



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

JUNE 18, 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. Silent Invocation
2. Pledge of Allegiance
3. Swearing in Ceremony
4. Roll Call

B. CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only
6. Agenda Approval
7. Approval of Minutes
 - a. June 4, 2019 - Regular City Council Meeting
8. Bid Awards and Contract Items
 - a. Reject All Bids - ITB 19-11 Pedestrian and School Signs
 - b. Intent to award ITB #19-10 to McConnie Enterprises, Inc. for baseball field work
 - c. Approval of Change Order No. 1 to Mead Hunt Task Authorization 11 for construction phase (post design) services for the Dunlawton Street Lighting Project
9. Resolution No. 19-25 - Residential Shade Tree Mitigation
10. Resolution No. 19-26 - Ratifying Election Results for the Run Off Election held June 11, 2019 for District 1
11. Resolution No. 19-27 - Budget Appropriation
12. Resolution No. 19-29 - Right-of-Way Vacation - Howes Street

13. Resolution No. 19-30 - Right-of-Way Vacation - Portion of Freeman Street
14. Resolution No. 19-31 - Right-of-Way Vacation - Portion of Orchard Street
15. Cost Participation Agreement - FPL/Canal View Blvd. Improvements
16. Major Special Event Request– Port Orange Family YMCA Triathlon at Aunt Catfish Restaurant at 4009 Halifax Drive.

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

D. COUNCIL COMMENTS

17. Comments/Concerns from Council Members

E. BOARD APPOINTMENTS, INTERVIEWS, REPORTS

18. Citizen Advisory Committee for TPO
19. Environmental Advisory Board Appointment
20. Construction Regulation Board Appointments (x5)

F. PUBLIC HEARING

21. Second Reading - Ordinance No. 2019-17 - Palmer Series 2019B Bond
22. Second Reading - Ordinance No. 2019-18 - Administrative Rezoning/119 Howes Street
23. Second Reading - Ordinance No. 2019-19 - Fire Assessment Procedure
24. First Reading - Ordinance No. 2019-20 - Small-Scale Future Land Use Map Amendment/904 and 908 Taylor Road
25. First Reading - Ordinance No. 2019-21 - Rezoning/904 and 908 Taylor Road
26. Resolution No. 19-22 - 1389 Reed Canal Rd./Brownfield Area Designation Request

G. REGULAR AGENDA

27. First Reading - Ordinance No. 2019-22 - Trespassing on Public Property

H. ADDITIONAL ITEMS

28. City Attorney
29. City Manager

I. COUNCIL COMMITTEE REPORTS

30. City Council Committee Reports
 - a. First Step Shelter
 - b. Port Orange/South Daytona Chamber of Commerce

c. Roundtable of Elected Officials

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 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
JUNE 4, 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.

Silent Invocation

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

CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only

Susanne Scheiber, citizen, spoke regarding Resolution No. 19-24 supporting the reduction of single-use plastic straws in the City of Port Orange. She asked for more than a voluntary ban.

Marcia Kreeger, citizen, also spoke regarding the ban on single-use plastic straws and plastic bags.

5. Agenda Approval

Motion to pull Item #9 from the Consent Agenda for further discussion was made by Vice Mayor Chase Tramont and Seconded by Councilman Scott Stiltner. Motion carried unanimously by voice vote.

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

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

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

Item #9 - Vice Mayor Chase Tramont does not support the ban because he does not believe the government should dictate the business's procedures.

Mayor Burnette read Resolution No. 19-24.

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.

Motion to adopt Resolution No. 19-24 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian.

Councilman Jack Wiles suggested patrons refuse or not ask for a straw but agrees with Vice Mayor Tramont that the decision should be up to the business.

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

CITIZEN PARTICIPATION (Non-Agenda – 15 minutes)

Jim Edwards, citizen, would like to see the Port Orange Art Fest come back to Port Orange.

COUNCIL COMMENTS

13. Comments/Concerns from Council Members

Councilman Scott Stiltner read Senior Deputy Frank Schofield's obituary and spoke about his service to the community. He asked Council to rename the boat ramps at the Dunlawton Bridge for him. Mayor Burnette asked Mr. Johansson to bring a resolution back for Council's consideration in the renaming.

Councilman Jack Wiles discussed some ideas to help reduce the burden on taxpayers. He suggested having all License Agreements approved by Staff rather than Council. Mayor Burnette asked for an agenda item to be considered by Council. Ms. Roberts advised Council of the three types of License Agreements. Council's approval is by past practice not ordinance or resolution. She suggested Lien Recovery Agreements be discussed as well.

Mayor Don Burnette invited all to the Mayor's Golf Tournament on June 15, 2019 and reminded citizens to vote on June 11, 2019 for the District 1 Council Seat.

SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

14. Port Orange Get Fit Winners Recognition

Susan Lovallo, Parks & Recreation Director, presented the Port Orange Get Fit winners with their awards.

15. Port Orange Police Pension Plan Valuation Report Presentation

Chad Little, Freiman Little Actuaries, LLC, presented details from the actuarial report.

PUBLIC HEARING

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

Mayor Don Burnette read Ordinance No. 2019-17.

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.

Motion to adopt Ordinance No. 2019-17 on first reading was made by Vice Mayor Chase Tramont and Seconded by Councilman Jack Wiles. Motion carried unanimously by roll call vote.

REGULAR AGENDA

17. City Attorney Evaluation and Compensation

Ms. Roberts thanked her staff for their work in the City Attorney's Office. She has met with each of the Council members and will implement new goals for the next year based on the feedback. She explained her benefits and salary compared to other's in the area.

Council members discussed their thoughts on the City Attorney's request for an increase in her retirement account.

Motion to approve the continuance of 2.5% contribution plus a 3.5% one-time contribution to the City Attorney's retirement account was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

18. City Manager Evaluation Debrief

Council members have met with the City Manager regarding his performance and discussed their thoughts on his performance. They gave him high marks and thanked him for his service. Mr. Johansson thanked Council for the opportunity to serve them, staff, and the community.

Councilman Jack Wiles suggested an increase of 10-16.8% to match the salaries of other area executives and managers. Councilman Drew Bastian would be comfortable with a 3-3.5% increase. Councilman Scott Stiltner agreed with a 10% increase. Vice Mayor Chase Tramont is not comfortable with 10% because it can't be done for the rank and file. He would feel comfortable with a 3-5% increase to get closer to the market rate. He'd like to tackle wages in this year's budget.

Motion to grant an increase of 3.5% of the base salary effective October 1, 2019 was made by Councilman Drew Bastian. Motion failed for lack of a second.

Motion to grant an increase of 7.5% of the base salary effective October 1, 2019 was made by Vice Mayor Chase Tramont and Seconded by Councilman Drew Bastian. Motion carried 3-2 by roll call vote with Councilman Jake Wiles and Councilman Scott Stiltner voting no.

COMMENTS

19. City Attorney Comments

There was nothing further.

20. City Manager Comments

Mr. Johansson thanked Council for the increase. He discussed the shooting in Virginia Beach and advised he and staff take these incidents seriously and training is ongoing.

COUNCIL COMMITTEE REPORTS

21. City Council Committee Reports

a. River to Sea TPO - Councilman Scott Stiltner was unable to attend.

b. General Employees' Pension Fund - Councilman Scott Stiltner provided an update.

ADJOURNMENT - 8:31 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, CMC
City Clerk



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: Yes

SUBJECT: (B8a) Reject All Bids - ITB 19-11 Pedestrian and School Signs

DEPARTMENT: Public Works

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: The Public Works & Utilities Department recommends City Council reject all bids for ITB#19-11, Pedestrian and School Signs.

SUMMARY: On May 16, 2019, the City received one responsive bid from Universal Signs & Accessories for \$61,224.00 in response to ITB 19-11, Pedestrian and School Signs.

Having only received the one responsive bid, staff feels it is in the best interest of the City to reject all bids and explore other options in an effort to purchase pedestrian and school crossing signs at the lowest price available.

Project No.: IMI015 Funding Account No.: 301-4300-541-6397

Presenter: Lynn Stevens

ATTACHMENTS:

1.	ITB 19 11 Bid Submittal Universal Signs and Accessories	ITB 19 11 Bid Submittal Universal Signs and Accessories.pdf
2.	ITB 19 11 Bid Tabulation Pedestrian and School Signs	ITB 19 11 Bid Tabulation Pedestrian and School Signs.pdf
3.	Bid Package ITB 19 11 Pedestrian and School Signs	Bid Package ITB 19 11 Pedestrian and School Signs.pdf
4.	ITB 19 11 Excel Price Sheet Pedestrian and School Signs	ITB 19 11 Excel Price Sheet Pedestrian and School Signs.xlsx
5.	ITB 19 11 Addendum 1 of 1	ITB 19 11 Addendum 1 of 1.pdf
6.	Justification Memo Reject All Bids 19 11 Pedestrian and School Signs	Justification Memo Reject All Bids 19 11 Pedestrian and School Signs.pdf

Julia Wiggins
Kynah Cockcroft
Tom DiEulio
Ronny Buttrum

Created/Initiated - 5/21/2019
Approved - 5/21/2019
Approved - 5/21/2019
Approved - 5/21/2019

Lynn Stevens	Approved - 5/22/2019
Scott Neils	Approved - 5/23/2019
Margaret Roberts	Approved - 6/6/2019
Jake Johansson	Approved - 6/7/2019
Robin Fenwick	Final Approval - 6/7/2019



"ATTACHMENT 1" SCHEDULE OF UNIT PRICING

BID FORM

CITY OF PORT ORANGE

ITB # 19-11

Pedestrian School Signs

Completed Attachment 1 Bid Proposal form MUST be included with Bid Submission

Instruction to save Attachment from DemandStar website:

Perform "File Save As" and save spreadsheet to your computer. Fill in pricing in highlighted cells, preferably electronically.

Bidders are required to complete all fields shaded in green. All other fields will be automatically calculated.

NAME OF BUSINESS: Universal

CONTACT PERSON: Sean Stone

EMAIL ADDRESS: sstone@universalsignsfl.com

AUTHORIZED NAME: Sean Stone

AUTHORIZED SIGNATURE: Sean Stone

BID PROPOSAL

ITEM #	QUANTITY	UNIT of MEASURE	DESCRIPTION	DELIVERY TIME in DAYS	WARRANTY DURATION in MONTHS	COST per UNIT	TOTAL COST
1	8	EACH	30" Flashing school crossing solar powered sign with timer activation and mounting hardware	30	36	\$2,377.00	\$19,016.00
2	2	EACH	30" Flashing School Crossing signs with: Solar Power push button activation and mounting hardware	30	36	\$2,670.00	\$5,340.00
3	2	EACH	30" Flashing Pedestrian crossing solar powered signs with push button activation and mounting hardware	30	36	\$2,670.00	\$5,340.00
4	8	EACH	30" Flashing Pedestrian crossing solar powered signs with Audible push button activation and mounting hardware	30	36	\$3,941.00	\$31,528.00
TOTAL COST OF PROJECT							\$61,224.00

AWARD: THIS BID WILL BE AWARDED TO THE LOWEST RESPONSIVE, RESPONSIBLE BIDDER



CITY OF PORT ORANGE, FLORIDA
ITB TABULATION SHEET

ALL BIDS ACCEPTED BY THE CITY OF PORT ORANGE ARE SUBJECT TO THE CITY'S TERMS AND CONDITIONS. ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE BIDDERS ARE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. BIDS FROM THE BIDDERS LISTED HEREIN ARE THE ONLY BIDS RECEIVED TIMELY AS OF THE OPENING DATE AND TIME. ALL OTHER BIDS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE. ALL BIDS ARE SUBJECT TO REVIEW BY THE CITY AND AWARD REQUIRES A FORMAL CONTRACT AND APPROVAL BY CITY COUNCIL.

ITB NUMBER: ITB-19-11
ITB TITLE: PEDESTRIAN & SCHOOL SIGNS
OPENING DATE/TIME: 5/16/2019 AT 2:30 P.M.

				Response 1	Response 2	Response 3	Response 4
Submittal Required Forms (mark "yes" or "no")				Universal Signs & Accessories	Vendor	Vendor	Vendor
1	Form 7.2 – Vendor’s Acknowledgement			YES			
2	Form 7.3 – Addendum and Change Order Procedure			YES			
3	Form 7.4 – Drug Free/Tie Preference Statement			YES			
4	Form 7.5 – Public Entity Crimes Statement			YES			
5	Form 7.6 – Affidavit of Anti-Collusion			YES			
6	Form 7.7– Statement of Vendor’s Qualifications			YES			
7	Form 7.8 – Professional References for Previous Experience			YES			
8	Form 7.9 – Professional References for Previous Experience			YES			
9	Form 7.10 – Local Business Affidavit of Eligibility			YES			
10	Attachment 1 – Bid Proposal			YES			
	1 Original, 1 Digital Copy (CD or flash drive) version in PDF format.			YES			
	Deemed Responsive?			YES			
	Additional Comments						
Delivery Days		Warranty	Quantity				
30	30” Flashing school crossing solar powered sign with timer activation and mounting hardware	36	8	\$19,016.00	\$0.00	\$0.00	\$0.00
30	30” Flashing School Crossing signs with: Solar Power push button activation and mounting hardware	36	2	\$5,340.00	\$0.00	\$0.00	\$0.00
30	30” Flashing Pedestrian crossing solar powered signs with push button activation and mounting hardware	36	2	\$5,340.00	\$0.00	\$0.00	\$0.00
30	30” Flashing Pedestrian crossing solar powered signs with Audible push button activation and mounting hardware	36	8	\$31,528.00	\$0.00	\$0.00	\$0.00
TOTAL BID				\$61,224.00	\$0.00	\$0.00	\$0.00
Opened and tabulated by:		David Van Valkenburgh Purchasing Agent					
Witnessed by:		Joseph Castro Purchasing Buyer					

CITY OF PORT ORANGE, FLORIDA
ITB TABULATION SHEET

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ITB NUMBER: ITB-19-11
ITB TITLE: INSTALL REPLACE PEDESTRIAN & SCHOOL SIGNS
OPENING DATE/TIME: 5/16/2019 AT 2:30 P.M.

			Response 5	Response 6	Response 7	Response 8
Submittal Required Forms (mark "yes" or "no")			Vendor	Vendor	Vendor	Vendor
1	Form 7.2 – Vendor’s Acknowledgement					
2	Form 7.3 – Addendum and Change Order Procedure					
3	Form 7.4 – Drug Free/Tie Preference Statement					
4	Form 7.5 – Public Entity Crimes Statement					
5	Form 7.6 – Affidavit of Anti-Collusion					
6	Form 7.7– Statement of Vendor’s Qualifications					
7	Form 7.8 – Professional References for Previous Experience					
8	Form 7.9 – Professional References for Previous Experience					
9	Form 7.10 – Local Business Affidavit of Eligibility					
10	Attachment 1 – Bid Proposal					
	1 Original, 1 Digital Copy (CD or flash drive) version in PDF format.					
	Deemed Responsive?					
	Additional Comments					
Delivery Days		Warranty				
	30” Flashing school crossing solar powered sign with timer activation and mounting hardware		\$0.00	\$0.00	\$0.00	\$0.00
	30” Flashing School Crossing signs with: Solar Power push button activation and mounting hardware		\$0.00	\$0.00	\$0.00	\$0.00
	30” Flashing Pedestrian crossing solar powered signs with push button activation and mounting hardware		\$0.00	\$0.00	\$0.00	\$0.00
	30” Flashing Pedestrian crossing solar powered signs with Audible push button activation and mounting hardware		\$0.00	\$0.00	\$0.00	\$0.00
TOTAL BID			\$0.00	\$0.00	\$0.00	\$0.00

Opened and tabulated by: David Van Valkenburgh Purchasing Agent
Witnessed by: Joseph Castro Purchasing Buyer

CITY OF PORT ORANGE, FLORIDA
ITB TABULATION SHEET

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ITB NUMBER: ITB-19-11
ITB TITLE: INSTALL REPLACE PEDESTRIAN & SCHOOL SIGNS
OPENING DATE/TIME: 5/16/2019 AT 2:30 P.M.

			Response 9	Response 10	Response 11	Response 12
Submittal Required Forms (mark "yes" or "no")			Vendor	Vendor	Vendor	Vendor
1	Form 7.2 – Vendor’s Acknowledgement					
2	Form 7.3 – Addendum and Change Order Procedure					
3	Form 7.4 – Drug Free/Tie Preference Statement					
4	Form 7.5 – Public Entity Crimes Statement					
5	Form 7.6 – Affidavit of Anti-Collusion					
6	Form 7.7– Statement of Vendor’s Qualifications					
7	Form 7.8 – Professional References for Previous Experience					
8	Form 7.9 – Professional References for Previous Experience					
9	Form 7.10 – Local Business Affidavit of Eligibility					
10	Attachment 1 – Bid Proposal					
	1 Original, 1 Digital Copy (CD or flash drive) version in PDF format.					
	Deemed Responsive?					
	Additional Comments					
Delivery Days		Warranty				
	30” Flashing school crossing solar powered sign with timer activation and mounting hardware		\$0.00	\$0.00	\$0.00	\$0.00
	30” Flashing School Crossing signs with: Solar Power push button activation and mounting hardware		\$0.00	\$0.00	\$0.00	\$0.00
	30” Flashing Pedestrian crossing solar powered signs with push button activation and mounting hardware		\$0.00	\$0.00	\$0.00	\$0.00
	30” Flashing Pedestrian crossing solar powered signs with Audible push button activation and mounting hardware		\$0.00	\$0.00	\$0.00	\$0.00
TOTAL BID			\$0.00	\$0.00	\$0.00	\$0.00

Opened and tabulated by: David Van Valkenburgh Purchasing Agent
Witnessed by: Joseph Castro Purchasing Buyer

CITY OF PORT ORANGE, FLORIDA

INVITATION TO BID

PEDESTRIAN and SCHOOL SIGNS

ITB #19-11



City of Port Orange Purchasing Division

Prepared by: David Van Valkenburgh, Purchasing Agent

Release Date: April 25, 2019

**Bid Due Date and Time:
May 16, 2019 at 2:30 P.M.**

City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129
(386) 506-5718
purchdiv@port-orange.org
www.port-orange.org



Legal Notice to Proposers

ITB #19-11 PEDESTRIAN and SCHOOL SIGNS

Notice is hereby given that the City of Port Orange is soliciting bids for ITB #19-11 PEDESTRIAN and SCHOOL SIGNS. Bids will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 P.M. on May 16, 2019** which may be amended by addendum issued by the City. All untimely Bids will not be considered and will be returned to the Bidder unopened. All Bids will be evaluated to ensure they contain all required forms in order to deem the Bidder responsive or non-responsive. Bids will be opened and read aloud at 2:30 P.M. in Council Chambers.

DESCRIPTION: The City of Port Orange is soliciting sealed bids from Successful Bidders to furnish materials and other components necessary to meet Scope of Work that will meet these requirements of the City of Port Orange

All Bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-256, and all Bids will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129, and at www.municode.com. Local vendors may be given a local preference pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-275.

Copies of the Bid documents, requirements, scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from the City of Port Orange website at www.port-orange.org/bids.aspx and (DemandStar) via their website at www.demandstar.com. All questions shall be directed **in writing** to the Purchasing Agent, David Van Valkenburgh, dvanvalkenburgh@port-orange.org or purchdiv@port-orange.org and reference "Questions in the subject line. Last day for questions will be **May 09, 2019 at 5:00 P.M.**

All Bidders are required to complete and submit a Public Entity Crime Statement, the Anti-Collusion Statement, and Drug-Free Tie Proposal Preference Statement, as well as other documents as required by the solicitation.

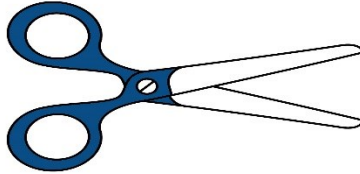
NO bid shall be withdrawn for a period of ninety (90) days subsequent to the bid opening without the consent of the City of Port Orange, Florida.

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

Bids shall be **submitted to the City Clerk's office** with one (1) original addressed to David Van Valkenburgh, Purchasing Agent, Finance Department, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 in a **SEALED ENVELOPE/PACKAGE** plainly marked on the outside: **"ITB #19-11 PEDESTRIAN and SCHOOL SIGNS"**

David Van Valkenburgh, Purchasing Agent
Legal Ad - One Time – **April 25, 2019**

Cut along the outer border and affix this label to the outside of your sealed bid envelope/package to identify it as a "Sealed Bid". Be sure to include the name of the company submitting the bid where requested.



SEALED BID • DO NOT OPEN	
SEALED BID NO.	ITB #19-11
BID TITLE:	PEDESTRIAN and SCHOOL SIGNS
DUE DATE/TIME:	May 16, 2019 at 2:30 P.M.
SUBMITTED BY:	(Name of Company)
DELIVER TO:	City of Port Orange City Clerk's Office Attn: David Van Valkenburgh Purchasing Agent Finance Department 1000 City Center Circle Port Orange, Florida 32129
DATE/TIME RECEIVED:	(To be stamped by Clerk's Office)

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SECTION 1 – PURPOSE AND OVERVIEW

The City of Port Orange is soliciting sealed bids from Successful Bidders to furnish materials and other components necessary to meet Scope of Work that will meet these requirements of the City of Port Orange.

It is the intent and purpose of the City of Port Orange (City) that this Invitation to Bid promotes competitive selection. It shall be the Bidder's responsibility to advise the Purchasing Division if any language, requirements, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this ITB to a single source.

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO BIDDERS

Firms or companies (Vendor) desiring to provide services, as described herein shall submit sealed bids, to including one original copy in conformance with the detailed submittal instructions.

TIMELINE (Local Time):

The City reserves the right to alter dates as needed.

Date of Distribution:April 25, 2019

Deadline for Questions: May 9, 2019 by 5:00 P.M.

Final Addendum Posting: May 10, 2019 by 5:00 P.M.

Bids Due:**May 16, 2019 by 2:30 P.M.**

City Council Meeting for Approval of Recommendation of Award..... To Be Determined

Bids must be delivered in a sealed envelope/package and delivered to:

City of Port Orange City Clerk's Office
Attn: David Van Valkenburgh, Purchasing Agent
Finance Department
1000 City Center Circle
Port Orange, Florida 32129

Sealed Bids must be delivered no later than the date and time listed in the Timeline above. All times referenced are local time.

Bids shall be sealed, and Vendors shall clearly indicate on the outside of their bid the following:

- a) Invitation to Bid (ITB) Number and Title
- b) Date of Opening
- c) Name of Vendor
- d) Address of Vendor

Due to the timing of mail service, the City cautions Vendors to assure actual delivery of Bids to the City prior to the deadline set for receiving bids. Carrier and hand deliveries of bids will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until the date and time referenced in the Timeline above or as amended by addendum issued by the City. Bids received after the established deadline shall not be considered.

Offers by telephone, email or telegram shall not be accepted. Also, Vendors are instructed NOT to fax their bid package. **Faxed bids shall be rejected as non-responsive regardless of where or when the fax is received.**

All Bids will be opened publicly, and the names of all Vendors shall be read aloud. All conferences and meetings regarding this ITB are recorded electronically (audio only).

The City of Port Orange reserves the right to reject any or all Bids or parts of Bids if it is in the best interest of the City.

QUESTIONS REGARDING THIS ITB:

All questions shall reference #19-11 PEDESTRIAN and SCHOOL SIGNS” in the subject line. All questions concerning this ITB shall be submitted in writing no later than the date and time referenced in the Timeline above to:

David Van Valkenburgh
Purchasing Agent
1000 City Center Circle
Port Orange, FL 32129
dvanvalkenburgh@port-orange.org or
purchdiv@port-orange.org

ADDENDA REGARDING THE INVITATION TO BID:

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

It is the Vendor's responsibility to be sure all correct number of addenda was received. The Vendor should verify with the designated contact persons prior to submitting a Bid that all addenda have been received. Vendors should acknowledge the correct number of addenda received as part of their Bids. It is the responsibility of the Vendor to ensure all addenda have been received prior to submitting a bid.

Written responses, in the form of an addendum, will be provided via the City website www.port-orange.org/bids.aspx and Demand Star websites. www.demandstar.com.

The city of Port Orange reserves the right to consider the omission of an acknowledgment of addendum as cause for rejection of the ITB submittal.

This provision exists solely for the convenience and administrative efficiency of the City of Port Orange. No Vendor or other third party gains any rights by virtue of this provision or the application thereof, nor shall any Vendor or third party have any standing to sue or cause of action arising therefrom.

CLARIFICATIONS:

It is the Vendor’s responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this ITB. Lack of understanding and/or misinterpretation of any portions of this ITB shall not be cause for withdrawal of your Bid after opening or for subsequent protest of award. Vendors must contact the Purchasing Representative, at the email provided, should clarification be required.

Modification or alteration of the documents contained in the solicitation or contract shall only be valid if mutually agreed to in writing by the parties.

MINIMUM QUALIFICATIONS:

Vendors shall be licensed to do business in the State of Florida. Submit Sunbiz report showing your company registered as “Active”.

Vendors must be properly registered and licensed to provide the goods or services identified in the scope of work, by all applicable state and local agencies.

Vendors must provide a minimum of three (3) verifiable references from similar scopes of work as identified in this ITB on the provided "Professional References" form. Failure to provide references that verify required experience may cause the Vendor to be deemed non-responsive. The City of Port Orange is not to be used as a reference.

NO LOBBYING:

All Vendors are hereby placed on notice that the City of Port Orange Council, City Employees/Staff, nor Members of the Evaluation Committee (with the exception of the City of Port Orange Purchasing Division personnel designated to receive requests for interpretations or corrections) are not to be lobbied, directly or indirectly either individually or collectively, regarding this ITB. During the entire procurement process, all Vendors and their subcontractors, sub-consultants, or agents are hereby placed on notice that they are not to contact any persons listed above for such purposes as holding meetings of introduction, dinners, etc. if they intend to submit or have submitted Bids for this project. Any Vendor contacting individuals mentioned herein in violation of this warning may automatically be disqualified from further consideration for this ITB.

PRICING SHEETS:

Pricing sheets/Bid Forms are to be completed as directed and without modification and returned as part of the ITB submittal prior to the ITB deadline for submission. Failure to fill out the price sheets/bid forms as directed and without modification may negatively affect the evaluation of your bid.

EXCEPTIONS TO SPECIFICATIONS:

If taking exception to any portion of the ITB specifications, the Vendor must indicate those exceptions as stated on the Vendor's Acknowledgement Form.

BID SUBMISSION AND WITHDRAWAL:

Unless otherwise specified, Vendor shall use the forms supplied by the Purchasing Division. Bids, once opened, become the property of the City, cannot be withdrawn, and will not be returned to the Vendors. Upon opening, Bids become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

CORRECTION OF BIDS:

Correction of inadvertently erroneous Bids shall be permitted up to the time of ITB opening. Vendors shall not be allowed to modify their Bids after the opening time and date.

WITHDRAWAL OF BIDS:

NO Bid shall be withdrawn for a period of ninety (90) days subsequent to the Bid opening without the consent of the City of Port Orange, Florida. Negligence on the part of the Vendor in preparing the Bid confers no right of withdrawal or modification after the Bid has been opened, at the appointed time and place by the City of Port Orange. Any such withdrawn Bid shall not be resubmitted.

OPENING OF BIDS:

Bids will be received until the date and time stated in this ITB and will be publicly opened and read at the place, time and date stated. No responsibility will attach the Purchasing Department for the premature opening of a Bid not properly addressed and identified.

LITIGATION HISTORY:

The City will consider a Vendor's litigation history information in its review and determination of responsibility. All Vendors are required to disclose to the City all "material" cases filed, pending, or resolved during the last five (5) years prior to the solicitation response due date, whether such cases were brought by or against the Vendor, any parent or subsidiary of the Vendor, or any predecessor organization. If the Vendor is a joint venture, the information provided should encompass the joint venture (if it is not newly-formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Vendor's litigation history is an issue of responsibility, the failure to provide litigation history as required in the Evaluation Criteria may result in a recommendation of non-responsive by the Purchasing Manager.

DEBARMENT HISTORY:

The City will consider a Vendor's debarment history information in its review and determination of responsibility. All Vendors are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Vendor, any parent or subsidiary of the Vendor, or any predecessor organization. If the Vendor is a joint venture, the information provided should encompass the joint venture (if it is not newly-formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Vendor's debarment history is an issue of responsibility, the failure to provide debarment history as required in the Proposal Submittal and Requirements Section may result in a recommendation of non-responsive by the Purchasing Manager.

REJECTION OF BIDS:

The City reserves the right to reject any and/or all Bids when such rejection is in the best interest of the City.

BIDS MAY BE REJECTED AND/OR VENDOR(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

- (a) Failure to update the information on file including address, product, service or business descriptions.
- (b) Failure to perform according to contract provisions.
- (c) Conviction in a court of law of any criminal offense in connection with the conduct of business.
- (d) Evidence of a violation of any federal or state antitrust law based on the submission of bids or proposals, or the awarding of contracts.
- (e) Evidence that the vendor has attempted to give a Board employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
- (f) Other reasons deemed appropriate by the City.

OWNERSHIP OF DOCUMENTS:

All documents resulting from this project will become the sole property of the City of Port Orange. The Vendor must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in the possession of the Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

AMERICANS WITH DISABILITIES ACT (ADA):

If you need special services provided for under the Americans with Disabilities Act, contact the ADA Coordinator in our Human Resources office at 386-506-5560 at least 48 hours before the scheduled event.

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SECTION 3 – SCOPE OF WORK

SCOPE OF WORK for Electronic Signs:

The Contractor shall provide the following equipment:

8 EA. – Flashing school crossing solar powered sign with timer activation. Each assembly shall include the minimum

- 30" x 30" S1-1, School crossing blinking sign, FYG, DG3, 5 Amber LED 14AH
- Minimum 7-day timer activation with time clock control panel,
- 13 Watt solar panel package with solar tube mount
- Circuit programming kit, including programming software
- Sign mounting kit with anti-vandal
- Model SI-TS40S1130S2A or better.

2 EA. – Flashing school crossing solar powered, push button activation sign. Each assembly shall include the minimum:

- 30" x 30" S1-1 School Crossing signs, FYG, DG3, 5 Amber LEDs, 14AH
- Radio control cabinet for wireless communication with wired activation
- Bulldog push button kit, yellow, with LED, R10-25
- 5" x 7" EGP, ADA compliant push button to cross sign
- Sign mounting kit with anti-vandal
- Model SI-TS40S1130S1A or better.

2 EA. - Flashing Pedestrian crossing solar powered signs with push button activation. Each assembly shall include the minimum:

- Solar powered, LED flashing, Ped Xing sign
- 30" x 30" type IX-FYG for wireless communication, with wired activation
- ADA push button LED & Beep pressure activation
- 5"x7" sign with frame
- Model SI-TS40W11230S1A or better

8 EA. - Flashing Pedestrian crossing solar powered signs with Audible push button activation. Each assembly shall include the minimum:

- Solar powered, LED flashing, Ped Xing sign
- 30" x 30" type IX-FYG for wireless communication, with wired activation
- Campbell Guardian Push Button activation, AC powered includes audible push button frame and 9" x 12" R10-25 sign with ambient gain control
- Model SI-TS40W11230S1A (sign) or better

Equipment shall include all required mounting hardware, posts, software, special tools, etc. for proper mounting.

All signs shall have wireless communication, reflective sheeting to match FDOT standard for both School crossing and Pedestrian Crossings.

All installation shall be performed by the City of Port Orange personnel.

End of Scope-of-Work

SECTION 4 – STANDARD PURCHASE DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple Bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract
8. **Bidder or Proposer** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. (See also "Vendor")
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit Responses through a Request for Proposals, Request for Statements of Qualifications, or Invitation to Negotiate.
11. **Competitive (Formal) Solicitation** is the process of requesting and receiving two or more sealed bids, proposals, statements of qualifications or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

12. **Competitive Range** means the responsive submissions that meet the evaluation criteria and are considered to be reasonably susceptible of award.
13. **Construction** means the process of building, repairing, improving, and alterations, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.
14. **Contract** is a written agreement or purchase order issued for the purchase of goods or services.
15. **Contractor** means the person, firm or entity selling goods or services to the City under a Contract.
16. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
17. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
18. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
19. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for the evaluation of proposals, statements of qualifications or replies as part of a Request for Proposals (RFP), Request for Submission of Qualifications (RFSQ), or Invitation to Negotiate (ITN), or competitive grant process.
20. **Evaluator** is a member of the evaluation committee/team.
21. **Goods** are supplies, materials, or equipment.
22. **Intent to Award** is a document, published on Onvia/DemandStar, that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
23. **Invitation to Bid (ITB) or Bid** means a formal request to prospective vendors requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper.
24. **Invitation to Negotiate (ITN)** means a formal request to prospective vendors requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.
25. **Issues** means points, matters, or concerns to be addressed during negotiations.
26. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the "driver of change" and seeks alternatives/options.

27. **Lowest Responsible Bid means the responsive Bid** meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.
28. **Lowest Responsible Bidder** means the Bidder submitting Lowest Responsible Bid.
29. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).
30. **Negotiator** is a member of the negotiation team.
31. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a Bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
33. **Onvia/DemandStar** is the official online repository for all City competitive solicitations.
34. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
35. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Vendors to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
36. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
37. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
38. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
39. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement

practice or contract award.

40. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Vendor to perform the resultant Contract.
41. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.
42. **Request for Proposal (RFP)** means a formal request to prospective vendors requesting qualifications of the vendor and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
43. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective vendors requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.
44. **Respondent** means an entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.
45. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.
46. **Responsible (Vendor)** is a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
47. **Responsive (Vendor)** is a vendor that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
48. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
49. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a vendor must execute in terms of delivering specific commodities or in performance of contractual services.
50. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
51. **Solicitation** means a formal request, as applicable, for prospective vendors to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a

Request for Quotation.

- 52. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.
- 53. **Stakeholder** means an individual, who is not likely to become a vendor, who has an interest in the commodities/contractual services needed.
- 54. **Subcontractor** means a person, firm or entity providing goods or services to a Vendor to be used in the performance of the Vendor's obligations under the Contract.
- 55. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.
- 56. **Unbalanced Bid** means a Bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.
- 57. **Vendor** is a person, firm, or entity that provides commodities or services and submits a Response to a Solicitation. Any Vendor may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. (Also called "Bidder" or "Proposer".)

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SECTION 5 – GENERAL TERMS AND CONDITIONS

These instructions are standard for all contracts for commodities or services issued through the City of Port Orange Purchasing Division. General Requirements apply to all advertised Solicitations; however, **these may be superseded, in whole or in part, by the SPECIAL REQUIREMENTS/INSTRUCTIONS OR OTHER DATA CONTAINED HEREIN.**

READ THIS ENTIRE DOCUMENT CAREFULLY. FOLLOW ALL INSTRUCTIONS. YOU ARE RESPONSIBLE FOR FULFILLING ALL REQUIREMENTS AND SPECIFICATIONS. BE SURE YOU UNDERSTAND THEM.

1. ACCEPTANCE BY CITY

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

2. ADDENDUM

When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Vendors should acknowledge all addenda by circling the quantity of addenda received on the "Vendor Acknowledgment Form" and include it in the returned Response package. Failure to acknowledge the correct number of addenda issued may result in rejection of the Response. It is the responsibility of the Vendor to ensure all addenda have been received prior to submitting a bid. All Addenda shall be posted by the CITY on www.demandstar.com.

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

3. ADDITIONAL GOODS

Products, Materials and Goods not specifically identified in this bid request may be added to any resultant contract upon mutual consent of the contracting parties. The City reserves the right to add or delete products or materials of similar nature, within the family of products of "ITB Item(s)" and their commodity codes, to those items requested in this bid.

4. **ANTI-COLLUSION STATEMENT**

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

5. **APPLICABLE LAWS**

In connection with the furnishing of supplies or performance of work under the Contract, the Vendor agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.

6. **ASSIGNMENT**

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

7. **AUTHORITY TO CONDUCT BUSINESS IN FLORIDA:**

A Florida corporation or partnership is required to provide evidence with its response that the Vendor is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager.

A foreign (out-of-state) corporation or partnership is required to provide evidence with its response that the Vendor is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager.

A joint venture is required to provide evidence with its response that the joint venture, or at least one of the joint venture partners, is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. However, the joint venture is required to provide evidence prior to contract execution that the joint venture is authorized to transact business in Florida and provide the City with a copy of the joint venture Agreement.

A joint venture is also required to provide with its response a Statement of Authority indicating that the individual submitting the joint venture's proposal has the legal authority to bind the joint venture. If not with its response, such evidence must be submitted to the City no later than five (5) business days from the request of the Purchasing Manager.

8. **AWARDS**

Results from the evaluation committee will be considered by the City of Port Orange City Council at the earliest possible regular meeting subsequent to the evaluation process. This ITB is issued in accordance with and shall be governed by the provisions of the City's Purchasing Policy.

The City of Port Orange City Council reserves the right to make award(s) by individual sections, groups, all or none, or a combination thereof, with one or more Vendors; to reject any and all proposals, or to waive any informality or technicality in proposals received as deemed to be in the best interest of the City.

The City does not award publicly funded contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act, 8 United States Code s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, Contract, proposal or quote for purchase of services and goods by the City of Port Orange.

9. **AWARD AND EXECUTION OF CONTRACT:**

When a bid received has been determined to be satisfactory, a Contract will be awarded, or Purchase Order issued to the lowest responsible Bidder within the time designated in the Contract Documents.

The Bidder(s) to whom the award is made shall execute the Contract(s) and return it, together with the properly executed bonds and insurance certificates to the office of the Owner, within the time specified

10. **BID RETURNS**

Vendors shall return all completed Responses to the City of Port Orange at the address set forth in Section 2 of this document on the date and at the time specified. Late submissions will not be accepted and shall be returned to Vendors unopened.

11. **BID PROTEST**

Any person who is adversely affected by the City's decision or intended decision shall file with the City Purchasing Manager a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking Bids, Proposals, Statements, or Replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the Solicitation. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time period established herein. The formal written protest shall be filed with the Purchasing Manager in writing within ten (10) days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings. Upon receipt of the formal written protest that has been timely filed, the City shall stop the solicitation or contract award process until the subject of the protest is resolved by final City action. However, the City may continue the solicitation or award process, provided the City Manager sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or

welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties. The policy this City has established is as follows:

- a. As soon as possible after receipt, the Purchasing Manager shall provide written bid protest to City Manager, City Attorney, Department Head involved, and Supervisor directly involved in the acquisition.
- b. Purchasing Manager shall schedule within seven (7) business days, excluding weekends and holidays, a meeting with the above-mentioned individuals or designee and protestor. The intent of the meeting is to provide a review and/or solution prior to going before Council. After reviewing all relevant information, the City Manager shall render a decision.
- c. If the protestor disagrees, he may appeal to the City Council at a formal council meeting. After reviewing the evidence, the City Council will issue their decision. The City Council's decision is final; however, the protestor can appeal the decision to the Circuit Court in Volusia County, Florida within thirty (30) days of the City Council's final decision. Decisions at all levels shall be in writing to the protestor.

12. **BID/PROPOSAL TABULATION**

Vendors who wish to receive a copy of the bid/proposal tabulation may obtain it via www.demandstar.com or on the City of Port Orange website, Bid Opportunities page at www.port-orange.org/bids.aspx or by email purchdiv@port-orange.org.

13. **BONDS**

If this Solicitation requires submission of bid guarantee and performance bonds, there will be a separate page explaining those requirements. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. When the Purchasing Manager deems it necessary, bid bonds/deposits shall be prescribed and are advertised in the public notices inviting bids. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the bid amount. Payment and Performance Bonds requested for construction projects shall be in an amount equal to one hundred percent (100%) of the total contract amount. Upon award, the successful Vendor may also be required to furnish and pay for a satisfactory contract one hundred percent (100%) Payment and Performance Bond which will be recorded by the City, at the Vendor's sole cost and expense, with the Clerk of the Circuit Court, Volusia County, Florida, and to enter into a written contract with the City of Port Orange. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirements of Florida law. The City will bill the cost of recording to the contractor. Payment and Performance Bonds shall also be recorded at the Vendor's expense in the Office of the Clerk of the Circuit Court, Volusia County, Florida. All bonds no matter which kind, are advertised in the Solicitation which appears in the newspaper. Unsuccessful Vendors are entitled to the return of their surety where the Purchasing Manager has required such. A successful Vendor shall forfeit any surety required by the Purchasing Manager upon failure on the part of the Vendor to enter into a contract within the time specified after the award of bid.

14. **CERTIFICATE OF INSURANCE**

If required upon notice of intent to award contract resulting from this solicitation, the selected Vendor will be required to submit a Certificate of Insurance showing proof of adequate coverage for professional general liability, errors and omissions and workers' compensation as identified

under the insurance requirements of this solicitation and listing the City of Port Orange as a Certificate Holder prior to execution of the contract.

15. **CHANGE ORDERS**

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change order requests shall be made in writing by the Contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

16. **CHANGE ORDER REQUEST NOTIFICATION**

The Successful Contractor is responsible for giving the City of Port Orange, prior to the Contract expiration date, at least forty-five (45) calendar day's advance notice for any anticipated changes in price greater than \$25,000.00, time and/or scope of the awarded Contract. The Contractor shall not continue to provide services past the Contract expiration date unless approved by a written Change Order Notice from the City.

17. **CLEAN UP**

Upon completion of the delivery of materials, the Contractor shall restore any/all public and private property which was damaged during delivery. Restoration is meant to include removal of any spillage or restoring damage to the edge of pavement, sidewalks, driveways, landscaped areas, etc. Contractor shall make repairs consistent with or better than what existed prior to delivery. This shall be understood to include the use of sod or seed and mulch to replace (if necessary) existing grass that has been damaged.

If sod is used it shall match the sod present on the effected property. Contractor shall make all repairs and restorations at his expense.

18. **CONDUCT OF VENDORS**

All Vendors or individuals acting on behalf of a Vendor are hereby prohibited from lobbying or otherwise attempting to persuade or influence any member of the Evaluation Committee, City Council members, or City staff at any time during the course of the solicitation process. The solicitation process shall end upon issuance of the written City Manager and staff recommendation for selection of a Vendor. All Vendors or individuals acting on behalf of a Vendor are further prohibited from contacting or otherwise attempting to communicate with any member of the staff, Evaluation Committee or City Council members regarding the pending solicitation or its outcome until after the issuance of the written recommendation of the most qualified Vendor. Until such recommendation is issued in writing, any questions regarding the pending solicitation shall be submitted to the Purchasing Manager. Failure to comply with this procedure shall result in rejection/disqualification of said submittal without exception. Contact with staff, City Council members and the Evaluation Committee during a public meeting shall not be considered a violation of this requirement.

19. **CONE OF SILENCE**

The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the execution of the award.

The Cone of Silence is defined as the period beginning with the issuance of the solicitation document and continues through the execution of the award document. During this time vendors, service providers and the like are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City Agents, or elected officials. Any vendor who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation.

Exceptions to the Cone of Silence:

- Written communication directed to the Procurement Officer;
- All communications occurring at Pre-Proposal Conferences;
- Oral presentations before publicly notice committee meetings;
- Procurement of goods and services for Emergency situations; and
- Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.

20. **CONFLICT OF INTEREST**

For purposes of determining any possible conflict of interest, all Vendors must disclose if any City of Port Orange employee is also an owner, corporate officer, or employee of Vendor's business. No official or employee of the City who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Scope of Work covered by the Contract shall voluntarily acquire any personal interest, directly or indirectly, in the contract or proposed Contract.

21. **CONFLICT OF INSTRUCTIONS**

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

22. **CONTRACT**

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

23. **CONTRACT OBLIGATION**

The City of Port Orange City Council shall approve the contract if greater than \$25,000.00 annually. The Mayor or other person authorized by the Mayor must sign the contract before it becomes binding on the City of Port Orange or the Vendor. Department heads are NOT authorized to sign contracts for the City of Port Orange. Binding agreements shall remain in effect until all products and/or services covered by this purchase have been satisfactorily delivered and accepted.

24. **CONTRACT RENEWALS**

Renewals may be made ONLY by written agreement between the City of Port Orange and the Vendor. Any price escalations are limited to those stated by the Vendor on the original Response.

25. **COOPERATIVE PURCHASING**

The City Manager may elect to purchase through or join with other governmental units in cooperative purchasing ventures when the best interest of the City would be served thereby, provided the same is in accordance with all applicable laws. In the event the City Manager should elect to purchase through or join with other governmental agencies in cooperative purchasing ventures, all purchases in excess of twenty-five thousand dollars (\$25,000.00) shall require council approval before the purchasing contracts are entered into. (Code 1981, § 8-33, Ord. 1997-22, § 5. 5-6-1997; Ord. No. 2004-15, § 4, 7-20-2004)

26. **COPYRIGHT AND PATENT RIGHTS**

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

27. **COST INCURRED BY VENDOR**

All expenses, including costs for required bonds, involved with the preparation and submission of Responses to the City, or any work performed in connection therewith shall be borne by the Vendor. No payment shall be made for any response received, nor for any other effort required of or made by the Vendor prior to commencement of work as defined by the contract approved by the City Council.

28. **DAMAGE**

Any damage to driveways, irrigation systems, sidewalks, pavement, or landscaping will be evaluated by the City's representative and the Contractor. If the Contractor is found to be at fault, all repairs, restitution, or reimbursements to the County must be completed within one week of discovery.

29. **DEBARMENT HISTORY**

The City will consider a Vendor's debarment history information in its review and determination of responsibility. All Vendors are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Vendor, any parent or subsidiary of the Vendor, or any predecessor organization. If the Vendor is a joint venture, the information provided should encompass the joint venture (if it is not newly-formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Vendor's debarment history is an issue of responsibility, the failure to provide debarment history as required in the Proposal Submittal and Requirements Section may result in a recommendation of non-responsive by the Purchasing Manager.

30. **DEFAULT PROVISIONS**

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

31. **DELIVERY OF GOODS/SERVICES**

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

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

Upon approval of a contract, the vendor is obligated to deliver the goods to the destination specified in the Solicitation or the Purchase Order and bears the risk of loss until delivery. If this Solicitation or Purchase Order does not contain delivery instructions, Vendor shall request instructions in writing from the Purchasing Manager. If the delivery instructions contained in the Solicitation allocate delivery costs and risks in a manner contrary to this section, the provisions of this Competitive Solicitation shall prevail.

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

32. **DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER /PROPOSER**

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

- a. The ability, capacity and skill of the Bidder/Proposer to perform the contract.
- b. Whether the Bidder/Proposer can perform the contract within the time specified, without delay or interference.
- c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder/Proposer.
- d. The quality of performance of previous contracts.
- e. The previous and existing compliance by the Bidder/Proposer with laws and ordinances relating to the contract.

- f. The sufficiency of the financial resources and ability of the Bidder/Proposer to perform the contract or provide the service.
- g. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- h. The ability of the Bidder/Proposer to provide further maintenance and service for the use of the subject of the contract.
- i. The number and scope of conditions attached to the bid.
- j. Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

33. **DISCLOSURE OF CONFLICTS**

The award is subject to the provisions of Chapter 112.313, Florida Statutes. All Vendors must disclose with their Response the name of any officer, director, or agent who is also an employee of the City. Further, all Vendors must disclose the name of any employee who owns, directly or indirectly, an interest in the Vendor's firm or any of its branches. The Vendor shall not compensate, in any manner, directly or indirectly, any officer, agent, or employee of the City for any act or service that he/she may do, or perform for, or on behalf of any officer, agent or employee of the Vendor. No officer, agent, or employee of the City shall have any interest, directly or indirectly, in any contract or purchase made, or authorized to be made by anyone for, or on behalf of the City. The Vendor shall have no interest and shall not acquire any interest that shall conflict in any manner or degree with the performance of the services required under the Solicitation.

34. **DISQUALIFICATION OF BIDDER/PROPOSER**

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

35. **EVALUATION**

Evaluation shall be used as a determinant as to which Response items or services are the most efficient and/or most economical for the City. It shall be based on all factors which have a bearing on price and performance of the items in the user environment. All Responses are subject to tabulation by the City of Port Orange Purchasing Division and recommendation to the governing body. Compliance with all Solicitation requirements, delivery and needs of the using department are considerations in evaluating Responses. Pricing is NOT the only criteria for making a recommendation. The City of Port Orange Purchasing Division reserves the right to contact any

Bidder/Proposer, at any time, to clarify, verify or request information with regard to any Response.

36. **EXCEPTIONS TO SPECIFICATIONS**

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

37. **E-VERIFY**

Vendors shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract.

38. **FACILITIES**

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

39. **FAILURE TO RESPOND**

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

40. **FINANCIAL STABILITY**

Vendors shall be prepared to supply a financial statement upon request, preferably a certified audit of the last available fiscal year. A third party prepared financial statement and the latest Dunn & Bradstreet report will be accepted in lieu thereof.

41. **FORCE MAJEURE**

Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

42. **GOVERNING FORMS**

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

43. **GOVERNING LAW**

Vendors shall comply with all applicable federal, state and local laws and regulations. All Responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all Responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com.

The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services.

Every acquisition equal to or greater than \$10,000.00 must have a signed, notarized "Public Entity Crimes Form" to comply with Section 287.133(3)(a), Florida Statutes. Also required is the "Drug-Free Preference Form" to comply with Section 287.087, Florida Statutes. Each form is included in the Solicitation.

44. **GRANT FUNDING**

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

45. **HIPAA COMPLIANCE**

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

46. **IDENTICAL TIE BIDS**

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

47. **INDEMNIFICATION/HOLD HARMLESS**

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

directly caused or resulting from the sole negligence of City or any of its officers, agents, or employees.

48. **INDEPENDENT CONTRACTOR**

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

The Vendor represents itself to be an independent contractor offering such services to the general public and shall not represent himself or his employees to be an employee of the City. Therefore, the Vendor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney's fees); and damage of any kind related to such matters. The Vendor shall further understand that the City cannot save and hold harmless and or indemnify the Vendor and/or the Vendor's employees against any liability incurred or arising as a result of any activity of the Bidder/Proposer or any activity of the Vendor's employees performed in connection with the Contract.

49. **INSPECTIONS AND TESTING**

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

50. **INSURANCE**

If required upon execution of a contract, the Vendor shall maintain insurance during the life of this agreement, and the City of Port Orange shall be listed as additional insured on that insurance document. A waiver of subrogation must be added in all areas and shall suffice in lieu of additional insured on workers' compensation, in an amount and a form set forth herein, to insure against risks, which are identified herein. Insurance providers must be rated "A" or better accordingly to the A.M. Best Company.

51. **INSURANCE CANCELLATION**

No change or cancellation in insurance shall be made without thirty (30) days' written notice by the Vendor to the City. Insurance coverage required in these specifications shall be in force throughout the contract term. Should any awardee fail to maintain or to provide acceptable evidence of current insurance within five (5) days after receipt of written notice at any time during the contract term, the City shall have the right to consider the Contract breached which shall justify the termination thereof.

52. **INSURANCE REQUIREMENTS**

If required, the Vendor shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers' 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 other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all Insuring companies are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. The Vendor shall not commence work under the contract until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. The Vendor shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change.

The City reserves the right to increase insurance coverage as determined for higher risk contracts and shall reimburse the Contractor for the reasonable additional costs of increased coverage.

Insurance	Limits: Standards	Comments
Workers' Compensation <u>Additional Coverage:</u>	Coverage A - Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
Comprehensive General Liability (including Completed Operations and Contractual Liability)	Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000. Aggregate	When the Contract work on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
Comprehensive Business, Automobile Liability to include all automobiles. <u>Additional Coverage:</u>	Auto Liability Body Injury: \$100,000 each person, \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage

Property Insurance Builders Risk. <u>Additional Coverage:</u>	Buildings - Completed value of contract. "All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If the Contract requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
Professional Liability (Errors & Omissions)	Coverage \$1,000,000 minimum	

53. **INVOICES AND PAYMENTS**

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, Port Orange, Florida, 32129. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if Vendor offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Vendors should state any payment discount in the space provided on the bid form for construction services.

54. **IRREVOCABILITY OF RESPONSES**

Each Vendor agrees that Responses shall remain open until the effective date not to exceed 90 days after selection, shall not be subject to revocation or withdrawal, and shall be subject to the City Council's acceptance of a contract with the Vendor.

55. **LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS**

Responses received after the Response Due Date and time are late and shall not be considered. Modifications received after the Response Due Date are also late and shall not be considered. Letters of withdrawal received after the Response Due Date are late and shall not be considered. Letters of withdraw received after contract award shall be deemed a breach of contract, subject to penalties as set forth in the contract and Solicitation.

56. **LEGAL REQUIREMENTS**

Applicable provision of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all Responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a Solicitation hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Vendor shall not constitute a cognizable defense against the legal effect thereof.

Upon execution of a contract, the successful Vendor shall hold harmless, indemnify and defend the City of Port Orange, its members, officials, officers and employees against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorneys' fees and court costs) arising out of or incidental to the performance of the Contract, whether or not due to or caused by negligence of the City of Port

Orange, its members, officials, officers or employees. This Contract requirement shall be reflected in the insurance coverage certificate.

57. **LICENSES, PERMITS AND TAXES**

The Vendor shall comply with all rules, regulations, laws and permitting requirements of the City, Volusia County, the State of Florida, and the United States Government now in force or hereafter to be adopted. The Vendor shall abide by all ordinances and laws pertaining to his operations and shall secure, at his expense, all licenses and permits necessary for construction and operation.

58. **LITERATURE (if applicable):**

If no particular brand, model or make is specified, Vendors shall submit descriptive literature and technical data, fully detailing all features, designs, construction, appointments, finishes and the like not covered in the specifications, necessary to fully describe the equipment, material, and/or services he proposes to furnish.

59. **LOCAL PREFERENCE**

In accordance with City of Port Orange City Code 2-275, except where federal or state law, or any other funding source, mandates to the contrary, the City shall give preference to local businesses in the following manner:

(a) Competitive Bids

- (1) Port Orange Business: In any competitive bidding process where a bid submitted by a Port Orange business is within eight percent (8%) of the lowest and best responsible bid submitted by a non-Port-Orange business, then the Port Orange business shall have the opportunity to submit, within five (5) working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.
- (2) Volusia County business: In any competitive bidding process where a Volusia County business is within five percent (5%) of the lowest and best responsible bid submitted by a business other than a Port Orange business or Volusia County business, then the Volusia County business shall have the opportunity to submit, within five (5) working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.
- (3) Florida Business: In any competitive bidding process where a State of Florida business is within three percent (3%) of the lowest and best responsible bid submitted by a non-local business, then the Florida business shall have the opportunity to submit, within five (5) working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.
- (4) Tied Bid Preference: In case of a tie bid between a local business and a non-local business, the local business shall prevail. In case of a tie between two or more local businesses, the following order of preference shall control: first priority to Port Orange business, second priority to Volusia County business, and third priority to Florida business.

- (b) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Port Orange Business means a business having its headquarters and principal place of business within the City of Port Orange at least twelve (12) months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the City's satisfaction, demonstrating the physical business presence of the firm within the limits of the City of Port Orange.

Volusia County Business means a business having its headquarters and principal place of business within the County of Volusia, and not within the City of Port Orange, at least twelve (12) months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the City's satisfaction, demonstrating the physical business presence of the firm within the limits of Volusia County.

Florida Business means a business having its headquarters and principal place of business within the State of Florida, and not within Volusia County, at least twelve (12) months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within the limits of the State of Florida.

60. **MAINTENANCE**

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

61. **NAME BRANDS**

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

62. **NON-DISCRIMINATION**

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

63. **NON-EXCLUSIVITY OF CONTRACT**

The selected Vendor understands and agrees that any resulting contractual relationship is non-exclusive, and the City of Port Orange reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the City of Port Orange.

64. **NON-PERFORMANCE:**

Failure to meet the expected quality of workmanship, schedule, or other criteria agreed upon, shall be considered a default.

In case of default, the City may procure the required services from other sources and hold the Consultant responsible for any excess costs occasioned thereby and may immediately cancel the contract.

65. **NOTICE TO CONTRACTOR**

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

66. **OPTIONAL CONTRACT USAGE**

As provided in Section 287.042(16), Florida Statutes, State of Florida agencies may purchase from a contract resulting from this solicitation, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.

67. **OTHER AGENCIES**

- (a) All Vendors awarded contracts from this Bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices, terms, and conditions, if agreed to by both parties.
- (b) 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 Vendor(s).

68. **PATENTS/COPYRIGHTS**

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

69. **PRE-BID CONFERENCE OR PRE-PROPOSAL CONFERENCE**

The Purchasing Manager shall determine if a pre-bid conference is required and provide the date, time and location in the Solicitation legal advertisement and Solicitation specifications. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow. Attendance to the pre-bid and pre-proposal conference is normally non-mandatory. Only Vendors attending a mandatory pre-bid conference will be eligible to submit a Response. The representative of each Vendor shall be an authorized employee of the Vendor and shall sign in accordingly.

70. **PREPARATION OF RESPONSES**

In preparing Responses, the Proposal Form, the Bid Form (when a Bid Bond is permitted as proposal security), Certificate as to Corporate Principal, Public Entity Crimes Statement, Anti-Collusion Statement, and Drug Free Preference Statement must be properly executed in ink.

Upon the prescribed Schedule of Unit Prices, all bid prices shall be typewritten or written in ink, or electronically imputed in the blank spaces for each item, with the amounts extended if a unit price bid, and all amounts totaled. The sum of the Total Bid as calculated from the individual items, Schedule of Unit Prices, shall equal the Total Price. Except as provided below, bids containing substitutions or combinations of alternates will not be considered unless such substitutions or combinations are specifically authorized by the Proposal. The Vendor shall sign his/her name and give his/her business address in the spaces provided therefore. If the Proposal is made as a partnership, it shall be signed by all partners; if made by a corporation, it shall be signed in the name of the corporation by one of the officers thereof and shall have affixed the seal of the corporation.

71. **POSTPONEMENT / CANCELLATION / WAIVER OF IRREGULARITIES**

The City may, at its sole and absolute discretion, reject any and all, or parts of, Responses; re-advertise the Solicitation for new Responses; postpone or cancel, at any time, the Solicitation process; or waive any irregularities in the Solicitation or in the Responses received as a result of the Solicitation, or to accept that Response which best serves the interest of the City.

72. **PRICING**

The Vendor certifies that prices, terms and conditions in the Response will be firm for acceptance for a period of ninety (90) days from the date of Response opening unless otherwise stated by the City. Responses may not be withdrawn before the expiration of ninety (90) days. Prices shall be firm, with no escalator clauses unless specified by the City. Responses may be withdrawn after ninety (90) days only upon written notification to the City. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Pricing/Delivery Information form.

Prices shall be all inclusive: no price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, the Vendor shall indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid.

When submitting Bids/Proposals based on a Lump Sum basis, Vendors shall be required to submit a Schedule of Unit Pricing for each line item listed on the Bid Proposal in order to be considered for award.

73. **PRODUCTS/ESTIMATES:**

Items included on the Bid Form represent the needs of various departments within the City. This is in no way to be construed as the entire or complete list of products to be purchased from the resulting contract.

There is no anticipated dollar volume for this contract and cannot be guaranteed. Items shall be ordered on an as needed, when needed basis. Exact quantities or estimated quantities cannot be predetermined.

74. **PROPRIETY INFORMATION**

Upon receipt by the City, responses to Solicitations, become public records subject to the provisions Florida's state policy on public records, Section 119, Florida Statutes. If you believe that any portion of your response is exempt, you should clearly identify the specific documents for which confidentiality is claimed and provide specific legal authority of the asserted exemption. Any financial statement that an agency requires a prospective Vendor to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution.

75. **PROTECTION**

Precaution shall be exercised at all times for the protection of persons, (including employees) and property. All existing structures, utilities, services, roads, trees, shrubbery, etc. shall be protected against damage or interrupted service at all times by the Vendor during the term of contract, and the Vendor shall be held responsible for any damage to the property occurring by reason of his operation on the property.

76. **PUBLIC ENTITY CRIMES**

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

77. **PUBLIC RECORDS COMPLIANCE**

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- b. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy

any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The failure of Contractor to comply with a public records request shall constitute a material breach of the contract.

78. **PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT**

Section 119.071(1)(c), Florida Statutes: **Any financial statement that an agency requires a prospective Vendor to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law.** This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Vendors will not be able to procure a copy of their competitor's bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a vendor, or where a vendor answers questions. In other words, neither Vendors, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Vendors, but the new law limits public attendance to portions of such meetings.

79. **PURCHASE ORDER AND DELIVERY**

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

80. **QUALITY**

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

81. **QUESTIONS, INTERPRETATIONS**

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

82. **RECORDS/AUDIT**

The Vendor shall maintain records sufficient to document their completion of the scope of services as a public record and as a requirement of the Contract. At all reasonable times, these records, unless exempt or confidential, shall be subject to review, inspection, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the Contract and in accordance with the requirements of public records retention as prescribed by general law. Records which relate to any litigation, appeals or settlements of claims arising from performance under this requirement shall be made available until a final disposition has been made of such litigation, appeals, or claims.

83. **RECYCLED MATERIALS**

City of Port Orange encourages the use of products made of recycled materials.

84. **REJECTING OF RESPONSES, REBIDDING**

The City reserves the right to accept or reject any or all Responses or parts of Responses, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified. The City Council shall have the authority to reject any and all Responses. If the lowest and best Response exceeds the budgeted amount and the City Council does not make additional funds available, the purchasing agent with the help of the department head shall have the authority to re-advertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available. (Code 1981, § 8-28.)

85. **REQUEST FOR ADDITIONAL INFORMATION**

Prior to the final Solicitation selection, Vendors may be required to submit additional information which the City may deem necessary to further evaluate the Vendor's qualifications to perform under the terms of the Solicitation and subsequent Contract.

86. **REVIEW OF RESPONSES/SUBMISSIONS**

Each Response will be reviewed to determine if the Response is responsive to the submission requirements outlined in the Solicitation. A responsive Response is one which follows the

requirements of the Solicitation, includes all required documentation, is submitted in the format outlined in the Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your Response non-responsive.

87. **RIGHT OF NEGOTIATION RFP/RFSQ/ITN**

The City reserves the right to negotiate with the selected Vendor the exact terms and conditions of the Contract.

88. **RIGHT OF WITHDRAWAL**

A bid, proposal, statement, or reply may not be withdrawn before the expiration of ninety (90) days from the Response due date.

89. **RIGHTS TO SOLICITATION SUBMITTED MATERIAL**

All Responses, inquiries, or correspondence relating to or in reference to a Solicitation, and all reports, charts, and other documentation submitted by Vendors shall become the property of the City when received.

90. **RULES, REGULATIONS AND LICENSING REQUIREMENT**

The Vendor shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Vendors are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

91. **SAMPLES**

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

92. **SEPARATION AND DISTRIBUTION**

The Solicitation has been designed for transmittal as a complete document to interested parties. It is recommended that it not be separated; however, it may be reproduced in its entirety as additional distribution might dictate.

93. **SEVERABILITY**

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

94. **SIGNATURE REQUIRED**

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

95. **SIGNED RESPONSE CONSIDERED AN OFFER**

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

96. **SILENCE OF SPECIFICATIONS**

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

97. **SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES**

Unless otherwise specified, Vendors shall use the Solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Vendor's authorized representative. Responses containing erasures or corrections must be initialed by the Vendor in ink. Responses shall be submitted by mail or hand delivery only. No Response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: David Van Valkenburgh, Purchasing Agent, Purchasing Office, a division of the Finance Department, Port Orange City Hall, 1000 City Center, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 p.m. on the date indicated in the Solicitation documents or as addenda issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All Responses deemed non-responsive will be returned to the Vendor and will not be opened.

Bids (Envelope/Package) shall contain one (1) original and one (1) digital (Cd or flash drive) version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/package shall be clearly marked on the outside to include the bid project name, bid number and name of the Vendor.

98. **STATE LICENSING REQUIREMENTS**

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the Vendor shall have met the license, certification, and any other requirements of the state, county, city and/or other agency of authority with jurisdiction in such matters and should provide copies of documentation that evidence such qualifications with the response to the Solicitation; and, that the Vendor shall provide follow-up evidence that the Vendor maintains such credentials throughout the period of the agreement. A copy of a current certificate of authority from the Secretary of State authorizing the Bidder/Responder to do business in the State of Florida, or other evidence of legal authority to do business in the state, county, city and/or any other agency of authority should be provided with your response to the Solicitation. Information concerning certification with the Secretary of State may be obtained at <http://ccfcorp.dos.state.fl.us/index.html>. Contract documents shall be executed by the entity's duly authorized officer as evidence by entity records.

99. **SUBCONTRACTING**

The Vendor will not sub-contract or enter into any subcontracting agreements pertaining to this contract, without obtaining approval from the City of Port Orange.

100. **SUPPLEMENTAL MATERIALS**

Vendors are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements that the Vendor wishes to include as a condition of the bid must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

101. **TAXES**

The City of Port Orange is exempt from all federal excise, state and local taxes unless otherwise stated in this document. A Tax Exemption Certificate will be furnished upon written request to the City of Port Orange Purchasing Division.

102. **TERM CONTRACTS**

Acceptance by the City of Port Orange of Vendor's offer shall be limited to the terms herein unless expressly agreed in writing by the City. If the contract is intended to cover a specific time period, the term will be given in the bid specifications.

103. **TERMINATION**

The City of Port Orange reserves the right to terminate the contract for default if the Vendor breaches any of the terms therein, including warranties of the Vendor or if the Vendor becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which the City of Port Orange may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to the City's satisfaction and/or to meet all other obligations and requirements. The City may cancel the Contract at any time for breach of contractual obligations by providing the Vendor with a written

notice of such cancellation. Should the City exercise its right to cancel the contract for such reasons, the cancellation shall become effective on the date as specified in the notice of cancellation sent to the Vendor.

104. **TERMINATION - NOTICE**

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

105. **TITLE TRANSFER**

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

106. **UNBALANCED BID**

A mathematically unbalanced bid is where a bidder places a high price on some items and a low price on other items in a unit price contract. A bid is materially unbalanced when there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the City. Unbalanced Bids will be rejected if the prices are deemed materially unbalanced.

107. **USE OF SOLICITATION FORMS**

The Vendor shall complete the appropriate Solicitation Form(s) included in the Solicitation. All blanks on the Solicitation Forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A."

Supplemental information may be attached to the Solicitation Forms. Failure to fully complete the appropriate Solicitation Forms may result in disqualification of the Response.

If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional Solicitation Form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated.

The signature of the Authorized Person or Entity must be that of an officer, partner or a sole proprietor of the entity making the Response. The original Response, and each copy submitted shall contain an original signature on the Vendor's Acknowledgement Form contained in each Solicitation.

108. **VARIANCES**

For purposes of Response evaluation, Vendors must indicate any variances, no matter how slight, contained in the Response. No variations or exceptions by a Vendor will be considered or deemed a part of the Response submitted unless such variances or exceptions are listed in the Response and referenced in the space provided on the Response pages. If variances are not stated, or

referenced as required, it will be assumed that the product or service complies with the City's terms, conditions and specifications. By receiving a Response, the City does not necessarily accept any variances contained in the Response. All variances submitted are subject to review and approval by the City. If any Response contains material variances that, in the City's sole opinion, make that Response conditional in nature, the City reserves the right to reject the Response or part of the Response that is declared, by the City, as conditional.

109. **VENDOR'S PRODUCT OR SERVICES**

The Vendor's product (if applicable) delivered to the City shall be free of all liens, claims or encumbrances, and the vendor warrants that it has a clear title to the product being delivered.

- a. If the Vendor is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.
- b. The Vendor shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Vendor.
- c. In furnishing the service or product to the City, the Vendor shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, Contract, proposal or quote.

110. **WAIVER OF IRREGULARITIES**

The City of Port Orange reserves the right to waive and/or reject any non-substantial irregularity in Responses received whenever such waiver or rejection is in the best interest of the City and/or it does not meet the minimum requirements set forth. All reasonably responsive Responses will be considered. However, the City reserves the right to waive formalities or informalities in Responses, to reject, with or without cause, any or all Responses or portions of Responses, or to interview or not interview individual Vendors, and to accept any Responses or portions of Responses deemed to be in the best interest of the City. The city council shall grant the City Manager to waive any and all non-substantial irregularities in any and all formal Solicitations. (Code 1981, § 8-29; Ord. No. 2015-17, § 1, 5-19-2015)

111. **WARRANTIES**

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

SECTION 6 – SPECIAL CONDITIONS

PERIOD OF OFFER VALIDITY:

Bids offered in this ITB must remain firm for a period of ninety (90) Days from the ITB opening date.

NOTICE: The City reserves the right to consider cooperative contracts, federal, state municipal etc.; in the evaluation process. If in the City's best interest, the City may utilize a cooperative contract in lieu of making an award.

TERMS OF CONTRACT:

One-time materials purchase

WARRANTY AND DELIVERY INFORMATION:

Contractor to provide warranty information with bid.

Desired delivery shall be within 6 weeks of receipt of the purchase order.

All equipment shall be FOB Port Orange, FL.

[Remainder of this page left intentionally blank]

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- _____ Form 7.2 – Vendor’s Acknowledgement
- _____ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- _____ Form 7.4 – Drug Free/Tie Preference Statement
- _____ Form 7.5 – Public Entity Crimes Statement
- _____ Form 7.6 – Affidavit of Anti-Collusion
- _____ Form 7.7– Statement of Vendor’s Qualifications
- _____ Form 7.8 – Professional References for Previous Experience
- _____ Form 7.10 – Local Business Affidavit of Eligibility
- _____ Attachment 1 – Bid Proposal
- _____ Submission of one (1) original marked “ORIGINAL” and one (1) digital (CD or flash drive) version in PDF format.

BY: _____
Name of Business

Authorized Signature

Date

This document must be completed and returned with your Submittal

FORM 7.2 – VENDOR’S ACKNOWLEDGEMENT FORM

I have carefully examined the Invitation to Bid (ITB), Instructions to Vendors, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the Invitation to Bid at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to ninety (90) days in order to allow the City of Port Orange adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the Invitation to Bid.

I certify that all information contained in this Bid is truthful to the best of my knowledge and belief. I further certify that I am a duly authorized to submit this Bid on behalf of the Vendor / Contractor as its act and deed and that the Vendor / Contractor is ready, willing and able to perform if awarded the contract.

I further certify that this Bid is made without prior understanding, Contract, connection, discussion, or collusion with any person, firm or corporation submitting a Bid for the same product or service; no officer, employee or agent of the City of Port Orange City Council or of any other Vendor interested in said ITB; and that the undersigned executed this Vendor’s Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

I further certify that having read and examined the specifications and documents for the designated services and understanding the general conditions for contract under which services will be performed, does hereby propose to furnish all labor, equipment, and material to provide the services set forth in the ITB.

I hereby declare that the following listing states any clarifications, any and all variations from and exceptions to the requirements of the specifications and documents. The undersigned further declares that the “work” will be performed in strict accordance with such requirements and understands that any exceptions to the requirements of the specifications and documents may render the Bid non-responsive.

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

Please check one: ☐ I take NO exceptions. ☐ Exceptions (list below; add additional pages if necessary):

NAME OF BUSINESS

MAILING ADDRESS

AUTHORIZED SIGNATURE

CITY, STATE & ZIP CODE

NAME, TITLE, TYPED

TELEPHONE NUMBER / FAX NUMBER

FEDERAL IDENTIFICATION #

E-MAIL ADDRESS

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this day of _____, 20____ by _____, who is personally known to me or who has produced ad identification and who did take an oath.

My Commission Expires: _____

Notary Public

This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Vendors, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this invitation to Bid.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid proposal.

Addendum # _____ Date: _____ Addendum # _____ Date: _____

Addendum # _____ Date: _____ Addendum # _____ Date: _____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

If awarded the Contract for this Solicitation, I acknowledge that no oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders requests shall be made in writing by the Contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

I acknowledge the following statement regarding Change Orders to the awarded Contract:

“The Successful Contractor is responsible for giving the City of Port Orange, prior to the Contract expiration date, at least forty-five (45) calendar days’ advance notice for any anticipated changes in price greater than \$25,000.00, time and/or scope of the awarded Contract. The Contractor shall not continue to provide services past the Contract expiration date unless approved by a written Change Order Notice from the City.”

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20____, by _____, as _____ of _____

(NAME)

(TITLE)

(NAME OF ORGANIZATION) and who:

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

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

In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

As an authorized representative of the firm, I certify that this firm complies fully with the above requirements.

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20____, by
_____, as _____ of
(NAME) (TITLE)

_____ and who:
(NAME OF ORGANIZATION)

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

This document must be completed and returned with your Submittal

Printed, typed or stamped name, commission and expiration:

FORM 7.5 – SWORN STATEMENT UNDER SECTION 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

(To be signed in the presence of notary public or other officer authorized to administer oaths.)

Before me, the undersigned Authority, personally appeared affiant _____, who, being by me first duly sworn, made the following statement:

1. The business address of _____ (name of Offeror or business) is _____.
2. My relationship to _____ (name of Offeror or business) is _____ (relationship such as sole proprietor, partner, president, vice president).
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such an agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. (Draw a line through paragraph 6 if paragraph 7 below applies.)
7. There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted vendor list. The name of the convicted person or affiliate is _____. A copy of the order of the Division of Administrative Hearings is attached to this statement. **(Draw a line through paragraph 7 if paragraph 6 above applies.)**

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20____, by _____, as _____ of _____ and who:

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

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

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

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

NAME OF FIRM: _____

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

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY: __ STATE: _____ ZIP CODE: _____

TELEPHONE: _____ FAX: _____

COMPLETION TIME: _____

F.E.I.N. NUMBER: _____

NO Bid may be withdrawn for a period of ninety (90) days subsequent to the submittal of the Bids, without the consent of the City of Port Orange.

NO BID (REASON): _____

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF VENDOR’S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true, and correct to the best of their knowledge and belief. If necessary, questions may be answered on separate paper and attached, with any additional information that may be pertinent.

- A. Name of Vendor.
- B. Permanent main office address.
- C. Date organized.
- D. If a corporation, where incorporated.
- E. How many years have you been engaged in the contracting business under your present firm or trade name?
- F. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion.)
- G. General character of work performed by your company.
- H. Have you ever failed to complete any work awarded to you? If so, where and why?
- I. Have you ever defaulted on a contract? If so, where and why?
- J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed.
- K. List your major equipment currently owned or leased.
- L. Experience in work similar to this type of project.
- M. Background and experience of the principal members of your organization, including the officers.
- N. Credit currently available: \$_____
- O. Give bank reference: _____
- P. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner?

(Form 7.7 Statement of Vendor's Qualifications – Page 2)

Q. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Statement of Vendor's Qualifications.

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20____, by
_____, as _____
of _____ and who:

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission
and expiration:

This document must be completed and returned with your Submittal

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Vendor proposes that he/she is qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein.

Please provide three (3) current and correct references from clients for similar services.

(Do not include the City of Port Orange)

1. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods or
Services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____
2. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods or
Services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____
3. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods or
Services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____

This document must be completed and returned with your Submittal.

FORM 7.10 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

*This declaration is executed under penalty of perjury of the laws to the United States and State of Florida***THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:**

RFSQ/RFP/ITN/BID/CONTRACT/PROJECT # (as applicable): _____

BUSINESS NAME: _____

CONTACT PERSON/TITLE: _____

MAILING ADDRESS: _____

CITY-STATE-ZIP: _____

Length of Time at Address Provided: _____

Physical Presence of Business: ☐ Headquarters, ☐ Manufacturing Facility, or ☐ Locally Owned FranchiseAnd within Legal Boundaries: ☐ The City of Port Orange ☐ Volusia County ☐ The State of Florida

FEIN (Federal Employer Identification Number): _____

BUSINESS STRUCTURE: ☐ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship☐ Other (Specify): _____

PHONE NUMBER: _____ FAX: _____

EMAIL: _____

****Please attach a valid business tax receipt, or other such documentation******ATTESTATION – I understand that:**

- In accordance with City Of Port Orange City Code 2-275, local businesses shall have five (5) business days from bid/proposal opening to submit a best and final bid for evaluation. To qualify: A Port Orange business initial bid must be within (8%) of the lowest and best responsible bid from a non-Port Orange business; A Volusia County business initial bid must be within (5%) of the lowest and best responsible bid from a non-Volusia County business; A State of Florida business initial bid must be within (3%) of the lowest and best responsible bid from a non-State of Florida business.
- A local business must have its headquarters, manufacturing facility, or locally owned franchise located within the legal boundaries of the City of Port Orange, Volusia County, or the State of Florida, as indicated herein, for at least twelve (12) months prior to the bid or proposal opening date and a valid business license, issued by the corresponding government agency. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. Bidders shall attach to this affidavit of eligibility with a bid or proposal, a copy of a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within corresponding local limits.
- The preference does not apply to goods or services exempted by statute or prohibited by Federal law, State law, or other funding source restrictions.
- The preference established in this policy does not prohibit the right of the City, or other authorized purchasing authority, to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals.
- The information contained herein may be subject to verification.
- A vendor who misrepresents the local preference status of its firm in a proposal or bid submitted to the City of Port Orange will lose the privilege to claim local preference status and shall lose eligibility to claim local preference for a period of one (1) year. The City Manager may also recommend that the firm be referred for debarment.

BEFORE ME; the undersigned authority, in and for the State of Florida and the City of Port Orange personally appeared _____ who, after being sworn according to law, stated that he or she was authorized to represent _____ and to execute this affidavit on behalf of the said Business Entity and attests, under penalty of perjury, to the above.

(Form 7.10 – Local Business Affidavit of Eligibility – Page 2)

SWORN AND SUBSCRIBED BEFORE ME

NOTARY SEAL

SIGNATURE OF NOTARY PUBLIC

THIS _____ DAY OF _____, 20__

My Commission Expires: _____

SIGNATURE OF AFFIANT

DATE

PRINTED NAME OF AFFIANT / TITLE

COMPANY

This document must be completed and returned with your Submittal

BID COST/FEE PROPOSAL

		"ATTACHMENT 1" SCHEDULE OF UNIT PRICING						
		BID FORM						
		CITY OF PORT ORANGE						
		ITB # 19-11						
		Pedestrian School Signs						
		Completed Attachment 1 Bid Proposal form MUST be included with Bid Submission						
		Instruction to save Attachment from DemandStar website:						
		Perform "File Save As" and save spreadsheet to your computer. Fill in pricing in highlighted cells, preferably electronically.						
		Bidders are required to complete all fields shaded in green. All other fields will be automatically calculated.						
		NAME OF BUSINESS:						
		CONTACT PERSON:						
		EMAIL ADDRESS:						
		AUTHORIZED NAME:						
		AUTHORIZED SIGNATURE:						
BID PROPOSAL								
ITEM #	QUANTITY	UNIT of MEASURE	DESCRIPTION	DELIVERY TIME in DAYS	WARRANTY DURATION in MONTHS	COST per UNIT	TOTAL COST	
1	8	EACH	30" Flashing school crossing solar powered sign with timer activation and mounting hardware			\$0.00	\$0.00	
2	2	EACH	30" Flashing School Crossing signs with: Solar Power push button activation and mounting hardware			\$0.00	\$0.00	
3	2	EACH	30" Flashing Pedestrian crossing solar powered signs with push button activation and mounting hardware			\$0.00	\$0.00	
4	8	EACH	30" Flashing Pedestrian crossing solar powered signs with Audible push button activation and mounting hardware			\$0.00	\$0.00	
						TOTAL COST OF PROJECT	\$0.00	
AWARD: THIS BID WILL BE AWARDED TO THE LOWEST RESPONSIVE, RESPONSIBLE BIDDER								

[Remainder of this page left intentionally blank]

STANDARD CITY OF PORT ORANGE CONTRACT DOCUMENTS (FOR INFORMATIONAL PURPOSES ONLY)



**CITY OF PORT ORANGE
STANDARD CONTRACT FOR SERVICES**

This Standard Contract for Services ("Contract") is entered into this ____ day of _____, 2016, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and _____ ("Contractor"), a _____ corporation whose principal address is _____. The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

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

(i) _____

- (b) The time, manner and place for performance of such services shall be:

Term: This Contract shall become effective on the last date the Contract is signed by the Parties. Work shall be substantially completed within ____ calendar days from issuance of a Notice to Proceed and final completion ____ days thereafter (the "Term").

Manner and Place: The work shall be performed as outlined in Exhibit "____," in accordance with Standard Construction Details as required on all City owned facilities and properties (i.e. rights-of-way) and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances. Contractor shall not deliver goods or services without a written Purchase Order(s) or Notice to Proceed(s), signed by an authorized agent of the City of Port Orange.

Time and Essence: Contractor acknowledges that time is of the essence for this Contract.

Authorization for Services: This Contract standing alone does not authorize the purchase of any work or services or require the City to place any orders for work or service. Authorization for performance of services by the Contractor under this Contract shall be in the form of a written Notice to Proceed issued and executed by the City. The City reserves the right to contract with other parties for work and services contemplated by this Contract, as determined in the City's sole and absolute discretion.

Liquidated Damages: Contractor shall pay \$ _____ for each day that expires after the date the Work is required to be Substantially Completed until the Contractor achieves Substantial Completion with the work. Contractor and City agree and recognize that the liquidated damages set forth herein shall not be treated as a penalty and are just damages that are proportionate to any damages that might reasonably be expected to follow from a delay to Substantial Completion.

2. City Obligations. In return for the services identified above, the City agrees to compensate the Contractor at the prices set forth in Exhibit "___" attached hereto, subject to a limit up to but not to exceed \$_____ for the term of this Contract. The City's obligation to pay Contractor under this Contract is limited to the budgeted amount for the fiscal year approved by the Port Orange City Council for the then current fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. Contract Documents. The following forms are attached as Exhibit "___" and must be completed, signed, witnessed and notarized as indicated, and returned to the City prior to the commencement of any services by Contractor under this Contract:

- a. Front Page for Bond (F.S. § 255.05)
- b. Combination Payment and Performance Bond (F.S. §255.05)

4. Liens. Contractor acknowledges that Contractor shall not be entitled to lien the City or other public property.

5. Contract Administration. The _____ shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

6. Termination for Convenience of the City

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

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

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

- (i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
- (ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;
- (iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice;
- (iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Port Orange; and
- (v) use best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this clause.

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

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

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

- (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
 - (1) the cost of work performed or supplies delivered;
 - (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above;
 - (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable.
- (ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated.

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

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

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

9. Examination of Records

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

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

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

10. Public Records Compliance. Contractor shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term.

(d) Upon completion of the Contract, Contractor shall transfer to the City, at no cost, all public records in possession of the Contractor and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

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

CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO 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

11. Termination for Non-Appropriation of Funds

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

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

12. Insurance. Contractor shall maintain insurance during the life of this Contract. Contractor shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers' compensation coverage, the bidder's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation.

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Contractor shall not commence work under this Agreement until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. Contractor shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change.

The City reserves the right to increase insurance coverage as determined for higher risk contracts and shall reimburse the Contractor for the reasonable additional costs of increased coverage.

Insurance	Standards	Comments
Workers' Compensation <u>Limits:</u> <u>Additional Coverage:</u>	Coverage A - Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
Comprehensive General Liability (including Completed Operations and Contractual Liability) <u>Limits:</u>	Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000 Aggregate	When the Contract work on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
Comprehensive Business, Automobile Liability to include all automobiles. <u>Limits:</u> <u>Additional Coverage:</u>	Auto Liability Bodily Injury: \$100,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
Property Insurance Builders Risk. <u>Limits:</u> <u>Additional Coverage:</u>	Buildings - Completed value of contract. "All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If the Contract requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
Professional Liability (Errors & Omissions) <u>Limits:</u>	Coverage - \$1,000,000 minimum	

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

14. Modifications or Changes to this Contract

(a) Change Orders. The Department Head, with the concurrence of the City's signatory as required by the City's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract.

(b) If any change under this clause causes an increase or decrease in Contractor's cost of, or time required for the performance of the work hereunder, Contractor shall receive an equitable adjustment in accordance

with subparagraph (d), which shall include all compensation to the Contractor, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change.

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

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

15. **Sovereign Immunity.** The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

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

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

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

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

19. **Inspection**

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

(b) In the event any supplies or lots of supplies are defective in material or workmanship, or otherwise not in conformity with the requirements of this Contract, the City shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Finance Director, corrected in place by and at the expense of Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the City may either (i) by contract or otherwise replace or correct such supplies and charge Contractor the cost for such replacement or correction; or (ii) may terminate this Contract for default as provided in the clause of

this Contract entitled "Termination for Default." Unless Contractor corrects or replaces such supplies within the delivery schedule, the Finance Director may require the delivery of such supplies at a reduction in price, which is equitable under the circumstances. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract. Failure to inspect and accept or reject supplies shall neither relieve Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the City therefor.

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

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

21. Non-discrimination. During the performance of this Contract, Contractor agrees as follows:

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

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

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

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

23. Force Majeure. Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure

shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

24. Controlling Law. **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.**

25. Additional Provisions. This Contract includes all additional provisions as may have been outlined in _____ and written quotes and purchase orders and any attachments or exhibits to this Contract whether delivered herewith or subsequently approved as a part hereof, such as drawings or technical specifications prepared in the performance of this work.

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

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

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

Copy to: City of Port Orange
Attention: _____
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-_____

Contractor: _____
Attention: _____

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

28. Contract Construction

This 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. The delivery by facsimile or e-mail of

an executed copy of this Agreement shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this Agreement.

29. Authority to Sign. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

[Remainder of this page intentionally left blank]

SAMPLE

Witnesses: _____

Printed Name: _____

Printed Name: _____

By: _____

Printed Name: _____

Title: _____

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

Date: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, as _____ of _____, a _____ corporation, and who:

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

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

Date: _____
Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Donald O. Bumette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

Witnesses:

ATTEST:

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

Date: _____
Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

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

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



End of Solicitation Documents



CITY OF ORANGE

"ATTACHMENT 1" SCHEDULE OF UNIT PRICING

BID FORM

ITB # 19-11

Pedestrian School Signs

Completed Attachment 1 Bid Proposal form **MUST** be included with Bid Submission

Instruction to save Attachment from DemandStar website:

Perform "File Save As" and save spreadsheet to your computer. Fill in pricing in highlighted cells, preferably electronically.

Bidders are required to complete all fields shaded in green. All other fields will be automatically calculated.

NAME OF BUSINESS:					
CONTACT PERSON:					
EMAIL ADDRESS:					
AUTHORIZED NAME:					
AUTHORIZED SIGNATURE:					

BID PROPOSAL							
ITEM #	QUANTITY	UNIT of MEASURE	DESCRIPTION	DELIVERY TIME in DAYS	WARRANTY DURATION in MONTHS	COST per UNIT	TOTAL COST
1	8	EACH	30" Flashing school crossing solar powered sign with timer activation and mounting hardware			\$0.00	\$0.00
2	2	EACH	30" Flashing School Crossing signs with: Solar Power push button activation and mounting hardware			\$0.00	\$0.00
3	2	EACH	30" Flashing Pedestrian crossing solar powered signs with push button activation and mounting hardware			\$0.00	\$0.00
4	8	EACH	30" Flashing Pedestrian crossing solar powered signs with Audible push button activation and mounting hardware			\$0.00	\$0.00
						TOTAL COST OF PROJECT	\$0.00

AWARD: THIS BID WILL BE AWARDED TO THE LOWEST RESPONSIVE, RESPONSIBLE BIDDER



CITY OF PORT ORANGE

ADDENDUM NO. # 1

ITB 19-11 PEDESTRIAN and SCHOOL SIGNS

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5718
FAX 386-506-5711
purchdiv@port-orange.org

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated April 25, 2019 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

A. CLARIFICATIONS:

N/a

B. CHANGES TO SPECIFICATIONS:

N/a

C. QUESTIONS AND ANSWERS:

Question 1:

The Scope of Work included with the above referenced solicitation requires a couple of items to clarify an appropriate scope of work. I have itemized the items below for your ease of reference.

- 1) *Model SI-TS40S1130S2A, Model SI-TS40S1130S1A, Model SI-TS40W11230S1A, Model SI-TS40W11230S1A (sign) or better.* These model numbers are listed as a requirement for all four of the requested assemblies in the Scope of Work. The referenced model numbers are for LED signs supplied by Traffic Safety Corporation. Please be advised that Traffic Safety Corporation does not have an approved LED sign by the Florida Department of Transportation (FDOT) as required by Florida Statute.

It is requested that the City allow LED signs that are tested and approved by the FDOT. Will the City accept LED signs that are tested and approved by the FDOT? **Answer: The signs are being placed on city, low speed, low traffic streets, not State roads or highways. Therefore, they do not need to meet FDOT requirements. The city does not place signs on State roadways.**

2) *Campbell Guardian Push Button activation, AC powered, includes audible push button frame and 9" x 12" R10-25 sign with ambient gain control.* The Guardian push button assembly does not currently have an approval by FDOT. Additionally, the specified button assembly calls for a 120VAC power source that will be connected with a solar powered LED sign assembly. Further, the specified button assembly includes vibrotactile features which the Federal Highway Administration has issued a memorandum that pedestrian activation at uncontrolled marked crosswalks shall not use "vibrotactile indications or percussive indications."

It is requested that the City allow the use of the Polara's Model XAV2E-LED Push Button Station. Polara is the leader in the market of durable pedestrian push button assemblies, and their Model XAV2E-LED push button assembly does have approval from FDOT, and it provides the verbal audible guidance that we believe the City is looking for in the fourth item included in the solicitation. Will the City accept the Model XAV2E-LED push button assembly for this item?

Answer: Yes, the city will accept this.

Question 2:

I just wanted to clarify, are you looking for one push button system? The system comes with 2 signs. Or do you need two systems, which would be 4 signs?

Answer: See SOW & specifications for details this is identified in the Specs

David Van Valkenburgh
Purchasing Agent

In all other respects, except as specifically stated herein, the subject ITB 19-11 remains unchanged.

END OF ADDENDUM NO. #1



City of Port Orange Public Works & Utilities Department

TO: M.H. Johansson, City Manager

THRU: Lynn Stevens, Public Works & Utilities Director
Julia Wiggins, Public Works & Utilities Business Manager

FROM: James Buttrum, Deputy Director Public Works & Utilities

DATE: May 21, 2019

SUBJECT: Reject All Bids – ITB 19-11 Pedestrian & School Signs

REQUEST:

The Public Works & Utilities Department requests City Council reject all bids for ITB 19-11, Pedestrian & School Signs.

PURPOSE:

The purpose is to action is to purchase pedestrian and school crossing signs at the lowest price available.

CONSIDERATION:

On May 16, 2019, one responsive bid was received from Universal Signs & Accessories for \$61,224.00 in response to ITB 19-11, Pedestrian and School Signs. A second bid was received late from Lightle Enterprises of Ohio, however this bid was deemed non-responsive and remains un-opened as all bid submittals had to be delivered by the date and time specified in the bid package.

The FY19 budget for the purchase of blinking, push button pedestrian and school crossing signs is \$43,000.00. Staff has purchased and installed one school crossing sign at a lower price than bid. Staff feels it is in the best interest of the City to reject all bids, evaluate why other vendors did not submit bids, and explore options to obtain the lowest most competitive price possible.

FUNDING:

P SchoolCrossingInterSafety 301-4300-541-6397
Project #IMI015 FY19 Budget \$43,000.00

RECOMMENDATION:

The Public Works & Utilities Department recommends City Council reject all bids for ITB 19-11, Pedestrian & School Signs.

ANTICIPATED SCHEDULE:

- a) Placed on Civic Clerk – May 2019
- b) Council Approval – June 18, 2019

ATTACHMENTS:

- a) All bid documents for ITB 19-11 Pedestrian & School Signs



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: Yes

SUBJECT: (B8b) Intent to award ITB #19-10 to McConnie Enterprises, Inc. for baseball field work

DEPARTMENT: Parks & Recreation

GOAL:

RECOMMENDED MOTION: Move to approve the intent to award ITB 19-10 Baseball field work to McConnie Enterprises, Inc., subject to Contractor's execution of the final contract documents as approved by the City Manager and City Attorney, and to authorize the Mayor and City Clerk to execute all required documents.

SUMMARY: ITB 19-10 opened on May 15, 2019 and we only received one responsive bidder to replace the fence, backstop and dugouts at Spruce Creek Road Park South field. The responsive bidder is McConnie Enterprises from Tampa Florida. The bid amount of \$77,826.00. This project is budgeted in QPC 067. Term begins at time of notice to proceed and the bidder has 60 days to substantial and 30 days to final.

Staff recommends approval.

Project No.: QPC067
QPC067

Funding Account No.: 001-4400-572-6397
317-1000-519-63-97

Presenter: Susan Lovallo

ATTACHMENTS:

1.	Bid Tabulation Sheet	Bid Tabulation Sheet.pdf
2.	Notice of intent	Notice of intent.pdf
3.	McConnie Enterprises response	McConnie Enterprises response.pdf
4.	ITB 19-10 FENCE and BACKSTOP REPLACEMENT FINAL	ITB 19-10 FENCE and BACKSTOP REPLACEMENT FINAL.pdf
5.	M&HRecommendation of Award 5.22.19	M&HRecommendation of Award 5.22.19.pdf

Susan Lovallo
Susan Lovallo
Scott Neils
Margaret Roberts

Created/Initiated - 6/3/2019
Approved - 6/3/2019
Approved - 6/4/2019
Approved - 6/5/2019

Jake Johansson
Robin Fenwick

Approved - 6/7/2019
Final Approval - 6/7/2019



**CITY OF PORT ORANGE, FLORIDA
ITB TABULATION SHEET**

ALL BIDS ACCEPTED BY THE CITY OF PORT ORANGE ARE SUBJECT TO THE CITY'S TERMS AND CONDITIONS. ANY AND ALL ADDITIONAL TERMS AND CONDITIONS SUBMITTED BY THE BIDDERS ARE REJECTED AND SHALL HAVE NO FORCE AND EFFECT. BIDS FROM THE BIDDERS LISTED HEREIN ARE THE ONLY BIDS RECEIVED TIMELY AS OF THE OPENING DATE AND TIME. ALL OTHER BIDS SUBMITTED IN RESPONSE TO THIS SOLICITATION, IF ANY, ARE HEREBY REJECTED AS LATE. ALL BIDS ARE SUBJECT TO REVIEW BY THE CITY AND AWARD REQUIRES A FORMAL CONTRACT AND APPROVAL BY CITY COUNCIL.

ITB NUMBER: ITB-19-10 FENCE AND BACKSTOP REPLACEMENT

OPENING DATE/TIME: 5/15/2019 AT 2:30 P.M.

				McConnie Enterprises	Response 2	Response 3	Response 4				
Submittal Required Forms (mark "yes" or "no")				Vendor	Vendor	Vendor	Vendor				
1	Form 7.2 – Vendor’s Acknowledgement			YES							
2	Form 7.3 – Addendum and Change Order Procedure			YES							
3	Form 7.4 – Drug Free/Tie Preference Statement			YES							
4	Form 7.5 – Public Entity Crimes Statement			YES							
5	Form 7.6 – Affidavit of Anti-Collusion			YES							
6	Form 7.7– Statement of Vendor’s Qualifications			YES							
7	Form 7.8 – Statement of Vendor’s Qualifications			YES							
8	Form 7.9 – Professional References for Previous Experience			YES							
9	Form 7.10 – Listing of Subcontractors			YES							
12	Attachment 1 – Bid Proposal			YES							
13	Bid Bond			YES							
14	Copy of Contractor Entity License			YES							
1 Original, 1 Digital Copy (CD or flash drive) version in PDF format.				YES							
Deemed Responsive?				YES							
Additional Comments											
ITEM #	DESCRIPTION	QTY EACH	UNIT	PROPOSED PRICE	TOTAL PRICE	PROPOSED PRICE	TOTAL PRICE	PROPOSED PRICE	TOTAL PRICE	PROPOSED PRICE	TOTAL PRICE
1	Demolition/Clearing & Grubbing	1	LS	\$4,200.00	\$4,200.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
2	Layout/As-Builts	1	LS	\$2,000.00	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3	Chain-link Fencing 10 ft High Infield Fencing	192	LF	\$44.25	\$8,496.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
4	Chain-link Fencing 6 ft High Outfield/Misc Fencing	950	LF	\$22.50	\$21,375.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
5	Chain-link Gates - 6' H x 12' W Double Swing Gate	2	EA	\$650.00	\$1,300.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
6	Chain-link Gates - 6' H x 4' W Swing Gate	2	EA	\$425.00	\$850.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
7	15' Long Players Bench	2	EA	\$1,485.00	\$2,970.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
8	Foul Pole	2	EA	\$2,025.00	\$4,050.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Backstop Wall/Padding/Netting System	1	EA	\$26,585.00	\$26,585.00						
9	4" Thick 3000PSI Fiber Mesh Concrete	1,200	SF	\$3.00	\$3,600.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
10	Batter's Boxes	1	LS	\$2,400.00	\$2,400.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
				TOTAL BASE BID	\$77,826.00	TOTAL BASE BID	\$0.00	TOTAL BASE BID	\$0.00	TOTAL BASE BID	\$0.00
Opened and tabulated by:				David Van Valkenburgh Purchasing Agent							
Witnessed by:				Joseph Castro Purchasing Buyer							



NOTICE OF INTENT TO AWARD

ITB #19-10 FENCE and BACKSTOP REPLACEMENT

May 16, 2019

On May 15, 2019 Purchasing received One (1) bids for the Fence and Backstop Replacement.

After review of the bids submitted, City Staff has made its recommendation to award McConnie Enterprises of Tampa FL bid of \$77,826.00.

Recommendation to award will be presented for City Council approval on June 18,

**2019. David Van Valkenburgh CFCM, C.P.M.
Purchasing Agent**

**"ATTACHMENT 1" SCHEDULE OF UNIT PRICING****BID FORM
CITY OF PORT ORANGE****ITB # 19-10****FENCE and BACKSTOP REPLACEMENT**Completed Attachment 1 Bid Proposal form **MUST** be included with Bid Submission

Instruction to save Attachment from DemandStar website:

Perform "File Save As" and save spreadsheet to your computer.

Fill in pricing in highlighted cells, preferably electronically.

Bidders are required to complete all fields shaded in green. All other fields will be automatically calculated.

NAME OF BUSINESS:	mccconnie enterprises /mccconnie fence
CONTACT PERSON:	paul hughes
EMAIL ADDRESS:	phughes@mccconniefence.com
AUTHORIZED NAME:	paul hughes
AUTHORIZED SIGNATURE:	

PROPOSAL PRICING

ITEM #	DESCRIPTION	QTY EACH	UNIT	PROPOSED PRICE	TOTAL PRICE
1	Demolition/Clearing and Grubbing	1	LS	\$4,200.00	\$4,200.00
2	Layout/As-Builts	1	LS	\$2,000.00	\$2,000.00
3	Chain-link Fencing 10 Foot High Infield Fencing (192 LF shown on plans)	192	LF	\$44.25	\$8,496.00
4	Chain-link Fencing 6 Foot High Outfield/Misc. Fencing (850 LF shown on plans)	950	LF	\$22.50	\$21,375.00
5	Chain-link Gates - 6' H X 12'W Double Swing Gate	2	EA	\$650.00	\$1,300.00
6	Chain-link Gates - 6' H X 4' W Swing Gate	2	EA	\$425.00	\$850.00
7	15' Long Players Bench	2	EA	\$1,485.00	\$2,970.00
8	Foul Pole	2	EA	\$2,025.00	\$4,050.00
	Backstop Wall/Padding/Netting System	1	LS	\$26,585.00	\$26,585.00
9	4" Thick 3000 PSI Fiber mesh Concrete (850 SF shown on plans)	1,200	SF	\$3.00	\$3,600.00
10	Batter's Boxes	1	LS	\$2,400.00	\$2,400.00
				TOTAL BASE BID	\$77,826.00

AWARD: THIS BID WILL BE AWARDED TO THE LOWEST, RESPONSIVE, RESPONSIBLE BIDDER

Bond Number: N/A

**SECTION 00410
BID BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, McConnie Enterprises, Inc.
DBA McConnie Fence Co. as Principal and
Nationwide Mutual Insurance Company of the City of Des Moines State of Iowa, a corporation
existing under the laws of the State of Florida, as Surety, are held and firmly bound unto the
City of Port Orange - 1000 City Center Circle, Port Orange, FL. 32129
hereinafter called the Owner, in the sum of Five Percent of Total Amount Bid in U.S.
Dollars (\$ 5%) lawful money of the United States of America, for the payment of
which sum well and truly to be made, we bind ourselves our heirs, executors, administrators and
successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that whereas the Principal has submitted the accompanying
Proposal or Bid, for the construction of:

**ALL CHILDREN'S/SPRUCE CREEK PARK – SOUTH FIELD
BID NO. XX-XX**

NOW, THEREFORE, if the Principal shall not withdraw said Bid within ninety (90) days after the
opening of the same and in the event of the acceptance of his proposal by the Owner, shall, within
the period specified therefore, enter into a written contract with the Owner in accordance with the
Bid as accepted, and give bond with good and sufficient surety or sureties, as may be required, for
the faithful performance and proper fulfillment of such contract, or in the event of the withdrawal
of said Bid within the period specified, of the failure to enter into such contract and give bonds
within the time specified, if the Principal shall pay the Owner the difference between the amount
specified in said Bid and the amount for which the Owner may procure the required work, if the
latter amount be in excess of the former, then the above obligation shall be void and of no effect,
otherwise to remain in full force and virtue.

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- ☒ Form 7.2 – Vendor’s Acknowledgement
- ☒ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- ☒ Form 7.4 – Drug Free/Tie Preference Statement
- ☒ Form 7.5 – Public Entity Crimes Statement
- ☒ Form 7.6 – Affidavit of Anti-Collusion
- ☒ Form 7.7 – Statement of Vendor’s Qualifications
- ☒ Form 7.8 – Professional References for Previous Experience
- ☒ Form 7.9 – Local Business Affidavit of Eligibility
- ☒ Form 7.10 – Listing of Subcontractors
- ☒ Copy of License (Contractor, Sunbiz, etc.)
- ☒ Attachment 1 – Bid Proposal
- ☒ Bid Bond
- ☒ Submission of one (1) original marked “ORIGINAL” and one (1) digital (CD or flash drive) version in PDF format.

BY: McConnie Enterprises
Name of Business
Paul J. Keigh
Authorized Signature
5/11/19
Date

This document must be completed and returned with your Submittal

(Form 7.10 – Local Business Affidavit of Eligibility – Page 2)

SWORN AND SUBSCRIBED BEFORE ME



SIGNATURE OF NOTARY PUBLIC

THIS 16th DAY OF May, 2019

My Commission Expires: 6/19/22

 4/11/19
SIGNATURE OF AFFIANT DATE

B. J. Hughes PM
PRINTED NAME OF AFFIANT / TITLE

McConnie Fence
COMPANY

NOTARY SEAL



Brian Vesco
State of Florida

My Commission Expires 06/19/2022
Commission No. GG 230648

This document must be completed and returned with your Submittal

FORM 7.10 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

This declaration is executed under penalty of perjury of the laws to the United States and State of Florida

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

RFSQ/RFP/ITN/BID/CONTRACT/PROJECT # (as applicable): _____

BUSINESS NAME: _____

CONTACT PERSON/TITLE: _____

MAILING ADDRESS: _____

CITY-STATE-ZIP: _____

Length of Time at Address Provided: _____

Physical Presence of Business: ☐ Headquarters, ☐ Manufacturing Facility, or ☐ Locally Owned Franchise

And within Legal Boundaries: ☐ The City of Port Orange ☐ Volusia County ☐ The State of Florida

FEIN (Federal Employer Identification Number): _____

BUSINESS STRUCTURE: ☐ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship

☐ Other (Specify): _____

PHONE NUMBER: _____ FAX: _____

EMAIL: _____

****Please attach a valid business tax receipt, or other such documentation****

ATTESTATION – I understand that:

- In accordance with City Of Port Orange City Code 2-275, local businesses shall have five (5) business days from bid/proposal opening to submit a best and final bid for evaluation. To qualify: A Port Orange business initial bid must be within (8%) of the lowest and best responsible bid from a non-Port Orange business; A Volusia County business initial bid must be within (5%) of the lowest and best responsible bid from a non-Volusia County business; A State of Florida business initial bid must be within (3%) of the lowest and best responsible bid from a non-State of Florida business.
- A local business must have its headquarters, manufacturing facility, or locally owned franchise located within the legal boundaries of the City of Port Orange, Volusia County, or the State of Florida, as indicated herein, for at least twelve (12) months prior to the bid or proposal opening date and a valid business license, issued by the corresponding government agency. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. Bidders shall attach to this affidavit of eligibility with a bid or proposal, a copy of a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within corresponding local limits.
- The preference does not apply to goods or services exempted by statute or prohibited by Federal law, State law, or other funding source restrictions.
- The preference established in this policy does not prohibit the right of the City, or other authorized purchasing authority, to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals.
- The information contained herein may be subject to verification.
- A vendor who misrepresents the local preference status of its firm in a proposal or bid submitted to the City of Port Orange will lose the privilege to claim local preference status, and shall lose eligibility to claim local preference for a period of one (1) year. The City Manager may also recommend that the firm be referred for debarment.

BEFORE ME; the undersigned authority, in and for the State of Florida and the City of Port Orange personally appeared _____ who, after being sworn according to law, stated that he or she was authorized to represent _____ and to execute this affidavit on behalf of the said Business Entity and attests, under penalty of perjury, to the above.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Vendor proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful Vendor shall not substitute subcontractors without approval from the Engineer. Vendor shall attach additional sheets as necessary.

Subcontractor No. 1

Name: Sparky's Concrete

Description of Work: concrete

Percent of Contract Price: 5%

Previous Experience Together: Yes/☒ No

Subcontractor No. 2

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 3

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 4

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

This document must be completed and returned with your Submittal

LISTING OF PREVIOUS EXPERIENCE

Commercial Client List

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

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

	Contact Name	Phone	Current Client? Y or N	Number of years service provided	Description of service
1	Derlene	402-293-4000	Y	15 yrs	Fencing
2	Beverly	613-635-1229	Y	20 yrs	Fencing
3	John	727-372-0781	Y	12 yrs	Fencing

This document must be completed and returned with your Submittal.

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Vendor proposes that he/she is qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein.

Please provide three (3) current and correct references from clients for similar services.

(Do not include the City of Port Orange)

1. Company Name: Fin Frack
Contact Person: Darlene Scandlers
City, State: Opaopka Fl
Telephone Number: 407-293-4000
Email Address: _____
Description of goods or
Services provided: Fencing
Contract Amount: 500,000.00
Start/End Date of Contract: yearly contract
2. Company Name: Hillsborough School
Contact Person: michael or Beverly
City, State: Tampa Fl
Telephone Number: 813-635 1229
Email Address: _____
Description of goods or
Services provided: Fencing
Contract Amount: 750,000.00
Start/End Date of Contract: yearly contract
3. Company Name: Stensell Properties
Contact Person: John Stege
City, State: Odessa Fl 33556
Telephone Number: 727-372-0781
Email Address: _____
Description of goods or
Services provided: Fencing
Contract Amount: 90,000.00
Start/End Date of Contract: 1/2/19

This document must be completed and returned with your Submittal.

Okeechobee County FFF School \$400,000.00 completed 11/1/19

Walmart Distribution, Cocoa, \$399,000 11/15/19

City of Plant City Bell Fields \$490,000.00 5/9/19

1999 Newholland Skidster

2010 Sky Jack scissor lift

Ford F250 Duellix

(Form 7.7 Statement of Vendor's Qualifications – Page 2)

Q. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Statement of Vendor's Qualifications.

McConnie Enterprises
Name of Business

By: Paul Hughes
Printed Name: Paul Hughes
Title: Comm Estimator

STATE OF Florida
COUNTY OF Brevard

Sworn to (or affirmed) and subscribed before me this 16th day of May, 2019, by
Paul Hughes, as Signer
of McConnie Enterprises and who:

[Notary: Please select one]

☐ is personally known to me; or

☒ has produced Drivers License as identification.

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



Brian Vesco
State of Florida
My Commission Expires 06/19/2022
Commission No. GG 230648

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF VENDOR'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true, and correct to the best of their knowledge and belief. If necessary, questions may be answered on separate paper and attached, with any additional information that may be pertinent.

- A. Name of Vendor. McDonnie Enterprises
- B. Permanent main office address. 4707 30th Aves. Tampa FL 33619
- C. Date organized. 1981
- D. If a corporation, where incorporated.
- E. How many years have you been engaged in the contracting business under your present firm or trade name? 38 years
- F. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion.)
- G. General character of work performed by your company. Fencing installation
- H. Have you ever failed to complete any work awarded to you? If so, where and why? NO
- I. Have you ever defaulted on a contract? If so, where and why? NO
- J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed.
- K. List your major equipment currently owned or leased.
- L. Experience in work similar to this type of project. 35 years
- M. Background and experience of the principal members of your organization, including the officers.
- N. Credit currently available: \$ 1 mil
- O. Give bank reference: Bank of Tampa
- P. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? NO

FORM 7.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

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

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

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

NAME OF FIRM: McConnie Enterprises

SIGNED BY: Paul J. Hughes
(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

PRINTED SIGNATURE: Paul J. Hughes

TITLE: Comm Estimator

ADDRESS: 4707 30th Ave S

CITY: Port Orange STATE: FL ZIP CODE: 32119

TELEPHONE: _____ FAX: 813 957-0752

COMPLETION TIME: _____

F.E.I.N. NUMBER: 59-12588620

NO Bid may be withdrawn for a period of ninety (90) days subsequent to the submittal of the Bids, without the consent of the City of Port Orange.

NO BID (REASON): _____

This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Vendors, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this invitation to Bid.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid proposal.

Addendum # 1 Date: 4/10/19 Addendum # _____ Date: _____

Addendum # _____ Date: _____ Addendum # _____ Date: _____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

If awarded the Contract for this Solicitation, I acknowledge that no oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders requests shall be made in writing by the Contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

I acknowledge the following statement regarding Change Orders to the awarded Contract:

"The Successful Contractor is responsible for giving the City of Port Orange, prior to the Contract expiration date, at least forty-five (45) calendar days' advance notice for any anticipated changes in price greater than \$25,000.00, time and/or scope of the awarded Contract. The Contractor shall not continue to provide services past the Contract expiration date unless approved by a written Change Order Notice from the City."

McConnie Enterprises
Name of Business

By: Paul Hughes
Printed Name: Paul J Hughes
Title: Comm Estimator

STATE OF Florida
COUNTY OF Brevard

Sworn to (or affirmed) and subscribed before me this 16th day of May, 2019 by
Paul Hughes as Signer of
(NAME) (TITLE)
McConnie Enterprises and who:
(NAME OF ORGANIZATION)

[Notary: Please select one]

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

[Signature]

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal



Brian Vesco
State of Florida
My Commission Expires 06/19/2022
Commission No. GG 230648

FORM 7.2 – VENDOR'S ACKNOWLEDGEMENT FORM

I have carefully examined the Invitation to Bid (ITB), Instructions to Vendors, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the Invitation to Bid at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to ninety (90) days in order to allow the City of Port Orange adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the Invitation to Bid.

I certify that all information contained in this Bid is truthful to the best of my knowledge and belief. I further certify that I am a duly authorized to submit this Bid on behalf of the Vendor / Contractor as its act and deed and that the Vendor / Contractor is ready, willing and able to perform if awarded the contract.

I further certify that this Bid is made without prior understanding, Contract, connection, discussion, or collusion with any person, firm or corporation submitting a Bid for the same product or service; no officer, employee or agent of the City of Port Orange City Council or of any other Vendor interested in said ITB; and that the undersigned executed this Vendor's Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

I further certify that having read and examined the specifications and documents for the designated services and understanding the general conditions for contract under which services will be performed, does hereby propose to furnish all labor, equipment, and material to provide the services set forth in the ITB.

I hereby declare that the following listing states any clarifications, any and all variations from and exceptions to the requirements of the specifications and documents. The undersigned further declares that the "work" will be performed in strict accordance with such requirements, and understands that any exceptions to the requirements of the specifications and documents may render the Bid non-responsive.

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

Please check one: ☒ I take NO exceptions. ☐ Exceptions (list below; add additional pages if necessary):

Mc Connie Enterprises
NAME OF BUSINESS

Paul Hughes
AUTHORIZED SIGNATURE

Paul J Hughes Comp Estimator
NAME, TITLE, TYPED

59-1258620
FEDERAL IDENTIFICATION #

STATE OF Florida COUNTY OF Brevard

4707 30th A S.
MAILING ADDRESS

Tampa FL 33619
CITY, STATE & ZIP CODE

813-997-0252
TELEPHONE NUMBER / FAX NUMBER

phughes@mccconniefence.com
E-MAIL ADDRESS

The foregoing instrument was acknowledged before me this day of 16th May, 2019 by Paul Hughes, who is personally known to me or who has produced ad identification and who did take an oath.

My Commission Expires: 6/19/22

[Signature]
Notary Public

This document must be completed and returned with your Submittal



CITY OF PORT ORANGE, FLORIDA

INVITATION TO BID

FENCE & BACKSTOP REPLACEMENT

ITB #19-10



City of Port Orange Purchasing Division

Prepared by: David Van Valkenburgh Purchasing Agent

Release Date: April 10, 2019

Bid Due Date and Time: May 15, 2019 at 2:30 P.M.

City of Port Orange, Florida

1000 City Center Circle

Port Orange, FL 32129

(386) 506-5704

purchdiv@port-orange.org

www.port-orange.org



Legal Notice to Proposers

ITB #19-10 FENCE & BACKSTOP REPLACEMENT

Notice is hereby given that the City of Port Orange is soliciting bids for ITB #19-10 FENCE & BACKSTOP REPLACEMENT. Bids will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 P.M. on May 15, 2019** which may be amended by addendum issued by the City. All untimely Bids will not be considered and will be returned to the Bidder unopened. All Bids will be evaluated to ensure they contain all required forms in order to deem the Bidder responsive or non-responsive. Bids will be opened and read aloud at 2:30 P.M. in Council Chambers.

There will be a Non-Mandatory Pre-Bid Conference for the project at **1:00 P.M.** (local time) on **April 24, 2019** at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the Pre-Bid Conference must sign in. The representative of each Bidder shall be an authorized employee of the Bidder and shall sign in accordingly. Bidders are urged to obtain Bid documents and familiarize themselves with the documents prior to the Pre-Bid meeting.

A Bid Guarantee in the form of a Bid Bond executed by the Bidder and an acceptable surety or a certified check or bank draft payable to the City of Port Orange, Florida in an amount equal to five percent (5%) of the proposed bid shall be submitted with each submission

DESCRIPTION: *The City of Port Orange is soliciting sealed Bids for acquiring the services for replacing existing chain link fence at Spruce Creek Road Park. Remove old backstop and replace with new designed backstop. Bidders must be a commercial entity licensed to do business in the State of Florida and perform the services identified herein.*

All Bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-256, and all Bids will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129, and at www.municode.com. Local vendors may be given a local preference pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-275.

Copies of the Bid documents, requirements, the scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from Onvia the City of Port Orange website at www.port-orange.org/bids.aspx and (DemandStar) via their website at www.demandstar.com. All questions shall be directed **in writing** to the Purchasing Agent, David VanValkenburgh, dvanvalkenburgh@port-orange.org or purchdiv@port-orange.org and reference **"Questions on ITB# 19-10 FENCE & BACKSTOP REPLACEMENT"** in the subject line. Last day for questions will be **May 1, 2019 at 5:00 P.M.**

All Bidders are required to complete and submit a Public Entity Crime Statement, the Anti-Collusion Statement, and Drug-Free Tie Proposal Preference Statement, as well as other documents as required by the solicitation.

NO bid shall be withdrawn for a period of ninety (90) days subsequent to the bid opening without the consent of the City of Port Orange, Florida. Upon award, the successful bidder will also be required to

furnish and pay for a satisfactory contract one hundred percent (100%) Payment and Performance Bond to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida and to enter into a contract for services with the City of Port Orange.

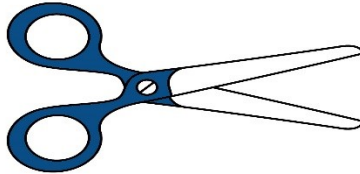
No Bids received after the time and date specified for the opening will be considered. The City of Port Orange, Florida reserves the right to reject any and all Bids, to waive any and all non-substantial irregularity in Bids received, whenever such waiver or rejection is in the best interest of the City.

Bids shall be **submitted to the City Clerk's office** with one (1) original and one (1) identical digital (CD or flash drive) version in pdf format, addressed to David Van Valkenburgh, Purchasing Agent, Finance Department, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 in a **SEALED ENVELOPE/PACKAGE** plainly marked on the outside: **"ITB #19-10 FENCE & BACKSTOP REPLACEMENT."**

David Van Valkenburgh – Purchasing Agent
Legal Ad - One Time – **April 10, 2019**

[Remainder of this page left intentionally blank]

Cut along the outer border and affix this label to the outside of your sealed bid envelope/package to identify it as a "Sealed Bid". Be sure to include the name of the company submitting the bid where requested.



SEALED BID • DO NOT OPEN	
SEALED BID NO.	<u>ITB #19-10</u>
BID TITLE:	<u>FENCE & BACKSTOP REPLACEMENT</u>
DUE DATE/TIME:	<u>May 15 at 2:30 P.M.</u>
SUBMITTED BY:	<u>(Name of Company)</u>
DELIVER TO:	City of Port Orange City Clerk's Office Attn: David Van Valkenburgh Purchasing Agent Finance Department 1000 City Center Circle Port Orange, Florida 32129
DATE/TIME RECEIVED:	<u>(To be stamped by Clerk's Office)</u>

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SECTION 1 – PURPOSE AND OVERVIEW

The purpose of this Invitation to Bid (ITB) is to solicit competitive sealed bids from Firms or Companies (Vendors) for the provision of contracting for ITB 19-10 FENCE & BACKSTOP REPLACEMENT. Bidders must be a commercial entity licensed to do business in the State of Florida and perform the services identified herein.

It is the intent and purpose of the City of Port Orange (City) that this Invitation to Bid promotes competitive selection. It shall be the Bidder's responsibility to advise the Purchasing Division if any language, requirements, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this ITB to a single source.

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO BIDDERS

Firms or companies (Vendor) desiring to provide services, as described herein shall submit sealed bids, including one original copy and one (1) digital (CD or flash drive) version in PDF format, in conformance with the detailed submittal instructions.

TIMELINE (Local Time):

The City reserves the right to alter dates as needed.

Date of Distribution:April 10, 2019

Non-Mandatory Pre-Bid Conference April 24, 2019 at 1:00 P.M.

Deadline for Questions: May 1, 2019 by 5:00 P.M.

Final Addendum Posting: May 8, 2019 by 5:00 P.M.

Bids Due: May 15, 2019 by 2:30 P.M.

City Council Meeting for Approval of Recommendation of AwardTo Be Determined

Bids must be delivered in a sealed envelope/package and delivered to:

City of Port Orange City Clerk's Office
Attn: David Van Valkenburgh Purchasing Agent
Finance Department
1000 City Center Circle
Port Orange, Florida 32129

Sealed Bids must be delivered no later than the date and time listed in the Timeline above. All times referenced are local time.

Bids shall be sealed, and Vendors shall clearly indicate on the outside of their bid the following:

- a) Invitation to Bid (ITB) Number and Title
- b) Date of Opening
- c) Name of Vendor
- d) Address of Vendor

Due to the timing of mail service, the City cautions Vendors to assure actual delivery of Bids to the City prior to the deadline set for receiving bids. Carrier and hand deliveries of bids will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until the date and time referenced in the Timeline above or as amended by addendum issued by the City. Bids received after the established deadline shall not be considered.

Vendors are cautioned that they are responsible for delivery to the specific location cited above. Therefore, if your bid, proposal, statement or quotation is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the above address. This office will not be responsible for deliveries made to any place other than the specified address.

Offers by telephone, email or telegram shall not be accepted. Also, Vendors are instructed NOT to fax their bid package. **Faxed bids shall be rejected as non-responsive regardless of where or when the fax is received.**

All Bids will be opened publicly, and the names of all Vendors shall be read aloud. All conferences and meetings regarding this ITB are recorded electronically (audio only).

The City of Port Orange reserves the right to reject any or all Bids or parts of Bids if it is in the best interest of the City.

PRE-BID CONFERENCE/SITE VISIT:

There will be a Non-Mandatory Pre-Bid Conference for the project on the date and time referenced in the Timeline above at City Hall, Council Chambers (1st Floor), 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the Mandatory Pre-Bid Conference must sign in. The representative of each Vendor shall be an authorized employee of the Vendor and shall sign in accordingly.

QUESTIONS REGARDING THIS ITB:

All questions shall reference "ITB #19-10 FENCE & BACKSTOP REPLACEMENT" in the subject line. All questions concerning this ITB shall be submitted in writing no later than the date and time referenced in the Timeline above to:

David Van Valkenburgh
Purchasing Agent Buyer
1000 City Center Circle
Port Orange, FL 32129
dvanvalkenburgh@port-orange.org or
purchdiv@port-orange.org

ADDENDA REGARDING THE INVITATION TO BID:

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Bid Due Date. Vendors should not rely on any representations, statements or explanations other than those made in this ITB or in any addendum to this ITB. Where there appears to be a conflict between the ITB and any addenda issued, the last addendum issued will prevail. It is the Vendor's responsibility to be sure all correct number of addenda was received. The Vendor should verify with the designated contact persons prior to submitting a Bid that all addenda have been received. Vendors should acknowledge the correct number of addenda received as part of their Bids. It is the responsibility of the Vendor to ensure all addenda have been received prior to submitting a bid.

Written responses, in the form of an addendum, will be provided via the City website www.port-orange.org/bids.aspx and Demand Star websites. www.demandstar.com.

The city of Port Orange reserves the right to consider the omission of an acknowledgment of addendum as cause for rejection of the ITB submittal.

This provision exists solely for the convenience and administrative efficiency of the City of Port Orange. No Vendor or other third party gains any rights by virtue of this provision or the application thereof, nor shall any Vendor or third party have any standing to sue or cause of action arising therefrom.

CLARIFICATIONS:

It is the Vendor's responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this ITB. Lack of understanding and/or misinterpretation of any portions of this ITB

shall not be cause for withdrawal of your Bid after opening or for subsequent protest of award. Vendors must contact the Purchasing Representative, at the email provided, should clarification be required.

Modification or alteration of the documents contained in the solicitation or contract shall only be valid if mutually agreed to in writing by the parties.

MINIMUM QUALIFICATIONS:

Vendors shall be licensed to do business in the State of Florida. Submit Sunbiz report showing your company registered as “Active”.

Vendors must be a commercial general contractor and properly registered and licensed to provide the goods or services identified in the scope of work, by all applicable state and local agencies.

Vendors must provide a minimum of three (3) verifiable references from similar scopes of work as identified in this ITB on the provided “Professional References” form. Failure to provide references that verify required experience will cause the Vendor to be deemed non-responsive. The City of Port Orange is not to be used as a reference.

NO LOBBYING:

All Vendors are hereby placed on notice that the City of Port Orange Council, City Employees/Staff, nor Members of the Evaluation Committee (with the exception of the City of Port Orange Purchasing Division personnel designated to receive requests for interpretations or corrections) are not to be lobbied, directly or indirectly either individually or collectively, regarding this ITB. During the entire procurement process, all Vendors and their subcontractors, sub-consultants, or agents are hereby placed on notice that they are not to contact any persons listed above for such purposes as holding meetings of introduction, dinners, etc. if they intend to submit or have submitted Bids for this project. Any Vendor contacting individuals mentioned herein in violation of this warning may automatically be disqualified from further consideration for this ITB.

PRICING SHEETS:

Pricing sheets/Bid Forms are to be completed as directed and without modification and returned as part of the ITB submittal prior to the ITB deadline for submission. Failure to fill out the price sheets/bid forms as directed and without modification may negatively affect the evaluation of your bid.

EXCEPTIONS TO SPECIFICATIONS:

If taking exception to any portion of the ITB specifications, the Vendor must indicate those exceptions as stated on the Vendor’s Acknowledgement Form.

BID SUBMISSION AND WITHDRAWAL:

Unless otherwise specified, Vendor shall use the forms supplied by the Purchasing Division. Bids, once opened, become the property of the City, cannot be withdrawn, and will not be returned to the Vendors. Upon opening, Bids become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

CORRECTION OF BIDS:

Correction of inadvertently erroneous Bids shall be permitted up to the time of ITB opening. Vendors shall not be allowed to modify their Bids after the opening time and date.

WITHDRAWAL OF BIDS:

NO Bid shall be withdrawn for a period of ninety (90) days subsequent to the Bid opening without the consent of the City of Port Orange, Florida. Negligence on the part of the Vendor in preparing the Bid confers no right of withdrawal or modification after the Bid has been opened, at the appointed time and place by the City of Port Orange. Any such withdrawn Bid shall not be resubmitted.

OPENING OF BIDS:

Bids will be received until the date and time stated in this ITB and will be publicly opened and read at the place, time and date stated. No responsibility will attach the Purchasing Department for the premature opening of a Bid not properly addressed and identified.

LITIGATION HISTORY:

The City will consider a Vendor's litigation history information in its review and determination of responsibility. All Vendors are required to disclose to the City all "material" cases filed, pending, or resolved during the last five (5) years prior to the solicitation response due date, whether such cases were brought by or against the Vendor, any parent or subsidiary of the Vendor, or any predecessor organization. If the Vendor is a joint venture, the information provided should encompass the joint venture (if it is not newly-formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Vendor's litigation history is an issue of responsibility, the failure to provide litigation history as required in the Evaluation Criteria may result in a recommendation of non-responsive by the Purchasing Manager.

DEBARMENT HISTORY:

The City will consider a Vendor's debarment history information in its review and determination of responsibility. All Vendors are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Vendor, any parent or subsidiary of the Vendor, or any predecessor organization. If the Vendor is a joint venture, the information provided should encompass the joint venture (if it is not newly-formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Vendor's debarment history is an issue of responsibility, the failure to provide debarment history as required in the Proposal Submittal and Requirements Section may result in a recommendation of non-responsive by the Purchasing Manager.

REJECTION OF BIDS:

The City reserves the right to reject any and/or all Bids when such rejection is in the best interest of the City.

BIDS MAY BE REJECTED AND/OR VENDOR(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

- (a) Failure to update the information on file including address, product, service or business descriptions.
- (b) Failure to perform according to contract provisions.
- (c) Conviction in a court of law of any criminal offense in connection with the conduct of business.

- (d) Evidence of a violation of any federal or state antitrust law based on the submission of bids or proposals, or the awarding of contracts.
- (e) Evidence that the vendor has attempted to give a Board employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Board's purchasing activity.
- (f) Other reasons deemed appropriate by the City.

OWNERSHIP OF DOCUMENTS:

All documents resulting from this project will become the sole property of the City of Port Orange. The Vendor must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in the possession of the Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

AMERICANS WITH DISABILITIES ACT (ADA):

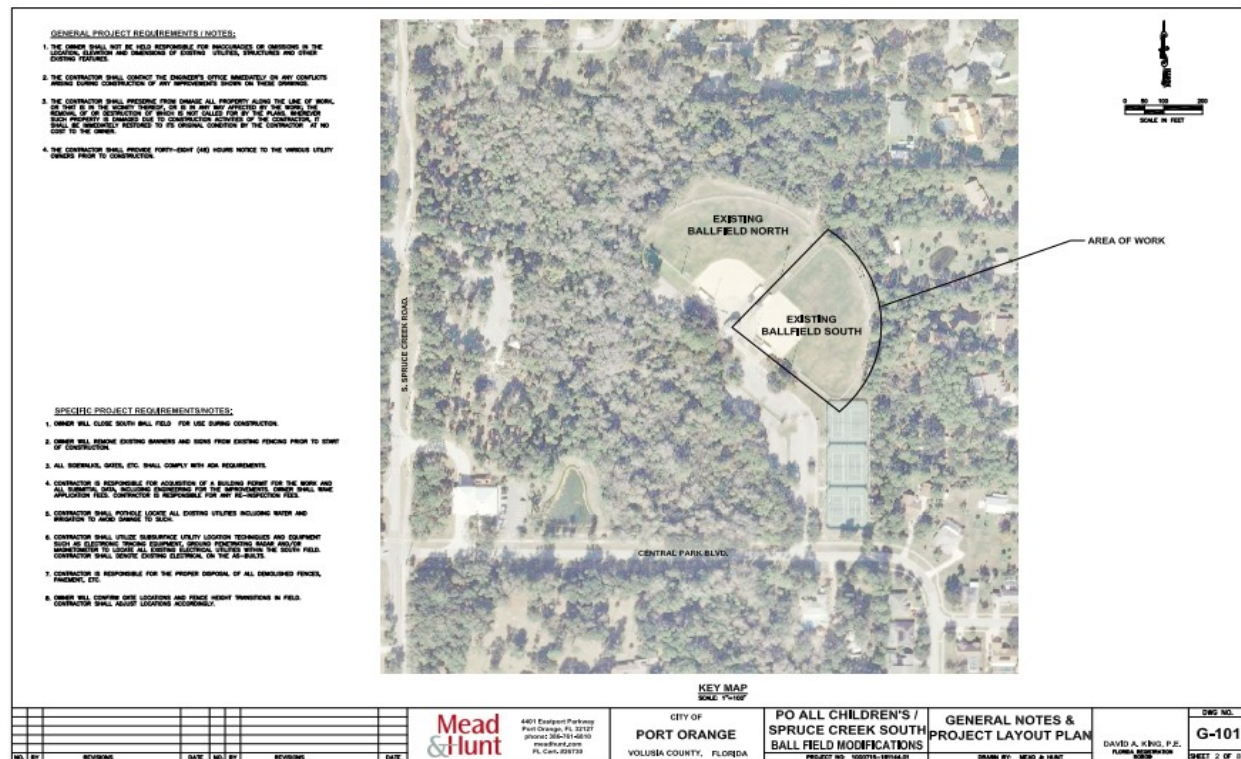
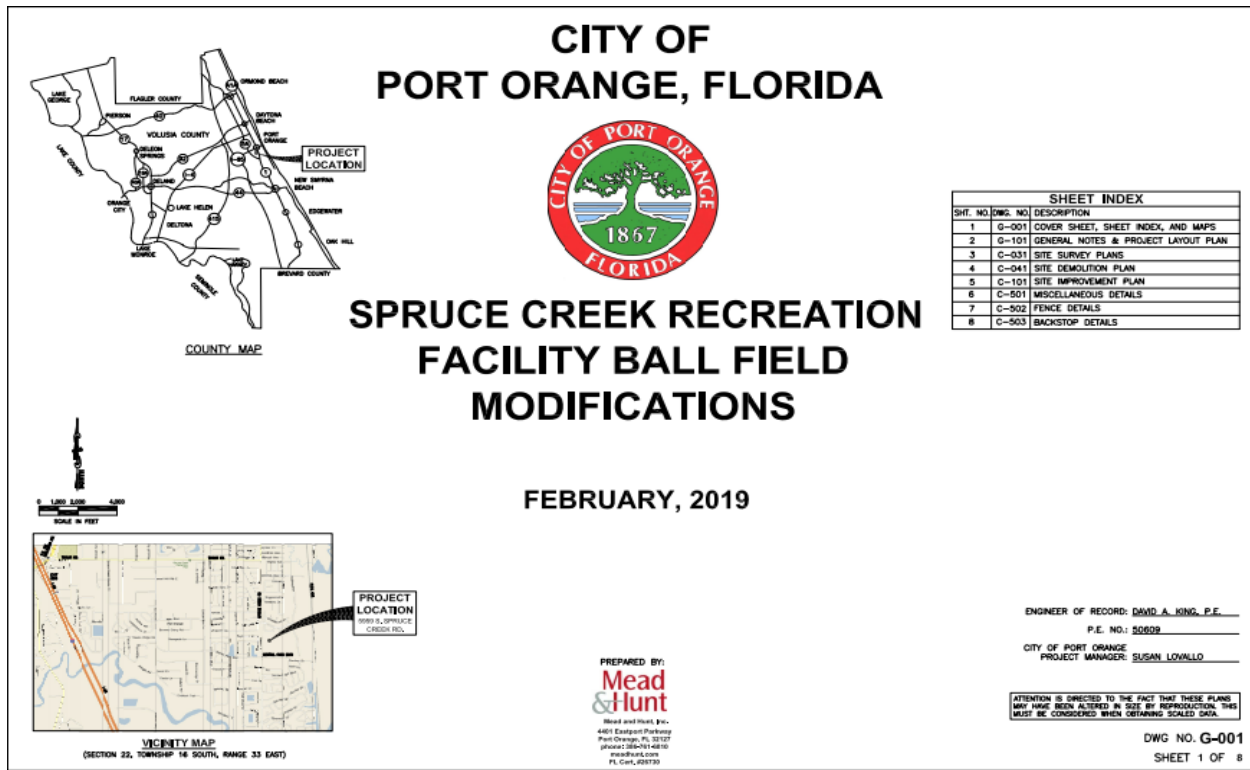
If you need special services provided for under the Americans with Disabilities Act, contact the ADA Coordinator in our Human Resources office at 386-506-5560 at least 48 hours before the scheduled event.

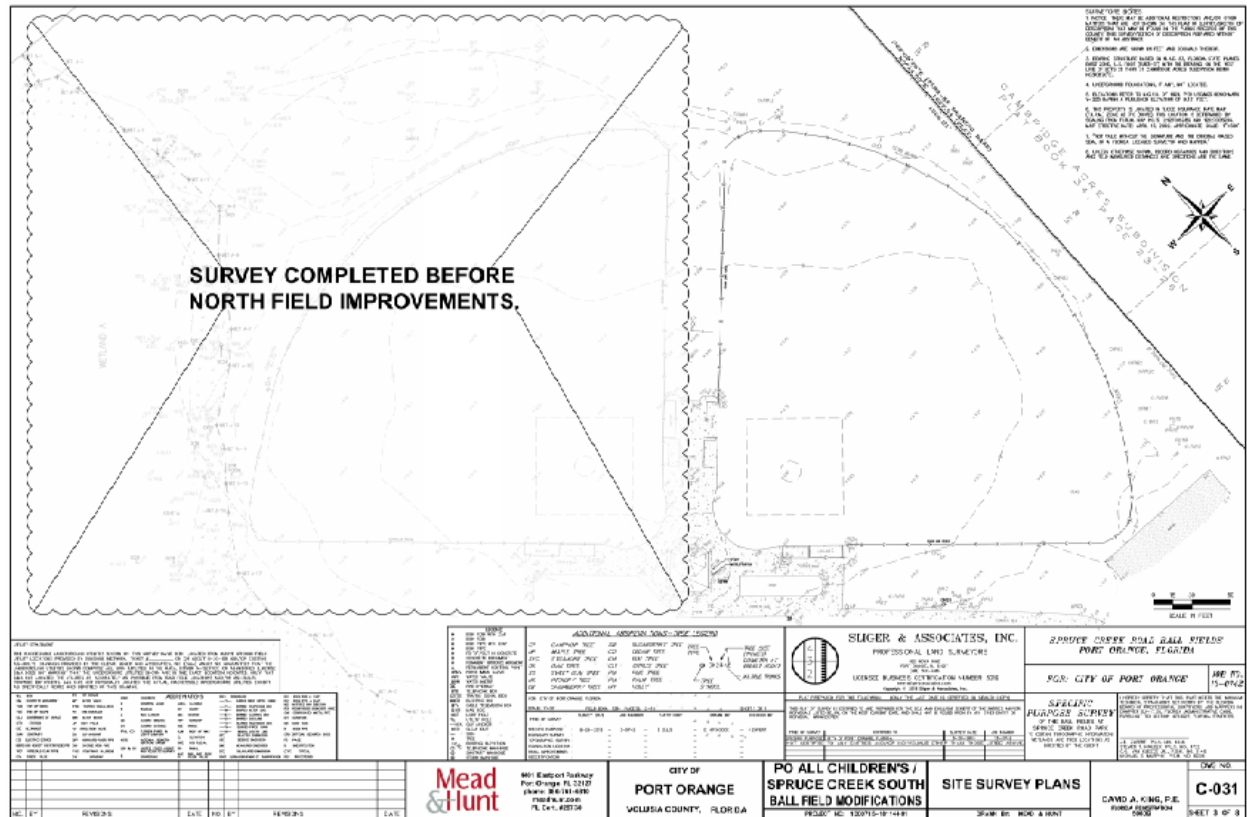
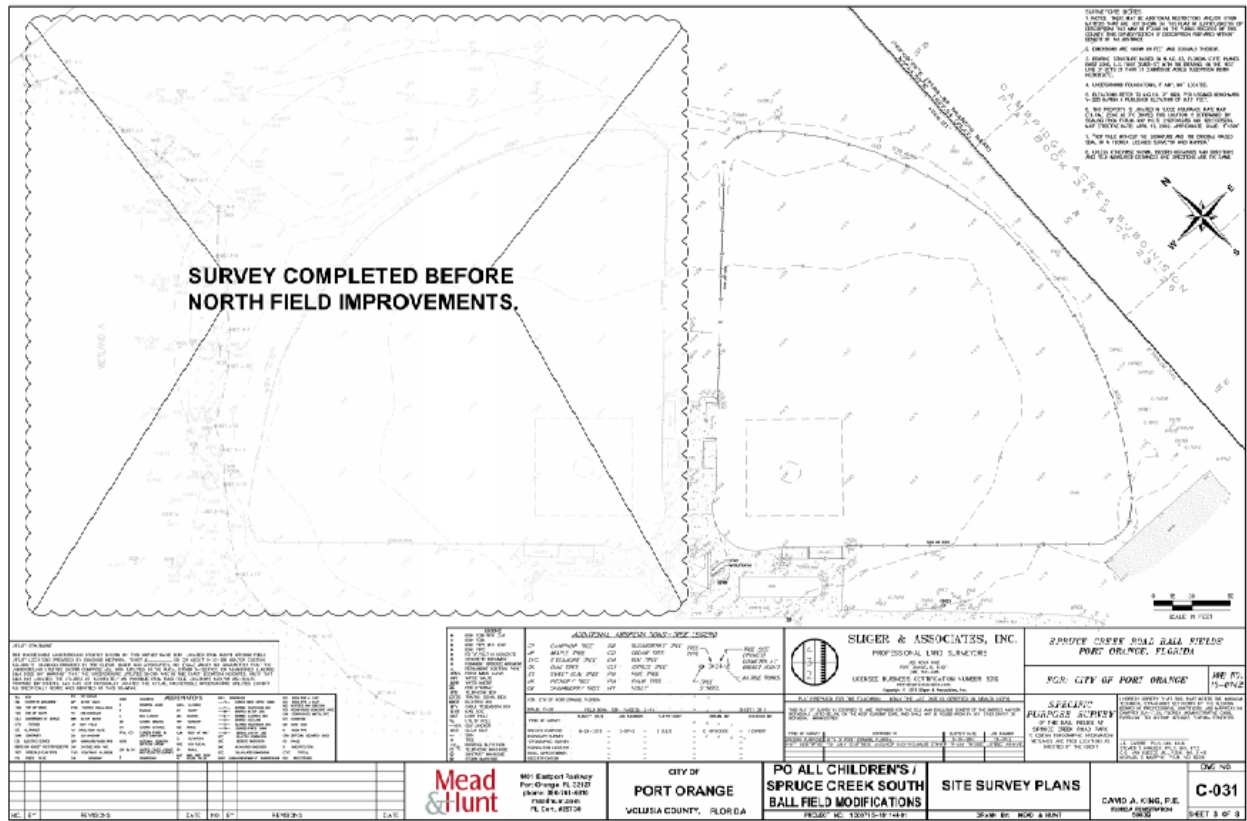
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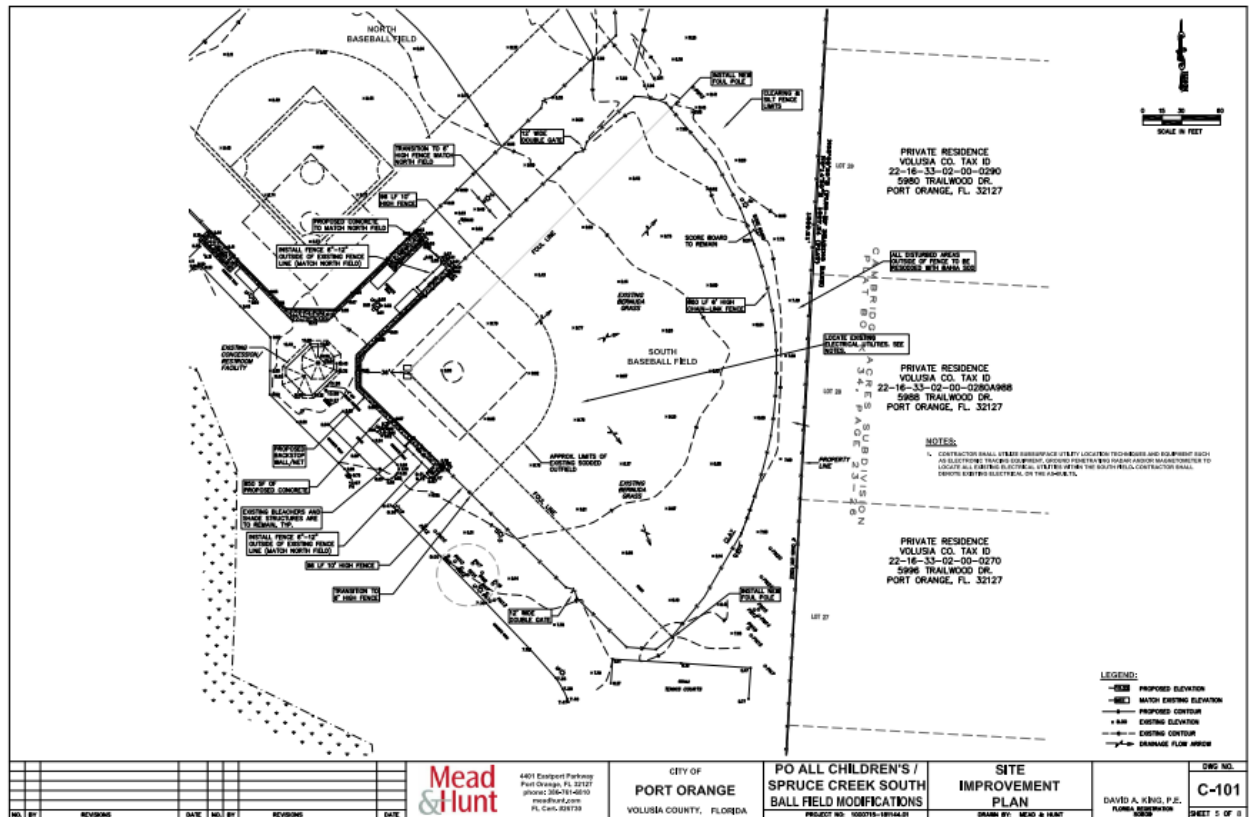
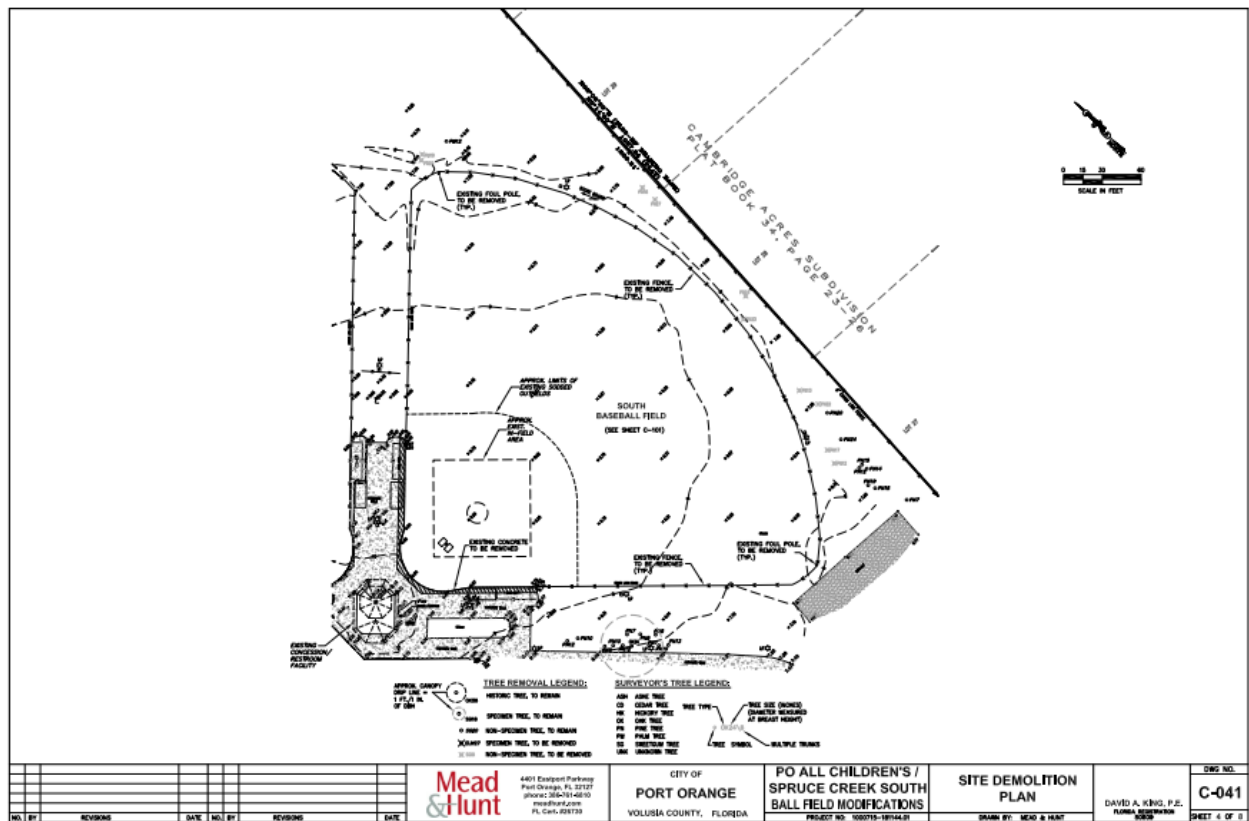
SECTION 3 – SCOPE OF WORK AND REQUIREMENTS

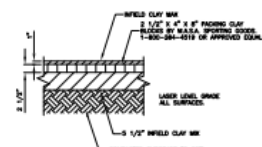
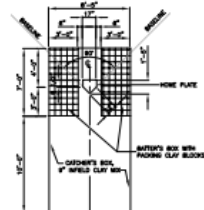
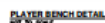
Specs can be found on this link

<https://portorange.sharepoint.com/:b:/g/pch/EQ8laFnwfpBCgo60lmQN2ioB32r0LBZKVwU6RUqnfGfQzQ?e=xIJfI>





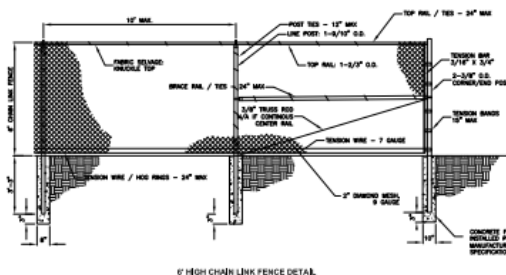




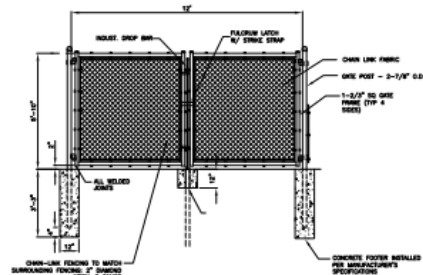
PACKING CLAY BLOCKS SECTION

BATTER'S BOX AND CATCHER'S BOX LAYOUT

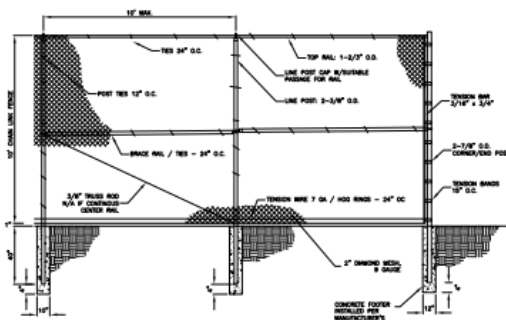
									4801 Dwyer Parkway Fort Collins, CO 80525 Phone: 970-751-4810 mead@mead.com P.O. Box 100730		CITY OF PORT ORANGE VOLUSIA COUNTY, FLORIDA		PO ALL CHILDREN'S / SPRUCE CREEK SOUTH BALL FIELD MODIFICATIONS PROJECT NO. 100730-1004-00		MISCELLANEOUS DETAILS		DWG NO. C-501	
NO.	BY	REVISIONS	DATE	NO.	BY	REVISIONS	DATE			DAVID A. KING, P.E. FLORIDA REGISTRATION NO. 12433		SHEET 6 OF 6						



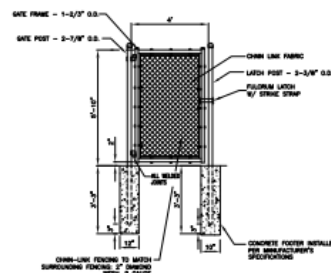
6' HIGH CHAIN LINK FENCE DETAIL



12" WIDE CHAIN LINK GATE DETAIL



10' HIGH CHAIN LINK FENCE DETAIL



4' WIDE CHAIN LINK GATE DETAIL

- NOTES:
1. FENCE SYSTEM BY MERCHANTS METALS, OR APPROVED EQUAL.
 2. ALL FRAM WORK SHALL BE ASTM F 1043, GROUP 1A OR 10 STANDARD WEIGHT PIPE, SCHEDULE 40. FRAMING WORK SHALL BE 3/8 CORN GALVALUED ASTM A36 CLASS 1 BEAMS. RAIL FITTINGS WORK SHALL BE ASTM FPM.
 3. S.O. OF TERMINAL, CORNER, AND LINE PITS TO BE DETERMINED BY RAIL MANUFACTURER/SUPPLIER TO WITHSTAND 130 MP, EXPOSURE 9 MONTHS.

												4401 Eastport Parkway Fort Orange, FL 32117 phone: 386-761-4610 fax: 386-761-4611 FL Cmt. 553738		CITY OF PORT ORANGE VOLUSIA COUNTY, FLORIDA		PO ALL CHILDREN'S / SPRUCE CREEK SOUTH BALL FIELD MODIFICATIONS		FENCE DETAILS		DWG NO. C-502	
PREP BY: SCOTT/CHEN										DATE: JAN 24, 2018		REVISION:		DRAWN BY: DAVID A. KING, P.E. FLORIDA REGISTRATION NO. 12403		CHECKED BY: DAVID A. KING, P.E. FLORIDA REGISTRATION NO. 12403		SHEET 7 OF 8			

SECTION 4 – STANDARD PURCHASE DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple Bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract
8. **Bidder or Proposer** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. (See also "Vendor")
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit Responses through a Request for Proposals, Request for Statements of Qualifications, or Invitation to Negotiate.
11. **Competitive (Formal) Solicitation** is the process of requesting and receiving two or more sealed bids, proposals, statements of qualifications or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
12. **Competitive Range** means the responsive submissions that meet the evaluation criteria and are considered to be reasonably susceptible of award.

13. **Construction** means the process of building, repairing, improving, and alterations, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.
14. **Contract** is a written agreement or purchase order issued for the purchase of goods or services.
15. **Contractor** means the person, firm or entity selling goods or services to the City under a Contract.
16. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
17. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
18. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
19. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for the evaluation of proposals, statements of qualifications or replies as part of a Request for Proposals (RFP), Request for Submission of Qualifications (RFSQ), or Invitation to Negotiate (ITN), or competitive grant process.
20. **Evaluator** is a member of the evaluation committee/team.
21. **Goods** are supplies, materials, or equipment.
22. **Intent to Award** is a document, published on Onvia/DemandStar, that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
23. **Invitation to Bid (ITB) or Bid** means a formal request to prospective vendors requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper.
24. **Invitation to Negotiate (ITN)** means a formal request to prospective vendors requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.
25. **Issues** means points, matters, or concerns to be addressed during negotiations.
26. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the "driver of change" and seeks alternatives/options.
27. **Lowest Responsible Bid means the responsive Bid** meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.

28. **Lowest Responsible Bidder** means the Bidder submitting Lowest Responsible Bid.
29. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).
30. **Negotiator** is a member of the negotiation team.
31. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a Bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
33. **Onvia/DemandStar** is the official online repository for all City competitive solicitations.
34. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
35. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Vendors to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
36. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
37. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
38. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
39. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
40. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Vendor to perform the resultant Contract.

41. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.
42. **Request for Proposal (RFP)** means a formal request to prospective vendors requesting qualifications of the vendor and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
43. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective vendors requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.
44. **Respondent** means an entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.
45. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.
46. **Responsible (Vendor)** is a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
47. **Responsive (Vendor)** is a vendor that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
48. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
49. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a vendor must execute in terms of delivering specific commodities or in performance of contractual services.
50. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
51. **Solicitation** means a formal request, as applicable, for prospective vendors to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.
52. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.
53. **Stakeholder** means an individual, who is not likely to become a vendor, who has an interest in the commodities/contractual services needed.

54. **Subcontractor** means a person, firm or entity providing goods or services to a Vendor to be used in the performance of the Vendor's obligations under the Contract.
55. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.
56. **Unbalanced Bid** means a Bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.
57. **Vendor** is a person, firm, or entity that provides commodities or services and submits a Response to a Solicitation. Any Vendor may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. (Also called "Bidder" or "Proposer".)

[Remainder of this page left intentionally blank]

SECTION 5 – GENERAL TERMS AND CONDITIONS

These instructions are standard for all contracts for commodities or services issued through the City of Port Orange Purchasing Division. General Requirements apply to all advertised Solicitations; however, **these may be superseded, in whole or in part, by the SPECIAL REQUIREMENTS/INSTRUCTIONS OR OTHER DATA CONTAINED HEREIN.**

READ THIS ENTIRE DOCUMENT CAREFULLY. FOLLOW ALL INSTRUCTIONS. YOU ARE RESPONSIBLE FOR FULFILLING ALL REQUIREMENTS AND SPECIFICATIONS. BE SURE YOU UNDERSTAND THEM.

1. ACCEPTANCE BY CITY

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

2. ADDENDUM

When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Vendors should acknowledge all addenda by circling the number of addenda received on the "Vendor Acknowledgment Form" and include it in the returned Response package. Failure to acknowledge the correct number of addenda issued may result in rejection of the Response. It is the responsibility of the Vendor to ensure all addenda have been received prior to submitting a bid. All Addenda shall be posted by the CITY on www.demandstar.com.

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

3. ADDITIONAL GOODS

Products, Materials and Goods not specifically identified in this bid request may be added to any resultant contract upon mutual consent of the contracting parties. The City reserves the right to add or delete products or materials of similar nature, within the family of products of "ITB Item(s)" and their commodity codes, to those items requested in this bid.

4. **ANTI-COLLUSION STATEMENT**

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

5. **APPLICABLE LAWS**

In connection with the furnishing of supplies or performance of work under the Contract, the Vendor agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.

6. **ASSIGNMENT**

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

7. **AUTHORITY TO CONDUCT BUSINESS IN FLORIDA:**

A Florida corporation or partnership is required to provide evidence with its response that the Vendor is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager.

A foreign (out-of-state) corporation or partnership is required to provide evidence with its response that the Vendor is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager.

A joint venture is required to provide evidence with its response that the joint venture, or at least one of the joint venture partners, is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. However, the joint venture is required to provide evidence prior to contract execution that the joint venture is authorized to transact business in Florida and provide the City with a copy of the joint venture Agreement.

A joint venture is also required to provide with its response a Statement of Authority indicating that the individual submitting the joint venture's proposal has the legal authority to bind the joint venture. If not with its response, such evidence must be submitted to the City no later than five (5) business days from the request of the Purchasing Manager.

8. **AWARDS**

Results from the evaluation committee will be considered by the City of Port Orange City Council at the earliest possible regular meeting subsequent to the evaluation process. This ITB is issued in accordance with and shall be governed by the provisions of the City's Purchasing Policy.

The City of Port Orange City Council reserves the right to make award(s) by individual sections, groups, all or none, or a combination thereof, with one or more Vendors; to reject any and all proposals, or to waive any informality or technicality in proposals received as deemed to be in the best interest of the City.

The City does not award publicly funded contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act, 8 United States Code s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, Contract, proposal or quote for purchase of services and goods by the City of Port Orange.

9. **AWARD AND EXECUTION OF CONTRACT:**

When a bid received has been determined to be satisfactory, a Contract will be awarded, or Purchase Order issued to the LOWEST Responsible Bidder within the time designated in the Contract Documents.

The Bidder(s) to whom the award is made shall execute the Contract(s) and return it, together with the properly executed bonds and insurance certificates to the office of the Owner, within the time specified

10. **BID RETURNS**

Vendors shall return all completed Responses to the City of Port Orange at the address set forth in Section 2 of this document on the date and at the time specified. Late submissions will not be accepted and shall be returned to Vendors unopened.

11. **BID PROTEST**

Any person who is adversely affected by the City's decision or intended decision shall file with the City Purchasing Manager a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking Bids, Proposals, Statements, or Replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the Solicitation. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time established herein. The formal written protest shall be filed with the Purchasing Manager in writing within ten (10) days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings. Upon receipt of the formal written protest that has been timely filed, the City shall stop the solicitation or contract award process until the subject of the protest is resolved by final City action. However, the City may continue the solicitation or award process, provided the City Manager sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or

welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties. The policy this City has established is as follows:

- a. As soon as possible after receipt, the Purchasing Manager shall provide written bid protest to City Manager, City Attorney, Department Head involved, and Supervisor directly involved in the acquisition.
- b. Purchasing Manager shall schedule within seven (7) business days, excluding weekends and holidays, a meeting with the above-mentioned individuals or designee and protestor. The intent of the meeting is to provide a review and/or solution prior to going before Council. After reviewing all relevant information, the City Manager shall render a decision.
- c. If the protestor disagrees, he may appeal to the City Council at a formal council meeting. After reviewing the evidence, the City Council will issue their decision. The City Council's decision is final; however, the protestor can appeal the decision to the Circuit Court in Volusia County, Florida within thirty (30) days of the City Council's final decision. Decisions at all levels shall be in writing to the protestor.

12. **BID/PROPOSAL TABULATION**

Vendors who wish to receive a copy of the bid/proposal tabulation may obtain it via www.demandstar.com or on the City of Port Orange website, Bid opportunities page at www.port-orange.org/bids.aspx or by email purchdiv@port-orange.org.

13. **BONDS**

If this Solicitation requires submission of bid guarantee and performance bonds, there will be a separate page explaining those requirements. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. When the Purchasing Manager deems it necessary, bid bonds/deposits shall be prescribed and are advertised in the public notices inviting bids. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the bid amount. Payment and Performance Bonds requested for construction projects shall be in an amount equal to one hundred percent (100%) of the total contract amount. Upon award, the successful Vendor may also be required to furnish and pay for a satisfactory contract one hundred percent (100%) Payment and Performance Bond which will be recorded by the City, at the Vendor's sole cost and expense, with the Clerk of the Circuit Court, Volusia County, Florida, and to enter into a written contract with the City of Port Orange. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirements of Florida law. The City will bill the cost of recording to the contractor. Payment and Performance Bonds shall also be recorded at the Vendor's expense in the Office of the Clerk of the Circuit Court, Volusia County, Florida. All bonds no matter which kind, are advertised in the Solicitation which appears in the newspaper. Unsuccessful Vendors are entitled to the return of their surety where the Purchasing Manager has required such. A successful Vendor shall forfeit any surety required by the Purchasing Manager upon failure on the part of the Vendor to enter into a contract within the time specified after the award of bid.

14. **CERTIFICATE OF INSURANCE**

If required upon notice of intent to award contract resulting from this solicitation, the selected Vendor will be required to submit a Certificate of Insurance showing proof of adequate coverage for professional general liability, errors and omissions and workers' compensation as identified

under the insurance requirements of this solicitation and listing the City of Port Orange as a Certificate Holder prior to execution of the contract.

15. **CHANGE ORDERS**

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change order requests shall be made in writing by the Contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

16. **CHANGE ORDER REQUEST NOTIFICATION**

The Successful Contractor is responsible for giving the City of Port Orange, prior to the Contract expiration date, at least forty-five (45) calendar day's advance notice for any anticipated changes in price greater than \$25,000.00, time and/or scope of the awarded Contract. The Contractor shall not continue to provide services past the Contract expiration date unless approved by a written Change Order Notice from the City.

17. **CLEAN UP**

Upon completion of the delivery of materials, the Contractor shall restore any/all public and private property which was damaged during delivery. Restoration is meant to include removal of any spillage or restoring damage to the edge of pavement, sidewalks, driveways, landscaped areas, etc. Contractor shall make repairs consistent with or better than what existed prior to delivery. This shall be understood to include the use of sod or seed and mulch to replace (if necessary) existing grass that has been damaged.

If sod is used it shall match the sod present on the effected property. Contractor shall make all repairs and restorations at his expense.

18. **CONDUCT OF VENDORS**

All Vendors or individuals acting on behalf of a Vendor are hereby prohibited from lobbying or otherwise attempting to persuade or influence any member of the Evaluation Committee, City Council members, or City staff at any time during the course of the solicitation process. The solicitation process shall end upon issuance of the written City Manager and staff recommendation for selection of a Vendor. All Vendors or individuals acting on behalf of a Vendor are further prohibited from contacting or otherwise attempting to communicate with any member of the staff, Evaluation Committee or City Council members regarding the pending solicitation or its outcome until after the issuance of the written recommendation of the most qualified Vendor. Until such recommendation is issued in writing, any questions regarding the pending solicitation shall be submitted to the Purchasing Manager. Failure to comply with this procedure shall result in rejection/disqualification of said submittal without exception. Contact with staff, City Council members and the Evaluation Committee during a public meeting shall not be considered a violation of this requirement.

19. **CONE OF SILENCE**

The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the execution of the award.

The Cone of Silence is defined as the period beginning with the issuance of the solicitation document and continues through the execution of the award document. During this time vendors, service providers and the like are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City Agents, or elected officials. Any vendor who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation.

Exceptions to the Cone of Silence:

- Written communication directed to the Procurement Officer;
- All communications occurring at Pre-Proposal Conferences;
- Oral presentations before publicly notice committee meetings;
- Procurement of goods and services for Emergency situations; and
- Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.

20. **CONFLICT OF INTEREST**

For purposes of determining any possible conflict of interest, all Vendors must disclose if any City of Port Orange employee is also an owner, corporate officer, or employee of Vendor's business. No official or employee of the City who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Scope of Work covered by the Contract shall voluntarily acquire any personal interest, directly or indirectly, in the contract or proposed Contract.

21. **CONFLICT OF INSTRUCTIONS**

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

22. **CONTRACT**

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

23. **CONTRACT OBLIGATION**

The City of Port Orange City Council shall approve the contract if greater than \$25,000.00 annually. The Mayor or other person authorized by the Mayor must sign the contract before it becomes binding on the City of Port Orange or the Vendor. Department heads are NOT authorized to sign contracts for the City of Port Orange. Binding agreements shall remain in effect until all products and/or services covered by this purchase have been satisfactorily delivered and accepted.

24. **CONTRACT RENEWALS**

Renewals may be made ONLY by written agreement between the City of Port Orange and the Vendor. Any price escalations are limited to those stated by the Vendor on the original Response.

25. **COOPERATIVE PURCHASING**

The City Manager may elect to purchase through or join with other governmental units in cooperative purchasing ventures when the best interest of the City would be served thereby, provided the same is in accordance with all applicable laws. In the event the City Manager should elect to purchase through or join with other governmental agencies in cooperative purchasing ventures, all purchases in excess of twenty-five thousand dollars (\$25,000.00) shall require council approval before the purchasing contracts are entered into. (Code 1981, § 8-33, Ord. 1997-22, § 5. 5-6-1997; Ord. No. 2004-15, § 4, 7-20-2004)

26. **COPYRIGHT AND PATENT RIGHTS**

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

27. **COST INCURRED BY VENDOR**

All expenses, including costs for required bonds, involved with the preparation and submission of Responses to the City, or any work performed in connection therewith shall be borne by the Vendor. No payment shall be made for any response received, nor for any other effort required of or made by the Vendor prior to commencement of work as defined by the contract approved by the City Council.

28. **DAMAGE**

Any damage to driveways, irrigation systems, sidewalks, pavement, or landscaping will be evaluated by the County's representative and the Contractor. If the Contractor is found to be at fault, all repairs, restitution, or reimbursements to the County must be completed within one week of discovery.

29. **DEBARMENT HISTORY**

The City will consider a Vendor's debarment history information in its review and determination of responsibility. All Vendors are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Vendor, any parent or subsidiary of the Vendor, or any predecessor organization. If the Vendor is a joint venture, the information provided should encompass the joint venture (if it is not newly-formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Vendor's debarment history is an issue of responsibility, the failure to provide debarment history as required in the Proposal Submittal and Requirements Section may result in a recommendation of non-responsive by the Purchasing Manager.

30. **DEFAULT PROVISIONS**

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

31. **DELIVERY OF GOODS/SERVICES**

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

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

Upon approval of a contract, the vendor is obligated to deliver the goods to the destination specified in the Solicitation or the Purchase Order and bears the risk of loss until delivery. If this Solicitation or Purchase Order does not contain delivery instructions, Vendor shall request instructions in writing from the Purchasing Manager. If the delivery instructions contained in the Solicitation allocate delivery costs and risks in a manner contrary to this section, the provisions of this Competitive Solicitation shall prevail.

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

32. **DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER /PROPOSER**

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

- a. The ability, capacity and skill of the Bidder/Proposer to perform the contract.
- b. Whether the Bidder/Proposer can perform the contract within the time specified, without delay or interference.
- c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder/Proposer.
- d. The quality of performance of previous contracts.
- e. The previous and existing compliance by the Bidder/Proposer with laws and ordinances relating to the contract.

- f. The sufficiency of the financial resources and ability of the Bidder/Proposer to perform the contract or provide the service.
- g. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- h. The ability of the Bidder/Proposer to provide further maintenance and service for the use of the subject of the contract.
- i. The number and scope of conditions attached to the bid.
- j. Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

33. **DISCLOSURE OF CONFLICTS**

The award is subject to the provisions of Chapter 112.313, Florida Statutes. All Vendors must disclose with their Response the name of any officer, director, or agent who is also an employee of the City. Further, all Vendors must disclose the name of any employee who owns, directly or indirectly, an interest in the Vendor's firm or any of its branches. The Vendor shall not compensate, in any manner, directly or indirectly, any officer, agent, or employee of the City for any act or service that he/she may do, or perform for, or on behalf of any officer, agent or employee of the Vendor. No officer, agent, or employee of the City shall have any interest, directly or indirectly, in any contract or purchase made, or authorized to be made by anyone for, or on behalf of the City. The Vendor shall have no interest and shall not acquire any interest that shall conflict in any manner or degree with the performance of the services required under the Solicitation.

34. **DISQUALIFICATION OF BIDDER/PROPOSER**

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

35. **EVALUATION**

Evaluation shall be used as a determinant as to which Response items or services are the most efficient and/or most economical for the City. It shall be based on all factors which have a bearing on price and performance of the items in the user environment. All Responses are subject to tabulation by the City of Port Orange Purchasing Division and recommendation to the governing body. Compliance with all Solicitation requirements, delivery and needs of the using department are considerations in evaluating Responses. Pricing is NOT the only criteria for making a recommendation. The City of Port Orange Purchasing Division reserves the right to contact any

Bidder/Proposer, at any time, to clarify, verify or request information with regard to any Response.

36. **EXCEPTIONS TO SPECIFICATIONS**

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

37. **E-VERIFY**

Vendors shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract.

38. **FACILITIES**

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

39. **FAILURE TO RESPOND**

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

40. **FINANCIAL STABILITY**

Vendors shall be prepared to supply a financial statement upon request, preferably a certified audit of the last available fiscal year. A third party prepared financial statement and the latest Dunn & Bradstreet report will be accepted in lieu thereof.

41. **FORCE MAJEURE**

Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

42. **GOVERNING FORMS**

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

43. **GOVERNING LAW**

Vendors shall comply with all applicable federal, state and local laws and regulations. All Responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all Responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com.

The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services.

Every acquisition equal to or greater than \$10,000.00 must have a signed, notarized "Public Entity Crimes Form" to comply with Section 287.133(3)(a), Florida Statutes. Also required is the "Drug-Free Preference Form" to comply with Section 287.087, Florida Statutes. Each form is included in the Solicitation.

44. **GRANT FUNDING**

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

45. **HIPAA COMPLIANCE**

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

46. **IDENTICAL TIE BIDS**

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

47. **INDEMNIFICATION/HOLD HARMLESS**

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

directly caused or resulting from the sole negligence of City or any of its officers, agents, or employees.

48. **INDEPENDENT CONTRACTOR**

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

The Vendor represents itself to be an independent contractor offering such services to the public and shall not represent himself or his employees to be an employee of the City. Therefore, the Vendor shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney's fees); and damage of any kind related to such matters. The Vendor shall further understand that the City cannot save and hold harmless and or indemnify the Vendor and/or the Vendor's employees against any liability incurred or arising as a result of any activity of the Bidder/Proposer or any activity of the Vendor's employees performed in connection with the Contract.

49. **INSPECTIONS AND TESTING**

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

50. **INSURANCE**

If required upon execution of a contract, the Vendor shall maintain insurance during the life of this agreement, and the City of Port Orange shall be listed as additional insured on that insurance document. A waiver of subrogation must be added in all areas and shall suffice in lieu of additional insured on workers' compensation, in an amount and a form set forth herein, to insure against risks, which are identified herein. Insurance providers must be rated "A" or better accordingly to the A.M. Best Company.

51. **INSURANCE CANCELLATION**

No change or cancellation in insurance shall be made without thirty (30) days' written notice by the Vendor to the City. Insurance coverage required in these specifications shall be in force throughout the contract term. Should any awardee fail to maintain or to provide acceptable evidence of current insurance within five (5) days after receipt of written notice at any time during the contract term, the City shall have the right to consider the Contract breached which shall justify the termination thereof.

52. **INSURANCE REQUIREMENTS**

If required, the Vendor shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers' 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 other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all Insuring companies are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. The Vendor shall not commence work under the contract until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. The Vendor shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change.

The City reserves the right to increase insurance coverage as determined for higher risk contracts and shall reimburse the Contractor for the reasonable additional costs of increased coverage.

Insurance	Limits: Standards	Comments
Workers' Compensation <u>Additional Coverage:</u>	Coverage A - Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
Comprehensive General Liability (including Completed Operations and Contractual Liability)	Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000. Aggregate	When the Contract work on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
Comprehensive Business, Automobile Liability to include all automobiles. <u>Additional Coverage:</u>	Auto Liability Body Injury: \$100,000 each person, \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
Property Insurance Builders Risk. <u>Additional Coverage:</u>	Buildings - Completed value of contract. "All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If the Contract requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.

53. **INVOICES AND PAYMENTS**

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, Port Orange, Florida, 32129. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if Vendor offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Vendors should state any payment discount in the space provided on the bid form for construction services.

54. **IRREVOCABILITY OF RESPONSES**

Each Vendor agrees that Responses shall remain open until the effective date not to exceed 90 days after selection, shall not be subject to revocation or withdrawal, and shall be subject to the City Council's acceptance of a contract with the Vendor.

55. **LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS**

Responses received after the Response Due Date and time are late and shall not be considered. Modifications received after the Response Due Date are also late and shall not be considered. Letters of withdrawal received after the Response Due Date are late and shall not be considered. Letters of withdraw received after contract award shall be deemed a breach of contract, subject to penalties as set forth in the contract and Solicitation.

56. **LEGAL REQUIREMENTS**

Applicable provision of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all Responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a Solicitation hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Vendor shall not constitute a cognizable defense against the legal effect thereof.

Upon execution of a contract, the successful Vendor shall hold harmless, indemnify and defend the City of Port Orange, its members, officials, officers and employees against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorneys' fees and court costs) arising out of or incidental to the performance of the Contract, whether or not due to or caused by negligence of the City of Port Orange, its members, officials, officers or employees. This Contract requirement shall be reflected in the insurance coverage certificate.

57. **LICENSES, PERMITS AND TAXES**

The Vendor shall comply with all rules, regulations, laws and permitting requirements of the City, Volusia County, the State of Florida, and the United States Government now in force or hereafter to be adopted. The Vendor shall abide by all ordinances and laws pertaining to his operations and shall secure, at his expense, all licenses and permits necessary for construction and operation.

58. **LITERATURE (if applicable):**

If no brand, model or make is specified, Vendors shall submit descriptive literature and technical data, fully detailing all features, designs, construction, appointments, finishes and the like not covered in the specifications, necessary to fully describe the equipment, material, and/or services he proposes to furnish.

59. **LOCAL PREFERENCE**

In accordance with City of Port Orange City Code 2-275, except where federal or state law, or any other funding source, mandates to the contrary, the City shall give preference to local businesses in the following manner:

(a) Competitive Bids

- (1) Port Orange Business: In any competitive bidding process where a bid submitted by a Port Orange business is within eight percent (8%) of the lowest and best responsible bid submitted by a non-Port-Orange business, then the Port Orange business shall have the opportunity to submit, within five (5) working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.
- (2) Volusia County business: In any competitive bidding process where a Volusia County business is within five percent (5%) of the lowest and best responsible bid submitted by a business other than a Port Orange business or Volusia County business, then the Volusia County business shall have the opportunity to submit, within five (5) working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.
- (3) Florida Business: In any competitive bidding process where a State of Florida business is within three percent (3%) of the lowest and best responsible bid submitted by a non-local business, then the Florida business shall have the opportunity to submit, within five (5) working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.
- (4) Tied Bid Preference: In case of a tie bid between a local business and a non-local business, the local business shall prevail. In case of a tie between two or more local businesses, the following order of preference shall control: first priority to Port Orange business, second priority to Volusia County business, and third priority to Florida business.

- (b) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Port Orange Business means a business having its headquarters and principal place of business within the City of Port Orange at least twelve (12) months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the City's satisfaction, demonstrating the physical business presence of the firm within the limits of the City of Port Orange.

Volusia County Business means a business having its headquarters and principal place of

business within the County of Volusia, and not within the City of Port Orange, at least twelve (12) months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the City's satisfaction, demonstrating the physical business presence of the firm within the limits of Volusia County.

Florida Business means a business having its headquarters and principal place of business within the State of Florida, and not within Volusia County, at least twelve (12) months prior to the bid or proposal opening date, as evidenced by a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within the limits of the State of Florida.

60. **MAINTENANCE**

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

61. **NAME BRANDS**

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

62. **NON-DISCRIMINATION**

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

63. **NON-EXCLUSIVITY OF CONTRACT**

The selected Vendor understands and agrees that any resulting contractual relationship is non-exclusive, and the City of Port Orange reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the City of Port Orange.

64. **NON-PERFORMANCE:**

Failure to meet the expected quality of workmanship, schedule, or other criteria agreed upon, shall be considered a default.

In case of default, the City may procure the required services from other sources and hold the Consultant responsible for any excess costs occasioned thereby and may immediately cancel the contract.

65. **NOTICE TO CONTRACTOR**

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

66. **OPTIONAL CONTRACT USAGE**

As provided in Section 287.042(16), Florida Statutes, State of Florida agencies may purchase from a contract resulting from this solicitation, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.

67. **OTHER AGENCIES**

- (a) All Vendors awarded contracts from this Bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices, terms, and conditions, if agreed to by both parties.
- (b) 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 Vendor(s).

68. **PATENTS/COPYRIGHTS**

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

69. **PRE-BID CONFERENCE OR PRE-PROPOSAL CONFERENCE**

The Purchasing Manager shall determine if a pre-bid conference is required and provide the date, time and location in the Solicitation legal advertisement and Solicitation specifications. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow. Attendance to the pre-bid and pre-proposal conference is normally non-mandatory. Only Vendors attending a mandatory pre-bid conference will be eligible to submit a Response. The representative of each Vendor shall be an authorized employee of the Vendor and shall sign in accordingly.

70. **PREPARATION OF RESPONSES**

In preparing Responses, the Proposal Form, the Bid Form (when a Bid Bond is permitted as proposal security), Certificate as to Corporate Principal, Public Entity Crimes Statement, Anti-Collusion Statement, and Drug Free Preference Statement must be properly executed in ink.

Upon the prescribed Schedule of Unit Prices, all bid prices shall be typewritten or written in ink, or electronically imputed in the blank spaces for each item, with the amounts extended if a unit price bid, and all amounts totaled. The sum of the Total Bid as calculated from the individual items, Schedule of Unit Prices, shall equal the Total Price. Except as provided below, bids containing substitutions or combinations of alternates will not be considered unless such substitutions or combinations are specifically authorized by the Proposal. The Vendor shall sign his/her name and

give his/her business address in the spaces provided therefore. If the Proposal is made as a partnership, it shall be signed by all partners; if made by a corporation, it shall be signed in the name of the corporation by one of the officers thereof and shall have affixed the seal of the corporation.

71. **POSTPONEMENT / CANCELLATION / WAIVER OF IRREGULARITIES**

The City may, at its sole and absolute discretion, reject any and all, or parts of, Responses; re-advertise the Solicitation for new Responses; postpone or cancel, at any time, the Solicitation process; or waive any irregularities in the Solicitation or in the Responses received as a result of the Solicitation, or to accept that Response which best serves the interest of the City.

72. **PRICING**

The Vendor certifies that prices, terms and conditions in the Response will be firm for acceptance for a period of ninety (90) days from the date of Response opening unless otherwise stated by the City. Responses may not be withdrawn before the expiration of ninety (90) days. Prices shall be firm, with no escalator clauses unless specified by the City. Responses may be withdrawn after ninety (90) days only upon written notification to the City. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Pricing/Delivery Information form.

Prices shall be all inclusive: no price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, the Vendor shall indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid.

When submitting Bids/Proposals based on a Lump Sum basis, Vendors shall be required to submit a Schedule of Unit Pricing for each line item listed on the Bid Proposal in order to be considered for award.

73. **PRODUCTS/ESTIMATES:**

Items included on the Bid Form represent the needs of various departments within the City. This is in no way to be construed as the entire or complete list of products to be purchased from the resulting contract.

There is no anticipated dollar volume for this contract and cannot be guaranteed. Items shall be ordered on an as needed, when needed basis. Exact quantities or estimated quantities cannot be predetermined.

74. **PROPRIETY INFORMATION**

Upon receipt by the City, responses to Solicitations, become public records subject to the provisions Florida's state policy on public records, Section 119, Florida Statutes. If you believe that any portion of your response is exempt, you should clearly identify the specific documents for which confidentiality is claimed and provide specific legal authority of the asserted exemption. Any financial statement that an agency requires a prospective Vendor to submit in order to

prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution.

75. **PROTECTION**

Precaution shall be exercised at all times for the protection of persons, (including employees) and property. All existing structures, utilities, services, roads, trees, shrubbery, etc. shall be protected against damage or interrupted service at all times by the Vendor during the term of contract, and the Vendor shall be held responsible for any damage to the property occurring by reason of his operation on the property.

76. **PUBLIC ENTITY CRIMES**

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

77. **PUBLIC RECORDS COMPLIANCE**

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- b. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

The failure of Contractor to comply with a public records request shall constitute a material breach of the contract.

78. **PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT**

Section 119.071(1)(c), Florida Statutes: **Any financial statement that an agency requires a prospective Vendor to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of**

the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law. This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Vendors will not be able to procure a copy of their competitor's bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a vendor, or where a vendor answers questions. In other words, neither Vendors, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Vendors, but the new law limits public attendance to portions of such meetings.

79. **PURCHASE ORDER AND DELIVERY**

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

80. **QUALITY**

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

81. **QUESTIONS, INTERPRETATIONS**

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

82. **RECORDS/AUDIT**

The Vendor shall maintain records sufficient to document their completion of the scope of services as a public record and as a requirement of the Contract. At all reasonable times, these records, unless exempt or confidential, shall be subject to review, inspection, copy and audit by persons duly authorized by the City. These records shall be kept for a minimum of three (3) years after completion of the Contract and in accordance with the requirements of public records retention as prescribed by general law. Records which relate to any litigation, appeals or settlements of claims arising from performance under this requirement shall be made available until a final disposition has been made of such litigation, appeals, or claims.

83. **RECYCLED MATERIALS**

City of Port Orange encourages the use of products made of recycled materials.

84. **REJECTING OF RESPONSES, REBIDDING**

The City reserves the right to accept or reject any or all Responses or parts of Responses, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified. The City Council shall have the authority to reject any and all Responses. If the lowest and best Response exceeds the budgeted amount and the City Council does not make additional funds available, the purchasing agent with the help of the department head shall have the authority to re-advertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available. (Code 1981, § 8-28.)

85. **REQUEST FOR ADDITIONAL INFORMATION**

Prior to the final Solicitation selection, Vendors may be required to submit additional information which the City may deem necessary to further evaluate the Vendor's qualifications to perform under the terms of the Solicitation and subsequent Contract.

86. **REVIEW OF RESPONSES/SUBMISSIONS**

Each Response will be reviewed to determine if the Response is responsive to the submission requirements outlined in the Solicitation. A responsive Response is one which follows the requirements of the Solicitation, includes all required documentation, is submitted in the format outlined in the Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your Response non-responsive.

87. **RIGHT OF NEGOTIATION RFP/RFSQ/ITN**

The City reserves the right to negotiate with the selected Vendor the exact terms and conditions of the Contract.

88. **RIGHT OF WITHDRAWAL**

A bid, proposal, statement, or reply may not be withdrawn before the expiration of ninety (90) days from the Response due date.

89. **RIGHTS TO SOLICITATION SUBMITTED MATERIAL**

All Responses, inquiries, or correspondence relating to or in reference to a Solicitation, and all reports, charts, and other documentation submitted by Vendors shall become the property of the City when received.

90. **RULES, REGULATIONS AND LICENSING REQUIREMENT**

The Vendor shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Vendors are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

91. **SAMPLES**

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

92. **SEPARATION AND DISTRIBUTION**

The Solicitation has been designed for transmittal as a complete document to interested parties. It is recommended that it not be separated; however, it may be reproduced in its entirety as additional distribution might dictate.

93. **SEVERABILITY**

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

94. **SIGNATURE REQUIRED**

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

95. **SIGNED RESPONSE CONSIDERED AN OFFER**

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

96. **SILENCE OF SPECIFICATIONS**

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

97. **SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES**

Unless otherwise specified, Vendors shall use the Solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Vendor's authorized representative. Responses containing erasures or corrections must be initialed by the Vendor in ink. Responses shall be submitted by mail or hand delivery only. No Response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: David Van Valkenburgh, Purchasing Agent, Purchasing Office, a division of the Finance Department, Port Orange City Hall, 1000 City Center, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 p.m. on the date indicated in the Solicitation documents or as addenda issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All Responses deemed non-responsive will be returned to the Vendor and will not be opened.

Bids (Envelope/Package) shall contain one (1) original and one (1) digital (Cd or flash drive) version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/package shall be clearly marked on the outside to include the bid project name, bid number and name of the Vendor.

98. **STATE LICENSING REQUIREMENTS**

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the Vendor shall have met the license, certification, and any other requirements of the state, county, city and/or other agency of authority with jurisdiction in such matters and should provide copies of documentation that evidence such qualifications with the response to the Solicitation; and, that the Vendor shall provide follow-up evidence that the Vendor maintains such credentials throughout the period of the agreement. A copy of a current certificate of authority from the Secretary of State authorizing the Bidder/Responder to do business in the State of Florida, or other evidence of legal authority to do business in the state, county, city and/or any other agency of authority should be provided with your response to the Solicitation. Information concerning certification with the Secretary of State may be obtained at <http://ccfcorp.dos.state.fl.us/index.html>. Contract documents shall be executed by the entity's duly authorized officer as evidence by entity records.

99. **SUBCONTRACTING**

The Vendor will not sub-contract or enter into any subcontracting agreements pertaining to this contract, without obtaining approval from the City of Port Orange.

100. **SUPPLEMENTAL MATERIALS**

Vendors are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements that the Vendor wishes to include as a condition of the bid must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

101. **TAXES**

The City of Port Orange is exempt from all federal excise, state and local taxes unless otherwise stated in this document. A Tax Exemption Certificate will be furnished upon written request to the City of Port Orange Purchasing Division.

102. **TERM CONTRACTS**

Acceptance by the City of Port Orange of Vendor's offer shall be limited to the terms herein unless expressly agreed in writing by the City. If the contract is intended to cover a specific time period, the term will be given in the bid specifications.

103. **TERMINATION**

The City of Port Orange reserves the right to terminate the contract for default if the Vendor breaches any of the terms therein, including warranties of the Vendor or if the Vendor becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which the City of Port Orange may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to the City's satisfaction and/or to meet all other obligations and requirements. The City may cancel the Contract at any time for breach of contractual obligations by providing the Vendor with a written notice of such cancellation. Should the City exercise its right to cancel the contract for such reasons, the cancellation shall become effective on the date as specified in the notice of cancellation sent to the Vendor.

104. **TERMINATION - NOTICE**

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

105. **TITLE TRANSFER**

Title and Risk of Loss of goods shall not pass to City of Port Orange until City of Port Orange actually receives and takes possession of the goods at the point or points of delivery. Receiving times may

vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. The Vendor is advised to consult the using department for instructions. The place of delivery shall be specified in the bid specification and/or on the Purchase Order as a "Deliver To:" address.

106. **UNBALANCED BID**

A mathematically unbalanced bid is where a bidder places a high price on some items and a low price on other items in a unit price contract. A bid is materially unbalanced when there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the City. Unbalanced Bids will be rejected if the prices are deemed materially unbalanced.

107. **USE OF SOLICITATION FORMS**

The Vendor shall complete the appropriate Solicitation Form(s) included in the Solicitation. All blanks on the Solicitation Forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A."

Supplemental information may be attached to the Solicitation Forms. Failure to fully complete the appropriate Solicitation Forms may result in disqualification of the Response.

If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional Solicitation Form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated.

The signature of the Authorized Person or Entity must be that of an officer, partner or a sole proprietor of the entity making the Response. The original Response, and each copy submitted shall contain an original signature on the Vendor's Acknowledgement Form contained in each Solicitation.

108. **VARIANCES**

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

109. **VENDOR'S PRODUCT OR SERVICES**

The Vendor's product (if applicable) delivered to the City shall be free of all liens, claims or encumbrances, and the vendor warrants that it has a clear title to the product being delivered.

- a. If the Vendor is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.

- b. The Vendor shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Vendor.
- c. In furnishing the service or product to the City, the Vendor shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, Contract, proposal or quote.

110. **WAIVER OF IRREGULARITIES**

The City of Port Orange reserves the right to waive and/or reject any non-substantial irregularity in Responses received whenever such waiver or rejection is in the best interest of the City and/or it does not meet the minimum requirements set forth. All reasonably responsive Responses will be considered. However, the City reserves the right to waive formalities or informalities in Responses, to reject, with or without cause, any or all Responses or portions of Responses, or to interview or not interview individual Vendors, and to accept any Responses or portions of Responses deemed to be in the best interest of the City. The city council shall grant the City Manager to waive any and all non-substantial irregularities in any and all formal Solicitations. (Code 1981, § 8-29; Ord. No. 2015-17, § 1, 5-19-2015)

111. **WARRANTIES**

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

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SECTION 6 – SPECIAL CONDITIONS

PERIOD OF OFFER VALIDITY:

Bids offered in this ITB must remain firm for a period of ninety (90)Days from the ITB opening date.

CONTRACT TERM:

The term of the contract shall be from the date of the Notice to Proceed.

There is a desired 60 calendar days for substantial completion of the project after start of work and another 30 calendar days from final completion.

PROJECT TIME-LINE:

- A. Notice of Award: after bid opening and compete review of submitted bid information
- B. Notice to Proceed: after Pre-construction Meeting
- C. Start Date and Time: TBD by Parks & Recreation Dept. after Pre-construction Meeting
- D. Substantial Completion Time: 60 days maximum from start time
- E. Final Completion Time: 30 calendar days after final substantial completion time

ELIGIBILITY OF VENDOR:

To be eligible to respond to this ITB, the Vendors must have prior experience working with the services described in this ITB. Please provide eligibility experience with your submittal.

NOTICE: The City reserves the right to consider cooperative contracts, federal, state municipal etc.; in the evaluation process. If in the City's best interest, the City may utilize a cooperative contract in lieu of making an award.

BID BONDS

A certified check or bank draft, payable to the City of Port Orange, Florida or a satisfactory bid bond executed by the Bidder and an acceptable surety, in an amount equal to five percent (5%) of the bid shall be submitted with each bid.

PAYMENT & PERFORMANCE BONDS

Upon award, the successful bidder will also be required to furnish and pay for a satisfactory contract one hundred percent (100%) Payment and Performance Bond to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida and to enter into a contract for services with the City of Port Orange. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirement of Florida law. The City will bill the cost of recording to the contractor.

LICENCES AND PERMITS:

Contractor is responsible for all applicable local and state licenses, permits and fees.

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- _____ Form 7.2 – Vendor’s Acknowledgement
- _____ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- _____ Form 7.4 – Drug Free/Tie Preference Statement
- _____ Form 7.5 – Public Entity Crimes Statement
- _____ Form 7.6 – Affidavit of Anti-Collusion
- _____ Form 7.7– Statement of Vendor’s Qualifications
- _____ Form 7.8 – Professional References for Previous Experience
- _____ Form 7.9 – Local Business Affidavit of Eligibility
- _____ Form 7.10 – Listing of Subcontractors
- _____ Copy of License (Contractor, Sunbiz, etc.)
- _____ Attachment 1 – Bid Proposal
- _____ Bid Bond
- _____ Submission of one (1) original marked “ORIGINAL” and one (1) digital (CD or flash drive) version in PDF format.

BY: _____
Name of Business

Authorized Signature

Date

This document must be completed and returned with your Submittal

FORM 7.2 – VENDOR’S ACKNOWLEDGEMENT FORM

I have carefully examined the Invitation to Bid (ITB), Instructions to Vendors, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the Invitation to Bid at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to ninety (90) days in order to allow the City of Port Orange adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the Invitation to Bid.

I certify that all information contained in this Bid is truthful to the best of my knowledge and belief. I further certify that I am a duly authorized to submit this Bid on behalf of the Vendor / Contractor as its act and deed and that the Vendor / Contractor is ready, willing and able to perform if awarded the contract.

I further certify that this Bid is made without prior understanding, Contract, connection, discussion, or collusion with any person, firm or corporation submitting a Bid for the same product or service; no officer, employee or agent of the City of Port Orange City Council or of any other Vendor interested in said ITB; and that the undersigned executed this Vendor’s Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

I further certify that having read and examined the specifications and documents for the designated services and understanding the general conditions for contract under which services will be performed, does hereby propose to furnish all labor, equipment, and material to provide the services set forth in the ITB.

I hereby declare that the following listing states any clarifications, any and all variations from and exceptions to the requirements of the specifications and documents. The undersigned further declares that the “work” will be performed in strict accordance with such requirements, and understands that any exceptions to the requirements of the specifications and documents may render the Bid non-responsive.

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

Please check one: ☐ I take NO exceptions. ☐ Exceptions (list below; add additional pages if necessary):

NAME OF BUSINESS

MAILING ADDRESS

AUTHORIZED SIGNATURE

CITY, STATE & ZIP CODE

NAME, TITLE, TYPED

TELEPHONE NUMBER / FAX NUMBER

FEDERAL IDENTIFICATION #

E-MAIL ADDRESS

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this day of _____, 20____ by _____, who is personally known to me or who has produced ad identification and who did take an oath.

My Commission Expires: _____

Notary Public

This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Vendors, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this invitation to Bid.

I acknowledge receipt and incorporation of the following addenda, and the cost, if any, of such revisions has been included in the price of the bid proposal.

Addendum # _____ Date: _____ Addendum # _____ Date: _____

Addendum # _____ Date: _____ Addendum # _____ Date: _____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

If awarded the Contract for this Solicitation, I acknowledge that no oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change orders requests shall be made in writing by the Contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

I acknowledge the following statement regarding Change Orders to the awarded Contract:

“The Successful Contractor is responsible for giving the City of Port Orange, prior to the Contract expiration date, at least forty-five (45) calendar days’ advance notice for any anticipated changes in price greater than \$25,000.00, time and/or scope of the awarded Contract. The Contractor shall not continue to provide services past the Contract expiration date unless approved by a written Change Order Notice from the City.”

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20____, by _____, as _____ of _____

(NAME)

(TITLE)

(NAME OF ORGANIZATION) and who:

(NAME OF ORGANIZATION)

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

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

In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

As an authorized representative of the firm, I certify that this firm complies fully with the above requirements.

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20____, by
_____, as _____ of _____

(NAME)

(TITLE)

(NAME OF ORGANIZATION) and who:

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

This document must be completed and returned with your Submittal

Printed, typed or stamped name, commission and expiration:

FORM 7.5 – SWORN STATEMENT UNDER SECTION 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

(To be signed in the presence of notary public or other officer authorized to administer oaths.)

Before me, the undersigned Authority, personally appeared affiant _____, who, being by me first duly sworn, made the following statement:

1. The business address of _____ (name of Offeror or business) is _____.
2. My relationship to _____ (name of Offeror or business) is _____ (relationship such as sole proprietor, partner, president, vice president).
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such an agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. (Draw a line through paragraph 6 if paragraph 7 below applies.)
7. There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted vendor list. The name of the convicted person or affiliate is _____. A copy of the order of the Division of Administrative Hearings is attached to this statement. **(Draw a line through paragraph 7 if paragraph 6 above applies.)**

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20____, by _____, as _____ of _____ and who:

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

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

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

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

NAME OF FIRM: _____

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

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY: __ STATE: _____ ZIP CODE: _____

TELEPHONE: _____ FAX: _____

COMPLETION TIME: _____

F.E.I.N. NUMBER: _____

NO Bid may be withdrawn for a period of ninety (90) days subsequent to the submittal of the Bids, without the consent of the City of Port Orange.

NO BID (REASON): _____

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF VENDOR’S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true, and correct to the best of their knowledge and belief. If necessary, questions may be answered on separate paper and attached, with any additional information that may be pertinent.

- A. Name of Vendor.
- B. Permanent main office address.
- C. Date organized.
- D. If a corporation, where incorporated.
- E. How many years have you been engaged in the contracting business under your present firm or trade name?
- F. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion.)
- G. General character of work performed by your company.
- H. Have you ever failed to complete any work awarded to you? If so, where and why?
- I. Have you ever defaulted on a contract? If so, where and why?
- J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed.
- K. List your major equipment currently owned or leased.
- L. Experience in work similar to this type of project.
- M. Background and experience of the principal members of your organization, including the officers.
- N. Credit currently available: \$_____
- O. Give bank reference: _____
- P. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner?

(Form 7.7 Statement of Vendor's Qualifications – Page 2)

Q. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Statement of Vendor's Qualifications.

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this ____ day of _____, 20____, by
_____, as _____
of _____ and who:

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission
and expiration:

This document must be completed and returned with your Submittal

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Vendor proposes that he/she is qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein.

Please provide three (3) current and correct references from clients for similar services.

(Do not include the City of Port Orange)

1. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods or
Services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____
2. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods or
Services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____
3. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods or
Services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____

This document must be completed and returned with your Submittal.

LISTING OF PREVIOUS EXPERIENCE

Commercial Client List

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

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

	Contact Name	Phone	Current Client? Y or N	Number of years service provided	Description of service
1					
2					
3					

This document must be completed and returned with your Submittal.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Vendor proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful Vendor shall not substitute subcontractors without approval from the Engineer. Vendor shall attach additional sheets as necessary.

Subcontractor No. 1

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 2

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 3

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 4

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

This document must be completed and returned with your Submittal

FORM 7.10 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

*This declaration is executed under penalty of perjury of the laws to the United States and State of Florida***THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:**

RFSQ/RFP/ITN/BID/CONTRACT/PROJECT # (as applicable): _____

BUSINESS NAME: _____

CONTACT PERSON/TITLE: _____

MAILING ADDRESS: _____

CITY-STATE-ZIP: _____

Length of Time at Address Provided: _____

Physical Presence of Business: ☐ Headquarters, ☐ Manufacturing Facility, or ☐ Locally Owned FranchiseAnd within Legal Boundaries: ☐ The City of Port Orange ☐ Volusia County ☐ The State of Florida

FEIN (Federal Employer Identification Number): _____

BUSINESS STRUCTURE: ☐ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship☐ Other (Specify): _____

PHONE NUMBER: _____ FAX: _____

EMAIL: _____

****Please attach a valid business tax receipt, or other such documentation******ATTESTATION – I understand that:**

- In accordance with City Of Port Orange City Code 2-275, local businesses shall have five (5) business days from bid/proposal opening to submit a best and final bid for evaluation. To qualify: A Port Orange business initial bid must be within (8%) of the lowest and best responsible bid from a non-Port Orange business; A Volusia County business initial bid must be within (5%) of the lowest and best responsible bid from a non-Volusia County business; A State of Florida business initial bid must be within (3%) of the lowest and best responsible bid from a non-State of Florida business.
- A local business must have its headquarters, manufacturing facility, or locally owned franchise located within the legal boundaries of the City of Port Orange, Volusia County, or the State of Florida, as indicated herein, for at least twelve (12) months prior to the bid or proposal opening date and a valid business license, issued by the corresponding government agency. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. Bidders shall attach to this affidavit of eligibility with a bid or proposal, a copy of a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within corresponding local limits.
- The preference does not apply to goods or services exempted by statute or prohibited by Federal law, State law, or other funding source restrictions.
- The preference established in this policy does not prohibit the right of the City, or other authorized purchasing authority, to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals.
- The information contained herein may be subject to verification.
- A vendor who misrepresents the local preference status of its firm in a proposal or bid submitted to the City of Port Orange will lose the privilege to claim local preference status, and shall lose eligibility to claim local preference for a period of one (1) year. The City Manager may also recommend that the firm be referred for debarment.

BEFORE ME; the undersigned authority, in and for the State of Florida and the City of Port Orange personally appeared _____ who, after being sworn according to law, stated that he or she was authorized to represent _____ and to execute this affidavit on behalf of the said Business Entity and attests, under penalty of perjury, to the above.

(Form 7.10 – Local Business Affidavit of Eligibility – Page 2)

SWORN AND SUBSCRIBED BEFORE ME

SIGNATURE OF NOTARY PUBLIC

THIS _____ DAY OF _____, 20__

My Commission Expires: _____

NOTARY SEAL

SIGNATURE OF AFFIANT

DATE

PRINTED NAME OF AFFIANT / TITLE

COMPANY

This document must be completed and returned with your Submittal

BID COST/FEE PROPOSAL

"ATTACHMENT 1" SCHEDULE OF UNIT PRICING						
BID FORM						
CITY OF PORT ORANGE						
ITB # 19-10						
FENCE and BACKSTOP REPLACEMENT						
Completed Attachment 1 Bid Proposal form MUST be included with Bid Submission						
Instruction to save Attachment from DemandStar website: Perform "File Save As" and save spreadsheet to your computer. Fill in pricing in highlighted cells, preferably electronically.						
Bidders are required to complete all fields shaded in green. All other fields will be automatically calculated.						
NAME OF BUSINESS:						
CONTACT PERSON:						
EMAIL ADDRESS:						
AUTHORIZED NAME:						
AUTHORIZED SIGNATURE:						
PROPOSAL PRICING						
ITEM #	DESCRIPTION	DAYS to COMPLETE	QTY EACH	UNIT	PROPOSED PRICE	TOTAL PRICE
1	Demolition/Clearing and Grubbing		1	LS	\$0.00	\$0.00
2	Layout/As-Builts		1	LS	\$0.00	\$0.00
3	Chain-link Fencing 10 Foot High Infield Fencing (192 LF shown on plans)		240	LF	\$0.00	\$0.00
4	Chain-link Fencing 6 Foot High Outfield/Misc. Fencing (850 LF shown on plans)		950	LF	\$0.00	\$0.00
5	Chain-link Gates - 6' H X 12'W Double Swing Gate		2	EA	\$0.00	\$0.00
6	Chain-link Gates - 6' H X 4' W Swing Gate		2	EA	\$0.00	\$0.00
7	15' Long Players Bench		2	EA	\$0.00	\$0.00
8	Foul Pole		2	EA	\$0.00	\$0.00
9	Backstop Wall/Padding/Netting System 4" Thick 3000 PSI Fiber mesh Concrete (850 SF shown on plans)		1,200	SF	\$0.00	\$0.00
10	Batter's Boxes		1	LS	\$0.00	\$0.00
					TOTAL BASE BID	\$0.00
AWARD: THIS BID WILL BE AWARDED TO THE LOWEST, RESPONSIVE, RESPONSIBLE BIDDER						

This document must be completed and returned with your Submittal

BID BOND

BID BOND

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that _____, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____, (hereinafter called "PRINCIPAL"), and _____, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____ (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel.: (386) 506-5501, (hereinafter called "OBLIGEE" or "CITY"), in the penal sum of _____ dollars and (____)/100 (\$____), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated _____, 20____, for:

Project Name / Bid No.:

Project Address:

Legal Description: See Attached

Description of Work:

NOW, THEREFORE,

A. If the principal shall not withdraw said bid within one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies, if the latter amount be in excess of the former, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this _____ day of _____, A.D. 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to original bid bond and financial statement of Surety Company).

PRINCIPAL:

Signature

Corporate Officer & Title

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

WITNESSES:

SURETY:

Attorney-in-Fact (signature)

Name & Title

Name of Local Resident Agent

City, State, Zip

Telephone:
A.M. Best No.: _____ NAIC No. : _____

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

STATE OF _____
COUNTY OF _____

Before me this day personally appeared _____ (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the _____ (corporate surety) and that this person has been authorized by _____ (corporate surety) to execute the forgoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant

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

NOTARY PUBLIC – STATE OF

Type or print name: _____

Commission No.: _____

Commission Expires: _____

(Seal)

.....
END OF BID BOND

This document must be completed and returned with your Submittal

PERFORMANCE & PAYMENT BOND

RETURN RECORDED DOCUMENT TO:

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

Name of Project

City Project No. _____

Bond No. _____

Space Reserved for Recording Data

COMBINATION PAYMENT AND PERFORMANCE BOND FOR PUBLIC CONSTRUCTION

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

BY THIS BOND, We, _____ as Principal, and _____, a corporation, as Surety, are bound to CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of _____ DOLLARS (\$ _____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

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

Notice of Nonpayment and Time Limitations

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

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

(Capital Projects)
[MTR/sal 2016-02-26]

Page 1 of 2
Public Construction Bond

IN WITNESS WHEREOF, this performance and payment bond is executed in duplicate originals, each of which shall be deemed an original, this _____, day of _____, 20__.

Attest:

(Name of Principal)

(As to Corporate Principal) Secretary

By: _____

Name/Title: _____

(Witness to Principal)

(Corporate Seal)

(Surety)

(Witness to Surety)

By: _____

Name: _____

(Attorney-in-Fact)

(Corporate Seal)

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

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



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this ____ day of _____, 2016, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and _____ ("Contractor"), a _____ corporation whose principal address is _____. The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

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

(i) _____

- (b) The time, manner and place for performance of such services shall be:

Term: This Contract shall become effective on the last date the Contract is signed by the Parties. Work shall be substantially completed within ____ calendar days from issuance of a Notice to Proceed and final completion ____ days thereafter (the "Term").

Manner and Place: The work shall be performed as outlined in Exhibit "____," in accordance with Standard Construction Details as required on all City owned facilities and properties (i.e. rights-of-way) and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances. Contractor shall not deliver goods or services without a written Purchase Order(s) or Notice to Proceed(s), signed by an authorized agent of the City of Port Orange.

Time and Essence: Contractor acknowledges that time is of the essence for this Contract.

Authorization for Services: This Contract standing alone does not authorize the purchase of any work or services or require the City to place any orders for work or service. Authorization for performance of services by the Contractor under this Contract shall be in the form of a written Notice to Proceed issued and executed by the City. The City reserves the right to contract with other parties for work and services contemplated by this Contract, as determined in the City's sole and absolute discretion.

Liquidated Damages: Contractor shall pay \$_____ for each day that expires after the date the Work is required to be Substantially Completed until the Contractor achieves Substantial Completion with the work. Contractor and City agree and recognize that the liquidated damages set forth herein shall not be treated as a penalty and are just damages that are proportionate to any damages that might reasonably be expected to follow from a delay to Substantial Completion.

2. City Obligations. In return for the services identified above, the City agrees to compensate the Contractor at the prices set forth in Exhibit "___" attached hereto, subject to a limit up to but not to exceed \$_____ for the term of this Contract. The City's obligation to pay Contractor under this Contract is limited to the budgeted amount for the fiscal year approved by the Port Orange City Council for the then current fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. Contract Documents. The following forms are attached as Exhibit "___" and must be completed, signed, witnessed and notarized as indicated, and returned to the City prior to the commencement of any services by Contractor under this Contract:

- a. Front Page for Bond (F.S. § 255.05)
- b. Combination Payment and Performance Bond (F.S. §255.05)

4. Liens. Contractor acknowledges that Contractor shall not be entitled to lien the City or other public property.

5. Contract Administration. The _____ shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

6. Termination for Convenience of the City

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

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

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

- (i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
- (ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;
- (iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice;
- (iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Port Orange; and
- (v) use best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this clause.

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

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

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

- (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
 - (1) the cost of work performed or supplies delivered;
 - (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above;
 - (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable.
- (ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated.

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

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

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

9. Examination of Records

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

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

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

10. Public Records Compliance. Contractor shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term.

(d) Upon completion of the Contract, Contractor shall transfer to the City, at no cost, all public records in possession of the Contractor and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

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

CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO 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

11. Termination for Non-Appropriation of Funds

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

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

12. Insurance. Contractor shall maintain insurance during the life of this Contract. Contractor shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers' compensation coverage, the bidder's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation.

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Contractor shall not commence work under this Agreement until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. Contractor shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than ten (10) days prior to the effective date of the change.

The City reserves the right to increase insurance coverage as determined for higher risk contracts and shall reimburse the Contractor for the reasonable additional costs of increased coverage.

Insurance	Standards	Comments
Workers' Compensation <u>Limits:</u> <u>Additional Coverage:</u>	Coverage A - Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
Comprehensive General Liability (including Completed Operations and Contractual Liability) <u>Limits:</u>	Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000 Aggregate	When the Contract work on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
Comprehensive Business, Automobile Liability to include all automobiles. <u>Limits:</u> <u>Additional Coverage:</u>	Auto Liability Bodily Injury: \$100,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
Property Insurance Builders Risk. <u>Limits:</u> <u>Additional Coverage:</u>	Buildings - Completed value of contract. "All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If the Contract requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
Professional Liability (Errors & Omissions) <u>Limits:</u>	Coverage - \$1,000,000 minimum	

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

14. Modifications or Changes to this Contract

(a) Change Orders. The Department Head, with the concurrence of the City's signatory as required by the City's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract.

(b) If any change under this clause causes an increase or decrease in Contractor's cost of, or time required for the performance of the work hereunder, Contractor shall receive an equitable adjustment in accordance

with subparagraph (d), which shall include all compensation to the Contractor, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change.

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

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

15. **Sovereign Immunity.** The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

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

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

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

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

19. **Inspection**

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

(b) In the event any supplies or lots of supplies are defective in material or workmanship, or otherwise not in conformity with the requirements of this Contract, the City shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Finance Director, corrected in place by and at the expense of Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the City may either (i) by contract or otherwise replace or correct such supplies and charge Contractor the cost for such replacement or correction; or (ii) may terminate this Contract for default as provided in the clause of

this Contract entitled "Termination for Default." Unless Contractor corrects or replaces such supplies within the delivery schedule, the Finance Director may require the delivery of such supplies at a reduction in price, which is equitable under the circumstances. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract. Failure to inspect and accept or reject supplies shall neither relieve Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the City therefor.

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

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

21. Non-discrimination. During the performance of this Contract, Contractor agrees as follows:

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

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

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

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

23. Force Majeure. Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure

shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

24. Controlling Law. **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.**

25. Additional Provisions. This Contract includes all additional provisions as may have been outlined in _____ and written quotes and purchase orders and any attachments or exhibits to this Contract whether delivered herewith or subsequently approved as a part hereof, such as drawings or technical specifications prepared in the performance of this work.

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

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

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

Copy to: City of Port Orange
Attention: _____
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-_____

Contractor: _____
Attention: _____

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

28. Contract Construction

This 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. The delivery by facsimile or e-mail of

an executed copy of this Agreement shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this Agreement.

29. Authority to Sign. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

[Remainder of this page intentionally left blank]

SAMPLE

Witnesses: _____

Printed Name: _____

Printed Name: _____

By: _____

Printed Name: _____

Title: _____

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

Date: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, as _____ of _____, a _____ corporation, and who:

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

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

Date: _____
Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2017, by Donald O. Bumette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

Witnesses:

ATTEST:

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

Date: _____
Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

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

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



End of Solicitation Documents



May 22, 2019

Susan Lovallo
Director, Parks & Recreation
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Email: slovallo@port-orange.org

**RE: FENCE AND BACKSTOP REPLACEMENT
BID NO. 19-10**

Dear Susan,

We have reviewed the single bid that was received from McConnie Enterprises of Tampa (McConnie) in the amount of \$77,826.00. The bid amount appears fair and is in-line with our estimated construction cost. The individual bid item unit costs appear balanced.

Neither the City nor our firm has had any past direct experience with McConnie. Based on the experience listing included in their bid, they have successfully completed many projects in equal/greater scope. Their website states that they have been in continuous business in the Tampa area since 1974. In speaking with their project manager, they have recently expanded their work area and have been performing commercial and institutional work around the state for the last four (4) years. McConnie provided information on existing continuing contracts with a number of established entities such as Hillsborough County Public Schools and Finfrock (parking garage contractor).

We have no reason to believe the McConnie should not be able to successfully complete this project and therefore we concur with City staff's recommendation to award. Please contact our office if you have any questions or need additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "D. King".

David A. King, P.E.
Vice President/Business Unit Leader

DAK:bf



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: Yes

SUBJECT: (B8c) Approval of Change Order No. 1 to Mead Hunt Task Authorization 11 for construction phase (post design) services for the Dunlawton Street Lighting Project

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Change Order No. 1 to the Mead & Hunt Task Authorization 11 for construction phase (post design) services for the Dunlawton Street Lighting Project in the amount of \$22,705.

SUMMARY: The City previously contracted with Mead & Hunt for bidding and construction phase (post design) services for the Dunlawton Street Lighting project. The Street Lighting project is a Local Agency Program (LAP) project in which the City receives federal funding to provide safety improvements (lighting) to the roadway for both vehicles and pedestrians. The project consists of replacing walklights with street lights at 10 intersections (and entire R/W between) with 62 LED luminaries at 30' mounting height on round, tapered aluminum poles along a +/- 0.70 mile segment of Dunlawton Avenue, between Ridgewood Avenue and Spruce Creek Road. The project is in construction and the need has arisen for Mead & Hunt to provide additional assistance.

The change order includes the following additional services during the construction phase.

- Address up to five (5) additional design questions/RFIs, etc. from City, Contractor and/or CEI firm. This is an estimated amount based on the previous amount of questions that have arisen during construction to date and the amount and complexity of work left to complete on the project. Many questions arose during pre-digging for the foundations when unforeseen underground facilities were encountered. 15 of 62 foundations remain to be installed, which means that the underground work is approaching completion. Six (6) questions from the contractor concerning above ground work have been answered. We don't anticipate more than five additional questions to arise during the remainder of construction.
- Design changes to load center locations. Mead Hunt coordinated with FPL during design to determine the power needs and location of power service for the new streetlights. Two locations were chosen and identified in the final plans. The power company (FPL) changed both service points after design requiring relocation of both load centers on the plans. The power company further diminished the service phase from 3-phase to single phase after design requiring new riser diagrams for the load

centers.

- Review of alternate conflict light pole and alternate light fixture submitted by contractor (not including photometric analysis and voltage drop calculations). In accordance with Federal Highway Administration (FHWA) requirements, the City's bid had to allow alternate fixtures to encourage competitive bidding. The contractor submitted an alternate, triggering the need for the City's Engineer of Record (Mead Hunt) to review pursuant to LAP requirements.
- Coordination of FDOT submittal and review of alternate light fixture photometrics and voltage drop calculations.
- Plan revisions for revised light pole locations due to conflicts with unforeseen existing utilities and underground facilities. During design Mead Hunt utilized as-built information and coordinated with the various utilities that occupy the Dunlawton right-of-way within the project limit. Efforts were made to eliminate utility conflicts based on this information. During construction the contractor requested utility locates and performed pre-digs to determine if the area was clear to install each foundation. During the pre-digs the actual depth and horizontal location of utilities became apparent. Utility operators are allowed a tolerance of two (2) feet to either side horizontally when locating their utility. An underground facility commonly referred to as the FDOT ITS was found in the entire length of the north side affecting nearly half the foundations. The FDOT ITS is a fiber optic cable system that controls traffic signals among other things. FDOT is not obligated to locate this facility, thus this discovery was an unforeseen condition that further complicated finding locations for half of the foundations. The revised light pole locations triggered the need for plan revisions for which FDOT requires be made by the Engineer of Record (Mead Hunt).

Project No.: AIO016 Funding Account No.: 301-4300-541.63-97

Presenter: Tim Burman

ATTACHMENTS:

1.	Change Order No 1 to Task Auth No 11	CO No 1 to Task Auth No 11.pdf
2.	Mead Hunt Revised Add'l. Construction Assistance 5.28.19	Mead Hunt Revised Add'l. Construction Assistance 5.28.19.pdf
3.	Mead & Hunt TA 11 CA Dunlw Lighting	Mead & Hunt TA 11 CA Dunlw Lighting.pdf

Margaret Tomlinson
Tim Burman
Scott Neils
Margaret Roberts
Jake Johansson

Created/Initiated - 6/3/2019
Approved - 6/3/2019
Approved - 6/4/2019
Approved - 6/6/2019
Approved - 6/7/2019

Robin Fenwick

Final Approval - 6/7/2019

CHANGE ORDER NO. 1

To Task Authorization No. 11 dated November 19, 2018 For
Master Contract for Engineering Services dated December 27, 2016

MEAD AND HUNT INC., Contractor

Pursuant to merger with Quentin L. Hampton and Associates, Inc.

Project: SR421 Dunlawton Lighting Bidding & Construction Services

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price (including \$5,000.00 allowance): \$12,105.00	Original Contract Times Consistent with the construction project schedule as amended
Net changes from previous Change Order: N/A	Changes in contract time from previous Change Orders: N/A 0 days
Contract Price prior to this Change Order: \$12,105.00	Contract Completion Date prior to this Change Order: Consistent with the construction project schedule as amended
Net Increase (decrease) of this Change Order No. 1 (including \$12,700.00 allowance): \$22,705.00	Changes in contract time requested this Change Order No. 1: (Requires Council Approval) N/A
Contract Price with all approved Change Orders (including \$17,700.00 allowance): \$34,810.00	Contract Times with all approved Change Orders: Consistent with the construction project schedule as amended

CHANGES ORDERED:

- I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the Task Authorization No.11 entered into by and between the parties on November 19, 2018.
- II. REQUIRED CHANGES: To provide for the following additional services during the construction phase:
 - Address up to five (5) additional design questions/RFIs, etc. from City, Contractor and/or CEI firm.
 - Design changes to load center locations.
 - Review of alternate conflict light pole.
 - Review of alternate light fixture submitted by contractor (not including photometric analysis and voltage drop calculations).
 - Coordination of FDOT submittal and review of alternate light fixture photometrics and voltage drop calculations.
 - Plan revisions for revised light pole locations due to conflicts with unforeseen existing utilities and underground facilities.

No goods shall be delivered nor services commenced hereunder until this Change Order has been fully executed by all parties.

- III. JUSTIFICATION:
Changes in scope require Council approval. Is this a scope change? YES
- IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Task Authorization No. 11 under Master Contract for Engineering Service dated December 27, 2016, subject to a limit up to but not to exceed \$22,705.00, for a total revised Task Authorization No.11 amount not to exceed \$34,810.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.
- V. This Change Order may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Change Order shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Change Order.

Acknowledgments:

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

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

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

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

RECOMMENDED BY:

Department Project Manager

ACCEPTED BY:

**MEAD AND HUNT, INC. D/B/ QUENTIN L.
HAMPTON ASSOCIATES, INC.**
Contractor

By: _____

Printed Name: Larry Roberts

Title: Community Development Engineer

Date Signed: _____

By: _____

Printed Name: _____

Title: _____

Date Signed: _____

RECOMMENDED BY:

N/A
City's Representative

RECOMMENDED BY:

N/A
Engineer of Record

By: _____

Printed Name: _____

Title: _____

Date Signed: _____

By: _____

Printed Name: _____

Title: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Tim Burman, Community Development
Director

Date Signed: _____

City Manager

By: _____
M.H. Johansson, City Manager

Date Signed: _____

If Council approval is required:

Affirmed:

By: _____
Donald O. Burnette, Mayor

Robin L. Fenwick, CMC, City Clerk

Date Signed: _____

Date Signed: _____



May 29, 2019

Larry Roberts, P.E.
Community Development Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Email: lroberts@port-orange.org
Hard Copy Mailed Only on Request

**CITY OF PORT ORANGE
DUNLAWTON AVENUE (SR421) STREET LIGHTING IMPROVEMENTS
SPRUCE CREEK ROAD TO RIDGEWOOD AVENUE
CONSTRUCTION PHASE SERVICES – ADDITIONAL SERVICES
SCOPE OF SERVICES AND FEE ESTIMATE
-REVISED-**

Dear Mr. Roberts,

Per your request we are providing the enclosed revised scope and fee estimate for the additional services requested for the above referenced project. The attached scope of services describes, in detail, what our firm understands to be required for the additional services.

If you have any questions or comments, please contact our office.

Sincerely,

A blue ink signature of David A. King.

David A. King, P.E.
Vice President/Business Unit Leader

A blue ink signature of Andrew M. Giannini.

Andrew M. Giannini, P.E.
Senior Project Manager/Associate

DAK/AMG:bf

Enclosures: Scope and Fee Estimate

**CITY OF PORT ORANGE
DUNLAWTON AVENUE (SR421) STREET LIGHTING IMPROVEMENTS
SPRUCE CREEK ROAD TO RIDGEWOOD AVENUE
CONSTRUCTION PHASE SERVICES – ADDITIONAL SERVICES
SCOPE OF SERVICES AND FEE ESTIMATE
-REVISED-**

General: This Scope of Services is in conformance with the Master Contract for Engineering Services, between the City of Port Orange (CITY) and Mead & Hunt, Inc. (MEAD & HUNT) per RFSQ 16-32 dated December 27, 2016. This is subject to all conditions listed within the Contract.

Background: The CITY previously contracted with MEAD & HUNT for design, permitting and bidding and construction phase services for this project. The project is in construction and the need has arisen for MEAD & HUNT to provide additional assistance.

Scope of Work:

Additional Construction Phase Services: MEAD & HUNT shall provide the following additional services during the construction phase.

- Address up to five (5) additional design questions/RFIs, etc. from CITY, Contractor and/or CEI firm
- Design changes to load center locations due to FPL and actual available right-of-way area. (Design changes for voltage change due to FPL was previously invoiced on December 10, 2018 Invoice #285436, applied to design task authorization)
- Review of alternate conflict light pole by contractor
- Review of alternate light fixture submitted by contractor (not including photometric analysis and voltage drop calculations)
- Coordination of FDOT submittal and review of alternate light fixture photometrics and voltage drop calculations
- Plan revisions for revised light pole locations due to conflicts with existing utilities

Exclusions: All work effort not specifically described above including but not limited to:

- Inspection, other than listed above
- Construction contract administration
- Public meeting attendance

Compensation: MEAD & HUNT proposes to complete the above stated tasks for a fee of Twenty-Two Thousand Seven Hundred Five Dollars and 00/100 (\$22,705.00) based on the man-hour and fee breakdown shown below:

Description	Project Manager/ Principal (hours)	Professional Engineers (hours)	CADD Technicians (hours)	Production/ QC Manager (hours)	Clerical Support (hours)	Total Task (\$)
	\$175.00	\$140.00	\$70.00	\$75.00	\$50.00	See Below
Additional Construction Phase Assistance	7	12	80	8	18	\$ 10,005.00
LUMP SUM SUB-TOTAL	7	12	80	8	18	\$ 10,005.00
	Electrical Engineer Out of Pocket Allowance					\$12,700.00
	GRAND TOTAL					\$22,705.00

If Florida Sales Tax becomes due on professional services, the CITY shall reimburse MEAD & HUNT for the additional sales tax cost.

“PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF MEAD & HUNT INC., MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.”

IF THE CONTRACTOR (MEAD & HUNT, INC.) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S (MEAD & HUNT, INC.’s) DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT (PROPOSAL), CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY HALL, CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FL 32129, City Clerk, Robin Fenwick, (386) 506-5566, rfenwick@port-orange.org.



Revised May 28, 2019
April 9, 2019

Mr. David King, PE
Vice President
Mead & Hunt
4401 Eastport Parkway
Port Orange, FL 32127
Delivered via email: David.King@meadhunt.com

**Re: Port Orange Dunlawton Ave. Street Lighting
Select Pole Foundations Additional Services Request
TLC Project Number: 517004**

Dear David:

As requested, TLC Engineering Solutions, Inc. has developed the following proposal to provide supplemental services for the referenced project.

Additional services are based on the following scope items:

1. Load center location design changes due to FPL and available R/W.
2. Review of Contractor alternate conflict pole (this is yet to come, but they plan on submitting on a manufacture standard conflict pole that has different dimensions than the one we specified).
3. Review of Contractor alternate fixture (not including the photometric analysis and voltage drop calcs. which the City will not pay for since we did it without their approval. They originally planned to have contractor pay for it, but he refused once he heard that we already did it).
4. Plan revisions for revised light pole locations due to conflicts with underground utilities.
5. **This proposal does not include any future work not listed above.**

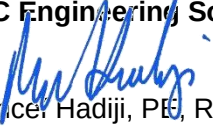
TLC is prepared to provide supplemental services as outlined above for a fixed fee of **\$12,700.00**. All other terms of our original proposal applies unless specifically modified by this proposal.

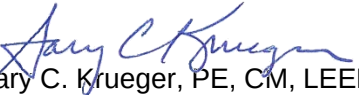
If our proposal is acceptable, please remit appropriate authorization allowing us to proceed. This authorization constitutes your commitment to pay the fee and reimbursable expenses, and represents that your firm has received approval from the client.

Please give me a call with any questions or comments.

Sincerely,

TLC Engineering Solutions, Inc.


Morice Hadiji, PE, RCDD, LEED AP BD+C, GGP
Senior Electrical Engineer


Gary C. Krueger, PE, CM, LEED AP BD+C
Principal / Division Director

Authorization

By: _____

Print Name and Title _____

Date _____



May 29, 2019

Larry Roberts, P.E.
Community Development Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Email: lroberts@port-orange.org
Hard Copy Mailed Only on Request

**CITY OF PORT ORANGE
DUNLAWTON AVENUE (SR421) STREET LIGHTING IMPROVEMENTS
SPRUCE CREEK ROAD TO RIDGEWOOD AVENUE
CONSTRUCTION PHASE SERVICES – ADDITIONAL SERVICES
SCOPE OF SERVICES AND FEE ESTIMATE
-REVISED-**

Dear Mr. Roberts,

Per your request we are providing the enclosed revised scope and fee estimate for the additional services requested for the above referenced project. The attached scope of services describes, in detail, what our firm understands to be required for the additional services.

If you have any questions or comments, please contact our office.

Sincerely,

A blue ink signature of David A. King.

David A. King, P.E.
Vice President/Business Unit Leader

A blue ink signature of Andrew M. Giannini.

Andrew M. Giannini, P.E.
Senior Project Manager/Associate

DAK/AMG:bf

Enclosures: Scope and Fee Estimate

**CITY OF PORT ORANGE
DUNLAWTON AVENUE (SR421) STREET LIGHTING IMPROVEMENTS
SPRUCE CREEK ROAD TO RIDGEWOOD AVENUE
CONSTRUCTION PHASE SERVICES – ADDITIONAL SERVICES
SCOPE OF SERVICES AND FEE ESTIMATE
-REVISED-**

General: This Scope of Services is in conformance with the Master Contract for Engineering Services, between the City of Port Orange (CITY) and Mead & Hunt, Inc. (MEAD & HUNT) per RFSQ 16-32 dated December 27, 2016. This is subject to all conditions listed within the Contract.

Background: The CITY previously contracted with MEAD & HUNT for design, permitting and bidding and construction phase services for this project. The project is in construction and the need has arisen for MEAD & HUNT to provide additional assistance.

Scope of Work:

Additional Construction Phase Services: MEAD & HUNT shall provide the following additional services during the construction phase.

- Address up to five (5) additional design questions/RFIs, etc. from CITY, Contractor and/or CEI firm
- Design changes to load center locations due to FPL and actual available right-of-way area. (Design changes for voltage change due to FPL was previously invoiced on December 10, 2018 Invoice #285436, applied to design task authorization)
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- Review of alternate light fixture submitted by contractor (not including photometric analysis and voltage drop calculations)
- Coordination of FDOT submittal and review of alternate light fixture photometrics and voltage drop calculations
- Plan revisions for revised light pole locations due to conflicts with existing utilities

Exclusions: All work effort not specifically described above including but not limited to:

- Inspection, other than listed above
- Construction contract administration
- Public meeting attendance

Compensation: MEAD & HUNT proposes to complete the above stated tasks for a fee of Twenty-Two Thousand Seven Hundred Five Dollars and 00/100 (\$22,705.00) based on the man-hour and fee breakdown shown below:

Description	Project Manager/ Principal (hours)	Professional Engineers (hours)	CADD Technicians (hours)	Production/ QC Manager (hours)	Clerical Support (hours)	Total Task (\$)
	\$175.00	\$140.00	\$70.00	\$75.00	\$50.00	See Below
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LUMP SUM SUB-TOTAL	7	12	80	8	18	\$ 10,005.00
	Electrical Engineer Out of Pocket Allowance					\$12,700.00
	GRAND TOTAL					\$22,705.00

If Florida Sales Tax becomes due on professional services, the CITY shall reimburse MEAD & HUNT for the additional sales tax cost.

“PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF MEAD & HUNT INC., MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.”

IF THE CONTRACTOR (MEAD & HUNT, INC.) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S (MEAD & HUNT, INC.’s) DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT (PROPOSAL), CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY HALL, CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FL 32129, City Clerk, Robin Fenwick, (386) 506-5566, rfenwick@port-orange.org.



Revised May 28, 2019
April 9, 2019

Mr. David King, PE
Vice President
Mead & Hunt
4401 Eastport Parkway
Port Orange, FL 32127
Delivered via email: David.King@meadhunt.com

**Re: Port Orange Dunlawton Ave. Street Lighting
Select Pole Foundations Additional Services Request
TLC Project Number: 517004**

Dear David:

As requested, TLC Engineering Solutions, Inc. has developed the following proposal to provide supplemental services for the referenced project.

Additional services are based on the following scope items:

1. Load center location design changes due to FPL and available R/W.
2. Review of Contractor alternate conflict pole (this is yet to come, but they plan on submitting on a manufacture standard conflict pole that has different dimensions than the one we specified).
3. Review of Contractor alternate fixture (not including the photometric analysis and voltage drop calcs. which the City will not pay for since we did it without their approval. They originally planned to have contractor pay for it, but he refused once he heard that we already did it).
4. Plan revisions for revised light pole locations due to conflicts with underground utilities.
5. **This proposal does not include any future work not listed above.**

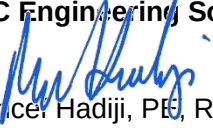
TLC is prepared to provide supplemental services as outlined above for a fixed fee of **\$12,700.00**. All other terms of our original proposal applies unless specifically modified by this proposal.

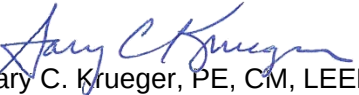
If our proposal is acceptable, please remit appropriate authorization allowing us to proceed. This authorization constitutes your commitment to pay the fee and reimbursable expenses, and represents that your firm has received approval from the client.

Please give me a call with any questions or comments.

Sincerely,

TLC Engineering Solutions, Inc.


Morice Hadiji, PE, RCDD, LEED AP BD+C, GGP
Senior Electrical Engineer


Gary C. Krueger, PE, CM, LEED AP BD+C
Principal / Division Director

Authorization

By: _____

Print Name and Title _____

Date _____

TASK AUTHORIZATION NO. 11
Master Contract for Engineering Services dated December 27, 2016
Between the City of Port Orange, Florida and
Mead and Hunt, Inc. d/b/a Quentin L. Hampton Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and Mead and Hunt, Inc. d/b/a Quentin L Hampton Associates, Inc., a Wisconsin corporation registered to transact business in the State of Florida, with its principal place of business at 2440 Deming Way, Middleton, WI 53562 ("Contractor"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated as referenced above to RFSQ 16-32, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. The Director of Community Development, Tim Burman, shall perform contract administration for this Task Authorization No. 10, and may be reached at 386-506-5675.
3. In addition to all other terms and conditions contained in the Contract, Contractor shall provide bidding and construction services for the Dunlawton Lighting Project, and as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "A."
4. Contractor shall complete bidding and construction services provided herein and consistent with the construction project schedule as amended.
5. In return for the services identified above, the City agrees to compensate Contractor in amount not to exceed \$12,105.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
6. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.
7. Notice. For purposes of this agreement, notices to Mead and Hunt, Inc. pursuant to merger with Quentin L Hampton Associates, Inc. shall be sent as follows:
Mead and Hunt, Inc.
Attn.: Brad Blais
4401 Eastport Parkway
Port Orange, FL 32127
Brad.Blais@meadhunt.com

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

Witnesses:

Mead and Hunt, Inc. d/b/a Quentin L. Hampton
Associates, Inc.


Printed Name: Erika Lustik


Printed Name: Tammie Russell


By: _____
Printed Name: David King
Title: Vice President

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

Date: 11/16/18

Witnesses:

CITY OF PORT ORANGE

Cynthia K. Rivera
Printed Name: Cynthia K. Rivera

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

Shelby Field
Printed Name: Shelby Field

Date: 11/19/18

Witnesses:

ATTEST:

Shelby Field
Printed Name: Shelby Field

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

D. Massey
Printed Name: Deanna Massey

Date: 11/19/18



EXHIBIT “A”

Dated June 25, 2018

Consisting of 4 Pages



Quentin L. Hampton Associates
Civil and Environmental Engineers
A Mead & Hunt Company

June 25, 2018

Larry Roberts, P.E.
Community Development Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Email: lroberts@port-orange.org
Hard Copy Mailed Only on Request

**CITY OF PORT ORANGE
DUNLAWTON AVENUE (SR421) STREET LIGHTING IMPROVEMENTS
SPRUCE CREEK ROAD TO RIDGEWOOD AVENUE
BIDDING AND CONSTRUCTION PHASE SERVICES**

Dear Mr. Roberts,

We are pleased to present the enclosed revised scope and fee estimate for the above referenced project as requested. The attached scope of services describes, in detail, what our firm understands to be required for the bidding and construction phases of this project.

We look forward to the opportunity to work with the City on this project. If you have any questions or comments, please contact our office.

Sincerely,

David A. King, P.E.
Vice President/Business Unit Leader

Andrew M. Giannini, P.E.
Senior Project Manager/Associate

DAK/AMG:bf

Enclosures: Scope and Fee Estimate
 Fee and Man-Hour Spreadsheet

4401 Eastport Parkway
P.O. Box 290247
Port Orange, Florida 32129-0247

Phone: (386) 761-6810
Fax: (386) 761-3977
www.qlha.com

**CITY OF PORT ORANGE
DUNLAWTON AVENUE (SR421) STREET LIGHTING IMPROVEMENTS
SPRUCE CREEK ROAD TO RIDGEWOOD AVENUE
BIDDING AND CONSTRUCTION PHASE SERVICES
SCOPE OF SERVICES AND FEE ESTIMATE**

General: This Scope of Services is in conformance with the Master Contract for Engineering Services between the City of Port Orange (CITY) and QLH, A Mead & Hunt Company (QLH) dated December 27, 2016. This is subject to all conditions listed within the Contract.

Background: The CITY previously contracted with QLH for design and permitting services for this project. The project is now out to bid and, as Engineer of Record (EOR), QLH has been requested to provide assistance during bidding and construction.

Scope of Work:

Bidding Assistance: QLH shall assist the CITY in bidding the project with the completion of the following activities:

- Address bidder's technical questions and provide responses to CITY for distribution to bidders.
- Attend pre-bid conference.
- Prepare information for addenda to CITY for posting to CITY website, as needed.
- Review submitted bids.
- Investigate experience of low bidder(s).
- Make recommendation of award to CITY.
- Attend CITY Council meeting for bid award, if requested.

Construction Phase Services: QLH shall provide the following services during the construction phase as the EOR in compliance with FDOT CPAM.

- Attend preconstruction conference.
- Address Contractor/CITY design questions (assumed 20 questions).
- Review of Contractor as-built drawings.
- Attend substantial completion inspection.
- Attend final inspection.

Exclusions: All work effort not specifically described above including but not limited to:

- Inspection, other than listed above.
- Construction contract administration.
- Public meeting attendance.

Compensation: QLH proposes to complete the above stated tasks for a fee of Twelve Thousand One Hundred Five and 00/100 Dollars (\$12,105.00) based on the attached man-hour and fee estimate spreadsheet.

If Florida Sales Tax becomes due on professional services, the CITY shall reimburse QLH for the additional sales tax cost.

QLH, A Mead & Hunt Company

City of Port Orange, Florida



David A. King, P.E.
Vice President/Business Unit Leader

See Task Authorization Page 3

6/25/18

Date

Date

"PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF MEAD & HUNT INC., MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE."

IF THE CONTRACTOR (MEAD & HUNT, INC.) HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S (MEAD & HUNT, INC.'s) DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT (PROPOSAL), CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY HALL, CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FL 32129, City Clerk, Robin Fenwick, (386) 506-5566, rfenwick@port-orange.org.

CITY OF PORT ORANGE
DUNLAWTON AVENUE STREET LIGHTING PROJECT
SPRUCE CREEK ROAD TO RIDGEWOOD AVENUE
BIDDING AND CONSTRUCTION PHASE SERVICES
June 25, 2018

Task	Description	Project Manager/ Principal (hours)	Professional Engineers (hours)	CADD Technicians (hours)	Production/ QC Manager (hours)	Clerical Support (hours)	Total Task (\$)
	Hourly Rate	\$175.00	\$140.00	\$70.00	\$75.00	\$50.00	See Below
1	Bidding Assistance						
	Address bidder's technical questions and provide responses to City for distribution to bidders	1	4	4	1	1	\$ 1,140.00
	Attend pre-bid conference	2	0	0	0	0	\$ 350.00
	Prepare information for addenda to City for posting to City website, as needed	1	4	4	1	1	\$ 1,140.00
	Review submitted bids	1	4	0	0	0	\$ 735.00
	Investigate experience of low bidder(s)	1	3	0	0	0	\$ 595.00
	Make recommendation of award to City	1	2	0	0	0	\$ 455.00
	Attend City Council meeting for bid award, if requested	1	0	0	0	0	\$ 175.00
	Subtotals	8	17	8	2	2	\$ 4,590.00
2	Construction Phase Services						
	Attend Preconstruction Conference	2	0	0	0	0	\$ 350.00
	Address Contractor/City design questions	3	6	0	0	2	\$ 1,465.00
	Attend substantial completion inspection	2	0	0	0	0	\$ 350.00
	Attend final inspection	2	0	0	0	0	\$ 350.00
	Subtotals	5	6	0	0	2	\$ 2,515.00
	LUMP SUM SUB-TOTAL	13	23	8	2	4	\$ 7,105.00
	Electrical Engineer/Additional T&E Services/Out of Pocket Allowance						\$5,000.00
	TOTAL						\$12,105.00



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: Yes

SUBJECT: (B9) Resolution No. 19-25 - Residential Shade Tree Mitigation

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 19-25, Residential Shade Tree Mitigation.

SUMMARY: City Council approved Ordinance 2019-2, February 5, 2019, which amended Chapter 13 of the Land Development Code (LDC) updating the landscaping requirements for all residential lots.

Ordinance 2019-2 provides alternatives to plant or replant shade tree(s) on lots 6,000 square-feet or less, while also keeping the shade tree requirement of 1 shade tree per 2,500 square-feet. However, if the residential lot is 6,000 square-feet or less, the administrative official has the ability to allow the following alternatives, or a combination of the following due to the unique characteristic of the lot:

1. The use of understory trees at a ratio of two (2) understory trees per one (1) required shade tree;
2. The upsizing of a shade tree from a two-inch, 10-foot tall tree at the time of planting to a four-inch 14-foot tall tree at the time of planting and to count the upsized shade tree as two (2) shade trees; and
3. A contribution to the City's Tree Bank in an amount established by a Resolution by City Council.

The proposed Resolution for residential shade trees establishes the process to determine the value of the replacement cost of a tree that is proposed to be removed on a residential lot less than 6,000 square-feet when unique characteristics are present [i.e. public/private infrastructure (FPL transformers, utility meter boxes, etc.), driveway/sidewalk, accessory structures, and existing tree roots].

To determine the residential mitigation value, prices for the wholesale costs for a 30-gallon understory tree (crepe myrtle, holly tree; approximately 1 ½", 8' tall) and a 45-gallon shade tree (oak, magnolia, maple; approximately 2", 10' tall) were collected and averaged from local nurseries/contractors.

The residential mitigation cost will be calculated based on the average wholesale cost of a 30-gallon tree or 45-gallon tree, depending on which alternative option is chosen and what mitigation is required.

Tree Size Wholesale Cost Average

30-
Gallon \$182.50

45-
Gallon \$312.50

The proposed resolution can be taken to the Environmental Advisory Board and City Council periodically for review and updating.

Project No.: Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

1.	Reso. No. 19-25	Reso. No. 19-25.pdf
----	-----------------	---------------------

Briana Conlan-King
Tim Burman
Shannon Balmer
Jake Johansson
Robin Fenwick

Created/Initiated - 5/14/2019
Approved - 5/16/2019
Approved - 6/5/2019
Approved - 6/7/2019
Final Approval - 6/7/2019

RESOLUTION NO. 19-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ESTABLISHING THE PROCESS TO DETERMINE THE VALUE OF RESIDENTIAL SHADE TREE MITIGATION FOR A TREE THAT IS PROPOSED TO BE REMOVED ON A RESIDENTIAL LOT LESS THAN 6,000 SQUARE FEET WHEN UNIQUE CIRCUMSTANCES ARE PRESENT; SUPERSEDING PRIOR RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange has created landscaping criteria to ensure quality landscape design, maintenance of such, and to enhance a natural, attractive environment within the City; and

WHEREAS, the City of Port Orange approved Ordinance No. 2019-2, establishing alternatives to plant or replant shade tree(s) on lots 6,000 square feet or less for single and two-family residences when site specific conditions do not reasonably allow for the installation of the required number of trees; and

WHEREAS, Chapter 13, Section 5.5 of the Land Development Code, City of Port Orange, Florida, authorizes the administrative official to allow contribution to the City's tree bank as an alternative to the shade tree requirement for lots 6,000 square feet or less under site specific conditions; and

WHEREAS, Chapter 13, Section 5.5 of the Land Development Code, City of Port Orange, Florida, authorizes the City Council to establish by resolution the residential mitigation value of a tree proposed to be removed on a residential lot less than 6,000 square feet when unique characteristics are present for contribution to the City's Tree Bank.

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

Section 1. The residential mitigation value for contribution to the Tree Bank is hereby established pursuant to the authority set forth in Chapter 13, Section 5.5 of the Land Development Code, City of Port Orange as follows:

<u>Tree Size</u>	<u>Wholesale Cost Average</u>
30-Gallon Understory Tree	\$182.50
45-Gallon Shade Tree	\$312.50

Section 2. The fees established in this resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (B10) Resolution No. 19-26 - Ratifying Election Results for the Run Off Election held June 11, 2019 for District 1

DEPARTMENT: City Clerk

GOAL:

RECOMMENDED MOTION: Move to approve Resolution No. 19-26.

SUMMARY: The purpose of this resolution is to ratify the results of the election for Port Orange City Council Member for District 1 held on June 11, 2019.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Reso. No. 19-26	Reso. No. 19-26.pdf
2.	20190611 Election Summary - WITH Over and Undervotes	20190611 Election Summary - WITH Over and Undervotes.pdf

Robin Fenwick
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 6/3/2019
Approved - 6/6/2019
Approved - 6/7/2019
Final Approval - 6/7/2019

RESOLUTION NO. 19-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, RATIFYING THE RESULTS OF THE ELECTION FOR CITY COUNCIL DISTRICT HELD ON JUNE 11, 2019; DECLARING THE CITY COUNCIL MEMBER ELECTED FOR DISTRICT 1; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, an election for City Council District 1 was held in the City of Port Orange, Volusia County, Florida, on June 11, 2019, pursuant to the provisions of the City Charter, Ordinance No. 2008-35; and

WHEREAS, it appears that said election has been duly and properly held in accordance with the Charter of the City of Port Orange and applicable state law, and that the votes cast thereat have been returned, delivered and canvassed by the Port Orange Canvassing Board, which has certified the results thereof.

NOW, THEREFORE, BE IT RESOLVED, DETERMINED, FOUND, DECLARED AND HEREBY RATIFIED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, at a public meeting of said City Council, duly held, at which the official returns of the election have been duly accepted and ratified according to the Charter of the City of Port Orange, Florida and applicable state law:

Section 1. The legal votes cast for each candidate and totals are as follows:

<u>CANDIDATE</u>	<u>VOTES</u>
<u>DISTRICT 1</u>	
Lee Barreiro	2,064
Marilyn Ford	<u>3,940</u>
TOTAL	<u>6,004</u>

Section 2. The City Council hereby declares the council member as follows:

District 1 Marilyn Ford

Section 3. The election is found to have been in all respects conducted in accordance with law, and all steps in connection with and preceding such election has been duly, regularly and lawfully taken.

Section 4. This resolution shall be deemed effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the day of

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

SUMMARY REPORT

Run Date:06/11/19 07:28 PM

Official Pt Orange Spc Runoff
June 11, 2019
Volusia County, Florida

OFFICIAL RESULTS

Report EL45 Page 001

VOTES PERCENT

PRECINCTS COUNTED (OF 14)		14	100.00
REGISTERED VOTERS - TOTAL		44,300	
BALLOTS CAST - TOTAL		6,013	
BALLOTS CAST - BLANK		9	.15
VOTER TURNOUT - TOTAL			13.57
VOTER TURNOUT - BLANK			.02

City Council District 1 Port Orange
(VOTE FOR) 1

(WITH 14 OF 14 PRECINCTS COUNTED)			
Lee Barreiro		2,064	34.38
Marilyn Ford		3,940	65.62
Over Votes		0	
Under Votes		9	



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (B11) Resolution No. 19-27 - Budget Appropriation

DEPARTMENT: Finance

GOAL:

RECOMMENDED MOTION: Move to approve Resolution No. 19-27.

SUMMARY: *\$414,000 Lakeside Community Center A/C Replacement - General Fund 001 Appr. Equity

*\$400,000 ECHO Grant for REC Center Remodel - Recreation Impact Fee Fund 611

*\$10,000 Transfer from General Fund Parks Maint to Golf Course Fund 450

*\$10,000 FDLE Grant for Police Cell Phone Software

*\$2,000 Add'l Travel funds for Police Education Fund 615

*\$14,625 Reduce Fund 505 Appr. Equity and Contingency for invoice accrued to FY18

*\$10,000 Transfer from City Manager Gen. Fund to Non-Departmental Gen Fund to fund Land Purchase Option Agreement

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Resolution No. 19-27	e Bud Reso 19-27 - Misc - CC Mtg 06-18-19.pdf
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Lisa Pallante
Scott Neils
Margaret Roberts
Jake Johansson
Robin Fenwick

Created/Initiated - 6/4/2019
Approved - 6/4/2019
Approved - 6/6/2019
Approved - 6/11/2019
Final Approval - 6/13/2019

RESOLUTION NO. 19-27

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROPRIATING OPERATING, AND CAPITAL FUNDS FOR THE FISCAL YEAR 2019 BUDGET; TO BUDGET FOR VOLUSIA COUNTY ECHO GRANT 19-11 TO FUND THE REC CENTER REMODEL PROJECT PHASE I; TO BUDGET FOR THE REPLACEMENT OF THE HVAC UNITS AT THE LAKESIDE COMMUNITY CENTER; TO BUDGET FOR FDLE GRANT 2019-JAGD-VOLU-1-N3-037 TO FUND POLICE CELL PHONE SOFTWARE; TO BUDGET FOR THE TRANSFER FROM THE GENERAL FUND TO THE GOLF COURSE FUND FOR OPERATING EXPENSES; TO BUDGET FOR THE TRANSFER OF FUNDS FROM THE CITY MANAGER DEPARTMENT TO THE NON-DEPARTMENTAL DEPARTMENT TO FUND A LAND PURCHASE OPTION AGREEMENT; TO REDUCE APPROPRIATED EQUITY AND CONTINGENCY IN THE LEASE AND REPLACEMENT FUND FOR INVOICES ACCRUED IN FY18; TO BUDGET FOR ADDITIONAL TRAINING IN THE POLICE EDUCATION FUND; SETTING FORTH REVENUES AND EXPENDITURES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council desires to budget for the Volusia County ECHO Grant (Project 19-11) in the amount of \$400,000 to be used to partially fund the REC Center Remodel (Project QPC082) and;

WHEREAS, the City Council desires to budget for the transfer of \$414,000 from the General Fund (001) to the General Capital Fund (317) to fund the replacement of two HVAC units at the Lakeside Community Center; and

WHEREAS, the City Council desires to budget for the Florida Department of Law Enforcement (FDLE) Grant 2019-JAGD-VOLU-1-N3-037 in the amount of \$10,000 to be used to fund the purchase of Police Cell Phone Software; and

WHEREAS, the City Council desires to budget for transfer of \$10,000 from the General Fund (001) – Parks Maintenance Department to the Golf Course Fund (450) for operating expenses; and

WHEREAS, the City Council desires to budget for the transfer of \$10,000 from the City Manager’s department to the Non-Departmental department, both in the General Fund, to fund the Land Purchase Option Agreement; and

WHEREAS, the City Council desires to reduce appropriated equity and contingency in the Lease and Replacement Fund (505) in the amount of \$14,625 related to invoices accrued to FY18; and

WHEREAS, the City Council desires to budget \$2,000 in the Police Education Fund (615) for additional Police training; and

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

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

Section 2. The Budget item adopted in the preceding section shall govern the expenditures relating to such operations for the City during the current fiscal year effective October 1, 2018 through September 30, 2019.

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

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC City Clerk

Adopted on the day of

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

FY2019 General Fund 001
Prepared: June 3, 2019
Finance: Finance Staff

	Budget Increase / (Decrease)
<u>Revenues:</u>	
Florida Department of Law Enforcement (FDLE) Grant 2019-JAGD-VOLU-1-N3-037	10,000
Appropriated Equity	414,000
Total Revenues:	\$ 424,000
<u>Expenditures:</u>	
Public Safety	10,000
Transfer to General Capital Fund 317	414,000
City Manager	(10,000)
Non-Departmental	10,000
Parks Maintenance	\$ (10,000)
Transfer to Golf Course Operations Fund 450	10,000
Total Expenditures:	\$ 424,000

To budget grant revenue from FDLE for the purchase of Cell Phone software (Police), to budget for the transfer of funds to the General Capital Fund 317 for the HVAC replacements at Lakeside Community Center, to budget for the transfer of funds from the City Manager's department to the Non Departmental department for the Land Purchase Option Agreement for Dave's Pest Control property, to budget for the transfer of funds from Parks Maintenance to the Golf Course Operations Fund 450.

FY2019 General Capital Fund 317
Prepared: June 3, 2019
Finance: Finance Staff

	<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>	
Transfer from General Fund 001	\$ 414,000
Total Revenues:	<u>\$ 414,000</u>

<u>Expenditures:</u>	
Non-Departmental - Capital Outlay	414,000
Total Expenditures:	<u>\$ 414,000</u>

To budget for the replacement of HVAC units at the Lakeside Community Center, Project QPC073.

FY2019 Golf Course Operating Fund 450
Prepared: June 3, 2019
Finance: Finance Staff

	<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>	
Transfer from General Fund 001	10,000
Total Revenues:	<u>\$ 10,000</u>

<u>Expenditures:</u>	
Non-Departmental	10,000
Total Expenditures:	<u>\$ 10,000</u>

To budget for funds being transferred from the General Fund to the 450 Golf Course Fund for miscellaneous building repairs, as needed, on the Clubhouse.

FY2019 Lease and Replacement Fund 505
Prepared: June 3, 2019
Finance: Finance Staff

	<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>	
Appropriated Equity	(14,625)
Total Revenues:	<u><u>\$ (14,625)</u></u>

<u>Expenditures:</u>	
Non-Departmental	(14,625)
Total Expenditures:	<u><u>\$ (14,625)</u></u>

To budget for the reduction of appropriated equity and contingency for invoices accrued back to FY18 on the ERP Project ZMI054.

FY2019 Recreation Impact Fund 611
Prepared: June 3, 2019
Finance: Finance Staff

	Budget Increase / (Decrease)
<u>Revenues:</u>	
ECHO Grant 19-11 for the REC Center Remodel Phase I Project	400,000
Total Revenues:	\$ 400,000

<u>Expenditures:</u>	
Recreation - Capital Outlay	400,000
Total Expenditures:	\$ 400,000

To budget for Volusia County ECHO Grant 19-11 for the REC Center Remodel Phase I, Project QPC082.

FY2019 Police Education Trust Fund 615
Prepared: June 3, 2019
Finance: Finance Staff

		<u>Budget Increase / (Decrease)</u>
<u>Revenues:</u>		
Appropriated Equity	\$	2,000
Total Revenues:	\$	<u>2,000</u>
<u>Expenditures:</u>		
Police	\$	2,000
Total Expenditures:	\$	<u>2,000</u>

To budget for additional Police Department training and travel.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: Yes

SUBJECT: (B12) Resolution No. 19-29 - Right-of-Way Vacation - Howes Street

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Move to approve Resolution No. 19-29, subject to receipt of the franchise utility release letters, approval of the quit claim deeds by the city attorney, and the easement to the City on Howes Street for the purposes of utilities and drainage.

SUMMARY: The Community Development Department has received an application to vacate right-of-way for portions of 1) Howes Street; 2) Orchard Street; and 3) Freeman Street rights-of-way located within the Tanglewood Mobile Estates. The Tanglewood Mobile Estates is located on the north side of Commonwealth Boulevard, between the railroad tracks and Orange Avenue. D. Scott Baker, Esq. of Zimmerman Kiser Sutcliffe law firm, the applicant for the property owner, Tanglewood Mobile Estates, LLC, has made this request to vacate the portion of the three rights-of-way to resolve title issues within the interior of the mobile home park.

The Howes Street right-of-way being requested extends through Tanglewood between Orange Avenue and the Railroad tracks. The request is to vacate the entire right-of-way as there is a portion of the existing Tanglewood Clubhouse parking lot located in the right-of-way. There is no future infrastructure improvement planned in this right-of-way. If approved, Howes Street will become a private road within the park that will be the property owner's responsibility to maintain. Staff is requiring as a condition to approval of the right-of-way vacation request that the property owner provide the City with an easement over the portion of land created by the Howes Street right-of-way vacation. This easement will be for the purposes of City utilities and drainage. Additionally, Charter Communications/Spectrum has also requested an easement for existing utilities in the portion of the Howes Street right-of-way being vacated.

The requested right-of-way vacation will not eliminate any of the existing access roads into and out of the mobile home park. Residents will still be able to enter and exit using Howes Street, Orchard Street, Crowell Street, and Bern Street.

The right-of-way vacation application and legal descriptions have been reviewed for completeness and accuracy. City departments have reviewed the application and have no outstanding concerns. The property owner has agreed to provide the easement requested over Howes Street as part of the right-of-way vacation request. If the vacation is approved, the city will quit claim to the property owner the right-of-way area vacated as described in the attached Exhibit.

Project No.: Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

1.	Reso. No. 19-29	Reso. No. 19-29 .pdf
2.	QC Deed Howes Street	QC Deed Howes Street.pdf
3.	Exhibit A to Reso. No. 19-29 and QC Deed	HOWES ST ROW LEGAL DESC.pdf
4.	ROW Vacation Applications	ROW Vacation Applications.pdf
5.	Aerial	Aerial.pdf
6.	Location Map	Location Map.pdf
7.	Survey of Tanglewood Mobile Estates	Survey of Tanglewood Mobile Estates.pdf
8.	Archived Site Plans of MHP	Archived Site Plans of MHP.pdf

Margaret Tomlinson
Tim Burman
Shannon Balmer
Jake Johansson
Robin Fenwick

Created/Initiated - 5/29/2019
Approved - 5/31/2019
Approved - 6/5/2019
Approved - 6/7/2019
Final Approval - 6/7/2019

RESOLUTION NO. 19-29

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORT ORANGE, VOLUSIA COUNTY, FLORIDA,
VACATING A PORTION OF THE HOWES STREET RIGHT-
OF-WAY; AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE A QUIT CLAIM DEED; PROVIDING FOR
SEVERABILITY; PROVIDING FOR REPEAL OF
CONFLICTING RESOLUTIONS; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, Tanglewood Mobile Estates, LLC, a Florida limited liability company is the record owner of the property adjoining a portion of right-of-way commonly known as Howes Street which was dedicated to the City by plat recorded at Map Book 31, Page 148 of the Public Records of Volusia County, Florida; and

WHEREAS, Tanglewood Mobile Estates, LLC has applied to the City to vacate that portion of right-of-way commonly known as Howes Street which was dedicated to the City by plat recorded at Map Book 31, Page 148 of the Public Records of Volusia County, Florida; and

WHEREAS, the applicant has complied with the requirements of Section 177.101(4), Florida Statutes; and

WHEREAS, the City Council of the City of Port Orange has the power and authority to vacate a right-of-way under constitutional home rule powers, Chapter 166 and Chapter 177, Florida Statutes; and

WHEREAS, the City Council of the City of Port Orange has determined that the portion of the public right-of-way to be vacated is not presently in use and that adjoining and neighboring owners of property will not be adversely affected by the vacation of a portion of the public right-of-way and it is in the best interest and welfare of the City of Port Orange and the citizens thereof to vacate and abandon this portion of the public right-of-way as more particularly described herein below.

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

Section 1. The interest of the City of Port Orange, Volusia County, Florida, in the following described public right-of-way is hereby declared to be vacated and abandoned and any right, title and interest of the City of Port Orange and any public rights in and to the public right-of-way hereby vacated are renounced and disclaimed. The portion of the dedicated public right-of-way to be vacated is more particularly described as follows:

See **Exhibit "A"**, attached hereto and made a part hereof.

Section 2. The Mayor and City Clerk are hereby authorized and directed to execute the Quit Claim Deed upon approval by the City Attorney.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application thereof.

Section 4. That all resolutions made in conflict with this resolution are hereby repealed.

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

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Prepared by
Shannon K. Balmer
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange FL 32129

Adjacent Property Parcel No. 6310-13-01-0010

Quit-Claim Deed

This Indenture, made this _____ day of _____, 2019, between **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, located in Volusia County, Florida, mailing address: 1000 City Center Circle, Port Orange FL 32129, Grantor, and **TANGLEWOOD MOBILE ESTATES, LLC**, a Florida Limited Liability Company, mailing address: 5100 Orange Avenue, Port Orange, FL 32127, Grantee.

Witnesseth: That the said Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said Grantor, in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release, and quit claim unto the said Grantee, its successor and assigns forever, all the right, title, interest, claim and demand which Grantor has in and to the following described piece or parcel of land, situate, lying and being in the County of Volusia, State of Florida:

A portion of Howes Street, dedicated to the City of Port Orange, FL by plat as recorded in Map Book 31, Page 148 of the Public Records of Volusia County, Florida, said portion of which having been vacated and abandoned by Resolution No. 19-29, and being more particularly depicted and described on **Exhibit "A,"** attached hereto and made a part hereof by reference.

To Have and to Hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of Grantor, either in law or in equity to the only proper use, benefit and behoof of Grantee forever.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

In Witness Whereof, Grantor has hereunto has caused this Quit-Claim Deed to be executed under seal and on its behalf the day and year first above written.

WITNESSES:

CITY OF PORT ORANGE, FLORIDA
A Chartered Municipal Corporation

Name: _____

By: _____
Donald O. Burnette, Mayor

Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Donald O. Burnette as Mayor, of the City of Port Orange, Florida, a chartered municipal corporation, who acknowledge that he is duly authorized to execute the foregoing agreement on behalf of the city. He is personally known to me.

Notary Public, State of Florida at Large
Printed name of Notary, Commission, Seal & Expiration Date:

WITNESSES:

Name: _____

Attest: _____
Robin L. Fenwick
City Clerk, CMC

Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Robin L. Fenwick, as City Clerk, of the City of Port Orange, Florida, a chartered municipal corporation, who acknowledge that she is duly authorized to execute the foregoing agreement on behalf of the city. She is personally known to me.

Notary Public, State of Florida at Large
Printed name of Notary, Commission, Seal & Expiration Date:

Legal Review By: _____

Date: _____



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD

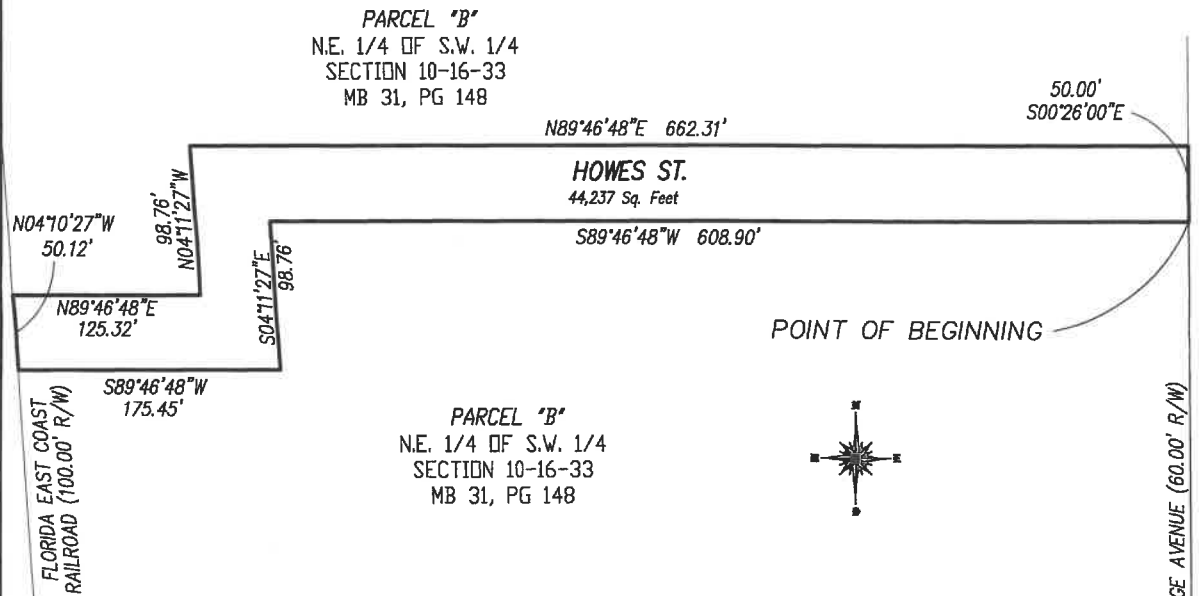
PORT ORANGE, FL 32127

(386) 761-5385

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RECORDING INFORMATION



LEGAL DESCRIPTION:

A PORTION OF LAND LOCATED IN REPLAT OF: A PORTION OF ALLANDALE, A PORTION OF ASSESSOR'S SUB. PORT ORANGE, AND A PORTION OF NORWOOD SUB., ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 31, PAGE 148, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID REPLAT RECORDED IN MAP BOOK 31, PAGE 148, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE N00°26'00"W, ALONG THE WEST LINE OF ORANGE AVENUE A 60.00' RIGHT OF WAY AND SAID PLAT, 743.22 FEET TO THE SOUTH RIGHT OF WAY LINE OF HOWES STREET AND THE POINT OF BEGINNING; THENCE S89°46'48"W, ALONG SAID SOUTH RIGHT OF WAY LINE 608.90 FEET; THENCE S04°11'27"E, 98.76 FEET; THENCE S89°46'48"W, 175.45 FEET TO THE EAST RIGHT OF WAY OF FLORIDA EAST COAST RAILROAD A 100.00 FOOT RIGHT OF WAY AND WESTERLY LINE OF SAID PLAT; THENCE N04°10'27"W, ALONG SAID RIGHT OF WAY 50.12 FEET; THENCE N89°46'48"E, ALONG THE NORTH RIGHT OF WAY OF HOWES STREET, 125.32 FEET; THENCE N04°11'27"W, 98.76 FEET; THENCE N89°46'48"E, 662.31 FEET TO THE WEST RIGHT OF WAY LINE OF SAID ORANGE AVENUE A 60.00 FOOT RIGHT OF WAY, 662.31 FEET; THENCE S00°26'00"E, 50.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 44,237 SQUARE FEET OR 1.02 ACRES, MORE OR LESS.

POINT OF COMMENCEMENT
SOUTHEAST CORNER, PARCEL B, REPLAT
MB 31, PG 148, PUBLIC RECORDS OF
VOLUSIA COUNTY, FLORIDA.

GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.

SKETCH OF DESCRIPTION ONLY
THIS IS NOT A BOUNDARY SURVEY
FOR: ZIMMERMAN KISER & SUTCLIFFE P.A.

JOB # 19-0612

SHEET 1 OF 2

ABBREVIATIONS

W	WETLAND
R/W	RIGHT OF WAY
C	CENTERLINE
Δ	CENTRAL ANGLE
R	RADIUS
L	ARC LENGTH
CB	CHORD BEARING
CE	CONSERVATION EASEMENT
N.G.V.D.	NATIONAL GEODETIC VERTICAL DATUM
U.S.C. & G.S.	UNITED STATES COAST AND GEODETIC SURVEY

LEGEND

●	IRON ROD WITH CAP
○	IRON PIPE
□	CONCRETE MONUMENT
■	PERMANENT REFERENCE MONUMENT
△	PERMANENT CONTROL POINT
(R)	RADIAL LINE
(NR)	NON-RADIAL LINE
○	EXISTING ELEVATION
□	PROPOSED ELEVATION



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD

PORT ORANGE, FL 32127

(386) 761-5385

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SURVEYORS NOTES

1. NOTICE: THERE MAY BE ADDITIONAL RESTRICTIONS AND/OR OTHER MATTERS THAT ARE NOT SHOWN ON THIS PLAT OF SURVEY/SKETCH OF DESCRIPTION THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. THIS SURVEY/SKETCH OF DESCRIPTION PREPARED WITHOUT BENEFIT OF AN ABSTRACT.
2. DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
3. BEARING STRUCTURE IS ASSUMED WITH THE BEARING ON THE WEST LINE OF ORANGE AVENUE A 60' RIGHT OF WAY BEING N00°26'00"W.
4. "NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER." OR ELECTRONIC SIGNATURE.
5. UNLESS OTHERWISE SHOWN, RECORD DISTANCES AND DIRECTIONS AND FIELD MEASURED DISTANCES AND DIRECTIONS ARE THE SAME.

REFERENCE: ALLANDALE GARDENS REPLAT

THIS PLAT OF SURVEY IS CERTIFIED TO AND PREPARED FOR THE SOLE AND EXCLUSIVE BENEFIT OF THE ENTITIES AND/OR INDIVIDUALS LISTED BELOW, ON THE MOST CURRENT DATE, AND SHALL NOT BE RELIED UPON BY ANY OTHER ENTITY OR INDIVIDUAL WHOMSOEVER.

TYPE OF SURVEY	CERTIFIED TO	SURVEY DATE	JOB NUMBER
SKETCH OF	ZIMMERMAN KISER & SUTCLIFFE P.A.	5-3-2019	19-0612
DESCRIPTION			

SHEET 2 OF 2

VALID WITH SIGNATURE & EMBOSSED SEAL ONLY

FOR: ZIMMERMAN KISER & SUTCLIFFE P.A.

SKETCH OF DESCRIPTION	DATE	JOB NO.	P.C.	DRW.	CHECKED BY
BOUNDARY SURVEY	5-3-2019	19-0612		TJ	J BARNES
TOPOGRAPHIC SURVEY					
FOUNDATION LOCATED					
FINAL IMPROVEMENTS					
RECERTIFICATION					
PROPOSED HOUSE LOCATION					

I HEREBY CERTIFY THAT THIS PLAT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

[Signature]
J.E. APERT, P.L.S. NO. 4046
W. BARNES P.S.M. NO. 5576
C.O. VAN KLEECK JR., P.S.M. NO. 6149
MICHAEL S. MURPHY, P.S.M. NO. 6208



CITY OF PORT ORANGE

Department of Community Development
Engineering Division

CASE NO.

#19-75000001

DATE APPLICATION RECEIVED

MAY 06 2019

1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 PHONE: (386) 506-5600 FAX: (386) 506-5699/www.port-orange.org

RIGHT-OF-WAY VACATION APPLICATION

Applicant: Tanglewood Mobile Estates, LLC

Address: c/o D. Scott Baker, Esq., 315 East Robinson Street, Suite 600, Orlando, FL 32801

Phone: 407-425-7010 Fax: 407-418-1251 Email: sbaker@zkslawfirm.com

Adjacent Property 1 Owner(s): Tanglewood Mobile Estates, LLC

Address: same as above Parcel No.: 6310-13-01-0010

Phone: same as above Fax: same as above Email: same as above

Adjacent Property 2 Owner(s): _____

Address: _____ Parcel No.: _____

Phone: _____ Fax: _____ Email: _____

(Provide a separate attachment for additional adjacent properties if necessary)

Legal Description of the proposed right-of-way vacation area *(provide a separate attachment if necessary)*:

see attached

HOWES ST

Purpose for the proposed right-of-way vacation: Resolve title issues within the interior of Tanglewood Mobile Estates mobile home park.

REQUIRED ATTACHMENTS

1. A current, original, sealed property survey of the proposed easement vacation area and the adjacent properties
2. A copy of the recorded deeds for the adjacent properties
3. A property tax payment certification or a copy of the total property tax payment receipt for the adjacent properties
4. The application processing and recording fee payment of \$250.00
5. The completed original application form (notarized signatures required on Page 2)

Applicant Signature: X William Morgan Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

I HEREBY GRANT AUTHORIZATION FOR THE ABOVE LISTED APPLICANT TO ACT ON MY BEHALF:

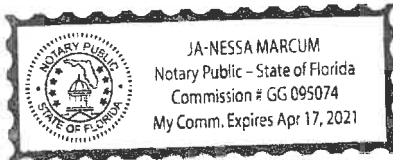
Adjacent Property 1 Owner Signature: X William Morgan Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC
Adjacent Property 1 Owner Signature: N/A Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th of May, 2019 by William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC, a Florida limited liability company _____, who is personally known to me or who has produced Florida drivers license _____ as identification and who did (did not) take an oath.

JA-Nessa Marcum
(Signature)
(Name of Notary typed, printed or stamped)

Notary Public, Commission No. GG095074



Adjacent Property 2 Owner Signature: _____ Date: _____

Adjacent Property 2 Owner Signature: _____ Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____, 20____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

(Signature)

(Name of Notary typed, printed or stamped)

Notary Public, Commission No. _____

(Provide a separate attachment for additional adjacent properties if necessary)



CITY OF PORT ORANGE

Department of Community Development
Engineering Division

CASE NO.

#19-75000003

DATE APPLICATION RECEIVED

MAY 06 2019

1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 PHONE: (386) 506-5600 FAX: (386) 506-5699/www.port-orange.org

RIGHT-OF-WAY VACATION APPLICATION

Applicant: Tanglewood Mobile Estates, LLC

Address: c/o D. Scott Baker, Esq., 315 East Robinson Street, Suite 600, Orlando, FL 32801

Phone: 407-425-7010 Fax: 407-418-1251 Email: sbaker@zkslawfirm.com

Adjacent Property 1 Owner(s): Tanglewood Mobile Estates, LLC

Address: same as above Parcel No.: 6310-13-01-0010

Phone: same as above Fax: same as above Email: same as above

Adjacent Property 2 Owner(s): _____

Address: _____ Parcel No.: _____

Phone: _____ Fax: _____ Email: _____

(Provide a separate attachment for additional adjacent properties if necessary)

Legal Description of the proposed right-of-way vacation area *(provide a separate attachment if necessary)*:

see attached

FREEMAN ST

Purpose for the proposed right-of-way vacation: Resolve title issues within the interior of Tanglewood Mobile Estates mobile home park.

REQUIRED ATTACHMENTS

1. A current, original, sealed property survey of the proposed easement vacation area and the adjacent properties
2. A copy of the recorded deeds for the adjacent properties
3. A property tax payment certification or a copy of the total property tax payment receipt for the adjacent properties
4. The application processing and recording fee payment of \$250.00
5. The completed original application form (notarized signatures required on Page 2)

Applicant Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

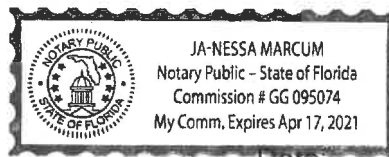
I HEREBY GRANT AUTHORIZATION FOR THE ABOVE LISTED APPLICANT TO ACT ON MY BEHALF:

Adjacent Property 1 Owner Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC
Adjacent Property 1 Owner Signature: N/A Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th of May, 2019 by William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC, a Florida limited liability company, who is personally known to me or who has produced Florida driver's license as identification and who did (did not) take an oath.

[Signature] Notary Public, Commission No. GG 095074
(Name of Notary typed, printed or stamped) Ja-Nessa Marcum



Adjacent Property 2 Owner Signature: _____ Date: _____
Adjacent Property 2 Owner Signature: _____ Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____, 20____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

(Signature) Notary Public, Commission No. _____
(Name of Notary typed, printed or stamped)

(Provide a separate attachment for additional adjacent properties if necessary)



CITY OF PORT ORANGE

Department of Community Development
Engineering Division

CASE NO.

#19-75000002

DATE APPLICATION RECEIVED

MAY 06 2019

1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 PHONE: (386) 506-5600 FAX: (386) 506-5699/www.port-orange.org

RIGHT-OF-WAY VACATION APPLICATION

Applicant: Tanglewood Mobile Estates, LLC

Address: c/o D. Scott Baker, Esq., 315 East Robinson Street, Suite 600, Orlando, FL 32801

Phone: 407-425-7010 Fax: 407-418-1251 Email: sbaker@zkslawfirm.com

Adjacent Property 1 Owner(s): Tanglewood Mobile Estates, LLC

Address: same as above Parcel No.: 6310-13-01-0010

Phone: same as above Fax: same as above Email: same as above

Adjacent Property 2 Owner(s): _____

Address: _____ Parcel No.: _____

Phone: _____ Fax: _____ Email: _____

(Provide a separate attachment for additional adjacent properties if necessary)

Legal Description of the proposed right-of-way vacation area *(provide a separate attachment if necessary)*:

see attached

ORCHARD ST

Purpose for the proposed right-of-way vacation: Resolve title issues within the interior of Tanglewood Mobile Estates mobile home park.

REQUIRED ATTACHMENTS

1. A current, original, sealed property survey of the proposed easement vacation area and the adjacent properties
2. A copy of the recorded deeds for the adjacent properties
3. A property tax payment certification or a copy of the total property tax payment receipt for the adjacent properties
4. The application processing and recording fee payment of \$250.00
5. The completed original application form (notarized signatures required on Page 2)

Applicant Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

I HEREBY GRANT AUTHORIZATION FOR THE ABOVE LISTED APPLICANT TO ACT ON MY BEHALF:

Adjacent Property 1 Owner Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

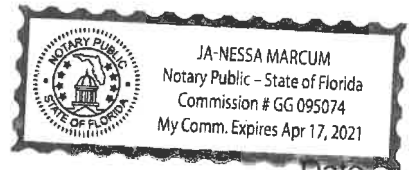
Adjacent Property 1 Owner Signature: N/A Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th of May, 2019 by William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC, a Florida limited liability company _____, who is personally known to me or who has produced Florida drivers license _____ as identification and who did (did not) take an oath.

[Signature]
(Signature)
Ja-Nessa Marcum
(Name of Notary typed, printed or stamped)

Notary Public, Commission No. GG-095074



Adjacent Property 2 Owner Signature: _____ Date: _____

Adjacent Property 2 Owner Signature: _____ Date: _____

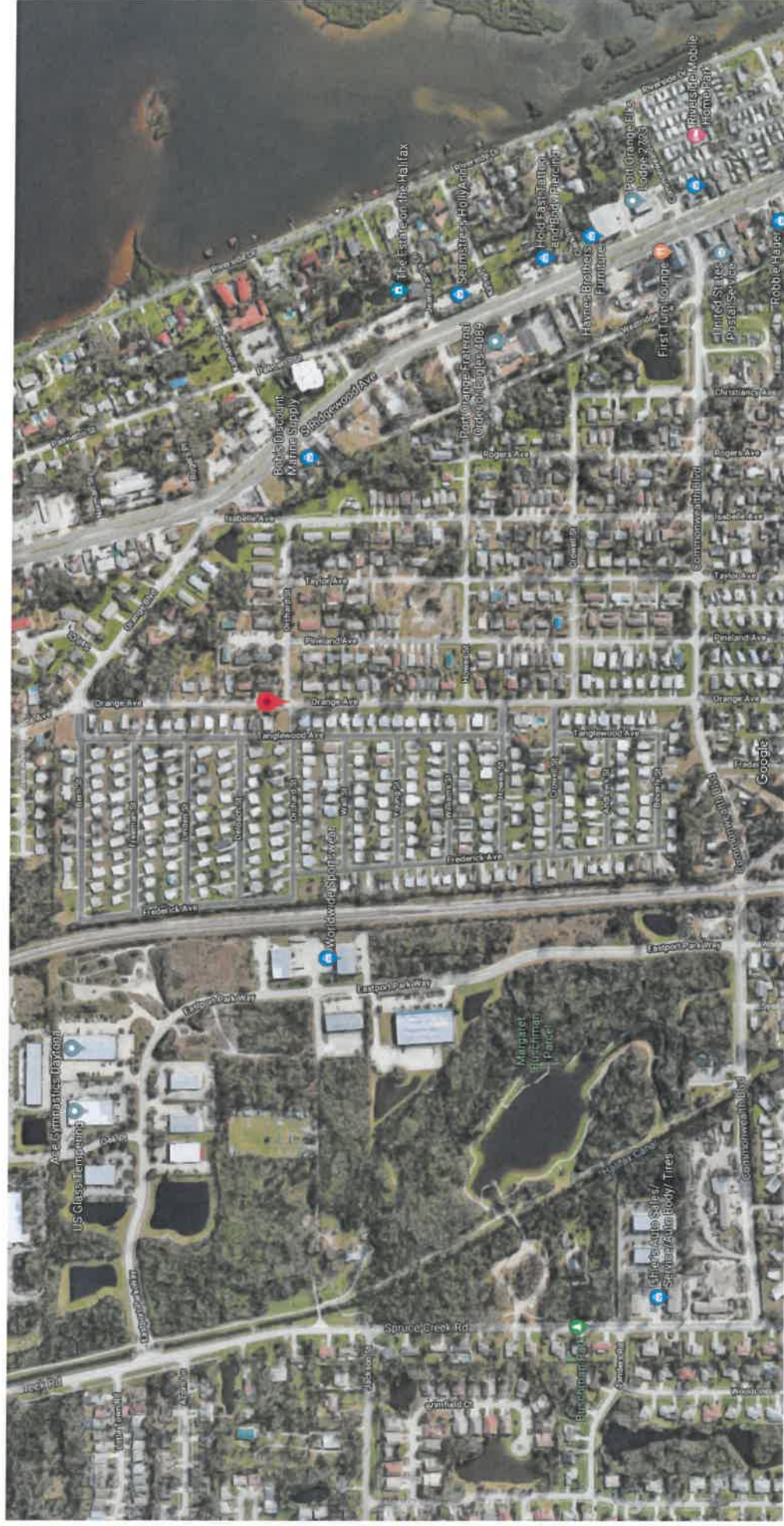
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____, 20____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

(Signature) Notary Public, Commission No. _____

(Name of Notary typed, printed or stamped)

(Provide a separate attachment for additional adjacent properties if necessary)



Orchard St

Port Orange, FL 32127



Directions



Save



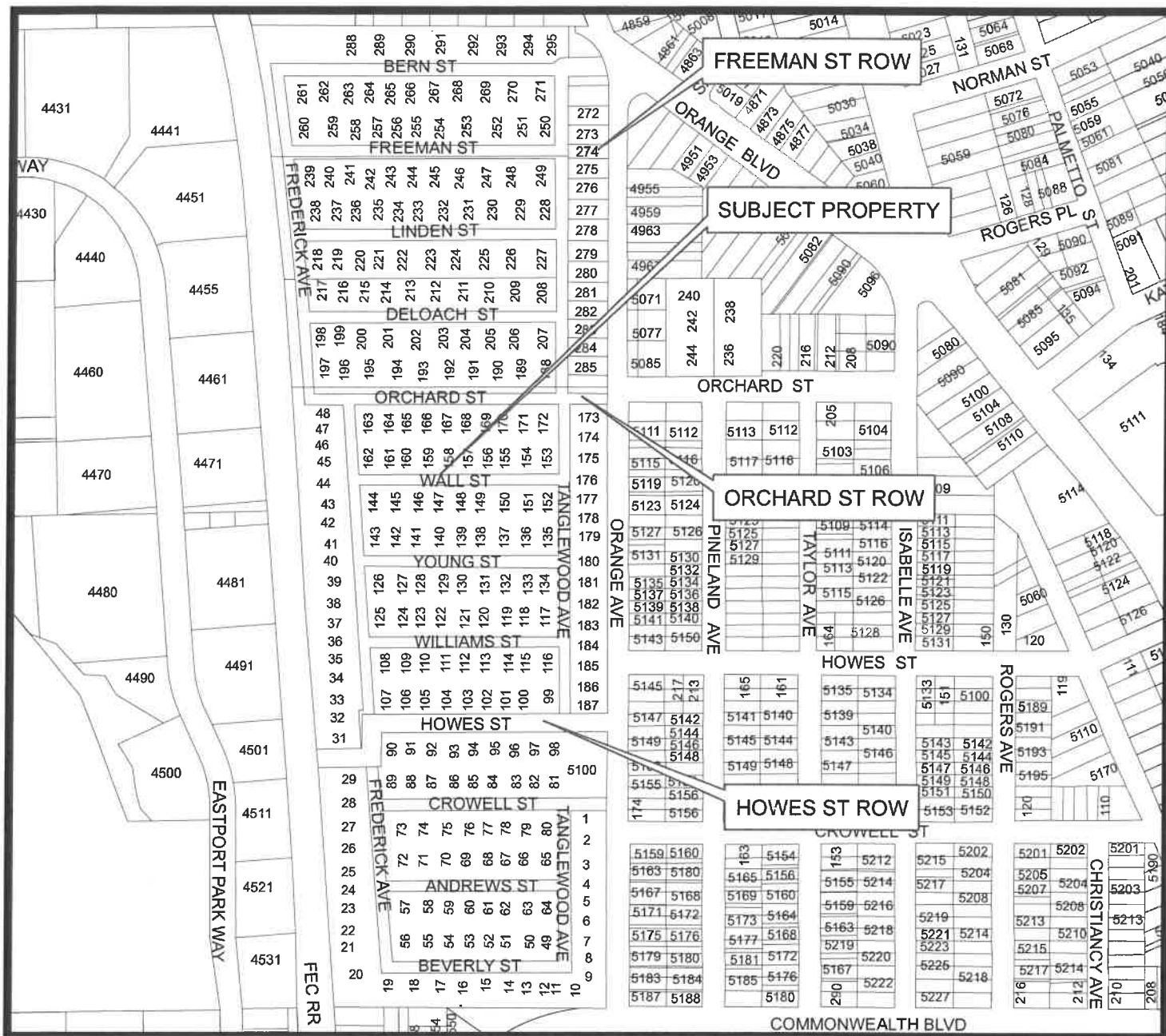
Nearby



Send to:



our Share



Case No.: 19-75000001, - 02, - 03

Applicant: TANGLEWOOD
MOBILE ESTATES, LLC

Location: 5100 Orange Ave

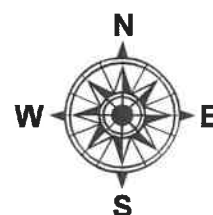
Requested Action:

To obtain vacations
of right-of-way to
resolve title issues
within mobile home park.



Location Map

CITY OF PORT ORANGE
DEPARTMENT OF COMMUNITY DEVELOPMENT



RECOVERED

A. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting

SET 5/8" IRON ROD & CAP LB3079

SET 5/8" IRON ROD & CAP LB3079

50.00' DRAINAGE EASEMENT

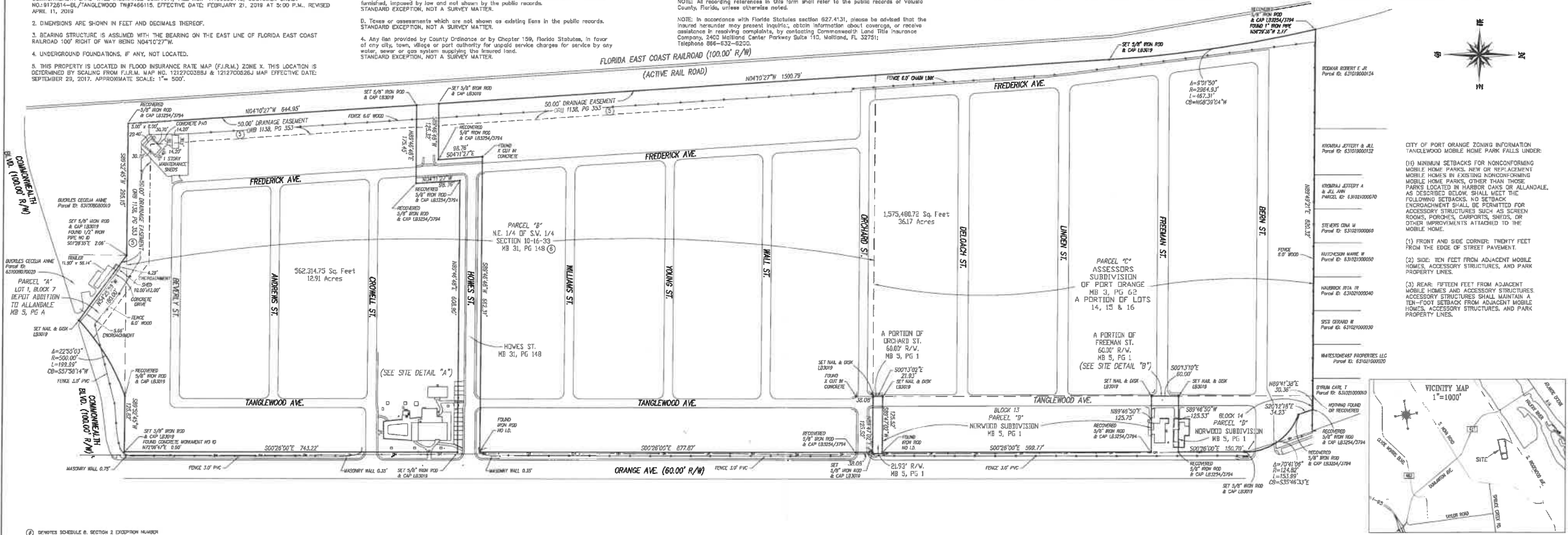
Items 3B, 3C, and 3D will be deleted from the policy(ies) upon receipt of an affidavit acceptable to the Company, affirming that, except as disclosed therein (i) no parties in

SITE DETAIL "B"
 SCALE: 1"=30'

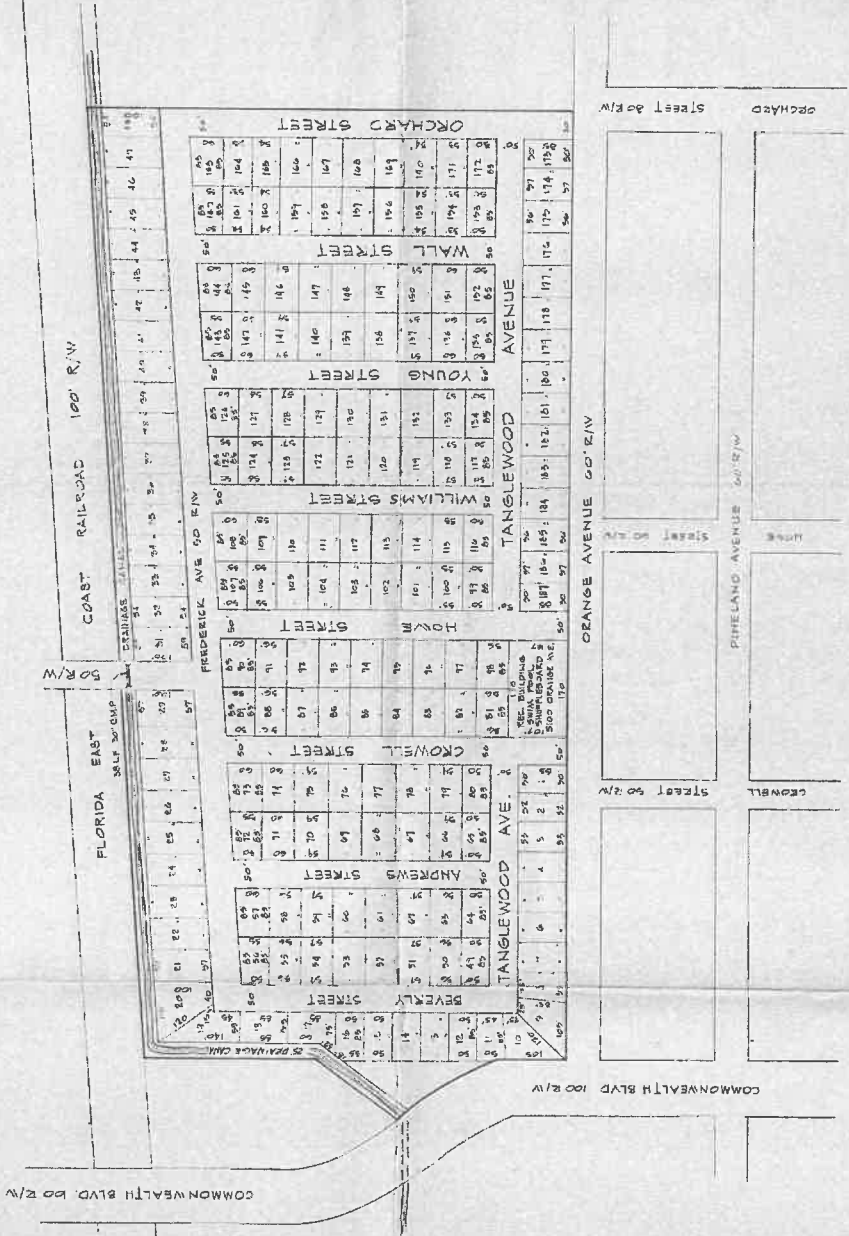
The diagram shows a site layout with the following features and dimensions:

- North Arrow:** Located at the top left, pointing towards the upper left.
- Top Boundary:** A line with a bearing of $S00^{\circ}15'10"E$ and a distance of $\approx 60.00'$.
- Left Boundary:** A line with a bearing of $S00^{\circ}26'00"E$ and a distance of $508.77'$.
- Right Boundary:** A line with a bearing of $S02^{\circ}5'00"E$ and a distance of $155.70'$.
- Internal Dimensions and Bearings:**
 - Top horizontal segment: $60.00'$ R/W.
 - Vertical segment on the right: $11.76'$, $17.02'$, $10.03'$, $19.95'$, $10.08'$.
 - Horizontal segment between vertical lines: $11.42'$, $11.37'$, $11.05'$, $8.02'$.
 - Vertical segment on the left: $124.70'$, $65.59'$, $54.30'$, $12.00'$.
 - Horizontal segment at the bottom: $23.54'$.
 - Vertical segment near the bottom left: $51.51'$, $52.75'$, $55.61'$.
 - Horizontal segment near the bottom right: $27.02'$, $1.50'$.
 - Vertical segment near the bottom right: $11.80'$.
- Structures and Features:**
 - MOBILE HOME:** A rectangular structure with a width of $36.6'$ and a depth of $14.4'$.
 - PROANE TANK:** A circle located below the mobile home.
 - AC PAD:** A rectangular area to the right of the mobile home.
 - METER BOX:** A rectangular area below the AC pad.
 - CONCRETE PAD:** A rectangular area to the left of the mobile home.
- Fence:** A line labeled "FENCE 3.0' PVC" runs horizontally across the bottom of the site.

GRANGE AREA
 NOTE: MOBILE HOME'S W/PS & H/PS ENDOGRAPH INTO AREA ADJACENT TO ORANGE AVE., NOT PART OF THE PARCEL.

[illegible]

SCALE: 1" = 100'



APPROVED
2/16/71



LAYOUT PLAN	
SCOTT, PHILLIPS & WINE, INC. ENGINEERS & SURVEYORS MOBILE, ALA.	
CHARTER	TANGLEWOOD
DATE	MOBILE ESTATES
7-1-70	100' ORANGE - FLORIDA
INVESTED	1-5-71
SHEET	2
OF	6

PEC RAILROAD CORP

TRUSS

20' ORANGE DITCH

PEDERICK AVE 33' R/W

ORLAND ST 42' R/W

EXISTING TANGLEWOOD
MOBILE SYSTEM
TANGLED

DELOACH ST 33' R/W

LINDER ST 33' R/W

TERMINAL ST 33' R/W

TERMINAL ST 33' R/W

T PILE

NOTES:
1. ALL VERTICAL CURVE SHALL BE
DESIGNED TO MEET THE
REQUIREMENTS OF THE
AASHTO MANUAL.

PROPOSED HOME LAKE RENTAL COMMUNITY
TOTAL NO. LOTS 75
BUILDING AREA 1,000 SQ. FT.
TOTAL AREA 1,000 SQ. FT.
TOTAL AREA 1,000 SQ. FT.

DATE	DESCRIPTION OF REVISION			
LOT LAYOUT				
GEORGE C. SCOTT - LAWRENCE E. BENNETT				
DAYTONA BEACH CONSULTING ENGINEERS				
FLORIDA				
TANGLEWOOD UNIT 3				
MOBILE SYSTEM				
PORT ORANGE, FLORIDA				
SCALE	DATE	BY	CHECKED	DATE
1"=50'	5-16-61	JS	JS	
SHEET 3 OF 7				



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: Yes

SUBJECT: (B13) Resolution No. 19-30 - Right-of-Way Vacation - Portion of Freeman Street

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Move to approve Resolution No. 19-30, subject to receipt of the franchise utility release letters, approval of the quit claim deeds by the city attorney, and the easement to the City on Howes Street for the purposes of utilities and drainage.

SUMMARY: The Community Development Department has received an application to vacate right-of-way for portions of 1) Howes Street; 2) Orchard Street; and 3) Freeman Street rights-of-way located within the Tanglewood Mobile Estates. The Tanglewood Mobile Estates is located on the north side of Commonwealth Boulevard, between the railroad tracks and Orange Avenue. D.Scott Baker, Esq. of Zimmerman Kiser Sutcliffe law firm, the applicant for the property owner, Tanglewood Mobile Estates, LLC, has made this request to vacate the portion of the three rights-of-way to resolve title issues within the interior of the mobile home park.

The portion of the Freeman Street right-of-way being requested to be vacated is developed with an existing mobile home and there is no future infrastructure improvement planned in this portion of the Freeman Street rights-of-way.

The requested right-of-way vacation will not eliminate any of the existing access roads into and out of the mobile home park. Residents will still be able to enter and exit using Howes Street, Orchard Street, Crowell Street, and Bern Street.

The right-of-way vacation application and legal descriptions have been reviewed for completeness and accuracy. City departments have reviewed the application and have no outstanding concerns. If the vacation is approved, the city will quit claim to the property owner the right-of-way area vacated as described in the attached Exhibit.

Project No.: Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

1.	Reso. No. 19-30	Reso. No. 19-30 Vacation Freeman Street.pdf
----	-----------------	---

2.	QC Deed Freeman Street	QC Deed Freeman Street.pdf
3.	Exhibit A to Reso. No. 19-30 and QC Deed	FREEMAN ST ROW LEGAL DESC.pdf
4.	ROW Vacation Applications	ROW Vacation Applications.pdf
5.	Aerial	Aerial.pdf
6.	Location Map	Location Map.pdf
7.	Survey of Tanglewood Mobile Estates	Survey of Tanglewood Mobile Estates.pdf
8.	Archived Site Plans of MHP	Archived Site Plans of MHP.pdf

Robin Fenwick
 Tim Burman
 Shannon Balmer
 Jake Johansson
 Robin Fenwick

Created/Initiated - 6/3/2019
 Approved - 6/4/2019
 Approved - 6/5/2019
 Approved - 6/7/2019
 Final Approval - 6/7/2019

RESOLUTION NO. 19-30

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORT ORANGE, VOLUSIA COUNTY, FLORIDA,
VACATING A PORTION OF FREEMAN STREET RIGHT-
OF-WAY; AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE A QUIT CLAIM DEED; PROVIDING FOR
SEVERABILITY; PROVIDING FOR REPEAL OF
CONFLICTING RESOLUTIONS; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, Tanglewood Mobile Estates, LLC a Florida limited liability is the record owner of the property adjoining a portion of right-of-way commonly known as Freeman Street which was dedicated to the City by plat recorded at Map Book 5, Page 1 of the Public Records of Volusia County, Florida; and

WHEREAS, Tanglewood Mobile Estates, LLC has applied to the City to vacate that portion of right-of-way commonly known as Freeman Street which was dedicated to the City by plat recorded at Book 5, Page 1 of the Public Records of Volusia County, Florida; and

WHEREAS, the applicants have complied with the requirements of Section 177.101(4), Florida Statutes; and

WHEREAS, the City Council of the City of Port Orange has the power and authority to vacate a right-of-way under constitutional home rule powers, Chapter 166 and Chapter 177, Florida Statutes; and

WHEREAS, the City Council of the City of Port Orange has determined that the portion of the public right-of-way to be vacated is not presently in use and that adjoining and neighboring owners of property will not be adversely affected by the vacation of a portion of the public right-of-way and it is in the best interest and welfare of the City of Port Orange and the citizens thereof to vacate and abandon this portion of the public right-of-way as more particularly described herein below.

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

Section 1. The interest of the City of Port Orange, Volusia County, Florida, in the following described public right-of-way is hereby declared to be vacated and abandoned and any right, title and interest of the City of Port Orange and any public rights in and to the public right-of-way hereby vacated are renounced and disclaimed. The portion of the dedicated public right-of-way to be vacated is more particularly described as follows:

See **Exhibit "A"**, attached hereto and made a part hereof.

Section 2. The Mayor and City Clerk are hereby authorized and directed to execute the Quit Claim Deed upon approval by the City Attorney.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application thereof.

Section 4. That all resolutions made in conflict with this resolution are hereby repealed.

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

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Prepared by
Shannon K. Balmer
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange FL 32129

Adjacent Property Parcel No. 6310-13-01-0010

Quit-Claim Deed

This Indenture, made this _____ day of _____, 2019, between **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, located in Volusia County, Florida, mailing address: 1000 City Center Circle, Port Orange FL 32129, Grantor, and **TANGLEWOOD MOBILE ESTATES, LLC**, a Florida Limited Liability Company, mailing address: 5100 Orange Avenue, Port Orange, FL 32127, Grantee.

Witnesseth: That the said Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said Grantor, in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release, and quit claim unto the said Grantee, its successor and assigns forever, all the right, title, interest, claim and demand which Grantor has in and to the following described piece or parcel of land, situate, lying and being in the County of Volusia, State of Florida:

A portion of Freeman Street, dedicated to the City of Port Orange, FL by plat as recorded in Map Book 5, Page 1 of the Public Records of Volusia County, Florida, said portion of which having been vacated and abandoned by Resolution No. 19-30, and being more particularly depicted and described on **Exhibit "A,"** attached hereto and made a part hereof by reference.

To Have and to Hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of Grantor, either in law or in equity to the only proper use, benefit and behoof of Grantee forever.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

In Witness Whereof, Grantor has hereunto has caused this Quit-Claim Deed to be executed under seal and on its behalf the day and year first above written.

WITNESSES:

CITY OF PORT ORANGE, FLORIDA
A Chartered Municipal Corporation

Name: _____

By: _____
Donald O. Burnette, Mayor

Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Donald O. Burnette as Mayor, of the City of Port Orange, Florida, a chartered municipal corporation, who acknowledge that he is duly authorized to execute the foregoing agreement on behalf of the city. He is personally known to me.

Notary Public, State of Florida at Large
Printed name of Notary, Commission, Seal & Expiration Date:

WITNESSES:

Name: _____

Attest: _____
Robin L. Fenwick
City Clerk, CMC

Name: _____

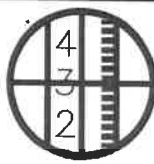
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Robin L. Fenwick, as City Clerk, of the City of Port Orange, Florida, a chartered municipal corporation, who acknowledge that she is duly authorized to execute the foregoing agreement on behalf of the city. She is personally known to me.

Notary Public, State of Florida at Large
Printed name of Notary, Commission, Seal & Expiration Date:

Legal Review By: _____

Date: _____



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD

PORT ORANGE, FL 32127

(386) 761-5385

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WWW.SLIGERASSOCIATES.COM

RECORDING INFORMATION

PARCEL "C"
ASSESSORS
SUBDIVISION
OF PORT ORANGE
MB 3, PG 62
A PORTION OF LOTS
14, 15 & 16

BLOCK 14
NORWOOD
SUBDIVISION
MB 5, PG 1
N89°46'50"E
125.53'

FREEMAN ST.

S89°46'50"W
125.75'

7,538 Sq. Feet

POINT OF BEGINNING

BLOCK 13
NORWOOD
SUBDIVISION
MB 5, PG 1



LEGAL DESCRIPTION:

A PORTION OF LAND LOCATED IN NORWOOD SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 5, PAGE 1, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF THE REPLAT RECORDED IN MAP BOOK 31, PAGE 148, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE N00°26'00"W, ALONG THE WEST LINE OF ORANGE AVENUE A 60.00 FOOT RIGHT OF WAY AND SAID PLAT, 2292.79 FEET TO THE SOUTH RIGHT OF WAY LINE OF FREEMAN STREET AND THE POINT OF BEGINNING; THENCE S89°46'50"W, ALONG SAID SOUTH RIGHT OF WAY LINE 125.75 FEET; THENCE N00°13'10"W, 60.00 FEET; THENCE N89°46'50"E, TO THE WEST RIGHT OF WAY LINE OF SAID ORANGE AVENUE A 60.00 FOOT RIGHT OF WAY, 125.53 FEET; THENCE S00°26'00"E, 60.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 7,538 SQUARE FEET OR 1.17 ACRES, MORE OR LESS.

POINT OF COMMENCEMENT
SOUTHEAST CORNER, PARCEL B, REPLAT
MB 31, PG 148, PUBLIC RECORDS OF
VOLUSIA COUNTY, FLORIDA.

GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.

SKETCH OF DESCRIPTION ONLY
THIS IS NOT A BOUNDARY SURVEY
FOR: ZIMMERMAN KISER & SUTCLIFFE P.A.

JOB # 19-0612

SHEET 1 OF 2

ABBREVIATIONS

W	WETLAND
R/W	RIGHT OF WAY
CL	CENTERLINE
Δ	CENTRAL ANGLE
R	RADIUS
L	ARC LENGTH
CB	CHORD BEARING
CE	CONSERVATION EASEMENT
N.G.V.D.	NATIONAL GEODETIC VERTICAL DATUM
U.S.C. & G.S.	UNITED STATES COAST AND GEODETIC SURVEY

LEGEND

●	IRON ROD WITH CAP
○	IRON PIPE
□	CONCRETE MONUMENT
■	PERMANENT REFERENCE MONUMENT
△	PERMANENT CONTROL POINT
(R)	RADIAL LINE
(NR)	NON-RADIAL LINE
○	EXISTING ELEVATION
□	PROPOSED ELEVATION



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD
PORT ORANGE, FL 32127
(386) 761-5385

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www.sligerassociates.com

SURVEYORS NOTES

1. NOTICE: THERE MAY BE ADDITIONAL RESTRICTIONS AND/OR OTHER MATTERS THAT ARE NOT SHOWN ON THIS PLAT OF SURVEY/SKETCH OF DESCRIPTION THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. THIS SURVEY/SKETCH OF DESCRIPTION PREPARED WITHOUT BENEFIT OF AN ABSTRACT.
2. DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
3. BEARING STRUCTURE IS ASSUMED WITH THE BEARING ON THE WEST LINE OF ORANGE AVENUE A 60' RIGHT OF WAY BEING N00°26'00"W.
4. "NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER." OR ELECTRONIC SIGNATURE.
5. UNLESS OTHERWISE SHOWN, RECORD DISTANCES AND DIRECTIONS AND FIELD MEASURED DISTANCES AND DIRECTIONS ARE THE SAME.

REFERENCE: ALLANDALE GARDENS REPLAT

THIS PLAT OF SURVEY IS CERTIFIED TO AND PREPARED FOR THE SOLE AND EXCLUSIVE BENEFIT OF THE ENTITIES AND INDIVIDUALS LISTED BELOW, ON THE MOST CURRENT DATE, AND SHALL NOT BE RELIED UPON BY ANY OTHER ENTITY OR INDIVIDUAL WHOMSOEVER.

TYPE OF SURVEY	CERTIFIED TO	SURVEY DATE	JOB NUMBER
SKETCH OF	ZIMMERMAN KISER & SUTCLIFFE P.A.	5-3-2019	19-0612
DESCRIPTION			

SHEET 2 OF 2

VALID WITH SIGNATURE & EMBOSSED SEAL ONLY

FOR: ZIMMERMAN KISER & SUTCLIFFE P.A.

SKETCH OF DESCRIPTION	DATE	JOB NO.	P.C.	DRW.	CHECKED BY
BOUNDARY SURVEY	5-3-2019	19-0612		TJ	J BARNES
TOPOGRAPHIC SURVEY					
FOUNDATION LOCATED					
FINAL IMPROVEMENTS					
RECERTIFICATION					
PROPOSED HOUSE LOCATION					

I HEREBY CERTIFY THAT THIS PLAT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER SJ-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

[Signature]
J.F. TAPERT, P.L.S. NO. 4046
J.E. W. BARNES P.S.M. NO. 5576
C.O. VAN KLEECK JR., P.S.M. NO. 6149
MICHAEL S. MURPHY, P.S.M. NO. 6208



CITY OF PORT ORANGE

Department of Community Development
Engineering Division

CASE NO.

#19-75000001

DATE APPLICATION RECEIVED

MAY 06 2019

1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 PHONE: (386) 506-5600 FAX: (386) 506-5699/www.port-orange.org

RIGHT-OF-WAY VACATION APPLICATION

Applicant: Tanglewood Mobile Estates, LLC

Address: c/o D. Scott Baker, Esq., 315 East Robinson Street, Suite 600, Orlando, FL 32801

Phone: 407-425-7010 Fax: 407-418-1251 Email: sbaker@zkslawfirm.com

Adjacent Property 1 Owner(s): Tanglewood Mobile Estates, LLC

Address: same as above Parcel No.: 6310-13-01-0010

Phone: same as above Fax: same as above Email: same as above

Adjacent Property 2 Owner(s): _____

Address: _____ Parcel No.: _____

Phone: _____ Fax: _____ Email: _____

(Provide a separate attachment for additional adjacent properties if necessary)

Legal Description of the proposed right-of-way vacation area *(provide a separate attachment if necessary)*:

see attached

HOWES ST

Purpose for the proposed right-of-way vacation: Resolve title issues within the interior of Tanglewood Mobile Estates mobile home park.

REQUIRED ATTACHMENTS

1. A current, original, sealed property survey of the proposed easement vacation area and the adjacent properties
2. A copy of the recorded deeds for the adjacent properties
3. A property tax payment certification or a copy of the total property tax payment receipt for the adjacent properties
4. The application processing and recording fee payment of \$250.00
5. The completed original application form (notarized signatures required on Page 2)

Applicant Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

I HEREBY GRANT AUTHORIZATION FOR THE ABOVE LISTED APPLICANT TO ACT ON MY BEHALF:

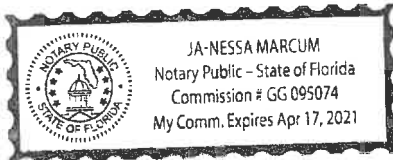
Adjacent Property 1 Owner Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC
Adjacent Property 1 Owner Signature: N/A Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th of May, 2019 by William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC, a Florida limited liability company _____, who is personally known to me or who has produced Florida driver's license _____ as identification and who did (did not) take an oath.

[Signature]
(Signature)
JA-Nessa Marcum
(Name of Notary typed, printed or stamped)

Notary Public, Commission No. GG095074



Adjacent Property 2 Owner Signature: _____ Date: _____

Adjacent Property 2 Owner Signature: _____ Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____, 20____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

(Signature)

(Name of Notary typed, printed or stamped)

Notary Public, Commission No. _____

(Provide a separate attachment for additional adjacent properties if necessary)



CITY OF PORT ORANGE

Department of Community Development
Engineering Division

CASE NO.

#19-75000003

DATE APPLICATION RECEIVED

MAY 06 2019

1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 PHONE: (386) 506-5600 FAX: (386) 506-5699/www.port-orange.org

RIGHT-OF-WAY VACATION APPLICATION

Applicant: Tanglewood Mobile Estates, LLC

Address: c/o D. Scott Baker, Esq., 315 East Robinson Street, Suite 600, Orlando, FL 32801

Phone: 407-425-7010 Fax: 407-418-1251 Email: sbaker@zkslawfirm.com

Adjacent Property 1 Owner(s): Tanglewood Mobile Estates, LLC

Address: same as above Parcel No.: 6310-13-01-0010

Phone: same as above Fax: same as above Email: same as above

Adjacent Property 2 Owner(s): _____

Address: _____ Parcel No.: _____

Phone: _____ Fax: _____ Email: _____

(Provide a separate attachment for additional adjacent properties if necessary)

Legal Description of the proposed right-of-way vacation area *(provide a separate attachment if necessary)*:

see attached

FREEMAN ST

Purpose for the proposed right-of-way vacation: Resolve title issues within the interior of Tanglewood Mobile Estates mobile home park.

REQUIRED ATTACHMENTS

1. A current, original, sealed property survey of the proposed easement vacation area and the adjacent properties
2. A copy of the recorded deeds for the adjacent properties
3. A property tax payment certification or a copy of the total property tax payment receipt for the adjacent properties
4. The application processing and recording fee payment of \$250.00
5. The completed original application form (notarized signatures required on Page 2)

Applicant Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

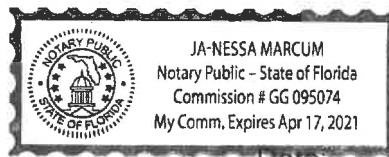
I HEREBY GRANT AUTHORIZATION FOR THE ABOVE LISTED APPLICANT TO ACT ON MY BEHALF:

Adjacent Property 1 Owner Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC
Adjacent Property 1 Owner Signature: N/A Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th of May, 2019 by William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC, a Florida limited liability company, who is personally known to me or who has produced Florida driver's license as identification and who did (did not) take an oath.

[Signature] Notary Public, Commission No. GG 095074
(Name of Notary typed, printed or stamped) Ja-Nessa Marcum



Adjacent Property 2 Owner Signature: _____ Date: _____
Adjacent Property 2 Owner Signature: _____ Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____, 20____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

(Signature) Notary Public, Commission No. _____
(Name of Notary typed, printed or stamped)

(Provide a separate attachment for additional adjacent properties if necessary)



CITY OF PORT ORANGE

Department of Community Development
Engineering Division

CASE NO.

#19-75000002

DATE APPLICATION RECEIVED

MAY 06 2019

1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 PHONE: (386) 506-5600 FAX: (386) 506-5699/www.port-orange.org

RIGHT-OF-WAY VACATION APPLICATION

Applicant: Tanglewood Mobile Estates, LLC

Address: c/o D. Scott Baker, Esq., 315 East Robinson Street, Suite 600, Orlando, FL 32801

Phone: 407-425-7010 Fax: 407-418-1251 Email: sbaker@zkslawfirm.com

Adjacent Property 1 Owner(s): Tanglewood Mobile Estates, LLC

Address: same as above Parcel No.: 6310-13-01-0010

Phone: same as above Fax: same as above Email: same as above

Adjacent Property 2 Owner(s): _____

Address: _____ Parcel No.: _____

Phone: _____ Fax: _____ Email: _____

(Provide a separate attachment for additional adjacent properties if necessary)

Legal Description of the proposed right-of-way vacation area *(provide a separate attachment if necessary)*:

see attached

ORCHARD ST

Purpose for the proposed right-of-way vacation: Resolve title issues within the interior of Tanglewood Mobile Estates mobile home park.

REQUIRED ATTACHMENTS

1. A current, original, sealed property survey of the proposed easement vacation area and the adjacent properties
2. A copy of the recorded deeds for the adjacent properties
3. A property tax payment certification or a copy of the total property tax payment receipt for the adjacent properties
4. The application processing and recording fee payment of \$250.00
5. The completed original application form (notarized signatures required on Page 2)

Applicant Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

I HEREBY GRANT AUTHORIZATION FOR THE ABOVE LISTED APPLICANT TO ACT ON MY BEHALF:

Adjacent Property 1 Owner Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

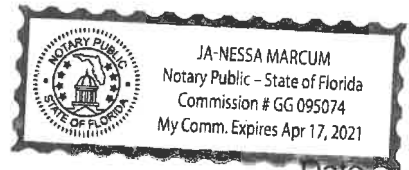
Adjacent Property 1 Owner Signature: N/A Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th of May, 2019 by William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC, a Florida limited liability company _____, who is personally known to me or who has produced Florida drivers license _____ as identification and who did (did not) take an oath.

[Signature]
(Signature)
Ja-Nessa Marcum
(Name of Notary typed, printed or stamped)

Notary Public, Commission No. GG-095074



Adjacent Property 2 Owner Signature: _____ Date: _____

Adjacent Property 2 Owner Signature: _____ Date: _____

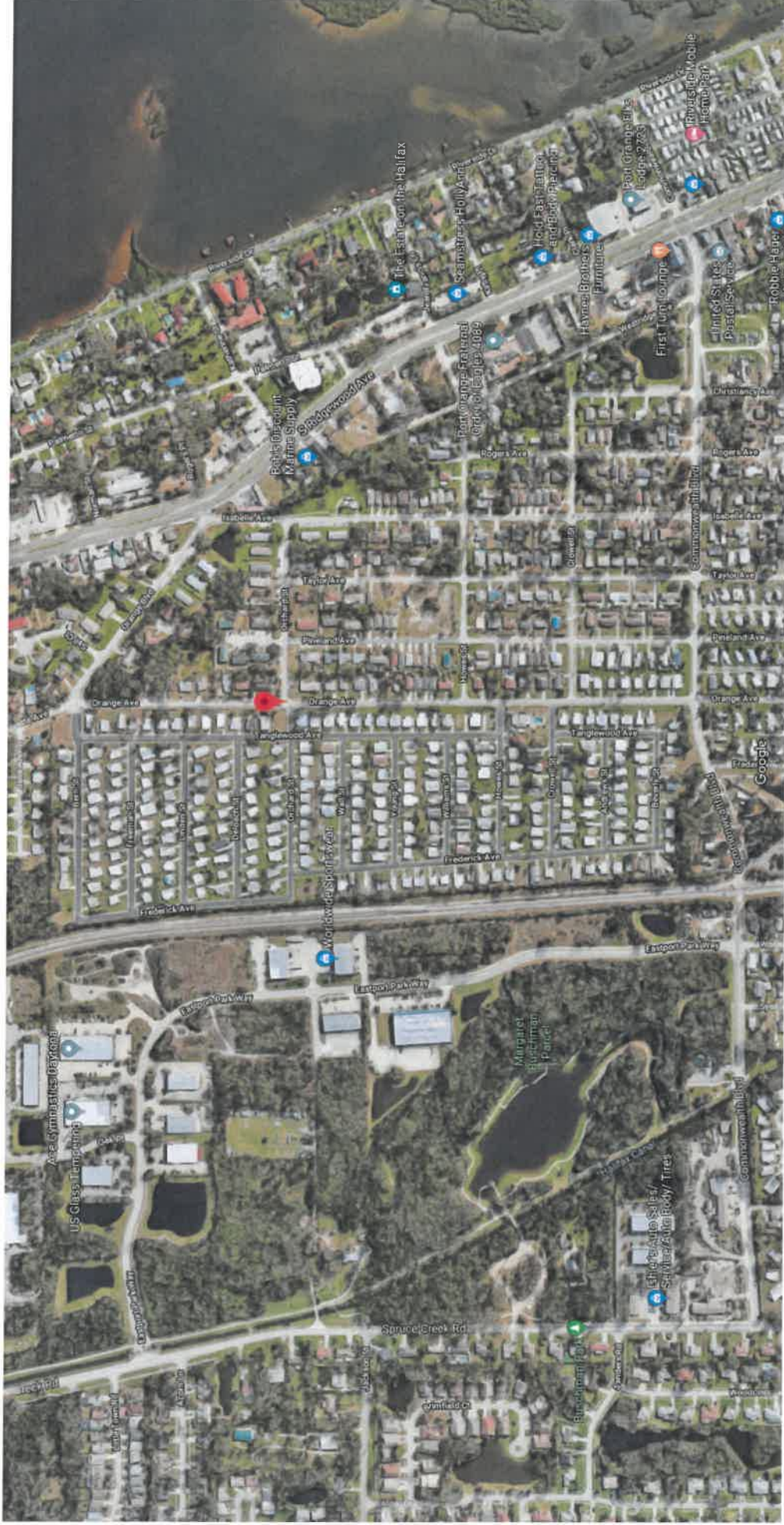
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____, 20____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

(Signature) Notary Public, Commission No. _____

(Name of Notary typed, printed or stamped)

(Provide a separate attachment for additional adjacent properties if necessary)



Orchard St

Port Orange, FL 32127



Directions



Save



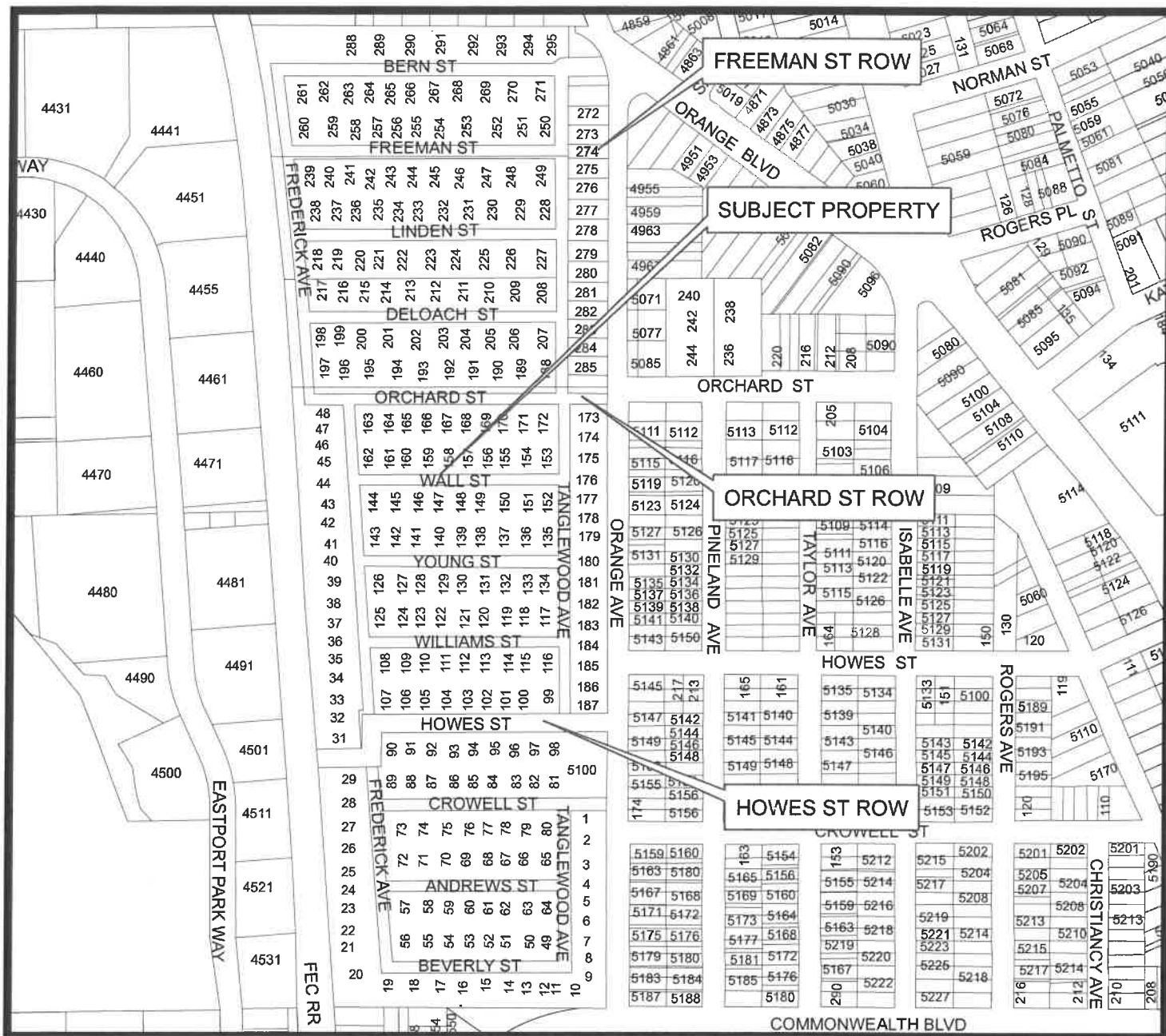
Nearb



end to



Sha



Case No.: 19-75000001, - 02, - 03

Applicant: TANGLEWOOD
MOBILE ESTATES, LLC

Location: 5100 Orange Ave

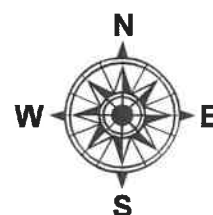
Requested Action:

To obtain vacations
of right-of-way to
resolve title issues
within mobile home park.

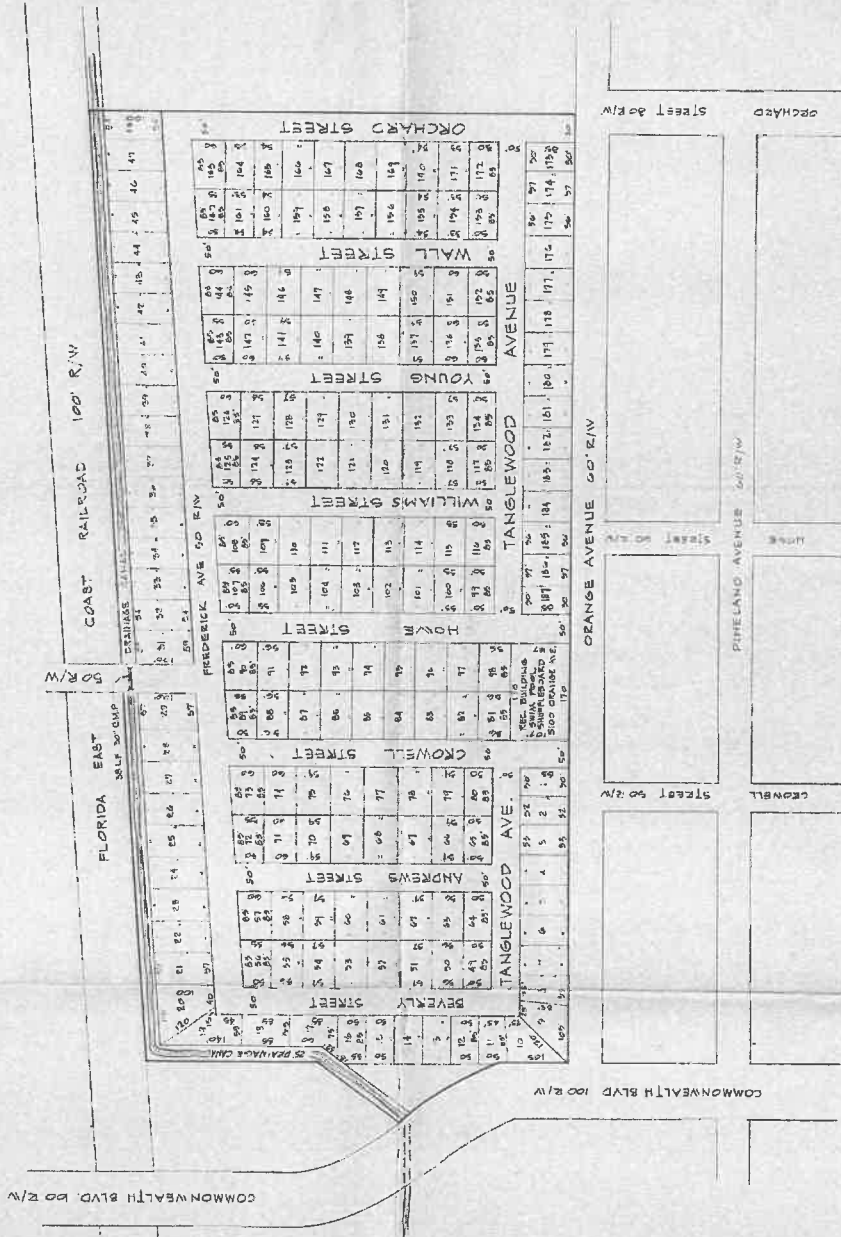


Location Map

CITY OF PORT ORANGE
DEPARTMENT OF COMMUNITY DEVELOPMENT



SCALE: 1" = 100'



APPROVED
7/1/71



LAYOUT PLAN	
OWNER	SCOTT, PHILLIPS & WINE, INC. ENGINEERS & SURVEYORS HOLLY HILL, FLA.
PROJECT	TANGLEWOOD MOBILE ESTATES
DATE	7-1-70
PROJECT	1-5-71
SHEET	2
OF	6

PEC RAILROAD CORP

TRUSS

20' ORANGE DITCH

PEDERICK AVE 33' R/W



ORANGE AVE 60' R/W

EXISTING TANGLEDWOOD MOBILE SYSTEM

SCALE 1"=40'

NOTES:
1. ALL VERTICAL CURVE SHALL BE
DESIGNED TO MEET THE
REQUIREMENTS OF THE
FLORIDA HIGHWAY DEPARTMENT

PROPOSED HOME LAKE TENTAL COMMUNITY
TOTAL NO. LOTS 75
BUILDING PERMIT
TOTAL AREA 16.00 AC.
TOTAL AREA 16.00 AC.

DATE	DESCRIPTION OF REVISION		
LOT LAYOUT			
GEORGE C. SCOTT - LAWRENCE E. BENNETT			
DAYTONA BEACH CONSULTING ENGINEERS			
FLORIDA			
TANGLEDWOOD UNIT 3			
MOBILE HOMES			
PORT ORANGE, FLORIDA			
SCALE	DATE	REVISION	SHEET 3 OF 7
1"=40'	5-16-64	1/2	



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: Yes

SUBJECT: (B14) Resolution No. 19-31 - Right-of-Way Vacation - Portion of Orchard Street

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Move to approve Resolution No. 19-31, subject to receipt of the franchise utility release letters, approval of the quit claim deeds by the city attorney, and the easement to the City on Howes Street for the purposes of utilities and drainage.

SUMMARY: The Community Development Department has received an application to vacate right-of-way for portions of 1) Howes Street; 2) Orchard Street; and 3) Freeman Street rights-of-way located within the Tanglewood Mobile Estates. The Tanglewood Mobile Estates is located on the north side of Commonwealth Boulevard, between the railroad tracks and Orange Avenue. D. Scott Baker, Esq. of Zimmerman Kiser Sutcliffe law firm, the applicant for the property owner, Tanglewood Mobile Estates, LLC, has made this request to vacate the portion of the three rights-of-way to resolve title issues within the interior of the mobile home park.

The portion of Orchard Street right-of-way being requested to be vacated is undeveloped and there is no future infrastructure improvement planned in the portion of the rights-of-way. The requested right-of-way vacation will not eliminate any of the existing access roads into and out of the mobile home park. Residents will still be able to enter and exit using Howes Street, Orchard Street, Crowell Street, and Bern Street.

The right-of-way vacation application and legal descriptions have been reviewed for completeness and accuracy. City departments have reviewed the application and have no outstanding concerns. The property owner has agreed to provide the easement requested over Howes Street as part of the right-of-way vacation request. If the vacation is approved, the city will quit claim to the property owner the right-of-way area vacated as described in the attached Exhibit.

Project No.: Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

1.	Reso. No. 19-31	Reso. No. 19-31 .pdf
----	-----------------	----------------------

2.	QC Deed Orchard Street	QC Deed Orchard Street.pdf
3.	Exhibit A to Reso. No. 19-31 and QC Deed	ORCHARD ST ROW LEGAL DESC.pdf
4.	ROW Vacation Applications	ROW Vacation Applications.pdf
5.	Aerial	Aerial.pdf
6.	Location Map	Location Map.pdf
7.	Survey of Tanglewood Mobile Estates	Survey of Tanglewood Mobile Estates.pdf
8.	Archived Site Plans of MHP	Archived Site Plans of MHP.pdf

Robin Fenwick
 Tim Burman
 Shannon Balmer
 Jake Johansson
 Robin Fenwick

Created/Initiated - 6/3/2019
 Approved - 6/4/2019
 Approved - 6/5/2019
 Approved - 6/7/2019
 Final Approval - 6/7/2019

RESOLUTION NO. 19-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORT ORANGE, VOLUSIA COUNTY, FLORIDA, VACATING A
PORTION OF ORCHARD STREET RIGHT-OF-WAY;
AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE
A QUIT CLAIM DEED; PROVIDING FOR SEVERABILITY;
PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS;
AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Tanglewood Mobile Estates, LLC, a Florida limited liability is the record owner of the properties adjoining a portion of right-of-way commonly known as Orchard Street which was dedicated to the City by plat recorded at Map Book 5, Page 1 of the Public Records of Volusia County, Florida; and

WHEREAS, Tanglewood Mobile Estates, LLC, has applied to the City to vacate that portion of right-of-way commonly known as Orchard Street which was dedicated to the City by plat recorded at Book 5, Page 1 of the Public Records of Volusia County, Florida; and

WHEREAS, the applicants have complied with the requirements of Section 177.101(4), Florida Statutes; and

WHEREAS, the City Council of the City of Port Orange has the power and authority to vacate a right-of-way under constitutional home rule powers, Chapter 166 and Chapter 177, Florida Statutes; and

WHEREAS, the City Council of the City of Port Orange has determined that the portion of the public right-of-way to be vacated is not presently in use and that adjoining and neighboring owners of property will not be adversely affected by the vacation of a portion of the public right-of-way and it is in the best interest and welfare of the City of Port Orange and the citizens thereof to vacate and abandon this portion of the public right-of-way as more particularly described herein below.

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

Section 1. The interest of the City of Port Orange, Volusia County, Florida, in the following described public right-of-way is hereby declared to be vacated and abandoned and any right, title and interest of the City of Port Orange and any public rights in and to the public right-of-way hereby vacated are renounced and disclaimed. The portion of the dedicated public right-of-way to be vacated is more particularly described as follows:

See **Exhibit "A"**, attached hereto and made a part hereof.

Section 2. The Mayor and City Clerk are hereby authorized and directed to execute the Quit Claim Deed upon approval by the City Attorney.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application thereof.

Section 4. That all resolutions made in conflict with this resolution are hereby repealed.

Section 5. This resolution shall become effective immediately upon adoption.

MAYOR ALLEN GREEN

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Prepared by
Shannon K. Balmer
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange FL 32129

Adjacent Property Parcel No. 6310-13-01-0010

Quit-Claim Deed

This Indenture, made this _____ day of _____, 2019, between **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, located in Volusia County, Florida, mailing address: 1000 City Center Circle, Port Orange FL 32129, Grantor, and **TANGLEWOOD MOBILE ESTATES, LLC**, a Florida Limited Liability Company, mailing address: 5100 Orange Avenue, Port Orange, FL 32127, Grantee.

Witnesseth: That the said Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said Grantor, in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release, and quit claim unto the said Grantee, its successor and assigns forever, all the right, title, interest, claim and demand which Grantor has in and to the following described piece or parcel of land, situate, lying and being in the County of Volusia, State of Florida:

A portion of Orchard Street, dedicated to the City of Port Orange, FL by plat as recorded in Map Book 5, Page 1 of the Public Records of Volusia County, Florida, said portion of which having been vacated and abandoned by Resolution No. 19-31, and being more particularly depicted and described on **Exhibit "A,"** attached hereto and made a part hereof by reference.

To Have and to Hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of Grantor, either in law or in equity to the only proper use, benefit and behoof of Grantee forever.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

In Witness Whereof, Grantor has hereunto has caused this Quit-Claim Deed to be executed under seal and on its behalf the day and year first above written.

WITNESSES:

CITY OF PORT ORANGE, FLORIDA
A Chartered Municipal Corporation

Name: _____

By: _____
Donald O. Burnette, Mayor

Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Donald O. Burnette as Mayor, of the City of Port Orange, Florida, a chartered municipal corporation, who acknowledge that he is duly authorized to execute the foregoing agreement on behalf of the city. He is personally known to me.

Notary Public, State of Florida at Large
Printed name of Notary, Commission, Seal & Expiration Date:

WITNESSES:

Attest: _____
Robin L. Fenwick
City Clerk, CMC

Name: _____

Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Robin L. Fenwick, as City Clerk, of the City of Port Orange, Florida, a chartered municipal corporation, who acknowledge that she is duly authorized to execute the foregoing agreement on behalf of the city. She is personally known to me.

Notary Public, State of Florida at Large
Printed name of Notary, Commission, Seal & Expiration Date:

Legal Review By: _____

Date: _____



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD

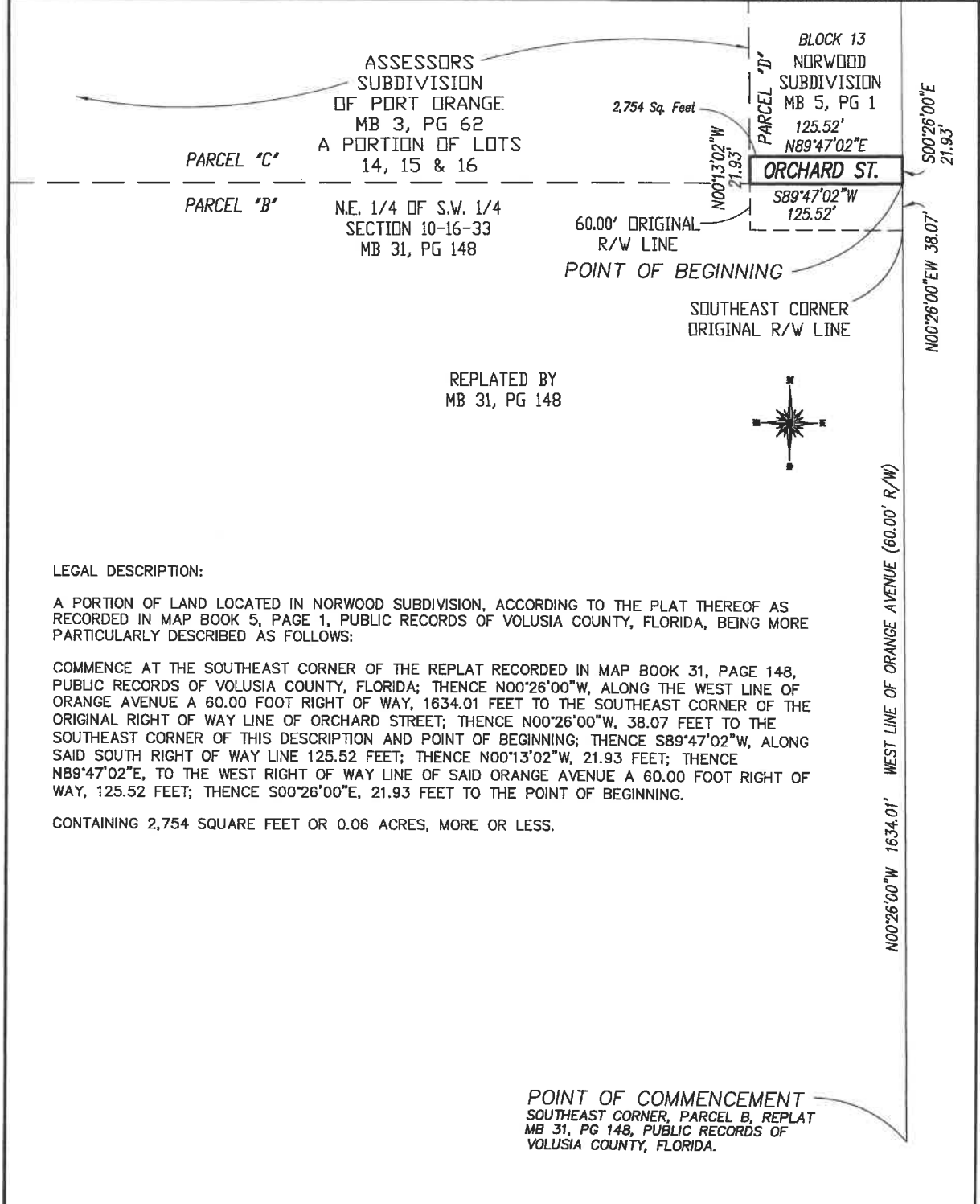
PORT ORANGE, FL 32127

(386) 761-5385

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WWW.SLIGERASSOCIATES.COM

RECORDING INFORMATION



LEGAL DESCRIPTION:

A PORTION OF LAND LOCATED IN NORWOOD SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 5, PAGE 1, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF THE REPLAT RECORDED IN MAP BOOK 31, PAGE 148, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE N00°26'00"W, ALONG THE WEST LINE OF ORANGE AVENUE A 60.00 FOOT RIGHT OF WAY, 1634.01 FEET TO THE SOUTHEAST CORNER OF THE ORIGINAL RIGHT OF WAY LINE OF ORCHARD STREET; THENCE N00°26'00"W, 38.07 FEET TO THE SOUTHEAST CORNER OF THIS DESCRIPTION AND POINT OF BEGINNING; THENCE S89°47'02"W, ALONG SAID SOUTH RIGHT OF WAY LINE 125.52 FEET; THENCE N00°13'02"W, 21.93 FEET; THENCE N89°47'02"E, TO THE WEST RIGHT OF WAY LINE OF SAID ORANGE AVENUE A 60.00 FOOT RIGHT OF WAY, 125.52 FEET; THENCE S00°26'00"E, 21.93 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,754 SQUARE FEET OR 0.06 ACRES, MORE OR LESS.

GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.

SKETCH OF DESCRIPTION ONLY
THIS IS NOT A BOUNDARY SURVEY
FOR: ZIMMERMAN KISER & SUTCLIFFE P.A.

JOB # 19-0612

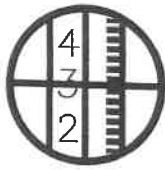
SHEET 1 OF 2

ABBREVIATIONS

W	WETLAND
R/W	RIGHT OF WAY
CL	CENTERLINE
Δ	CENTRAL ANGLE
R	RADIUS
L	ARC LENGTH
CB	CHORD BEARING
CE	CONSERVATION EASEMENT
N.G.V.D.	NATIONAL GEODETIC VERTICAL DATUM
U.S.C. & G.S.	UNITED STATES COAST AND GEODETIC SURVEY

LEGEND

●	IRON ROD WITH CAP
○	IRON PIPE
□	CONCRETE MONUMENT
■	PERMANENT REFERENCE MONUMENT
△	PERMANENT CONTROL POINT
(R)	RADIAL LINE
(NR)	NON-RADIAL LINE
○	EXISTING ELEVATION
□	PROPOSED ELEVATION



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD
PORT ORANGE, FL 32127
(386) 761-5385

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www.sligerassociates.com

SURVEYORS NOTES

1. NOTICE: THERE MAY BE ADDITIONAL RESTRICTIONS AND/OR OTHER MATTERS THAT ARE NOT SHOWN ON THIS PLAT OF SURVEY/SKETCH OF DESCRIPTION THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. THIS SURVEY/SKETCH OF DESCRIPTION PREPARED WITHOUT BENEFIT OF AN ABSTRACT.
2. DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
3. BEARING STRUCTURE IS ASSUMED WITH THE BEARING ON THE WEST LINE OF ORANGE AVENUE A 60' RIGHT OF WAY BEING N00°26'00"W.
4. "NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER." OR ELECTRONIC SIGNATURE.
5. UNLESS OTHERWISE SHOWN, RECORD DISTANCES AND DIRECTIONS AND FIELD MEASURED DISTANCES AND DIRECTIONS ARE THE SAME.

REFERENCE: ALLANDALE GARDENS REPLAT

THIS PLAT OF SURVEY IS CERTIFIED TO AND PREPARED FOR THE SOLE AND EXCLUSIVE BENEFIT OF THE ENTITIES AND INDIVIDUALS LISTED BELOW, ON THE MOST CURRENT DATE, AND SHALL NOT BE RELIED UPON BY ANY OTHER ENTITY OR INDIVIDUAL WHOMSOEVER.

TYPE OF SURVEY	CERTIFIED TO	SURVEY DATE	JOB NUMBER
SKETCH OF	ZIMMERMAN KISER & SUTCLIFFE P.A.	5-3-2019	19-0612
DESCRIPTION			

SHEET 2 OF 2

VALID WITH SIGNATURE & EMBOSSED SEAL ONLY

FOR: ZIMMERMAN KISER & SUTCLIFFE P.A.

	DATE	JOB NO.	P.C.	DRW.	CHECKED BY
SKETCH OF DESCRIPTION	5-3-2019	19-0612		TJ	J BARNES
BOUNDARY SURVEY					
TOPOGRAPHIC SURVEY					
FOUNDATION LOCATED					
FINAL IMPROVEMENTS					
RECERTIFICATION					
PROPOSED HOUSE LOCATION					

I HEREBY CERTIFY THAT THIS PLAT MEETS THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

J. E. Barnes
J.E. BARNES, P.L.S. NO. 4046
J.E. W. BARNES P.S.M. NO. 5576
C.O. VAN KLEECK JR., P.S.M. NO. 6141
MICHAEL S. MURPHY, P.S.M. NO. 6208



CITY OF PORT ORANGE

Department of Community Development
Engineering Division

CASE NO.

#19-75000001

DATE APPLICATION RECEIVED

MAY 06 2019

1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 PHONE: (386) 506-5600 FAX: (386) 506-5699/www.port-orange.org

RIGHT-OF-WAY VACATION APPLICATION

Applicant: Tanglewood Mobile Estates, LLC

Address: c/o D. Scott Baker, Esq., 315 East Robinson Street, Suite 600, Orlando, FL 32801

Phone: 407-425-7010 Fax: 407-418-1251 Email: sbaker@zkslawfirm.com

Adjacent Property 1 Owner(s): Tanglewood Mobile Estates, LLC

Address: same as above Parcel No.: 6310-13-01-0010

Phone: same as above Fax: same as above Email: same as above

Adjacent Property 2 Owner(s): _____

Address: _____ Parcel No.: _____

Phone: _____ Fax: _____ Email: _____

(Provide a separate attachment for additional adjacent properties if necessary)

Legal Description of the proposed right-of-way vacation area *(provide a separate attachment if necessary)*:

see attached

HOWES ST

Purpose for the proposed right-of-way vacation: Resolve title issues within the interior of Tanglewood Mobile Estates mobile home park.

REQUIRED ATTACHMENTS

1. A current, original, sealed property survey of the proposed easement vacation area and the adjacent properties
2. A copy of the recorded deeds for the adjacent properties
3. A property tax payment certification or a copy of the total property tax payment receipt for the adjacent properties
4. The application processing and recording fee payment of \$250.00
5. The completed original application form (notarized signatures required on Page 2)

Applicant Signature: X William Morgan Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

I HEREBY GRANT AUTHORIZATION FOR THE ABOVE LISTED APPLICANT TO ACT ON MY BEHALF:

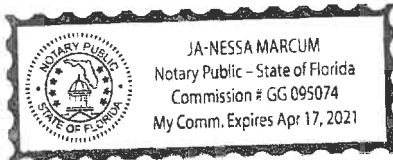
Adjacent Property 1 Owner Signature: X William Morgan Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC
Adjacent Property 1 Owner Signature: N/A Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th of May, 2019 by William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC, a Florida limited liability company _____, who is personally known to me or who has produced Florida driver's license _____ as identification and who did (did not) take an oath.

JA-Nessa Marcum
(Signature)
(Name of Notary typed, printed or stamped)

Notary Public, Commission No. GG095074



Adjacent Property 2 Owner Signature: _____ Date: _____

Adjacent Property 2 Owner Signature: _____ Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____, 20____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

(Signature)

(Name of Notary typed, printed or stamped)

Notary Public, Commission No. _____

(Provide a separate attachment for additional adjacent properties if necessary)



CITY OF PORT ORANGE

Department of Community Development
Engineering Division

CASE NO.

#19-75000003

DATE APPLICATION RECEIVED

MAY 06 2019

1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 PHONE: (386) 506-5600 FAX: (386) 506-5699/www.port-orange.org

RIGHT-OF-WAY VACATION APPLICATION

Applicant: Tanglewood Mobile Estates, LLC

Address: c/o D. Scott Baker, Esq., 315 East Robinson Street, Suite 600, Orlando, FL 32801

Phone: 407-425-7010 Fax: 407-418-1251 Email: sbaker@zkslawfirm.com

Adjacent Property 1 Owner(s): Tanglewood Mobile Estates, LLC

Address: same as above Parcel No.: 6310-13-01-0010

Phone: same as above Fax: same as above Email: same as above

Adjacent Property 2 Owner(s): _____

Address: _____ Parcel No.: _____

Phone: _____ Fax: _____ Email: _____

(Provide a separate attachment for additional adjacent properties if necessary)

Legal Description of the proposed right-of-way vacation area *(provide a separate attachment if necessary)*:

see attached

FREEMAN ST

Purpose for the proposed right-of-way vacation: Resolve title issues within the interior of Tanglewood Mobile Estates mobile home park.

REQUIRED ATTACHMENTS

1. A current, original, sealed property survey of the proposed easement vacation area and the adjacent properties
2. A copy of the recorded deeds for the adjacent properties
3. A property tax payment certification or a copy of the total property tax payment receipt for the adjacent properties
4. The application processing and recording fee payment of \$250.00
5. The completed original application form (notarized signatures required on Page 2)

Applicant Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

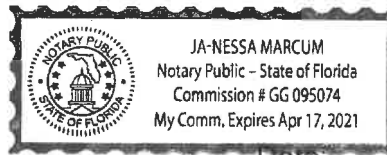
I HEREBY GRANT AUTHORIZATION FOR THE ABOVE LISTED APPLICANT TO ACT ON MY BEHALF:

Adjacent Property 1 Owner Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC
Adjacent Property 1 Owner Signature: N/A Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th of May, 2019 by William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC, a Florida limited liability company, who is personally known to me or who has produced Florida driver's license as identification and who did (did not) take an oath.

[Signature] Notary Public, Commission No. GG 095074
(Name of Notary typed, printed or stamped) Ja-Nessa Marcum



Adjacent Property 2 Owner Signature: _____ Date: _____
Adjacent Property 2 Owner Signature: _____ Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____, 20____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

(Signature) Notary Public, Commission No. _____
(Name of Notary typed, printed or stamped)

(Provide a separate attachment for additional adjacent properties if necessary)



CITY OF PORT ORANGE

Department of Community Development
Engineering Division

CASE NO.

#19-75000002

DATE APPLICATION RECEIVED

MAY 06 2019

1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129 PHONE: (386) 506-5600 FAX: (386) 506-5699/www.port-orange.org

RIGHT-OF-WAY VACATION APPLICATION

Applicant: Tanglewood Mobile Estates, LLC

Address: c/o D. Scott Baker, Esq., 315 East Robinson Street, Suite 600, Orlando, FL 32801

Phone: 407-425-7010 Fax: 407-418-1251 Email: sbaker@zkslawfirm.com

Adjacent Property 1 Owner(s): Tanglewood Mobile Estates, LLC

Address: same as above Parcel No.: 6310-13-01-0010

Phone: same as above Fax: same as above Email: same as above

Adjacent Property 2 Owner(s): _____

Address: _____ Parcel No.: _____

Phone: _____ Fax: _____ Email: _____

(Provide a separate attachment for additional adjacent properties if necessary)

Legal Description of the proposed right-of-way vacation area *(provide a separate attachment if necessary)*:

see attached

ORCHARD ST

Purpose for the proposed right-of-way vacation: Resolve title issues within the interior of Tanglewood Mobile Estates mobile home park.

REQUIRED ATTACHMENTS

1. A current, original, sealed property survey of the proposed easement vacation area and the adjacent properties
2. A copy of the recorded deeds for the adjacent properties
3. A property tax payment certification or a copy of the total property tax payment receipt for the adjacent properties
4. The application processing and recording fee payment of \$250.00
5. The completed original application form (notarized signatures required on Page 2)

Applicant Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

I HEREBY GRANT AUTHORIZATION FOR THE ABOVE LISTED APPLICANT TO ACT ON MY BEHALF:

Adjacent Property 1 Owner Signature: X [Signature] Date: 5-6-19
William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC

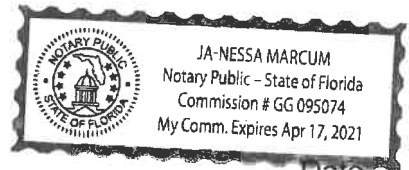
Adjacent Property 1 Owner Signature: N/A Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 6th of May, 2019 by William Morgan, as Managing Member of Tanglewood Mobile Estates, LLC, a Florida limited liability company _____, who is personally known to me or who has produced Florida drivers license _____ as identification and who did (did not) take an oath.

[Signature]
(Signature)
Ja-Nessa Marcum
(Name of Notary typed, printed or stamped)

Notary Public, Commission No. GG-095074



Adjacent Property 2 Owner Signature: _____ Date: _____

Adjacent Property 2 Owner Signature: _____ Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

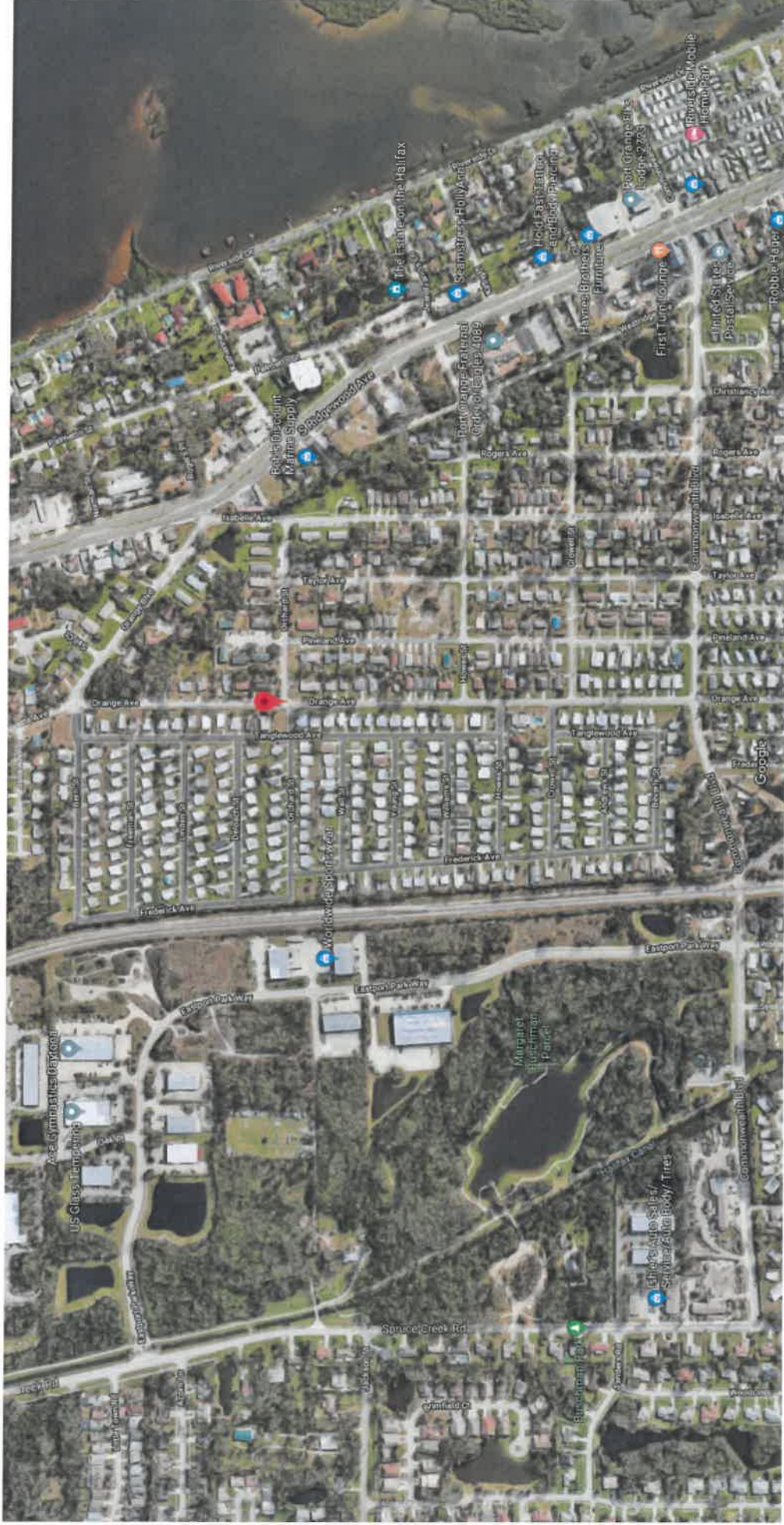
The foregoing instrument was acknowledged before me this _____, 20____ by _____, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.

(Signature)

Notary Public, Commission No. _____

(Name of Notary typed, printed or stamped)

(Provide a separate attachment for additional adjacent properties if necessary)



Orchard St

Port Orange, FL 32127



Directions



Save



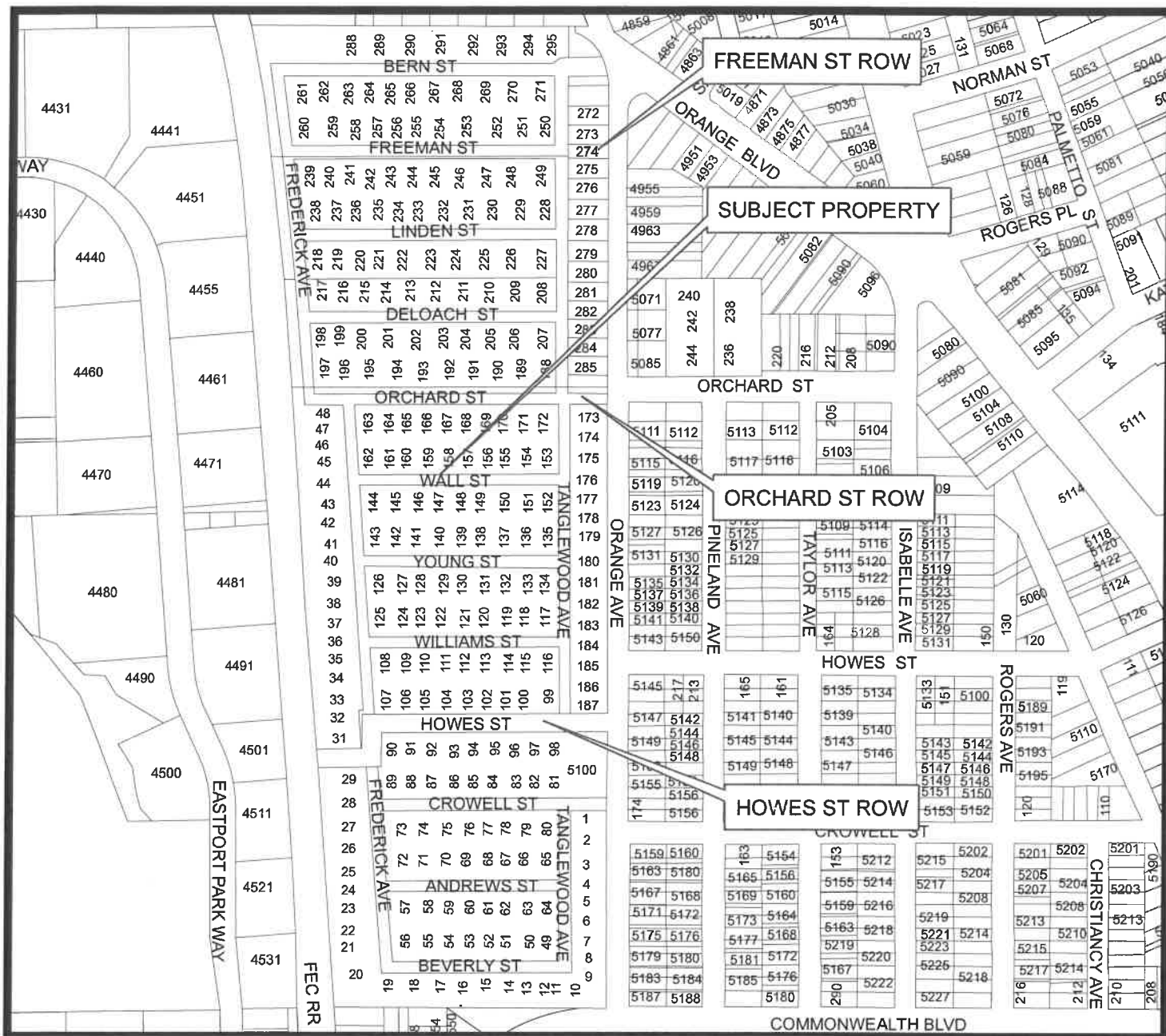
Nearby



end to:



Shan



Case No.: 19-75000001, - 02, - 03

Applicant: TANGLEWOOD
MOBILE ESTATES, LLC

Location: 5100 Orange Ave

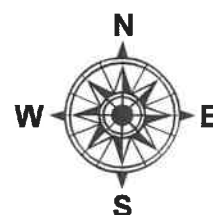
Requested Action:

To obtain vacations
of right-of-way to
resolve title issues
within mobile home park.

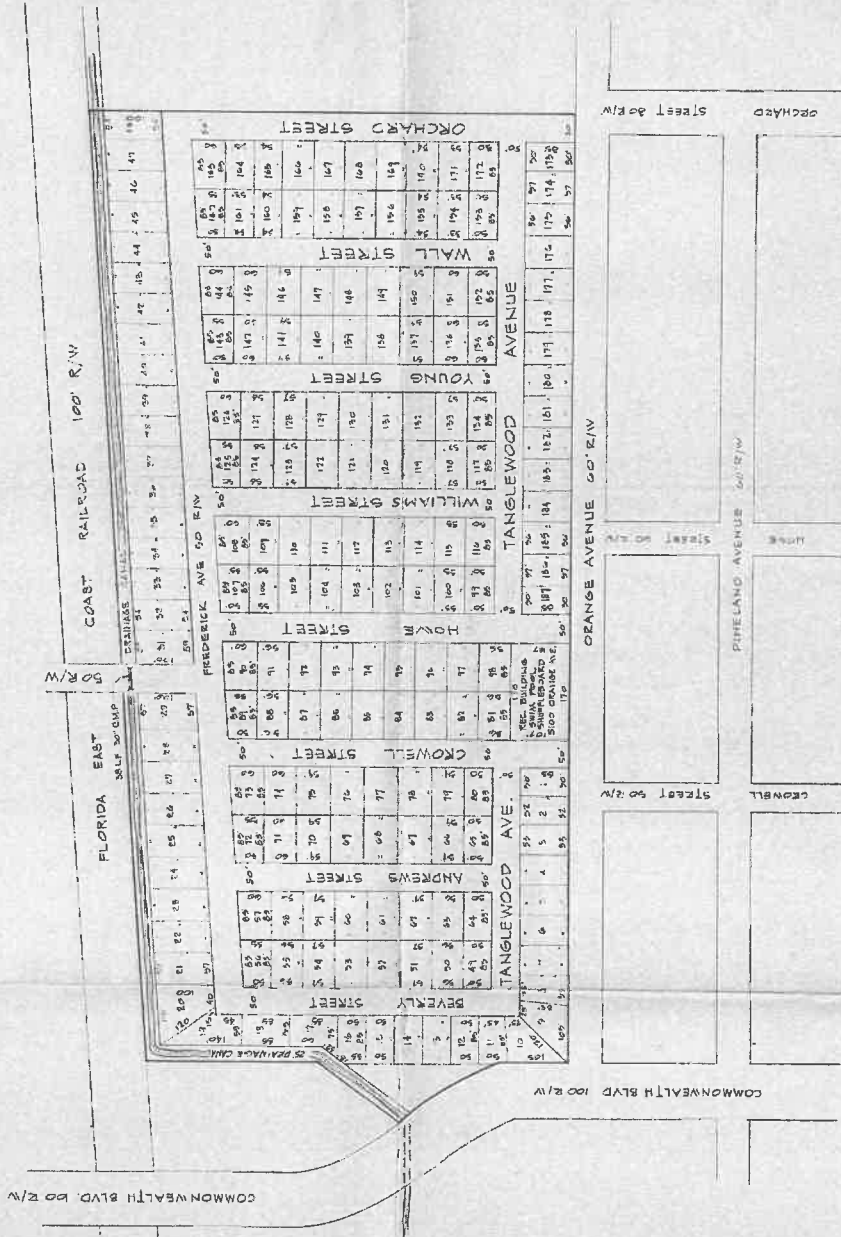


Location Map

CITY OF PORT ORANGE
DEPARTMENT OF COMMUNITY DEVELOPMENT



SCALE: 1" = 100'



APPROVED
2/16/71



LAYOUT PLAN	
SCOTT, PHILLIPS & WINE, INC. ENGINEERS & SURVEYORS MOBILE, ALA.	
CHARTER	TANGLEWOOD
DATE	MOBILE ESTATES
7-1-70	100' ORANGE - FLORIDA
INVESTED	1-5-71
SHEET	2 OF 6



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (B15) Cost Participation Agreement - FPL/Canal View Blvd. Improvements

DEPARTMENT: Public Works

GOAL:

RECOMMENDED MOTION: Move to approve a cost participation agreement with Florida Power & Light for road and drainage improvements on a portion of Canal View Blvd. in the amount not to exceed \$63,905.36.

SUMMARY: In FY19, Public Works Capital Improvement Project included a project to address the Canal View Blvd. drainage system. The project entails installing curbing on the canal side of the roadway, storm drains to direct the water into the canal without eroding the banks of the canal, and regrading/paving the roadway. This work is designed to reduce erosion due to stormwater run off.

In November 2018, FPL approached the City with a site plan to develop their property on the east side of Ken Bern Park. The City proposes a partnership with FPL to provide some of those improvements along Canal View Blvd.

The cost to improve the roadway from the east side of Ken Bern Park to the corner of Canal View and Spruce Creek Road is \$108,394.16. The City's portion would be \$63,905.36

Project No.: Funding Account No.:

Presenter: Lynn Stevens

ATTACHMENTS:

1.	FPL Cost Share Agreement 6-6-19	FPL Cost Share Agreement clean 6-6-19.pdf
2.	Department Memo - cost participation with FPL	Department Memo - cost participation with FPL.pdf

Penelope Cruz
Kynah Cockcroft
Julia Wiggins
Lynn Stevens
Scott Neils

Created/Initiated - 5/6/2019
Approved - 5/16/2019
Approved - 5/16/2019
Approved - 5/20/2019
Approved - 5/20/2019

Shannon Balmer
Jake Johansson
Robin Fenwick

Approved - 6/6/2019
Approved - 6/7/2019
Final Approval - 6/7/2019

Utilities Cost Participation Agreement

THIS UTILITIES COST PARTICIPATION AGREEMENT ("Agreement") is made and entered into by and between **City of Port Orange**, a Chartered Florida Municipality located in Volusia County, Florida, 1000 City Center Circle, Port Orange, Florida 32129 ("City") and **Florida Power & Light Company**, a Florida corporation, whose mailing address is 700 Universe Blvd. Juno Beach, FL 33408 ("Developer"); collectively hereinafter "Parties" or "Party".

RECITALS

WHEREAS, the Developer is the owner of certain real property described on **Exhibit "A"**, attached hereto and referred to herein as the Subject Property ("Subject Property"); and

WHEREAS, the Developer has submitted to the City a plan for expansion to an existing service yard on approximately Nine and Nine-tenths (± 9.9) acres of real property designated as Expansion of FPL Service Yard ("Project"); and

WHEREAS, the Land Development Code of the City of Port Orange, Florida ("LDC") sets forth requirements for site developments within the City; and

WHEREAS, this Project would typically require an extension of Samms Avenue; and

WHEREAS, requiring a partial extension of Samms is not the best use of resources; and

WHEREAS, the Developer has requested a waiver from the extension requirements due to the negative impacts, such as eliminating natural buffer, removal of historical trees, and increased drainage concerns; and

WHEREAS, in lieu of extending Samms Avenue the full length of the Subject Property, the Developer has requested to cost share necessary drainage improvements along Canal View Road, pursuant to Chapter 11, Sec. 6(c)(4) of the LDC; and

WHEREAS, the Developer is willing to design and construct certain drainage improvements in an effort to relieve the drainage issues in the area of Canal View Road ("Drainage Improvements"), more particularly described herein and depicted in the sketch of the Drainage Improvements, attached hereto as part of **Exhibit "B"** and incorporated herein by reference (collectively "Scope of Work") in exchange for monetary assistance from the City with the costs of the Drainage Improvements; and

WHEREAS, the Drainage Improvements will greatly improve the drainage issues in the affected area surrounding the Project; and

WHEREAS, pursuant to Chapter 11, Section 6 of the Code of Ordinances, City of Port Orange, Florida, the City may cost participate at the sole discretion of the Port Orange City Council ("City Council"); and

WHEREAS, Developer and City have reviewed the cost estimate, attached hereto as **Exhibit "C"**, incorporated herein by reference ("Estimate") and entered into this Agreement with the understanding that such Estimate is an accurate estimate of the actual costs of the Drainage Improvements as set forth herein; and

WHEREAS, the parties desire to memorialize their agreement in writing, as more fully set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties are as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by reference.
2. Developer's Obligations. Subject to and in accordance with the terms and conditions of this Agreement, Developer agrees to provide for the design of the engineered plans of the Drainage Improvements, which shall include the engineered plans, drawings, and specifications for the same, in accordance with the requirements set forth in the Land Development Code of the City of Port Orange ("LDC"), accepted and approved by the City, and any other requirements of law, hereinafter referred to as "Scope of Work." The Developer shall provide and furnish all services necessary for the Drainage Improvements, pursuant to the Scope of Work and subject to the following conditions:
 - (a) The Developer shall design, engineer, permit and construct the Drainage Improvements within or adjacent to the Project in accordance with the Scope of Work attached hereto as **Exhibit "B"**. The Drainage Improvements shall generally consist of adding curbing and stormwater flumes to a portion of Canal View Blvd., providing additional relief to the drainage for the entire surrounding area. No substantial deviations from the Scope of Work shall be incorporated into the design and engineering without prior written consent of the City. Such services shall include, without implied limitation, engineering investigation, surveys, geotechnical testing, preliminary and final designs, preparation of working drawings, and quantity and cost estimates. Developer has retained an engineer of record, Joseph W. Mayer, P.E., of Bussen-Mayer Engineering Group, Inc., License No. 36836, which engineer is acceptable to the City, who shall sign, seal and date the certification of completed construction and as-built record drawings pertaining to the Drainage Improvements.
 - (b) During construction, the Developer shall prepare and maintain complete and accurate books of account and records as to all actual costs ("Costs"), which books of account and records shall be kept and maintained in accordance with generally accepted industry standards, consistently applied, and the Developer shall promptly supply to the City detailed documentation of Costs as the costs are incurred, including pay requests, and cancelled checks upon written request by the City.
 - (c) Upon completion of construction of the Drainage Improvements, the Developer's engineer of record shall prepare and provide to the City the certification of completed construction and the as-built drawings.
3. City Reimbursement.
 - (a) Upon City's acceptance and approval of the Drainage Improvements, the City shall reimburse the Developer in an amount not to exceed **Sixty-Three Thousand Nine Hundred & Five and 36/100 Dollars (\$63,905.36)**. The Developer will submit to the Public Works and Utilities Director an invoice for payments made by the Developer and such invoices shall (i) identify all Costs funded by the Developer; and (ii) include detailed invoices and documentation acceptable to the City, to include pay

requests, cancelled checks, wire transfer instructions and other verification reasonably necessary to identify all Costs incurred and funded by Developer. The invoice shall include the documentation of completion and acceptance by the City of such services.

- (b) Acceptance of the Drainage Improvements by the City shall not be unreasonably withheld or delayed. The City shall not reimburse the Developer for any expenditures not related to or consistent with this Agreement.
4. Impact Fees. Developer specifically agrees that there will be no impact fee credits requested or provided to the Developer for the Drainage Improvements constructed pursuant to this Agreement, and that the Developer will pay all impact fees otherwise associated with buildings within the Project.
 5. No General Obligation. The obligations of the City set forth herein shall not be construed to be or constitute general obligations, debts or liabilities of the City or the State of Florida or political subdivision thereof within the meaning of the Constitution and laws of the State of Florida, or to result in a pledge of or lien upon any revenues of the City. The obligation of the City to reimburse Developer hereunder is subject to the discretion of the City Council of City of Port Orange to budget and appropriate legally available funds in amounts sufficient to fund the Cost of Drainage Improvements.
 6. No Indemnity. The Parties acknowledge and agree that neither Party to this Agreement has any obligation, or liability, to indemnify the other Party for any loss arising from any claim arising under, out of or related to this Agreement.
 7. Choice of Law. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any dispute shall be located in the civil court of competent jurisdiction of Volusia County, Florida.
 8. Severability. The provisions of this Agreement are declared by the parties to be severable. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.
 9. Integration. This Agreement and the documents incorporated herein by reference shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.
 10. Notice. For purposes of this agreement, notices shall be sent as follows:

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

Developer: Florida Power & Light Company
Attention: Sheri Kocher
700 Universe Blvd.

11. Disputes. Upon notice of any dispute arising under this Agreement, the Parties shall attempt to resolve it promptly by negotiation between executives who have authority to settle the dispute. If said dispute has not been settled within thirty (30) days of the noticed dispute, Parties agree to first try to resolve the dispute with the help of a mutually agreed-upon mediator in Volusia County, Florida. The Parties shall share any costs and fees associated with the mediation, equally. Each Party shall bear the cost of their own attorneys' fees and expenses. If the dispute is not resolved through mediation, the parties may pursue legal remedies in a court of competent jurisdiction as set forth in Section 7 of this Agreement.
12. Force Majeure. Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.
13. Public Records Compliance. Contractor 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 record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.
 - (c) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the City.
 - (d) Upon completion of the Contract, Contractor shall transfer to the City, at no cost, all public records in possession of the Contractor 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.

If Contractor does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Contractor may be subject to penalties under Section 119.0701, Florida Statutes.

CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO 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.

IN WITNESS WHEREOF, the parties affix their signatures and seals on the dates set forth below:

WITNESSES:

CITY OF PORT ORANGE, a Florida
municipal corporation

Printed Name: _____

By: _____
Donald O. Burnette, Mayor

Printed Name: _____

Date: _____

Printed Name: _____

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

Printed Name: _____

Date: _____

(Corporate Seal)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Donald O. Burnette, Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Robin L. Fenwick, City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

Signed, sealed and delivered

in the presence of:

Printed Name: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was sworn to and acknowledged before me this _____ day of _____, 2019 by _____, _____ **of Florida Power & Light Company**, a Florida corporation, who [___] is personally known to me, or [___] have produced _____ as identification.

DEVELOPER:

Florida Power & Light Company, a Florida corporation

By: _____

Title: _____

Notary Public, State of Florida at Large

Commission Number, Date of Commission, Expiration, and Seal

EXHIBIT "A"

Parcel #633701210020

The North Half (N ½) of Lot Two (2), Block Twenty-one (21), Dunlawton, as per map in Deed Book "M", Page 187, of the Public Records of Volusia County, Florida.

Less and except:

The Northerly 15 feet (Parcel A and the Easterly 30 feet Parcel B) less the Northerly 15 feet, and the fillet of a curve, lying Southerly and Westerly of Parcel A and B, with a radius of 35 feet and a central angle 89°17' 30", said curve being at the intersection of Parcels A and B, of the North ½ of Lot 2, Block 21, DUNLAWTON SUBDIVISION, and the Northerly 15 feet of the Easterly 15 feet of vacated Sauls Street (vacated per O.R. 2277, Page 119) Westerly and adjacent to subject Block 21, DUNLAWTON SUBDIVISION, MB "M", Page 187, Public Records of Volusia County, Florida.

Parcel #633701210022

A portion of the South ½ of Lot 2, Block 21, Dunlawton, according to the map in Deed Book M, page 187, bounded and described as follows:

Beginning at the Northeast corner of the South ½ of Lot 2, Block 21, aforesaid and run Westerly on the Northerly line of said South ½ of Lot 2, 200 feet to a point; thence Southerly parallel to the Easterly line of the South ½ of Lot 2, 100 feet to a point; thence run Easterly 200 feet to the Easterly line of the South ½ of Lot 2 aforesaid; thence run Northerly along the Easterly line of the South ½ of Lot 2, to the point of beginning, Volusia County, Florida.

Parcel # 633701220030

The Easterly one-half (1/2) of Lot 3, in Block 22, EXCEPT that part lying in Old Canal Road, of DUNLAWTON, according to the map thereof, recorded in Deed Book M, Page 187, and also recorded in Map Book 14, Pages 82 and 83, both of the Public Records of Volusia County, Florida.

EXHIBIT “B”

Plan Sheets to be provided once updated

EXHIBIT "C"

**City of Port Orange/FPL
Engineer's Cost Estimate for Canalview Blvd.
Fair Share Participation Agreement
S.P. # 18-80000009
May 2, 2019**

**A. FPL: Canal View Improvements
(Per approved site plan)**

Item	Provider	Cost \$
Civil Engineering Design: Canal View Blvd.	Bussen Mayer	\$7,000.00
Survey and Mapping Services	Sliger & Associates	\$3,800.00
Volusia County: Use Permit	Volusia County	\$137.00
Volusia County: Inspection Fee 2% of construction costs (*)	Volusia County	\$100.00
Canal View Cost	Ovation Construction	\$97,357.16
Cost Total (Canal View)		\$108,394.16

(*) 4 Concrete flumes at \$1,250.00 each x 2%=\$100.00

- B. FPL Share = Cost of Improvements not constructed on Samms Ave.**
 • Contractor Quote for Samms Ave.(Ovation) **\$44,488.80**
- C. City of Port Orange Share = **\$63,905.36****


 05/03/19

Joseph W. Mayer, PE
 Florida Professional Engineer No: 36836
 Bussen-Mayer Engineering Group, Inc. License #3535



City of Port Orange Public Works & Utilities Department

TO: M.H. Johansson, City Manager

THRU: Julia Wiggins, Business Manager

FROM: Lynn Stevens, Public Works & Utilities Director

DATE: May 20, 2019

SUBJECT: Cost Participation Agreement – Florida Power & Light,
Canal View Blvd. Road and Drainage Improvements

REQUEST:

The Public Works & Utilities Department is requesting City Council approval a cost participation agreement with Florida Power & Light for road and drainage improvements on a portion of Canal View Blvd. in the amount not to exceed \$63,905.36.

PURPOSE:

The purpose of the request is to improve the road and drainage infrastructure on Canal View Blvd. in partnership with development.

CONSIDERATION:

Florida Power and Light currently owns property on the south side of Canal View Blvd. from Spruce Creek Road to Ken Bern Park. FPL is in the process of permitting improvements to the property immediately east of Ken Bern Park. As part of that development, the City requires the developer (FPL) to extend roadways for the benefit of the City. This project would require extending Samms Avenue from 800 Samms Avenue east to Spruce Creek Road even though it is not required for FPLs use of the property. This road extension would require removal of large trees and a significant increase in through traffic in the residential neighborhood. Staff has discussed alternatives with FPL and believes it to be in the best interest of the City, the residents, and FPL to forego the extension at this time. Instead, the City has asked FPL to partner with the City to provide improvements along Canal View Blvd.

Currently, the Canal View Blvd. roadway has significant areas where stormwater has eroded the bank of the canal, impacting the shoulder of the road and exposing the guardrail posts resulting in significant safety concerns.

The canal is owned by Volusia County Mosquito Control District (VCMCD). VCMCD routinely dredges the bottom portion of the canal to control growth and maintain flow-way. City crews historically mowed the sides of the canal next to the roadway. However, mowing was creating more damage by killing the vegetation that reduces bank erosion. Boom mowers cannot judge how close to cut the grass, therefore, the grass was being cut in slow grow times causing the grass to die off and provide no erosion protection. The County has agreed to spot repair the areas of the bank that have significantly eroded as long as the City prevents any further from stormwater runoff.

In FY19, Public Works included a Capital Improvement Project to address the Canal View Blvd. drainage system. The project entails installing curbing on the canal side of the roadway, storm drains to direct the water into the canal without eroding the banks of the canal, and regrading/paving the roadway.

In November 2018, FPL approached the Community Development Department with a site plan to develop their property on the east side of Ken Bern Park. The cost to improve the roadway from the east side of Ken Bern Park to the corner of Canal View and Spruce Creek Road is \$108,394.16. The City's portion would be \$63,905.36 (\$108,394.16 minus the cost of improvements on Samms Ave. not constructed). The engineer's estimate has been attached for additional information.

The Public Works & Utilities Department requests a cost participation agreement for the improvements to Canal View Blvd. in the amount not to exceed \$63,905.36. CDBG funding is secured for this project and can be used for the City's portion of the project.

FUNDING:

City Cost Participation
110 1904 554 63 97
Project No: CDBG 10
Budget: \$237,000
Actual: \$63,905.36

RECOMMENDATION:

The Public Works & Utilities Department recommends City Council approval a cost participation agreement with Florida Power & Light for road and drainage improvements on a portion of Canal View Blvd. in the amount not to exceed \$63,905.36.

ATTACHMENTS:

a.) Engineer's Estimate



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: Yes

SUBJECT: (B16) Major Special Event Request– Port Orange Family YMCA Triathlon at Aunt Catfish Restaurant at 4009 Halifax Drive.

DEPARTMENT: Community Development

GOAL: N/A

RECOMMENDED MOTION: Move to approve the Special Event request for the Port Orange Family YMCA Triathlon located at 4009 Halifax Drive, La Cantina Cocina Mexicana located at 4085 Ridgewood Avenue and 4108 Halifax Drive, subject to the attached conditions.

SUMMARY: The applicant Mica Lill, Special Event Director, on behalf of the Volusia/Flagler Family YMCA, is requesting a special event, for the Port Orange Family YMCA Triathlon. The proposed hours of the event are from 7:00 a.m. until 11:00 a.m. on Saturday, July 27, 2019.

The triathlon begins with a 500-meter swim from the small boat ramp on the northwest side of Bird Island in the intercoastal waterway; the swim course is from the boat ramp going east approximately 200 yards, turning north approximately 50 yards, turning west approximately 200 yards, turning south approximately 50 yards and finishing at the boat ramp.

The triathlon will continue with a 12-mile bike route starting at the south side of the Dunlawton Avenue bridge heading east to Atlantic Avenue (A1A). Riders will then turn right onto A1A and proceed south to Inlet Harbor Road, then turn right onto Inlet Harbor Road and make another right onto Peninsula Drive. Riders will then head north on Peninsula Avenue, rounding a sharp bend and turn left onto Cardinal Boulevard. Riders then will make a left on to Demotte Ave, then a right onto Peninsula Drive, then a left onto Dunlawton Avenue and continue west over the Dunlawton Avenue bridge to the start/finish line on Bird Island.

The triathlon will continue with a 4-mile run beginning on the south side of the Dunlawton Avenue bridge and head west on the sidewalk. Runners will then turn left at Aunt Catfish's and head south on Halifax Drive to the turnaround point at Niver Street. Runners will then head back North along Halifax Drive to the finish line in the parking lot located at 4085 Ridgewood Avenue.

After the completion of the triathlon, there will be an awards ceremony, held at La Cantina Cocina Mexicana, 4085 Ridgewood Avenue. The ceremony will have designated areas for refreshments, a live DJ, and sponsor exhibit tents. Parking for the event will be in the City's lot across from Aunt Catfish's, and the lots utilized by Aunt

Catfish's and La Cantina Cocina Mexicana, 4085 Ridgewood Avenue. Restrooms will be available inside Aunt Catfish's and provided by the applicant. Clean up for the race and ceremony will occur immediately after.

The proposed event has been reviewed by the Police, Fire, Parks and Recreation, Public Works, and Community Development departments. The event director has received cost estimates from the Police and Public Works departments for staff overtime and equipment (barricades, lights, etc.) to assist the event with traffic control and safety issues.

The applicant has received approval from Daytona Beach Shores, Volusia County, and Ponce Inlet since portions of the triathlon will go through those jurisdictions. The applicant has also worked with the Port Orange Police Department to ensure the safety of the course and to provide a safer event for all involved.

Project No.: Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

1.	Course Maps 2019 po tri	Course Maps 2019 po tri.pdf
2.	Staff Recommendations	Staff Recommendations.pdf
3.	2019 PO YMCA Triathlon #19-2099	2019 PO YMCA Triathlon #19-2099.pdf

Briana Conlan-King
Tim Burman
Thomas Grimaldi
Ronny Buttrum
Jake Johansson
Robin Fenwick

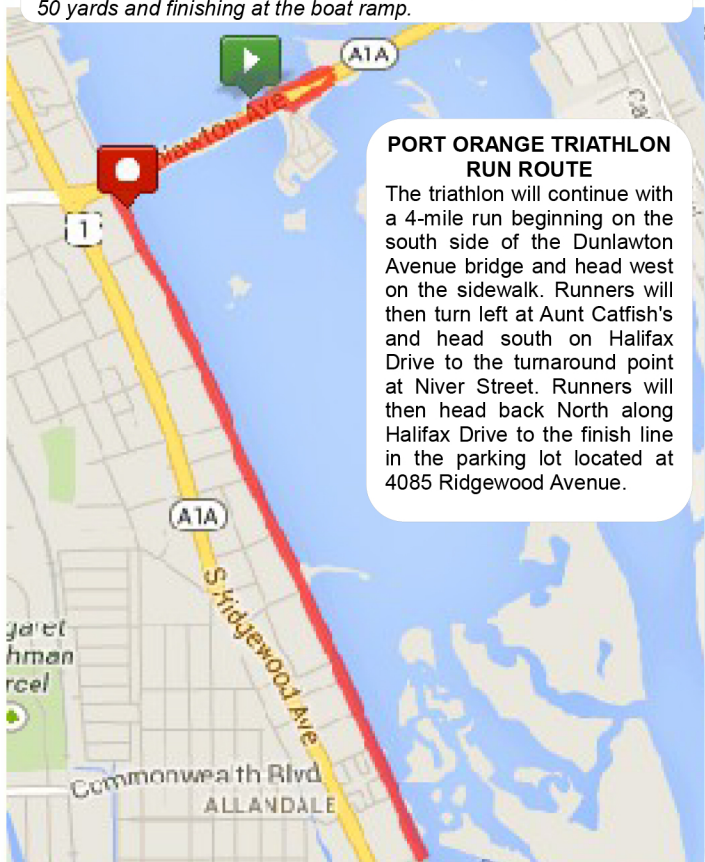
Created/Initiated - 5/28/2019
Approved - 5/29/2019
Approved - 5/30/2019
Approved - 6/3/2019
Approved - 6/5/2019
Final Approval - 6/5/2019

2019

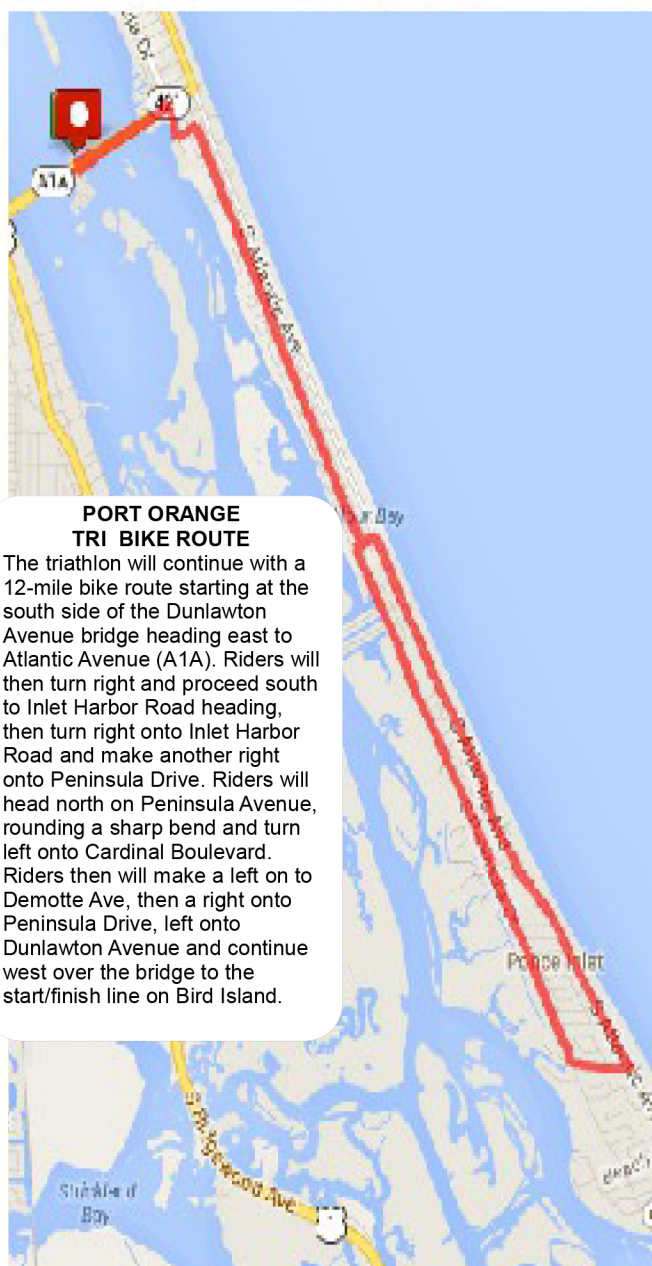
WELCOME TO THE PORT ORANGE FAMILY YMCA TRIATHLON



The Triathlon will begin with a swim route located at the small boat ramp on the northwest side of Bird Island in the Intracoastal waterway; the 500-meter swim course is from the boat ramp going east approximately 200 yards, turning north approximately 50 yards, turning west approximately 200 yards, turning south approximately 50 yards and finishing at the boat ramp.



The triathlon will continue with a 4-mile run beginning on the south side of the Dunlawton Avenue bridge and head west on the sidewalk. Runners will then turn left at Aunt Catfish's and head south on Halifax Drive to the turnaround point at Niver Street. Runners will then head back North along Halifax Drive to the finish line in the parking lot located at 4085 Ridgewood Avenue.



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RECOMMENDATION:

Staff recommends approval of the Port Orange Family YMCA Triathlon subject to the following conditions:

1. **Applicant shall be responsible for any charges for City of Port Orange Police services related to this event and coordinate with the Police Department for all vehicular traffic patterns and pedestrian concerns.**
2. **Applicant shall be responsible for coordination with the City of Port Orange Public Works Department for Public Works services and all charges for equipment (barricades, lights, etc.) used for this event for traffic control.**
3. **Rates for this event for staff time and equipment are per Resolution 19-2.**
4. Hours of the event shall be from 7:00 a.m. until 11:00 a.m.
5. A \$250 surety bond is required as outlined in Chapter 58, Article III, of the City of Port Orange Code of Ordinances.
6. Access shall be maintained for all emergency vehicles.
7. Event organizers are required to delineate the event area from the vehicular driving and parking area with cones, ropes and/or barricades where necessary.
8. All areas used for this function shall be handicapped-accessible. Handicapped parking is to remain open and accessible for the event.
9. A temporary sign permit shall be required for the one banner permitted for this event. An application shall be submitted at least two weeks prior to the event for permit approval.
10. All trash generated along the route must be picked up and disposed of at the end of the event along with any debris at the event sites.
11. Amplified speaker systems must comply with the City noise ordinance (Code of
12. All public restroom facilities must remain open to the public.
13. Ordinances, Chapter 42, Article IV, Section 42 Noise regulations).



CITY OF PORT ORANGE

Department of Community Development
1000 City Center Cir.
Port Orange, FL 32129
Phone: (386) 506-5600 Fax: (386) 506-5699

DATE RECEIVED:

RECEIVED BY:

PERMIT NO.:

4/23/19
32
19-2099

SPECIAL EVENT PERMIT APPLICATION

City Ordinance No. 2013-16 & Fee Resolution No. 13-58 – Chapter 58 Article III, Code of Ordinances

Name of Business/Organization Hosting Event: Port Orange Family YMCA
Event Site Address: 4009 Halifax Drive Port Orange, FL
Event Contact Person: Mica Lill
Email Address: Mill@vfyymca.org Phone: 386-405-9889
Description of Event: Sprint Triathlon
500-yard swim - 12 mile Bike - 4 mile run

Dates of Event: 7-27-19 Repeat Event: YES ☒ NO ☐
Number of Temporary Merchants: 0 Signs: YES ☒ NO ☐
Temporary Power: YES ☐ NO ☒ Tents: YES ☐ NO ☒

SPECIAL EVENT APPLICATION REQUIREMENTS

Application for **Major Special Events** must be submitted at least **forty-five (45)** days in advance of the requested event. **Minor Special Events** must be submitted at least **seven (7)** days in advance.

Required Documents:

1. Letter of request
2. Proof of ownership, written lease, or notarized authorization form
3. Sketch of the event layout on the property
4. Completed application checklist (attached)

PERMIT APPLICATION FEES**

☐ **MINOR SPECIAL EVENTS** (Seven days or less)
\$100.00

☒ **MAJOR SPECIAL EVENTS** (Seven days or less)
\$300.00* 150.00

☐ **MAJOR SPECIAL EVENTS** (More than seven days)
\$500.00*

* Repeat events on properties in good standing with City departments may be eligible for a reduced application fee.

** Additional fees may apply if City resources such as Public Works or Police Department are requested or required.

Revised 9/23/13



HALIFAX HEALTH PRESENTS:

THE PORT ORANGE FAMILY YMCA TRIATHLON

PART OF THE LIVE YOUR LIFE WELL SERIES | THE SPRINT SERIES

7:00 AM | SATURDAY, JULY 27, 2019



The Starting Point is at Aunt Catfish by the River, 4009 Halifax Drive, Port Orange, FL

COURSE

A 500-yard Intracoastal swim, a beautiful 12-mile bike ride down Atlantic Avenue & a 4-mile run over the Dunlawton Bridge and down Riverside Drive.

PACKET PICK-UP

Friday, July 26
4:00 pm - 6:00 pm

The Hub Cycling
3751 S. Clyde Morris Blvd #5
Port Orange, FL 32129

INDIVIDUALS

\$62 through July 25
\$80 Packet Pick-Up & Race Day

RELAYS

\$82 through July 25
\$100 Packet Pick-Up & Race Day



REGISTRATION

Visit vfymca.org or
runnershighracing.com

INCLEMENT WEATHER POLICY

This event will be rain or shine. In extreme circumstances the YMCA reserves the right to cancel event with no refunds possible.

For more information, sponsorship opportunities or to volunteer for these events contact Mica Lill at mlill@vfymca.org or call 386-425-5210

SPECIAL THANKS TO OUR SPONSORS:



PORT ORANGE FAMILY YMCA

4701 City Center Parkway, Port Orange, FL 32129 | P 386.760.9622 | F 386.788.7579 | vfymca.org

TOGETHER WE CAN BUILD A BETTER US



Consumer's Certificate of Exemption

Issued Pursuant to Chapter 212, Florida Statutes

DR-14
R. 04/11

85-8013262188C-0	03/31/2015	03/31/2020	501(C)(3) ORGANIZATION
Certificate Number	Effective Date	Expiration Date	Exemption Category

This certifies that

VOLUSIA FLAGLER FAMILY YOUNG MENS
CHRISTIAN ASSOCIATION INC
761 E INTERNATIONAL SPEEDWAY BLVD
DELAND FL 32724-2509

is exempt from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased.



Important Information for Exempt Organizations

DR-14
R. 04/11

1. You must provide all vendors and suppliers with an exemption certificate before making tax-exempt purchases. See Rule 12A-1.038, Florida Administrative Code (F.A.C.).
2. Your *Consumer's Certificate of Exemption* is to be used solely by your organization for your organization's customary nonprofit activities.
3. Purchases made by an individual on behalf of the organization are taxable, even if the individual will be reimbursed by the organization.
4. This exemption applies only to purchases your organization makes. The sale or lease to others of tangible personal property, sleeping accommodations, or other real property is taxable. Your organization must register, and collect and remit sales and use tax on such taxable transactions. Note: Churches are exempt from this requirement except when they are the lessor of real property (Rule 12A-1.070, F.A.C.).
5. It is a criminal offense to fraudulently present this certificate to evade the payment of sales tax. Under no circumstances should this certificate be used for the personal benefit of any individual. Violators will be liable for payment of the sales tax plus a penalty of 200% of the tax, and may be subject to conviction of a third-degree felony. Any violation will require the revocation of this certificate.
6. If you have questions regarding your exemption certificate, please contact the Exemption Unit of Account Management at 800-352-3671. From the available options, select "Registration of Taxes," then "Registration Information," and finally "Exemption Certificates and Nonprofit Entities." The mailing address is PO Box 6480, Tallahassee, FL 32314-6480.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/16/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Brown & Brown of Florida, Inc. P.O. Box 2412 Daytona Beach FL 32115-2415		CONTACT NAME: Laurie Kohler PHONE (A/C, No, Ext): (386) 239-7242 FAX (A/C, No): (386) 323-9159 E-MAIL ADDRESS: lkohler@bbdaytona.com	
INSURED Volusia Flagler Family YMCA 761 E. International Speedway Blvd Deland FL 32724		INSURER(S) AFFORDING COVERAGE INSURER A: Great American Insurance Company INSURER B: Great American Alliance Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 16691 26832	

COVERAGES

CERTIFICATE NUMBER: 2019-20

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY			PAC308702300	04/01/2019	04/01/2020	EACH OCCURRENCE \$ 1,000,000
	☐ CLAIMS-MADE ☒ OCCUR		DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000				
	☒ Sexual Abuse including		MED EXP (Any one person) \$ 5,000				
	☒ Professional Liability		PERSONAL & ADV INJURY \$ 1,000,000				
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 3,000,000
	☒ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG \$ 3,000,000
	OTHER:						EMPLOYEE BENEFITS \$ 1,000,000
B	☒ AUTOMOBILE LIABILITY			CAP308702400	04/01/2019	04/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☒ ANY AUTO		BODILY INJURY (Per person) \$				
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS		BODILY INJURY (Per accident) \$				
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY		PROPERTY DAMAGE (Per accident) \$				
B	☒ UMBRELLA LIAB ☒ OCCUR			UMB308702500	04/01/2019	04/01/2020	EACH OCCURRENCE \$ 3,000,000
	☐ EXCESS LIAB ☐ CLAIMS-MADE		AGGREGATE \$ 3,000,000				
	☐ DED ☒ RETENTION \$ 10,000						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE ☐ OTH-ER ☐
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y ☐ N	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

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

CITY OF DAYTONA BEACH SHORES IS ADDITIONAL INSURED ON THE GENERAL LIABILITY, PER FORM ICG8970 11-14.

CERTIFICATE HOLDER

CANCELLATION

CITY OF DAYTONA BEACH SHORES 2990 S ATLANTIC AVE DAYTONA BCH SHORES FL 32118	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE



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INSURED Volusia Flagler Family YMCA 761 E. International Speedway Blvd Deland FL 32724		INSURER(S) AFFORDING COVERAGE INSURER A: Great American Insurance Company INSURER B: Great American Alliance Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:	
		NAIC # 16691 26832	

COVERAGES**CERTIFICATE NUMBER:** 2019-20**REVISION NUMBER:**

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A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Sexual Abuse including ☒ Professional Liability GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			PAC308702300	04/01/2019	04/01/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 EMPLOYEE BENEFITS \$ 1,000,000
	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			CAP308702400	04/01/2019	04/01/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			UMB308702500	04/01/2019	04/01/2020	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐ N / A					PER STATUTE ☐ OTH-ER ☐ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

TOWN OF PONCE INLET IS ADDITIONAL INSURED ON THE GENERAL LIABILITY, PER FORM ICG8970 11-14.

CERTIFICATE HOLDER**CANCELLATION**TOWN OF PONCE INLET
4300 SOUTH ATLANTIC AVENUE

PONCE INLET

FL 32127

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

AUTHORIZED REPRESENTATIVE

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PRODUCER

Brown & Brown of Florida, Inc.
P.O. Box 2412

Daytona Beach

FL 32115-2415

CONTACT NAME: Laurie Kohler

PHONE (A/C, No, Ext): (386) 239-7242

FAX (A/C, No): (386) 323-9159

E-MAIL ADDRESS: lkohler@bbdaytona.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A: Great American Insurance Company

16691

INSURER B: Great American Alliance Insurance Company

26832

INSURER C:

INSURER D:

INSURER E:

INSURER F:

INSURED

Volusia Flagler Family YMCA
761 E. International Speedway Blvd

Deland

FL 32724

COVERAGES**CERTIFICATE NUMBER:** 2019-20**REVISION NUMBER:**

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	☐ DED ☒ RETENTION \$ 10,000						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE ☐ OTH-ER ☐
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	☐ Y/N	N/A				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

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

CITY OF PORT ORANGE IS ADDITIONAL INSURED ON THE GENERAL LIABILITY, PER FORM ICG8970 11-14.

CERTIFICATE HOLDER

CITY OF PORT ORANGE

1000 CITY CENTER CIRCLE
PORT ORANGE

FL 32127

CANCELLATION

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

AUTHORIZED REPRESENTATIVE



4-20-19

Re: triathlon

To Whom It May Concern,

Mica Lill and the Volusia Flagler Family YMCA have my permission to use the properties at 4009 Halifax Dr., 4108 Halifax Dr. and 4085 Ridgewood Ave. for their triathlon on July 27, 2019.

Feel free to contact me with any questions.

Sincerely,

Brendan Galbreath

386-547-0179



FOR YOUTH DEVELOPMENT®
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

April 19th 2019

The City of Port Orange
Department of Community Development
1000 City Center Circle, Port Orange, FL 32129

SUBJECT: Port Orange YMCA Sprint Triathlon @ Aunt Catfish on Saturday, July 27th, 2019 at 7:00 am

The Volusia Flagler Family YMCA is always developing ways to impact our community through Healthy Living, Youth Development and Social Responsibility. Please accept this letter and accompanying information as a request to hold our YMCA Sprint Triathlon @ Aunt Catfish's on the River for Saturday, July 27th at 7:00 am. Attached you will find all of the required documents for approval.

Please be aware that all proceeds raised from this event will directly benefit the Port Orange Family YMCA as part of our Y Community Campaign to provide scholarships to Port Orange Residents.

If you have any questions or concerns please contact me.

Thank you for taking the time to review our application.

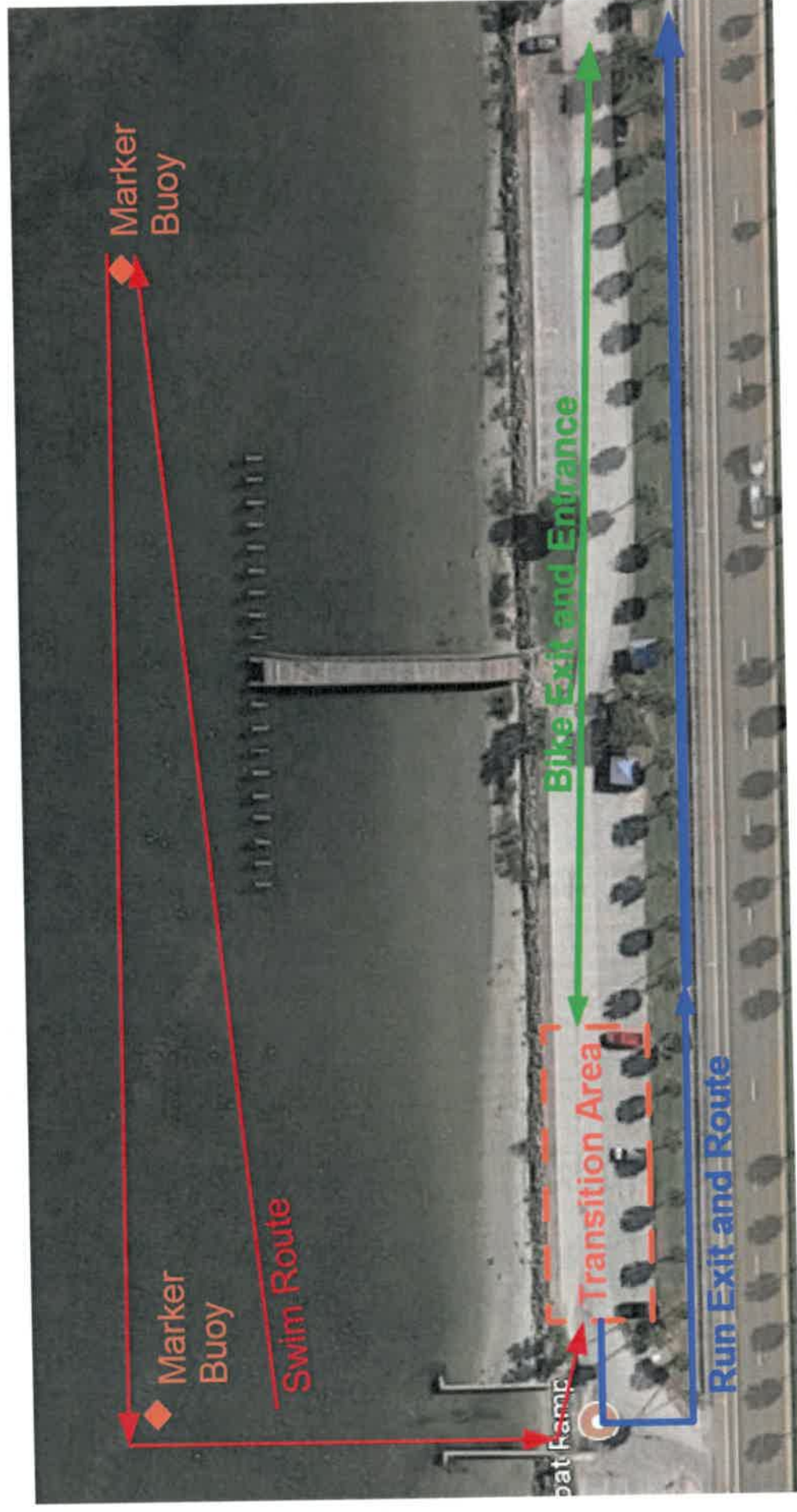
Sincerely,
Mica Lill
Executive Director
Community Health Director
Volusia Flagler Family YMCA
E. mlill@vfymca.org C. 386-405-9889

Volusia Flagler Family YMCA
Association Office
761 E. International Speedway Boulevard
DeLand, FL 32724
Phone: (386) 738-9622 Fax: (386) 822-9622



The mission of the YMCA is to put Christian principles into practice through programs that build healthy spirit, mind, and body for all.

Transition Area



Amy Freer

From: Mica Lill
Sent: Friday, April 26, 2019 1:43 PM
To: Amy Freer
Subject: Fwd: po tri maps.pdf
Attachments: image001.jpg; ATT00001.htm; 2019 Map PO Triathlon 190425002 FNL.pdf; ATT00002.htm

Can u print this email and also give with permit to PO?
The part where he approved
Thanks
Mica

Sent from my iPhone

Begin forwarded message:

From: "Frank, Bill" <bfrank@cityofdbs.org>
Date: April 26, 2019 at 9:57:03 AM EDT
To: Mica Lill <MLill@vfymca.org>
Subject: RE: po tri maps.pdf

Yes this route works for The Shores.

From: Mica Lill <MLill@vfymca.org>
Sent: Thursday, April 25, 2019 5:09 PM
To: Frank, Bill <bfrank@cityofdbs.org>
Subject: RE: po tri maps.pdf

Thank you..
The map attached is what I am giving to city of PO that you approve of.
Is the correct?
I have to have your written permission...

Thank you

Mica Lill, MPH
Executive Director
Community Health Director
MLill@VFYMCA.ORG

VOLUSIA FLAGLER FAMILY YMCA



Town of Ponce Inlet

4300 South Atlantic Avenue
Ponce Inlet, Florida 32127
Phone: (386) 236-2150
Fax: (386) 322-6717
www.ponce-inlet.org

May 8, 2019

Ms. Mica Lill, Special Events Director
Volusia Flagler Family YMCA
761 E. International Speedway Blvd.
DeLand, FL 32724

Dear Ms. Lill,

I am writing to you on behalf of the Town of Ponce Inlet to inform you that the Ponce Inlet Special Event Committee has determined that the Port Orange YMCA Triathlon does not meet the requirements of a Special Event in Ponce Inlet. Please continue to apply for a permit each year as this event will be reevaluated to ensure no changes are needed to be made which would then qualify this event as a special event. Thank you for continuing to apply each year. Please let me know if you have any questions.

Sincerely,

Amy Zengotita
Cultural Services Manager
Special Events Coordinator
Town of Ponce Inlet
4300 South Atlantic Ave.
Ponce Inlet, FL 32127
(386) 236-2163

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet citizens the greatest value for their dollar.

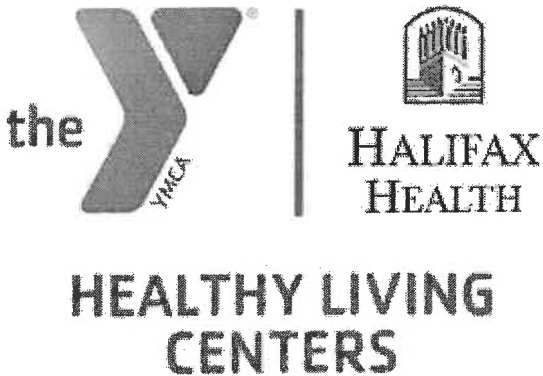
Conlan-King, Briana

From: Mica Lill <MLill@vfymca.org>
Sent: Monday, May 20, 2019 11:50 AM
To: Conlan-King, Briana
Subject: [EXT] FW: [EXT] RE: NEW 5K MAP

See below:
Thanks

Mica Lill, MPH
Executive Director
Community Health Director
MLill@VFYMCA.ORG

VOLUSIA FLAGLER FAMILY YMCA
761 E. International Speedway Blvd. DeLand, FL 32724
C 386.405.9889
www.vfymca.org
www.facebook.com/vfymca



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From: Williams, Kelly [mailto:kewilliams@port-orange.org]
Sent: Monday, May 20, 2019 11:42 AM
To: Mica Lill <MLill@vfymca.org>
Cc: Gaver, Gregory <deang@port-orange.org>; Eddy, Joshua <JoshE@port-orange.org>
Subject: FW: [EXT] RE: NEW 5K MAP

Good morning Ms. Lill,

I've received the contract and map for the ymca tri in July. The motors unit was able to review the map and determined the event will require 7 officers to safely manage the detail.

I will proceed with posting the event. We look forward to seeing you in July.

Thank you,

Kelly Williams

Accreditation Manager
Port Orange Police Department
4545 Clyde Morris Boulevard
386-506-5812 Office
386-756-5311 Fax
kewilliams@port-orange.org
www.port-orange.org

From: Gaver, Gregory
Sent: Monday, May 20, 2019 11:37 AM
To: Williams, Kelly <kewilliams@port-orange.org>
Cc: Eddy, Joshua <JoshE@port-orange.org>
Subject: RE: [EXT] RE: NEW 5K MAP

Seven (7) is the minimum number of officers we can do it with.

Sergeant Dean Gaver
Traffic/Motor Unit Supervisor
Port Orange Police Department
4545 Clyde Morris Blvd.
Port Orange Fl. 32129
Office 386-506-5840
ggaver@port-orange.org



From: Williams, Kelly
Sent: Monday, May 20, 2019 11:16 AM
To: Gaver, Gregory
Subject: FW: [EXT] RE: NEW 5K MAP

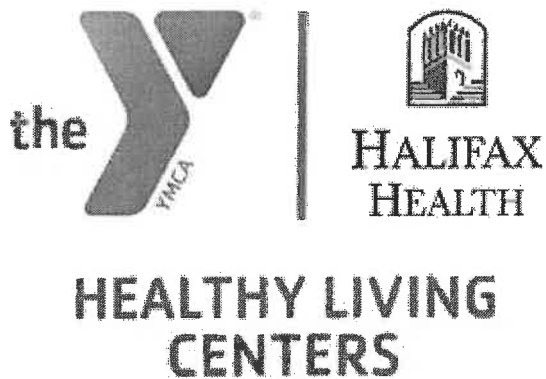
Contract and map for YMCA triathlon.

From: Mica Lill <MLill@vfymca.org>
Sent: Monday, May 13, 2019 1:23 PM
To: Williams, Kelly <kewilliams@port-orange.org>
Subject: [EXT] RE: NEW 5K MAP

Kelly,
I have attached a special detail request.
Let me know if you have any questions.
Thanks

Mica Lill, MPH
Executive Director
Community Health Director
MLill@VFYMCA.ORG

VOLUSIA FLAGLER FAMILY YMCA
761 E. International Speedway Blvd. DeLand, FL 32724
C 386.405.9889
www.vfymca.org
www.facebook.com/vfymca



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Conlan-King, Briana

From: Mica Lill <MLill@vfymca.org>
Sent: Thursday, May 23, 2019 11:37 AM
To: Conlan-King, Briana
Subject: [EXT] Fwd: PO Tri

See email below
Will this do?
Thanks
Mica

Sent from my iPhone

Begin forwarded message:

From: "David Padgett" <dpadgett@volusia.org>
Date: May 23, 2019 at 11:09:23 AM EDT
To: "Mica Lill" <MLill@vfymca.org>
Cc: "Benjamin Bartlett" <BBartlett@volusia.org>
Subject: RE: PO Tri

**** Reply Requested When Convenient ****

Mica, if there is no lane or road closure request and the bikes will be traversing with the flow of traffic then there is nothing I need to approve. I would recommend that 7 days prior to the event that you put up some message boards informing the public that drive this area letting them know that a event will be taking place with the times and date on it, just to help inform the residents.
Thanks David

David E. Padgett
Public Works Service Supervisor
Road & Bridge/ Traffic Ops
Volusia County Public Works
2560 West State Rd 44

Phone : 386-822-6422

Mica Lill <MLill@vfymca.org> 5/23/2019 9:59 AM >>>

No road or lane

Mica Lill, MPH
Executive Director

Community Health Director
MLill@VFYMCA.ORG

VOLUSIA FLAGLER FAMILY YMCA
761 E. International Speedway Blvd. DeLand, FL 32724
C 386.405.9889
www.vfymca.org
www.facebook.com/vfymca

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-----Original Message-----

From: David Padgett [<mailto:dpadgett@volusia.org>]

Sent: Thursday, May 23, 2019 8:23 AM

To: Mica Lill <MLill@vfymca.org>

Cc: Benjamin Bartlett <BBartlett@volusia.org>

Subject: Re: PO Tri

**** Reply Requested When Convenient ****

Hello Mica, since I haven't been involved with this in the past I just want to verify that the portion of the marathon that takes place on the county roads the biking section are you requesting any lane or road closure or will the bikes be moving with the flow of traffic. If you could let me know on this I will try to get you a answer by tomorrow. Thanks David

Sent from my iPhone

|

On May 22, 2019, at 7:33 PM, Mica Lill <MLill@vfymca.org>



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (E19) Environmental Advisory Board Appointment

DEPARTMENT: City Clerk

GOAL:

RECOMMENDED MOTION: Move to appoint one new member to the Environmental Advisory Board.

SUMMARY: The Environmental Advisory Board has one vacancy to be filled. The appointed member will fill the unexpired term of Newton White, which expires 5/7/2020. The City Clerk has received two applications from the following individuals:

Christina Berry
Michael Arminio

Both applications are attached for your consideration.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Berry,Christina	Berry,Christina.pdf
2.	Arminio, Michael	Arminio, Michael.pdf

Robin Fenwick

Created/Initiated - 6/4/2019

From: noreply@civicplus.com
Sent: Wednesday, February 07, 2018 8:37 AM
To: CityClerk
Subject: Online Form Submittal: Advisory Boards and Commissions Volunteer Application

Advisory Boards and Commissions Volunteer Application

Step 1

Thank you for your interest in serving the City of Port Orange. Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for your appointment.

Please choose the Board(s) / Commission(s) for which you wish to apply. If applying for more than one Board / Commission, indicate the order of preference in the space below the list.

Check the boards you wish to apply for	Civil Service Board, Code Enforcement Board*, Environmental Advisory Board, Parks and Recreation Board, Planning Commission*
Pension Boards*	Field not completed.
Order of Preference	Field not completed.

All of the above boards / commissions are subject to the "Sunshine Law"

** Members of these boards / commissions are required to file financial disclosures within 30 days of date of appointment.*

Personal Information

First Name	Christina
Last Name	BERRY
Date of Birth	8/11/1986
Telephone	2075773926
Email Address	Clberraw86@gmail.com
Business Telephone	Field not completed.

Are you a registered voter in Port Orange?	Yes
Address	1008 tompkins dr
City Council District	<i>Field not completed.</i>
How long have you been a resident of Port Orange?	1 year
Are you currently serving on a City Board?	No
If yes, when and which board?	<i>Field not completed.</i>

References

Please list three references (business and / or personal)

Reference 1	Susie crossley 2075772090
Reference 2	Ian Ashland 2073448415
Reference 3	Josh moody 2072400866

Education

High School	Lewiston high school
Date Graduated High School	6/4/2004
College	University of southern Maine
Date Graduated College	6/1/2010
Degree	Leadership and organizarional studies

Additional Information

Work Experience	Teletech 3 months.
Interests / Activities	Animals
Community Involvement	Volunteer with Sevhs
Why do you desire to serve on these boards?	Yes
Resume / Additional Information	<i>Field not completed.</i>

I understand the responsibilities associated with being a board member, and I have adequate time to serve if appointed.

Type your name to sign Christina L Berry

Date *Field not completed.*

Note: If you have questions concerning the duties and responsibilities of any of the above Boards / Commissions, please contact the City Clerk's Office at 386-506-5563.

Email not displaying correctly? [View it in your browser.](#)

Applied to 1/15/08
92

CITY OF PORT ORANGE ADVISORY BOARDS AND COMMISSIONS

RECEIVED
OCT 09 2007

VOLUNTEER APPLICATIONS

CITY OF PORT ORANGE

Thank you for your interest in serving the City of Port Orange. Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for your appointment.

Please choose the Board(s)/Commission(s) for which you wish to apply. If applying for more than one Board/Commission, please number in the order of preference.

- | | |
|---|--|
| ☐ Environmental Advisory Board | ☐ Library Advisory Board |
| ☐ Construction Regulation Board* | ☐ Parks and Recreation Board |
| ☐ Code Enforcement Board* | ☒ Planning Commission* |
| ☐ Charter Review Board | |
| ☐ Civil Service Board | <u>Pension Boards*</u> |
| ☐ Districting Commission* | ☐ General Employees |
| ☐ Golf Course Advisory Board | ☐ Police |
| ☐ Community Redevelopment Agency | ☐ Fire |

ALL OF THE ABOVE ARE SUBJECT TO THE "SUNSHINE LAW"
BOARD AND COMMISSION MEMBERS MUST BE A REGISTERED VOTER

MEMBERS OF THE BOARDS/COMMISSIONS WITH AN ASTERIK ARE REQUIRED TO FILE
FINANCIAL DISCLOSURES WITHIN 30 DAYS OF DATE OF APPOINTMENT.

1. **PERSONAL**

Name MICHAEL ARMINIO Date of Birth 8-19-59

Address 1423 BREAKS WAY

Home Telephone 386-304-7033

Business Telephone 386-767-7425

Are you a registered voter in Port Orange? ☒ Yes ☐ No

City Council District 1

How long have you been a resident of Port Orange? 17 YEARS

Are you currently serving on a City Board? NO

Have you ever served on a City Board? NO

If yes, when and which Board? _____

2. REFERENCES – Please list three references (business and/or personal)

ROBIN LASKY - 760-2636 PORT ORANGE
Name, address, and telephone number

DAVE WAILER MORI CT PORT ORANGE 322-2450
Name, address, and telephone number

DEBBY CONNORS PORT ORANGE 212-8388
Name, address

3. EDUCATION

High School NEW SYMNA SAN HIGH Date Graduated 1977

College DBCC Date Graduated DIDN'T Degree _____

4. WORK EXPERIENCE OWNER OF BAY BREEZE BLINDS
17 YEARS, PRIOR TO THAT OWNER OF
INTERIOR INSTALLATIONS 8 YEARS

5. INTERESTS/ACTIVITIES GOLF, BUSINESS NETWORKING
BOXING, WEIGHT TRAINING, SURFING
COMMUNITY EVENTS

6. COMMUNITY INVOLVEMENT PAST V.P. ECONOMIC DEVELOPMENT
TREASURER PS Chamber of Commerce, CURRENT PRESIDENT
PORT ORANGE/S. DAYTONA Chamber of Commerce

7. WHY DO YOU DESIRE TO SERVE ON THIS/THESE BOARDS?

TO CONTINUE THE SMART GROWTH PORT ORANGE
HAS DEVELOPED, AND POSSIBLE City Council position.

8. A resume or separate sheet with additional information may be included.

I understand the responsibilities associated with being a board member, and I have adequate time to serve in appointed.

[Signature]
Signature

10-4-07
Date

Note: If you have questions concerning the duties and responsibilities of any of the above Boards/Commissions, please contact the City Clerk's Office at 506-5563.
Return this form to: Shirley Kelly, Deputy City Clerk,
1000 City Center Circle, Port Orange, Florida 32129



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (E20) Construction Regulation Board Appointments (x5)

DEPARTMENT: City Clerk

GOAL:

RECOMMENDED MOTION: Move to appoint five members to the Construction Regulation Board.

SUMMARY: Community Development has determined a need to re-active the Construction Regulation Board and five (5) appointments are necessary to hold a board meeting.

According to the Land Development Code, the Construction Regulation Board is to review the building, floodplain management, fire, and other related codes and policies, hear appeals of those codes, and provide recommendations to the City Council on building and construction related matters. The Construction Regulation Board is to consist of contractors registered with the City or qualified electors residing in the City. The 5 board members are to be composed of one architect or engineer, one licensed contractor and three members-at-large from the building industry.

The following applicants have expressed an interest in serving the City in this capacity:

Ankeet Rama
Kent Kirton
Lance Green
Michael Anderson
Richard Smith

Their applications are attached for your consideration.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Anderson, Michael	Anderson, Michael.pdf
2.	Green, Lance	Green, Lance.pdf
3.	Kirton, Kent	Kirton, Kent.pdf
4.	Rama, Ankeet	Rama, Ankeet.pdf
5.	Smith, Richard	Smith, Richard.pdf

Robin Fenwick	Created/Initiated - 6/4/2019
Tim Burman	Approved - 6/5/2019
Jake Johansson	Approved - 6/7/2019
Robin Fenwick	Final Approval - 6/7/2019

Advisory Boards and Commissions Volunteer Application

Step 1

Thank you for your interest in serving the City of Port Orange. Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for your appointment.

Please choose the Board(s) / Commission(s) for which you wish to apply. If applying for more than one Board / Commission, indicate the order of preference in the space below the list.

Check the boards you wish to apply for	Environmental Advisory Board
--	------------------------------

Pension Boards*	Field not completed.
-----------------	----------------------

Order of Preference	Field not completed.
---------------------	----------------------

All of the above boards / commissions are subject to the "Sunshine Law"

* Members of these boards / commissions are required to file financial disclosures within 30 days of date of appointment.

Personal Information

First Name	Michael
------------	---------

Last Name	Anderson
-----------	----------

Date of Birth	6/24/1972
---------------	-----------

Telephone	3862996641
-----------	------------

Email Address	mranderson@bonedryflorida.com
---------------	--

Business Telephone	3862996641
--------------------	------------

Are you a registered voter in Port Orange?	Yes
--	-----

Address	6172 Del Rio Drive
---------	--------------------

City Council District	4
-----------------------	---

How long have you been a resident of Port Orange?	5 years
Are you currently serving on a City Board?	No
If yes, when and which board?	Field not completed.
References	
Please list three references (business and / or personal)	
Reference 1	Jack Wiles 520 Dunlawton Ave 386-547-0717
Reference 2	James Jestes 6170 Del Rio Drive 386-315-4744
Reference 3	Jarod Prentice 1026 NW 8th Terr Cape Coral, FL 33993 904-403-2566
Education	
High School	Forest High School (Ocala, FL)
Date Graduated High School	6/7/1990
College	University of Florida
Date Graduated College	12/15/2001
Degree	BS in Agricultural and Biological Engineering
Additional Information	
Work Experience	Former City of Port Orange Community Development Engineer and Flood Plain Manager Licensed Civil Engineer Licensed General Contractor
Interests / Activities	Boating Waterways Sustainable Development
Community Involvement	Field not completed.
Why do you desire to serve on these boards?	Bordered by water on two sides, the City of Port Orange has a valuable asset that should be sustained responsibly for generations. I feel that my professional experience and expertise could be a valuable asset to this board to assist with the sensitive issues that come along with development and the

environment. If chosen, I look forward to becoming an integral member of the board and hope that can I serve as an "even keel" to help the balance of the City's environmental assets.

Resume / Additional
Information

Field not completed.

I understand the responsibilities associated with being a board member, and I have adequate time to serve if appointed.

Type your name to sign

Michael Anderson

Date

7/11/2018

Note: If you have questions concerning the duties and responsibilities of any of the above Boards / Commissions, please contact the City Clerk's Office at 386-506-5563.

CITY OF PORT ORANGE ADVISORY BOARDS AND COMMISSIONS

VOLUNTEER APPLICATIONS

Thank you for your interest in serving the City of Port Orange. Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for your appointment.

Please choose the Board(s)/Commission(s) for which you wish to apply. If applying for more than one Board/Commission, please number in the order of preference.

☐ Environmental Advisory Board
☐ Construction Regulation Board*
☐ Code Enforcement Board*
☐ Charter Review Board
☐ Civil Service Board
☐ Districting Commission

☒ Golf Advisory Board
☐ Library Advisory Board
☐ Parks and Recreation Board
☐ Planning Commission*
☐ City Manager Selection Committee
☐ Audit & Budget Advisory Board
☐ Youth Advisory Board

CRA Boards

☐ Eastport Community Redevelopment Agency*
☐ Town Center Community Redevelopment Agency*

Pension Boards

☐ General Employees*
☐ Police*
☐ Fire*

ALL OF THE ABOVE ARE SUBJECT TO THE "SUNSHINE LAW"

MEMBERS OF THE BOARDS/COMMISSIONS WITH AN ASTERIK ARE REQUIRED TO FILE FINANCIAL DISCLOSURES WITHIN 30 DAYS OF DATE OF APPOINTMENT.

1. PERSONAL

Name LANCE GREEN Date of Birth 9/10/64

Address 6469 Longlake Dr

Home Telephone 386-527-2656

E-Mail Address Lancegreen@CFL.FR.COM

Business Telephone 386-527-2656

Are you a registered voter in Port Orange? ☒ Yes ☐ No

City Council District 4

How long have you been a resident of Port Orange? 50+ years

Are you currently serving on a City Board? Planning Board

Have you ever served on a City Board? Planning Board

If yes, when and which Board? ✓

RECEIVED

MAR 27 2017

CITY OF PORT ORANGE
HUMAN RESOURCES DEPARTMENT

2. **REFERENCES** – Please list three references (business and/or personal)

ALLEN GREEN 4248 Jackson St. P.O. 322-0247
Name, address, and telephone number

Chase Tramount 386-589-1320
Name, address, and telephone number

Brian Curtiss 6446 Longlake Dr 527-6811
Name, address, and telephone number

3. **EDUCATION**

High School CREEK Class 82 Date Graduated 82½

College DSC Date Graduated 92 Degree Yes

4. **WORK EXPERIENCE** Cert. Fied General Contractor +
Certified Real Estate 40+ years in the
Construction Industry

5. **INTERESTS/ACTIVITIES** Community Service, Golf +
Parenting

6. **COMMUNITY INVOLVEMENT** Currently Serving as Chair of
Planning Board.

7. **WHY DO YOU DESIRE TO SERVE ON THIS/THESE BOARDS?**

I have been Involved in the Golf Course From start of
Construction. I live in cypress Head and want to Assist, Success
of Golf Course

8. A resume or separate sheet with additional information should be included.

I understand the responsibilities associated with being a board member, and I have adequate time to serve if appointed.

Dance
Signature

3/24/17
Date

Note: If you have questions concerning the duties and responsibilities of any of the above Boards/Commissions, please contact the City Clerk's Office at 506-5563.

Return this form to:

Robin Fenwick, CMC, City Clerk,
1000 City Center Circle
Port Orange, Florida 32129



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CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (F21) Second 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

Robin Fenwick

Created/Initiated - 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 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 6/18/2019

Consent item: No

SUBJECT: (F22) Second Reading - Ordinance No. 2019-18 - Administrative Rezoning/119 Howes Street

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION:

Move to approve Ordinance 2019-18, to rezone $\pm$ 0.34 acres from Volusia County R-5 (Single-Family Residential) to NP (Neighborhood Preservation).

SUMMARY:

Planning Commission Recommendation: Approval (4/25/19)

An administrative rezoning of $\pm$ 0.34 acres from Volusia County R-5 (Single-Family Residential) to NP (Neighborhood Preservation). The subject property is located at 119 Howes Street, west of Ridgewood Avenue and north of Commonwealth Blvd.

The NP zoning district allows single-family detached dwellings, as well as other uses with special development requirements. Clubs, lodges, and fraternal organizations are one of the permitted uses with special development requirements in the NP zoning district. If approved, the property owners, American Legion Post 270, intend to construct a new meeting facility to replace the existing fire-damaged building. All future development (building permit, site plan or subdivision) submitted will require detailed technical review to determine all requirements in the Land Development Code (LDC) and Florida Building Code (FBC) are met.

Staff has prepared the subject administrative rezoning application to correct this zoning inconsistency so that the subject property will have a zoning consistent with the Comprehensive Plan FLU designation and the use of the property.

The rezoning request was reviewed according to the criteria established in Chapter 3, Section 5 of the LDC in terms of consistency with the Comprehensive Plan and the surrounding land uses and zoning.

Project No.: Funding Account No.:

Presenter: Penelope Cruz

ATTACHMENTS:

1.	Ord. No. 2019-18	Ord. No. 2019-18 .pdf
2.	Ord. No. 2019-18 - Exhibit A	EXHIBIT A.pdf
3.	Ord. No. 2019-18 - Exhibit B	EXHIBIT B.pdf
4.	STAFF REPORT	STAFF REPORT.pdf

Robin Fenwick

Created/Initiated - 5/24/2019

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.

WHEREAS, the property to be rezoned consists of approximately ± 0.34 acres located at 119 Howes Street from Volusia County R-5 (Single-Family Residential) to NP (Neighborhood Preservation); and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission recommended approval of the proposed rezoning;

WHEREAS, the City Council has approved by majority vote of the members present the rezoning of the described property; and

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

Section 1. The City Council of the City of Port Orange does hereby rezone the following described property from Volusia County R-5 (Single-Family Residential) to NP (Neighborhood Preservation)

Section 2. The property rezoned consists of approximately ± 0.34 acres located at 119 Howes Street, more particularly described in **Exhibit "A"**, attached hereto.

Section 3. The City Council of the City of Port Orange does hereby approve, authorize and direct the revision of the City's Official Zoning Atlas to show the classifications for the area as hereby rezoned as shown on **Exhibit "B"** attached hereto.

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the ____ day of _____, 2019

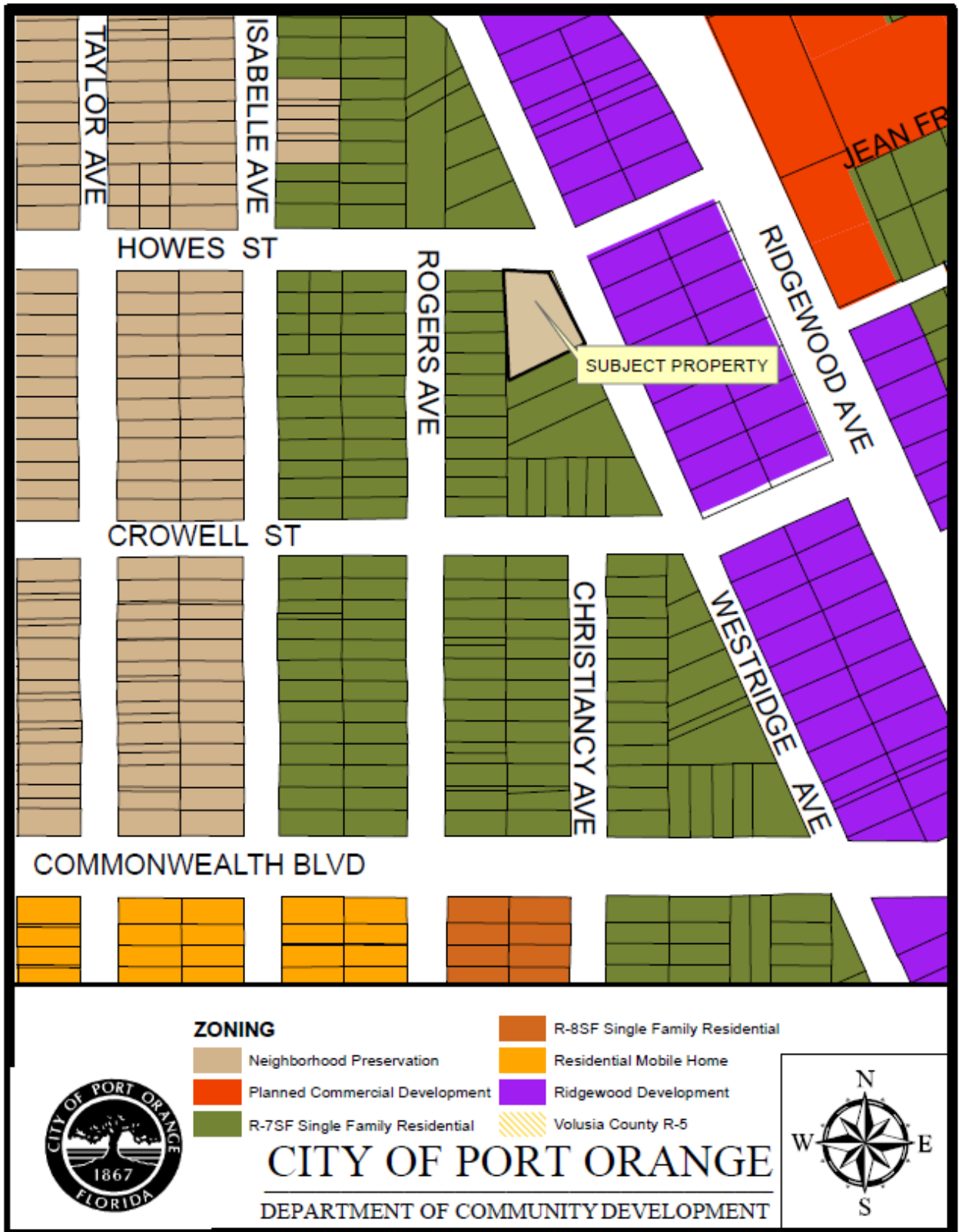
Passed and adopted on second and final reading on the ____ day of _____,
2019

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

EXHIBIT A

LOTS 22 & 23 BLK G ALLANDALE PER OR 4911 PGS 3934-3935 PER OR 7429 PG 3121

EXHIBIT B





STAFF REPORT

REZONING / 119 HOWES STREET

CASE NO. 19-6000002

REQUEST:	Rezone ± 0.34 acres from Volusia County R-5 (single-family residential) to City of Port Orange Neighborhood Preservation (NP)
LOCATION:	119 Howes Street (Figure 1 – Location Map)
OWNER:	Walt Zack Memorial Post 270 Port Orange Inc
APPLICANT:	City of Port Orange
PLANNING COMMISSION RECOMMENDATION:	Approval (April 25, 2019)
STAFF CONTACT:	Gwen Perney (386) 506-5673
CITY COUNCIL DATE:	May 22, 2019

PROPERTY OVERVIEW

The proposed rezoning would change the zoning from Volusia County R-5 (single-family residential) to Neighborhood Preservation (NP) for a ± 0.34 -acre property. The subject property is located at 119 Howes Street, west of Ridgewood Avenue and north of Commonwealth Boulevard. If approved, the American Legion Post 270 intends to build a new building to replace the former building that was recently damaged by a fire. According to the NP zoning district, the use “clubs, lodges, and fraternal organizations” is permitted if it existed on the property before 2015.

FIGURE 1. LOCATION MAP



DISCUSSION

The subject property was annexed into the City of Port Orange in 1998 when it was previously occupied by the Ponce Inlet Lions Club. The Future Land Use (FLU) was amended in 1999 from Volusia County *Urban Medium Intensity* to City of Port Orange *Urban Medium Density (4 – 8 units/acre)*. However, the property was never rezoned from Volusia County R-5 to a compatible City zoning district.

The American Legion has occupied the subject property since 2000. The existing meeting hall experienced fire damage in January 2019 and is currently in the process of being demolished. The American Legion would prefer to remain at their current location and construct a new meeting hall as opposed to moving to a new location in order to retain membership.

Staff has prepared the subject administrative rezoning application to correct this zoning inconsistency so that the subject property will have a zoning consistent with the Comprehensive Plan FLU designation and the use of the property.

Staff is recommending rezoning the property to Neighborhood Preservation (NP) to be consistent with adjacent properties and the Future Land Use designation. The NP zoning district allows single-family detached dwellings, as well as other uses with special development requirements. Clubs, lodges, and fraternal organizations are one of the permitted uses with special development requirements in the NP zoning district. All future development (building permit, site plan or subdivision) submitted will require detailed technical review to determine all requirements in the Land Development Code (LDC) and Florida Building Code (FBC) are met.

The rezoning request was reviewed according to the criteria established in Chapter 3, Section 5 of the LDC in terms of consistency with the Comprehensive Plan and the surrounding land uses and zoning.

Consistency with Comprehensive Plan

The subject property currently has a Future Land Use (FLU) designation of City of Port Orange *Urban Medium Density (4-8 units/acre)* (see Exhibit A). The NP zoning district is consistent with the *Urban Medium Density (4-8 units/acre)* FLU designation.

Compatibility with Surrounding Uses and Zoning

The NP zoning district is consistent with the surrounding properties that are zoned for medium-density residential uses. The subject property is surrounded by single-family homes to the north, south, and west, and the existing Eagles Fraternal Lodge to the east. The current adopted FLU designation for the subject property and the current FLU designation of the adjacent properties is identified on Exhibit A. The current and proposed zoning classification of the subject property and adjacent properties are identified on Exhibit B.

Table 1. Surrounding Land Uses and Zoning

Direction	Existing Land Use	FLU Designation	Zoning District
North	Single-family home	Residential (4-8 units/acre)	R-7SF (single-family residential)
South	Single-family home	Residential (4-8 units/acre)	R-7SF (single-family residential)
West	Single-family home	Residential (4-8 units/acre)	R-7SF (single-family residential)
East	Club, lodge, fraternal organization	Commercial	RD (Ridgewood Development)

PUBLIC NOTICE

On April 5, 2019, staff posted the property notifying the public of the proposed rezoning.

STAFF RECOMMENDATION

Staff recommends **approval** of the request to rezone ±0.34 acres from Volusia County R-5 (Single Family Residential) to City of Port Orange Neighborhood Preservation (NP).

ATTACHMENTS

Exhibit A - Current Future Land Use Map

Exhibit B - Current and Proposed Zoning Map

EXHIBIT A

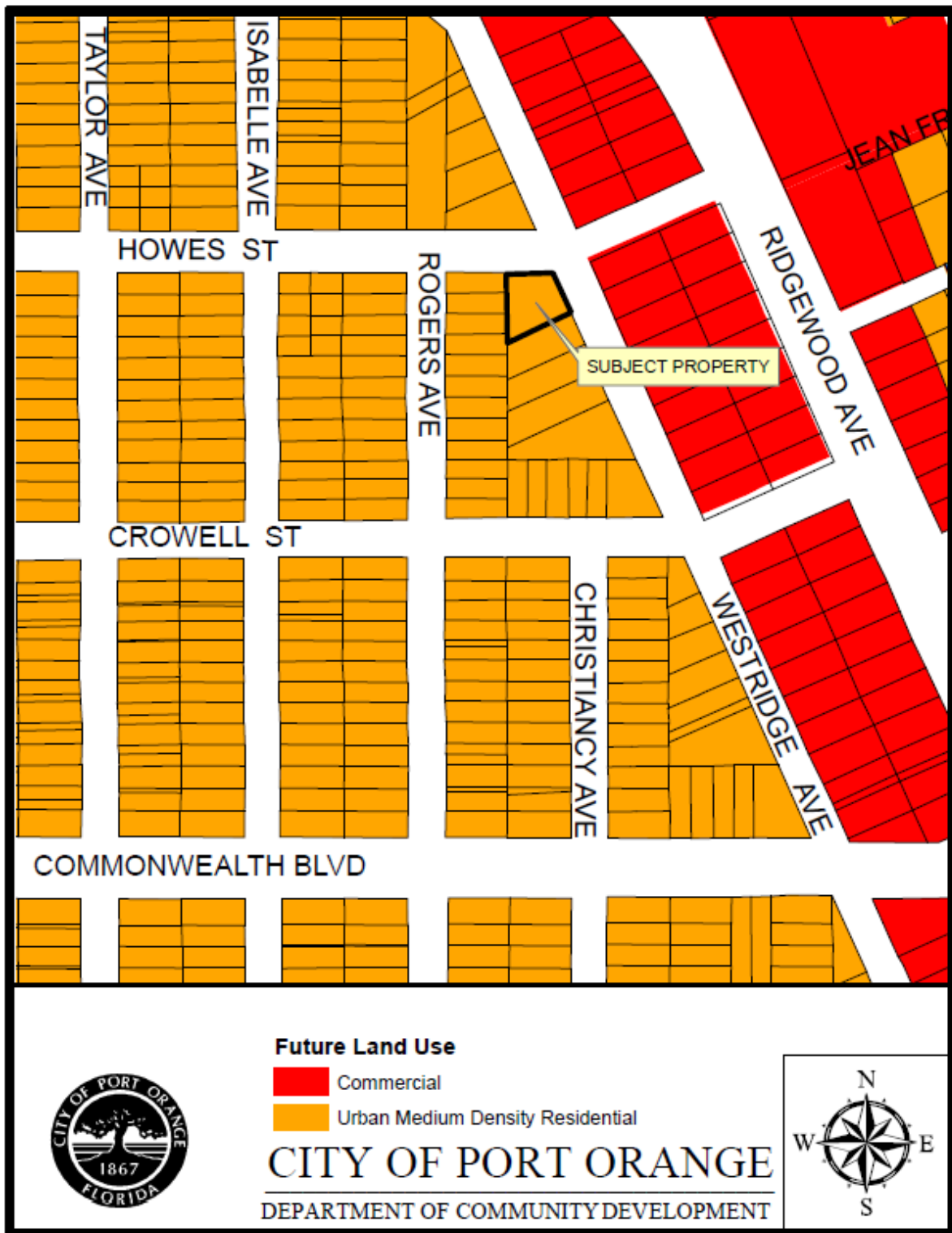
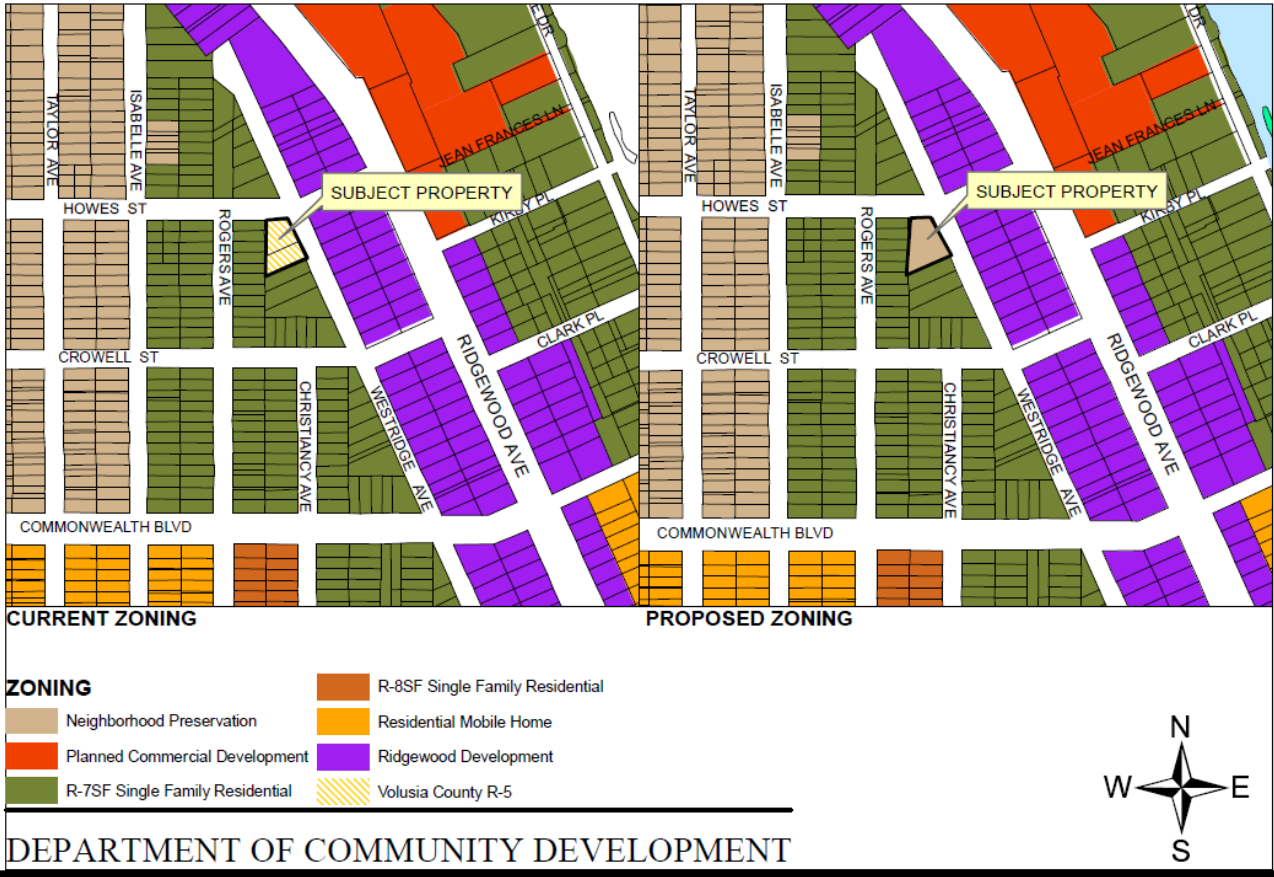


EXHIBIT B





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (F23) Second Reading - Ordinance No. 2019-19 - Fire Assessment Procedure

DEPARTMENT: City Manager

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve Ordinance No. 2019-19.

SUMMARY: Staff has been working on a proposed non-ad valorem fire fee assessment since fall 2018. In December Council passed a resolution to secure the ability to use the uniform method of collection for this fee beginning in Fiscal Year 2020. Our next step is to create an ordinance allowing the city to consider implementing a fire service fee. The adoption of this ordinance does not lock the city into implementing a fire service fee this year or in the future. Staff recommends adoption of the ordinance so that we do not have to repeat the work should the city decide to move forward on a fire service fee this year or any year in the future.

Project No.: Funding Account No.:

Presenter: Matthew Jones

ATTACHMENTS:

1.	FINAL Fire Assessment Ordinance MJ 5.16.19	FINAL Fire Assessment Ordinance MJ 5.16.19.pdf
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Robin Fenwick

Created/Initiated - 5/23/2019

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.

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

SECTION 1. The City Council hereby amends Chapter 30, FIRE PREVENTION AND PROTECTION, of the City of Port Orange Code of Ordinances, to create a new Article III titled "Fire Protection Assessment" to read as follows:

ARTICLE III. – FIRE PROTECTION ASSESSMENT

Sec. 30-50. - Introduction.

(a) *Definitions.* As used in this Article, the following words and terms shall have the following meanings, unless the context clearly otherwise requires:

Annual assessment resolution means the resolution described in Section 30-52(h) hereof, establishing the rate at which a fire protection assessment for a specific fiscal year will be computed. The final assessment resolution shall constitute the annual assessment resolution for the initial fiscal year in which a fire protection assessment is imposed.

Assessment coordinator means the person or entity designated by the city manager to be responsible for coordinating the fire protection assessments.

Assessed property means all parcels of land included on the assessment roll and subject to the fire protection assessments contemplated hereunder.

Assessment roll means the special assessment roll relating to a fire protection assessment approved by a final assessment resolution pursuant to Section 30-52(f) hereof or an annual assessment resolution pursuant to Section 30-52(h) hereof.

Building means any structure, whether temporary or permanent, built for support, shelter or enclosure of persons, chattel, or property of any kind, including mobile homes. This term shall include the use of land in which lot or spaces are offered for use, rent or lease for the placement of mobile homes, travel trailers, or the like for residential purposes.

Building permit means an official document or certificate issued by the city, under the authority of ordinance or law, authorizing the construction or siting of any building within the city. The term "building permit" shall also include set up or tie down permits

for those structures or buildings, such as a mobile home, that do not require a building permit in order to be constructed.

Certificate of occupancy means the written certification issued by the city that a building is ready for occupancy for its intended use. For the purposes of this Article, a set up or tie down permit or its equivalent issued for a mobile home shall be considered a certificate of occupancy.

City manager means the chief administrative officer of the city, designated by the city council to be responsible for coordinating fire protection assessments or such person's designee.

County means Volusia County, Florida.

Final assessment resolution means the resolution described in Section 30-52(f) hereof which shall confirm, modify, or repeal the initial assessment resolution and which shall be the final proceeding for the initial imposition of fire protection assessments.

Fire protection assessment means a special assessment lawfully imposed by the city council against assessed property to fund all or any portion of the cost of the provision of Fire Protection services, facilities, or programs providing a special benefit to property as a consequence of possessing a logical relationship to the value, use, or characteristics of the assessed property.

Fire protection assessed cost means the amount determined by the city council to be assessed in any fiscal year to fund all or any portion of the cost of the provision of Fire Protection services, facilities, or programs which provide a special benefit to assessed property, and shall include, but not be limited to, the following components: (i) the cost of physical construction, reconstruction or completion of any required facility or improvement; (ii) the costs incurred in any required acquisition or purchase; (iii) the cost of all labor, materials, machinery, and equipment; (iv) the cost of fuel, parts, supplies, maintenance, repairs, and utilities; (v) the cost of computer services, data processing, and communications; (vi) the cost of all lands and interest therein, leases, property rights, easements, and franchises of any nature whatsoever; (vii) the cost of any indemnity or surety bonds and premiums for insurance; (viii) the cost of salaries, volunteer pay, workers' compensation insurance, or other employment benefits; (ix) the cost of uniforms, training, travel, and per diem; (x) the cost of construction plans and specifications, surveys and estimates of costs; (xi) the cost of engineering, financial, legal, and other professional services; (xii) the costs of compliance with any contracts or agreements entered into by the city to provide Fire Protection services; (xiii) a reasonable amount for a capital asset replacement reserve account; (xiv) all costs associated with the structure, implementation, collection, and enforcement of the fire protection assessments, including any service charges of the tax collector, or property appraiser and amounts necessary to off-set discounts received for early payment of fire

protection assessments pursuant to the Uniform Assessment Collection Act or for early payment of fire protection assessments collected pursuant to Section 30-53(b) herein; (xv) all other costs and expenses necessary or incidental to the acquisition, provision, or construction of Fire Protection services, facilities, or programs, and such other expenses as may be necessary or incidental to any related financing authorized by the city council by subsequent resolution; (xvi) a reasonable amount for contingencies and anticipated delinquencies and uncollectible fire protection assessments; and (xvii) reimbursement to the city or any other person for any moneys advanced for any costs incurred by the city or such person in connection with any of the foregoing components of fire protection assessed cost. In the event the city also imposes an impact fee upon new growth or development for Fire Protection related capital improvements, the fire protection assessed cost shall not include costs attributable to capital improvements necessitated by new growth or development that will be paid by such impact fees. The fire protection assessed cost shall also not include costs for the provision of emergency medical services by the city.

Fiscal year means that period commencing October 1st of each year and continuing through the next succeeding September 30th, or such other period as may be prescribed by law as the fiscal year for the city.

Government property means property owned by the United States of America or any agency thereof, a sovereign state or nation, the State of Florida or any agency

thereof, a county, a county school board, a special district, a municipal corporation, or any of their respective agencies or political subdivisions.

Initial assessment resolution means the resolution described in Section 30-52(b) hereof which shall be the initial proceeding for the identification of the fire protection assessed cost for which an assessment is to be made and for the imposition of a fire protection assessment.

Maximum assessment rate means the highest rate of a fire protection assessment established by the city council in an initial assessment resolution or preliminary assessment resolution and confirmed by the city council in the final assessment resolution or annual assessment resolution.

Owner shall mean the person reflected as the owner of assessed property on the tax roll.

Person means any individual, partnership, firm, organization, corporation, association, or any other legal entity, whether singular or plural, masculine or feminine, as the context may require.

Preliminary assessment resolution means the resolution described in Section 30-52(h) hereof initiating the annual process for updating the assessment roll and directing the re-imposition of fire protection assessments pursuant to an annual assessment resolution.

Property appraiser means the Volusia County Property Appraiser.

Tax collector means Volusia County or any department, division or office thereof responsible for the collection of ad valorem taxes and non-ad valorem assessments.

Tax roll means the real property ad valorem tax assessment roll maintained by the property appraiser for the purpose of the levy and collection of ad valorem taxes.

Uniform Assessment Collection Act means sections 197.3632 and 197.3635, Florida Statutes, or any successor statutes authorizing the collection of non-ad valorem assessments on the same bill as ad valorem taxes, and any applicable regulations promulgated thereunder.

(b) ***Interpretation.*** Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Article; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Article. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

(c) ***General Findings.*** It is hereby ascertained, determined, and declared that:

(1) Pursuant to Article VIII, section 2(b), Florida Constitution, the Charter for the City of Port Orange, and sections 166.021 and 166.041, Florida Statutes, the city council has all powers of local self government to perform municipal functions and to render municipal services in a manner not inconsistent with law, and such power may be exercised by the enactment of city ordinances.

- (2) The city council may exercise any governmental, corporate, or proprietary power for a municipal purpose except when expressly prohibited by law, and the city council may legislate on any subject matter on which the Florida Legislature may act, except those subjects described in (a), (b), (c), and (d) of section 166.021(3), Florida Statutes. The subject matter of paragraphs (a), (b), (c), and (d) of section 166.021(3), Florida Statutes, are not relevant to the imposition of assessments related to Fire Protection services, facilities or programs of the city.
- (3) The purpose of this Article is to provide procedures and standards for the imposition of city-wide fire protection assessments under the general home rule powers of a municipality to impose special assessments; authorize a procedure for the funding of Fire Protection services, facilities, or programs providing special benefits to property within the city; and legislatively determine the special benefit provided to assessed property from the provision of the city's fire protection services.
- (4) The annual fire protection assessments, to be imposed using the procedures provided in this Article, shall constitute non-ad valorem assessments within the meaning and intent of the Uniform Assessment Collection Act.
- (5) The fire protection assessments to be imposed using the procedures provided in this Article are imposed by the city council, not the Volusia County Board

of County Commissioners, the property appraiser or the tax collector. The duties of the property appraiser and tax collector under the provisions of this Article and the Uniform Assessment Collection Act are ministerial.

(d) *Legislative determinations of special benefit.* It is hereby ascertained and declared that the Fire Protection services, facilities, and programs provide a special benefit to property because Fire Protection services possess a logical relationship to the use and enjoyment of property by:

- (1) Protecting the value and integrity of the improvements, structures, and unimproved land through the provision of available Fire Protection services;
- (2) Protecting the life and safety of intended occupants in the use and enjoyment of property;
- (3) Lowering the cost of fire insurance by the presence of a professional and comprehensive Fire Protection program within the city and limiting the potential financial liability for uninsured or underinsured properties; and
- (4) Containing and extinguishing the spread of fire incidents occurring on property, including but not limited to unimproved property, with the potential to spread and endanger the structures and occupants of property.

Sec. 30-52. – Assessments.

(a) *General authority.*

- (1) The city council is hereby authorized to impose an annual fire protection assessment to fund all or any portion of the fire protection assessed cost upon benefitted property at a rate of assessment based on the special benefit accruing to such property from the city's provision of Fire Protection services, facilities, or programs. All fire protection assessments shall be imposed in conformity with the procedures set forth herein.
- (2) The amount of the fire protection assessment imposed in a fiscal year against a parcel of assessed property shall be determined pursuant to an apportionment methodology designed to provide a fair and reasonable apportionment of the fire protection assessed cost among assessed property on a basis reasonably related to the special benefit provided by Fire Protection services, facilities, or programs funded with assessment proceeds.
- (3) Nothing contained in this Article shall be construed to require the imposition of fire protection assessments against government property.

(b) ***Initial proceedings.*** The initial proceeding for the imposition of a fire protection assessment shall be the adoption of an initial assessment resolution by the city council which:

- (1) Contains a brief and general description of the Fire Protection services, facilities, or programs to be provided;
- (2) Determines the fire protection assessed cost to be assessed;

- (3) Describes the method of apportioning the fire protection assessed cost and the computation of the fire protection assessment for specific properties;
- (4) Establishes an estimated assessment rate for the applicable fiscal year;
- (5) Establishes a maximum assessment rate, if desired by the city council; and
- (6) Directs the assessment coordinator to:
 - a. Prepare the initial assessment roll, as required by Section 30-52(c) hereof;
 - b. Publish the notice required by Section 30-52(d) hereof; and
 - c. Mail the notice required by Section 30-52(e) hereof using information then available from the tax roll.

(c) *Initial assessment roll.*

- (1) The assessment coordinator shall prepare, or direct the preparation of, the initial assessment roll, which shall contain the following:
 - a. A summary description of all assessed property conforming to the description contained on the tax roll;
 - b. The name of the owner of the assessed property, if available; and
 - c. The amount of the fire protection assessment to be imposed against each such parcel of assessed property.
- (2) The initial assessment roll shall be retained by the assessment coordinator and shall be open to public inspection. The foregoing shall not be construed to require that the assessment roll be in printed form if the amount of the fire

protection assessment for each parcel of property can be determined by use of a computer terminal available to the public.

(d) *Notice by publication.*

(1) Upon completion of the initial assessment roll, the assessment coordinator shall publish, or direct the publication of, once in a newspaper of general circulation within the city a notice stating that at a meeting of the city council on a certain day and hour, not earlier than 20 calendar days from such publication, which meeting shall be a regular, adjourned, or special meeting, the city council will hear objections of all interested persons to the final assessment resolution which shall establish the rate of assessment and approve the aforementioned initial assessment roll.

(2) The published notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Such notice shall include

- a. A geographic depiction of the property subject to the fire protection assessment;
- b. A brief and general description of the Fire Protection services, facilities, or programs to be provided;
- c. The rate of assessment including a maximum assessment rate in the event one was adopted;
- d. The procedure for objecting provided in Section 30-52(f) hereof;

- e. The method by which the fire protection assessment will be collected;
and
- f. A statement that the initial assessment roll is available for inspection at the office of the assessment coordinator and all interested persons may ascertain the amount to be assessed against a parcel of assessed property at the office of the assessment coordinator.

(e) *Notice by mail.*

(1) In addition to the published notice required by Section 30-52(d), the assessment coordinator shall provide notice, or direct the provision of notice, of the proposed fire protection assessment by first class mail to the owner of each parcel of property subject to the fire protection assessment.

(2) Such notice shall include:

- a. The purpose of the fire protection assessment;
- b. The rate of assessment to be levied against each parcel of property, including a maximum assessment rate in the event one was adopted;
- c. The unit of measurement applied to determine the fire protection assessment;
- d. The number of such units contained in each parcel of property;
- e. The total revenue to be collected by the city from the fire protection assessment;

- f. A statement that failure to pay the fire protection assessment will cause a tax certificate to be issued against the property or foreclosure proceedings to be instituted, either of which may result in a loss of title to the property;
- g. A statement that all affected owners have a right to appear at the hearing and to file written objections with the city council within 20 days of the notice; and
- h. The date, time, and place of the hearing.

(3) The mailed notice shall conform to the requirements set forth in the Uniform Assessment Collection Act. Notice shall be mailed at least 20 calendar days prior to the hearing to each owner at such address as is shown on the tax roll. Notice shall be deemed mailed upon delivery thereof to the possession of the United States Postal Service. The assessment coordinator may provide proof of such notice by affidavit. Failure of the owner to receive such notice due to mistake or inadvertence shall not affect the validity of the assessment roll nor release or discharge any obligation for payment of a fire protection assessment imposed by the city council pursuant to this Article.

(f) *Adoption of final assessment resolution.*

- (1) At the public hearing as noticed pursuant to Section 30-52(d) and (e) hereof, or to which an adjournment or continuance may be taken by the city council,

the city council shall receive any oral or written objections of interested persons and may then, or at any subsequent meeting of the city council adopt the final assessment resolution which shall:

- a. Confirm, modify, or repeal the initial assessment resolution with such amendments, if any, as may be deemed appropriate by the city council;
- b. Establish the rate of assessment to be imposed in the upcoming fiscal year;
- c. Establish a maximum assessment rate that may be imposed in the event such rate was adopted;
- d. Approve the initial assessment roll, with such amendments as it deems just and right; and
- e. Determine the method of collection.

(2) The adoption of the final assessment resolution by the city council shall constitute a legislative determination that all parcels assessed derive a special benefit from the Fire Protection services, facilities, or programs to be provided or constructed and a legislative determination that the fire protection assessments are fairly and reasonably apportioned among the properties that receive the special benefit.

(3) All written objections to the final assessment resolution shall be filed with the assessment coordinator at or before the time or adjourned time of such

hearing. The final assessment resolution shall constitute the annual assessment resolution for the initial fiscal year in which fire protection assessments are imposed or re-imposed hereunder.

(g) ***Effect of final assessment resolution.*** The fire protection assessments for the initial fiscal year shall be established upon adoption of the final assessment resolution. The adoption of the final assessment resolution shall be the final adjudication of the issues presented (including, but not limited to, the determination of special benefit and fair apportionment to the assessed property; the method of apportionment and assessment; the initial rate of assessment; the maximum assessment rate, if any; the initial assessment roll; and the levy and lien of the fire protection assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of the city council's adoption of the final assessment resolution. The initial assessment roll, as approved by the final assessment resolution, shall be delivered to the tax collector, as required by the Uniform Assessment Collection Act, or if the alternative method described in Section 30-53(b) hereof is used to collect the fire protection assessments, such other official as the city council by resolution shall designate.

(h) ***Annual assessment resolution.***

(1) Annually, the city council shall approve the assessment roll in accordance with the procedures in this Section 30-52(h), unless the city council makes the

determination by majority vote that a fire protection assessment shall not be levied for the subsequent fiscal year.

- (2) The initial proceedings for the approval of the annual assessment roll shall be the adoption of a preliminary assessment resolution by the city council which
- a. Contains a brief and general description of the fire protection services, facilities, or programs to be provided;
 - b. Determines the fire protection assessed cost to be assessed for the upcoming fiscal year;
 - c. Establishes the estimated assessment rate for the upcoming fiscal year;
 - d. Establishes or increases a maximum assessment rate, if desired by the city council;
 - e. Authorizes the date, time, and place of a public hearing to receive and consider comments from the public and consider the adoption of the annual assessment resolution for the upcoming fiscal year if a public hearing is required based on the circumstances described in subsection (6) below; and
 - f. Directs the assessment coordinator to:
 1. Update the assessment roll;

2. Provide notice by publication and first-class mail to affected owners in the event circumstances described in subsection (6) of this section so require; and
 3. Direct and authorize any supplemental or additional notice deemed proper, necessary or convenient by the city.
- (3) At the public hearing established in the preliminary assessment resolution or to which an adjournment or continuance may be taken by the city council, the city council shall receive any oral or written objections of interested persons and may then, or at any subsequent meeting of the city council, adopt the annual assessment resolution, which shall:
- a. Establish the rate of assessment to be imposed in the upcoming fiscal year; and
 - b. Approve the assessment roll for the upcoming fiscal year with such adjustments as the city council deems just and right.

The assessment roll shall be prepared in accordance with the method of apportionment set forth in the initial assessment resolution, or any subsequent preliminary assessment resolution, together with modifications, if any, that are provided and confirmed in the final assessment resolution or any subsequent annual assessment resolution.

- (4) Nothing herein shall preclude the city council from providing annual notification to all owners of assessed property in the manner provided in Section 30-52(d) and (e) hereof or any other method as provided by law.
- (5) The city council may establish or increase a maximum assessment rate in an initial assessment resolution or preliminary assessment resolution and confirm such maximum assessment rate in the annual assessment resolution in the event notice of such Maximum Rate Assessment has been included in the notices required by Section 30-52(d) and (e) hereof.
- (6) In the event (1) the proposed fire protection assessment for any fiscal year exceeds the rates of assessment adopted by the city council including a maximum assessment rate, if any, that were listed in the notices previously provided to the owners of assessed property pursuant to Section 30-52(d) and (e) hereof, (2) the purpose for which the fire protection assessment is imposed or the use of the revenue from the fire protection assessment is substantially changed from that represented by notice previously provided to the owners of assessed property pursuant to Section 30-52(d) and (e) hereof, (3) the method of apportionment is revised or altered resulting in an increased fire protection assessment from that represented by notice previously provided to the owners of assessed property pursuant to Section 30-52(d) and (e) hereof, or (4) an assessment roll contains assessed property that was not included on

the assessment roll approved for the prior fiscal year, notice shall be provided by publication and first class mail to the owners of such assessed property as provided by law. Such notice shall substantially conform with the notice requirements set forth in Section 30-52(d) and (e) hereof and inform the owner of the date, time, and place for the adoption of the annual assessment resolution. The failure of the owner to receive such notice due to mistake or inadvertence, shall not affect the validity of the assessment roll nor release or discharge any obligation for payment of a fire protection assessment imposed by the city council pursuant to this Article.

- (7) As to any assessed property not included on an assessment roll approved by the adoption of the final assessment resolution or a prior year's annual assessment resolution, the adoption of the succeeding annual assessment resolution shall be the final adjudication of the issues presented as to such assessed property (including, but not limited to, the determination of special benefit and fair apportionment to the assessed property, the method of apportionment and assessment, the rate of assessment, the establishment or increase of a maximum assessment rate, the assessment roll, and the levy and lien of the fire protection assessments), unless proper steps shall be initiated in a court of competent jurisdiction to secure relief within 20 days from the date of the city council's adoption of the annual assessment resolution.

Nothing contained herein shall be construed or interpreted to affect the finality of any fire protection assessment not challenged within the required 20-day period for those fire protection assessments previously imposed against assessed property by the inclusion of the assessed property on an assessment roll approved in the final assessment resolution or any subsequent annual assessment resolution.

(8) The assessment roll, as approved by the annual assessment resolution, shall be delivered to the tax collector as required by the Uniform Assessment Collection Act, or if the alternative method described in Section 30-53(b) hereof is used to collect the fire protection assessments, such other official as the city council by resolution shall designate. If the fire protection assessment against any property shall be sustained, reduced, or abated by the court, an adjustment shall be made on the assessment roll.

(i) ***Lien of fire protection assessments.*** Upon the adoption of the assessment roll, all fire protection assessments shall constitute a lien against assessed property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments. Except as otherwise provided by law, such lien shall be superior in dignity to all other prior liens, mortgages, titles, and claims, until paid. The lien for a fire protection assessment shall be deemed perfected upon the city council's adoption of the final assessment resolution or the annual assessment resolution,

whichever is applicable. The lien for a fire protection assessment collected under the Uniform Assessment Collection Act shall attach to the property included on the assessment roll as of the prior January 1, the lien date for ad valorem taxes imposed under the tax roll. The lien for a fire protection assessment collected under the alternative method of collection provided in Section 30-53(b) shall be deemed perfected upon the city council's adoption of the final assessment resolution or the annual assessment resolution, whichever is applicable, and shall attach to the property on such date of adoption.

- (j) *Revisions to fire protection assessments.* If any fire protection assessment made under the provisions of this Article is either in whole or in part annulled, vacated, or set aside by the judgment of any court, or if the city council is satisfied that any such fire protection assessment is so irregular or defective that the same cannot be enforced or collected, or if the city council has failed to include or omitted any property on the assessment roll, which property should have been so included, the city council may take all necessary steps to impose a new fire protection assessment against any property benefited by the Fire Protection services, facilities or programs, following as nearly as may be practicable, the provisions of this Article and in case such second fire protection assessment is annulled, vacated, or set aside, the city council may obtain and impose other fire protection assessments until a valid fire protection assessment is imposed.

(k) *Procedural irregularities.* Any informality or irregularity in the proceedings in connection with the levy of any fire protection assessment under the provisions of this Article shall not affect the validity of the same after the approval thereof, and any fire protection assessment as finally approved shall be competent and sufficient evidence that such fire protection assessment was duly levied, that the fire protection assessment was duly made and adopted, and that all other proceedings applicable to such fire protection assessment were duly had, taken, and performed as required by this Article; and no variance from the directions hereunder shall be held material unless it be clearly shown that the party objecting was materially injured thereby.

(l) *Correction of errors and omissions.*

- (1) No act of error or omission on the part of the property appraiser, tax collector, city manager, city council, or their deputies or employees, shall operate to release or discharge any obligation for payment of a fire protection assessment imposed by the city council under the provision of this Article.
- (2) When it shall appear that any fire protection assessment should have been imposed under this Article against a parcel of property specially benefited by the provision of Fire Protection services, facilities, or programs, but that such property was omitted from the assessment roll; or such property was erroneously assessed; or was not listed on the tax roll as an individual parcel

of property as of the effective date of the assessment roll approved by the annual assessment resolution for any upcoming fiscal year, the city council may, upon provision of a notice by mail provided to the owner of the omitted or erroneously assessed parcel in the manner and form provided in Section 30-52(e), impose the applicable fire protection assessment for the fiscal year in which such error or omission is discovered, in addition to the applicable fire protection assessment due for the prior two fiscal years. Such fire protection assessment shall constitute a lien against assessed property equal in rank and dignity with the liens of all state, county, district, or municipal taxes and special assessments, and superior in rank and dignity to all other prior liens, mortgages, titles, and claims in and to or against the real property involved, shall be collected as provided herein, and shall be deemed perfected on the date of adoption of the resolution imposing the omitted or delinquent assessments.

- (3) Prior to the delivery of the assessment roll to the tax collector in accordance with the Uniform Assessment Collection Act, the assessment coordinator shall have the authority at any time, upon his or her own initiative or in response to a timely filed petition from the owner of any property subject to a fire protection assessment, based upon presentation of competent and substantial evidence, to correct any error in applying the fire protection

assessment apportionment method to any particular parcel of property not otherwise requiring the provision of notice pursuant to the Uniform Assessment Collection Act. Any such correction shall be considered valid ab initio and shall in no way affect the enforcement of the fire protection assessment imposed under the provisions of this Article. All requests from affected property owners for any such changes, modifications or corrections shall be referred to, and processed by, the assessment coordinator and not the property appraiser or tax collector.

- (4) After the assessment roll has been delivered to the tax collector in accordance with the Uniform Assessment Collection Act, any changes, modifications, or corrections thereto shall be made in accordance with the procedures applicable to correcting errors and insolvencies on the tax roll upon timely written request and direction of the assessment coordinator.

(m) *Interim assessments.*

- (1) An interim fire protection assessment may be imposed against all property, for which a building permit or certificate of occupancy, at the discretion of the city council, is issued, after adoption of the annual assessment resolution. The amount of the interim fire protection assessment shall be calculated upon a monthly rate, which shall be one-twelfth of the annual rate for such property computed in accordance with the annual assessment resolution for the fiscal

year for which the interim fire protection assessment is being imposed. Such monthly rate shall be imposed for each full calendar month remaining in the fiscal year. In addition to the monthly rate, the interim fire protection assessment may also include an estimate of the subsequent fiscal year's fire protection assessment. No building permit or certificate of occupancy, at the discretion of the city council, shall be issued until full payment of the interim fire protection assessment is received by the city. Issuance of the building permit or certificate of occupancy, at the discretion of the city council, without the payment in full of the interim fire protection assessment shall not relieve the owner of such property of the obligation of full payment. Any interim fire protection assessment not collected prior to the issuance of the building permit or certificate of occupancy, at the discretion of the city council, may be collected pursuant to the Uniform Assessment Collection Act as provided in Section 30-53(a) of this Article or by any other method authorized by law. Any interim fire protection assessment shall be deemed due and payable on the date the building permit or certificate of occupancy, at the discretion of the city council, was issued and shall constitute a lien against such property as of that date. Said lien shall be equal in rank and dignity with the liens of all state, county, district or municipal taxes and special assessments, and superior in rank and dignity to all other liens,

encumbrances, titles and claims in and to or against the real property involved and shall be deemed perfected upon the issuance of the building permit or certificate of occupancy, at the discretion of the city council.

(2) In the event the city elects to collect the interim fire protection assessment at the time of building permit, the following procedures shall apply.

- a. In the event a building permit expires prior to completion of the building for which it was issued, and the applicant paid the interim fire protection assessment at the time the building permit was issued, the applicant may within 90 days of the expiration of the building permit apply for a refund of the interim fire protection assessment. Failure to timely apply for a refund of the interim fire protection assessment shall waive any right to a refund.
- b. The application for refund shall be filed with the assessment coordinator and contain the following:
 1. The name and address of the applicant;
 2. The location of the property and the tax parcel identification number for the property which was the subject of the building permit;
 3. The date the interim fire protection assessment was paid;

4. A copy of the receipt of payment for the interim fire protection assessment; and
 5. The date the building permit was issued and the date of expiration.
- c. After verifying that the building permit has expired and that the building has not been completed, the city shall refund the interim fire protection assessment paid for such building.
 - d. The applicant for a building permit which is subsequently issued for a building on the same property which was subject of a refund shall pay the interim fire protection assessment as required by this Section 30-52(m).

Sec. 30-53. – Collection.

(a) *Method of collection.*

- (1) Unless otherwise directed by the city council, the fire protection assessments shall be collected pursuant to the uniform method provided in the Uniform Assessment Collection Act, and the city shall comply with all applicable provisions of the Uniform Assessment Collection Act. Any hearing or notice required by this Article may be combined with any other hearing or notice required by the Uniform Assessment Collection Act or other provision of law.
- (2) The amount of a fire protection assessment to be collected using the uniform method pursuant to the Uniform Assessment Collection Act for any specific

parcel of benefitted property may include an amount equivalent to the payment delinquency, delinquency fees and recording costs for a prior year's assessment for a comparable service, facility, or program provided, (1) the collection method used in connection with the prior year's assessment did not employ the use of the uniform method of collection authorized by the Uniform Assessment Collection Act, (2) notice is provided to the owner as required under the Uniform Assessment Collection Act, and (3) any lien on the affected parcel for the prior year's assessment is supplanted and transferred to such fire protection assessment upon certification of a non-ad valorem roll to the tax collector by the city.

(b) *Alternative method of collection.* In lieu of using the Uniform Assessment Collection Act, the city council may elect to collect the fire protection assessments by any other method which is authorized by law or under the alternative collection method provided by this section:

(1) The city council shall provide fire protection assessment bills by first class mail to the owner of each affected parcel of property that is subject to the fire protection assessment. The bill or accompanying explanatory material shall include:

a. A brief explanation of the fire protection assessment;

- b. A description of the unit of measurement used to determine the amount of the fire protection assessment;
- c. The number of units contained within the parcel;
- d. The total amount of the fire protection assessment imposed against the parcel for the appropriate period;
- e. The location at which payment will be accepted;
- f. The date on which the fire protection assessment is due; and
- g. A statement that the fire protection assessment constitutes a lien against assessed property equal in rank and dignity with the liens of all state, county, district or municipal taxes and other non-ad valorem assessments.

(2) A general notice of the lien resulting from imposition of the fire protection assessments shall be recorded in the Official Records of the County of Volusia. Nothing herein shall be construed to require that individual liens or releases be filed in the Official Records of the County of Volusia.

(3) The city council shall have the right to foreclose and collect all delinquent fire protection assessments in the manner provided by law for the foreclosure of mortgages on real property or appoint or retain an agent to institute such foreclosure and collection proceedings. A fire protection assessment shall become delinquent if it is not paid within 30 days from the date payment was

due, as identified in accordance with subsection (b)(1)f. of this section. The city council or its agent shall notify any property owner who is delinquent in payment of his or her fire protection assessment within 60 days from the date such assessment was due. Such notice shall state in effect that the city council or its agent will either (1) initiate a foreclosure action or suit in equity and cause the foreclosure of such property subject to a delinquent fire protection assessment in a method now or hereafter provided by law for foreclosure of mortgages on real property, or (2) cause an amount equivalent to the delinquent fire protection assessment, not previously subject to collection using the uniform method under the Uniform Assessment Collection Act, to be collected on the tax bill for a subsequent year.

- (4) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any foreclosure action as described herein shall be included in any judgment or decree rendered therein. At the sale pursuant to decree in any such action, the city may be the purchaser to the same extent as any person. The city council or its agent may join in one foreclosure action the collection of fire protection assessments against any or all property assessed in accordance with the provisions hereof. All delinquent owners whose property is foreclosed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the city council and its agents, including

reasonable attorney fees, in collection of such delinquent fire protection assessments and any other costs incurred by the city council as a result of such delinquent fire protection assessments and the same shall be collectible as a part of or in addition to, the costs of the action.

(5) In lieu of foreclosure, any delinquent fire protection assessment and the costs, fees and expenses attributable thereto, may be collected pursuant to the Uniform Assessment Collection Act; provided however, that (1) notice is provided to the owner in the manner required by the Uniform Assessment Collection Act and this Article, and (2) any existing lien of record on the affected parcel for the delinquent fire protection assessment is supplanted by the lien resulting from certification of the assessment roll, as applicable, to the tax collector.

(6) Notwithstanding the city council's use of an alternative method of collection, the assessment coordinator shall have the same power and authority to correct errors and omissions as provided to him or other city officials in Section 30-52(l) hereof.

(7) Any city council action required in the collection of fire protection assessments may be by resolution.

(c) *Government property.*

- (1) Notwithstanding anything herein to the contrary, Assessments shall not be imposed against government property which is exempted from the payment of special assessments and/or non-ad valorem assessments under state or federal law. The foregoing class of properties not to be assessed do not include government property that is leased for private use. Nothing herein shall be construed to require the imposition of Assessments against government property.
- (2) In the event fire protection assessments are imposed against government property, the city council shall provide fire protection assessment bills by first class mail to the owner of each affected parcel of government property. The bill or accompanying explanatory material shall include:
- a. A brief explanation of the fire protection assessment;
 - b. A description of the unit of measurement used to determine the amount of the fire protection assessment;
 - c. The number of units contained within the parcel;
 - d. The total amount of the parcel's fire protection assessment for the appropriate period;
 - e. The location at which payment will be accepted; and
 - f. The date on which the fire protection assessment is due.

- (3) Fire protection assessments imposed against government property shall be due on the same date as all other fire protection assessments and, if applicable, shall be subject to the same discounts for early payment.
- (4) A fire protection assessment shall become delinquent if it is not paid within 30 days from the date payment was due, as identified in subsection (b)(1)f. of this section. The city council shall notify the owner of any government property that is delinquent in payment of its fire protection assessment within 60 days from the date such assessment was due. Such notice shall state that the city council will initiate a mandamus or other appropriate judicial action to compel payment.
- (5) All costs, fees and expenses, including reasonable attorney fees and title search expenses, related to any mandamus or other action as described herein shall be included in any judgment or decree rendered therein. All delinquent owners of government property against which a mandamus or other appropriate action is filed shall be liable for an apportioned amount of reasonable costs and expenses incurred by the city, including reasonable attorney fees, in collection of such delinquent fire protection assessments and any other costs incurred by the city council as a result of such delinquent fire protection assessments and the same shall be collectible as a part of or in addition to, the costs of the action.

- (6) As an alternative to the foregoing, a fire protection assessment imposed against government property may be collected as a surcharge on a utility bill provided to such government property in periodic installments with a remedy of a mandamus action in the event of non-payment. The city council may contract for such billing services with any utility, whether or not such utility is owned by the city.

Sec. 30-54. - General Provisions.

- (a) *Applicability.* This Article and the city council's authority to impose assessments pursuant hereto shall be applicable throughout the city.

(b) *Alternative method.*

- (1) This Article shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing or which may hereafter come into existence. This Article, being necessary for the welfare of the inhabitants of the city, shall be liberally construed to effect the purposes hereof.

- (2) Nothing herein shall preclude the city council from directing and authorizing, by resolution, the combination with each other of (1) any supplemental or additional notice deemed proper, necessary, or convenient by the city, (2) any

notice required by this Article, or (3) any notice required by law, including the Uniform Assessment Collection Act.

SECTION 2. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange and the sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 3. The provisions of this Ordinance are severable; and if any section, subsection, sentence, clause or provision is held invalid by any court of competent jurisdiction, the remaining provisions of this Ordinance shall not be affected thereby.

[REMAINDER OF PAGE LEFT BLANK]

SECTION 4. This Ordinance shall be in force and take effect immediately upon its passage and adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

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

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

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



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (F24) First Reading - Ordinance No. 2019-20 - Small-Scale Future Land Use Map Amendment/904 and 908 Taylor Road

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Move to approve Ordinance No. 2019-21, to change the Future Land Use (FLU) designation for ±4.4-acres from *Office/Residential Transition* to *Commercial*, and authorization for staff to send the amendment to the required review agencies.

SUMMARY: Planning Commission Action (05/23/19): Recommended Approval

The applicant is requesting to change the Future Land Use (FLU) designation for ±4.4-acres from *Office/Residential Transition* to *Commercial*. The 4.4-acre subject property includes the Port Orange Christian Church site (904 Taylor Rd.) and an adjacent vacant parcel (908 Taylor Rd.). According to the applicant, if the FLU amendment request is approved, the applicant intends to request the subject property be rezoned from Professional Office (PO) to Community Commercial (CC) (see Case No. 19-60000001).

According to the applicant, the Port Orange Christian Church is in the process of relocating to a new site, located at 1801 Taylor Road, and wants to sell their land to fund the new site. Together with the owner of the adjacent vacant parcel, N & T Enterprises, LLC, they have requested to amend the FLU of the subject property to expand the number of non-residential uses allowed to be developed on the subject property to facilitate redevelopment. The applicant also stated that the request is to put in place FLU designation and zoning that better reflects the development pattern surrounding Taylor Road/ Dunlawton Avenue/ I-95 commercial node.

The proposed FLU amendment is generally consistent with the pertinent Goals, Objectives, and Policies of the City's Comprehensive Plan. The proposed FLU designation is compatible with adjacent parcels. There are no new impacts to public facilities from the proposed amendment. Adequate capacity exists for portable water, sewer, schools, recreation, and stormwater, and solid waste. As for transportation, while the proposed amendment reduces the thermotical maximum number of PM Peak and daily trips, there are still failing road segments identified. As with all development, the specific site development proposals for the subject property will be subject to concurrency regulations requiring adequate public facilities to be provided to mitigate the impacts

As documented in the staff report, changing the FLU designation for the subject

property will reduce the theoretical maximum demand the subject property will have on all public infrastructure and services. The staff report is attached for your review.

Project No.: Funding Account No.:

Presenter: Penelope Cruz

ATTACHMENTS:

1.	Ord. No. 2019-20	Ord. No. 2019-20 .pdf
2.	Ord. No. 2019-20 Exhibit A	Ord. No. 2019-20 Exhibit A.pdf
3.	Staff Report	CC_FLUA Staff Report_SW Corner_Taylor Rd_Boggs Ford Ln.pdf

Penelope Cruz
Tim Burman
Shannon Balmer
Jake Johansson
Robin Fenwick

Created/Initiated - 5/28/2019
Approved - 5/29/2019
Approved - 6/5/2019
Approved - 6/7/2019
Final Approval - 6/7/2019

ORDINANCE NO. 2019-20

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, RELATING TO
COMPREHENSIVE PLANNING; AMENDING THE FUTURE
LAND USE MAP OF THE COMPREHENSIVE PLAN;
AMENDING THE FUTURE LAND USE DESIGNATION FOR
±4.4 ACRES FROM OFFICE/RESIDENTIAL TRANSITION
TO COMMERCIAL; PROVIDING FOR CONFLICTING
ORDINANCES, SEVERABILITY AND AN EFFECTIVE
DATE.

WHEREAS, after careful review and a public hearing, the Planning Commission, sitting as the Local Planning Agency, has forwarded a recommendation to the City Council regarding this proposed amendment to the Comprehensive Plan for the City of Port Orange; and

WHEREAS, the proposed amendment to the Comprehensive Plan directly relates to small scale development activities as provided in Section 163.3187(1)(c), Florida Statutes; and

WHEREAS, the City Council of the City of Port Orange has received comments and proposals from the general public and held at least one public hearing with regard to the proposed amendment to the Comprehensive Plan; and

WHEREAS, the amendment to the Comprehensive Plan shall be submitted to the Volusia Growth Management Commission for a determination of consistency in accordance with Section 202.3 of the Charter of Volusia County, Florida; and

WHEREAS, the City Council hereby declares that the purpose and intent of the proposed amendment to the Comprehensive Plan is to guide future growth and development; encourage the most appropriate use of land, water, and other resources,

consistent with the public interest; promote and protect the public health, safety, comfort, good order, appearance, convenience, aesthetics, and general welfare; prevent the overcrowding of land and avoid undue concentration of population; provide adequate and efficient transportation, water, sewage, drainage, fire protection, parks, recreational facilities, housing, and other services, facilities and resources; and conserve and protect natural resources within the City, while protecting private property rights; and

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

Section 1. For purposes herein, the term “Comprehensive Plan”, shall mean the Comprehensive Plan for the City of Port Orange, consisting of the two (2) volumes entitled “Comprehensive Plan City of Port Orange 2010-2025”, including Binder No. 1, consisting of ten (10) elements, including Future Land Use and Future Land Use Map; Transportation; Housing; Public Facilities; Public Schools Facilities; Coastal Zone Management; Conservation; Recreation and Open Space; Intergovernmental Coordination; and Capital Improvements, all as adopted by Ordinance No. 1999-43, as subsequently amended by Ordinances No. 1999-46, 1999-56, 1999-57, 2000-1, 2000-8, 2000-13, 2000-25, 2000-29, 2000-41, 2001-2, 2001-21, 2001-26, 2001-28, 2001-75, 2001-76, 2001-89, 2002-7, 2002-20, 2003-3, 2003-1, 2003-22, 2003-39, 2004-34, 2004-39, 2005-1, 2005-3, 2005-13, 2005-15, 2005-25, 2005-27, 2005-30, 2005-31, 2005-49, 2006-9, 2006-16, 2006-24, 2006-41, 2006-51, 2006-53, 2007-4, 2007-14, 2007-30, 2007-48, 2007-55, 2007-57, 2007-60, 2007-61, 2008-2, 2008-8, 2008-9, 2008-12, 2008-16, 2008-19, 2008-36, 2009-3, 2009-19, 2009-20, 2010-14, 2010-20, 2010-30, 2011-24, 2011-34, 2012-8, 2012-24, 2012-30, 2013-20, 2013-25, 2014-31, 2014-32,

2015-42, 2015-44, 2016-6, 2016-20, 2016-24, 2016-26, 2017-4, 2017-33, 2018-10, 2018-15, 2018-18, 2018-20, 2018-29, 2018-30, 2019-11 and this ordinance.

Section 2. The Future Land Use Map of the Comprehensive Plan is hereby amended from Office/Residential to Commercial as shown on the Map depicted in **Exhibit “A”**, attached hereto and by reference made a part hereof.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

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

MAYOR DONALD O. BURNETTE

ATTEST:

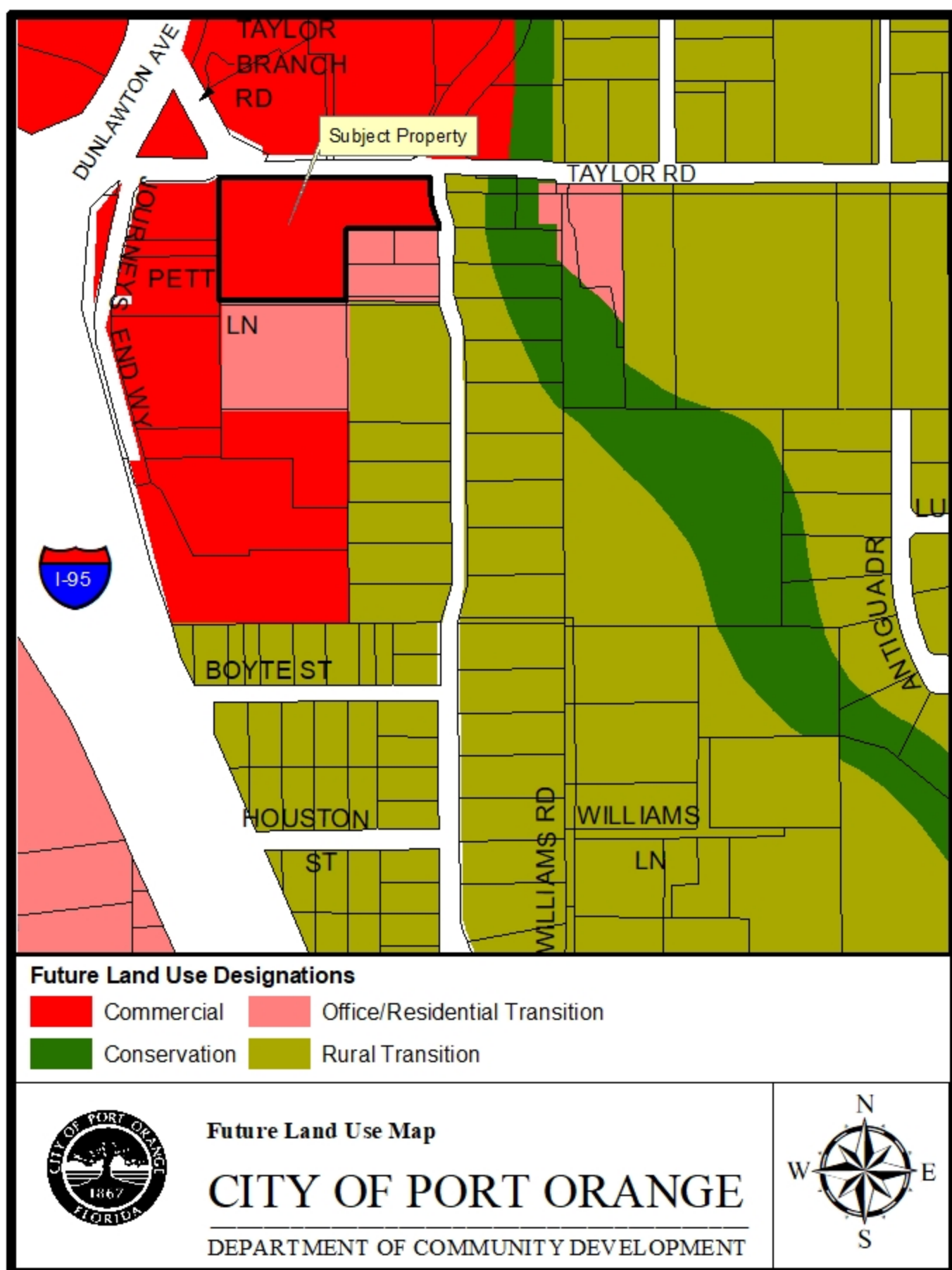
Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the day of

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

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Exhibit "A"





STAFF REPORT

Small-Scale Comprehensive Plan Future Land Use Amendment/Southwest corner of Taylor Rd. and Boggs Ford Rd.
Case No. 19-20000001

REQUEST:	Change the Comprehensive Plan Future Land Use (FLU) designation for ±4.4 acres from <i>Office/Residential Transition</i> to <i>Commercial</i> .
LOCATION:	Southwest corner of Taylor Rd. and Boggs Ford Rd. (Figure 1 - Location Map)
OWNERS:	Port Orange Christian Church, Inc. and N & T Enterprises, LLC
APPLICANT:	Storch Law Firm
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION ACTION:	Recommended Approval (May 23, 2019)
CITY COUNCIL:	June 18, 2019

INTRODUCTION

The applicant is requesting to change the Future Land Use (FLU) designation for ±4.4-acres from *Office/Residential Transition* to *Commercial*. The 4.4-acre subject property includes the Port Orange Christian Church site (904 Taylor Rd.) and an adjacent vacant parcel (908 Taylor Rd.). According to the applicant, if the FLU amendment request is approved, the applicant intends to request the subject property be rezoned from Professional Office (PO) to Community Commercial (CC) (see Case No. 19-60000001).



Figure 1. Location Map

Map created by the City of Port Orange Community Development Department

According to the applicant, the Port Orange Christian Church is in the process of relocating to a new site, located at 1801 Taylor Road, across from the Forest Lakes Preserve subdivision and wants to sell their land to fund the new site. Together with the owner of the adjacent vacant parcel, N & T Enterprises, LLC, they have requested to amend the FLU of the subject property to expand the number of non-residential uses allowed to be developed on the subject property to facilitate redevelopment. The applicant also stated that the request is to put in place FLU designation and zoning that better reflects the development pattern surrounding Taylor Road/ Dunlawton Avenue/ I-95 commercial node.

The current *ORT* FLU designation allows for the mixture of uses to be developed at a higher intensity (square-footage) and/or residential density. The intent of the requested *Commercial* land use designation is to provide for the retail sale of items and services to the general public. In locating commercial areas on the Future Land Use Map, the City has maintained the policy of designating commercial nodes at intersections of roadways. In this case, the subject property is part of Regional Node located at the intersection of I-95 and Dunlawton Avenue. The node classification was determined based on the functional classification of the adjacent roadways and size of the surrounding neighborhoods. A Regional Node is intended to serve the needs of residents within a 4-mile radius of the node.

As documented in the staff report, changing the FLU designation for the subject property will reduce the theoretical maximum demand the subject property will have on water, potable water, sewer, recreation, schools, transportation network, stormwater, and solid waste.

DISCUSSION

The following discussion will examine the proposed amendment and the impacts of the proposed amendment.

PROPERTY OVERVIEW

The subject property currently includes the Port Orange Christian Church site and an adjacent undeveloped parcel. The surrounding existing land uses, Future Land Use designations, and Zoning classifications are identified in Table 1. The current adopted FLU designation for the subject property and adjacent properties is identified on Exhibit A. The proposed FLU designation for the subject property and the current FLU designation of the adjacent properties are identified on Exhibit B. The current zoning classification of the subject property and adjacent properties are identified on Exhibit C. The proposed zoning classification of the subject property and current zoning classification of adjacent properties are identified on Exhibit D.

All future development plans (site plan or subdivision) submitted will require detailed technical review by the Development Review Committee (SDRC) to determine all requirements in the Land Development Code (LDC) are met. As with all development, specific site development proposals for the subject property are subject to concurrency regulations at the time of development requiring transportation facilities to be provided or for the developer to enter into a mitigation agreement for their impacts.

Table 1. Surrounding Land Uses and Zoning

Direction	Existing Land Use	FLU Designation	Zoning District
North	Altamira Planned Commercial Development (PCD)	Commercial	Planned Commercial Development (PCD)
South	Single-family homes	Office/Residential Transition; Rural Transition (0-2 units/acre)	Professional Office; Agriculture
East	Boggs Ford Road right-of-way; single-family homes	Boggs Ford Road right-of-way; Rural Transition (0-2 units/acre)	Agriculture
West	Journey's End Planned Commercial Development (PCD)	Commercial	Planned Commercial Development (PCD); Interchange Commercial (ICD)

PROPOSED AMENDMENT

The proposed amendment is to change the FLU designation for ±4.4-acres from *Office/Residential Transition* to *Commercial*. The following tables identify the current adopted and proposed FLU designations by acreage (Table 2) and maximum allowable density/intensity and net change in density/intensity (Table 3).

The current *Office/Residential Transition* FLU designation is a mixed-use category that allows for a distribution of uses within the 4.4-acres, with the cumulative mixture of uses totaling 100%. In Table 3, the maximum allowable density/intensity and net change in density/intensity is based on two theoretical maximum scenarios currently allowed with the *Office/Residential Transition* FLU designation (Scenario #1: 25% Residential/75% Office; and Scenario #2: 25% commercial/75% office).

Table 2. Current & Proposed Future Land Uses – Acreage by Category

	Current FLU (acres)	Proposed FLU (acres)	Net Change in FLU (acres)
Office/Residential Transition	4.4	0	- 4.4
Commercial	0	4.4	+4.4
TOTAL ACREAGE	4.4	4.4	0

Table 3. Current & Proposed Future Land Uses – Maximum Density/Intensity by Category

	Current FLU	Proposed FLU	Net Change in FLU
	[Theoretical Maximum Density/Intensity]		
Office/Residential Transition <i>Scenario #1</i> 25% Residential (10 units/acre)/75% Office (1.5 FAR*)	44 dwelling units 215,622 sq.ft.	0	-44 dwelling units -215,622 sq.ft.
Office/Residential Transition <i>Scenario #2</i> 25% commercial (1.5 FAR)* /75% office (1.5 FAR)*	287,496 sq.ft.	0	-287,496 sq.ft.
Commercial (1.0 FAR)*	0	191,664 sq. ft.	191,664 sq. ft.
TOTAL	Scenario #1: 44 dwelling units 215,622 sq.ft.	191,664 sq. ft.	Scenario #1: -44 dwelling units - 23,958 sq.ft
	Scenario #2: 287,496 sq.ft.		Scenario #2: -95,832 sq.ft.

*The floor area ratio (FAR) is the total covered area on all floors of all buildings on a certain lot divided by the total area of the lot.

INFRASTRUCTURE IMPACT ASSESSMENT

In accordance with standard practice from the Florida Department of Economic Opportunity (DEO) and other review agencies, an impact comparison analysis of the proposed amendment has been completed based upon the theoretical maximum development potential under the currently adopted Future Land Use designation versus the proposed designation. The following seven public facilities and services were examined (Table 4).

- | | |
|-------------------|------------------------|
| 1. Transportation | 5. Stormwater Drainage |
| 2. Sanitary Sewer | 6. Recreation |
| 3. Potable Water | 7. Schools |
| 4. Solid Waste | |

Overall, the proposed amendment would result in a net decrease in impacts to all public infrastructure and services.

Table 4. Impact Analysis (Theoretical Max.)

DEVELOPMENT VARIABLE	CURRENT LAND USE		PROPOSED LAND USE	NET CHANGE	
	Scenario 1 (25% Residential/ 75% Office)	Scenario 2 (25% commercial/ 75% office)		Scenario 1	Scenario 2
Residential Units	44	0	0	-44	0
Non-residential Buildable Sq. Ft.	215,622	287,496	191,664	-23,958	-95,832
Population ¹	99	0	0	-99	0
PM Peak Hour Trips/Daily Trips ²	948/8,083	1,187/10,859	711/8,184	-237/-101	-476/-2,675
Sanitary Sewer (gallons/day) ³	28,602	28,750	19,166	-9,436	-9,584
Potable Water (gallons/day) ⁴	29,482	28,750	19,166	-10,316	-9,584
Solid Waste (lbs./person) ⁵	2,474	2,875	1,917	-557	-958
Stormwater Drainage ⁶	n/a	n/a	n/a	n/a	n/a
Recreation/Open Space ⁷ (acres)	0.69	0	0	-0.69	0

Table 4 Notes:

1. Population: 2.25 persons per household (per 2010 Census)
2. Transportation: Apartment (220) 0.62 PM Peak Hour, 6.65 Average Daily; Shopping Center (820) trips per 1000 sq.ft. - 3.71 PM Peak Hour; 42.70 Average Daily; Medical Office (720) trips per 1000 sq.ft. - 4.27 PM Peak Hour, 36.13 Average Daily; ITE Trip Generation Manual, 10th Edition
3. Sanitary Sewer: 160 gallons per day per Equivalent Residential Unit; 1/10 gallon per square foot per day of non-residential development
4. Potable Water: 180 gallons per day per Equivalent Residential Unit; 1/10 gallon per square foot per day of non-residential development
5. Solid Waste: 3.21 pounds per person per day; 10 lbs. per 1,000 square feet of non- residential development per day
6. Stormwater Drainage: LOS standard = 25-year, 24-hour event; Drainage system will be designed to meet the requirements of the Land Development Code.
7. Rec. & Open Space: 7 acres/1,000 persons (0.007 acres/person)

TRANSPORTATION

A transportation analysis has been prepared by traffic engineering firm, LTG, Inc., and reviewed by staff. A decrease in the number of daily trips and P.M. peak hour trips is expected to result from the proposed FLU amendment. Based on the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition, the proposed *Commercial* FLU designation could generate 237 less P.M. peak hour trips and 101 less daily trips, based on the maximum allowed development for the current (Scenario #1) and proposed FLU designations. When compared to the current FLU designation under scenario #2, proposed *Commercial* FLU designation could generate 476 less P.M. peak hour trips and 2,675 less daily trips, based on the maximum allowed development for the current (Scenario #2) and proposed FLU designations.

The current FLU designation allows is a mixed-use designation that allows for mostly office, some commercial and multi-family residential uses. According to the ITE Trip Generation Manual, the medical and professional office and residential uses allowed under the current FLU designation generate more vehicular trips, especial during peak school traffic times, than the general commercial uses allowed under the proposed FLU designation. In addition, the uses allowed in the *Office/Residential Transition* FLU designation typically attract new trips to an area and while the *Commercial* FLU designation also attracts trips, there is typically a portion of trips that already exist on the adjacent roadways. Therefore, the *Commercial* FLU designation reduces the buildable area (square-footage) and supports uses that will attract a percentage of existing trips on the roadway network.

The analysis shows there will be deficiencies under the current land use in the long-term and the land use proposed in the amendment is expected to still add traffic to these roadway segments. However, due to the reduction in intensity and density through the proposed FLU amendment, the amount of traffic added is anticipated to be less.

As with all development, the specific site development proposals for the subject property will be subject to concurrency regulations at the time of development, requiring adequate transportation facilities to be provided or to mitigate their impacts.

SANITARY SEWER

The City has available capacity to accommodate the proposed amendment and future development of the subject property. The City's adopted LOS standard for sanitary sewer is 160 gallons per day per Equivalent Residential Unit (ERU), and 1/10 gallon per square foot per day of non-residential development. Using these standards, the proposed FLU designation would theoretically generate 19,166 gallons per day (gpd) of wastewater. This is a net decrease of over 9,000 gpd between the current and proposed FLU designations.

POTABLE WATER

The City has available well and Consumptive Use Permit (CUP) capacity to serve the proposed land use change. The City's adopted LOS standard for potable water is 180 gallons per day per Equivalent Residential Unit. Using this standard, the proposed FLU designation would demand 19,166 gallons of potable water per day based on the theoretical maximum development analysis, which is a net decrease of over 9,000 gallons per day.

SOLID WASTE COLLECTION

There is available capacity at the landfill to address the City's solid waste disposal needs. Solid waste generated within the City of Port Orange is delivered to the Volusia County landfill, a 3,000-acre Class I landfill with a projected life span to the year 2050. The City's adopted LOS standard for solid waste is 3.21 pounds per person per day and 10 lbs. per 1,000 square feet of non-residential development per day. Using this standard, the proposed FLU designation would generate 1,917 pounds per day of solid waste based on the theoretical maximum development analysis, which is a net decrease of over 500 pounds per day.

STORMWATER DRAINAGE

There is no anticipated impact to the City's drainage system from the proposed land use change. Stormwater management in the City of Port Orange deals with both quality and quantity. The City's adopted LOS standard for stormwater is the 25-year, 24-hour storm event. More specifically, the stormwater facilities must be capable of treating and conveying the runoff from such a storm without causing flooding of adjacent properties or polluting any receiving water bodies. In addition, the Comprehensive Plan and Land Development Code require that there be no net loss of stormwater retention function as a result of development. In other words, a given parcel must have the same ability to store and discharge water after development as it does before development occurs. Any future development of the property will be required to address stormwater retention on the property in accordance with these City standards.

RECREATION

The proposed FLU designation does not require additional parkland because it is a non-residential FLU designation that does not increase residential demand. According to the City's 2018 Concurrency Management Report, the City has an excess of 68 acres of parkland, so no additional parkland is needed.

SCHOOLS

Pursuant to the Volusia County School District criteria, the proposed FLU amendment and any future development of this property is exempt from School Concurrency review because the request is to change to a non-residential designation.

REVIEW CRITERIA AND STAFF FINDINGS

1. *Consistency with the City's Comprehensive Plan.*

Staff finding: The proposed FLU amendment is generally consistent with the pertinent Goals, Objectives, and Policies of the City's Comprehensive Plan. The proposed FLU designation is compatible with adjacent parcels. There are no new impacts to public facilities from the proposed amendment. Adequate capacity exists for portable water, sewer, schools, recreation, and stormwater, and solid waste. As for transportation, while the proposed amendment reduces the theoretical maximum number of PM Peak and daily trips, there are still failing road segments identified. As with all development, the specific site development proposals for the subject property will be subject to concurrency regulations requiring adequate public facilities to be provided to mitigate the impacts.

2. *Compatibility with land use designations for adjacent parcels and neighborhoods.*

Staff finding: The proposed FLU amendment is compatible with the adjacent properties. Compatibility is defined in the Comprehensive Plan as a condition in which dissimilar land uses can co-exist in relative proximity to one another in a stable fashion over time, such that neither use is negatively impacted by the other. The subject property is part of the I-95/Dunlawton regional commercial node and is primarily surrounded by properties with commercial or office FLU designations. Any future development will be required to comply with all LDC requirements, including those pertaining to buffers and screening (fence or wall) between non-residential and existing adjacent residential homes.

3. *Impacts on public facilities/infrastructure/services.*

Staff finding: The proposed amendment would result in an overall decrease in impacts to public facilities, infrastructure and services. The detailed use-specific concurrency analysis will be conducted as part of any future proposed development.

As with all development, a specific site plan or subdivision will be subject to concurrency regulations requiring adequate public facilities to be provided to mitigate impacts.

4. *Whether the amendment increases the clearance time for evacuation of the population in the Hurricane Vulnerability Zone above twelve hours.*

Staff finding: The subject property is not located within the Hurricane Vulnerability Zone and will not have any negative impact on the clearance time for evacuation of the population in the Hurricane Vulnerability Zone.

5. *Whether the amendment discourages the proliferation of urban sprawl.*

Staff finding: The proposed amendment will not encourage sprawl. The amendment area is surrounded by existing development, with access to existing infrastructure.

PUBLIC NOTICE

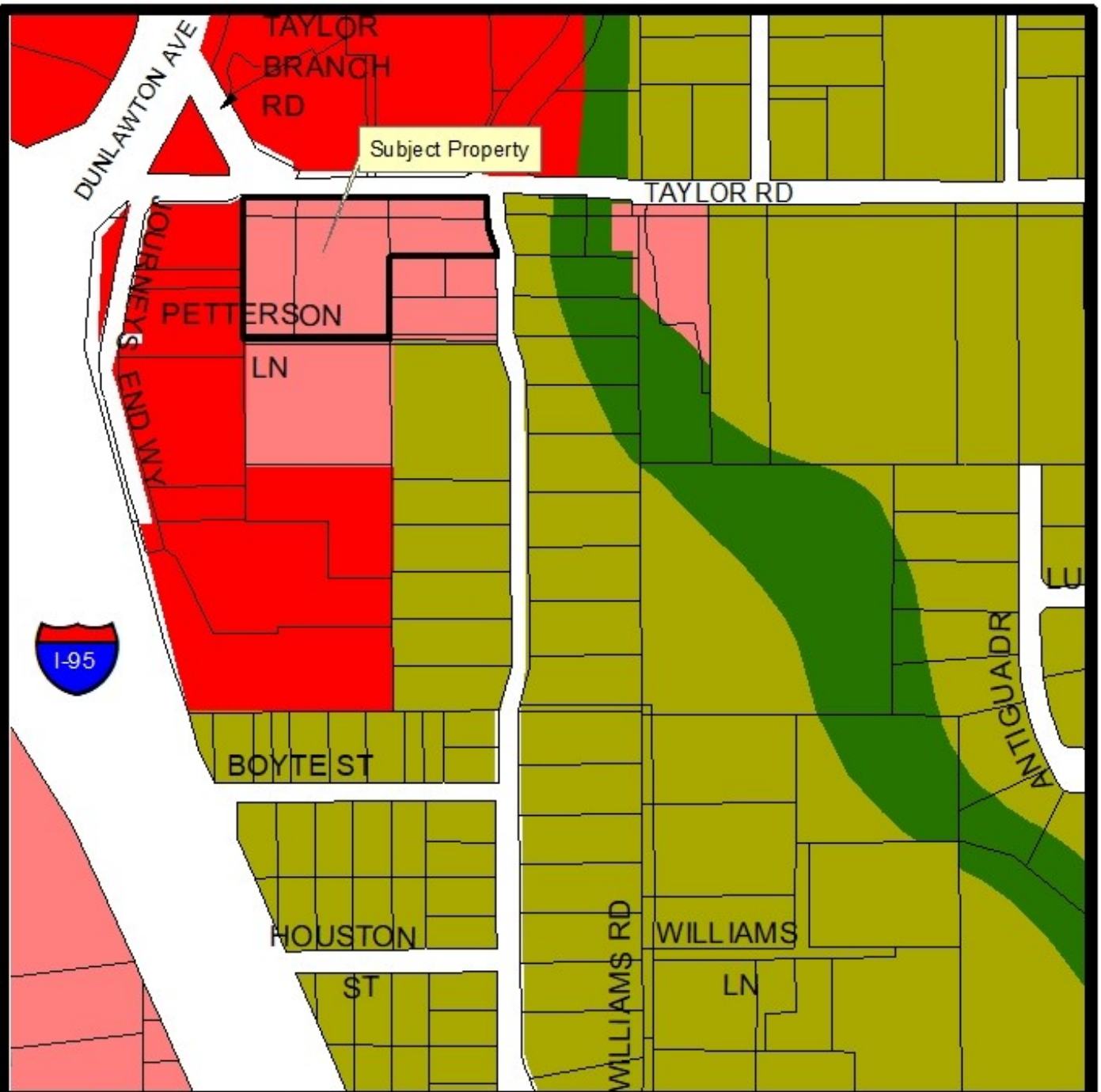
On April 5, 2019, staff posted the property notifying the public of the proposed amendment. The proposed amendment has also been advertised in the *News-Journal* pursuant to Florida Statutes.

STAFF RECOMMENDATION

Staff recommends approval of the request to change the FLU designation of ±4.4 acres from *Office/Residential Transition* to *Commercial*, and authorization for staff to send the amendment to the required review agencies.

ATTACHMENTS

Exhibit A – Current Future Land Use Map
Exhibit B – Proposed Future Land Use Map
Exhibit C – Current Zoning Map
Exhibit D – Proposed zoning Map



Future Land Use Designations

- | | | | |
|---|--------------|---|-------------------------------|
|  | Commercial |  | Office/Residential Transition |
|  | Conservation |  | Rural Transition |

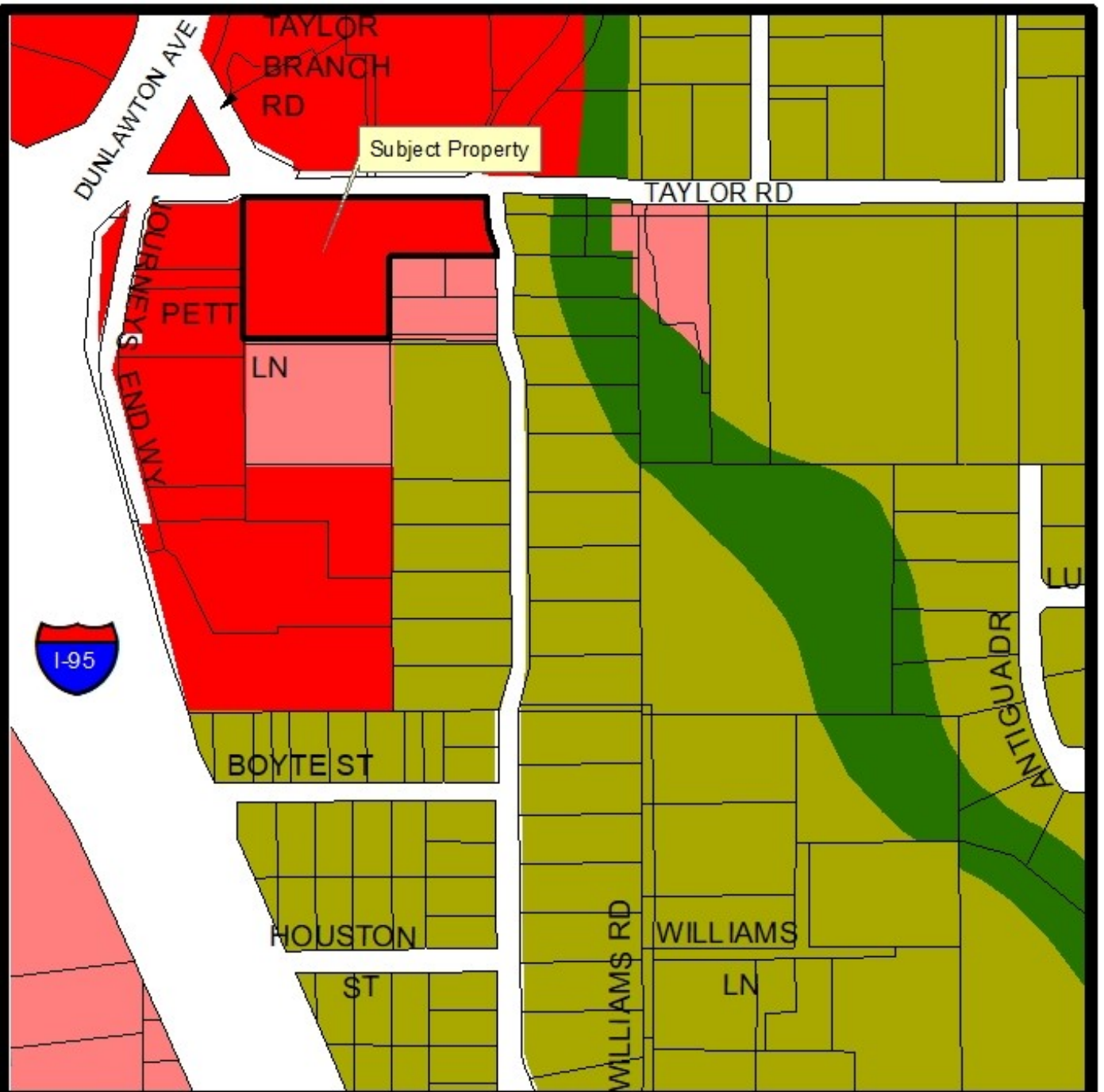


Exhibit A - Current Future Land Use Map

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT





Future Land Use Designations

- | | | | |
|---|--------------|---|-------------------------------|
|  | Commercial |  | Office/Residential Transition |
|  | Conservation |  | Rural Transition |

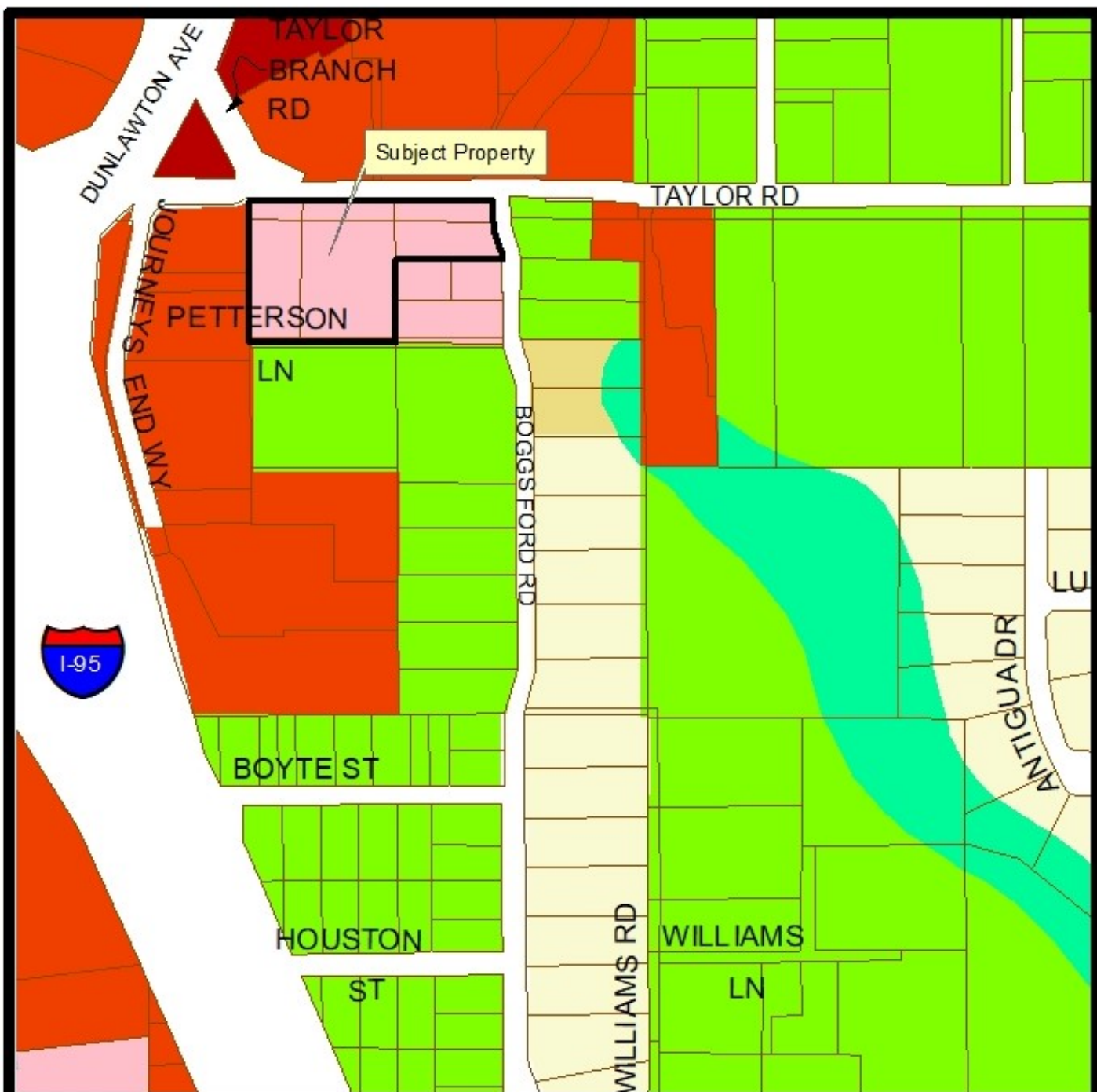


Exhibit B - Proposed Future Land Use Map

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT





Zoning Classifications

 Agriculture	 Interchange Commercial District	 R-20SF Single Family Residential
 Community Commercial	 Planned Commercial Development	 Rural Residential
 Flood Plain-Conservation	 Professional Office	

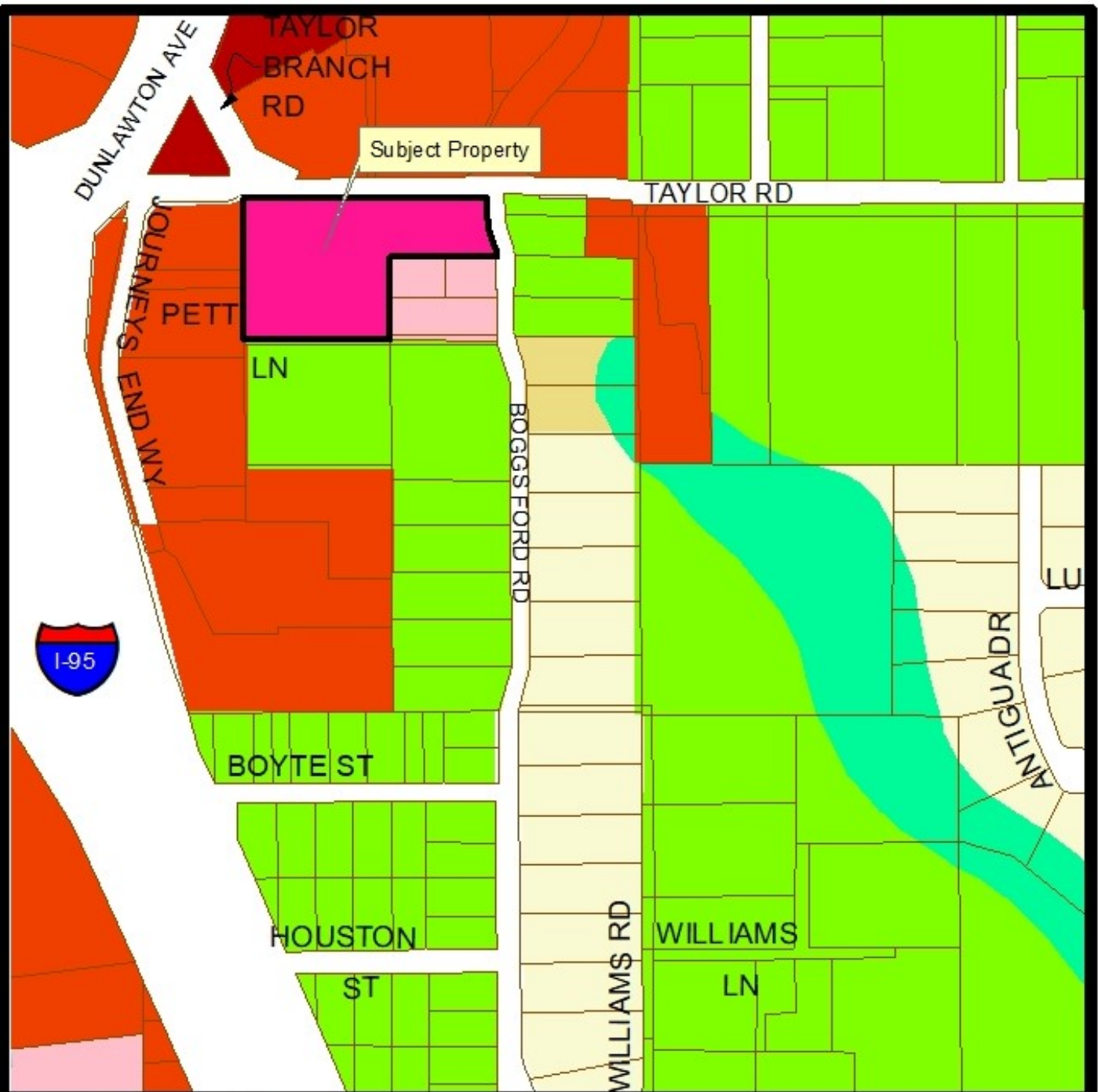


Exhibit C - Current Zoning Map

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT





Zoning Classifications

 Agriculture	 Interchange Commercial District	 R-20SF Single Family Residential
 Community Commercial	 Planned Commercial Development	 Rural Residential
 Flood Plain-Conservation	 Professional Office	



Exhibit D - Proposed Zoning Map

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (F25) First Reading - Ordinance No. 2019-21 - Rezoning/904 and 908 Taylor Road

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Move to approve Ordinance No. 2019-21, rezoning ± 4.4 -acres from Professional Office (PO) to Community Commercial (CC).

SUMMARY: Planning Commission Action (05/23/19): Recommended Approval

The applicant is requesting to rezone ± 4.4 -acres from Professional Office (PO) to Community Commercial (CC). The 4.4-acre subject property consist of two sites: 904 and 908 Taylor Road. At this time, there is no pending development proposed on the subject property. The applicant is requesting the rezoning to expand the number of non-residential uses allowed to be developed on the subject property.

The subject property currently includes the Port Orange Christian Church site and an adjacent vacant parcel. The rezoning request was reviewed according to the criteria established in Chapter 3, Section 5 of the LDC in terms of consistency with the Comprehensive Plan and the surrounding land uses and zoning.

All future development plans (site plan or subdivision) submitted will require detailed technical review by the Development Review Committee (SDRC) to determine all requirements in the Land Development Code (LDC) are met. As with all development, specific site development proposals for the subject property are subject to concurrency regulations at the time of development requiring transportation facilities to be provided or for the developer to enter into a mitigation agreement for their impacts.

The staff report is attached for your review.

Project No.: Funding Account No.:

Presenter: Penelope Cruz

ATTACHMENTS:

1.	Ord. No. 2019-21	Ord. No. 2019-21.pdf
2.	Ord. No. 2019-21 Exhibit 1	Exhibit A for Taylor Rd FLU.pdf
3.	Ord. No. 2019-21	Ord. No. 2019-21 Exhibit 2.pdf

	Exhibit 2	
4.	Staff Report	CC_Rezoning Staff Report_SW Corner_Taylor Rd_Boggs Ford Ln.pdf

Penelope Cruz
Tim Burman
Shannon Balmer
Jake Johansson
Robin Fenwick

Created/Initiated - 5/28/2019
Approved - 5/29/2019
Approved - 6/6/2019
Approved - 6/7/2019
Final Approval - 6/7/2019

ORDINANCE NO. 2019-21

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, REZONING ±4.4 ACRES
LOCATED AT 904 AND 908 TAYLOR ROAD FROM
PROFESSIONAL OFFICE (PO) TO COMMUNITY
COMMERCIAL (CC); AUTHORIZING REVISION OF THE
OFFICIAL ZONING ATLAS; AND PROVIDING AN
EFFECTIVE DATE.

WHEREAS, the property to be rezoned consists of ±4.4 acres located at 904 and 908 Taylor Road from Professional Office (PO) to Community Commercial (CC); and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission has by a majority vote recommended approval of the proposed rezoning; and

WHEREAS, the City Council has approved by a majority vote of the members present the rezoning of the described property; and

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

Section 1. The City Council of the City of Port Orange does hereby rezone the following described property from Professional Office (PO) Community Commercial (CC).

Section 2. The property rezoned consists of ±4.4 acres located at 904 and 908 Taylor Road more particularly described on **Exhibit “1”** attached hereto.

Section 3. The City Council of the City of Port Orange does hereby approve, authorize and direct the revision of the City's Official Zoning Atlas to show the classification for the area as hereby rezoned as shown on **Exhibit “2”**, attached hereto.

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Passed on first reading on the day of

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

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

EXHIBIT "1"

PARCEL 1: A PORTION OF LOT 1A OF PLAT NUMBER 2 MAP OF CRAIG FARMS, AS RECORDED IN BOOK 11, PAGE 90, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS: THE EASTERLY 260 FEET LYING EAST OF THE PROPERTY CONVEYED TO MORRIS F. TODD AND JOAN E. TODD, HUSBAND AND WIFE, BY THAT CERTAIN DEED DATED FEBRUARY 20, 1961, AND RECORDED FEBRUARY 27, 1961, IN OFFICIAL RECORDS BOOK 352, PAGE 313.

PARCEL 2: THE EASTERLY 130 FEET OF THE WESTERLY 540 FEET OF THE NORTHERLY 330.48 FEET OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA. RESERVING A PERMANENT EASEMENT FOR PUBLIC ROAD PURPOSES OVER THE SOUTHERLY 10 FEET THEREOF;

AND

PARCEL 3: THE EASTERLY 130 FEET OF THE WESTERLY 670 FEET OF THE NORTHERLY 330.48 FEET OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA. RESERVING A PERMANENT EASEMENT FOR PUBLIC ROAD PURPOSES OVER THE SOUTHERLY 10 FEET THEREOF.

LEGAL DESCRIPTION (PARCEL 4)

PART OF LOT 1-A, PLAT #2, CRAIG FARMS, PER MAP BOOK 11, PAGE 90, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 20, TOWNSHIP 16 SOUTH, RANGE 33 EAST, COUNTY OF VOLUSIA, FLORIDA; THENCE NORTH 88 DEGREES 11 MINUTES 30 SECONDS EAST ALONG THE NORTHERLY LINE OF SAID SECTION 20, FOR A DISTANCE OF 670 FEET TO THE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 45 MINUTES 30 SECONDS WEST FOR A DISTANCE OF 44.54 FEET TO THE SOUTHERLY PRESCRIPTIVE RIGHT-OF-WAY LINE OF TAYLOR ROAD (A COUNTY ROAD MAINTAINED AND IN USE); THENCE NORTH 89 DEGREES 00 MINUTES 19 SECONDS EAST ALONG THE SAID SOUTHERLY LINE OF TAYLOR ROAD FOR A DISTANCE OF 19.13 FEET; THENCE SOUTH 01 DEGREES 45 MINUTES 12 SECONDS EAST LEAVING SAID SOUTHERLY LINE OF TAYLOR ROAD FOR A DISTANCE OF 44.23 FEET TO THE NORTH LINE OF SAID SECTION 20; THENCE SOUTH 88 DEGREES 11 MINUTES 30 SECONDS WEST ALONG THE SAID NORTH LINE FOR A DISTANCE OF 19.20 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION (PARCEL 5)

PART OF WEST 315.78 FEET OF THE EAST 650 FEET OF LOT 1-A PLAT #2, CRAIG FARMS, PER MAP 11, PAGE 90, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA TOGETHER WITH A PORTION OF NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

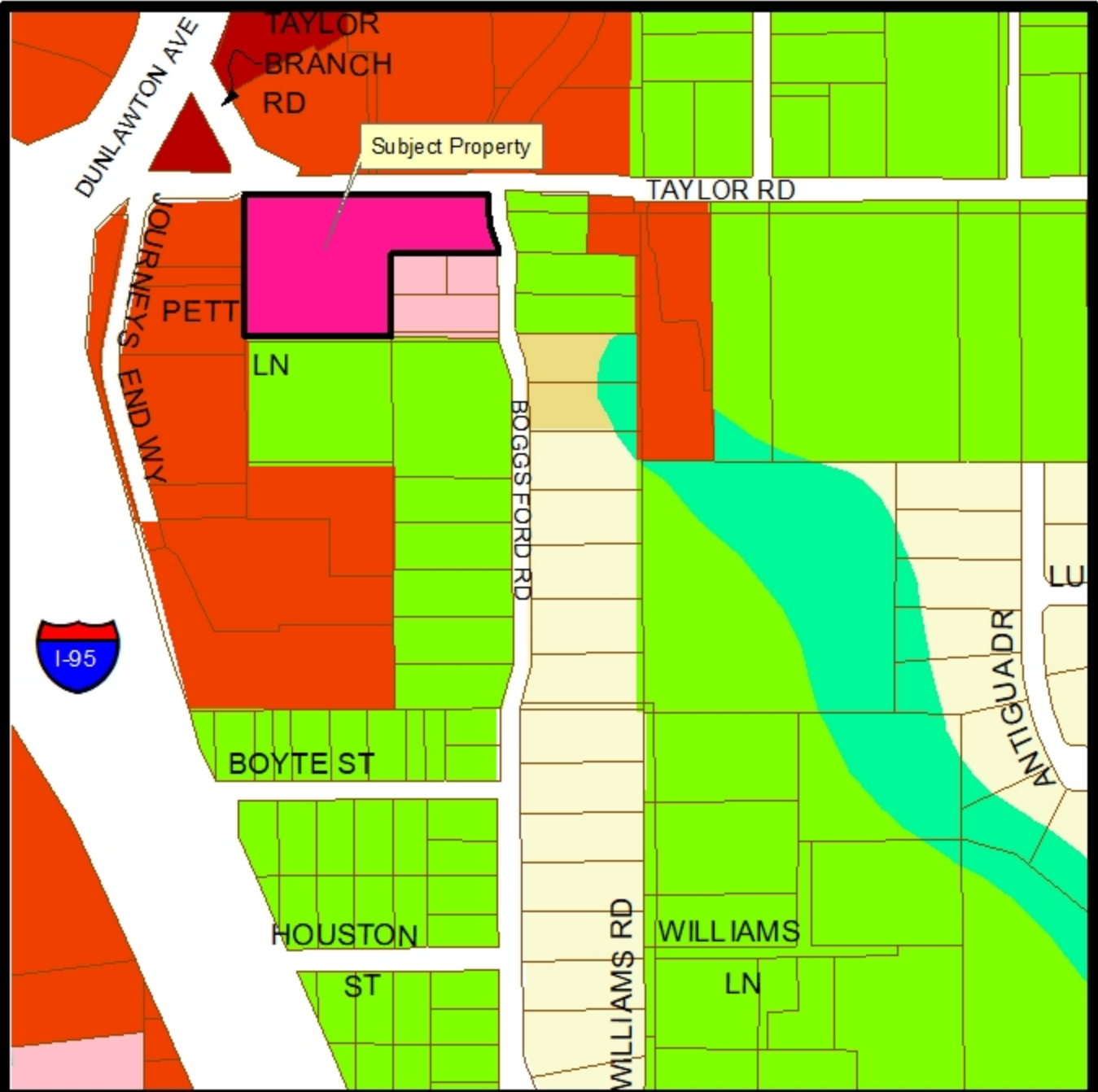
COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 20: THENCE THE N 88 11' 30" E ALONG THE NORTHERLY LINE OF SAID SECTION 20 A DISTANCE OF 670 FEET TO A POINT OF BEGINNING; THENCE CONTINUE N 88 11' 30" E ALONG SAID NORTH LINE OF SECTION 20 OF DISTANCE OF 19.20 FEET; THENCE N 01 45' 12" W A DISTANCE OF 44.23 FEET TO THE SOUTH LINE TAYLOR ROAD AS NOW OCCUPIED AND MAINTAINED; THENCE N 89 00' 19" E ALONG SAID SOUTH LINE OF TAYLOR ROAD A DISTANCE OF 240.66 FEET TO THE WEST RIGHT-OF-WAY OF BOGGS FORD ROAD AS NOW ESTABLISHED AND OCCUPIED; THENCE SOUTH AND SOUTHEAST ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 25 FEET, A CENTRAL ANGLE OF 7 52'05", AN ARC LENGTH OF 3.43 FEET TO THE POINT OF TANGENCY; THENCE S 01 39' 10" E A DISTANCE OF 62.55 FEET TO THE POINT OF CURVATURE TO THE LEFT, SAID CURVE, HAVING A CENTRAL ANGLE OF 23 33' 24" AND RADIUS OF 175 FEET; THENCE SOUTH TO SOUTHEAST ALONG SAID CURVE AN ARC LENGTH OF 71.95 FEET TO THE POINT OF REVERSE CURVE TO THE RIGHT, SAID CURVE HAVING A CENTRAL ANGLE OF 7 14' 37", A RADIUS OF 125 FEET; THENCE SOUTHEAST TO SOUTH LINE ALONG SAID CURVE AN ARC LENGTH OF 15.80 FEET; THENCE S 88 11' 30" W LEAVING SAID CURVE A DISTANCE OF 279.77 FEET; THENCE N 01 45' 30" W A DISTANCE OF 110.00 FEET TO THE POINT OF BEGINNING.

ABOVE DESCRIBED PARCEL CONTAINS 0.905 ACRES MORE OR LESS.

AND

THE EASTERLY 130 FEET OF THE WESTERLY 410 FEET OF THE NORTHERLY 330.48 FEET OF SECTION 20, TOWNSHIP 16 SOUTH, RANGE 33 EAST. SUBJECT TO AN EASEMENT FOR ROAD AND UTILITY PURPOSES OVER THE SOUTHERLY 10 FEET THEREOF, AND THAT PART OF LOT 1-A, PLAT #12, CRAIG FARMS SUBDIVISION AS RECORDED IN MAP BOOK 11, PAGE 90, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LYING NORTH OF AND BETWEEN THE NORTHERLY PROLONGATION OF THE EAST AND WEST LINES OF THE AFORESAID PROPERTY, PORTION OF LOT 1-A, CRAIG FARMS SUBDIVISION, OTHERWISE AS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SECTION 20, TOWNSHIP 16 SOUTH, RANGE 33 EAST, THENCE NORTH 88°11'30" EAST ALONG THE SOUTHERLY LINE OF SAID LOT 1-A, A DISTANCE OF 280 FEET TO THE PLACE OF BEGINNING; THENCE NORTH 01°45'30" WEST AND PARALLEL TO THE WESTERLY LINE OF SAID SECTION 20, A DISTANCE OF 58.52 FEET TO A POINT IN THE SOUTHERLY LINE OF NEW ROAD (A 50-FOOT RECORDED ROAD); THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID NEW ROAD, A DISTANCE OF 130 FEET; THENCE SOUTH 01°45'30" EAST, A DISTANCE OF 57.83 FEET TO A POINT IN THE NORTHERLY LINE OF SAID SECTION 20; THENCE SOUTH 88°11'30" WEST ALONG THE NORTHERLY LINE OF SAID SECTION 20, A DISTANCE OF 130 FEET TO THE PLACE OF BEGINNING.

Exhibit "2"



Zoning Classifications

Agriculture	Interchange Commercial District	R-20SF Single Family Residential
Community Commercial	Planned Commercial Development	Rural Residential
Flood Plain-Conservation	Professional Office	



Zoning Map

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT





STAFF REPORT

Rezoning/Southwest corner of Taylor Rd. and
Boggs Ford Rd.
Case No. 19-60000001

REQUEST:	Rezone ± 4.4 acres from Professional Office (PO) to Community Commercial (CC).
LOCATION:	Southwest corner of Taylor Rd. and Boggs Ford Rd. (Figure 1 - Location Map)
OWNERS:	Port Orange Christian Church, Inc. and N & T Enterprises, LLC
APPLICANT:	Storch Law Firm
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION ACTION:	Recommended Approval (May 23, 2019)
CITY COUNCIL:	June 18, 2019

INTRODUCTION

The applicant is requesting to rezone ± 4.4 -acres from Professional Office (PO) to Community Commercial (CC). The 4.4-acre subject property consist of two sites: 904 and 908 Taylor Road. At this time, there is no pending development proposed on the subject property. The applicant is requesting the rezoning to expand the number of non-residential uses allowed to be developed on the subject property.



Figure 1. Location Map

Map created by the City of Port Orange Community Development Department

DISCUSSION

The subject property currently includes the Port Orange Christian Church site and an adjacent vacant parcel. The rezoning request was reviewed according to the criteria established in Chapter 3, Section 5 of the LDC in terms of consistency with the Comprehensive Plan and the surrounding land uses and zoning.

All future development plans (site plan or subdivision) submitted will require detailed technical review by the Development Review Committee (SDRC) to determine all requirements in the Land Development Code (LDC) are met. As with all development, specific site development proposals for the subject property are subject to concurrency regulations at the time of development requiring transportation facilities to be provided or for the developer to enter into a mitigation agreement for their impacts.

The City has planned for and designated commercial nodes at intersections of major roads in the Future Land Use Element of the Comprehensive Plan. In this case, the subject property is part of a Regional Commercial Node located around the intersection of Dunlawton Avenue and I-95. The node is intended to support the City with a mix of retail uses for the surrounding area within a ± 4 -mile radius of the I-95 interchange area.

Consistency with Comprehensive Plan

The proposed rezoning to the Community Commercial (CC) zoning district is consistent with the proposed Commercial FLU designation. The subject property is currently designated *Office/Residential Transition* (ORT), but the applicant has applied to change the Future Land Use (FLU) designation to *Commercial* (see Exhibit B and Case No. 19-20000001).

Compatibility with Surrounding Uses and Zoning

The requested zoning is consistent with the surrounding properties that are zone Planned Commercial Development (PCD) and compatible with other surrounding properties currently developed with single-family homes. Compatibility is defined in the Comprehensive Plan as a condition in which dissimilar land uses can co-exist in relative proximity to one another in a stable fashion over time, such that neither use is unduly negatively impacted by the other. Any future development will be required to comply with all Land Development Code requirements, including those pertaining to buffers between non-residential and existing adjacent residential homes.

The surrounding existing land uses, Future Land Use designations, and Zoning classifications are identified in Table 1. The current adopted FLU designation for the subject property and adjacent properties are identified on Exhibit A. The proposed FLU designation for the subject property and the current FLU designation of the adjacent properties are identified on Exhibit B. The current zoning classification of the subject property and adjacent properties are identified on Exhibit C. The proposed zoning classification of the subject property and current zoning classification of adjacent properties are identified on Exhibit D.

Table 1. Surrounding Land Uses and Zoning

Direction	Existing Land Use	FLU Designation	Zoning District
North	Altamira Planned Commercial Development (PCD)	Commercial	Planned Commercial Development (PCD)
South	Single-family homes	Office/Residential Transition; Rural Transition (0-2 units/acre)	Professional Office; Agriculture
East	Boggs Ford Road right-of-way; single-family homes	Boggs Ford Road right-of-way; Rural Transition (0-2 units/acre)	Agriculture
West	Journey's End Planned Commercial Development (PCD)	Commercial	Planned Commercial Development (PCD); Interchange Commercial (ICD)

PUBLIC NOTICE

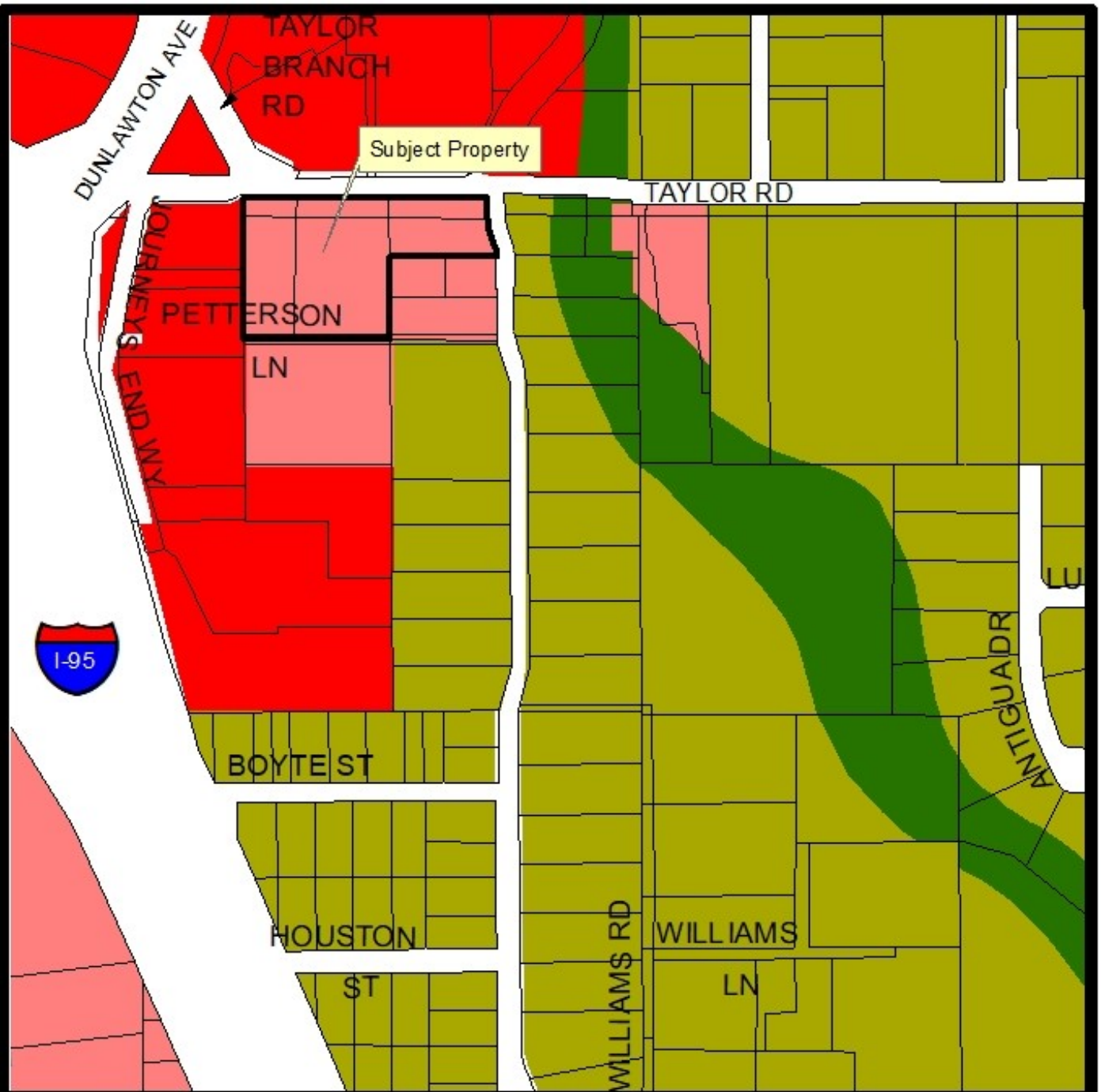
On April 5, 2019, staff posted the property notifying the public of the proposed amendment.

STAFF RECOMMENDATION

Staff recommends approval of the request to rezone ±4.4 acres from Professional Office (PO) to Community Commercial (CC).

ATTACHMENTS

- Exhibit A – Current Future Land Use Map
- Exhibit B – Proposed Future Land Use Map
- Exhibit C – Current Zoning Map
- Exhibit D – Proposed zoning Map
- Exhibit E – Community Commercial Zoning District Permitted Uses



Future Land Use Designations

- | | |
|--|--|
| Commercial | Office/Residential Transition |
| Conservation | Rural Transition |

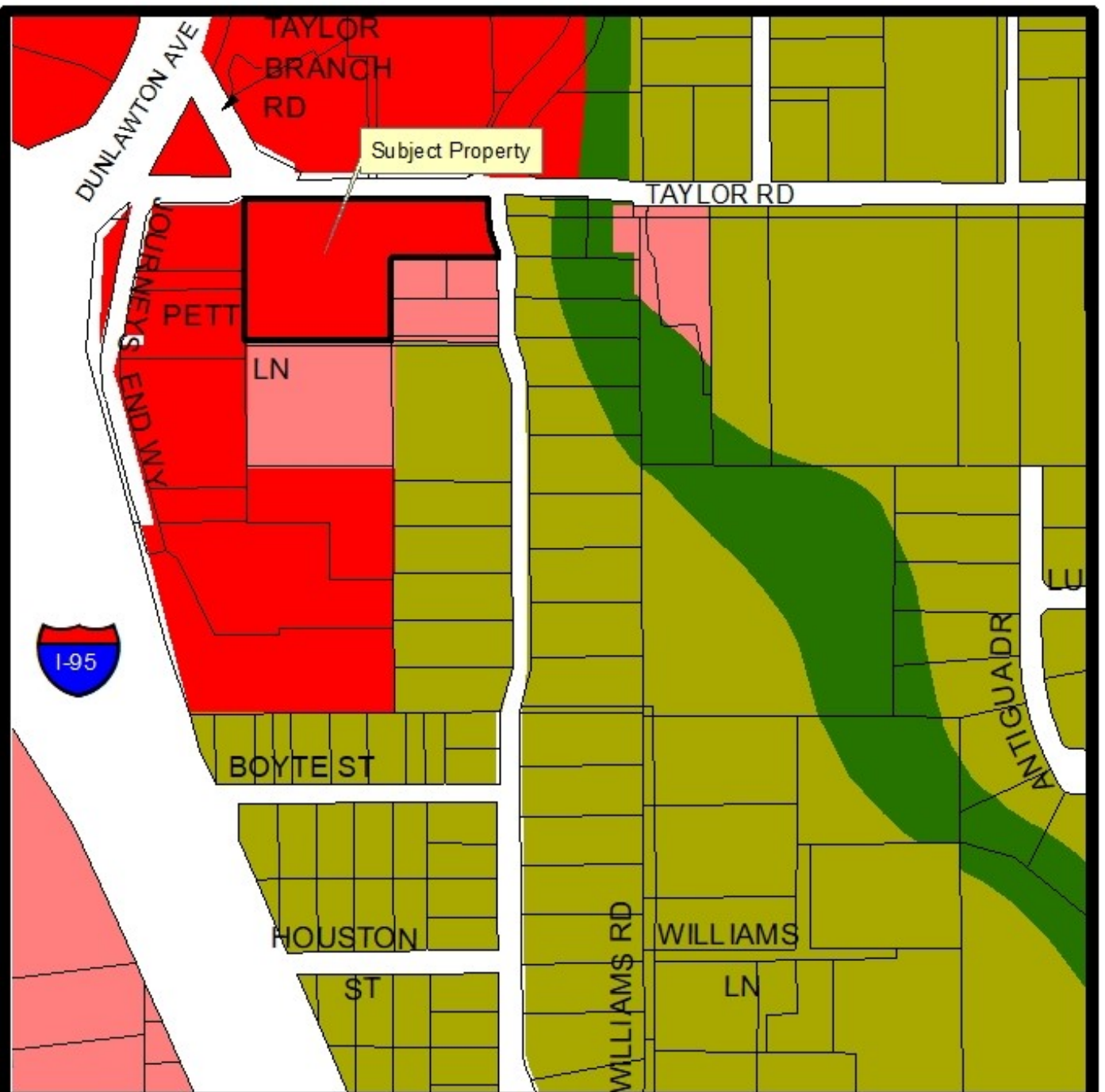


Exhibit A - Current Future Land Use Map

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT





Future Land Use Designations

- | | |
|--|--|
| Commercial | Office/Residential Transition |
| Conservation | Rural Transition |

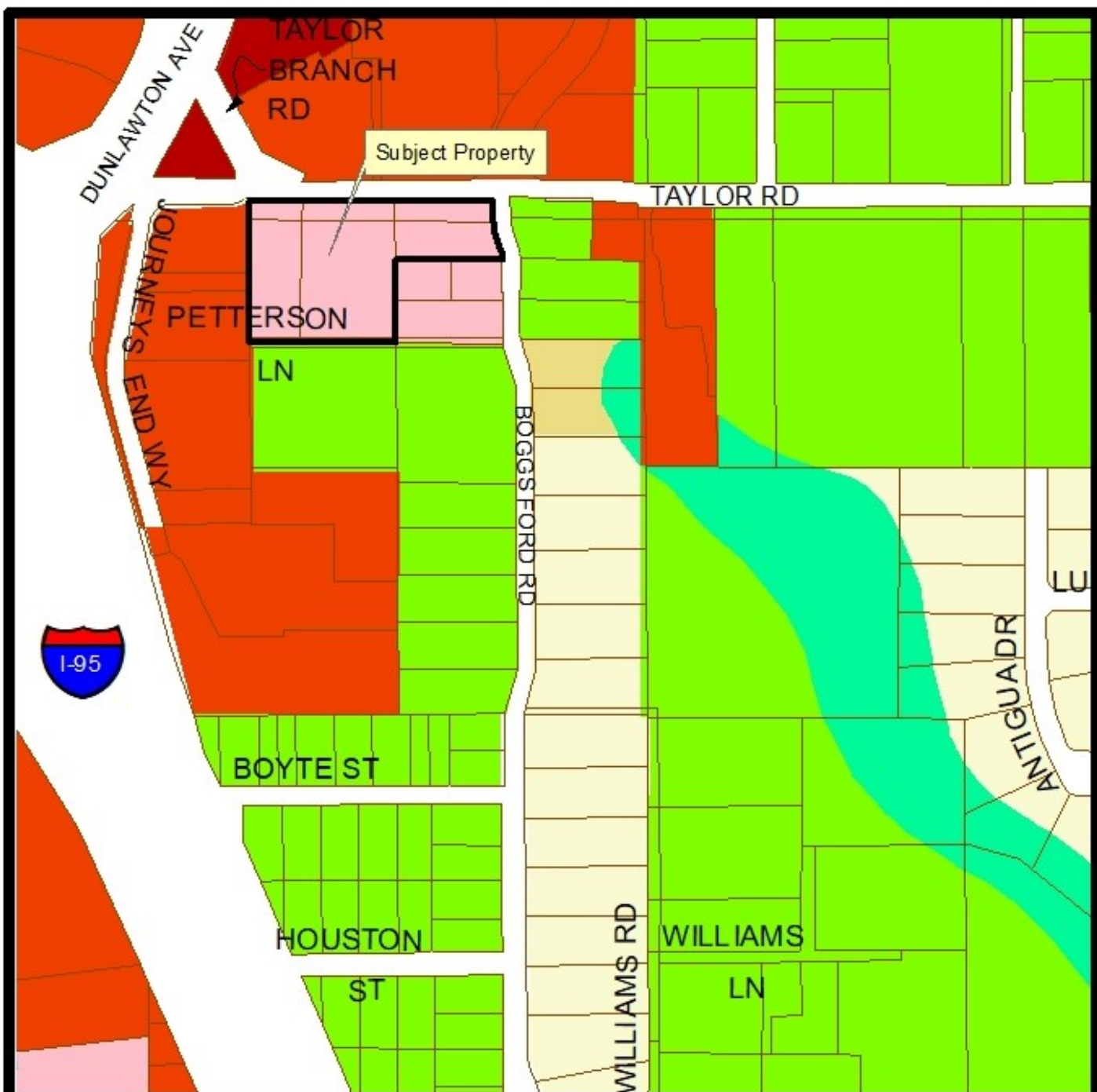


Exhibit B - Proposed Future Land Use Map

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT





Zoning Classifications

 Agriculture	 Interchange Commercial District	 R-20SF Single Family Residential
 Community Commercial	 Planned Commercial Development	 Rural Residential
 Flood Plain-Conservation	 Professional Office	

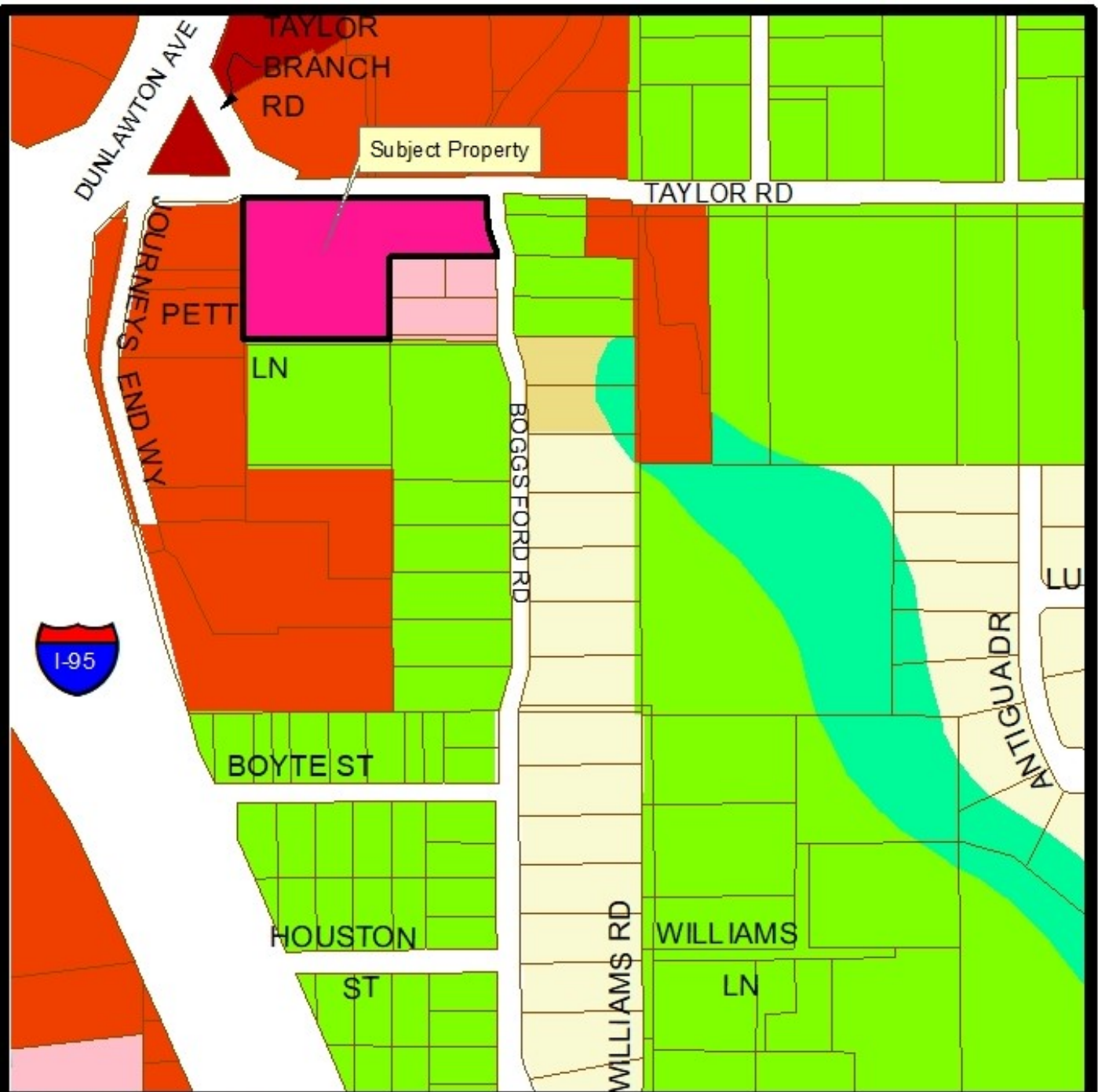


Exhibit C - Current Zoning Map

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT





Zoning Classifications

 Agriculture	 Interchange Commercial District	 R-20SF Single Family Residential
 Community Commercial	 Planned Commercial Development	 Rural Residential
 Flood Plain-Conservation	 Professional Office	



Exhibit D - Proposed Zoning Map

CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT



Exhibit E

Land Development Code

Chapter 17 – Zoning

Section 21: - Community commercial (CC) district.

(a) Purpose and intent. The community commercial (CC) district is intended to provide for community scale businesses that customarily require freestanding buildings on individual sites.

(b) Permitted uses.

- (1) Adult/vocational education.
- (2) Appliance/electronic repair shops.
- (3) Banks.
- (4) Business services.
- (5) Clubs, lodges, and fraternal organizations.
- (6) Camouflaged and monopole communication towers.
- (7) Convenience stores with or without fuel operations.
- (8) Financial services.
- (9) Fleet-based services.
- (10) Funeral homes.
- (11) Furniture and appliance stores.
- (12) Health/exercise clubs.
- (13) Medical offices/clinics.
- (14) Motor vehicle service stations.
- (15) Offices.
- (16) Office supplies.
- (17) Personal services.
- (18) Restaurants.
- (19) Retail home building materials.
- (20) Retail nurseries and garden supplies.
- (21) Retail sales and services.
- (22) Veterinary clinics.

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

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

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

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



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (F26) Resolution No. 19-22 - 1389 Reed Canal Rd./Brownfield Area Designation Request

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve Resolution 19-22.

SUMMARY: During the March 2016 workshop, the City Council consensus was in favor of establishing additional brownfield areas as a means of providing another economic development tool to those that may choose to utilize it if the request was initiated by an applicant/owner rather than City-initiated.

Jeff Brock, an attorney with Smith Bigman Brock in Daytona Beach, representing POA Development, LLC, has requested the City designate property located at 1389 Reed Canal Road (Parcel ID# 6306-01-00-0050) as a Brownfield Area in accordance with Section 376.80, Florida Statutes.

The subject 9.9-acre property was annexed into the City in 2018 and was part of the rezoning that established the 29.7-acre New Port Apartments Planned Unit Development (PUD) (Ordinance 2018-31). The balance of the New Port Apartments PUD property was previously designated as a Brownfield Area per Resolution 08-19 (attached).

A Brownfield Area means, "A contiguous area of one or more brownfield sites, some of which may not be contaminated, and which has been designated by a local government by resolution. Such areas may include all or portions of community redevelopment areas, enterprise zones, empowerment zones, other such designated economically deprived communities and areas, and Environmental Protection Agency-designated brownfield pilot projects." [Section 376.79(4) Florida Statutes]

POA Development, LLC, intends to redevelop the overall PUD property as a 310-unit apartment complex with associated site and off-site public improvements. The redevelopment of the property is complicated by actual and/or perceived environmental issues associated with the former use of the property as a construction and debris disposal facility until 1992. Accordingly, the property meets the definition of a Brownfield Site and a Brownfield Area set forth in Section 376.79, Florida Statutes. POA Development, LLC, is interested in redeveloping the property through the Florida Brownfields Redevelopment Program to facilitate investigation, assessment and cleanup of the actual and/or perceived environmental issues.

Some the potential economic incentives offered by the State through the brownfield program include:

- Voluntary Cleanup Tax Credit (VCTC) – Tax relief on corporate income taxes for voluntarily cleaning up a Brownfields site.
- Sales Tax Refunds - paid for building materials used in the construction of certain mixed-use and qualified housing projects.
- Risk-Based Corrective Action (RBCA) - allows for expedient and cost-effective cleanup activities on Brownfields sites.
- Job Bonus Refund - provides up to \$2,500 per job for businesses that create a minimum of 10 new jobs at a Brownfield site.
- Loan Guarantee – provided by the State for certain development activities.
- Liability Protection - in conjunction with a Brownfields Site Rehabilitation Agreement (BSRA).

Pursuant to Section 376.80(2)(c), Florida Statutes, a local government must designate a property as a Brownfield Area if the applicant can meet the applicable criteria provided for in the statute. A description of said criteria and an analysis of how the Developer meets the same is provided in the attached Request Letter dated April 16, 2019.

Florida Statutes require the City to hold two (2) public hearings on the resolution designating the subject Brownfield Area. The first public hearing (5/22/19) is to announce the second hearing on the resolution. The second public hearing (6/18/19) is to consider the proposed resolution.

Project No.: Funding Account No.:

Presenter: Penelope Cruz

ATTACHMENTS:

1.	Reso. No. 19-22	Reso. No. 19-22 .pdf
2.	Reso. No. 19-22 Exhibit A	Reso. No. 19-22 Exhibit A.pdf
3.	Reso. No. 19-22 Exhibit B	Reso. No. 19-22 Exhibit B.png
4.	Brownfield Designation Request Letter_ 1389 Reed Canal Rd	Brownfield Designation Request Letter_ 1389 Reed Canal Rd.pdf

Penelope Cruz

Created/Initiated - 5/28/2019

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.

WHEREAS, the State of Florida has provided in Ch. 97-277, Laws of Florida, codified as Sections 376.77 through 376.86, Florida Statutes, for the designation by resolution of certain areas as Brownfield areas, and for the corresponding provisions of environmental remediation, rehabilitation, and economic development for such areas; and

WHEREAS, POA Development, LLC is the owner of the property located at 1389 Reed Canal Road, as shown on Exhibits "A" and "B" hereof; and

WHEREAS, POA Development, LLC is requesting designation of the property legally described on Exhibit "A" hereof and depicted on Exhibit "B" hereof as a Brownfield area; and

WHEREAS, the City of Port Orange has considered: (1) whether the Brownfield area warrants economic development and has a reasonable potential for such activities; (2) whether the proposed area to be designated represents a reasonably focused approach and is not overly large in geographic coverage; (3) whether the area has potential to interest the private sector in participating in rehabilitation; and (4) whether the area contains sites or parts of sites suitable for limited recreational open space, cultural, or historical preservation purposes; and

WHEREAS, the City of Port Orange has considered the requirements for Brownfield area designation as provided in Section 376.80(2)(c), Florida Statutes, and finds:

1. POA Development, LLC has agreed to rehabilitate and redevelop the property within the Brownfield area;

2. The rehabilitation and redevelopment of the proposed Brownfield area will result in economic productivity of the area, along with the creation of at least 6 new permanent jobs which are full-time equivalent jobs not associated with the implementation of the Brownfield site rehabilitation and redevelopment;

3. The redevelopment of the proposed Brownfield area is consistent with the City of Port Orange's comprehensive plan and is a permissible use under the City's land development regulations;

4. Notice of the Brownfield area designation and proposed applicable rehabilitation has been provided to neighboring property owners and nearby residents of the proposed area to be designated, and an opportunity has been afforded to those receiving notice for comments and suggestions about rehabilitation; and

5. POA Development, LLC has provided reasonable assurance that it has sufficient financial resources to implement and complete the applicable rehabilitation agreement and redevelopment plan on the property; and

WHEREAS, the City of Port Orange finds that City Hall is a location reasonably proximate to the area described herein and provides a fair and convenient venue for public input; and

WHEREAS, the notice, publication and public hearing requirements set forth in Section 376.80(1), Florida Statutes, have been satisfied; and

WHEREAS, the City of Port Orange shall notify the Florida Department of Environmental Protection in writing and provide a copy of this Resolution setting forth the designation of the property legally described on Exhibit "A" hereof and depicted on Exhibit "B" hereof, as a Brownfield area.

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

Section 1. In accordance with the Florida Brownfields Redevelopment Act, Sections 376.77 through 376.86, Florida Statutes, the Property legally described on Exhibit "A" hereof and depicted on Exhibit "B" hereof is hereby designated as a "Brownfield area."

Section 2. POA Development, LLC shall be responsible for the Brownfield site remediation and rehabilitation on the property currently owned by it within the Brownfield area.

Section 3. The City Clerk is hereby directed to notify the Florida Department of Environmental Protection of the City of Port Orange's decision to designate a Brownfield area for remediation, rehabilitation and economic development for the purposes set forth in Sections 376.77 through 376.86, Florida Statutes, by providing the Department a copy of this Resolution.

Section 4. Designating said area as a Brownfield area shall in no way render the City of Port Orange responsible for costs of site rehabilitation or source removal, as those terms are defined in Section 376.79(17) and (18), Florida Statutes, or for any other costs that may arise or be incurred.

Section 5. In accordance with Chapter 2, Article III, Division 4, Sec. 2-117(c) of the Port Orange Code of Ordinances, the City of Port Orange's Environmental Advisory Board shall serve as the advisory board for Brownfield sites in this Brownfield area.

Section 6. If any provision of this resolution or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of this resolution which can be given effect without the invalid provision or application, and to thios end the provision of this resolution are severable.

Section 7. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Feniwck, CMC, City Clerk

Adopted on the ____ day of _____, 2019

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Exhibit "A"

LEGAL DESCRIPTION:

LOT 5

LOT 5, BENNETT SUBDIVISION OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 6, TOWNSHIP 16 SOUTH,
RANGE 33 EAST, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN PLAT BOOK 6,
PAGE 11 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

CONTAINING 9.91 ACRES MORE OR LESS

LEGAL DESCRIPTION

PARKER MYNCHENBERG & ASSOCIATES, INC.

PROFESSIONAL ENGINEERS * LANDSCAPE ARCHITECTS
1720 RIDGEWOOD AVENUE HOLLY HILL, FLORIDA 32117
(386) 877-8291 FAX (386) 877-2114 E-MAIL: info@parkermynchenberg.com
CERTIFICATE OF AUTHORIZATION NUMBER 00003810



HORACE SMITH, JR., P.A.
JEFFREY E. BIGMAN
JEFFREY P. BROCK
SARAH L. MORRISON METZ
SHEILA M. ENNIS
RUDDLEDGE H.C. SMITH
BROOKE M. GAFFNEY
FRANK S. GANZ
ELIZABETH A. MYERS
ADAM J. CAMPBELL

Larry R. Stout (Retired)



Commitment to Excellence
SMITH BIGMAN BROCK

444 SEABREEZE BOULEVARD
SUITE 900
DAYTONA BEACH, FL 32118

Send all correspondence to:
POST OFFICE BOX 15200
DAYTONA BEACH, FL 32115

TELEPHONE: (386) 254-6875
FACSIMILE: (386) 257-1834

www.daytonallaw.com

April 16, 2019

VIA ELECTRONIC DELIVERY AND US MAIL FIRST CLASS

City of Port Orange
Attn: Penelope Cruz
Planning Manager
1000 City Center Circle
Port Orange, FL 32129

RE: Request for Brownfield Area Designation
1389 Reed Canal Road, Port Orange, FL 32128
Newport Apartments
Parcel ID No. 6306-01-00-0050

Dear Ms. Cruz,

Smith Bigman Brock has the pleasure of representing POA Development, LLC. ("Owner") with respect to the vacant property located at 1389 Reed Canal Road, Port Orange Florida (the "Property"). A figure depicting the approximate location of the Property is attached hereto as Exhibit A. Please accept this letter as the Owner's request to have the City of Port Orange (the "City") designate the Property as a Brownfield Area in accordance with Section 376.80, Florida Statutes.

The Owner is part of Collier Companies which owns and manages more than 10,791 apartments throughout Florida with more than 47 years of experience in developing and managing multi-family residential communities. The Property is proposed to be developed as a 310 unit apartment complex commonly referred to as Newport Apartments.

As you may know, the redevelopment of the Property is complicated by actual and/or perceived environmental issues associated with the former use of the Property as a construction debris landfill. The adjacent parcels which will also be a part of the Newport Apartment complex have already been designated by the City as a Brownsfield Area. According, the Property meets the definition of a Brownfield Site and a Brownfield Area set forth in Section 376.79, Florida Statutes. The Owner is interested in developing the Property through the Florida Brownfields Redevelopment Program (the "Program") to facilitate investigation, assessment and cleanup of the actual and/or perceived environmental issues. Pursuant to Section 376.80(2)(c), Florida Statutes, a local government must designate a property as a Brownfield Area if the applicant can meet the applicable criteria provided for in the statute. A description of said criteria and an analysis of how the Owner meets the same is provided below.

Section 376.80(2)(c)1, Florida Statutes. A person who owns or controls a potential brownfield site is requesting the designation and has agreed to rehabilitate and redevelop the brownfield site.

SMITH BIGMAN BROCK

The Owner is the fee simple owner of the Property. A copy of the vesting deed is attached hereto as Exhibit B. Following the designation of the Property as a Brownfield Area, the Owner plans to enter into a Brownfield Site Rehabilitation Agreement with the Florida Department of Environmental Protection to facilitate site rehabilitation and redevelopment of the brownfield site.

Section 376.80(2)(c)2, Florida Statutes. The rehabilitation and redevelopment of the proposed brownfield site will result in economic productivity of the area, along with the creation of at least 5 new permanent jobs at the brownfield site that are full-time equivalent positions not associated with the implementation of the brownfield site rehabilitation agreement and that are not associated with redevelopment project construction activities pursuant to the redevelopment of the proposed brownfield site or area.

The property is the site of a former construction debris landfill and is vacant. The development of the Property for multi-family residential uses will result in increased economic productivity. The Owner anticipates that the development of the Property for a Class A multi-family apartment complex will result in the creation of at least 6 new permanent, full-time equivalent jobs that are not associated with the development project or construction at the Property.

Section 376.80(2)(c)3, Florida Statutes. The redevelopment of the proposed brownfield site is consistent with local comprehensive plan and is a permissible use under the applicable local land development regulations.

The development of the Property for multi-family uses is consistent with Port Orange's Comprehensive Plan and is a permissible use under Port Orange's Land Development Code. The Property's Future Land Use designation allows multi-family residential uses. In addition, the Property is located in the Newport Apartments Planned Unit Development (PUD) zoning district, which provides for the proposed use.

Section 376.80(2)(c)4, Florida Statutes. Notice of the proposed rehabilitation of the brownfield area has been provided to neighbors and nearby residents of the proposed area to be designated pursuant to paragraph (1)(c), and the person proposing the area for designation has afforded to those receiving notice the opportunity for comments and suggestions about rehabilitation. Notice pursuant to this subparagraph must be posted in the affected area.

The Owner is committed to providing proper notice and facilitating public involvement in the brownfield area designation process and the development of the Property. The Owner will assist the City in complying with the required notice provisions for the Brownfield Area, including notifying neighbors and residents, providing the City with any and all comments and suggestions it receives regarding site rehabilitation, posting the notice at the proposed Brownfield Area, and reimbursing the City with all costs incurred in complying with the notice requirements.

Section 376.80(2)(c)5, Florida Statutes. The person proposing the area for designation has provided reasonable assurances that he or she has sufficient financial resources to implement and complete the rehabilitation agreement and redevelopment of the brownfield area.

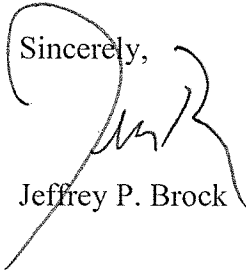
SMITH BIGMAN BROCK

The Owner is part of a family of companies with more than 47 years' experience in multi-family residential development. Over the past 47 years, the Owner has developed and managed more than 10,791 apartments across Florida. The Owner has sufficient financial resources to implement and complete site rehabilitation and redevelopment of the Property.

Assessment and cleanup of the Property through the Florida Brownfield Redevelopment Program will facilitate the redevelopment of a vacant and underutilized property to a new residential use while serving as a catalyst for economic growth. The Owner respectfully request that the City designate the Property as a Brownfield Area.

Smith Bigman Brock appreciates the opportunity to bring this request before the City of Port Orange. If you have any questions or comments, please do not hesitate to contact me.

Sincerely,

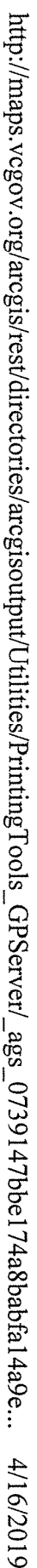


Jeffrey P. Brock

JPB/sk

Enclosures, as stated

cc: client



WARRANTY DEED

This Warranty Deed, made August 30 2017, between **New Port Park, LLC**, a Florida limited liability company, hereinafter Grantor, and **POA Development LLC**, a Florida limited liability company, hereinafter Grantee, whose address is 220 N. Main Street, Gainesville, Florida 32601.

WITNESSETH:

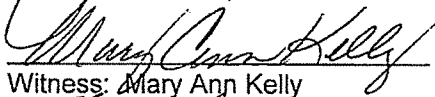
That the Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations, receipt whereof is hereby acknowledged, has granted, bargained and sold to the Grantee, its successors and assigns forever, the following described land situate in **Volusia** County, Florida, to wit:

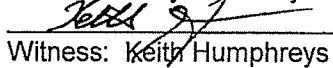
Lot 5, Bennett Subdivision of the Northeast ¼ of Section 6, Township 16 South, Range 33 East, according to the map or plat thereof as recorded in Plat Book 6, Page 11 of the Public Records of Volusia County, Florida.

Subject to zoning, covenants, conditions, restrictions, easements, reservations and limitations of record, if any, though this reference will not reimpose them, and taxes accruing subsequent to December 31, 2016.

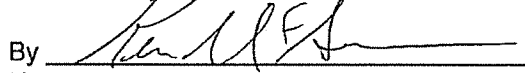
And the Grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever except as set forth above. Grantor hereby recites that the above-described property is not homestead property.

In witness whereof, the Grantor has executed this deed the date set forth above.


Witness: Mary Ann Kelly


Witness: Keith Humphreys

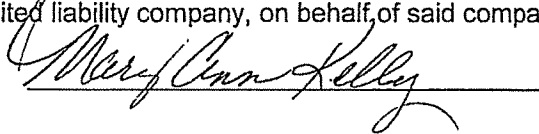
New Port Park, LLC

By 

Kenneth R. McGurn, Manager
101 SE 2ND Place, Ste 202, Gainesville, FL 32601

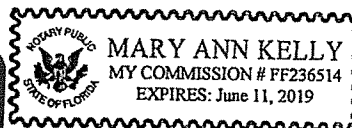
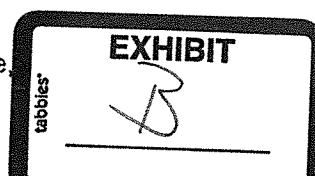
STATE OF FLORIDA, COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this 30th day of August, 2017 by Kenneth R. McGurn, Manager of New Port Park, LLC, a Florida limited liability company, on behalf of said company, who is personally known to me.



Tax Parcel: 630601000050

Prepared by: Linda C. McGurn
101 SE 2nd Place, #202, Gainesville,





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (G27) First Reading - Ordinance No. 2019-22 - Trespassing on Public Property

DEPARTMENT: Police Services

GOAL:

RECOMMENDED MOTION: Move to approve Ordinance No. 2019-22.

SUMMARY: This Ordinance allows for enforcement of trespassing on public properties in accordance with trespassing laws, and provides for due process.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

1.	Ordinance No. 2019-22 - Public Property Trespass	Ordinance No. 2019-22 - Public Property Trespass.pdf
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Thomas Grimaldi
William Proctor
Thomas Grimaldi
Matthew Jones
Jake Johansson
Robin Fenwick

Created/Initiated - 6/3/2019
Approved - 6/4/2019
Approved - 6/5/2019
Approved - 6/6/2019
Approved - 6/7/2019
Final Approval - 6/7/2019

ORDINANCE NO. 2019-22

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 58 OF THE CODE OF ORDINANCES, TO ESTABLISH A NEW SECTION 58-4 SETTING FORTH THE AUTHORITY AND PROCEDURES FOR THE ISSUANCE OF TRESPASS WARNINGS FOR PUBLIC PROPERTY; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council finds that it is necessary for the preservation and enhancement of the public health, safety and welfare and in the best interest of the City and its citizens to protect its parks and other public property; and

WHEREAS, the City Council recognizes the recidivism rates of certain ordinance violations by the same individuals and often in the same areas; and

WHEREAS, the City Council wants to ensure all citizens have a pleasant and enjoyable experience at City parks and other public property; and

WHEREAS, to ensure that all citizens continue to enjoy these facilities, it is necessary to enforce City rules and ordinances and remove those individuals who choose not to follow them.

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

Section 1. Section 58-4 of the Code of Ordinances, City of Port Orange, Florida, is hereby established and shall read as follows:

Sec. 58-4. – Trespass from public property.

- (a) The city manager and officers of the police department are authorized to issue a trespass warning to any individual who violates any city ordinance, park rule or regulation, or state law, which violation was committed while on or within a city facility, building, or outdoor area, including municipal parks, but excluding public rights-of-way. The trespass warning shall be limited in area to the specific property where the violation occurred.
- (b) For the purpose of this section, "rights-of-way" shall only include those sidewalks which are adjacent to a paved street, provided that the street-side edge of the sidewalk is within fifty (50) feet of the paved street or curb line.
- (c) Trespass warnings shall be issued as follows:
 - (1) For the first violation, the individual may be issued a trespass warning for a period not to exceed one (1) year.
 - (2) For a second or subsequent violation, the individual may be issued a trespass warning for a period not to exceed two (2) years.
- (d) A copy of the trespass warning shall be provided by certified mail or hand delivery to the individual given the warning. The written trespass warning shall advise of the right to appeal and the location at which to file the appeal.
- (e) Any person found on or within any city facility, building, or outdoor area, including municipal parks, in violation of a trespass warning may be arrested for trespassing, except as otherwise provided in this section.

- (f) The city manager may authorize an individual who has received a trespass warning to enter the property or premises to exercise his or her First Amendment rights if there is no other reasonable alternative location to exercise such rights or to conduct necessary municipal business. Such authorization must be in writing, shall specify the duration of the authorization and any conditions thereof, and shall not be unreasonably denied.
- (g) This section shall not be construed to limit the authority of any city employee or official to issue a trespass warning to any person for any lawful reason for any city property, including rights-of-way when closed to general vehicular or pedestrian use, when necessary or appropriate in the sole discretion of the city employee or official.
- (h) This section shall not be construed to limit the authority of officers of the police department to cite or arrest individuals for violating any section of the Code of Ordinances or the Florida Statutes.
- (i) Appeal of trespass warning. A person to whom a trespass warning is issued under this section shall have the right to appeal as follows:
 - (1) An appeal of the trespass warning must be filed, in writing, within ten days of the issuance of the warning, and shall include the appellant's name, address, and phone number, if any. No fee shall be charged for filing the appeal.
 - (2) The appeal shall be filed at the location specified in the trespass warning.

- (3) Appeals shall be heard by a special magistrate with whom the city contracts to provide this service.
- (4) Within five days following the filing of the appeal, the special magistrate shall schedule a hearing. Notice of the hearing shall be provided to the appellant in the following ways:
 - a. By posting the notice at the city hall, and
 - b. By mail if an address has been provided. In the event of non-delivery, then the notice posted at the city hall shall be sufficient.
- (5) The special magistrate shall hold the hearing as soon as possible. In no event shall the hearing be held sooner than seven days following the filing of the appeal and no later than 30 days from the filing of the appeal.
- (6) Copies of documents in the city's control which are intended to be used at the hearing, and which directly relate to the issuance of the trespass warning to the appellant, shall be made available upon request to the appellant at no cost.
- (7) The appellant and the city shall have the right to attend with an attorney, the right to testify, to call witnesses, to cross-examine witnesses and to present evidence. The appellant shall have the right to bring a court reporter, at his or her own expense.
- (8) The special magistrate shall consider the testimony, reports or other documentary evidence, and any other evidence presented at the hearing.

Formal rules of evidence shall not apply, but fundamental due process shall govern the proceedings.

- (9) The city shall bear the burden of proof by clear and convincing evidence that the trespass warning was properly issued pursuant to the criteria of this section.
- (10) If the appellant fails to attend a scheduled hearing, the special magistrate shall review the evidence presented and determine if the trespass warning was properly issued pursuant to the criteria of this section.
- (11) Within five days of the hearing, the special magistrate shall issue a written decision on the appeal which shall be mailed to the appellant at the address provided. If no address is provided, a copy of the decision shall be posted at the city hall.
- (12) The decision of the special magistrate shall be final and the appellant shall be deemed to have exhausted all administrative remedies. Such decision may be subject to judicial review in the manner provided by law by the appellant. The city may not appeal any decision of the special magistrate.
- (13) The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

Section 2. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted reasonable authority to codify the provisions of this Ordinance.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provision of this ordinance are declared severable.

Section 5. This ordinance shall be become effective upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, CMC, City Clerk

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

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

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

[CA 6849]



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 6/18/2019

Consent item: No

SUBJECT: (H29) City Manager

DEPARTMENT: City Manager

GOAL:

RECOMMENDED MOTION:

SUMMARY: Commercial property loophole update.

Project No.: Funding Account No.:

Presenter:

ATTACHMENTS:

Robin Fenwick
Jake Johansson
Robin Fenwick

Created/Initiated - 6/3/2019
Approved - 6/5/2019
Final Approval - 6/5/2019
