, make a notation on such Bonds of the date to which interest has been paid thereon and of the amount of any prepayments made on account of the principal thereof. Furthermore, to the extent that the Borrower has made the required payments to the Bank during any Bank Direct Payment Period, the Paying Agent shall have no obligations to make payments of the principal of or interest on the Bonds, to act as Registrar or to take any other action in respect thereof, except at the express written direction of the Bank or the Issuer.

The determination of the Index Rate, Daily Rate, Weekly Rate and the Long-Term Rate by the Remarketing Agent or the Calculation Agent, as applicable, shall be conclusive and binding upon the Holders of the Bonds, the Borrower, the Issuer and the Trustee, absent manifest error. The determination of the Applicable Spread by the Market Agent (during any Index Rate Period other than the Initial Period) shall be conclusive and binding upon the Issuer, the Borrower, the Trustee, the Remarketing Agent and the Holders or Beneficial Owners of such Bonds.

Failure by the Trustee to give any notice required hereunder, or any defect therein, shall not affect the interest rate borne by any of the Bonds. The Issuer, the Trustee, the Remarketing Agent, the Market Agent and the Calculation Agent, shall not be liable to any Holders or Beneficial Owners for failure to give any such notice, or any defect therein, or for failure of any Holders or Beneficial Owners to receive any such notice.

Interest on any Bond that is due and payable but not paid on the date due (“Defaulted Interest”) shall cease to be payable to the Owner of such Bond on the relevant Record Date and shall be payable to the Owner in whose name such Bond is registered at the close of business on a special record date (the “Special Record Date”) for the payment of such Defaulted Interest, which Special Record Date shall be fixed in the following manner: The Borrower shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Bond and the date of the proposed payment (which date shall be such as will enable the Trustee to comply with the next sentence hereof), and shall deposit with the Trustee at the time of such notice an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment; money deposited with the Trustee shall be held in trust for the benefit of the Owners of the Bonds entitled to such Defaulted Interest as provided in this Section. Following receipt of such funds the Trustee shall fix the Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Borrower of such Special Record Date and, in the name and at the expense of the Borrower, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Owner of a Bond entitled to such notice at the address of such Owner as it appears on the bond register not less than 10 days prior to such Special Record Date.

Subject to the foregoing provisions of this Section, each Bond delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond and each such Bond shall bear interest from such date, that neither gain nor loss in interest shall result from such transfer, exchange or substitution.

Section 2.03 Determination of Interest Rates on the Bonds; Conversions Between Index Rates or Long-Term Rate Bonds.

(a) Determination of Interest Rates.

(1) All Bonds shall operate in the same Interest Rate Mode.

(2) Subject to the provisions of Section 2.03(b)(3)(ii) hereof, interest on the Bonds shall not exceed the Maximum Rate.

(3) The Bonds shall be issued as Index Rate Bonds and shall bear interest initially at the LIBOR Index Rate. The Bonds may be converted to another Interest Rate Mode pursuant to the provisions hereof.

(4) Index Rate Bonds. The Index Rate shall be determined in accordance with Section 2.03(b). The Calculation Agent shall notify the Trustee and the Borrower of the Index Rate for each applicable period in accordance with Section 2.03(b); provided that any failure to so notify the Trustee or the Borrower shall not affect the rate of interest applicable to the Bonds and the Calculation Agent shall not have any liability for any such failure; provided further that, if the Index Rate is the Term Rate, such rate shall be established on or before the first day of the applicable Index Rate Period as provided in Section 2.03(b)(2)(iii). All Index Rate Bonds shall bear interest accruing at the same Index Rate.

(5) Long-Term Rate Bonds. Subject to the further provisions of this Section 2.03 with respect to Long-Term Rates or conversions between Long-Term Rates, the interest rate on the Bonds during any Long-Term Interest Period shall be determined by the Remarketing Agent as provided in this Section 2.03, and notice thereof shall be given as follows:

(A) The interest rate for the Long-Term Interest Period in question shall be determined by the Remarketing Agent on the date or dates and at the time or times required pursuant to Section 2.03(c) below. The interest rate to be determined for the Long-Term Interest Period shall be the lowest rate of interest that, in the reasonable judgment of the Remarketing Agent, would cause the Bonds in question to have a price equal to the principal amount thereof under prevailing market conditions for the relevant period as of

the date of determination, except as otherwise provided in Section 2.03(c).

- (B) Failure to Establish Certain Interest Rates. If the Remarketing Agent fails for any reason to determine the Long-Term Rate for any Long-Term Rate Period, as applicable, when required hereunder, or a court holds that the Long-Term Rate for Long-Term Rate Period, is invalid, illegal or unenforceable and, in each case, then the interest rate on the Bonds shall be equal to the SIFMA Index, until the interest rate on such Bonds is again validly determined by the Remarketing Agent.
- (C) All Long-Term Rate Bonds shall bear interest accruing at the same Long-Term Rate.

(6) Daily Rates. A Daily Rate shall be determined each Daily Rate Period as follows:

- (A) Daily Rate Periods shall commence on a Daily Rate Conversion Date which shall be a Business Day and thereafter on each Business Day until the type of rate period of the Bonds is converted to another type of rate period, and shall extend to, but not include, the next succeeding Business Day.
- (B) The Daily Rate for each Daily Rate Period shall be effective from and including the commencement date thereof and remain in effect to, but not including, the next succeeding Business Day. Each such Daily Rate shall be determined by the Remarketing Agent on the first Business Day of the Daily Rate Period to which it relates and provided to the Trustee by the Remarketing Agent by Electronic Notice by 10:00 a.m., New York City Time, on that same day.
- (C) The Daily Rate shall be the interest rate per annum determined by the Remarketing Agent (based upon tax exempt obligations comparable, in the judgment of the Remarketing Agent, to the Bonds and known to the Remarketing Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate which would enable the Remarketing Agent to sell the Bonds on the effective date at a price (without regard to accrued interest) equal to the principal amount thereof. In the event that the Remarketing Agent fails to establish a Daily Rate for any Business Day, then the Daily Rate for

such Business Day shall be equal to the rate in effect on the immediately preceding Business Day.

(7) Weekly Rates. A Weekly Rate shall be determined for each Weekly Rate Period as follows:

- (A) Weekly Rate Periods shall commence on a Thursday and end on Wednesday of the following week and each Weekly Rate Period shall be followed by another Weekly Rate Period until the rate period of the Bonds is converted to another type of rate period; provided that (i) in the case of a conversion to a Weekly Rate Period from a different rate period, the Weekly Rate Period shall commence on the Weekly Rate Conversion Date and shall end on Wednesday of the following week; (ii) in the case of a conversion from a Weekly Rate Period to a different rate period, the last Weekly Rate Period prior to conversion shall end on the day immediately preceding the Conversion Date to the new rate period; and (iii) the day of the week on which Weekly Rate Periods shall commence may be changed by the Remarketing Agent with the consent of the Borrower, if the scheduled rate determination day has become inappropriate (taking into account general market practice), as determined in the reasonable exercise of the Remarketing Agent's judgment, upon notice to the Trustee and the Tender Agent not less than 14 days before the change, which notice shall promptly be communicated by the Trustee, by first class mail to the Owners of Bonds, provided, that such notice to the Trustee is accompanied by an Opinion of Bond Counsel, which opinion shall also be addressed and delivered to the Issuer and the Trustee, to the effect that the change will not adversely affect the exclusion from gross income of the interest on any Bonds for federal income tax purposes.
- (B) The Weekly Rate for each Weekly Rate Period shall be effective from and including the commencement date thereof and remain in effect to and including the last day thereof. Each such Weekly Rate shall be determined by the Remarketing Agent on the Business Day next preceding the commencement date of the Weekly Rate Period to which it relates (or if not a Business Day on the next succeeding Business Day), and provided to the Trustee by the Remarketing Agent by Electronic Notice by 5:00 p.m., New York City Time, on such preceding Business Day.

(C) The Weekly Rate shall be the interest rate per annum determined by the Remarketing Agent (based upon tax exempt obligations comparable, in the judgment of the Remarketing Agent, to the Bonds and known to the Remarketing Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate which would enable the Remarketing Agent to sell the Bonds on the effective date at a price (without regard to accrued interest) equal to the principal amount thereof. In the event that the Remarketing Agent fails to establish a Weekly Rate for any week, then the Daily Rate for such week shall be equal to the rate in effect on the immediately preceding week.

(8) Unremarketed Bonds. Unremarketed Bonds shall bear interest at the Default Rate determined in accordance with the terms and provisions of the Continuing Covenant Agreement relating to such Unremarketed Bonds, as more fully set forth in Section 2.05 hereof.

(b) Index Rate.

(1) Initial Interest Rate. The Bonds shall bear interest at a LIBOR Index Rate from their date of issuance until the end of the Initial Period. The initial LIBOR Index Rate shall be _____% per annum, which shall be effective from the date the Bonds are originally issued to and including June 30, 2019.

(2) Determination of Index Rate. (i) SIFMA Index Rate. During each SIFMA Index Rate Period, the Bonds shall, subject to subsection (3) of this Section 2.03(b), bear interest at the SIFMA Index Rate. The Calculation Agent shall determine the SIFMA Index Rate on each Computation Date during the SIFMA Index Rate Period, and such rate shall become effective on the SIFMA Rate Reset Date next succeeding such Computation Date and interest at such rate shall accrue each day during such SIFMA Index Rate Period, commencing on and including the first day of such period to but excluding the last day of such period. The SIFMA Index Rate shall be rounded upward to the second decimal place. Promptly following the determination of the SIFMA Index Rate, the Calculation Agent shall give notice thereof to the Trustee. If the SIFMA Index Rate is not determined by the Calculation Agent on the Computation Date, the rate of interest born on such Index Rate Bonds shall be the rate in effect for the immediately preceding Interest Payment Period until the Calculation Agent next determines the SIFMA Index Rate as required hereunder.

(ii) LIBOR Index Rate. During each LIBOR Index Rate Period, the Bonds shall, subject to subsection (3) of this Section 2.03(b), bear interest at the LIBOR Index Rate. The Calculation

Agent shall determine the LIBOR Index Rate on each Computation Date during the LIBOR Index Rate Period, and such rate shall become effective on the LIBOR Index Reset Date next succeeding the Computation Date and interest at such rate shall accrue each day during such LIBOR Accrual Period, commencing on and including the first day of such period to and including the last day of such period. The LIBOR Index Rate shall be rounded upward to the third decimal place. Promptly following the determination of the LIBOR Index Rate, the Calculation Agent shall give notice thereof to the Trustee. If the LIBOR Index Rate is not determined by the Calculation Agent on the Computation Date, the rate of interest born on such Index Rate Bonds shall be the rate in effect for the immediately preceding Interest Payment Period until the Calculation Agent next determines the LIBOR Index Rate as required hereunder.

(iii) Term Rate. During each Term Rate Period, the Bonds shall, subject to subsection (3) of this Section 2.03(b), bear interest at the Term Rate. The Market Agent shall determine the Term Rate prior to the first day of such Term Rate Period and interest at such rate shall accrue each day during such Term Rate Period, commencing on and including the first day of such period to but excluding the last day of such period. The new Term Rate shall be determined by the Market Agent such that the Term Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which the Bonds may be sold on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof.

(3) Adjustments to Index Rates. (i) Taxable Rate. From and after any Taxable Date, the interest rate on Bonds in an Index Rate Period shall be established at a rate at all times equal to the Taxable Rate. The Trustee shall be notified of any Taxable Date and the effective date of Taxable Rate.

(ii) Default Rate. Notwithstanding the foregoing provisions of this Section 2.03 but subject to the interest rate limitations of Section 2.03(a), in the event of a failure to pay the principal of or interest on the Bonds when due (whether by scheduled maturity, required prepayment, redemption or otherwise) or upon the occurrence and continuation of an Event of Default, from and after the effective date of such Event of Default, the interest rate for Bonds in an Index Rate Period and Unremarketed Bonds shall be established at a rate at all times equal to the greater

of (A) the Default Rate and (B) the interest rate that otherwise would be applicable to the Bonds but for the provisions of this paragraph, payable on demand to the Bank. Interest shall accrue and be paid on both defaulted interest and defaulted principal.

(iii) Excess Interest. Notwithstanding anything in this Indenture to the contrary, if during an Index Rate Period (or at any time the Bonds constitute Unremarketed Bonds) the rate of interest on the Bonds exceeds the Maximum Rate for such Bonds, then (i) such Bonds shall bear interest at the Maximum Rate and (ii) interest on such Bonds calculated at the rate equal to the difference between (A) the rate of interest for such Bonds as calculated pursuant to this Indenture and (B) the Maximum Rate (the “Excess Interest”) shall be deferred until such date as the rate of interest borne by such Bonds as calculated pursuant to Section 2.03(b) hereunder is below the Maximum Rate, at which time Excess Interest shall be payable with respect to such Bonds. Payments of deferred Excess Interest shall no longer be due and payable upon the earlier to occur of the date on which such subseries is tendered for purchase in accordance with Section 3.09 hereof and are so paid or such Bonds are paid in full.

(c) Long-Term Rates.

(1) Interest Period. Whenever Bonds are to bear interest accruing at a Long-Term Rate, Long-Term Interest Periods shall commence on a Long-Term Rate Conversion Date or, thereafter, the effective date of a subsequent Long-Term Interest Period, and end on a day which is at least 12 months after such Long-Term Rate Conversion Date which is the day preceding (A) the effective date of a subsequent Long-Term Interest Period, (B) the Conversion Date on which a different Interest Payment Period shall become effective or (C) the maturity date for such Bonds. The term of each Long-Term Interest Period with respect to the Bonds shall be specified in writing by the Borrower to the Remarketing Agent, the Trustee, and the Tender Agent, at least 5 days prior to its commencement.

(2) Effective Period. The interest rate for each Long-Term Interest Period shall be effective from and including the commencement date of that Long-Term Interest Period and shall remain in effect through and including the last day thereof.

(3) Determination Time. Each Long-Term Rate shall be determined by the Remarketing Agent by 4:00 p.m., New York City time, on the Business Day immediately preceding the commencement date of the Long-Term Interest Period to which it relates. Notice of each Long-Term Rate shall be given by the Remarketing Agent to the Trustee, the Tender Agent, and the Borrower, by Electronic Notice not later than 5:00 p.m., New York City time, on the date of

determination. The Trustee shall inform the Holders of each Long-Term Rate determined by the Remarketing Agent upon request.

(4) Remarketing. The Long-Term Rate for each Long-Term Interest Period for the Bonds shall be the rate of interest per annum borne by the Bonds which shall be the lowest rate of interest that, in the judgment of the Remarketing Agent, would cause such Bonds to have a price equal to the principal amount thereof plus accrued interest, if any, under prevailing market conditions as of the date of determination. Notwithstanding the foregoing, the Long-Term Rate for a Long-Term Interest Period for the Bonds may be the rate of interest per annum determined by the Remarketing Agent to be the interest rate which, if borne by the Bonds, would enable the Remarketing Agent to sell such Bonds on the date and at the time of such determination at a price which will result in the lowest net interest cost for such Bonds, after taking into account any premium or discount at which such Bonds are sold by the Remarketing Agent, provided that in connection with selling such Bonds at a premium or discount:

- (A) The Remarketing Agent certifies to the Borrower, the Trustee and the Tender Agent that the sale of the Bonds at the interest rate and premium or discount specified by the Remarketing Agent is expected to result in the lowest net interest cost for such Bonds on the commencement date of the Long-Term Interest Period;
- (B) The Borrower consents in writing to the sale of the Bonds by the Remarketing Agent at such premium or discount;
- (C) In the case of Bonds to be sold at a discount the Borrower agrees to transfer to the Tender Agent on the commencement date of such Long-Term Interest Period, in immediately available funds, for deposit in the Purchase Fund, an amount equal to such discount;
- (D) In the case of Bonds to be sold at a premium, the Remarketing Agent shall transfer to the Trustee for deposit in the Bond Fund an amount equal to such premium;
- (E) On or before the date of the determination of the Long-Term Rate, the Borrower delivers to the Trustee and the Remarketing Agent a letter of Bond Counsel to the effect that Bond Counsel expects to be able to give an Opinion of Bond Counsel to the effect that such conversion of the interest rate will not, in and of itself, cause the interest on the Bonds to be includable in the gross income of Holders for federal income tax purposes, on or before the commencement date of the Long-Term Interest Period; and

(F) On or before the commencement date of the Long-Term Interest Period, the Internal Revenue Service has amended its published guidance relating to the reissuance of tax-exempt bonds to provide that remarketing of bonds in such an interest mode at a premium or discount will not result in a reissuance, and an Opinion of Bond Counsel to the effect that such determination of the interest rate will not, in and of itself, cause the interest on the Bonds to be includable in the gross income of Holders for federal income tax purposes shall have been received by the Trustee and the Borrower and confirmed to the Remarketing Agent.

(d) Conversions. At the option of the Borrower, the interest rate with respect to all (but not less than all) Bonds may be converted from one type of Interest Rate Mode to another as follows:

(1) Conversion Date. In any such case, the Conversion Date shall be the first day following the last day of an Interest Payment Period for the Interest Rate Mode from which such Bonds are to be converted; provided, however, that for Long-Term Rate Bonds, such conversion shall only occur on a date that such Long-Term Rate Bonds are subject to purchase pursuant to Section 3.09(a)(3) and that for Term Rate Bonds, such conversion shall only occur on a date that such Term Rate Bonds are subject to purchase on the respective Bank Purchase Date, or such other date as agreed to by the Bank. Interest shall accrue on such Bonds at the new interest rate commencing on such Conversion Date, whether or not a Business Day. Any action required to be taken on such Conversion Date, if such day is not a Business Day, may be taken on the next succeeding Business Day as if it had occurred on such Conversion Date.

(2) Notice of Intent to Convert. The Borrower shall give written notice of its intent to exercise its option to effect any such conversion to the Bank, during an Index Rate Period, to the Credit Bank, during a Weekly Rate Period or a Daily Rate Period, the Remarketing Agent with respect to the affected Bonds, the Tender Agent, and the Trustee with respect to the affected Bonds by Electronic Notice not fewer than five days (or such shorter period as shall be acceptable to the applicable parties) prior to the date on which the Trustee is required to provide notice to the Holders; provided, however, that during any Index Rate Period the Interest Rate Mode may not be changed to another Interest Rate Mode including, without limitation, a new Index Rate Period without the prior written consent of the Bank and is subject to any conditions set forth in the Agreement. Such notice shall specify the proposed Conversion Date (as well as the Bonds to which the conversion will be applicable). If the Borrower does not elect in a timely fashion to convert to a new Interest Rate Mode, the Interest Rate Mode then in effect shall continue until changed by timely notice.

Additionally, such notice shall confirm the appointment, subject to and in accordance with the requirements of this Indenture (including Section 3.11) of a qualified Remarketing Agent to act as Remarketing Agent for the Bonds in connection with the mandatory tender of such Bonds by reason of such conversion and the appointment, subject to and in accordance with this Indenture (including Section 3.07), of a qualified Tender Agent to act as Tender Agent in such connection; provided, however, that no such confirmation and no such appointments shall be required if such Bonds are then Index Rate Bonds or Long-Term Rate Bonds with a Long-Term Rate Period that lasts to maturity and the Market Agent, the Remarketing Agent and the Tender Agent then acting with respect to such Bonds are obligated to perform their duties and responsibilities with respect to the mandatory tender of such Bonds by reason of such conversion. Notwithstanding the forgoing, upon the conversion of the Bonds to an Index Rate Period or Term Rate Period, such notice shall confirm the appointment, subject to and in accordance with the requirements of this Indenture, of a qualified Market Agent to act as Market Agent for the Bonds.

In addition, if an Index Rate is to be in effect immediately following such Conversion Date, such notice shall state whether such Index Rate shall be a SIFMA Index Rate, a LIBOR Index Rate or a Term Rate, the new Bank Purchase Date and, in the case of the SIFMA Index Rate or LIBOR Index Rate, the new Applicable Spread. The new Applicable Spread (in the case of a SIFMA Index Rate or LIBOR Index Rate) or, in the case of a conversion to a Term Rate, the Term Rate, as applicable, shall be determined by the Market Agent such that the applicable Index Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which the Bonds may be sold on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof. In addition, if a SIFMA Index Rate or LIBOR Index Rate is to be in effect immediately following such Conversion Date, the Borrower shall provide a copy of such notice to the Calculation Agent contemporaneously with the Trustee.

(3) Notice of Conversion and Mandatory Tender. Not fewer than 30 days prior to the proposed Conversion Date (or 7 days in the case of conversions from Daily Rate Periods or Weekly Rate Periods), the Trustee shall give Electronic Notice, confirmed by first class mail, of the conversion and of mandatory tender of the Bonds (except in the case of conversions between Daily and Weekly Rate Periods) to the Holders of such Bonds at their addresses as they appear on the registration books of the Trustee as of the date notice of the election is received by the Trustee from the Borrower. The notice given pursuant to this paragraph shall set forth the information required by Section 3.09(e) hereof.

(4) Opinion of Bond Counsel. Any conversion pursuant to this Section shall be subject to the conditions that, on or before the Conversion Date, the Borrower shall have delivered to the Bank (during an Index Rate Period), the Credit Bank (during a Daily Rate Period or a Weekly Rate Period), the Trustee, and the Market Agent with respect to the affected Bonds or Remarketing Agent, as applicable, an Opinion of Bond Counsel to the effect that the conversion is authorized by this Indenture and will not, in and of itself, cause the interest on the

Bonds to be includable in the gross income of Holders for federal income tax purposes.

(5) Conditions to Conversion. Notwithstanding the Borrower's delivery of notice of the exercise of its option to effect a conversion pursuant to Section 2.03(d)(2), as long as such Conversion Date is not also a Bank Purchase Date, such conversion to the new Interest Rate Mode shall not take effect if:

- (A) the Borrower withdraws such notice of the exercise of its option to effect conversion not later than the Business Day preceding the date on which the interest rate at the new Interest Rate Mode is to be determined;
- (B) the Market Agent or the Remarketing Agent fails to determine, when required, the interest rate for the new Interest Rate Mode;
- (C) the notice to Holders of Bonds required by Section 2.03(d)(3) is not given when required;
- (D) the Borrower fails to deliver to the Trustee, the Bank, if applicable and the Market Agent the opinion referred to in Section 2.03(d)(4); or
- (E) sufficient funds are not available by Noon (New York City time) on the Conversion Date to purchase all of the Bonds required to be purchased on such Conversion Date.

In any of such events,

(i) the Conversion Date shall not occur, whether or not notice of the conversion has been given to the Holders;

(ii) the Bonds:

(a) bearing interest at an Index Rate shall continue to bear interest at an Index Rate determined as otherwise provided in Section 2.03(b);

(b) bearing interest at a Long-Term Rate shall bear interest as determined in Section 2.03(c) until all of such Bonds have been remarketed; and

(c) bearing interest at a Daily Rate or Weekly Rate shall bear interest as determined in Section 2.03(a)(6) or (7) respectively.

(iii) the mandatory tender of the Bonds on the Conversion Date pursuant to Section 3.09(a)(2) shall not occur, whether or not notice of the conversion has been given to the Holders. Notice of withdrawal of a conversion notice shall be given by the Borrower to the Trustee, the Bank, if applicable, the Remarketing Agent, the Tender Agent, and the Calculation Agent, if any, by telephone, promptly confirmed in writing, and shall thereafter be promptly given to the Holders of the Bonds (other than Long-Term Rate Bonds) by the Trustee by Electronic Notice, confirmed by first class mail. No cancellation of a conversion pursuant to this Section 2.03(d)(5) shall constitute an Event of Default hereunder.

(6) Conversions of the Long-Term Interest Rate to Maturity. All Bonds shall have the same maturity date and bear interest at the same Long-Term Rate on and after the Long-Term Rate Conversion Date unless on the date the Remarketing Agent determines the Long-Term Rate the Remarketing Agent also determines that such Bonds would bear a lower effective net interest cost if such Bonds were serial bonds or serial bonds and term bonds with mandatory sinking fund dates and principal amounts, in which event such Bonds shall become serial bonds or serial bonds and term bonds with maturity and mandatory sinking fund dates and principal amounts and shall bear separate Long-Term Rates for each maturity. The foregoing notwithstanding, the Borrower may agree to a different amortization of the principal of the Bonds after the Conversion Date if there is delivered to the Trustee by the Borrower an Opinion of Bond Counsel to the effect that utilization of such other method will not, in and of itself, adversely affect the validity of any Bonds or any exclusion from federal income taxation to which the interest on the Bonds would otherwise be entitled.

Section 2.04 Transfer of Bonds. Subject to the limitations set forth below with respect to Index Rate Bonds and Long-Term Rate Bonds, any Bond may, in accordance with its terms, be transferred, upon the registration books required to be kept pursuant to the provisions herein, by the person in whose name it is registered, in person or by his attorney duly authorized in writing, upon surrender of such Bond for cancellation at the Principal Corporate Trust Office of the Trustee, accompanied by delivery of a written instrument of transfer, duly executed in a form approved by the Trustee. Except pursuant to and in accordance with Article III, transfer of a Bond shall not be permitted by the Trustee if the Trustee has received written notice from the Tender Agent that the Tender Agent has received notice from the Holder of such Bond that such Bond will be delivered to the Tender Agent for purchase on or before the next Interest Payment Date.

Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond or Bonds of any Authorized Denomination or Authorized Denominations of the same maturity and series and for a like aggregate principal amount. The Trustee shall require the Holder requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer.

In no event (other than pursuant to and in accordance with Article III) shall any Bond selected by the Trustee for redemption or with respect to which the Tender Agent has received notice from the Holder thereof that such Bond will be delivered for purchase on or before the next Interest Payment Date be transferred under this Section.

Index Rate Bonds may be transferred without limitation to any Affiliate of the Bank subject to the limitations, if any, set forth in the Continuing Covenant Agreement. Index Rate Bonds may be transferred to another purchaser (other than an Affiliate of the Bank), if (i) written notice of such transfer, together with addresses and related information with respect to such purchaser is delivered to the Borrower and the Trustee by such transferor and (ii) such purchaser shall have delivered to the Issuer, the Borrower, the Trustee and the transferor a Purchaser Letter in the form attached hereto as *Exhibit A* executed by a duly authorized officer of such purchaser; provided that each such purchaser (other than an Affiliate of the Bank) shall constitute a commercial bank organized under the laws of the United States, or any state thereof, or any other country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of any such country, and, in any such case, having a combined capital and surplus, determined as of the date of any transfer pursuant to this Section, of not less than \$5,000,000,000, unless otherwise agreed to by the Issuer and the Borrower. Long-Term Rate Bonds may be transferred to another purchaser, if (i) written notice of such transfer, together with addresses and related information with respect to such purchaser is delivered to the Borrower and the Trustee by such transferor and (ii) such purchaser shall have delivered to the Issuer, the Borrower, the Trustee and the transferor a Purchaser Letter in the form attached hereto as *Exhibit A* executed by a duly authorized officer of such purchaser; provided that each such purchaser shall constitute a qualified institutional buyer as defined in Regulation D of Rule 501 under the Securities Act of 1933, unless otherwise agreed to by the Issuer and the Borrower. The Trustee shall have no duty or obligation to determine whether or not any transferee meets the requirements set forth herein and shall be fully protected in relying on any Purchaser Letter delivered to it in accordance herewith if so required to be delivered.

Notwithstanding the foregoing, if and when the Bonds are held under the Book Entry System, transfers of beneficial ownership will be effected pursuant to rules and procedures established by the Securities Depository, but subject to the limitations set forth in the preceding paragraph.

Section 2.05 Unremarketed Bonds. Notwithstanding anything in this Indenture to the contrary, (a) each Unremarketed Bond shall bear interest on the outstanding principal amount thereof at the Default Rate applicable to such Unremarketed Bond in accordance with the Continuing Covenant Agreement (as calculated by the Calculation Agent) for each day from and including the day such Bond becomes an Unremarketed Bond to and excluding the day such Bond ceases to be an Unremarketed Bond or is paid in full, (b) interest on each Unremarketed Bond shall be calculated on the basis of a 360 day year, and the actual number of days elapsed, and (c) interest on each Unremarketed Bond shall be payable on such dates as are specified in the Continuing Covenant Agreement (each such date an “Interest Payment Date” for such Unremarketed Bond or if no such dates are specified, on demand). A Bond shall cease to be an Unremarketed Bond only if such Unremarketed Bond is remarketed and transferred or such Unremarketed Bond is redeemed in full.

Section 2.06 Execution; Limited Obligation. The Bonds shall be executed on behalf of Issuer with the manual or facsimile signature of its Mayor and shall have impressed or imprinted thereon the official seal of Issuer or a facsimile thereof and be attested with the manual or facsimile signature of the City Clerk of Issuer. All authorized facsimile signatures shall have the same force and effect as if manually signed. In case any official of Issuer whose signature shall appear on the Bonds shall cease to be such official before the delivery of such Bonds, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. THE BONDS SHALL REPRESENT LIMITED OBLIGATIONS OF THE ISSUER. THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE PAYABLE SOLELY OUT OF THE REVENUES DERIVED FROM THE AGREEMENT AND ARE NOT OTHERWISE AN OBLIGATION OF ISSUER. THE BONDS AND THE INTEREST THEREON SHALL NEVER CONSTITUTE AN INDEBTEDNESS OF THE ISSUER OR THE STATE OF FLORIDA WITHIN THE MEANING OF ANY STATE CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION, AND SHALL NOT CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE ISSUER OR THE STATE OF FLORIDA OR A CHARGE AGAINST THE GENERAL CREDIT OF THE ISSUER OR THE STATE OF FLORIDA OR THE TAXING POWERS OF THE STATE OF FLORIDA. The principal of, premium, if any, and interest on the Bonds shall be payable solely from the payments, revenues and other amounts derived from the Agreement or pledged pursuant to this Indenture (except to the extent paid out of moneys attributable to the proceeds derived from the sale of the Bonds or to income from the temporary investment thereof and, under certain circumstances, to proceeds from insurance and condemnation awards). The Bonds shall be a valid claim of the respective holders thereof against the Bond Fund and other moneys held by Trustee and the amounts derived from the Agreement, which amounts are hereby pledged, assigned and otherwise secured for the equal and ratable payment of the Bonds and shall be used for no other purpose than to pay the principal of, premium, if any, and interest on the Bonds, except as may be otherwise expressly authorized in this Indenture.

Section 2.07 Tender and Payment Procedures. The Bonds shall initially be issued as one certificated bond. The Bonds may subsequently be converted to a Book Entry System with the agreement of the Issuer, the Borrower, the Bank and the Trustee. Notwithstanding anything in this Indenture to the contrary, if and when a Book Entry System is in effect with respect to the Bonds, (i) all tenders and deliveries of Bonds, as well as payment of the Purchase Price of tendered and/or deemed tendered Bonds, under the provisions of this Indenture shall be made pursuant to the delivery order or other applicable procedures of the Securities Depository as in effect from time to time, and (ii) all references in this Indenture to “Holder” and to “Bonds” in the context of tenders and rights and obligations to tender, remarket and/or purchase (including, without limitation, in Sections 3.08, 3.09 and 3.10 hereof) shall be deemed to be references to “holders of beneficial interests in bonds” and to “beneficial interests in Bonds,” respectively, and are hereinafter referred to in this Section as “Beneficial Owners.”

For Bonds registered in the name of Cede & Co., as nominee for The Depository Trust Company (“DTC”), the tender option rights of Beneficial Owners of Bonds may be exercised only by a Direct Participant (as defined by DTC) of DTC acting, directly or indirectly, on behalf of a Beneficial Owner of Bonds by giving notice of its election to tender Bonds or portions

thereof at the times and in the manner described above. Beneficial Owners will not have any rights to tender Bonds directly to the Tender Agent. Procedures under which a Beneficial Owner may direct a Direct Participant or DTC, or an Indirect Participant of DTC acting through a Direct Participant of DTC, to exercise a tender option right in respect of Bonds or portions thereof in an amount equal to all or a portion of such Beneficial Owner's beneficial ownership interest therein shall be governed by standing instructions and customary practices determined by such Direct Participant or Indirect Participant. For Bonds registered in the name of Cede & Co., as nominee for DTC, delivery of Bonds required to be tendered for purchase shall be effected by the transfer by a Direct Participant on the applicable Purchase Date of a book-entry credit to the account of the Tender Agent of a beneficial interest in such Bonds.

(a) Notwithstanding anything expressed or implied in the Indenture to the contrary, so long as the Book Entry System for the Bonds is maintained:

(1) There shall be no requirement of physical delivery to or by the Trustee or the Remarketing Agent of:

- (A) Any Bonds subject to mandatory or optional purchase as a condition to the payment of the Purchase Price therefor;
- (B) Any Bonds that have become Bank Bonds; or
- (C) Any remarketing proceeds of such Bonds or Bank Bonds; and

(2) Except as expressly provided in the Indenture with respect to Bonds in the Book Entry System, the Tender Agent shall not have any responsibility for paying the Purchase Price of any tendered Bond or for remitting remarketing proceeds to any person.

Section 2.08 Calculation Agent.

(a) During any Index Rate Period, the Calculation Agent shall be the Bank, or such other person as the Borrower may appoint, with the written consent of the Bank meeting the requirements of Section 2.08(b). The Borrower shall appoint any successor Calculation Agent for the Bonds, subject to the conditions set forth in Section 2.08(b). Any Calculation Agent which is not also the Bank shall designate its principal office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Borrower and the Trustee in which the Calculation Agent will agree to perform all calculations and provide all notices required of the Calculation Agent under this Indenture.

(b) The Calculation Agent shall be a corporation duly organized under the laws of the United States of America or any state or territory thereof and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Calculation Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' notice to the Borrower, the Trustee, the Tender Agent and the Remarketing Agent; provided that such resignation shall not be effective unless and until a

successor Calculation Agent is appointed and assumes the position in accordance with the provisions hereof. Upon receipt of such notice, during any Interest Rate Mode in which the services of a Calculation Agent are required under this Indenture, the Borrower will diligently seek to appoint a successor Calculation Agent to assume the duties of the Calculation Agent on the effective date of the prior Calculation Agent's resignation with the prior consent of the Bank. In the event that the Borrower shall fail to appoint a successor Calculation Agent in a timely manner when required under this Indenture, the Trustee shall either (i) appoint a Calculation Agent to act as such, or (ii) petition any court of competent jurisdiction for the appointment of a successor Calculation Agent, and such court may thereupon, after such notice, if any, as it may deem proper, appoint such successor Calculation Agent. Pending such appointment the Trustee has no duty or obligation to perform the functions of the Calculation Agent. The Calculation Agent may be removed at any time by written notice from the Borrower to the Trustee, the Tender Agent, the Bank, and the Remarketing Agent, provided that such removal shall not be effective unless and until a successor Calculation Agent is appointed by the Borrower and assumes such position in accordance with the provisions hereof.

(c) The Trustee shall, within 30 days of the resignation or removal of the Calculation Agent or the appointment of a successor Calculation Agent, give notice thereof to the registered owners of the Bonds.

(d) Promptly after determining any interest rate required to be determined by the Calculation Agent under this Indenture, the Calculation Agent shall provide Electronic Notice to the Trustee, the Bank, if applicable, the Tender Agent, the Remarketing Agent and any requesting Holder.

Section 2.09 Authentication. No Bond shall be valid or become obligatory for any purpose or entitled to any security or benefit under this Indenture unless and until a certificate of authentication on such Bond substantially in the form hereinabove set forth shall have been duly executed by the Trustee, and such executed certificate of Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered and is entitled to the security and benefit under this Indenture. Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds.

Section 2.10 Form of Bonds. The Bonds issued under this Indenture shall be substantially in the form hereinabove set forth with such variations, omissions and insertions as are permitted or required by this Indenture.

Section 2.11 Delivery of Bonds. Upon the execution and delivery of this Indenture, Issuer shall execute and deliver to Trustee and Trustee shall authenticate the Bonds and deliver them to or for the account of the purchaser or purchasers thereof as directed by Issuer as hereinafter in this section provided.

Prior to the delivery by Trustee of the Bonds there shall be filed with Trustee:

1. A copy, duly certified by the City Clerk of the Issuer of the Ordinance adopted by Issuer authorizing the issuance and sale of the Bonds and the execution and delivery of this Indenture and the Agreement.

2. Original executed counterparts of the Agreement, the Continuing Covenant Agreement and this Indenture.

3. A request and authorization to Trustee on behalf of Issuer and signed by its Mayor and City Clerk to authenticate and deliver the Bonds to the purchasers therein identified upon payment to Trustee, but for the account of Issuer, of a sum specified in such request and authorization plus accrued interest thereon to the date of delivery.

Upon the delivery of the Bonds in to the purchaser or purchasers thereof as herein provided, the proceeds of the payment received by the Trustee from such purchaser or purchasers shall be deposited in the Refunding Fund and the Cost of Issuance Fund, pursuant to Article V hereof.

Section 2.12 Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, Issuer may execute and Trustee may authenticate a new Bond of like date, maturity and denomination to that mutilated, lost, stolen or destroyed; provided that in the case of any mutilated Bond, such mutilated Bond, shall first be surrendered to Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to Issuer and Trustee evidence of such loss, theft or destruction satisfactory to Issuer and Trustee, together with an indemnity satisfactory to them. In the event any such Bond shall have matured, instead of issuing a duplicate Bond, Issuer may pay the same without surrender thereof. Issuer and Trustee may charge the holder or owner of such Bond with their reasonable fees and expenses in this connection.

Section 2.13 Registration of Bonds; Persons Treated as Owners. Trustee is hereby constituted and appointed the Bond Registrar of Issuer with respect to the Bonds. Trustee shall cause records for the registration and for the transfer of the Bonds as provided in this Indenture to be kept. The Bonds shall be registered as to principal and interest on such records upon presentation thereof to Trustee which shall make notation of such registration thereon. The Bonds may thereafter be transferred only upon an assignment duly executed by the Registered Owner or his attorney duly authorized in writing in such form as shall be satisfactory to Trustee, such transfer to be made on such records and endorsed on such Bond by Trustee. The principal and interest of all Bonds shall be payable only to or upon the order of the Registered Owner or his legal representative.

The person in whose name the Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and premium, if any, and interest on any Bond shall be made only to or upon the written order of the Registered Owner thereof or his legal representative, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 2.14 Destruction of Bonds. Whenever any outstanding Bond shall be delivered to Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount represented thereby, or for replacement pursuant to Section 2.12, such Bond shall be promptly canceled and cremated or otherwise destroyed by Trustee pursuant to Securities and Exchange Commission regulations.

Section 2.15 Additional Bonds. No additional bonds shall be issued under the terms of this Indenture.

Section 2.16 Issuance of Refunding Bonds. The Issuer may, but shall not be obligated to, upon application by the Borrower, issue refunding bonds, to be authenticated and delivered, to the extent permitted by law, at any time for the purpose of providing funds for refunding, so long as the exemption from federal income taxation of interest on any Bonds then outstanding is not adversely affected, all the Bonds then outstanding (including the payment of any redemption premium thereon). Refunding bonds shall be designated substantially as the Bonds to be refunded and shall be stated to mature in each year or years, and shall bear interest at a rate or rates, as set forth in the Indenture pursuant to which the refunding bonds are to be issued and as may then be permitted by law, and may be made redeemable at such times and prices all as may be provided in the Indenture authorizing the issuance of the refunding bonds. No refunding bonds shall be issued unless the proceeds (excluding accrued interest but including any premium) of the refunding bonds, plus any moneys to be withdrawn from any Fund or account created hereunder for such purpose and any other moneys made available for such purpose, together with the interest that shall accrue upon any direct obligations of United States Government or obligations guaranteed by the United States Government as to payment of principal and interest, shall not be less than an amount sufficient to pay the principal of and the redemption premium, if any, on the Bonds to be refunded, the principal installment of any Bonds then outstanding to become due prior to any such redemption date, and the interest which will accrue thereon to the redemption date or maturity dates occurring prior thereto, and all expenses incident to such financing.

(End of Article II)

ARTICLE III

REDEMPTION AND PURCHASE OF BONDS

Section 3.01 Terms of Redemption.

(a) Subject to any limitations set forth in the Continuing Covenant Agreement, during any Index Rate Period, the Bonds are subject to redemption on any Interest Payment Date at the direction of the Borrower, in whole or in part in such amounts as are designated by the Borrower at a Redemption Price equal to the principal amount of Bonds called for redemption, plus interest accrued thereon, if any, to the date fixed for redemption, together with any redemption premium or other amount provided for in the Continuing Covenant Agreement.

(b) Long-Term Rate Bonds are subject to redemption by the Borrower on any Purchase Date therefor, and Long-Term Rate Bonds are subject to redemption by the Borrower on any date after expiration of the applicable call protection period described below, as a whole or in part in such amounts and in such maturities as are designated by the Borrower (or if the Borrower fails to designate such maturities, in inverse order of maturity) and by lot within a maturity, at a Redemption Price equal to the principal amount of Bonds called for redemption, plus accrued interest, if any, to the date fixed for redemption, without premium.

Length of Long-Term Rate Period or Years Remaining to Maturity as of Conversion Date	Initial Redemption Dates (Anniversary of Long-Term Conversion Date)
Equal to or less than 10 years	Not subject to optional redemption
Greater than 10 years	10th anniversary

The foregoing notwithstanding, if the Borrower delivers to the Trustee and the Remarketing Agent prior to any Conversion Date or Purchase Date (for Bonds remaining Long-Term Rate Bonds for an additional Long-Term Interest Rate Period) (1) a notice containing alternative call protection periods and/or Redemption Prices for Long-Term Rate Bonds and (2) an Opinion of Bond Counsel addressed to the Trustee and the Remarketing Agent to the effect that the modifications to the call protection periods and/or Redemption Prices will not, in and of themselves, cause the interest on such Bonds to be includable in the gross income of Holders for purposes of federal income taxation, then the Bonds shall be subject to redemption by the Borrower pursuant to the call protection periods and at the Redemption Prices, if any, set forth in that notice, and this Section 3.01(b) shall be deemed to be modified as set forth in such notice.

(c) Daily Rate Bonds and Weekly Rate Bonds are subject to redemption and payment prior to maturity, on any Interest Payment Date at the option of the Issuer, which shall be exercised upon the written direction of the Borrower (subject to any applicable provisions of the Credit Agreement and with the consent of the Credit Bank), in whole or in part with respect to Bonds which accrue interest at Daily or Weekly Rates, at a redemption price equal to 100% of the principal amount redeemed, plus interest accrued to the redemption date.

(d) Unremarketed Bonds are subject to special mandatory redemption by the Borrower, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed plus accrued interest thereon (at the Default Rate) to but not including the date of such redemption, on the dates and in the manner set forth in the Continuing Covenant Agreement.

Section 3.02 Selection of Bonds for Redemption. Whenever provision is made in this Indenture for the redemption of less than all of the Bonds of any maturity, the Trustee, as directed by the Borrower, shall select the Bonds to be redeemed from all Bonds in such manner as may be designated by the Borrower or, if the Borrower shall have failed to so designate, by lot, provided, that, with respect to Index Rate Bonds or Long-Term Rate Bonds of the Bonds selected for redemption, the Bonds shall be redeemed in the following order of priority (and by lot within each priority other than the last priority):

First: any Bonds which have been tendered to the Tender Agent for purchase on or prior to the date fixed for redemption; and

Second: any other Bonds.

The Trustee shall promptly notify the Borrower in writing of the Bonds or portions thereof so selected for redemption.

Section 3.03 Notice of Redemption. The Issuer shall, at least 45 days prior to the redemption date fixed by the Issuer pursuant to the written direction of the Borrower (unless a shorter notice shall be satisfactory to the Trustee) give written notice to the Trustee directing the Trustee to call Bonds for redemption and give notice of redemption. Each notice of redemption shall state (a) the series and the maturities of the Bonds or portions thereof which are to be redeemed, (b) the date of redemption, (c) the place or places where the redemption will be made, including the name and address of the Trustee, (d) the Redemption Price, (e) the CUSIP numbers assigned to the Bonds to be redeemed, (f) in case of any Bonds to be redeemed in part only, the amount of such Bonds to be redeemed, (g) the original dated date, interest rate (in the case of Bonds bearing interest at Long Term Rates to maturity), and stated maturity date of each Bond to be redeemed and (h) if funds shall not be irrevocably deposited with the Trustee to pay the Redemption Price of the Bonds to be redeemed plus interest accrued thereon (if any) to the date fixed for redemption on or prior to the date that the redemption notice is first given as aforesaid, such notice shall state that any redemption is conditional on such funds being deposited with the Trustee on the redemption date and that a failure to make such deposit shall not constitute an Event of Default hereunder. Each such notice shall also (1) state that if, on the date fixed for redemption, the Trustee holds sufficient moneys therefor, then, on the date of redemption, the Redemption Price of the Bonds to be redeemed, plus interest accrued thereon (if any) to the date fixed for redemption, shall become due and payable and that from and after said date, interest on such Bonds shall cease to accrue and be payable, and (2) require that on said date such Bonds shall be surrendered, if required pursuant to the terms thereof. Notwithstanding the foregoing, this Section shall not apply in the case of any mandatory redemption of Bonds under this Indenture, and the Trustee shall call Bonds for redemption and shall give notice of redemption pursuant to such mandatory redemption requirements without the necessity of any action by the

Issuer or the Borrower and whether or not the Trustee shall hold in the Bond Fund moneys available and sufficient to effect the required redemption.

The Trustee shall take the following actions with respect to such notice of redemption:

(A) at least 30 but not more than 60 days prior to the redemption date for Index Rate Bonds and Long-Term Rate Bonds and at least 15 days prior to the redemption date for Daily Rate Bonds or Weekly Rate Bonds, such notice shall be given to the respective Holders of Bonds designated for redemption by Electronic Notice, confirmed by first class mail, postage prepaid, at their addresses appearing on the registration books maintained by the Trustee as of the close of business on the day before such notice is given; provided that failure of the Trustee to give such notice to any Holder of Bonds or any defect in such notice shall not affect the validity of the redemption of any other Bonds. Notwithstanding anything to the contrary contained herein, in the event all of the Bonds to be redeemed are held in book-entry form by the Nominee, the notice shall be made by Electronic Notice and the notice period required pursuant to this Section 3.3(A) may be less than 30 days prior to the redemption date, as applicable, provided such notice period complies with the operational guidelines of the then current Securities Depository in effect 60 days prior to the date of the scheduled redemption.

(B) A second notice of redemption shall be delivered no more than 60 days after the redemption date, by the same means as the first notice, to any Holder of Bonds who has not turned Bonds in for redemption within 20 days after the redemption date, provided that failure of the Trustee to give such notice to a Holder of Bonds or any defect in such notice shall not affect the validity of the redemption of such Bonds.

(C) The Trustee, if requested by the Borrower, shall also give notice of redemption by Electronic Notice to any securities depositories and/or securities information services as shall be designated in a Certificate of the Borrower.

The Borrower may instruct the Trustee to provide conditional notice of redemption, which may be conditioned upon the receipt of moneys or any other event. The Trustee shall rescind any redemption as soon as practicable by notice of rescission if directed to do so by the Borrower prior to the date of redemption. The Trustee shall give notice of rescission by the same means as is provided for the giving of a notice of redemption. The redemption shall be deemed canceled once the Trustee has given notice of rescission. Neither the rescission nor the failure of funds being made available in part or in whole on or before a redemption date shall constitute an Event of Default.

Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Borrower. Notwithstanding anything to the contrary set forth in this Section 3.03 the Trustee shall not be required to provide any notices of redemptions, other than optional redemptions, during any Index Rate Period.

Section 3.04 Partial Redemption of Bonds. Upon surrender of any Bond redeemed in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder

thereof, at the expense of the Borrower, a new Bond or Bonds, of Authorized Denominations and of the same series and maturity, equal in aggregate principal amount to the unredeemed portion of the Bond surrendered: provided, however, that during any Index Rate Period partial redemptions shall be made without the requirement for presentation and surrender by the Bank.

Section 3.05 Effect of Redemption. Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price of, together with interest accrued thereon, if any, to the redemption date on, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice together with interest accrued thereon, if any, to the redemption date, interest on the Bonds (or portions thereof) so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Holders of said Bonds shall have no rights in respect thereof except to receive payment of said Redemption Price and accrued interest, if any.

All Bonds redeemed pursuant to the provisions of this Article, if any, shall be canceled upon surrender thereof in accordance with the Trustee's customary procedures.

Section 3.06 The Tender Agent. U.S. Bank National Association, is hereby appointed by the Issuer as Tender Agent for the Bonds. The Tender Agent shall designate its principal office and signify its acceptance of the duties and obligations imposed upon it hereunder with respect to the Bonds by a written instrument of acceptance delivered to the Issuer and the Trustee. The Tender Agent shall be responsible:

(a) To hold all Index Rate Bonds, Daily Rate Bonds, Weekly Rate Bonds and Long-Term Rate Bonds delivered to it for purchase hereunder as agent and bailee of, and in escrow for the benefit of, the respective Holders which shall have so delivered such Bonds until moneys representing the Purchase Price of such Bonds shall have been delivered to or for the account of or to the order of such Holders;

(b) To hold all moneys delivered to it hereunder for the purchase of Bonds as agent and bailee of, and in escrow for the exclusive benefit of, the person or entity which shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to or for the account of such person or entity;

(c) To keep such books and records as shall be consistent with prudent industry practice and, upon reasonable advance notice, to make such books and records available for inspection by the Borrower, the Trustee, the Bank, if applicable, and the Remarketing Agent; and

(d) To perform the foregoing duties and obligations subject to and in accordance with the provisions of this Indenture relating thereto and to perform such other duties and responsibilities (including, without limitation, with respect to the Purchase Fund pertaining to the Bonds) as are provided in this Indenture to be performed by the Tender Agent.

The Tender Agent in performing its duties as set forth herein shall have the rights and immunities including, but not limited to, exculpations and indemnifications, of the Trustee as set forth in this Indenture to the same extent and as fully for all intents and purposes as though such rights and immunities had been set forth at length with respect to the Tender Agent.

Section 3.07 Qualifications of Tender Agent.

(a) The Tender Agent shall be duly organized under the laws of the United States of America or any state or territory thereof and be (1) a commercial bank and trust company or (2) a national banking association, have a combined capital stock, surplus and undivided profits of at least Fifty Million Dollars (\$50,000,000) and be authorized by law to perform all duties imposed upon it by this Indenture. At all times at which the Bonds are not in the Book Entry System, the Tender Agent shall have an office or agency in New York, New York. The Tender Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 60 days' notice to the Borrower, the Trustee, the Bank, if applicable, and each Remarketing Agent, provided that such resignation shall not take effect until the appointment and acceptance of a successor Tender Agent. The Tender Agent may be removed at any time upon 30 days' written notice by the Borrower upon written notice to the Tender Agent, the Trustee, the Bank, if applicable, and each Remarketing Agent, provided that such removal shall not take effect until the appointment of, and the acceptance of appointment by, a successor Tender Agent.

(b) If no successor Tender Agent shall have been appointed and have accepted appointment within 30 days of the giving notice of resignation or notice of removal as aforesaid, the Borrower may appoint a successor Tender Agent to act until a successor Tender Agent is appointed pursuant to the foregoing provisions of this Section.

(c) If no appointment of a successor Tender Agent shall have been made pursuant to the foregoing provisions of this Section, the Tender Agent resigning or being removed or any Holder (on behalf of himself and all other Holders) may petition any court of competent jurisdiction for the appointment of a successor Tender Agent, and such court may thereupon, after such notice, if any, as it may deem proper, appoint such successor Tender Agent.

(d) Any successor Tender Agent appointed under this Indenture shall signify its acceptance of such appointment by executing and delivering to the Borrower, the Trustee, the Bank, if applicable, each Remarketing Agent and to its predecessor Tender Agent a written acceptance thereof, and thereupon (i) such successor Tender Agent, without further act, deed or conveyance, shall become vested with all the monies, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Tender Agent, with like effect as if originally named Tender Agent herein, and (ii) the Tender Agent shall pay over, transfer, assign and deliver to the successor Tender Agent all the right, title and interest of the Tender Agent in and to all money and all other property held by the Tender Agent subject to and in accordance with this Indenture; but nevertheless at the request of the Borrower, the successor Tender Agent, any Remarketing Agent, such predecessor Tender Agent shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Tender Agent all the right, title and interest

of such predecessor Tender Agent in and to all money and all other property held by it under this Indenture. Upon request of the successor Tender Agent, the Issuer shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Tender Agent all money, estates, properties, rights, powers, trusts, duties and obligations of the predecessor Tender Agent. Upon acceptance by a successor Tender Agent as provided in this subsection, the Borrower shall give notice of the succession of such Tender Agent by Electronic Notice, confirmed by first class mail, to the Holders at the addresses shown on the registration books maintained by the Trustee. If the Borrower fails to deliver such notice within 15 days after the acceptance of appointment by the successor Tender Agent, the Trustee shall cause such notice to be delivered to such Holders within 30 days of such acceptance at the expense of the Borrower.

(e) Any Person into which the Tender Agent may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any Person to which the Tender Agent may sell or transfer all or substantially all of its trust or trust-related business, provided such Person shall be eligible under Section 3.07, shall be the successor to such Tender Agent, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding. Upon any such merger, consolidation or sale, the successor Tender Agent shall notify the Borrower, the Bank, if applicable, each Remarketing Agent, and the Trustee and, thereafter, shall deliver to the registered owners of all Outstanding Bonds at the addresses appearing on the registration books maintained by the Trustee notice of the succession of such Tender Agent to the duties of the Tender Agent hereunder.

Section 3.08 Purchase of Bonds by Tender Agent.

(a) The Tender Agent shall establish a special trust fund to be designated the Purchase Fund; and, within such Purchase Fund, the Tender Agent shall establish two separate accounts to be designated the Remarketing Account and the Undelivered Bond Payment Account. Only the Tender Agent shall have any right of withdrawal from the Purchase Fund with respect to the Bonds; and such Purchase Fund and such right of withdrawal shall be for the sole and exclusive benefit of the Holders of the Bonds subject to purchase on a Purchase Date; and the Borrower shall have no legal, beneficial or equitable interest in such Purchase Fund. Amounts on deposit in the Purchase Fund shall be held uninvested and without bearing interest. Amounts in the Purchase Fund shall not be commingled with amounts in the purchase funds for any other series of bond of the Issuer; and amounts in a particular account of the Purchase Fund shall not be commingled with amounts in any other account of such Purchase Fund. Any moneys received by the Tender Agent by reason of the remarketing by the Remarketing Agent with respect to the Bonds subject to purchase on a Purchase Date shall be deposited by the Tender Agent in the Remarketing Account of the Purchase Fund and applied by the Tender Agent in accordance with Section 3.08(d) and Section 3.08(e). Any moneys received by the Tender Agent representing amounts paid by the Borrower for the purchase of Bonds subject to purchase on a Purchase Date shall be deposited by the Tender Agent in the Purchase Fund and applied by the Tender Agent in accordance with Section 3.08(d) and Section 3.08(e). Moneys shall be transferred to the Undelivered Bond Payment Account within the Purchase Fund from the other accounts of such

Purchase Fund, in accordance with Section 3.08(d); and moneys shall be applied from the Undelivered Bond Payment Account within a Purchase Fund in accordance with Section 3.08(e).

Simultaneously with the giving (pursuant to Section 3.09(f)) of notice of any mandatory tender of Bonds pursuant to Section 3.09, the Trustee shall give notice by telephone or Electronic Notice, promptly confirmed by a written notice, to the Tender Agent, the Remarketing Agent, and the Borrower specifying the applicable Purchase Date, the aggregate principal amount and Purchase Price of Bonds subject to mandatory tender on such Purchase Date, and the portion, if any, of such Purchase Price representing accrued and unpaid interest on such Bonds to such Purchase Date.

(b) Not later than Noon, New York City time, on each Purchase Date, the Tender Agent shall determine the amount, if any, by which the Purchase Price of the Bonds to be purchased on such Purchase Date exceeds the amount of the proceeds of the remarketing of such Bonds by the Remarketing Agent for the Bonds on deposit in the Remarketing Account of the Purchase Fund at such time; and

(1) (A) Not later than 12:30 p.m., New York City time, on such Purchase Date, the Tender Agent shall notify the Borrower that the amount of such excess is the amount payable by the Borrower to the Tender Agent not later than 2:30 p.m., New York City time, on such Purchase Date for purposes of causing the Tender Agent to purchase, on behalf of the Borrower, Bonds having a Purchase Price equal to such excess (and, thereby, for the Tender Agent to have sufficient funds to pay the Purchase Price of all Bonds subject to purchase on such Purchase Date), and (B) not later than 2:30 p.m., New York City time, on such Purchase Date, the Tender Agent shall deposit the amount received by the Tender Agent from the Borrower for such purpose in the Purchase Fund.

(c) Not later than 3:00 p.m., New York City time, on each Purchase Date, the Tender Agent shall disburse the Purchase Price of Bonds to be purchased on such Purchase Date to the Holders thereof (upon surrender thereof for payment of such Purchase Price), from the following sources and in the following order of priority:

(1) Moneys on deposit in the Remarketing Account of the Purchase Fund (representing the proceeds of the remarketing by the Remarketing Agent with respect to the Bonds); and

(2) Moneys on deposit in the Purchase Fund (representing amounts paid by the Borrower to the Tender Agent for the purchase of such Bonds).

(d) Any moneys remaining in the Remarketing Account or the Purchase Fund and representing (but not exceeding) the Purchase Price of Bonds subject to purchase on the applicable Purchase Date but not tendered and delivered for purchase on the applicable Purchase Date (following the payments from such Purchase Fund described in Section 3.08(c)), shall be transferred by the Tender Agent to the Undelivered Bond Payment Account of such Purchase Fund not later than 3:30 p.m., New York City time, on the applicable Purchase Date (and retained

therein, subject to Section 3.08, for application in accordance with Section 3.08(e)). Any moneys remaining in the Remarketing Account, and the Purchase Fund on the applicable Purchase Date (after the payments from such Purchase Fund described in Section 3.08(c) and the transfer described in the preceding sentence of this Section 3.08(d)) shall be wire transferred by the Tender Agent, in immediately available funds, prior to the close of business on such Purchase Date, to the Remarketing Agent, and the Borrower, respectively.

(e) Moneys transferred to the Undelivered Bond Payment Account of the Purchase Fund on any Purchase Date shall be applied, on or after such Purchase Date, by the Tender Agent to pay the Purchase Price of Undelivered Bonds in respect of which they were so transferred, upon the surrender of such Bonds to the Tender Agent for such purpose.

(f) Subject only to the provisions of this Section 3.08 permitting the application thereof for the purposes and on the terms and conditions set forth herein, there are hereby pledged to secure the payment of the Purchase Price of the Bonds tendered and/or deemed tendered for purchase in accordance with this Indenture all the amounts held in the Purchase Fund (and the accounts therein). Said pledge shall constitute a lien on and security interest in such assets and shall attach, be perfected and be valid and binding from and after delivery by the Trustee of the Bonds, without any physical delivery thereof or further act.

(g) The Issuer hereby transfers in trust, grants a security interest in and assigns to the Tender Agent, for the benefit of the Holders of the Bonds, as security for the payment of the Purchase Price of Bonds tendered and/or deemed tendered for purchase in accordance with this Indenture, all of the amounts held in the Purchase Fund (and the accounts therein).

Section 3.09 Mandatory and Optional Purchase of Bonds.

(a) Bonds shall be subject to mandatory tender for purchase by the Tender Agent at the Purchase Price on the following Purchase Dates with respect to the Bonds:

(1) Each Bank Purchase Date;

(2) Each Conversion Date for the Bonds (unless such Conversion Date is already a Purchase Date, in which case no separate mandatory tender by operation of this Section 3.09 shall occur);

(3) Each Long-Term Rate Mandatory Purchase Date for such Bonds;
and

(4) Upon the 5th Business Day prior to the expiration or termination of the Letter of Credit if the Trustee has not received evidence as required by Sections 7.01 and 7.02 of this Indenture by the 30th day preceding the scheduled Letter of Credit expiration or termination date of either an extension of the then existing Letter of Credit or the issuance of an Alternate Letter of Credit meeting the requirements therefor set forth in this Indenture.

(b) Bonds shall be subject to optional tender for purchase by the Tender Agent at the Purchase Price on the following Purchase Dates with respect to the Bonds:

(1) Bonds accruing interest at a Daily Rate may be tendered for purchase at the purchase price payable in immediately available funds on any Business Day upon Electronic Notice of tender given to the Tender Agent not later than 10:15 a.m., New York City Time, on the purchase date.

(2) Bonds accruing interest at a Weekly Rate may be tendered for purchase at the purchase price payable in immediately available funds on any Business Day upon Electronic Notice of tender given to the Tender Agent not later than 5:00 p.m., New York City Time, on a Business Day not fewer than 7 days prior to the purchase date.

(c) Bonds to be purchased pursuant to Section 3.09 shall be delivered by the Holders thereof to the Tender Agent (together with necessary assignments and endorsements) at or prior to 1:00 p.m. New York City time on the applicable Purchase Date.

(d) Any Bonds to be purchased by the Tender Agent pursuant to this Section 3.09 that are not delivered for purchase on or prior to the Purchase Date, for which there has been irrevocably deposited in trust with the Trustee or the Tender Agent an amount sufficient to pay the Purchase Price of such Bonds, shall be deemed to have been tendered to the Tender Agent for purchase, and the Holders of such Bonds shall not be entitled to any payment (including any interest to accrue on or after the Purchase Date) other than the respective Purchase Prices of such Bonds, and such Bonds shall not be entitled to any benefits of this Indenture, except for payment of such Purchase Price out of the moneys deposited for such payment as aforesaid, subject, however, to the defeasance provisions under this Indenture.

(e) In addition to any other requirements set forth in this Indenture, notices of mandatory tender of Bonds delivered to Holders shall:

(1) Specify the proposed Purchase Date and the event which gives rise to the proposed Purchase Date;

(2) State that the Bonds shall be subject to mandatory tender for purchase on such date;

(3) State that Holders may not elect to retain Bonds subject to mandatory tender;

(4) State that all Bonds subject to mandatory tender shall be required to be delivered to the Principal Corporate Trust Office of the Tender Agent at or before 1:00 p.m., New York City time, on the Purchase Date;

(5) State that if the Holder of any Bond subject to mandatory tender fails to deliver such Bond to the Tender Agent for purchase on the Purchase Date, and if the Tender Agent is in receipt of funds sufficient to pay the Purchase Price

thereof, such Bond (or portion thereof) shall nevertheless be deemed purchased on the Purchase Date and ownership of such Bond (or portion thereof) shall be transferred to the purchaser thereof;

(6) State that any Holder that fails to deliver any Bond for purchase shall have no further rights thereunder or under this Indenture except the right to receive the Purchase Price thereof upon presentation and surrender of said Bond to the Tender Agent and that the Trustee will place a stop transfer against the Bonds subject to mandatory tender registered in the name of such Holder(s) on the registration books;

(7) State that provided that moneys sufficient to effect such purchase shall have been provided through (A) the remarketing of the Bonds by the Remarketing Agent, or (B) funds provided by the Borrower (if applicable), all such Bonds shall be purchased; and

(8) In the case of mandatory tender upon any proposed conversion of the Bonds, state that such conversion and such mandatory tender will not occur by reason of the occurrence of certain events specified in Section 2.03(d) or Section 2.04, as applicable (and summarize such events).

(f) Notice of mandatory tender of the Bonds by reason of a proposed Conversion Date shall be given in accordance with Section 2.03(d) or Section 2.04, as applicable. Notice of mandatory tender of the Bonds by reason of other events described in Section 3.09 shall be given by the Trustee (1) to the Holders of the Bonds subject to mandatory tender (at their addresses as they appear on the registration books of the Trustee as of the date of such notice) by Electronic Notice, confirmed by first class mail, and (2) to the Borrower, the Remarketing Agent, the Tender Agent, and the Calculation Agent, if any, by Electronic Notice not fewer than 10 days prior to the applicable Purchase Date.

(g) If, following the giving of notice of mandatory tender of Bonds pursuant to Section 3.09(e), an event occurs which, in accordance with the terms of this Indenture causes such mandatory tender not to occur, then (i) the Trustee shall so notify the Holders of such Bonds (at their addresses as they appear on the registration books of the Trustee on the date of such notice), by Electronic Notice, confirmed by first class mail, as soon as may be practicable after the applicable Purchase Date, and (ii) the Tender Agent shall return to their Holders any such Bonds tendered to the Tender Agent in connection with such mandatory tender of such Bonds.

Section 3.10 Insufficient Funds for the Payment of Purchase Price.

(a) If the funds available for the purchase of Bonds subject to purchase on a Purchase Date are insufficient to purchase all of the Bonds subject to purchase on such Purchase Date (including Undelivered Bonds), then no purchase of any Bonds shall occur on such Purchase Date and, on such Purchase Date, the Tender Agent shall (i) return all of such Bonds that were tendered to the Holders thereof, (ii) return all moneys received by the Tender Agent for the purchase of such Bonds to the respective Persons that provided such moneys (in the

respective amounts in which such moneys were so provided), and (iii) notify the Trustee of the foregoing.

(b) The failure to purchase Bonds on a Purchase Date shall constitute an Event of Default.

(c) If Bonds are not purchased when required pursuant to Section 3.09(a)(1) or (3), such Bonds shall bear interest at the Default Rate from such Purchase Date until such date that all of such Bonds have been remarketed or redeemed in full.

Section 3.11 The Remarketing Agents.

(a) One or more Remarketing Agents may be appointed with respect to the Bonds from time to time by the Borrower. Each Remarketing Agent appointed with respect to the Bonds in accordance with this Indenture shall designate its principal office and signify its acceptance of the duties and obligations imposed upon it as described herein by a written instrument of acceptance delivered to the Borrower and the Trustee, or by executing and delivering a Remarketing Agreement, in either case under which such Remarketing Agent (subject to Section 3.11) will agree, particularly:

(1) To hold all moneys delivered to it hereunder for the purchase of Bonds in trust for the exclusive benefit of the Person or Persons that shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to or for the account of such Person or Persons;

(2) To keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Borrower and the Trustee at all reasonable times;

(3) To determine the Long-Term Rates, Daily Rates and Weekly Rates with respect to the Bonds and give notice of such rates or spread, as applicable in accordance with Article II;

(4) To offer for sale and use its best efforts to find purchasers for the Bonds tendered for purchase, any such sale to be made at a price equal to 100% of the principal amount thereof plus accrued interest to the Purchase Date, in accordance with the terms of this Indenture;

(5) To deliver to the Tender Agent all Bonds held by it in accordance with the terms of this Indenture and the Remarketing Agreement; and

(6) To perform such other duties and responsibilities (including, without limitation, with respect to Bank Bonds) as are provided in this Indenture to be performed by the Remarketing Agent.

(b) One or more firms may serve as co-Remarketing Agents hereunder provided that each co-Remarketing Agent satisfies the requirements of Section 3.12. If co-

Remarketing Agents have been appointed and are performing the duties of Remarketing Agent hereunder, all references herein to the Remarketing Agent shall be deemed to refer to all the Remarketing Agents acting jointly; provided that the Remarketing Agreement may provide that one firm may perform certain specified duties hereunder in its sole capacity.

(c) In the event that the Remarketing Agent shall be dissolved, or if the property or affairs of such Remarketing Agent shall be taken under control of any state or federal court or administrative body because of bankruptcy or insolvency, or for any other reason, the office of the Remarketing Agent is (or is deemed by the Trustee to be) vacant, and the Borrower shall not have appointed a successor as such Remarketing Agent, the Bank shall ipso facto be deemed to be the Remarketing Agent for all purposes of this Indenture until the appointment by the Borrower of a successor to such Remarketing Agent; provided, however, that the Bank, in its capacity as such Remarketing Agent, shall not be required to remarket such Bonds or determine the interest rate on such Bonds hereunder.

(d) Each Remarketing Agent may in good faith hold any Bonds or any other form of indebtedness issued by the Issuer; own, accept or negotiate any drafts, bills of exchange, acceptances or obligations thereof; and make disbursements therefor and enter into any commercial or business arrangement therewith; all without any liability on the part of such Remarketing Agent for any real or apparent conflict of interest by reason of any such actions.

Section 3.12 Qualifications of Remarketing Agent. Each Remarketing Agent shall be authorized by law to perform all the duties imposed upon it hereunder. The Remarketing Agent may at any time resign and be discharged of the duties and obligations of the Remarketing Agent described in this Indenture by giving at least 30 days' notice to the Borrower, the Trustee, the Tender Agent, and the Rating Agencies. The Remarketing Agent may be removed at any time upon written notice by the Borrower to such Remarketing Agent, the Tender Agent, the Trustee, and the Rating Agencies.

Section 3.13 Sale of Bonds by Remarketing Agent.

(a) Upon the receipt by the Remarketing Agent notice of mandatory tender of Bonds pursuant to Section 3.09(f), such Remarketing Agent shall offer for sale and use its best efforts subject to the terms of the Remarketing Agreement to solicit purchases of Bonds subject to purchase on the applicable Purchase Date at a price equal to the Purchase Price.

(b) The Remarketing Agent shall direct that the proceeds of all purchases of Bonds solicited and arranged by such Remarketing Agent be paid to the Tender Agent (for deposit in the Remarketing Account of the Purchase Fund), at or prior to Noon, New York City time, on the applicable Purchase Date, in immediately available funds (and, promptly upon receipt thereof, the Tender Agent shall deposit such proceeds (against delivery of remarketed tendered Bonds to the Remarketing Agent) in the Remarketing Account of the Purchase Fund).

(c) At or prior to 4:30 p.m., New York City time, on the Business Day next preceding each Purchase Date with respect to the Bonds, the Remarketing Agent shall give notice by telephone (promptly confirmed by Electronic Notice) to the Tender Agent specifying: (1) the

aggregate principal amount and Purchase Price of Bonds subject to purchase on such Purchase Date for which such Remarketing Agent has received indications of interest from prospective purchasers, and (2) the aggregate principal amount and Purchase Price of Bonds subject to purchase on such Purchase Date for which such Remarketing Agent has not received indications of interest from prospective purchasers.

(d) The Remarketing Agent shall offer for sale and use its best efforts to arrange for the sale and remarketing of all Bonds subject to purchase on a Purchase Date that are purchased with moneys provided by the Borrower to the Tender Agent for such purpose (as described in Section 3.08(b)).

Section 3.14 Delivery of Bonds.

(a) Upon application of the moneys described in Section 3.13(b) to the purchase of Bonds on a Purchase Date pursuant to Section 3.08(c)(1) (and/or to the transfer thereof to the Undelivered Bond Payment Account of the Purchase Fund on a Purchase Date pursuant to Section 3.08(d)), the Tender Agent shall cause the Trustee to register the transfer of Bonds purchased therewith in the names of the purchasers thereof in accordance with information provided by the Remarketing Agent for such purpose and to have such transferred Bonds available for delivery against payment therefor.

(b) Upon the application of moneys described in Section 3.08(b)(1) to the purchase of Bonds on a Purchase Date pursuant to Section 3.08(c)(2) (and/or to the transfer thereof to the Undelivered Bond Payment Account of the Purchase Fund on a Purchase Date pursuant to Section 3.08(d)), the Bonds purchased (or, in the case of such transfer, provided to be purchased) with such moneys shall be registered in the name of the Borrower and shall, at the direction of the Borrower, be delivered to the Trustee for cancellation (and canceled by the Trustee) or delivered to the Tender Agent for the account of the Borrower and remarketed in accordance with Section 3.13.

(End of Article III)

ARTICLE IV

GENERAL COVENANTS

Section 4.01 Payment of Principal and Premium, if any, and Interest. Issuer covenants that it will promptly pay the principal of and premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in said Bonds according to the true intent and meaning thereof, but solely from the payments and other amounts pledged therefor under the Agreement which are from time to time held by Trustee in the Bond Fund or any other Fund created by this Indenture. The principal of and premium, if any, and interest on the Bonds are payable solely from payments and other amounts derived from the Agreement and said payments are secured as provided herein and in the Agreement, which payments and other amounts are hereby specifically pledged to the payment thereof in the manner and to the extent herein specified, and nothing in the Bonds or in this Indenture shall be construed as pledging any other funds or assets of Issuer. Neither the State of Florida nor Issuer nor any political subdivision of the State of Florida shall in any event be liable for the payment of the principal of and premium, if any, or interest on any of the Bonds except to the extent that payments and moneys pledged herein are sufficient therefor. Neither the members of the Issuer nor any official executing the Bonds shall be personally liable for the payment of the principal, premium, if any, or interest on the Bonds.

Section 4.02 Performance of Covenants; Issuer. Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture and in the Agreement, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto. Issuer covenants that it is duly authorized under the Constitution and laws of the State of Florida, including particularly and without limitation the Act, to issue the Bonds authorized hereby and to execute this Indenture to secure the property described herein, to assign the Agreement and to pledge the payments under the Agreement and other amounts hereby pledged in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken.

Except for the matters set forth in Section 4.01 hereof, Issuer shall not be obligated to take any action or execute any instrument until it shall have been requested to do so by Borrower or Trustee, and at Issuer's option has received from Borrower reimbursement for Issuer's expenses incurred or to be incurred in connection with such request. Issuer may require that a satisfactory indemnity bond be furnished by Borrower to Issuer for reimbursement of all expenses to which it may be put and to protect it against all liability in connection with the execution of any instrument or any other action requested by Borrower or Trustee.

Section 4.03 Right to Payments under Agreement. Issuer covenants that it will defend its right to the payment of amounts due from Borrower under the Agreement to Trustee, for the benefit of the holders and owners of the Bonds against the claims and demands of all persons whomsoever.

Section 4.04 Instruments of Further Assurance. Issuer will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning and confirming unto Trustee all and singular the rights in property pledged and assigned hereby to the payment of the principal of and premium, if any, and interest on the Bonds. Issuer, except as herein and in the Agreement provided, will not sell, convey, mortgage, encumber or otherwise dispose of the payments pursuant to the Agreement or any part thereof, together with any additions thereto and substitutions therefor.

Section 4.05 Recording and Filing. There will not be an initial filing of this Indenture. Trustee covenants that, to the extent it receives an opinion of Counsel that it is necessary in order to preserve and protect fully the security of the holders and owners of the Bonds and the rights of Trustee hereunder, it will file continuation statements with respect to each UCC financing statement relating to the trust estate filed by the Issuer; provided that a copy of the filed initial financing statement is timely delivered to the Trustee. In addition, unless the Trustee shall have been notified in writing by the Issuer that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (a) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this section and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Issuer shall be responsible for the customary fees charged by the Trustee for the preparation and filing of continuation statements and for the reasonable costs incurred by the trustee in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "extraordinary services" fees. The Trustee shall not be responsible for filing or for the sufficiency or accuracy of any financing statements initially filed to perfect security interests granted under this Indenture. The Trustee will file continuation statements for recordings filed; provided a copy of any such recording is given to the Trustee. Trustee may rely on an opinion of Counsel with respect to actions necessary under this Section. Any documents required to be filed hereunder shall be prepared by the Counsel providing such opinion and the Trustee has no duty or obligation to confirm the sufficiency of such documents. The costs associated with such opinion, documentation and filing shall be borne by the Borrower.

Section 4.06 Inspection of Books. All books and records in Issuer's possession relating to the Project and the payments and amounts derived pursuant to the Agreement shall at all reasonable times be open to inspection by such accountants or other agencies as Trustee may from time to time designate.

Section 4.07 List of Bondholders. Trustee will keep on file a list of names and addresses of all holders of Bonds. Such list shall include the principal amount of Bonds held by such holders and the numbers of such Bonds. At reasonable times and under reasonable regulations established by Trustee, said list may be inspected and copied by Borrower or by holders or owners (or a designated representative thereof) of five percent (5%) or more in principal amount of Bonds then outstanding, such possession or ownership and the authority of such designated representative to be evidenced to the satisfaction of Trustee.

Section 4.08 Rights Under Agreement. The Agreement, a duly executed counterpart of which has been filed with Trustee, sets forth the covenants and obligations of Issuer and Borrower, including provisions that subsequent to the issuance of Bonds and prior to their payment in full or provision for payment thereof in accordance with the provisions hereof, the Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of Trustee, and reference is hereby made to the Agreement for a detailed statement of said covenants and obligations of Borrower thereunder, and Issuer agrees that Trustee in its name or in the name of Issuer, without further consent of Issuer, may enforce all rights of Issuer and all obligations of Borrower under and pursuant to the Agreement for and on behalf of the Bondholders, whether or not Issuer is in default hereunder. Nothing herein contained shall be construed to prevent Issuer from enforcing directly any or all of its rights under the Agreement for indemnification or payment of expenses under Sections 5.3(b), 8.2 and 9.5 of the Agreement, incurred in connection with this matter.

(End of Article IV)

ARTICLE V

REVENUES AND FUNDS

Section 5.01 Source of Payment of Bonds. The Bonds herein authorized and all payments by Issuer hereunder are not general obligations of Issuer but are limited special obligations payable solely from Loan Payments and other amounts derived from the Agreement or assigned or pledged hereunder or otherwise from security assigned or pledged hereunder, and as authorized by the Act. The Bonds shall never constitute an indebtedness of Issuer within the meaning of any constitutional provision or statutory limitation and shall not constitute nor give rise to a pecuniary liability of Issuer or a charge against its general credit.

The payments provided in Section 5.2 of the Agreement are to be remitted directly to Trustee for the account of Issuer and deposited in the Bond Fund. Such payments are intended to be sufficient in amount to insure the prompt payment of the principal of and premium, if any, and interest on the Bonds, and are assigned to the payment of such principal, premium and interest. Notwithstanding the foregoing, any payments transferred by Borrower directly to the Bank as permitted under Section 2.02 hereof shall not be required to be collected and received by the Trustee and the Trustee shall have no duty to collect and receive such payments.

Section 5.02 Creation of Bond Fund. There is hereby created by Issuer and ordered established and maintained as a separate account with Trustee a trust fund to be designated “City of Port Orange, Florida Private College Facility Revenue Bond Fund (Palmer College of Chiropractic Project)” (herein called the “Bond Fund”), which shall be used to pay the principal of and premium, if any, and interest on the Bonds. Amounts on deposit in the Bonds Fund shall be used in accordance with and subject to the terms of this Indenture for the payment of the principal of and interest on the Bonds, whether at maturity or upon proceedings for redemption or upon acceleration. There shall be created an account within the Bond Fund called the “*Letter of Credit Account.*”

Section 5.03 Payments into Bond Fund. There shall be deposited into the Bond Fund, as and when received, (a) all payments specified in Section 5.2 of the Agreement, and (b) all other moneys received by Trustee under and pursuant to any of the provisions of the Agreement or this Indenture which are required or which are accompanied by directions that such moneys are to be paid into the Bond Fund. Issuer covenants and agrees that, should there be a default under the Agreement, Issuer shall fully cooperate with Trustee and with the Bondholders to fully protect the rights and security of the Bondholders and shall diligently proceed in good faith and use its best efforts so that at all times sufficient amounts will be available to promptly meet and pay the principal of and premium, if any, and interest on the Bonds as the same become due and payable. Nothing herein shall be construed as requiring Issuer to use any of its own funds or revenues to fulfill its obligations hereunder.

Section 5.04 Use of Moneys in Bond Fund. So long as a Letter of Credit is in effect, the Trustee, prior to each Interest Payment Date and each date on which principal is due and

payable on the Bonds (whether at maturity or upon proceedings for redemption pursuant to Section 3.01(a), (b) or (c) hereof, or by acceleration), shall draw on the Letter of Credit an amount which shall be sufficient for the purpose of paying the principal of, and premium, if any (if the Letter of Credit then covers premium) and interest due and payable on the Bonds (other than Pledged Bonds and Borrower Bonds) on such payment date. Such drawing shall be made in a timely manner under the terms of the Letter of Credit, but not later than the times specified in the Letter of Credit, in order that the Trustee may realize funds thereunder in sufficient time to pay Owners on the payment date as provided herein. So long as the Letter of Credit is in force, the Trustee shall deposit all moneys received pursuant to each draw on the Letter of Credit in the Letter of Credit Account in the Bond Fund and shall apply such moneys to the payment of the principal of and interest on or redemption price of Bonds as provided in this Section. Fund held in the Letter of Credit Account of the Bond Fund shall not be invested.

If no Letter of Credit is then in effect, on each Interest Payment Date and each date on which principal is due and payable on the Bonds (whether at maturity or upon proceedings for redemption pursuant to Section 3.01(a), (b) or (c) hereof, or by acceleration), the Trustee shall receive from the Borrower pursuant to Section 5.2 of the Agreement the full amount of principal of, and premium, if any, and interest due on, the Bonds on that date, unless a notice has been executed under Section 2.02 directing the payment to be made directly to the Bank.

The Trustee is authorized and directed to withdraw sufficient funds from the Letter of Credit Account in the Bond Fund to pay principal of, redemption premium, if any, and interest on the Bonds as the same become due and payable at maturity or upon redemption and to make said funds so withdrawn available to any Paying Agent for the purpose of paying said principal, redemption premium, if any, and interest. On the same Business Day on which moneys are disbursed from the Bond Fund pursuant to the preceding sentence, if moneys then remain in the Bond Fund in excess of amounts required for the payment of Bondholders, such moneys shall be disbursed to the Credit Bank to the extent amounts are then owed to the Credit Bank pursuant to the Credit Agreement. The Trustee may rely on a certificate from the Credit Bank that certifies the amounts so owed at any time. In the event of a default under the Letter of Credit, or at such time as no Letter of Credit secures the Bonds, the Trustee shall use all moneys then on deposit in the Bond Fund, to pay principal of, and premium, if any, and interest on, the Bonds.

To the extent that any interest due and payable on the Bonds on any Interest Payment Date or any other date on which principal is due and payable (whether at maturity or upon proceedings for redemption, or by acceleration), cannot be determined by the Trustee as of the time the draw must be submitted to the Credit Bank under the terms of the Letter of Credit, the Trustee shall draw moneys under the Letter of Credit in an amount sufficient to pay such interest as if the Maximum Rate was in effect for the period for which the interest rate cannot be determined.

The Trustee, upon the written instructions from the Issuer given pursuant to written direction of the Borrower accompanied by the written consent of the Credit Bank, shall use excess moneys in the Bond Fund to redeem all or part of the Bonds Outstanding and to pay interest to accrue thereon prior to such redemption and redemption premium, if any, on the next succeeding redemption date for which the required redemption notice may be given or on such

later redemption date as may be specified by the Borrower, in accordance with the provisions of Article III hereof, so long as the Borrower is not in default with respect to any payments under the Loan Agreement and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption. The Borrower may cause such excess moneys in the Bond Fund or such part thereof or other moneys provided by the Borrower, as the Borrower may direct, to be applied by the Trustee on a best efforts basis and to the extent practical for the purchase of Bonds in the open market for the purpose of cancellation at prices not exceeding the principal amount thereof plus accrued interest thereon to the date of such purchase.

After payment in full of the principal of, redemption premium, if any, and interest on the Bonds (or after provision has been made for the payment thereof as provided in this Indenture), and the fees, charges and expenses of the Trustee, Tender Agent, any Paying Agents and the Issuer, and any other amounts required to be paid under this Indenture and the Agreement, all amounts remaining in the Bond Fund shall be paid to the Borrower upon the expiration or sooner termination of the Agreement. Any moneys deposited in the Bond Fund, from whatever source, shall be used for the purposes described herein within a thirteen (13) month period beginning on the date of deposit. Any amounts received from investment of moneys held in the Bond Fund shall be used for the purposes described herein within a twelve (12) month period beginning on the date of receipt. The Bond Fund shall be depleted at least once a year, except for a reasonable carryover amount not exceeding the greater of (a) one year's earnings on the Bond Fund, or (b) one-twelfth of the annual debt service on the Bonds.

Section 5.05 Custody of Moneys in Bond Fund. The Bond Fund shall be in the custody of Trustee but in the name of Issuer, and Issuer hereby authorizes and directs Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and premium, if any, and interest on the Bonds as the same become due and payable, which authorization and direction Trustee hereby accepts.

Section 5.06 Refunding Fund. There is hereby created and established and ordered maintained as a separate account with the Trustee a trust fund in the name of Issuer to be designated "City of Port Orange, Florida Private College Facility Revenue Bond Refunding Fund (Palmer College Foundation, Inc. Project)" (herein called the "Refunding Fund").

Section 5.07 Payments into the Refunding Fund: Disbursements. Amounts shall be deposited into the Refunding Fund in accordance with the Closing Memorandum, Amounts in the Refunding Fund shall be applied to pay the Refunded Note and the cost of a termination payment in connection with the cancellation of a hedging agreement associated with the Refunded Note in accordance with the Closing Memorandum.

Section 5.08 Establishment of Cost of Issuance Fund. There is hereby created by Issuer and ordered established and maintained as a separate account with Trustee a fund to be designated "City of Port Orange, Florida Private College Facility Revenue Bond Cost of Issuance Fund (Palmer College of Chiropractic Project)" (herein called the "Cost of Issuance Fund"), which shall be expended in accordance with the provisions of the Agreement and this Indenture.

Section 5.09 Payments into the Cost of Issuance Fund; Disbursements. \$ _____ of the proceeds of the issuance and delivery of the Bonds shall be deposited in the Cost of Issuance Fund. Amounts in the Cost of Issuance Fund shall be disbursed by the Trustee in accordance with instructions to the Trustee from the Borrower for the payment of costs of issuance of the Bonds. Trustee is hereby authorized and directed to make each disbursement required by Borrower and to issue its checks therefor. Trustee shall keep and maintain adequate records pertaining to the Cost of Issuance Fund and the disbursements therefrom, and file an account thereof with the Issuer and Borrower upon request. Any balance remaining in the Cost of issuance Fund on December 1, 2019 shall be deposited in the Bond Fund.

Section 5.10 Non-presentment of Bonds. In the event any Bond shall not be presented for payment (if so required pursuant to the terms hereof) when the principal thereof becomes due, either at maturity, or at the date fixed for redemption thereof, or otherwise, if funds sufficient to pay any such Bond shall have been made available to Trustee for the benefit of the holder or holders thereof, all liability of Issuer to the holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of Trustee to hold such funds, without liability for interest thereon, for the benefit of the holder of such Bond who shall thereafter be restricted exclusively to such funds, for any claim of whatever nature on his part under this Indenture or on, or with respect to, such Bond. Any monies deposited with the Trustee that remains unclaimed shall be transferred to the appropriate governmental authorities upon the expiration of the escheat period in accordance with the escheat laws applicable to each of the holders of such Bonds.

Section 5.11 Moneys to be Held in Trust. All moneys required to be deposited with or paid to Trustee for account to any fund referred to in any provision of this Indenture or the Agreement shall be held by Trustee in trust, and except for moneys deposited with or paid to Trustee for the redemption of Bonds, notice of the redemption of which has been duly given, shall, while held by Trustee, constitute part of the Trust Estate and be subject to the lien or security interest created hereby.

Section 5.12 Repayment to Borrower from Bond Fund. Any amounts remaining in the Bond Fund after payment in full of the principal of and premium, if any, and interest on the Bonds, the fees, charges and expenses of Trustee, and all other amounts required to be paid hereunder shall be paid to Borrower upon the expiration or sooner termination of the term of the Agreement as provided in Section 11.1 of the Agreement.

Section 5.13 Custody of Separate Trust Funds. Trustee is authorized and directed to hold all Net Proceeds from any insurance proceeds or condemnation awards and disburse such proceeds in accordance with Article VI of the Agreement. If Borrower directs that any portion of such Net Proceeds be applied to redeem Bonds, Issuer covenants and agrees to take and cause to be taken the necessary steps to redeem on the next succeeding redemption date the amount of Bonds so specified by Borrower.

Section 5.14 Additional Payments Under the Agreement. Pursuant to Section 5.3 of the Agreement, Borrower has agreed to pay the fees and expenses of Trustee and any paying agent and fees and expenses of the Issuer relating to the Bonds and has agreed to make payments for

the purchase of Bonds tendered under Article III hereof. All such payments received by Trustee pursuant to Section 5.3 of the Agreement shall not be paid into the Bond Fund but shall be disbursed by Trustee solely for the purposes for which such payments are received.

Section 5.15 Establishment of Rebate Fund. There is hereby created by Issuer and ordered established and maintained as a separate account with Trustee a fund to be designated “City of Port Orange, Florida Private College Facility Revenue Bond Rebate Fund (Palmer College of Chiropractic Project)” (herein called the “Rebate Fund”), which shall be held separate and apart from all other funds and accounts established under this Indenture and from all other moneys of the Trustee. There shall be deposited into the Rebate Fund such amounts as are required to be deposited therein pursuant to, in accordance with, and at the times stated in the Agreement. The Trustee shall remit to the United States of America at the times and in the amounts set forth in written instructions from the Borrower, sums accumulated in the Rebate Fund, plus any interest earnings attributable to such amounts.

All amounts in the Rebate Fund including income earned from investment of the Rebate Fund, shall be held by the Trustee free and clear of the lien of this Indenture, and shall be disbursed in accordance with written instructions from the Borrower.

The Trustee shall not be responsible for any determination or calculation concerning arbitrage rebate with respect to the Bonds, or for determining whether the yield on any investments made in accordance with the Indenture would cause, or whether any other facts exist which would cause, any of the Bonds to become arbitrage bonds under Section 148 of the Code.

(End of Article V)

ARTICLE VI

INVESTMENT OF MONEYS

Except as otherwise provided herein, any moneys held as part of the Bond Fund or any other fund shall be invested and reinvested by Trustee as directed by the Borrower in accordance with the provisions of Section 4.3 of the Agreement. Any such investments shall be held by or under the control of or in the name of the Trustee. The Trustee shall be entitled to rely upon any written investment direction provided to it by the Borrower as required under Section 4.3 of the Agreement as a certification to the Trustee that such investments constitute Qualified Investments. The Trustee shall have no responsibility whatsoever to determine whether any investments made pursuant to such direction of the Borrower are or continue to be Qualified Investments. In the absence of written investment directions from the Borrower, the Trustee shall hold such funds uninvested in cash, without liability for interest. Trustee shall not commingle moneys from the Bond Fund with moneys from any other fund under this Indenture. Any money invested in respect of a particular fund shall be deemed at all times a part of the fund for which such investment was made and the interest accruing thereon and any profit realized or loss resulting from such investment shall be credited or charged against the fund for which such investment was made. Trustee shall not be required to risk or expend its own funds, nor be responsible for any loss, tax, fee, or other charge which is the result of an investment. Trustee shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in the Bond Fund is insufficient to pay the principal of and premium, if any, and interest on the Bonds when due. Issuer covenants and certifies to and for the benefit of the purchasers of the Bonds not to take any action to cause the Bonds to be classified as arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code.

By its execution of the Agreement the Borrower acknowledges that regulations of the Comptroller of the Currency grant Borrower the right to receive brokerage confirmations of the security transactions as they occur, at no additional cost. To the extent permitted by law, the Borrower specifically waives compliance with 12 C.F.R. 12 and hereby notifies the Trustee that no brokerage confirmations need be sent relating to the security transactions as they occur. Notwithstanding the foregoing, to the extent the Trustee receives and invests amounts under this Indenture, the Trustee shall provide the Borrower with periodic cash transactions statements, or other statements, which shall include details for all investment transactions made by the Trustee hereunder.

The Trustee may elect, but shall not be obligated, to credit the funds and accounts held by it with moneys representing income or principal payments due on, or sales proceeds due in respect of, Qualified Investments in such funds and accounts, or to credit to Qualified Investments intended to be purchased with such moneys, in each case before actually receiving the requisite moneys from the payment source, or to otherwise advance funds for account transactions. The Issuer and the Borrower each acknowledge that the legal obligation to pay the purchase price of any Qualified Investments arises immediately at the time of the purchase. Notwithstanding anything else in this Indenture, (i) any such crediting of funds or assets shall be

provisional in nature, and the Trustee shall be authorized to reverse any such transactions or advances of funds in the event that it does not receive good funds with respect thereto, and (ii) nothing in this Indenture shall constitute a waiver of any of the Trustee's rights as a securities intermediary under Uniform Commercial Code §9-206.

(End of Article VI)

ARTICLE VII

LETTER OF CREDIT

Section 7.01 Letter of Credit. On or before the Conversion Date upon which the Bonds shall bear interest at a Daily Rate or a Weekly Rate, as provided in the Agreement, the Borrower shall cause Credit Bank to issue and deliver to the Trustee the Letter of Credit, which will provide funds for the payment of the principal of and interest on the Bonds at the scheduled Interest Payment Dates, maturity dates, redemption dates or acceleration date thereof, and for the payment of the purchase price of Bonds that have been tendered for purchase and for which proceeds of remarketing have not been received. The Trustee shall hold the Letter of Credit for the benefit of the Owners of the Bonds until the Letter of Credit terminates in accordance with its terms. If at any time during the term of the Letter of Credit the Trustee resigns or is removed, and a successor Trustee is appointed and qualified under this Indenture, the resigning Trustee shall request that the Credit Bank transfer the Letter of Credit to the successor Trustee, and shall take all actions necessary to effect the transfer of the Letter of Credit to the successor Trustee. When the Letter of Credit terminates in accordance with its terms, the Trustee shall immediately surrender the Letter of Credit to the Credit Bank.

As provided in the Agreement, the Borrower shall cause the Letter of Credit to be continuously maintained in full force and effect (except when not required pursuant to this Article) while the Bonds bear interest at a Daily Rate or Weekly Rate, in an amount equal to the principal amount of the Outstanding Bonds plus the amount required for the amount of interest coverage required by each Rating Service at the Maximum Rate, until all of the Bonds have been paid in full or their payment provided for in accordance with Article VIII of this Indenture. The Borrower will exercise its best efforts to extend the term of the Letter of Credit currently in effect or to cause an Alternate Letter of Credit or commitment therefor to be delivered by the Credit Bank to the Trustee not less than 30 days prior to the termination date of the Letter of Credit then in effect pursuant to the provisions of this Article unless the Bonds are converted to a rate which is not the Daily Rate or the Weekly Rate.

The Trustee shall draw amounts under the Letter of Credit in accordance with the terms and conditions set forth therein at the times, in the manner and for the purposes set forth in this Indenture. The Issuer agrees that the Trustee in its name may enforce all rights of the Trustee and of the Issuer and all obligations of the Credit Bank (including the obligations of the Credit Bank to honor drafts duly presented in accordance with the terms and conditions of the Letter of Credit) under and pursuant to the Letter of Credit for the benefit of the Owners of the Bonds. All amounts drawn under the Letter of Credit shall be held by the Trustee in the Letter of Credit Account in the Bond Fund or the Tender Agent in the Bond Purchase Fund and used only for the purposes set forth herein. In no event shall any amounts drawn under the Letter of Credit be used for any purpose other than the payment of the principal of and interest on and purchase price of the Bonds. Anything in this Indenture to the contrary notwithstanding, amounts drawn under the Letter of Credit and deposited with the Trustee or the Tender Agent shall be invested only in Governmental Obligations maturing on an overnight basis or held uninvested.

Section 7.02 Alternate Letter of Credit. The Borrower may at any time, subject to any applicable provisions of the Credit Agreement, arrange for the substitution of an Alternate Letter of Credit for an existing Letter of Credit, and the Trustee shall accept any Alternate Letter of Credit, subject to the following limitations:

(a) Each Alternate Letter of Credit shall be an irrevocable direct-pay letter of credit, bank bond purchase agreement, bond insurance policy, revolving credit agreement, surety bond or other agreement or instrument issued and delivered in substitution for an existing Letter of Credit, under which any person or entity (other than the Issuer or the Borrower) undertakes to make or provide funds to make payments of the principal of, premium, if any, and interest on the Bonds, as and when due, and payments of the purchase price of Bonds that have been tendered for purchase and for which proceeds of remarketing have not been received, and which meets the requirements and conditions of this Section.

(b) Each Alternate Letter of Credit, or a binding commitment to issue and deliver the Alternate Letter of Credit, must be delivered to the Trustee not less than 30 days prior to the date of expiration of the then existing Letter of Credit, must be effective as of a date on or prior to the date of expiration of the then existing Letter of Credit and shall expire no earlier than the Letter of Credit which it replaces.

(c) Each Alternate Letter of Credit shall be satisfactory in form and substance to the Trustee, and shall be in a stated amount at least equal to the sum of (1) the aggregate principal amount of Bonds at the time outstanding, plus (2) and the amount of interest coverage required by each Rating Service and premium, if any. Any Alternate Letter of Credit replacing an existing Letter of Credit that is expiring or scheduled to expire within one year shall have a term of at least one year and 15 days beginning on the expiration date of the Letter of Credit then in effect.

(d) The Borrower shall give written notice to the Issuer, the Trustee, the Tender Agent and each Rating Service not less than 60 days prior to the expiration or termination date of the Letter of Credit then in effect, specifying that the Borrower intends to replace the existing Letter of Credit with an Alternate Letter of Credit on or before the expiration of the Letter of Credit then in effect. Upon receipt of such notice, the Trustee shall promptly mail a notice of the anticipated delivery of the Alternate Letter of Credit by first-class mail to the Remarketing Agent and each Owner. A draft of each Alternate Letter of Credit and the related Credit Agreement and appropriate information concerning the issuer of such Alternate Letter of Credit shall be submitted to each Rating Service by the Borrower.

(e) The Borrower shall cause to be delivered to the Trustee not less than 30 days prior to the expiration or termination date of the existing Letter of Credit (1) the Alternate Letter of Credit or a commitment by the Credit Bank which will issue the Alternate Letter of Credit, and (2) written notice from each Rating Service stating that the substitution of such Alternate Letter of Credit will not result in a reduction or withdrawal of any rating then in effect on the Bonds. The Bonds shall be subject to mandatory tender as provided herein, if such written notice from any Rating Service indicates that the replacement of the current Letter of Credit with

the proposed Alternate Letter of Credit will result in a withdrawal or reduction of the Rating Service's then current rating for the Bonds.

(f) When the Bonds are in a Daily or Weekly Rate Period, the Borrower shall exercise its best efforts to arrange for the delivery to the Trustee of an Alternate Letter of Credit to replace any Letter of Credit then in effect upon the expiration thereof prior to the end of any such rate period or upon the occurrence of any of the following events or circumstances:

(1) If the Credit Bank has rescinded, terminated or repudiated the Letter of Credit, or the Credit Bank or any governmental authority with jurisdiction over the Letter of Credit is challenging the validity of the Letter of Credit or if the Credit Bank is in default under the Letter of Credit.

(2) If the Credit Bank shall refuse to extend the stated termination date with respect to the current Letter of Credit then in effect, but the term of such Alternate Letter of Credit need not (but may) begin prior to the stated termination date of the current Letter of Credit then in effect. The Borrower shall not terminate the current Letter of Credit and Credit Agreement until the term of the Alternate Letter of Credit has begun.

(3) Receipt by the Trustee of written notice from the Credit Bank that an "event of default" as such term is defined in the Credit Agreement has occurred and is continuing under the Credit Agreement and a direction to purchase or redeem the Bonds.

(4) Failure of the Credit Bank to honor any drawing which strictly complies with the terms of the Letter of Credit.

(5) Receipt by the Trustee, within 10 Business Days following a drawing under the Letter of Credit to pay principal, premium, if any, and interest on the Bonds on the due date, or purchase price of Bonds tendered for purchase, of written notice from the Credit Bank that the Credit Bank has not been reimbursed for such drawing on the Letter of Credit and the amount for such drawing has not been reinstated; provided, however, that in such instance the existing Letter of Credit shall be drawn on to fund the mandatory tender under Section 3.07(f.) hereof.

(g) On or prior to the effective date of any Alternate Letter of Credit, the Borrower shall furnish to the Issuer and the Trustee (1) an opinion of counsel from counsel to the Credit Bank issuing such Alternate Letter of Credit to the effect that the Alternate Letter of Credit is a valid and binding obligation of such issuer or provider, enforceable in accordance with its terms, subject to customary exceptions relating to bankruptcy and insolvency, (2) an Opinion of Bond Counsel, which shall also be addressed and delivered to the Issuer, stating that the delivery of such Alternate Letter of Credit to the Trustee is authorized under this Indenture and complies with the terms hereof and does not adversely affect the tax-exempt status of the interest on the Bonds, and (3) written evidence from each Rating Service, to the effect that the Rating Service

has reviewed the proposed Alternate Letter of Credit and that the substitution of the proposed Alternate Letter of Credit for the Letter of Credit will not result in a reduction or withdrawal of its rating of the Bonds that prevailed prior to the substitution of the Alternate Letter of Credit. The Bonds shall be subject to mandatory tender as provided herein, if such written notice from any Rating Service indicates that the replacement of the current Letter of Credit with the proposed Alternate Letter of Credit will result in a withdrawal or reduction of the Rating Service's then current rating for the Bonds.

Section 7.03 Release of Letter of Credit. The Borrower may, with the prior written consent of the Credit Bank, at any time during a Daily Rate Period or a Weekly Rate Period, direct the Trustee to release an existing Letter of Credit and surrender such Letter of Credit to the Credit Bank, without substituting an Alternate Letter of Credit therefor. Upon any such direction, or upon payment of all outstanding principal and redemption premium, if any, of and interest on the Bonds, the Trustee shall release the Letter of Credit and surrender it to the Credit Bank; provided that the Trustee shall not release the Letter of Credit until all draws under the Letter of Credit have been honored. The Bonds shall be subject to mandatory tender pursuant to Section 3.09(a)(4) hereof on the 5th Business Day prior to any such release.

The Borrower shall notify the Trustee, the Tender Agent, each Rating Service and the Credit Bank of its intention to release the existing Letter of Credit at least 30 days prior to the date of such release. Upon receipt of such notice, the Trustee shall promptly mail a notice by first class mail of the anticipated release of the existing Letter of Credit to the Issuer, the Remarketing Agent and each Owner at the Owner's registered address.

Section 7.04 Surrender of Letter of Credit. If at any time an Alternate Letter of Credit is delivered to the Trustee, together with the other documents and opinions required by this Indenture, then the Trustee shall accept such Alternate Letter of Credit and concurrently with the acceptance thereof, the Trustee shall surrender the Letter of Credit previously in effect to the issuer thereof, in accordance with the terms thereof; provided that the Trustee shall not surrender any Letter of Credit until all draws under the Letter of Credit previously made have been honored. If at any time there shall cease to be any Bonds Outstanding under this Indenture, or if the Letter of Credit expires in accordance with the terms of such Letter of Credit, the Trustee shall surrender the Letter of Credit to the issuer thereof for cancellation. The Trustee shall comply with any procedures set forth in the Letter of Credit relating to the termination thereof.

Section 7.05 Rights of Credit Bank. As long as the Letter of Credit is in effect, no Event of Default described in Sections 9.01(h) of this Indenture has occurred and is continuing and the Credit Bank is not insolvent, the Credit Bank shall be deemed to be the Owner of all Bonds that are secured by the Letter of Credit, all Pledged Bonds and all Borrower Bonds for all purposes of this Article and following the occurrence of an Event of Default under the Indenture and for purposes of Article IX (except as provided in Sections 12.03 and 12.04). In any case herein where it is provided that an action can be taken with the consent of the Credit Bank, such action may not be taken without the consent of the Credit Bank unless otherwise provided.

If (i) an Event of Default shall occur and be continuing under the Indenture, or (ii) the Trustee shall draw under the Letter of Credit in connection with the redemption or mandatory

tender in whole of the Bonds, and in either such case the Credit Bank shall have provided the Trustee with funds pursuant to the Letter of Credit for the payment in full of principal or redemption price, if any, of and the interest on the Bonds, then, and in such event, the Credit Bank shall be subrogated to all rights theretofore possessed under the Indenture by the Trustee and the Owners in respect of which such principal or redemption price, if any, and interest shall have been paid with funds provided by the Credit Bank and not fully reimbursed to the Credit Bank. After the payment in full of all Bonds owned by the Owners, any reference herein to the holders of the Bonds or to the Owners shall mean the Credit Bank to the extent of those subrogation rights resulting from the payments made pursuant to the Letter of Credit.

Section 7.06 Limitation on Rights of the Credit Bank. Notwithstanding any provision of this Indenture or the Agreement to the contrary, no consent of or notice to the Credit Bank shall be required under any provision of this Indenture or the Agreement nor shall the Credit Bank have any right to receive notice of, consent to, direct or control any actions, restrictions, rights, remedies, waivers or acceleration pursuant to any provision of this Indenture or the Agreement during any time which:

(a) the Credit Bank has wrongfully failed to honor a properly presented draw made under and in compliance with the terms of the Letter of Credit which failure has not been cured;

(b) the Letter of Credit for any reason ceases to be valid and binding on the Credit Bank or is declared to be null and void, or the validity or enforceability of any provision of the Letter of Credit is denied by the Credit Bank or any governmental agency or authority, or the Credit Bank is denying further liability or obligation under the Letter of Credit, in all of the above cases contrary to the terms of the Letter of Credit;

(c) the Credit Bank has rescinded, repudiated or terminated the Letter of Credit;

(d) a petition has been filed and is pending against the Credit Bank under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and has not been dismissed within 30 Business Days after such filing;

(e) the Credit Bank has filed a petition, which is pending, under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or has consented to the filing of any petition against it under such law;

(f) the Credit Bank is dissolved or confiscated by action of government due to war or peace time emergency or the United States government declares a moratorium on the Credit Bank's activities; or

(g) the Letter of Credit is not in effect and no amounts are due and payable by the Borrower to the Credit Bank under the Credit Agreement.

This Section shall not in any way limit or affect the rights of the Credit Bank as a bond owner, as subrogee of a bond owner or as assignee of a bond owner or to otherwise be reimbursed and indemnified for its costs and expenses and other payment on or in connection with the Bonds or the Letter of Credit either by operation of law or at equity or by contract.

(End of Article VII)

ARTICLE VIII

DISCHARGE OF LIEN

If Issuer shall pay or cause to be paid, or there shall be otherwise paid or provisions for payment made to or for the holders and owners of the Bonds (including the Pledged Bonds and Unremarketed Bonds), the principal of and premium, if any, and interest due or to become due thereon at the times and in the manner stipulated therein, and if Issuer shall not then be in default in any of the other covenants and promises in the Bonds and in this Indenture expressed as to be kept, performed and observed by it or on its part, and shall pay or cause to be paid to Trustee and any paying agents all sums of money due or to become due according to the provisions hereof, and if the Borrower shall pay or cause to be paid all amounts payable by the Borrower under the Continuing Covenant Agreement, then these presents and the Trust Estate and rights hereby granted shall cease, determine and be void, whereupon Trustee shall cancel and discharge the lien of this Indenture, and release, assign and deliver unto Issuer any and all instruments as shall be requisite to cancel and discharge the lien of this Indenture, and release, assign and deliver any and all of the Trust Estate, right, title and interest in and to any and all rights assigned to Trustee or otherwise subject to the lien of this Indenture, except amounts in the Bond Fund required to be paid to Borrower under Section 5.12 hereof and except moneys or securities held by Trustee for the payment of the principal of and premium, if any, and interest on the Bonds.

Any Bond shall be deemed to be paid within the meaning of this Article VIII and for all purposes of this Indenture when (a) payment of the principal of and the applicable redemption premium, if any, on such Bond, plus interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (i) shall have been made or caused to be made in accordance with the terms thereof, or (ii) shall have been provided by irrevocably depositing with Trustee, in trust, and Trustee shall have irrevocably set aside exclusively for such payment, (1) moneys sufficient to make such payment, or (2) Governmental Obligations maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, the sufficiency of which money shall be verified by an independent certified public accountant selected by the Issuer, and (b) all necessary and proper fees, compensation and expenses of Trustee pertaining to the Bonds with respect to which such deposit is made shall have been paid or the payment thereof provided for to the satisfaction of it. At such time as a Bond shall be deemed to be paid hereunder, as aforesaid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of any such payment from such moneys or Governmental Obligations.

Notwithstanding the foregoing, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until: (a)(i) proper notice of redemption of such Bonds shall have been previously given in accordance with Article III of this Indenture, or in the event said Bonds are not by their terms subject to redemption within the next succeeding sixty (60) days, until Borrower shall have given Trustee on behalf of Issuer, in form satisfactory to Trustee, irrevocable instructions to notify, as soon as practicable,

the holders or owners of the Bonds, in accordance with Article III hereof, that the deposit required by (a)(ii) above has been made with Trustee and that said Bonds are deemed to have been paid in accordance with this Article VIII and stating such maturity or redemption date upon which moneys are to be available for the payment of the principal or redemption price, if applicable, on said Bonds, (ii) notification shall have been received by the Trustee from each Rating Service that any then current rating on the Bonds will not be lowered or withdrawn as a result of the Bonds being deemed paid as aforesaid; or (b) the maturity of such Bonds.

Any moneys so deposited with Trustee as provided in this Article may at the direction of Borrower also be invested and reinvested in Governmental Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Governmental Obligations in the hands of Trustee pursuant to this Article VIII which is not required for the payment of the Bonds and interest and premium thereon with respect to which such moneys shall have been so deposited, shall be deposited in the Bond Fund as and when realized and collected for use and application as are other moneys deposited in that fund.

Issuer hereby covenants that no deposit will be made hereunder and no use made of any such deposit which would cause the Bonds to be treated as arbitrage bonds within the meaning of Section 148 of the Internal Revenue Code and the regulations promulgated or proposed thereunder, or in any way affect the tax-exempt status of interest on any of the Bonds.

Notwithstanding any provision of any other Article of this Indenture which may be contrary to the provisions of this Article VIII, all moneys or Governmental Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds (including interest and premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including interest and premium thereon, if any) with respect to which such moneys and Governmental Obligations have been so set aside in trust.

(End of Article VIII)

ARTICLE IX

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 9.01 Defaults; Events of Default. If any one or more of the following events occur, subject to the provisions of Section 9.12 hereof, it is hereby defined as and declared to be and to constitute an “event of default”:

(a) Failure to pay any interest on any Bond when due and payable; provided however, that during any Index Rate Period, such failure shall not constitute an event of default until such failure has continued for ten (10) Business Days.

(b) Failure to pay the principal of, or premium, if any, on any Bond, when due, whether at the stated maturity thereof, or upon proceedings for redemption thereof, or by acceleration; provided however, that during any Index Rate Period, such failure shall not constitute an event of default until such failure has continued for ten (10) Business Days.

(c) Default in the payment of the Purchase Price due to the Owner of any Bond upon tender of such Bond to the Tender Agent for purchase pursuant to this Indenture when such payment has become due and payable.

(d) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in this Indenture or in the Bonds and such default shall remain unremedied for a period of thirty (30) Business Days after the occurrence thereof.

(e) The occurrence of an “event of default” under Section 9.1 of the Agreement.

(f) Failure to purchase Bonds on a Purchase Date except as provided in Section 3.10(b) pursuant to Section 3.08 hereof.

(g) During an Index Rate Period or in the event any Bonds constitute Unremarketed Bonds, the Trustee shall receive a written notice from the Bank that an event of default has occurred under the Continuing Covenant Agreement, which notice may in addition instruct the Trustee to accelerate the Bonds.

(h) The Credit Bank has wrongfully failed to honor a properly presented and conforming draw made under and in compliance with the terms of the Letter of Credit which failure has not been cured.

(i) Notice from the Credit Bank that an event of default has occurred under the Credit Agreement and direction from the Credit Bank to accelerate the Bonds.

The term “default” hereunder means default by the Issuer in the performance or observance of any of the covenants, agreements or conditions on its part contained in this Indenture or in the Bonds or default by Borrower in connection with the matters referred to in the provisions identified in paragraph (e) above, exclusive of any period of grace required to constitute a default an “event of default” as hereinabove provided.

If an event of default described in paragraphs (a), (b), (c), (f) or (g) above shall occur, the Trustee shall, within five (5) Business Days after knowledge of such event of default, give written notice, by first-class mail, of such event of default to the Issuer, Borrower, and each known Bondholder.

Section 9.02 Acceleration. Upon the occurrence and during the continuation of any Event of Default, the Trustee may, with the prior written consent of the Bank, if any, or the Credit Bank, if any, and shall, at the written direction of Bank, if any, or the Credit Bank, if any, and otherwise at the written direction of the Holders of 50% in aggregate principal amount of the Bonds then Outstanding, declare the principal of the Bonds then Outstanding to be immediately due and payable, whereupon that portion of the principal of the Bonds thereby coming due and the interest thereon accrued to the date of payment shall without further action, become and be immediately due and payable, anything in this Indenture or in the Bonds to the contrary notwithstanding.

Any such declaration, however, is subject to the condition that if, at any time after such declaration and before any final judgment or decree in any suit, action or other proceeding instituted for the payment of the moneys due shall have been obtained or entered, the Borrower shall deposit with the Trustee a sum sufficient to pay all the principal or Redemption Price of and installments of interest on the Bonds payment of which is overdue, with interest on such overdue principal at the rate borne by the respective Bonds, and the reasonable charges and expenses of the Trustee, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Holders of more than 50% in aggregate principal amount of the Bonds then Outstanding, by written notice to the Borrower, and the Trustee, or the Trustee may, on behalf of the Holders of all of the Bonds, and in any event upon the written consent of the Bank, if any, rescind and annul such declaration and its consequences and waive such default; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

Section 9.03 Remedies; Rights of Bondholders. Upon the occurrence and during the continuation of an Event of Default, the Trustee may, with the prior written consent of the Bank, if any, or the Credit Bank, if any, and upon the written direction of the Bank, if any, or the Credit Bank, if any, or otherwise the Holders of more than 50% in aggregate principal amount of the Bonds then Outstanding, and shall have been indemnified as provided in Section 10.01(l). shall take whatever action at law or in equity it deems, or such Bank, Credit Bank or Holders, as applicable, deem, necessary or desirable (1) to collect any amounts then due under this Indenture or such Bonds, (2) to enforce performance of any obligation, agreement or covenant of the

Borrower under this Indenture or the Bonds or the Tax Certificate, or (3) to otherwise enforce any of its rights.

No remedy by the terms of this Indenture conferred upon or reserved to Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to Trustee or to the Bondholders hereunder or now or hereafter existing at law or in equity.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default or acquiescence therein; and such right and power may be exercised from time to time as often as may be deemed expedient.

No waiver of any default or event of default hereunder, whether by Trustee or by the Bondholders, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereon.

Section 9.04 Right of Bondholders to Direct Proceedings. Subject to the provisions of Section 9.03 hereof, the holders of a majority in aggregate principal amount of the Bonds then outstanding shall have the right, at any time, by an instrument or instruments in writing executed and delivered to Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, and particularly Sections 9.11 and 10.01(l) hereof, and, pursuant to section 10.01(l) hereof, such holders shall be required to offer to Trustee adequate indemnity acceptable to Trustee against the costs, expenses and liabilities to be incurred therein or thereby.

Section 9.05 Appointment of Receivers. Upon the occurrence of an event of default, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of Trustee and of the Bondholders under this Indenture, Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate and of the payments, including any rental payments, revenues, earnings, income, products and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 9.06 Application of Moneys. All moneys received by Trustee pursuant to any right given or action taken under the provisions of this Article IX shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by Trustee (it being understood, however, that amounts drawn under the Letter of Credit shall be deposited directly in the Bond Fund and amounts representing the proceeds of the remarketing of Bonds shall be deposited in the Bond Purchase Fund, and in each case such amounts shall not be used for the payment of any of such costs, expenses, liabilities and advances) and the creation of a reasonable reserve for anticipated fees, costs and expenses, be deposited in the Bond Fund and all moneys in the Bond Fund shall be applied as follows:

(a) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST - To the payment of the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest, or the reimbursement of the Credit Bank for all such payments made pursuant to drawings under the Letter of Credit, if any, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege; and

SECOND - To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on any of the Bonds which shall have become due (other than Bonds matured or called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds from the respective dates upon which they became due (with interest on overdue installments of interest at the Default Rate, or the reimbursement of the Credit Bank for all such payments made pursuant to drawings under the Letter of Credit, if any, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment ratably, according to the amount of principal and interest due on such date, to the persons entitled thereto without any discrimination or privilege;

THIRD - To be held for the payment to the persons entitled thereto as the same shall become due of the principal of and premium, if any, and interest on the Bonds which may thereafter become due either at maturity or upon call for redemption prior to maturity and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with interest then due and owing thereon, payment shall be made ratably according to the amount of principal and interest due on such date to the persons entitled thereto without any discrimination or privilege;

FOURTH – To the payment of any obligations payable to the Bank under the Continuing Covenant Agreement (to the extent not required to be paid at a higher level of priority) or to the Credit Bank under the Credit Agreement, as applicable; and

(b) If the principal of all the Bonds shall become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege,

plus if available with interest on overdue installments of interest or principal at the Default Rate or to the reimbursement of the Credit Bank with respect to drawings made under the Letter of Credit to pay the same, and thereafter to the payment of any obligations payable to the Bank under the Continuing Covenant Agreement (to the extent not required to be paid at a higher level of priority).

(c) If the principal of all the Bonds shall have been declared due and payable, and if such declarations shall thereafter have been rescinded and annulled under the provisions of this Article IX then, subject to the provision of Section 9.06(b) hereof in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of Section 9.06(a) hereof.

Whenever moneys are to be applied pursuant to the provisions of this Section 9.06, such moneys shall be applied at such times, and from time to time, as Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Subject to Section 9.02 hereof, whenever Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue. Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the holder of any Bond until such Bond shall be presented to Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever the principal of and premium, if any, and interest on all Bonds have been paid under the provisions of this Section 9.06 and all expenses and charges of Trustee have been paid, any balance remaining in the Bond Fund shall be paid to Borrower as provided in Section 5.12 hereof.

Section 9.07 Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holder of the Bonds, and any recovery or judgment shall be for the equal and ratable benefit of the holders of the outstanding Bonds.

Section 9.08 Rights and Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder unless a default has occurred of which Trustee has been notified as provided in Section 10.01(h) hereof, or of which by said subsection Trustee is deemed to have notice, nor unless also such default shall have become an event of default and the holders of thirty-five percent (35%) in aggregate principal amount of Bonds then outstanding shall have made written request to Trustee and shall have provided Trustee reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in

Trustee's own name or names, nor unless also they have offered to Trustee indemnity as provided in Section 10.01(l), nor unless Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case at the option of Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its, his, her or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of the holders of all Bonds then outstanding. However, nothing contained in this Indenture shall affect or impair the right of any Bondholder to enforce the payment of the principal and interest on any Bond at and after the maturity thereof.

Section 9.09 Termination of Proceedings. In case Trustee shall have proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case Issuer, Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, with regard to the property subject to this Indenture, and all rights, remedies and powers of Trustee shall continue as if no such proceedings had been taken.

Section 9.10 Waivers of Events of Default. Trustee may at its discretion waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal, and shall do so upon the written request of the holders of (1) more than 66-2/3% in aggregate principal amount of all the Bonds then outstanding in respect of which default in the payment of principal or interest, or both, exists, or (2) more than 66-2/3% in aggregate principal amount of all Bonds then outstanding in the case of any other default; provided, however, that there shall not be waived (a) any event of default after the Trustee has drawn on the Letter of Credit, (b) any event of default in the payment of the principal of any outstanding Bonds at the date of maturity specified therein, or (c) any default in the payment when due of the interest on any such Bonds unless prior to such waiver or rescission, all arrears of payments on overdue installments of interest or all arrears of payments of principal when due, as the case may be, both with interest at the Default Rate and all expenses of Trustee, in connection with such default shall have been paid or provided for, and in cases of any such waiver or rescission, or in case any proceeding taken by Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case Issuer, Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon. Notwithstanding the foregoing, in no event shall the Trustee waive any event of default hereunder and its consequences and rescind any declaration of maturity of principal without the prior written consent of the Bank, if any.

Section 9.11 Notice of Defaults Under Section 9.01(d); Opportunity of Issuer and Borrower to Cure Such Defaults. Anything herein to the contrary notwithstanding, no default

under Section 9.01(d) hereof shall constitute an event of default until actual notice of such default by registered or certified mail shall be given to Issuer and Borrower by Trustee or by the holders of not less than thirty-five percent (35%) in aggregate principal amount of all Bonds outstanding, and Issuer and Borrower shall have had thirty (30) Business Days after receipt of such notice to correct said default or cause said default to be corrected, and shall not have corrected said default or caused said default to be corrected within the applicable period; provided, however, if said default be such that it cannot be corrected within the applicable period, it shall not constitute an event of default if corrective action is instituted by Issuer or Borrower within the applicable period and diligently pursued until the default is corrected and the Issuer or the Borrower provides a certification to the Trustee to such effect.

With regard to any default concerning which notice is given to Issuer and Borrower under the provisions of this Section 9.11, Issuer hereby grants Borrower full authority for account of Issuer to perform any covenant or obligation alleged in said notice to constitute a default, in the name and stead of Issuer with full power to do any and all things and acts to the same extent that Issuer could do and perform any such things and acts and with power of substitution.

Section 9.12 Direction of Remedies by Credit Bank. Notwithstanding anything herein other than Section 7.06 to the contrary, the Credit Bank shall be entitled, but not obligated, to direct the Trustee in the exercise of all rights and remedies under this Article, including, without limitation, acceleration of the Bonds, institution of legal proceedings and the granting of waivers with respect to the foregoing, and neither the Trustee, the Issuer nor the Owners of the Bonds shall have the right or be permitted to exercise any of the rights or remedies granted or permitted to any one or more of them under this Article without the express written consent of the Credit Bank; provided, however, that the Trustee shall have the ability to accelerate the maturity of the Bonds upon the occurrence of an event of default described in Sections 9.01(a), (b), or (c) in the Indenture, hereof without the express written consent of the Credit Bank; and provided, further, that nothing in this Section is intended or shall be construed to affect the obligation of the Trustee, which is absolute and unconditional, to demand and collect all amounts due and payable under the Letter of Credit when and as the same shall become due and payable. Notwithstanding any provision in the Indenture to the contrary, the Credit Bank's right to receive notice of, consent to, direct or control any actions, restrictions, rights, remedies, waivers or acceleration is limited as provided in Section 7.06 hereof.

Section 9.13 Direction of Remedies by Bank. The Bank shall be entitled, but not obligated during any Index Period, to direct the Trustee in the exercise of all rights and remedies under this Article, including, without limitation, acceleration of the Bonds, institution of legal proceedings and the granting of waivers with respect to the foregoing, and neither the Trustee, the Issuer nor the Owners of the Bonds shall have the right or be permitted to exercise any of the rights or remedies granted or permitted to any one or more of them under this Article without the express written consent of the Bank. If the Bank consists of more than one Holder of the Bonds the Bank shall provide the Trustee with satisfactory indemnity prior to taking any such actions.

(End of Article IX)

ARTICLE X

TRUSTEE

Section 10.01 Acceptance of Trusts. Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

(a) Trustee, prior to the occurrence of an event of default and after curing of all events of default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an event of default has occurred (which has not been cured or waived) Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in such exercise, as an ordinary prudent person would exercise or use under similar circumstances in the conduct of its own affairs.

(b) Trustee may exercise any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning its duties hereunder, and may in all cases pay reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. Trustee may act upon the opinion or advice of Independent Counsel or any attorney approved by Trustee in the exercise of reasonable care. Trustee shall not be responsible for any loss or damage resulting from any action or inaction in good faith in reliance upon such opinion or advice.

(c) Except for its certificate of authentication on the Bonds, the Trustee shall not be responsible for any recital by Issuer herein or any recital in the Bonds or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by Issuer of this Indenture, or for the validity of execution by Issuer of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value or title of the Project; and Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of Issuer or on the part of Borrower under the Agreement; but Trustee may require of Issuer or Borrower full information and advice as to the performance of the covenants, conditions and agreements aforesaid and as to the condition of the property herein conveyed.

(d) Trustee shall not be accountable for the use of the proceeds of any Bonds authenticated or delivered hereunder so long as such proceeds are used consistent with instructions from the Borrower in accordance with the Agreement and this Indenture. Trustee may become the owner of Bonds secured hereby with the same rights which it would have if not Trustee.

(e) Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document without further investigation and believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, Trustee shall be entitled to rely upon a certificate signed by Issuer Representative or Borrower Representative as sufficient evidence of the facts therein contained and prior to the occurrence of a default of which Trustee has been notified as provided in Section 10.01(h) hereof, or of which by Section 10.01(h) Trustee is deemed to have notice, shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or advisable, but shall in no case be bound to secure the same. Trustee may accept a certificate of the Chairman of Issuer under the seal of Issuer to the effect that a Resolution in the form therein set forth has been adopted by Issuer as conclusive evidence that such Resolution has been duly adopted, and is in full force and effect.

(g) The permissive right of Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its negligence or gross negligence or willful misconduct.

(h) Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by Issuer to cause to be made any of the payments to Trustee required to be made by Article IV hereof or failure by Issuer or Borrower to file with Trustee any document required by this Indenture or the Agreement to be so filed subsequent to the issuance of the Bonds, unless the Responsible Officer shall be specifically notified in writing of such default by Borrower or Issuer or by the holders of at least twenty-five percent (25%) in aggregate principal amount of Bonds then outstanding and all notices or other instruments required by this Indenture to be delivered to Trustee must, in order to be effective be delivered at the office of Trustee identified in Section 13.04, and in the absence of such notice so delivered Trustee may conclusively assume there is no default except as aforesaid.

(i) At any and all reasonable times Trustee, its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property herein conveyed, including all books and records of Issuer pertaining to the Project and the Bonds, and to take such memoranda from and with regard thereto as may be desired.

(j) Trustee shall not be required to give any bond or surety in respect of the execution of the said trusts and powers or otherwise in respect of the premises.

(k) Notwithstanding anything elsewhere in this Indenture with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, Trustee shall have the right, but shall not

be required, to demand any showings, certificates, opinion, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action, by Trustee deemed desirable for the purpose of establishing the right of Issuer to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by Trustee.

(l) Before taking the action hereunder, the Trustee may require that a satisfactory indemnification be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or gross negligence or willful default in connection with any such action; provided, however, that the Trustee shall not require indemnification before taking any of the following actions: (i) draws on the Letter of Credit, (ii) acceleration of the maturity of the Bonds in accordance with Section 9.02 hereof, (iii) notification of Bondholders of a redemption of Bonds under Article III hereof, or (iv) payment of the principal of, premium, if any, or interest on the Bonds.

(m) All moneys received by Trustee shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law.

(n) Delivery of reports, information and documents to the Trustee under Section 7.3 of the Agreement are for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein, including the Borrower's compliance with any covenants under the Agreement. The Trustee has no duty or obligation to review such information provided to it and shall hold such information solely as a repository on behalf of Bondholders. If any Bondholder requests to review or receive a copy of any such information the Trustee shall without further direction or consent by protected in providing such information to all Bondholders.

(o) The Trustee shall not be liable for any error in judgment exercised in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(p) In no event shall the Trustee be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Trustee has been advised of the likelihood of such damages or penalty and regardless of the form of action.

(q) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(r) To the extent the Trustee is required to receive from or provide any documentation to the Rating Service the Trustee has no duty to determine the appropriate Rating

Service and shall be protected in receiving from or providing any documentation to the Rating Service identified by the Borrower or the Issuer.

(s) The Trustee shall be under no responsibility to approve or evaluate any expert or other skilled person selected by the Issuer or the Borrower for any of the purposes expressed in this Indenture or the Agreement.

(t) To the extent amounts are due under any Credit Agreement or Continuing Covenant Agreement the Trustee shall be fully protected in relying on a certification from the Credit Bank or the Bank, respectively.

Section 10.02 Fees, Charges and Expenses of Trustee. Trustee shall be entitled to payment and reimbursement for reasonable fees for its services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by Trustee in connection with such services. Upon an event of default, but only upon an event of default, Trustee shall have a first lien with right of payment prior to payment on account of principal of and premium, if any, and interest on any Bond upon the Trust Estate for the foregoing fees, charges and expenses incurred by it, including costs of its own defense unless it is adjudicated to have committed negligence or willful default; provided, however, that the Trustee shall have no interest in or right to receive payment from the proceeds of any draw under the Letter of Credit or from the proceeds of the remarketing of Bonds.

Section 10.03 Notice to Bondholders if Default Occurs. If a default occurs of which Trustee is by Section 10.01(h) hereof required to take notice or if notice of default be given as therein provided, then Trustee shall promptly give written notice thereof by registered or certified mail to the Issuer, the Borrower and the Registered Owner of each Bond shown by the list of Bondholders required by the terms of Section 4.07 hereof to be kept at the office of Trustee.

Section 10.04 Intervention by Trustee. In any judicial proceedings to which Issuer or Borrower is a party and which in the opinion of Trustee and its counsel has a substantial bearing on the interests of owners of the Bonds, Trustee may intervene on behalf of Bondholders and shall do so if requested in writing by the owners of at least twenty-five percent (25%) of the aggregate principal amount of Bonds then outstanding, but only if provided with indemnity as set forth in Section 10.01(l).

Section 10.05 Successor Trustee. Any corporation or association into which Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its municipal trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and fully vested with all of the title to the Trust Estate and all the trusts, estates, properties, rights, powers, discretions, immunities, privileges, duties and obligations of its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 10.06 Resignation by Trustee. Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving thirty (30) days written notice by first-class mail to Issuer and to the owner of each Bond as shown by the list of Bondholders required by Section 4.07 hereof to be kept by Trustee; provided that such resignation shall take effect only upon the appointment of a successor Trustee by the Bondholders or by Issuer. If no successor Trustee is appointed within 60 days, Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee.

Section 10.07 Removal of Trustee. Trustee may be removed at any time upon thirty (30) days notice, by an instrument or concurrent instruments in writing delivered to Trustee and to Issuer, and signed by the owners of a majority in aggregate principal amount of Bonds then outstanding or by Borrower, with the consent of the Issuer, if no default then exists hereunder; provided that no such removal shall take effect until the appointment of a successor Trustee by the Bondholders or by Issuer.

Section 10.08 Appointment of Successor Trustee by Bondholders. In case Trustee hereunder shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by Borrower, with the consent of Issuer, if no default then exists hereunder or by the Registered Owners of a majority in aggregate principal amount of Bonds then outstanding, by an instrument or concurrent instruments in writing signed by such Registered Owners, or by their duly authorized attorneys-in-fact, and a copy of which shall be delivered personally or sent by registered mail to Issuer. In case of any such vacancy, Issuer, by an instrument executed by its Mayor and attested by its City Clerk under its seal, may appoint a temporary trustee to fill such vacancy until a successor trustee shall be appointed by the Bondholders in the manner above provided; and such temporary trustee so appointed by Issuer shall immediately and without further act be superseded by Trustee appointed by the Bondholders. Every such Trustee appointed pursuant to the provisions of this Section 10.08 shall be a trust company or bank with trust powers of good standing having a reported capital and surplus of not less than \$10,000,000 if there be such an institution willing, qualified and able to accept the trust upon customary terms.

Section 10.09 Concerning Any Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its or his predecessor and also to Issuer and Borrower an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested of the title to the Trust Estate and all the trusts, estates, properties, rights, powers, discretions, immunities, privileges, duties and obligations of its predecessors; but such predecessor shall, nevertheless, on the written request of Issuer, or of its successor, execute and deliver an instrument transferring to such successor all of the title to the Trust Estate and all the trusts, estates, properties, rights, powers, discretions, immunities, privileges, duties and obligations of such predecessor hereunder; and every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder to its successor. Should any instrument in writing from Issuer be required by any successor Trustee for more fully and certainly vesting in such successor all of the title to the Trust Estate and all the trusts, estates, properties, rights, powers, discretions, immunities,

privileges, duties and obligations intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article X, shall be filed or recorded by the successor Trustee in each recording office where this Indenture shall have been filed or recorded.

Section 10.10 Right of Trustee to Pay Taxes and Other Charges. In case any tax, assessment, governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Agreement, Trustee may pay such tax, assessment, governmental or other charge, or insurance premium, without prejudice, however, to any rights of Trustee or the Bondholders arising in consequence of such failure; and any amount at any time so paid under this Section 10.10, with interest thereon from the date of payment at the rate of one percent (1%) above the Prime Rate shall become so much additional indebtedness secured by this Indenture, and the same shall be given a preference in payment over any of the Bonds (provided that the Trustee shall have no interest in any proceeds of any draw under the Letter of Credit) and shall be paid out of the proceeds of revenues collected from the Project, if not otherwise caused to be paid; but Trustee shall not be under any obligation to make any such payment unless it shall have been requested to do so by the holders of at least twenty-five percent (25%) of the aggregate principal amount of Bonds then outstanding and shall have been provided with adequate funds for the purpose of such payment.

Section 10.11 Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State of Florida) denying or restricting the right of banking corporations or associations to transact business as Trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Agreement, and in particular in case of an enforcement of either on default, or in case Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to Trustee or hold title to the properties, in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that Trustee appoint an additional individual or institution as a separate or Co-Trustee. The following provisions of this Section 10.11 are adapted to these ends.

Trustee may appoint an additional individual or institution as a separate or Co-Trustee, in which event each and every remedy, power, right, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to Trustee with respect thereto shall be exercisable by and vest in such separate or Co-Trustee but only to the extent necessary to enable such separate or Co-Trustee to exercise such powers, rights and remedies and every covenant and obligation necessary to the exercise thereof by such separate or Co-Trustee shall run to and be enforceable by either of them.

Should any deed, conveyance or instrument in writing from Issuer be required by the separate Trustee or Co-Trustee so appointed by Trustee for more fully and certainly vesting in and confirming to him such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged

and delivered by Issuer. In case any separate Trustee or Co-Trustee, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate Trustee or Co-Trustee so far as permitted by law, shall vest in and be exercised by Trustee until the appointment of a new Trustee or successor to such separate Trustee or Co-Trustee.

Section 10.12 Designation and Succession of Paying Agents. Trustee and any other banks or trust companies, if any, designated as Paying Agent in any supplemental indenture, shall be the Paying Agent for the applicable series of Bonds.

Any bank or trust company with or into which any Paying Agent may be merged or consolidated, or to which the assets and business of such Paying Agent shall be sold, shall be deemed successor of such Paying Agent for the purposes of this Indenture. If the position of Paying Agent shall become vacant for any reason, Issuer shall, within thirty (30) days thereafter, appoint such bank or trust company as shall be specified by Borrower and whose principal office is located in the same city as such Paying Agent to fill such vacancy; provided, however, that if Issuer shall fail to appoint such Paying Agent within such period, Trustee shall make such appointment.

The Paying Agent shall enjoy the same protective provisions in the performance of its duties hereunder as are specified in Section 10.01 hereof with respect to Trustee and shall be entitled to payment for its reasonable fees and expenses as provided in Section 10.02 hereof with respect to Trustee insofar as such provisions may be applicable.

Section 10.13 Dealing in Bonds. The Trustee and Paying Agents, and any of their directors, officers, employees or agents, may in good faith become the owner of Bonds recorded hereby with the same rights which it or they would have hereunder if the Trustee or Paying Agent were not such.

(End of Article X)

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 11.01 Supplemental Indentures Not Requiring Consent of Bondholders. Issuer and Trustee, with the consent of the Bank, if any, or the Credit Bank, if any, but otherwise without consent of, or notice to, any of the Bondholders, may enter into an indenture or indentures supplemental to this Indenture which shall not be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture.
- (b) To grant to or confer upon Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or Trustee or any additional security.
- (c) To evidence the appointment of a separate Trustee or a Co-Trustee or the succession of a new Trustee hereunder.
- (d) To subject to the lien of this Indenture additional moneys or real or personal property.
- (e) To alter the manner in which the Remarketing Agent may, in the reasonable exercise of its judgment, act pursuant to Section 2.03(c)(4) hereof to increase the likelihood of achieving the lowest net interest cost during the term of the Bonds, but only if the Borrower provides to the Trustee and the Issuer an Opinion of Bond Counsel to the effect that the amendment will not adversely affect the exclusion from gross income on any Bonds for federal income tax purposes.

Section 11.02 Supplemental Indentures Requiring Consent of Bondholders. Exclusive of supplemental indentures covered by Section 11.01 hereof and subject to the terms and provisions contained in this Section 11.02, and not otherwise, the Bank, if any, and otherwise the holders of not less than 66-2/3% in aggregate principal amount of the Bonds then outstanding, shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to and approve the execution by Issuer and Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable by Issuer for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture; provided, however, that nothing in this Section 11.02 or in Section 11.01 hereof contained shall permit, or be construed as permitting (a) an extension of the maturity of the principal of, or the interest on, any Bond issued hereunder, or (b) a reduction in the principal amount of, or redemption premium on, any Bond or the rate of interest thereon, or (c) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (d) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indentures, or (e) the creation of any lien ranking prior

to or on a parity with the lien of this Indenture on the Trust estate or any part thereof, except as hereinbefore expressly permitted, or (f) the holder of any Bond then outstanding to be deprived of the lien hereby created on the Trust estate.

If at any time Issuer shall request Trustee to enter into any such supplemental indenture for any of the purposes of this Section 11.02, Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be given by registered or certified mail to the owner of each Bond shown by the list of Bondholders required by the terms of Section 4.07 hereof to be kept at the office of Trustee. Such notice shall be prepared by the Issuer and shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the principal office of Trustee for inspection by all Bondholders. If, within sixty (60) days or such longer period as shall be prescribed by Issuer following such notice, the Bank, if any, or the Credit Bank, if any, or the holders of not less than 66-2/3% in aggregate principal amount of the Bonds outstanding at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain Trustee or Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section 11.02 permitted and provided, this Indenture shall be and be deemed to be modified and amended in accordance therewith.

Anything herein to the contrary notwithstanding, a supplemental indenture under this Article XI shall not become effective unless and until Borrower shall have consented to the execution and delivery of such supplemental indenture. In this regard, Trustee shall cause notice of the proposed execution of any such supplemental indenture to be mailed by certified or registered mail to Borrower at least fifteen (15) Business Days prior to the proposed date of execution and delivery of any such supplemental indenture. Borrower shall be deemed to have consented to the execution and delivery of any such supplemental indenture if Trustee does not receive a letter of protest or objection thereto signed by or on behalf of Borrower on or before 4:30 p.m., Central Time, on the fifteenth (15th) Business Day after the mailing of said notice.

Section 11.03 General Amendment Provisions. The Trustee may in its discretion, but shall not be obligated to, enter into any supplemental indenture authorized by Section 11.01 and 11.02 hereof which materially adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall receive, and shall be fully protected in relying upon, (i) an Opinion of Counsel that such supplemental indenture is permitted by the terms hereof and (ii) an Opinion of Counsel to the effect that the amendment will not adversely affect the exclusion from gross income on any Bonds for federal income tax purposes.

(End of Article XI)

ARTICLE XII

AMENDMENT OF AGREEMENT

Section 12.01 Amendments, etc., to Agreement Not Requiring Consent of Bondholders. Trustee shall, with the consent of the Borrower, the Bank, if any, and the Credit Bank, if any, but without the consent of or notice to any other Bondholders, consent to any amendment, change or modification of the Agreement as may be required (i) by the provisions of the Agreement or this Indenture, (ii) for the purpose of curing any ambiguity or formal defect or omission, (iii) so as to more precisely identify the Project or substitute or add additional equipment to the Project or additional rights or interests in property acquired in accordance with the provisions of the Agreement, or (iv) in connection with any other change therein which, is not to the prejudice of the Bondholders or is not to the prejudice of Trustee. The consent of the Trustee shall not be required to any amendment or waiver of the Agreement so long as any such amendment or waiver does not adversely affect the rights or obligations of the Trustee; provided, however, the Trustee shall consent to or acknowledge any such amendment or waiver upon the request of the Issuer. If the consent of the Trustee is required or requested the Trustee shall receive the opinions set forth in Section 11.03 hereof.

Section 12.02 Amendments, etc., to Agreement Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 12.01 hereof neither Issuer nor Trustee shall consent to any other amendment, change or modification of the Agreement without the consent of the Bank, if any, the Credit Bank, if any, and without mailing of notice and the written approval or consent of the holders of not less than 66-2/3% in aggregate principal amount of the Bonds at the time outstanding given as in this Section 12.02 provided. Notwithstanding the foregoing, no amendment, change or modification of the Agreement so as to alter the provisions with respect to payment of Loan Payments under Sections 5.2 and 5.3 thereof is permissible without the consent of all holders of all Bonds then outstanding. If at any time Issuer and Borrower shall request the consent of Trustee to any such proposed amendment, change or modification of the Agreement, Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notices of such proposed amendment, change or modification to be given in the same manner as provided by Section 11.02 hereof with respect to supplemental indentures. Such notices shall be prepared by the Borrower or the Issuer and shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of Trustee for inspection by all Bondholders. If the consent of the Trustee is required the Trustee shall receive the opinions set forth in Section 11.03 hereof.

Section 12.03 No Amendment of Payment Provisions Without Bondholder Consent. Notwithstanding any other provision of this Indenture, no amendment, change or modification of the Agreement so as to alter the provisions with respect to payment of Loan Payments under Sections 5.2 and 5.3 thereof is permissible without the consent of all holders of all Bonds then outstanding.

Section 12.04 Modification of Letter of Credit. The Letter of Credit may not be modified without the written consent of 100% of the owners of the outstanding Bonds (except to correct

any formal defects in the Letter of Credit, which modification may be made with the consent of the Borrower and the Trustee, and without the consent of the Bondholders), other than to (i) effect transfers thereof, (ii) effect extensions thereof, or (iii) effect reductions and reinstatements thereof, all in accordance with the terms of the Letter of Credit. Pursuant to the Agreement, however, the Borrower has the right to obtain an Alternate Letter of Credit without the consent of the Bond owners.

(End of Article XII)

ARTICLE XIII

MISCELLANEOUS

Section 13.01 Consents, etc., of Bondholders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent documents and may be executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the owner of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of Trustee with regard to any action taken by it under such request or other instrument, namely:

(a) The fact and date of the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such writing acknowledged before him the execution thereof, or by an affidavit of any witness to such execution.

(b) The fact of ownership of Bonds registered to the owners thereof and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration records of Issuer maintained by Trustee pursuant to Section 2.08 hereof.

For all purposes of this Indenture and of the proceedings for the enforcement hereof, any person deemed to be the holder of any Bond in accordance with this Section 13.01 shall be deemed to continue to be such holder of such Bond until Trustee shall have received notice in writing to the contrary.

Section 13.02 Limitation of Rights. With the exception of any rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person or company other than the parties hereto, and the holders of the Bonds, any legal or equitable right, remedy or claim under or with respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and their successors and assigns and the holders of the Bonds as herein provided.

Section 13.03 Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

Section 13.04 Notices. Any notice, certificate, request, complaint, demand, communication or other paper shall be sufficiently given and shall be deemed given when delivered, or mailed by first-class mail, postage prepaid, or sent by overnight courier, addressed as follows: if to Issuer, to City of Port Orange, Florida, 1000 City Center Circle, Port Orange, FL

32129, Attention: City Manager; if to Trustee, to U.S. Bank National Association, _____, _____, _____, Attention: Corporate Trust Department; if to Borrower, to Palmer College Foundation, 1000 Brady Street, Davenport, Iowa 52803, Attention: President/Chancellor and Vice Chancellor for Finance; if to Bank, to U.S. Bank National Association, 201 West 2nd Street, Davenport, Iowa 52801, Attention: _____. Issuer, Borrower, Bank and Trustee may designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 13.05 Payments Due on Sundays and Holidays. In any case where the date of maturity of principal of or interest on the Bonds or the date fixed for redemption of any Bonds shall be a day other than a Business Day, then payment of principal and premium, if any, or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 13.06 Issuer's Obligations Limited. No recourse under or upon any obligation, covenant or agreement contained in this Indenture or in any Bond hereby secured, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Indenture, shall be had against the Issuer.

Anything in this Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (a) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer; (b) the Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services, it being understood that such services shall be performed either by the Trustee or the Borrower; (c) none of the provisions of this Indenture shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liability which may be incurred thereby; and (d) the Issuer shall have no obligation to provide money to pay any taxes, assessments or insurance premiums on the Project.

Section 13.07 Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 13.08 Applicable Provisions of Law. This Indenture shall be governed by and construed in accordance with the laws of the State of Florida, [provided that the duties and obligations of the Borrower and Issuer will be governed by the laws of the State of Florida.]

Section 13.09 Rules of Interpretation. Unless expressly indicated otherwise, references to sections or Articles are to be construed as references to sections or Articles of this instrument

as originally executed. Use of the words “herein”, “hereby”, “hereunder”, “hereof “, refer to the Indenture and not solely to the particular portion in which any such word is used.

Section 13.10 Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Indenture.

(End of Article XIII)

IN WITNESS WHEREOF, Issuer has caused this Indenture to be signed in its name and behalf by its Mayor and to be attested by its City Clerk and the seal of the Issuer to be affixed hereto, and to evidence its acceptance of the trusts hereby created Trustee has caused this Indenture to be signed in its name and behalf by its duly authorized officers, as of the day first above written.

(SEAL)

CITY OF PORT ORANGE, FLORIDA

By: _____
Mayor

ATTEST:

City Clerk

U.S. BANK NATIONAL ASSOCIATION

By: _____
_____, _____

EXHIBIT A

FORM OF PURCHASER LETTER

_____, 20__

City of Port Orange, Florida
Port Orange, Florida

Palmer College Foundation
Davenport, Iowa

City of Port Orange, Florida
Private College Facility Revenue Bonds
(Palmer College of Chiropractic Project), Series 2019B

Ladies and Gentlemen:

_____ (“Purchaser”) has agreed to purchase the above-referenced debt obligations (the “Debt Obligations”) in the original aggregate principal amount of \$[PAR AMOUNT], which were issued by the City of Port Orange, Florida (the “Issuer”) pursuant to the Indenture of Trust dated as of June 1, 2019 (the “Indenture”), between the Issuer and U.S. Bank National Association, as trustee (the “Trustee”). All capitalized terms used herein, but not defined herein, shall have the respective meanings set forth in the Indenture. The undersigned, an authorized representative of the Purchaser, hereby represents to you that:

1. The Purchaser has sufficient knowledge and experience in financial and business matters, including purchase and ownership of tax-exempt obligations, to be able to evaluate the risks and merits represented by the purchase of the Debt Obligations.

2. The Purchaser has authority to purchase the Debt Obligations and to execute this letter and any other instruments and documents required to be executed by the Purchaser in connection with the purchase of the Debt Obligations.

3. The Purchaser is a _____ organized under the laws of the United States of America and is able to bear the economic risks of purchasing the Debt Obligations.

4. The Purchaser understands that a prospectus, offering circular, or other comprehensive offering statement has not been provided with respect to the Debt Obligations. The Purchaser has made its own inquiry and analysis with respect to the Issuer, Palmer College Foundation a/k/a Palmer College Foundation, Inc. (the “Borrower”), the Debt Obligations and the security therefor, and other material factors affecting the security for and payment of the Debt Obligations.

5. The Purchaser acknowledges that it has reviewed information, including financial statements and other financial information, regarding the Issuer and the Borrower, and has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Issuer, the Borrower, the Debt Obligations and the security therefor, so that it has been able to make an informed decision to purchase the Debt Obligations; provided, however, that this letter shall not constitute a waiver of any rights or remedies the Purchaser may have with respect to any untrue information it may have received or any material information which was withheld from its review.

6. The Purchaser has not relied on Longhouse Capital Advisors, LLC in any way with respect to the credit information it has reviewed, its inquiry and analysis and its decision to make the Loans, and Longhouse Capital Advisors, LLC has not made any representations to the Lender with respect thereto

7. The Purchaser understands that the Bonds: (i) are not registered or qualified for sale under any Federal or state law or regulation, (ii) are not listed on any stock or other securities exchange, and (iii) have not been rated by any credit rating agency.

8. The Purchaser has been furnished with and has examined (i) the Indenture; (ii) the Loan Agreement, and (iii) other documents, certificates and the legal opinions delivered in connection with the issuance of the Bonds.

9. The Debt Obligations are being acquired by the Purchaser for its own account and not with a present view toward resale, transfer or distribution; provided, however, that the Purchaser reserves the right to sell, transfer or distribute the Debt Obligations, but agrees that any such sale, transfer or distribution by the Purchaser shall be in accordance with the terms of the Indenture.

[PURCHASER]

EXHIBIT B

PRINCIPAL PAYMENT SCHEDULE

Date

Principal Amount

\$



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/4/2019

Consent item: No

SUBJECT: (G17) City Attorney Evaluation and Compensation

DEPARTMENT: City Attorney

GOAL:

RECOMMENDED MOTION: Discussion of the City Council's evaluation for the City Attorney performance and motion to approve compensation for the City Attorney.

SUMMARY: The City Attorney is providing documentation and evaluation forms; and Councilman Wiles request for historical payroll will be provided subsequent to the distribution of the draft agenda.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Copy of Salary Adjustment Hx CA 2019	Copy of Salary Adjustment Hx CA 2019.pdf
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Tracy London
Margaret Roberts
Jamie Miller
Scott Neils
Jake Johansson
Robin Fenwick

Created/Initiated - 5/23/2019
Approved - 5/23/2019
Approved - 5/24/2019
Approved - 5/24/2019
Approved - 5/28/2019
Final Approval - 5/28/2019

City Attorney Salary Information

Current Salary: \$135,179 annually
Years of Service 18 Years 8 Months

Salary History

Date	Rate	Percent Change From Prior Wage
10/1/2008	\$110,314	
10/1/2013	\$113,068	2.5%
10/1/2014	\$116,459	3.0%
10/1/2015	\$119,953	3.0%
10/1/2016	\$122,948	2.5%
10/1/2017	\$126,630	3.0%
5/1/2018	\$131,248	3.5%
10/1/2018 (Current)	\$135,179	3.0%

For years not indicated above, there was no adjustment provided.