



REGULAR CITY COUNCIL MEETING

7:15 PM – COUNCIL CHAMBERS – CITY HALL

AUGUST 4, 2015

AGENDA

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

A. OPENING

1. Pledge of Allegiance
2. Invocation - Father Chris Hoffman - Our Lady of Hope Catholic Church
3. Roll Call

B. PUBLIC HEARING

4. 2015 CDBG Annual Action Plan (5th Year)
5. Second Reading – Ordinance No. 2015-26 – Amended and Restated Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for Town Park Planned Commercial Development (PCD); northeast corner of Williamson Blvd. and Madeline Ave.

C. AGENDA APPROVAL

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

E. COUNCIL COMMENTS

6. Comments/Concerns from Council Members

F. CONSENT AGENDA

7. Approval of Minutes

- a. July 21, 2015 - Regular City Council Meeting

8. Resolution No. 15-43 - Updating Gopher Tortoise Relocation Site Policies & Fees

9. Resolution No. 15-44 - Dedication to the public of second segment of McGinnis Avenue west of South Williamson Blvd.

10. Stormwater Maintenance Progress

11. Historic Tree Removal - 6222 Yellowstone Drive

12. Bid Awards and Contract Items

- a. Task Authorization No. 4 under the Contract for Engineering Services with Kimley-Horn and Associates
- b. Task Authorization No. 3 to the Contract with Quentin L. Hampton Associates, Inc. for Engineer of Record Services; South Atlantic Avenue Water Main Replacement
- c. Third Amendment to Agreement with Volusia County for fire suppression service in certain unincorporated areas.
- d. Contract Award to Magellan Advisors, LLC, for RFP #15-22; Information Technology Strategic Plan
- e. Agreement with Quentin L. Hampton & Associates, Inc. for Design and Permitting Services for Stormwater Drainage Improvements in the White Acres Area
- f. Authorize Payment for City Utility Relocation per the Joint Project Agreement with Volusia County for South Atlantic Avenue Sidewalk/Roadway/Water System Improvements in Wilbur-by-the Sea
- g. SunTrust Banking Services Contract Extension
- h. Change Order No. 3 to McMahan Construction Contract for the Williamson Blvd. Regional Lift Station
- i. Agreement with Dredging & Marine Consultants, LLC for Design and Permitting Services for Bank Stabilization at the City Center Retention Pond and Refurbishment of Causeway Docks
- j. Agreement with Quentin L. Hampton & Associates, Inc. for Design Services to Replace Failing Culvert at Ryanwood Subdivision Entrance

- k. Agreement with McKim & Creed Inc. for Design Services to Replace Failing Pipe Culverts under Pineland Avenue and Isabelle Avenue at Niver Street
 - l. Piggyback Volusia County Agreement with Lucity, Inc. to Purchase Public Works Asset Management Software
 - m. Modification of Johnson Contract with City for Sale and Purchase of 5126 Ridgewood Avenue
 - n. Extension of the Piggyback Agreement and Task Authorization No. 2 with RJH Technical Services, Inc.
 - o. Change Order No. 2 to the Contract for Services with Odyssey Manufacturing Company
13. Revised Employment Agreement for Michael H. "Jake" Johansson
14. Amended Employment Agreement for Interim City Manager, David T. Harden
15. Penna Court Motel - 4750 Ridgewood Avenue
- a. Resolution No. 15-42 - Contract for Sale and Purchase of Real Property
 - b. Resolution No. 15-46 - Budget Appropriations to Fund Acquisition of the Penna Court Motel located at 4750 Ridgewood Avenue

G. REGULAR AGENDA

16. First Reading - Ordinance No. 2015-27 - Amending City Code Sec 2-262, Purchase and sales procedures
17. First Reading - Ordinance No. 2015-29 - Adopting City Code Section 2-277 Bid protest
18. First Reading - Ordinance No. 2015-30 - Amending City Code Section 2-272 Alterations or modifications of contracts
19. Pie Guy – Targeted Business Program Incentive Contract
20. Fund Balance and Working Capital Policy
21. Monthly Financial Report through June 2015
22. Cypress Head Clubhouse
- a. Contract award for Cypress Head Clubhouse Renovation
 - b. Cypress Head Clubhouse HVAC System

H. COMMENTS

23. City Attorney Comments

24. Interim City Manager Comments

I. COUNCIL COMMITTEE REPORTS

25. City Council Committee Reports

a. River to Sea TPO Board

b. YMCA

c. General Employee's Pension Board

d. Port Orange/South Daytona Chamber of Commerce

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



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: 2015 CDBG Annual Action Plan (5th Year)

DEPARTMENT: City Manager

RECOMMENDED MOTION: Move to approve the proposed FY2015 CDBG Annual Action Plan, and to authorize staff to submit this plan to the U.S. Department of Housing and Urban Development (HUD).

SUMMARY: The City of Port Orange has been notified that it will tentatively receive \$258,112 for its FY 2015 CDBG allocation (October 1, 2015 – September 30, 2016). To receive these funds, the City must submit an Annual Action Plan that is consistent with the City's Five (5) Year CDBG Consolidated Plan approved by HUD.

Staff is proposing that the City's FY 2015 CDBG allocation be expended on the (A) White Acres Public Infrastructure/Sanitary Sewer Project (\$196,490), (B) Audible Pedestrian Crossing Signals (\$10,000) and (C) CDBG Planning and Administration (\$51,622).

The proposed FY 2015 CDBG Annual Action Plan has been made available for public comment through the City's CDBG web page. In addition, the opportunity for public comment has been advertised in the Daytona Beach News-Journal in compliance with the City's Citizen Participation Plan. Upon conclusion of the Public Hearing and approval by the City Council, this plan will be submitted to HUD for review and approval.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	DRAFT CDBG FY2015 Annual Action Plan	2015 DRAFT CDBG Annual Action Plan1.pdf
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Donahue, Kent
Harden, David
Roberts, Margaret
Harden, David

Created/Initiated - 07/13/2015
Approved - 07/13/2015
Approved - 07/21/2015
Final Approval - 07/21/2015



DRAFT

Fifth Program Year FY 2015

Action Plan

City of Port Orange, FL

Community Development Block Grant (CDBG)

GENERAL

Executive Summary

As a recipient of federal grant funds, the U.S. Department of Housing and Urban Development (HUD) requires the City of Port Orange to prepare and adopt a Five-Year Consolidated Plan for FY 2011 to FY 2015. This FY 2015 Annual Action Plan is the fifth year implementation of the Consolidated Plan.

The Action Plan serves as the City's application for Community Development Block Grant (CDBG) funding, and describes needs, goals and objectives. This plan covers a period beginning October 1, 2015, and ending on September 30, 2016. This plan was developed pursuant to Federal guidelines found at 24 CFR 91.

The City of Port Orange is located within Volusia County Florida. The current population estimate is 57,060 persons. There are five Census Tracts within the City that have a population whose income is at or below 80% of the area median income. The City has not defined specific target areas within the City.

Port Orange has been advised that it will be eligible to receive a CDBG entitlement allocation of \$258,112 in FY 2015. These funds are proposed to be spent primarily on public infrastructure improvements in an older, low to moderate income area of the community along the U.S. 1/Ridgewood Avenue corridor. An estimated 80% of the City FY 2015 CDBG allocation will be focused on the public infrastructure improvements in this area.

Aligned with the adopted Five (5) Year CDBG Consolidated Plan approved by HUD, staff is proposing to utilize the city's FY 2015 CDBG allocation on the White Acres Public Infrastructure/Sanitary Sewer Project (\$196,490), installation of Audible Pedestrian Crossing Signals (\$10,000) and Planning and Administration (\$51,622).

Proposed Activities

- 1. White Acres Public Infrastructure/Sanitary Sewer Project**
Amount: \$196,490 / Tract: 825.08 Group 1.

The city intends to construct sanitary sewer improvements in this LMI mobile home neighborhood.

- 2. Audible Pedestrian Crossing Signals**
Amount: \$10,000 / Tract: 082503; Group 3

Install audible pedestrian crossing signals at the corner of Spruce Creek Road and Nova Road.

- 3. Planning and Administration**
Amount: (\$51,622)

Total CDBG allocation \$258,112

Managing the Process

The City Manager's Office is the lead agency for administering the CDBG and other HUD programs, projects and activities. The City maintains on-going dialogue with stakeholders and provides 24/7 accessibility for CDBG information, documents and status reports via the CDBG page on the City's website. In addition, email contact with program staff is also available 24/7 via the City's website.

Citizen Participation

Consistent with the process identified in the city's adopted Citizen Participation Plan, the City of Port Orange has prepared this Annual Action Plan through an open process to obtain input from community stakeholders. Contacted individuals and community leaders include: neighborhood associations, adjacent municipalities, City agencies, non-profits, elected officials, faith based groups, and concerned citizens. The City held a Public Hearing on the Proposed Plan on August 4, 2015, after notice was provide in the Daytona Beach News-Journal, posted on the city website and posted in the City Hall lobby. Furthermore, the city advertised the opportunity for citizens and stakeholders to provide input on the CDBG Annual Action Plan process on its government access television state pogTV on Bright House cable channel 498.

The City did not receive any telephone inquiries, emails, nor formal written comments about the CDBG program or the proposed FY2015 Annual Action Plan. One member of

the public did provide oral comments regarding the FY 2015 Annual Action Plan at the public hearing held by the City Council. [Insert comments presented at public hearing]

Institutional Structure

Incorporated into action plan's planning process, the city sought input from various departments of the city including the Community Development Department and Public Utilities Department. Additionally, the Florida Division of Blind Services Daytona Beach office was consulted. During the FY 2015, the city will continue these communication efforts with the cited departments and agencies in conjunction with its administration of the CDBG programs.

Monitoring

Port Orange will continue to monitor the grant programs during FY 2015 in accordance with the local program policies and procedures and federal regulations. Any sub-recipients of federal CDBG or other funds will be closely monitored. The monitoring process will include on-site reviews of the sub-recipient's performance to ensure compliance with the goals and objectives of the program and federal regulations. The city's Finance Department has assigned personnel that coordinates and assists with all financial reporting. The city's external Auditors also review all grant expenditures for compliance to the federal regulations.

Lead-based Paint

No housing rehabilitation programs are planned during FY 2015. All lead-based paint (LBP) protocols will be followed during the proposed demolition of real property cited in this Plan. Lead poisoning is the leading environmental hazard to children, creating devastating and irreversible health problems. Because lead poisoning is a serious, yet preventable, health problem that can cause long-term neurological damage among young children, the City of Port Orange is committed to addressing this health hazard.

The leading cause of lead-based poisoning is exposure to dust from deteriorating paint in homes constructed before 1980. This is due to the high lead content used in paint during that period, particularly in homes built before 1950. Pre-1980 housing occupied by lower income households with children can offer particularly high risks of lead exposure due to the lower levels of maintenance among lower-income households. This is an important factor since it is not the lead paint itself that causes the hazards, but rather the deterioration of the paint that releases lead-contaminated dust and allows children to peel and eat lead-contaminated flakes.

Annual Objectives 91.220 (c)(3)

Goals and objectives to be carried out during the action plan period are indicated by placing a check in the following boxes

☐	Objective Category Decent Housing which includes:	☒	Objective Category Suitable Living Environment which includes:	☐	Objective Category Expanded Economic Opportunities which includes:
☐	Assisting homeless persons obtain affordable housing	☒	Improving the safety and livability of neighborhoods	☐	Job creation and retention
☐	Assisting persons at risk of becoming homeless	☒	Eliminating blighting influences and the deterioration of property and facilities	☐	Establishment, stabilization and expansion of small business (including micro-businesses)
☐	Retaining the affordable housing stock	☒	Increasing the access to quality public and private facilities	☐	The provision of public services with employment
☐	Increasing the availability of affordable permanent housing in standard condition to low-income and moderate-income families, particularly to members of disadvantaged minorities without discrimination on the basis of race, color, religion, sex national origin, familial status, or disability	☐	Reducing the isolation of income groups within areas through spatial deconcentration of housing opportunities for lower income persons and the revitalization of deteriorating neighborhoods	☐	The provision of jobs to low-income persons living in areas affected by those programs and activities under programs covered by the plan
☐	Increasing the supply of supportive housing which includes structural features and services to enable persons with special needs (including persons with HIV/AIDS) to live in dignity and independence	☐	Restoring and preserving properties of special historic, architectural, or aesthetic value	☐	Availability of mortgage financing for low income persons at reasonable rates using non-discriminatory lending practices
☐	Providing affordable housing that is accessible to job opportunities	☐	Conserving energy resources and use of renewable energy sources	☐	Access to capital and credit for development activities that promote the long-term economic social viability of the community

HOUSING

Specific Housing Objectives

To meet the needs of low/moderate income areas in order to maintain the livability, viability and safety of those areas, Port Orange will focus its limited CDBG funds toward public infrastructure. The city is not proposing to initiate any housing programs during FY 2015.

Measurable Objective: None.

Needs of Public Housing

The city of Port Orange has no Public Housing. No action is proposed in FY 2015.

Barriers to Affordable Housing

Port Orange is currently having a consultant conduct an Impediments to Fair Housing study. From that study, the city will be able to further fair housing through a variety of on-going activities. The city conducts internal reviews of its land use and zoning regulations and its administrative policies and procedures for their impact on affordable housing. Port Orange has established an expedited development review and permitting system that is applicable to affordable housing projects. All new city ordinances are required to be reviewed for their impact on affordable housing. These on-going activities will be undertaken in FY 2015.

HOME / American Dream Down Payment Initiative (ADDI)

The City of Port Orange does not receive HOME/ADDI funds. No action is proposed in FY 2015.

HOMELESS

Specific Homeless Prevention Elements

The Homeless Strategic Plan for the Volusia/Flagler Counties is contained in the Volusia/Flagler County Coalition for the Homeless Ten-Year Plan. The city will conduct no direct activities in this area, but will continue to support the Coalition's efforts during FY 2015.

Emergency Shelter Grants (ESG)

Port Orange is not a direct recipient of Emergency Shelter Grant funds. Residents in need of emergency shelter services will be referred to the appropriate agencies.

COMMUNITY DEVELOPMENT

Community Development

For FY 2015, Port Orange proposes to utilize the majority of its CDBG funds for public infrastructure improvements in a low/moderate income area of Port Orange. Located on Spruce Creek Road, the White Acres Mobile Home Park has been in existence since the late 1960s. An income survey was conducted by city's Public Utilities Department to determine whether CDBG funds could be directed for activities with this neighborhood. An income survey was developed according to Notice CPD-14-013 requirements and the survey's methodology was approved by HUD Jacksonville. The survey was mailed to the identified residents of this mobile home park. Face-to-face follow-ups were conducted along with a second mail out of the survey to increase responses. Further door-to-door visits occurred to achieve a 86.7% response rate. From the information provided, a majority of the households in the White Acres neighborhood were extremely or very low and moderate income households. The percentage of LMI persons in the White Acres project area is 81.051%.

The other proposed 2015 activity is the installation of audible pedestrian crossing signals. Port Orange selected the intersection of Spruce Creek Road and Nova Road to implement this activity that is part of long range plan to systemically install the devices over the next 10 years to assist blind individuals to safely travel our community's sidewalk system.

Measurable Objective: Number of low/moderate income residents served.

Antipoverty Strategy

Port Orange is not proposing any anti-poverty strategies in FY 2015.

Measureable Objective: None

NON-HOMELES SPECIAL NEEDS HOUSING

Non-homeless Special Needs 91.220 (c) and (e)

For all Non-homeless Special Needs Populations, the city will work with other area agencies to provide services and support to the greatest extent possible. Given the very small amount of CDBG funds allocated to Port Orange and the lesser priority assigned to this need, no action is proposed in FY 2015.

Housing Opportunities for People with AIDS

The Volusia/Flagler Coalition for the Homeless is the regional HOPWA. No action is proposed in FY 2015.

Specific HOPWA Objectives

No action proposed in FY 2015

Other Narrative

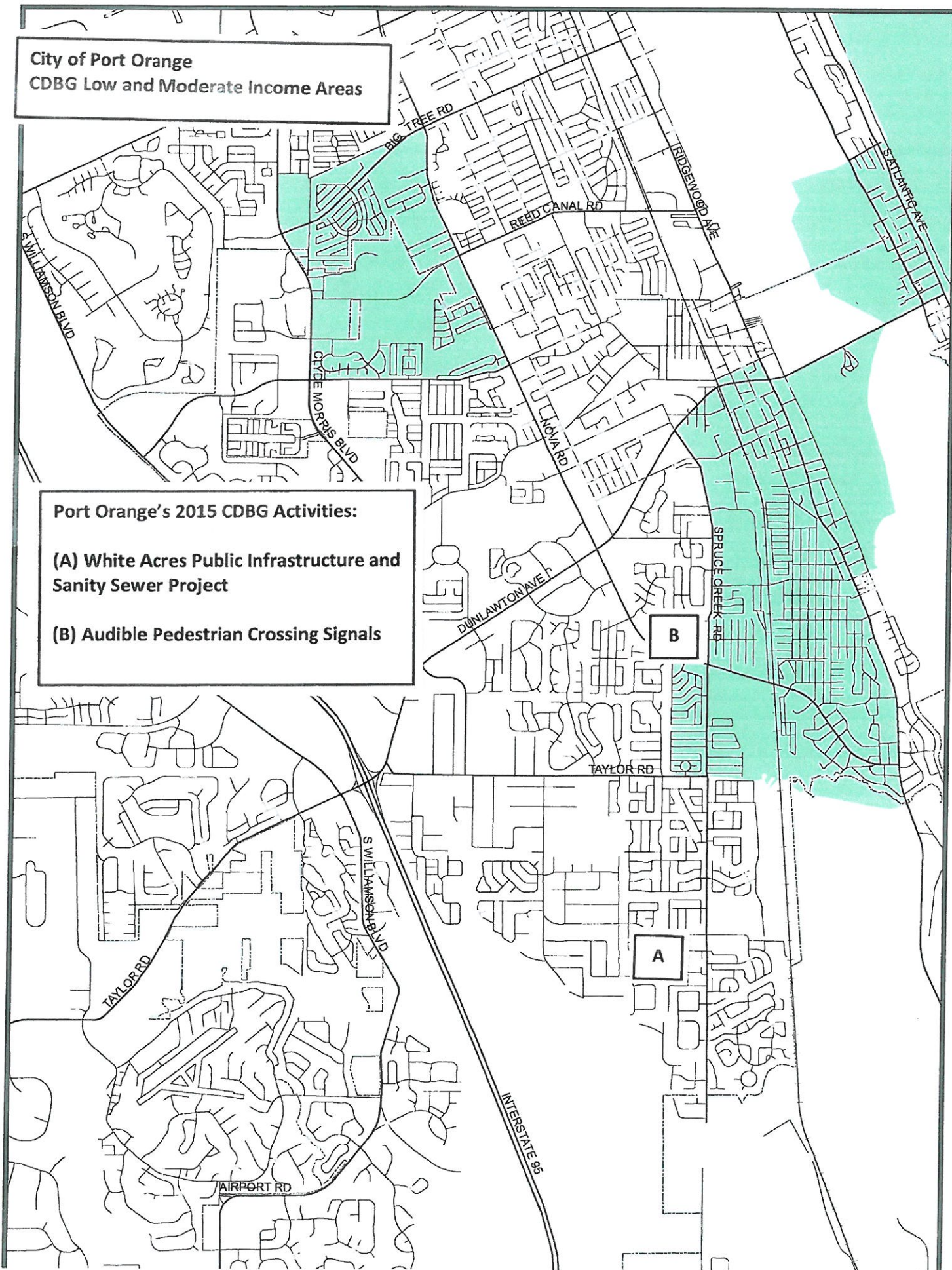
None.

City of Port Orange
CDBG Low and Moderate Income Areas

Port Orange's 2015 CDBG Activities:

**(A) White Acres Public Infrastructure and
Sanity Sewer Project**

(B) Audible Pedestrian Crossing Signals





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Second Reading – Ordinance No. 2015-26 – Amended and Restated Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for Town Park Planned Commercial Development (PCD); northeast corner of Williamson Blvd. and Madeline Ave.

DEPARTMENT: Community Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2015-26 on second reading, amending and restating the Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for the Town Park Planned Commercial Development (PCD).

SUMMARY: The applicant is requesting approval of an Amended and Restated MDA and CDP for the Town Park PCD. The proposed changes provide the framework to redevelop the site as a commercial project, provide for additional permitted uses and establish minimum lot dimensions, setbacks, buffers, and associated required site improvements. The proposal also includes a three-year timeframe for either completion or demolition of the existing church structure. If the amended and restated MDA and CDP is approved, it would take the place of the existing MDA and 1st amendment to the PCD.

At the May 28 meeting, the Planning Commission recommended approval (4-2) of the proposal. However, Planning Commission approval was subject to removing some of the requested additional uses including convenience store with or without fuel operations, motor vehicle service station and all of the special exception uses.

Based on the Planning Commission recommendation, the applicant has revised his request to accommodate the majority of these changes. The applicant has removed motor vehicle service stations, convenience stores with or without fuel operations, bars, lounges, and night clubs, fortune tellers, astrologers, and palm readers, game/recreation facilities, guyed and lattice communication towers, and marina, recreational. However, the applicant proposes to retain the following special exception uses: mini-warehouses, motor vehicle and boat storage facilities, houses of worship, and private schools.

If approved, the applicant intends to maintain the existing communication tower and redevelop the remaining property with multiple buildings including shared infrastructure such as stormwater retention, parking, and access drives. The property owner has indicated he will continue to pursue options for using the existing unfinished building but, under the proposed amendment, it must be removed or renovations must be underway within three years of the MDA being recorded.

Project Funding Account
No.: No.:

ATTACHMENTS:

1.	Ord. No. 2015-26 Town Park Am. and Restated MDA	.pdf
2.	Staff Report	Staff Report.pdf

Schmotzer, Melanie
Clark, Wayne
Harden, David

Created/Initiated - 07/22/2015
Approved - 07/22/2015
Final Approval - 07/22/2015

ORDINANCE NO. 2015-26

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (MDA) FOR THE TOWN PARK PLANNED COMMERCIAL DEVELOPMENT (PCD); PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Developer desire to enter into this Amended and Restated Master Development Agreement ("MDA") and Conceptual Development Plan ("CDP") for the Town Park Planned Commercial Development ("PCD"); and

WHEREAS, the Developer submitted a request to the Planning Commission to approve the amended and restated MDA and CDP; 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 amended and restated MDA and CDP.

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

Section 1. The City Council of the City of Port Orange does hereby approve the Amended and Restated Master Development Agreement and Conceptual Development Plan for the Town Park Planned Commercial Development (attached hereto as **Exhibit "1"**).

Section 2. The Mayor and City Clerk are hereby authorized to execute said Amended and Restated Master Development Agreement for the Town Park PCD on behalf of the City of Port Orange.

Section 3. All ordinances or resolutions or parts of ordinances or resolutions 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 ALLEN GREEN

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: _____
Assistant City Attorney

EXHIBIT "1"

**AMENDED AND RESTATED
MASTER DEVELOPMENT AGREEMENT FOR THE
TOWN PARK PLANNED COMMERCIAL DEVELOPMENT (PCD)**

This Amended and Restated Master Development Agreement for the Town Park Planned Commercial Development (PCD) (hereinafter referred to as the "Agreement") is made by and between RAINBOW DEVELOPMENT GROUP, LLC, a Florida limited liability company (hereinafter referred to as the "Owner" or "Developer") and the CITY OF PORT ORANGE, FLORIDA, a chartered municipal corporation (hereinafter the "City"), and hereby restates and supersedes the Development Agreement for Town Park PCD, recorded at Official Records Book 4511, Page 2281 through 2296, Public Records of Volusia County, Florida, and the First Amendment to Town Park Planned Unit Development Master Development Agreement, recorded at Official Records Book 4748, Page 750, Public Records of Volusia County.

WITNESSETH:

WHEREAS, the Developer and the City previously entered into a master development agreement to accommodate the development of approximately eight (8) acres, more or less, of real property located within the City of Port Orange and known as the Town Park PCD Property.; and

WHEREAS, The Town Park PCD Property was being developed under the provisions of the original master development agreement and the 1st amendment thereto, but the project became abandoned and project was never completed; and

WHEREAS, The Town Park PCD Property is now under different ownership and the development of the Town Park PCD Property shall be completed in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing premises, the parties hereto do hereby each consent and agree as follows:

1. THE PROPERTY:

This Planned Commercial Development consists of approximately eight (8) acres, more or less, of real property (the "Property"), which is described in Exhibit "A", attached hereto and by reference made a part hereof.

2. CONFORMANCE WITH COMPREHENSIVE PLAN:

The City has determined that the Property is suitable in size, location and character for the uses proposed, that the uses proposed meet the needs of the City, and that the uses proposed are consistent with the City's comprehensive plan as of the date of adoption of this Agreement enacting the zoning provided herein.

3. DEVELOPMENT:

The Developer has designated the Property as the "Town Park PCD". The Property shall generally be developed in accord with the Conceptual Development Plan prepared by Zev Cohen

and Associates, Inc. and dated July 2, 2015, a copy of which is attached hereto and by reference made a part hereof as **Exhibit "B"**.

4. DEVELOPMENT AGREEMENT AND CONCEPTUAL DEVELOPMENT PLAN:

- A. Development of the Property shall be controlled by the terms and conditions of this Agreement and the CDP, which is attached hereto and incorporated herein as Exhibit "B". The CDP generally depicts the planned layout of improvements to the Property. Collectively, this Agreement and the CDP for the Property may be referred to as the "Plan". In case of conflict between any textual provision of this Agreement and the CDP, the textual provision of this Agreement shall control. If the Agreement is silent regarding a particular subject or requirement, such silence shall not be construed as a conflict with the CDP. Except as otherwise provided in this Agreement, in the event of a conflict between the terms and provisions of the Plan and the City's ordinances, the terms and provisions of the Plan shall control. If the Plan fails to address a particular subject or code requirements, the requirements of the applicable City ordinance(s) as defined by the City's Land Development Code ("LDC"), shall control.
- B. The parties acknowledge that compliance with the requirements of the LDC may necessitate modifications of the CDP. In the event modifications to comply with the LDC are required, and modifications to the CDP are not in conflict with the textual provisions of this Agreement and LDC requirements not superseded by this Agreement, the modifications shall be deemed "minor" and may be approved without formal amendment of this Agreement. All other modification shall be deemed "major" and shall require formal amendment of this Agreement. Minor modifications shall require the written approval by the Administrative Official, who is defined in the LDC. If the Owner is not satisfied with the suggested resolution or the decision of the City Administrative Official categorizing the modifications as minor or major, the Owner may appeal the decision to the Planning Commission. Appeals from the Planning Commission may be made to the City Council.

5. PERMITTED USES, DIMENSIONAL, ARCHITECTURAL, PARKING AND LANDSCAPE REQUIREMENTS:

A table of Uses and Requirements listing the permitted uses of the Property, dimensional requirements for lots, structures and buildings, parking requirements, architectural requirements, and landscaping requirements for the Property is attached hereto and by

reference made a part hereof as **Exhibit "C"**. The Conceptual Development Plan (Exhibit "B") and the Table of Uses and Requirements (Exhibit "C") shall be read conjunctively. The Conceptual Development Plan shall be considered to illustrate the general location and size of the buildings, lots, storm water retention areas and common access ways to be utilized by occupants of the Property and the relationship of the lots and buildings to Williamson Boulevard, Madeline Avenue, and the vacant residential property to the north. The Table of Uses and Requirements shall be considered to specifically control the actual location and size of the buildings, lots, and landscaped areas on the Property. In case of a conflict between the textual provisions of this Agreement, including Exhibits, and Exhibit "B", the textual provisions of this Agreement shall control.

6. MAINTENANCE:

The Owner and all future owners of the Property shall be responsible for the continuous and perpetual maintenance of all required improvements in accordance with the LDC. In the event that the Property is subdivided into multiple parcels, lots, or tracts creating multiple ownerships, the division and assignment of maintenance responsibilities among the various owners shall be imposed by the creation of a property owner's association or agreement between the owners setting forth the necessary covenants and restrictions to assure the continuous and perpetual maintenance of all required improvements.

7. SITE PLANS:

The Developer plans to sell no more than three (3) individual building sites. The individual building sites shall be developed by the individual building site owners. Except as expressly provided herein, improvements permitted or required by this Agreement shall be constructed by individual building site owners in accord with this terms and conditions of this Agreement and, where applicable, the ordinances, resolutions and regulations of the City. The owner of an individual building site may be required by the City to make off-site improvements that will benefit the entire Property and subsequent owners of individual building sites. The City may require the owner of an individual building site to make those off-site improvements necessary to insure the integrity of the common facilities of the Property including, but not limited to, improvements to facilitate property drainage, access, and traffic circulation. The parties agree that off-site improvements made by an individual building site owner may provide benefit to the other building sites contained on the Property. Plans for individual building sites shall be subject

to the site development plan review procedures employed by the City at the time plans for an individual site are submitted. Utilities, bikepaths, and all required off-site improvements shall be installed prior to the issuance of a certificate of occupancy for any of the individual site plans.

8. PUBLIC UTILITIES AND STORMWATER MANAGEMENT:

Public utilities shall be designed to meet the City's specifications and requirements of the Land Development Code and City Standard Construction Details. Stormwater shall be designed to meet the specifications and requirements of the City's Land Development Code, City Standard Construction Details and the rules and regulations of the St. John's River Water Management District concerning stormwater drainage and management. The Owner shall provide all required easements to the City over the proposed retention area and related stormwater structures.

9. EASEMENTS:

Proposed easements for drainage and access and any easements or grants of easements for public utilities shall be submitted to the City for approval prior to construction on any portion of the Property. The Property shall be private but open to invitees of the building site owners. The Developer shall provide to the City access easements, where reasonable and necessary, to any and all areas of the Property in order for the City to provide municipal services and enforce its ordinances, resolutions and regulations.

10. EXISTING BUILDING AND STRUCTURES.

The Owner, after due diligence and consideration, shall either demolish or repurpose the existing incomplete building and slab located on the Property in accordance with the following terms and conditions:

A. Demolition Option - The existing incomplete building and slab located on the Property shall be demolished within three (3) years of the recording of this Agreement. Owner shall comply with the Florida Building Code and the City's Land Development Code ("LDC"); and shall acquire all necessary permits prior to demolition; OR

B. Repurpose Option – Owner shall, within three (3) years of the recording of this document, obtain the City's approval of its plans to repurpose the existing incomplete building and complete all required site improvements in accordance with the LDC and this Agreement. Owner shall, within four (4) years of the recording of this document, complete the repurposing and all other requisite improvements and conditions pursuant to the LDC and this Agreement and obtain the Certificate of Occupancy (CO) for the existing building.

FAILURE TO COMPLY – Should the owner fail to comply with this subsection by failing to either repurpose or demolish the existing incomplete building within the manner and timeframe as set forth herein, this Agreement shall expire immediately without the necessity for any further action by the City. The City does hereby reserve its right to pursue such other remedies as provided by law.

11. EFFECTIVE DATE AND EXPIRATION:

- A. This Agreement shall be effective upon recording by the City at the Developers expense in the public records of Volusia County, Florida. The Second Reading of the Ordinance approving the Town Park PCD shall not take place until the Developer has provided an executed copy of this Agreement to the City Clerk addressing all issues discussed prior to the scheduled Second Reading. If there are no additional requirements, corrections or conditions attached by the City Council at the Second Reading, the Agreement shall be signed by the Mayor and the City Clerk and thereafter recorded. The restrictions on use and development imposed by this Agreement shall be binding upon all successors in interest in the Property, unless and until the City alters or eliminates such restrictions in the course of the City's actions as zoning authority or until this Agreement expires.
- B. Development of the Town Park PCD shall commence within five (5) years from the effective date of this Agreement and it shall be completed within ten (10) years from the effective date unless it is extended by mutual agreement of the parties. Failure to comply with the established schedule shall cause the Agreement to lapse. The term "Development" is defined by the LDC.

12. AMENDMENTS:

- A. Amendments to this Agreement, other than minor modifications to the CDP as referred to in Section 3 of this Agreement, shall not be effective unless in writing and signed by all record title property owners of the land for which the amendment is to be applied, and the City. Notice of intent to consider an amendment to this Agreement shall be published by the City, at the Owner's cost, in a newspaper of general circulation and readership in Volusia County, Florida.
- B. Before amending this Agreement, the City shall conduct one or more public hearings. At the City's option, one of the public hearings may be held by the Planning Commission.
 - 1. Notice of intent to consider an amendment to this Agreement shall be published by the City, at the Owner's cost, in a newspaper of general circulation and readership in Volusia County, Florida.

2. If applicable, notice of intent to consider an amendment shall comply with the requirements of Section 166.041(3)(c), Florida Statutes, as amended from time to time.
3. The day, time, and place at which the second public hearing shall take place shall be announced at the first public hearing.
4. The notices required above shall specify the location of the PCD Property, the location of that portion of the PCD Property subject to the proposed amendment, the nature of the proposed amendment, and the following information to the extent applicable:
 - a.Changes permitted, conditional, and/or prohibited uses proposed.
 - b.Changes in building intensities and/or height proposed.
5. All notices shall specify a place where a copy of the proposed amendment can be obtained.

13. CONFORMANCE WITH LAWS

A. The Owner agrees:

1. To develop the Property according to all regulations of the City to the extent those regulations are not inconsistent with the Plan for the Property.
2. To be bound by all City codes and ordinances that are not in conflict with the provisions of this Agreement.

14. PRIOR AGREEMENTS:

This Agreement represents the complete understanding by and between the parties with respect to the development and continued use of the subject PCD Property. Any and all prior agreements between the parties with respect to any subject comprehended by this Agreement is hereby voided and suspended by this Agreement. Any amendment to this Agreement shall be in writing and signed by the City and the Owner(s).

15. ENFORCEABILITY:

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Agreement unless the holding so states.

16. POLICE POWER:

Nothing contained in this Agreement shall be construed as a waiver of or contract with respect to the regulatory and permitting authority of the City as it now or hereafter exists under applicable laws, rules and regulations. Further, nothing contained in this Agreement shall be construed as a waiver of the attempted waiver by the City of its sovereign immunity under the Constitution and laws of the State of Florida.

**CITY OF PORT ORANGE, a Florida
Municipal Corporation**

WITNESSES:

Printed name

Printed name

Printed name

Printed name

By: _____
Allen Green, Mayor
1000 City Center Circle
Port Orange, Florida 32129

Attest _____
Robin L. Fenwick, CMC, City Clerk
1000 City Center Circle
Port Orange, Florida 32129

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Allen Green, Mayor, and Robin L. Fenwick, CMC, City Clerk, of the CITY OF PORT ORANGE, FLORIDA, a Florida Municipal Corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public

(Seal)

Witnesses:

Printed Name

Printed Name

PCD Property Owner:

RAINBOW DEVELOPMENT GROUP, LLC

By: _____

Date: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by
_____, as _____ of RAINBOW DEVELOPMENT GROUP, LLC.
He/she is personally known to me and did not take an oath.

Notary Public
(Seal)

EXHIBIT A

DESCRIPTION - COMMERCIAL PARCEL

A PORTION OF SECTION 1, TOWNSHIP 16 SOUTH, RANGE 32 EAST, VOLUSIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE GROVES PHASE "C", AS RECORDED IN MAP BOOK 44, PAGE 19 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, SAID CORNER ALSO BEING THE SOUTHWEST CORNER OF MADELINE AVENUE, A 100 FOOT RIGHT OF WAY PER SAID THE GROVES PHASE "C"; THENCE $N89^{\circ}48'41''W$, 434.83 FEET TO THE CENTERLINE OF THE EAST VOLUSIA COUNTY MOSQUITO CONTROL DISTRICT MAIN DRAINAGE CANAL EASEMENT, AS RECORDED IN OFFICIAL RECORDS BOOK 847, PAGE 438, SAID PUBLIC RECORDS; THENCE $N89^{\circ}47'50''W$, 69.01 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, HAVING A RADIUS OF 1150.00 FEET AND A CENTRAL ANGLE OF $57^{\circ}46'00''$; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, 1159.45 FEET; THENCE $S32^{\circ}26'10''W$, 683.72 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 2550.00 FEET AND A CENTRAL ANGLE OF $09^{\circ}55'00''$; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, 441.35 FEET; THENCE $S42^{\circ}21'10''W$, 682.85 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF $90^{\circ}00'09''$; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, 39.27 FEET TO THE EASTERLY RIGHT OF WAY LINE OF WILLIAMSON BOULEVARD (EAST COAST BELTLINE, 200 FOOT RIGHT OF WAY PER VOLUSIA COUNTY RIGHT OF WAY SURVEY, PROJECT NO. 4146-1-2, MAY 1992); THENCE $N47^{\circ}38'59''W$, ALONG SAID EASTERLY RIGHT OF WAY LINE, 150.00 FEET TO THE POINT OF BEGINNING; THENCE $N47^{\circ}38'59''W$, ALONG SAID EASTERLY RIGHT OF WAY LINE, 675.00 FEET; THENCE $N42^{\circ}21'10''E$, 500.00 FEET; THENCE $S47^{\circ}38'59''E$, 700.00 FEET; THENCE $S42^{\circ}21'10''W$, 475.00 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 25.00 FEET AND A CENTRAL ANGLE OF $89^{\circ}59'51''$; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 39.27 FEET TO THE POINT OF BEGINNING. CONTAINING 8.03 ACRES, MORE OR LESS.

CONCEPT PLAN FOR TOWN PARK PCD PORT ORANGE, FLORIDA

EXHIBIT "B"

APPLICANT/AGENT:
RAINBOW DEVELOPMENT GROUP
594 WATERFORD POINTE
PORT ORANGE, FLORIDA 32127
PHONE: 386-785-4324
FAX: 386-785-4324
CONTACT: AMAR HEMADAN

CIVIL ENGINEER:
ZEV COHEN & ASSOCIATES, INC.
4475 U.S. 1 SOUTH, SUITE 601
PORT ORANGE, FLORIDA 32127
PHONE: 386-797-1810
FAX: 386-797-4159
CONTACT: SAMUEL C. HAMILTON, JR., P.E.

LANDSCAPE ARCHITECT:
ZEV COHEN & ASSOCIATES, INC.
300 INTERCHANGE BOULEVARD
ORLANDO BEACH, FL 32174
PHONE: 386-677-2482
FAX: 386-677-2500
CONTACT: PAUL MONBERGER, R.L.A.

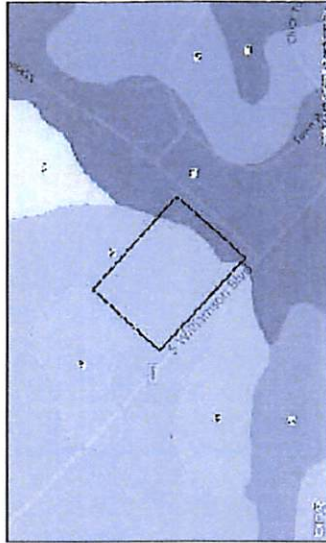


CONSTRUCTION
NO WORKING TO BE UNDERTAKEN IN THIS
AREA WITHOUT THE APPROVAL OF THE
LOCAL GOVERNMENT. ANY WORK
DONE IN THIS AREA SHALL BE
IN ACCORDANCE WITH THE
LOCAL GOVERNMENT'S
REQUIREMENTS.

NO.	DESCRIPTION	DATE	BY
1	CONCEPT PLAN	10/1/00	ZC
2	CONCEPT PLAN	10/1/00	ZC
3	CONCEPT PLAN	10/1/00	ZC
4	CONCEPT PLAN	10/1/00	ZC
5	CONCEPT PLAN	10/1/00	ZC
6	CONCEPT PLAN	10/1/00	ZC
7	CONCEPT PLAN	10/1/00	ZC
8	CONCEPT PLAN	10/1/00	ZC
9	CONCEPT PLAN	10/1/00	ZC
10	CONCEPT PLAN	10/1/00	ZC

CITY OF PORT ORANGE
CONCEPT PLAN
EXHIBIT B
TOWN PARK PCD
VOLUSIA COUNTY, FLORIDA

PROJECT NO.	0000000000
PROJECT NAME	TOWN PARK PCD
PROJECT LOCATION	PORT ORANGE, FLORIDA
PROJECT OWNER	RAINBOW DEVELOPMENT GROUP
PROJECT ENGINEER	ZEV COHEN & ASSOCIATES, INC.
PROJECT LANDSCAPE ARCHITECT	ZEV COHEN & ASSOCIATES, INC.
PROJECT DATE	10/1/00
PROJECT SCALE	1" = 300'
PROJECT SHEET	001
PROJECT TOTAL SHEETS	001
PROJECT STATUS	CONCEPT PLAN
PROJECT COMMENTS	



SOILS MAP
SCALE: 1" = 300'



Exhibit "C"

Table of Uses and Requirements

1. PERMITTED USES:

- a. Nursing Homes
- b. Assisted Living Facility
- c. Permitted Uses, Permitted Uses with Special Development Requirements, and Special Exception Uses allowed in the City of Port Oranges' Community Commercial (CC) and Professional Office (PO) Zoning Districts, as amended from time to time.

2. PROHIBITED USES:

- a. The following uses in City of Port Oranges' Community Commercial (CC) and Professional Office (PO) Zoning Districts are prohibited
 - 1. Motor vehicle service stations
 - 2. Convenience stores with or without fuel operations
 - 3. Bars, lounges, and night clubs
 - 4. Fortune tellers, astrologers, and palm readers
 - 5. Game/recreation facilities
 - 6. Guyed and lattice communication towers
 - 7. Marina, recreational

3. DIMENSIONAL REQUIREMENTS:

Maximum Building Height	45 Feet
Minimum Lot Width	125 Feet
Minimum Lot Size	22,500 Square Feet
Maximum Building Coverage	35%
Minimum Open Space	30%
Minimum Building Setbacks	
➤ Williamson Boulevard	50 Feet
➤ Madeline Avenue	25 Feet
➤ Side	30 Feet*
➤ Rear	30 Feet*

*Commercial building setbacks adjoining residential zoning shall be equal to or greater than building height.

4. LANDSCAPE REQUIREMENTS:

- A. All landscape buffers except listed below, foundation landscaping, vehicular use/parking landscaping, supplemental landscaping, and tree preservation, shall be developed in compliance with the Land Development Code (LDC), parking shall be developed in compliance with the LDC, as amended from time to time.

B. Williamson Boulevard

30 Feet

5. PARKING REQUIREMENTS:

Parking shall be developed in compliance with the Land Development Code, as amended from time to time.

6. SIGNAGE REQUIREMENTS:

Site signage shall be developed in compliance with the Land Development Code, as amended from time to time.

7. ARCHITECTURAL REQUIREMENTS:

A. All buildings and accessory structures on the Property shall be developed in compliance with the requirements of the Land Development Code, as amended from time to time.

B. Any use with a drive-thru window shall have its drive-thru window oriented toward the interior of the Property. All drive thru facilities must be designed to match the principal structure with regards to finishes, materials, color, and architectural style.

8. MISCELLANEOUS REQUIREMENTS:

In the event this agreement and exhibits fail to address a particular issue regarding development of the property, the regulations set forth in the Port Orange Land Development code, as amended from time to time, shall control.



STAFF REPORT

Restated and Amended MDA & CDP for the Town Park PCD

CASE NO. 15-40000001

REQUEST:	Amend and restate the Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for the Town Park Planned Commercial Development (PCD)
LOCATION:	Northeast corner of Madeline Ave. and S. Williamson Blvd. (Exhibit 1)
OWNER/APPLICANT:	Rainbow Development Group LLC
PLANNING COMMISSION RECOMMENDATION:	Approval, subject to removal of convenience store with or without fuel operations, motor vehicle service station, and all of the special exception uses in the PO and CC zoning districts
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Gwen Perney, Planner (386) 506-5673
CITY COUNCIL DATE:	July 21, 2015

Background

The applicant proposes to amend and restate the Master Development Agreement (MDA) and the Conceptual Development Plan (CDP) for the Town Park Planned Commercial Development (PCD). The amendment and restated MDA means that if adopted, the new MDA will take the place of existing MDA and 1st Amendment as a new document (Exhibit 2).

The Town Park PCD was originally approved in 1997 to be developed as an office complex with limited areas of general retail sales and service uses. In 2001, the MDA was amended to allow Houses of Worship as a permitted use. In 2002, construction began on the Word of Faith Church. Work stopped in 2003 and the property was abandoned. In 2013 a communications tower was constructed on the property under the terms of the MDA and the Land Development Code.

The changes proposed to the MDA are adding to the list of permitted uses and providing a timeframe for either completion or demolition of the existing church building. No other changes to the existing MDA or deviations from the LDC are being proposed.

The subject property is located on the east side of S. Williamson Blvd., north of Madeline Ave. (See – Location Map). The property is currently occupied with an abandoned unfinished building and a communications tower.

Location Map



Consistency With The Comprehensive Plan

The subject property is designated *Commercial* on the City's Future Land Use Map (Exhibit 1). The *Commercial* Future Land Use designation is intended to provide for uses such as, shopping centers, retail stores, restaurants, automobile service facilities, personal services, offices, and similar uses.

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 Neighborhood Commercial Node located around the intersection of S. Williamson Blvd. and Madeline Ave. (Exhibit 3). The node type was determined based on the classifications of the adjacent roadways and the size of the surrounding neighborhoods.

General infrastructure capacity for commercial development on the site was evaluated when the *Commercial* FLU designation was established. Detailed review of water, sewer, stormwater, and traffic will occur when site plans are submitted.

Development Proposal

If approved, the restated Town Park Master Development Agreement (MDA) and the Conceptual Development Plan (CDP) will provide the regulatory framework for

development of the subject property. The applicant intends to maintain the existing communications tower and develop the remaining property with multiple buildings including shared infrastructure such as stormwater retention, parking, and access drives. The proposed MDA indicates the applicant will continue to pursue options for using the existing unfinished building. If the building is found to be unsuitable for further use, it must be removed within three years of the MDA being recorded. The three year limit is being proposed by the applicant in order to provide sufficient time for design modifications, permitting, and financing.

The proposed restated MDA maintains the uses currently allowed and adds the uses allowed in the City's Community Commercial (CC) zoning district as well as nursing homes and assisted living facilities.

Currently Permitted Uses

Antennas
Banks
Business services
Camouflage and monopole comm. towers
Child care centers
Community gardens
Financial services
Fleet based services
Funeral homes (freestanding only)
Health/exercise clubs
Houses of worship
Medical office/clinics
Offices
Office supplies
Office/warehouse facilities
Pain management clinics
Personal services
Restaurants
Veterinary clinics
Xerographic and offset printing

Current Special Exception Uses

Guyed and lattice comm. towers
Private schools

Proposed Additional Uses

Assisted Living Facility
Adult/vocational education
Appliance/electronic repair shops
Athletic/sports facilities
Clubs, lodges, and fraternal orgs.
Convenience store w/ or without fuel*
Furniture and appliance stores
Motor vehicle service stations*
Nursing homes
Retail home building materials
Retail sales and services
Theaters

Proposed Additional Special Exception Uses**

Bars, lounges and nightclubs
Fortune tellers, astrologers, and palm readers*
Game/recreation facilities*
Marina, recreational*
Mini-warehouses
Motor vehicle and boat storage facilities

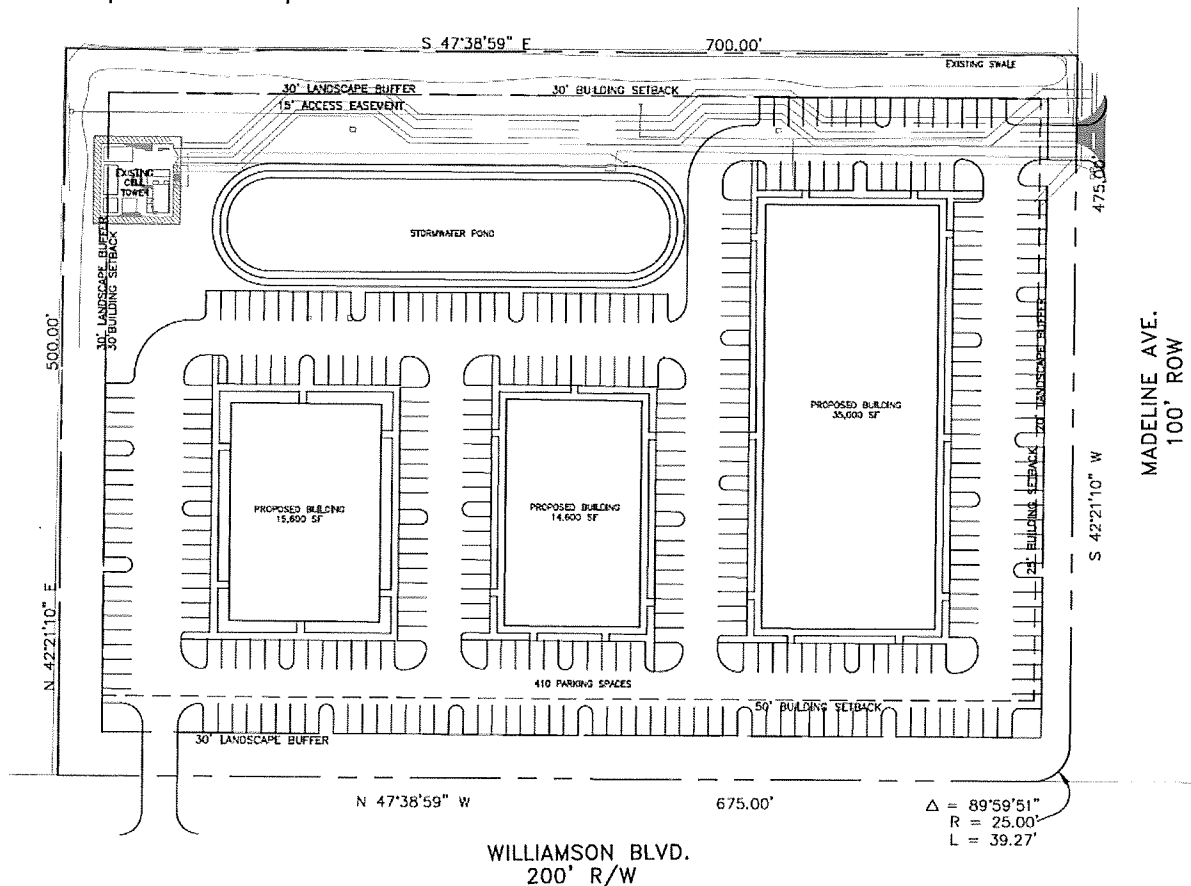
*Applicant has removed the uses highlighted in yellow based on the Planning Commission's recommendation.

**All special exception uses require separate Planning Commission and City Council approval.

General Site Layout:

Proposed development on the site will be accessed from S. Williamson Blvd. and Madeline Ave. If the property is subdivided into individual lots, cross access easements between the lots will be required. The Conceptual Development Plan shows the general location of potential buildings and infrastructure. The exact locations of buildings and associated site improvements will comply with the requirements in the restated MDA and will be determined at the time of site plan review.

As shown on the CDP, the applicant intends to relocate the existing stormwater pond to the northeast side of the property. Technical review of the relocation of the stormwater pond will be completed with the subdivision or site plan application and will be required to comply with the requirements of the Land Development Code and St. Johns River Water Management District.

Conceptual Development PlanLandscaping:

The proposed development will comply with the landscape and screening requirements of the City's LDC. This includes the 20-foot Madeline Ave. right-of-way buffer, 30-foot adjacent property buffers, foundation plantings around structures, screening of service areas for any proposed buildings, parking lot landscaping, tree preservation, and tree area requirements. No change is proposed for the existing 30-foot S. Williamson Blvd. right-of-way buffer.

Water, Sewer, and Reclaimed Water:

The proposed development will comply with the requirements of the LDC for improvements related to water, sewer, and reclaimed water service.

Architectural:

As described in the MDA, the architectural style of the buildings, accessory structures, screen walls, and site furnishings will be designed with a common architectural theme and comply with the City's LDC. A formal review of the architectural design will occur with each of the site plans to verify compliance with the MDA and LDC.

Parking & Project Access:

Parking will be provided as required by the LDC. The total number of parking spaces and design of the parking lots will be reviewed with the submittal of the site plans. Vehicles will enter and exit the project via the proposed access drives located on S. Williamson Blvd. and Madeline Ave. If the property is subdivided, cross-access easements will be recorded to provide an internal network for vehicles and pedestrians.

S. Williamson Blvd. and Madeline Ave. in this area are under Volusia County's jurisdiction. Specific technical requirements for access must be approved by Volusia County during site plan review.

Stormwater:

The stormwater drainage infrastructure for this project will be in the form of a retention pond. The stormwater drainage design will be reviewed with the submittal of the site and subdivision plans. Per the LDC, the applicant will be required to construct on-site stormwater facilities, designed to accommodate and treat the run-off from a 25-year, 24-hour storm event and convey the runoff from a 100-year, 24-hour storm event without causing flooding or pollution of receiving water bodies. In addition, there must be no net loss of stormwater retention function as a result of development; therefore, the property must have the same ability to store and discharge water after development as it does before development occurs.

The drainage area shown on the CDP will be required to provide stormwater drainage for the entire 8.03-acre property and will also be required to meet the stormwater requirements of the St. Johns River Water Management District. As part of the current zoning amendment application, final drainage plans are not required.

Subdivision:

The subject property may or may not be subdivided into individual lots. Development of each lot will require separate site plan approval, but each lot can be developed in no specific order, provided that the necessary infrastructure to support those phases has been constructed.

Traffic:

All site plan submittals for this property will be required to comply with the City's Concurrency Management requirements in the LDC. Detailed traffic analysis occurs at the site plan review stage to identify any improvements that might be required. Similar to other developments within the City, the developer may be required to enter into a

Fair-Share Concurrency Agreement with the City to pay for part of the scheduled improvements for any impacted areas.

According to the latest traffic counts for Madeline Ave. and S. Williamson Blvd., there is sufficient capacity on these roads for traffic estimated to be generated by development of this property (Table 1).

An example mixed-use development that consists of a 100 bed ALF, a 10,000 square foot retail pharmacy with drive-thru, and a 10,000 square foot medical/dental office building on the property would generate approximately 1,600 daily trips, distributed along the adjacent road network (ITE trip generation manual, 9th edition). Some of these trips would be "pass-by" or already on the road and some would be "internal capture" moving within the site. As a result, the total impact for this example would be less than 1,600 daily trips.

Table 1. Roadway Capacity

Roadway Segment	Maximum Capacity Vehicles per day *	Current Vehicles per day**	Remaining Capacity Vehicles per day	Remaining Capacity %
S. Williamson Blvd. from N. City Limits to Madeline Ave.	20,300	14,410	5,890	29%
S. Williamson Blvd. from Madeline Ave. to Willow Run Blvd.	19,500	14,100	5,400	27%
Madeline Ave. from Long Grove Ln. to S. Williamson Blvd.	16,727	11,549	5,178	30%

*Source: Volusia County Traffic Engineering, 2013

** Source: City of Port Orange Public Works, 2015

SUMMARY

The proposed changes in the restated MDA are to allow additional commercial uses on the site and setting a deadline for either reuse or demolition of the existing structure. The restatement and amendment will take the place of the original MDA and 1st Amendment.

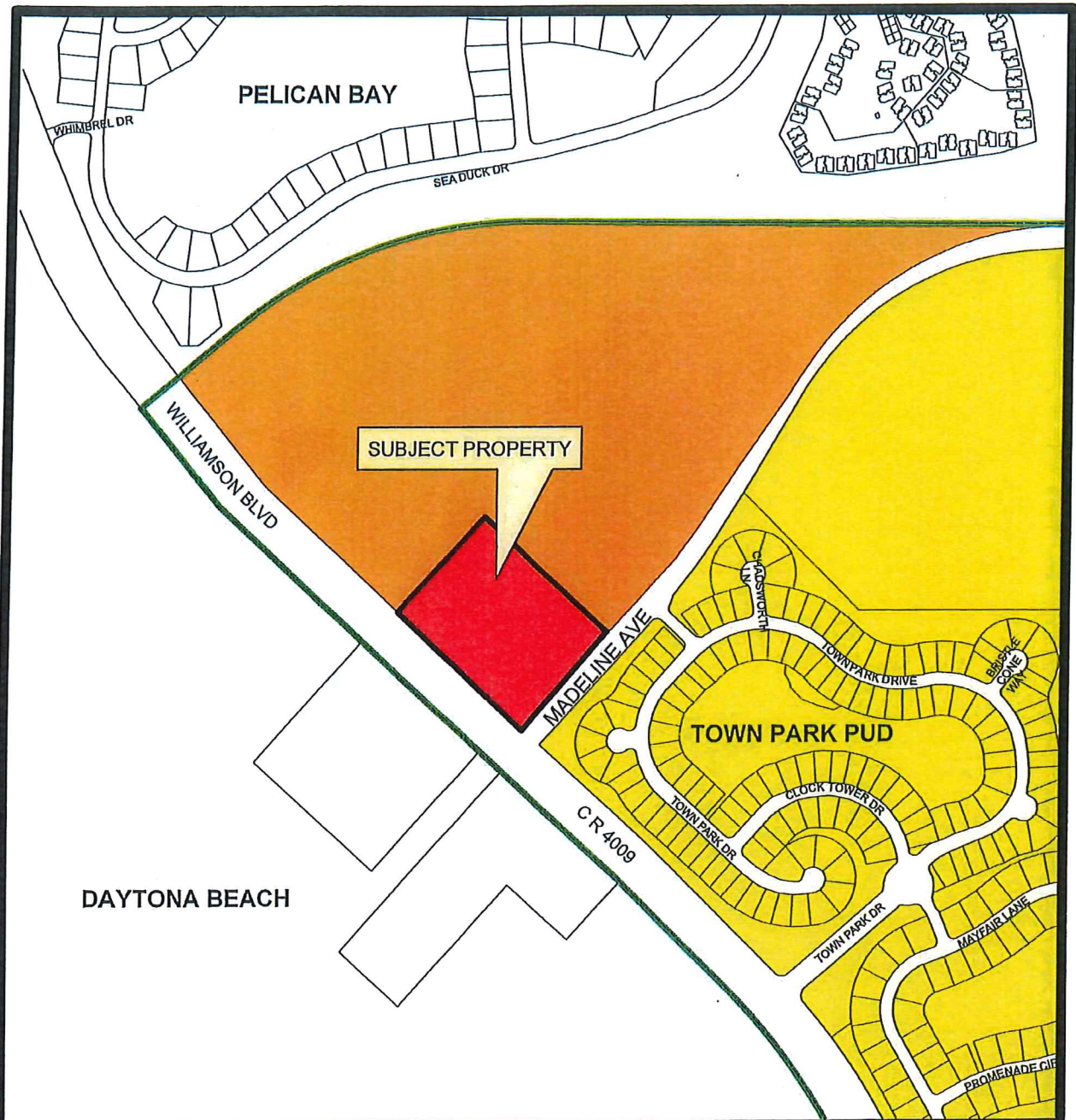
RECOMMENDATION:

Staff recommends **approval** of the Amended and Restated Master Development Agreement and Conceptual Development Plan to the Town Park PCD.

ATTACHMENTS:

Exhibit 1. Location Map

Exhibit 2. MDA and CDP (see attached ordinance)



Future Land Use Categories

-  City Boundary
-  Suburban Residential (2-4 Units/Acre)
-  Urban Medium Density Residential (4-8 Units/Acre)
-  Commercial



FUTURE LAND USE MAP
CITY OF PORT ORANGE

DEPARTMENT OF COMMUNITY DEVELOPMENT

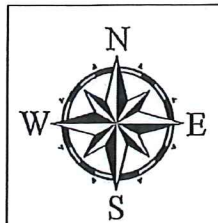


Exhibit 2

Amended and Restated Town Park MDA and CDP (see attached ordinance)

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
JULY 21, 2015

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

Pledge of Allegiance

Silent Invocation

Roll Call: Present: Councilman Bob Ford
Councilman Donald Burnette
Councilman Scott Stiltner
Vice Mayor Drew Bastian
Mayor Allen Green

Also Present: David Harden, Interim City Manager
Margaret T. Roberts, City Attorney
Robin Fenwick, City Clerk

PUBLIC HEARING

4. Second Reading - Ordinance No. 2015-25 - Residency requirements for Administrative Officials

Mayor Green read Ordinance No. 2015-25.

ORDINANCE NO. 2015-25

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; AMENDING THE CODE OF ORDINANCES, SECTION 2-168 RELATING TO THE RESIDENCY REQUIREMENT FOR ADMINISTRATIVE OFFICIALS AND RECOGNIZING FEDERAL AND STATE GOVERNING LAWS; PROVIDING FOR CONFLICTING ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2015-25 was made by Vice Mayor Bastian, and Seconded by Councilman Burnette. Motion carried unanimously by roll call vote after no public comments.

5. First Reading – Ordinance No. 2015-26 – Amended and Restated Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for Town Park Planned Commercial Development (PCD); northeast corner of Williamson Blvd. and Madeline Ave.

Mayor Green read Ordinance No. 2015-26.

ORDINANCE NO. 2015-26

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE AMENDED AND RESTATED MASTER DEVELOPMENT AGREEMENT (MDA) FOR THE TOWN PARK PLANNED COMMERCIAL DEVELOPMENT (PCD); PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2015-26 was made by Vice Mayor Bastian, and Seconded by Councilman Burnette.

Tim Burman, Planner, provided details of the changes to the MDA.

Mayor Green received numerous phone calls asking about hours of operation. Mr. Burman said it would have to meet current codes.

Councilman Burnette thanked Community Development for their work with the applicant on the uses for the property.

Paul Momberger, Zev Cohen & Associates, discussed the need for the changes in the type of uses. There is no specific plan for the property at this time.

Ann Wagoner, Town Park citizen, thanked all for listening to the residents' requests to eliminate some of the usage types.

Motion carried unanimously by roll call vote.

AGENDA APPROVAL

Item(s) pulled: 14.

Motion to approve the agenda as modified was made by Vice Mayor Bastian, and Seconded by Councilman Burnette. Motion carried unanimously by voice vote.

BOARD APPOINTMENTS, INTERVIEWS, REPORTS

6. Citizen Advisory Committee for TPO

Bobby Ball advised that there was no meeting held in July.

SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

7. Sign Spinner Committee Update - Newton White

Newton White provided the update to City Council from the committee working with the Port Orange/South Daytona Chamber of Commerce. The Committee's guidelines were read by Mr. White and provided to the City Clerk.

Councilman Ford suggested monitoring the informal agreement.

Councilman Burnette is of mixed feelings to the sign holders as he knows they are a benefit to the businesses.

Vice Mayor Bastian asked if the committee agreed to three sign holders per corner or per intersection. Mr. White said per corner to accommodate all businesses. Vice Mayor Bastian is concerned with a 15 square foot sign.

Councilman Stiltner doesn't believe the businesses need the signs to be successful but he understands the desire from the business standpoint. He is also concerned with the number at each intersection.

Mayor Green doesn't support sign holders at all. He believes there are other things the businesses can do to get exposure.

Phil Madson, Anytime Fitness, believes self-regulation has worked already. He doesn't believe there will ever be twelve on any intersection because they will get lost. He thanked Council for their support on the issue.

Chris McKenna, McKenna's Place, agreed that the business community has successfully self-regulated to address the concerns of Council. They are involved in the community in other ways as well.

David Potochnik, owner of local McDonald's Restaurants, participated in the committee in opposition of the sign holders. He is concerned with an outside business having a sign holder in our City.

Councilman Ford said it can always be revisited.

Motion to accept the report was made
by Councilman Ford, and Seconded by
Vice Mayor Bastian.

Motion to amend the motion to include a revisit of the issue in 120 days was made by Councilman Burnette, and Seconded by Councilman Stiltner. Motion carried 4-1, with Mayor Green voting no.

Motion to accept the report and revisit the issue in 120 days was made by Councilman Ford, and Seconded by Vice Mayor Bastian. Motion carried 4-1 with Mayor Green voting no.

CITIZEN PARTICIPATION (Agenda)

8. Traffic Signage at schools in Port Orange - Jeff LaCour

Jeff LaCour, citizen, discussed his concerns with the traffic signage at the schools in Port Orange. He believes the citations issued in the area constitute child endangerment. He suggested more signs and/or a flashing light on McDonald Street.

Councilman Stiltner disagreed with Mr. LaCour's suggestion for more signs. He doesn't believe signs help deter.

Councilman Ford agreed with Councilman Stiltner. He has conducted research on speeders and the only thing that works is enforcement. He would agree to look at the signage placement but doesn't want to clutter the neighborhoods when it doesn't have any effect.

Councilman Burnette supports the enforcement by the Police Department in the school zones. There won't be speeders on Charles Street because of the entrance into the school.

Vice Mayor Bastian agreed with the comments from Council.

Mr. LaCour believes the enforcement is entrapment. He is disappointed that Council doesn't see the need for more signs to help the citizens.

Mr. Harden advised that most of the schools are on county roads and the City has no control over signage. He also advised that the City does not receive a large amount from the payment of these tickets. The majority of the tickets go to the court costs and the state treasury.

Mark Schaeffer, citizen, believes a few more signs and a flashing light would be helpful.

Ray Tabach, citizen, would like to see an officer near Booth's Bowery.

Ann Pintiliano, 58 Spinnaker Circle, doesn't believe more signs are needed. There are plenty of signs and cops present.

9. Edward Utter - Maintenance on Service Drive behind 714 Normandy Blvd.

Edward Utter, citizen, asked Council to have the service drive behind his home at 714 Normandy Blvd. maintained.

Mayor Green advised that the issue has been discussed in the past and it was determined that the easements are private. Margaret Roberts, City Attorney, advised that the easements only serve the property that adjoins on Normandy Blvd. She advised that the drive is private property and Council is not permitted to use public funds on private property. She doesn't believe there is enough property to meet codes if the City were to obtain it from the private residents.

Councilman Ford cautioned Council with letting parts of the City decline. He would like Staff to discuss a Neighborhood Grant. He believes the condition of the service roads is not good for the City.

Councilman Burnette would like to know how many private roads are in the area that need work. He would like all of them addressed holistically.

Vice Mayor Bastian agreed to see if something that can be done.

Councilman Stiltner agreed with all of the comments of Council.

Mayor Green agreed to research the issue but cautioned that it will be a big undertaking.

Council agreed to look into acquiring rights-of-way from the property owners throughout the Commonwealth Mobile Home Park and seeking grant funds so that all the service drives could be resurfaced and maintained by the City.

CITIZEN PARTICIPATION (Non-Agenda – 15 minutes)

Ella Warren, President of the Cemetery Association, asked Council to consider replacing the black screening on the fence of the Public Works compound in the back of Woodland Cemetery. Mayor Green thanked Ms. Warren for her work at the Woodland Cemetery.

Roger Branch, citizen, addressed Council regarding water charges for a property that does not have water or sewer hook-up. The property is located at 5564 W. Magnolia Ave. He asked for the charges to be dropped because the lot has not been improved. Mr. Harden asked for an opportunity to research the issue and get back with Mr. Branch.

COUNCIL COMMENTS

10. Comments/Concerns from Council Members

Councilman Ford expressed his disappointment with the scheduling of a special meeting regarding the proposed millage rate. He asked for Staff to look at the fence at Coraci fields. It appears to be too close to the roadway. Bobby Ball, Zev Cohen & Associates, advised that there are issues with the corner of the field but bollards will be installed to protect the fence. Councilman Ford discussed drainage issues on Riverside Drive. He would like Public Works to see what can be done since other properties and the road have been built above the elevation of some of the older properties. He thinks there was a swale in the area at one time and may need to be reestablished.

Councilman Burnette asked for more information on the plans regarding annexing enclaves that are serviced by Port Orange, specifically west of Crane Lakes with an ICI project. He also asked Staff to have the lights on Dunlawton Avenue checked for better flow.

Vice Mayor Bastian announced the blood drive on Thursday, July 30, 2015. He asked that the fence adjacent to Intercoastal Village and phase 1 of the park at Riverwalk be beige rather than white.

Councilman Stiltner has received compliments regarding the sidewalk on Spruce Creek Road. He discussed issues with the speed of sidewalk repairs. He asked Council to consider changes to the process.

Mayor Green asked Tim Burman to discuss the Goodwill signs. Mr. Burman advised that the signs meet the code requirements. Vice Mayor Bastian asked why Goodwill is able to have such a large sign. Mr. Burman advised that the limit was lifted several years ago. Vice Mayor Bastian is concerned with the size for the area. Wayne Clark, Community Development Director, discussed the changes made relating to size limits. Staff will double check the size.

CONSENT AGENDA

11. Approval of Minutes

- a. July 7, 2015 - Regular City Council Meeting
- b. July 11, 2015 - Special City Council Meeting
- c. July 14, 2015 - Special City Council Meeting/Workshop

12. Resolution No. 15-38 - Tree Conservation Easement Vacation, 6076 Spruce Point Circle

13. Resolution No. 15-39 – Ratifying Application and Accepting Grant Funds from Florida Municipal Insurance Trust

14. Ratify Emergency Repair of YMCA Pool

15. Resolution No. 15-40 - Budget Appropriations

16. Resolution No. 15-41 - LAP Supplemental Agreement - Herbert Street Westbound Right Turn Lane at Clyde Morris Blvd.

17. Bid Awards and Contract Items
 - a. Award Bid #15-15 Herbert Street Westbound Right Turn Lane at Clyde Morris
 - b. Award of RFSQ #15-16 Professional CEI Services: Herbert Street Westbound Right Turn Lane at Clyde Morris
 - c. Piggyback Agreement with Carl Eric Johnson, Inc. and waiver of formal bidding for purchase of certain sole source water & wastewater treatment plant pumps, tanks, parts and services.
 - d. Second Extension to the Amended and Restated Agreement for Services with Danus Utilities, Inc. for sanitary sewer rehabilitation.
 - e. Piggyback Agreement with Diversified Drilling Corporation on Tampa Bay Water Contract.
 - f. Service Agreement with Biological Consulting for monitoring Receiving Wetland per Environmental Protection Permit (DEP) FL0020559, monitoring requirement #13 and 14
 - g. Amendment to Extend the Waverly Media, LLC Contract for an Additional 60 Days
 - h. Gym Scoreboard purchase
 - i. Extension of Piggy-Back on Volusia County Agreement with Universal Towing
18. June 2015 Project Manager's Report
19. Stormwater Maintenance Progress
20. Proposed License Agreement – Lot 17, Summer Trees Unit III-C Replat Subdivision; 107 Grey Branch Road
21. Approve the White Acres Project Area CDBG Income Survey Results.

Motion to approve the Consent Agenda as modified was made by Vice Mayor Bastian, and Seconded by Councilman Burnette. Motion carried unanimously by roll call vote.

Item #14 – Vice Mayor Bastian asked for an update on the project. Susan Lovallo, Parks & Recreation Director, provided details of the pool issues.

Motion to approve item #14 was made by Vice Mayor Bastian, and Seconded by Councilman Burnette. Motion carried unanimously by roll call vote after no public comments.

REGULAR AGENDA

22. Halifax Paving Lake Excavation Contract - Progress Report Update

Andy Neff, Public Utilities Director, provided an update on the excavation of Lake A by Halifax Paving. Staff met with Tad Durrance of Halifax Paving after sending a letter of

concern regarding the project as directed by Council. The excavation should be completed in time but it will be very close. Council is still worried about on time completion.

Mr. Schaeffer said there is progress. He asked for an open house or other community event once it is complete. Mayor Green supported a ribbon cutting.

23. Riverwalk Design Review

Councilman Burnette asked for further discussion. He asked about the liability of a splash pad. Ms. Lovallo advised that there have been no claims of liability at the splash pad at the All Children's Park. She advised that there are slip and falls at the skate park, ball fields, and other city facilities.

Mayor Green doesn't support the splash pad at this location. He believes it should be in a different area of Riverwalk. He believes there is a better way to use the property.

Councilman Stiltner asked what the better way is for the property. Mayor Green explained performance areas that were in the original plans. Councilman Stiltner discussed his findings regarding splash pads in other cities. He did not find any that were a liability issue. They were very popular and drew people to the areas where they are located. He said there is still plenty of room for an event area. He asked Staff to consider a lightening detector for safety. He supported the splash pad as designed.

Vice Mayor Bastian believes the property is being beautified and will be family friendly. He also supported the splash pad as designed.

Councilman Ford is not opposed to the splash pad but believes it should be somewhere different in the Riverwalk area. He believes the area is too small. He wants the event field as open as possible.

Mayor Green believes it would fit better in phase 1 near the kayak launch.

Mr. Schaeffer agreed with the Mayor and Councilman Ford.

Shailesh Patel, DMC, disagreed with Mayor Green's position. The workshop with the citizens considered the placement of the splash pad. He said moving it is not as easy as just moving it. The design provided visibility of the splash pad from Ridgewood Avenue. The location of the events has been spread out to accommodate safety issues.

Phil Klema, citizen, doesn't believe much will be gained by moving the splash pad to another area.

Motion to continue with the current design was made by Councilman Burnette, and Seconded by Vice Mayor Bastian. Motion carried 3-2 by roll call

vote with Mayor Green and Councilman
Ford voting no.

COMMENTS

24. City Attorney Comments

There was nothing further from the City Attorney.

25. Interim City Manager Comments

Mr. Harden advised Council that the contract with Bolerjack has been extended another four weeks. Staff has inquired of the County Staff regarding the plans for a campground at Rose Bay but they have not seen anything yet.

Mr. Harden discussed budget hearing dates in September. Council agreed to September 9 and September 22.

COUNCIL COMMITTEE REPORTS

26. City Council Committee Reports

- a. Volusia League of Cities – Mayor Green reported that the dinner is scheduled for Thursday, July 23, 2015.
- b. ArtHaus – Councilman Burnette reported that planning has begun for the sidewalk art festival. Sponsors are needed and welcomed.
- c. Port Orange/South Daytona Chamber of Commerce – Item skipped but will be brought back on August 4, 2015.
- d. Roundtable of Volusia County Elected Officials – Mayor Green reported that the Roundtable group is discussing enclaves and water issues.

ADJOURNMENT: p.m.

Attest:

Mayor Allen Green

Robin Fenwick, CMC
City Clerk



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Resolution No. 15-43 - Updating Gopher Tortoise Relocation Site Policies & Fees

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: Move to approve Resolution No. 15-43 establishing policies and fees for the relocation of gopher tortoises to the City of Port Orange permitted relocation site.

SUMMARY: Resolution No. 07-62 established the current fee schedule and gopher tortoise relocation policy when the City maintained the first and only relocation site permitted by Florida Fish and Wildlife Conservation Commission (FFWCC). Since then, many recipient sites have been established throughout the State; nine are within the Port Orange service area, creating a need for competitive site pricing.

The engineering firm of CPH, Inc. has worked with the city since the inception of the Gopher Tortoise Relocation Site. Amy Daly, Vice President and Director of Environmental Services for CPH, Inc., is currently under contract as the Authorized Gopher Tortoise Agent for the City. Ms. Daly has researched the issue of relocation sites and fees and has provided the attached memorandum with her findings and recommendations.

From inception to 2009, tortoise relocation has yielded more than \$130,000 in income to the City. The proposed resolution is intended to re-establish the Port Orange Relocation Site in the marketplace for continued revenue.

Project Funding Account
No.: No.:

ATTACHMENTS:

1.	Reso. No. 15-43	Reso. No. 15-43.pdf
2.	Memorandum from Authorized Gopher Tortoise Agent	Memo-FeeChanges-Port Orange Recipient Site_ June 4 2015.pdf
3.	Services Contract Gopher Tortoise Agent	CPH Inc. - Standard Contract for Service 5-12-15.pdf
4.	Resolution No. 07-62	RES 07-62 Policy Prices Gopher Tortoise Relocation.pdf

Johnson, Linda	Created/Initiated - 07/14/2015
Wilson, Rick	Approved - 07/20/2015
Neff, Andrew	Approved - 07/20/2015
Roberts, Margaret	Approved - 07/27/2015
Harden, David	Final Approval - 07/27/2015

RESOLUTION NO. 15- 43

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
PORT ORANGE, VOLUSIA COUNTY, FLORIDA
ESTABLISHING POLICIES AND FEES FOR RELOCATION
OF GOPHER TORTOISES TO THE CITY OF PORT
ORANGE RECIPIENT SITE; PROVIDING FOR
CONFLICTING RESOLUTIONS, AND PROVIDING AN
EFFECTIVE DATE.

WHEREAS, the City of Port Orange was the first Gopher Tortoise Recipient Site permitted by Florida Fish and Wildlife Conservation Commission (FFWCC) and currently operates under Permit # GTLR-09-00009B. The Recipient Site has the potential for 1,000 acres of suitable habitat located on portions of the central wellfield properties; and

WHEREAS, Resolution No. 07-62 established a tiered system to encourage the relocation of animals within our service area while promoting areas outside our geographic area to establish their own relocation sites. Since that time, other gopher tortoise relocation sites have been permitted throughout the State of Florida; and

WHEREAS, the first three phases of the City Recipient Site have been active since 2007 and continue to have capacity; and

WHEREAS, the City Council has determined that policies and fees should be reviewed, revised, and adopted for the continued operation of the City of Port Orange Gopher Tortoise Recipient Site as more particularly set forth herein.

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

Section 1. The City Council hereby authorizes the fees and policies set forth in this Resolution and for the relocation of gopher tortoises from donor sites within the City service area as follows:

- A. Service Area. Florida Fish and Wildlife Conservation Commission has determined the "Service Area" for the City permitted Recipient Site to be that area within 100-longitudinal miles north and south of the recipient site.
- B. Fee Schedule:
 - i. Receipt of 1 --to-- 10 tortoises: \$750 per tortoise received;
 - ii. Receipt of 11 --to-- 50 tortoises: \$725 per tortoise received;
 - iii. Receipt of over 50 tortoises: \$700 per tortoise.

- C. Costs. Charges for capture, examination, and transport per tortoise shall be deducted from the fee per terms of agreement in effect from time to time with the City's FFWCC Authorized Gopher Tortoise Agent.

Section 2. The City Council hereby authorizes all requests for relocation to be submitted to the City's authorized FFWCC Gopher Tortoise Agent. Prior to actual relocation, the applicant shall obtain written approval from the City Public Utilities Director, or his designee acting as the Gopher Tortoise Recipient Site Administrator. .

Section 3. The Gopher Tortoise Recipient Site Administrator shall review the fees and policies set forth in this Resolution at least every two years and shall determine the reasonable value of the gopher tortoise relocation to the City-owned site. The Administrator shall recommend to the City Manager any revision to this Resolution No. 15-43 to implement adjustments deemed appropriate for relocation and for the policies of the City.

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

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

MAYOR ALLEN GREEN

ATTEST:

Robin L. Fenwick, CMC, City Clerk

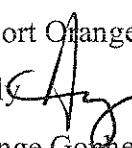
Adopted on the _____ day of _____, 2015

Reviewed and Approved: _____
City Attorney



500 West Fulton Street
Sanford, FL 32771
Phone: 407.322.6841
Fax: 407.330.0639

Memo

Date: June 4, 2015
To: Linda Johnson
Organization: City of Port Orange
From: Amy Daly 
Re: Port Orange Gopher Tortoise Recipient Site
CPH Job No.: P9210

As follow up to our May 1, 2015 meeting to discuss the City's gopher tortoise recipient site, CPH has obtained current pricing from recipient sites throughout the state of Florida which compete directly with the City as well as other non-competitive recipient sites. CPH offers the following information for your consideration during the City's re-evaluation of the gopher tortoise recipient site pricing.

The City of Port Orange approved the Gopher Tortoise Recipient Site current pricing structure on June 24, 2007 with the adoption of Resolution 07-62. The City has missed receiving revenue from approximately 150 tortoises (conservative estimate) over the past year due to the current pricing structure (\$800 within the City, \$1,000 within Volusia County & \$1,200 outside the County). Approximately 109 of these tortoises would have come from a CPH project. This equates to \$112,500 gross revenue at a competitive price of \$750 per tortoise. It would be difficult to forecast the net income for the recipient site as administrative costs vary depending on the number of tortoises relocated. An estimate of administrative costs may be in the range of 20-30% of gross revenue. Since the last relocation to the recipient site in 2009 CPH has received inquiries for approximately 80 to 150 tortoises per year. Conceptually CPH has identified additional phases of the recipient site for use in the future as the available tortoise capacity is filled. These additional phases will require permitting with the FFWCC.

In the past FFWCC has given this Recipient Site the "most favored status" and unofficially suggested the City's Recipient Site to third parties. When the Recipient Site was first permitted the stream of revenue was steady. CPH generated over \$131,000 for the City in approximately a two year period. As more recipient sites become available, more options for donor sites were available to consider and business tapered off.

Currently there are 437 tortoise spaces available in the three (3) permitted Phases with a reservation for 7 tortoises for S. Williamson Boulevard Extension. In an effort to obtain current recipient site pricing, CPH contacted all permitted recipient sites in the state of Florida to obtain



pricing including non-competitive recipient sites (different service area than the Port Orange Recipient Site). Many recipient sites contacted only served the recipient site owners projects and many were permitted but were not accepting tortoises at the moment. There are approximately 9 permitted recipient sites that would compete with Port Orange for tortoises. The most economical price per tortoise is \$700 with the highest price per tortoise of \$1,100 at these competing recipient sites. Currently, these recipient sites are not charging fees for commensal species. Pursuant to FFWCC permits, permittees may relocate some commensal species along with the gopher tortoises. Based on the tortoises relocated by CPH recently to other recipient sites, CPH has been relocating tortoises for \$700 to \$800 per tortoise.

In addition to modifying the current pricing structure CPH would like the City to consider flexible or "special" pricing for tortoise orders. For example, flexible pricing for the recipient site could consist of the following:

- 1 to 10 tortoises \$750 per tortoise
- 11 to 50 tortoises \$725 per tortoise
- Over 50 tortoises \$700 per tortoise

CPH appreciates the opportunity to manage the recipient site activities for the City. CPH would like the project to be financially beneficial for both parties. I hope the City will consider some of the suggestions in order to realize the goal of preservation of this Threatened Species while generating income for the City to manage the recipient site and have the remaining proceeds benefit the City.

Should you have any questions please contact me. Thank you



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this 12 day of May, 2015, 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 **CPH, INC.**, a Florida corporation, whose principal address is 500 West Fulton Street, Sanford, Florida 32771 ("Contractor"). (The City and Contractor are collectively referred to herein as the "Parties.")

1. Provision of Services

(a) The Contractor hereby agrees to act on behalf of the City of Port Orange as the Port Orange Gopher Tortoise Recipient Site representative and conduct tasks as stipulated by the City and by the requirements of the Florida Fish & Wildlife Conservation Commission more specially described in Exhibit "1," attached hereto.

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

Term: The term of this Contract shall commence on the last date this Contract is signed by the Parties and shall continue for a period of three (3) years thereafter (the "Initial Term").

Manner and Place: As outlined in Exhibit "1," 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), signed by an authorized agent of the City of Port Orange.

Time and Essence: Contractor acknowledges that time is of the essence for the Purchase Order(s) issued hereunder.

Authorization for Services: This Contract standing alone does not authorize goods or services provided by the Contractor or require the City to place any orders for goods or services. Authorization for performance of services by the Contractor under this Contract shall be in the form of written Purchase Order(s) issued and executed by the City Manager.

2. City Obligations. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1," subject to a limit up to but not to exceed Sixteen Thousand and 00/100 Dollars (\$16,000.00) annually. 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 Administration. The Public Utilities Director, Andrew Neff, shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

4. 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.

5. 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.

6. 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.

7. Termination by Notice. Either party may terminate this Contract, without further obligation, upon 60 days advance written notice to the other party or its agents or employees.

8. Examination of Records

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

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

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

9. 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.

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

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

10. 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.

11. 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>	Auto Liability Body Injury: \$100,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence.	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
<u>Additional Coverage:</u>		Non-Owned, Hired Car	
Property Insurance — Builders Risk.	<u>Limits:</u>	Buildings — Completed value of contract.	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.
<u>Additional Coverage:</u>		"All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	
Professional Liability (Errors & Omissions)	<u>Limits:</u>	Coverage- \$1,000,000 minimum	

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. Inspection

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

(b) In 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.

18. 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.

19. 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.

20. Disputes. The City Manager, 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. The decision by the City Manager shall be final and binding unless, within five (5) business days from the date of delivery of the decision of the City Manager, appeal is made to the City Council in writing and delivered to the City Clerk, Robin L. Fenwick, CMC. 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.

21. 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.

22. 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.**

23. Additional Provisions. As may have been outlined in 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.

24. 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.

25. 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: Andrew Neff, Public Works Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5750

Contractor: CPH, Inc.
Attention: David A. Gierach, President
500 West Fulton Street
Sanford, Florida 32771
(407) 322-6841 – Telephone

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.

26. 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.

27. 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]

Witnesses:

Patricia Hunt
Printed Name: Patricia Hunt

Dennifer Coffey
Printed Name: Dennifer Coffey

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me this 17 day of May, 2015, by David A. Gierach, as President of CPH, Inc., a Florida corporation, and who:

[Notary: Please select one]

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

CPH, INC.

By: David A. Gierach
David A. Gierach, 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, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Date: 5-12-15

Pamela A. Smith
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:



PAMELA A. SMITH
MY COMMISSION # FF 185572
EXPIRES: January 2, 2019
Bonded Thru Budget Notary Services

Witnesses:

CITY OF PORT ORANGE

Cynthia K Rivera
Printed Name: Cynthia K. Rivera

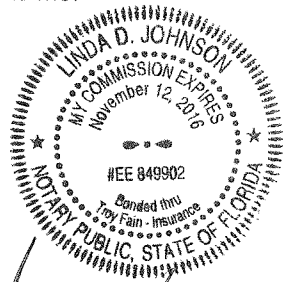
By: David T. Harden
David T. Harden, Interim City Manager

Linda Johnson
Printed Name: Linda Johnson

Date: 5/11/15

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 11th day of May, 2015, by David T. Harden, as Interim City Manager of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.



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

Witnesses:

Theresa Gutierrez
Printed Name: Theresa Gutierrez

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

Babara J. Abbate
Printed Name: Babara J. Abbate

Date: 5/11/15

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 11 day of May, 2015, 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.



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

[CA 4864]

SCOPE OF SERVICES

CITY OF PORT ORANGE GOPHER TORTOISE RECIPIENT SITE COORDINATION & 2016 MONITORING

Continuing Services

SECTION 1 GENERAL

- 1.1 Environmental Services shall be provided for the project in accordance with the attached schedule.
- 1.2 CPH, Inc. shall provide qualified personnel to conduct the work as further described herein and as shown on the hourly breakdown provided as Exhibit A. CPH, Inc. shall act on behalf of the City as the Port Orange Gopher Tortoise Recipient Site representative and conduct tasks as stipulated by the City and by the requirements of the Florida Fish & Wildlife Conservation Commission for a three (3) year period. The attached hourly breakdown is provided as an estimated time and only actual hours worked will be billed to the project.

SECTION 2 BASIC SERVICES OF THE ENGINEER

- 2.1 **General**
 - 2.1.1 CPH, Inc. agrees to perform professional environmental services in connection with the Gopher Tortoise Recipient Site FWC compliance matters and gopher tortoise relocation matters as hereinafter stated.
 - 2.1.2 CPH will serve as the CITY's professional representative to which this Scope of Services applies, and will give consultation and advice to the CITY during the performance of the services.
- 2.2 **Gopher Tortoise Relocation, Permit Compliance & FWC Coordination**
 - 2.2.1 CPH will conduct the required reporting with FWC when tortoises are received by the Recipient Site for 3 years.
 - 2.2.2 CPH will update the recipient site permitting information as required during a 3 year period.
 - 2.2.3 CPH will provide FWC with information regarding land management activities for the recipient site.
 - 2.2.4 CPH will coordinate with the Client as required.

- 2.2.5 CPH shall conduct field inspections with the FWC as requested. Up to 5 field meetings on the Recipient Site during a 3 year period.
- 2.2.6 CPH shall prepare one (1) annual monitoring report for submittal to FWC in 2016. The client shall receive an electronic copy of the report.

SECTION 3 PAYMENT/TIME

- 3.1 Compensation paid to CPH, Inc. for services described herein and rendered by principals and employees assigned to the project are computed by multiplying Standard Classification Billing Rates for all classifications of employees directly engaged on the project, times the number of hours worked on the project. The estimated hours and cost associated with this proposal are provided in Exhibit B.
- 3.2 The fee for the services described herein is estimated to be \$22,730 inclusive of out-of-pocket expenses. Invoices will be submitted periodically, indicating the hours expended during the billing cycle.

These fees are inclusive of out-of-pocket expenses. Out-of-pocket expenses will be specifically identified in periodic invoicing, and include such items as transportation and subsistence of principals and employees when traveling in connection with the project, toll telephone calls, cell phone calls, photocopies, blueprints and plots, etc. Payment will be made monthly without retention, based on invoices submitted which will indicate the hours expended and expenses incurred during that billing cycle.

Invoice payments must be kept current for services to continue. If the CITY fails to pay any invoice due within 45 days of the date of the invoice, CPH may, without waiving any other claim or right against CITY, suspend services under this agreement until CPH has been paid in full all amounts due CPH and/or any of its consultants and subcontractors.

SECTION 4 SUPPLEMENTARY SERVICES OF THE ENGINEER

- 4.1 If authorized in writing by the CITY prior to the rendering of such services, the CPH will furnish or obtain under subcontracts, supplementary services of the following types which will be paid for by the CITY.
 - 4.1.1 Additional services due to significant changes in the scope of the project including, but not limited to, changes in size, complexity, character of construction or due to time delays in initiating or completion of the work as described herein.
 - 4.1.2 Additional services in connection with the project including services normally furnished by the CITY and services not otherwise provided for in this Agreement.

- 4.1.3 Preparing to serve and serving as an expert witness for the CITY in any protest, litigation, or other proceeding involving the project.
- 4.1.4 Provide surveying services if required or requested by the CITY.
- 4.1.5 Provide, through a subconsultant, soils investigation and environmental services if required or requested by the CITY, or if required by the any regulatory agency, recommended by the CPH and authorized by the CITY.
- 4.1.6 Provide additional environmental services related to any wetlands or threatened or endangered species if required or requested by the CITY.

SECTION 5 GENERAL CONDITIONS

- 5.1 The CITY and CPH, Inc. each binds himself and his partners, successors, executors, administrators and assigns to the other party of this Agreement and to partners, successors, executors, administrators, and assigns of such other party in respect to all covenants of this Agreement. Nothing herein shall be construed as creating any personal liability on the part of any officer or agency of any public body, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the CITY and CPH, Inc.

SECTION 6

- 6.1 CPH, Inc. agrees to prosecute the work in a timely manner until the Project is completed.

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

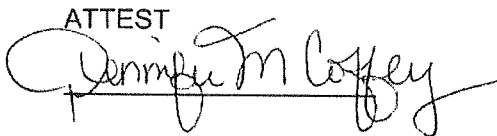
City of Port Orange, Florida

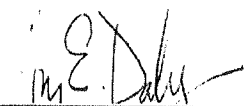
ATTEST

By: _____

Date: _____

CPH, Inc.

ATTEST


By:  _____

Amy E. Daly, LEED AP
Director of Environmental Services

Date: May 6, 2015

EXHIBIT "1"

Port Orange Tortoise Recipient Site Coordination & Monitoring EXHIBIT B						
epb						
Recipient Site Coordination & Monitoring	DES	SES	ES-IV	GIS	ADM	Estimated Expenses
Field Review with FWC	9		9	2	2	\$40.00
Monitoring report	20	30	50	20	10	\$500.00
Management & Coordination	15	10		5	2	\$120.00
FWC inspections, silt fence inspections			10		2	\$120.00
Estimated Hours	44	40	69	27	16	
Rates	\$150.00	\$125.00	\$95.00	\$105.00	\$60.00	
Total Cost	\$6,600.00	\$5,000.00	\$6,555.00	\$2,835.00	\$960.00	\$22,730

EXHIBIT "1"

Rates & Reimbursables

CPH Standard Rates	
Category	Rate
Principal	\$160
Sr. Project Manager	\$150
Project Manager	\$140
Professional Engineer	\$130
Sr. Project Engineer	\$125
Project Engineer	\$115
Project Designer	\$110
Principal Traffic Engineer	\$150
Sr. Traffic Engineer	\$135
Traffic Engineer	\$115
Traffic Analyst	\$105
Principal Environmental Scientist	\$150
Senior Environmental Scientist	\$125
Lead Environmental Scientist	\$105
Environmental Scientist	\$95
GIS Analyst	\$105
Arborist	\$125
Principal Planner	\$150
Sr. Planner	\$130
Planner	\$100
Principal Architect	\$150
Sr. Architect	\$140
Senior Architectural Manager	\$125
Architect	\$120
Architectural Designer	\$105
Architectural Coordinator	\$85
Senior Structural Engineer	\$150
Principal MEP Engineer	\$150
MEP Project Designer	\$110
MEP Design Technician	\$95
Principal Landscape Architect	\$150
Sr. Landscape Architect	\$125
Landscape Architect	\$105
Sr. Landscape Designer	\$100
Landscape Designer	\$85

CPH Standard Rates	
Category	Rate
Project Coordinator	\$90
Sr. Design Technician	\$105
Design Technician	\$95
Sr. CADD Technician	\$85
CADD Technician	\$75
Administrative	\$75
Clerical II	\$60
Clerical I	\$40
Senior Graphic Designer	\$125
Graphic Designer	\$75
Sr. Construction Manager	\$120
Construction Manager	\$105
Construction Field Representative II	\$100
Construction Field Personnel I	\$80
Principal Surveyor	\$145
Sr. Professional Surveyor	\$130
Professional Surveyor and Mapper	\$125
Field Technician/Designer	\$105
Surveyor in Training	\$100
Survey Project Manager/CADD	\$100
Field Crew Coordinator	\$95
Survey Party Chief	\$75
Survey Instrument Man	\$65
Surveying Sr CADD Tech	\$90
Surveying CADD Tech	\$75
Survey Crew (2 Man)	\$135
Survey Crew (Construction Staking - 2 Man)	\$160
Survey Crew (3 Man)	\$155
GPS (1 Man) / Robotics	\$130
GPS (2 Man)	\$165
1 Man Scanner/Laser Survey Crew	\$265
2 Man Scanner/Laser Survey Crew	\$290

Schedule of Reimbursable Charges

Copies (B&W)

8.5 x 11	\$0.05 Each
8.5 x 14	\$0.10 Each
11 x 17	\$0.20 Each

Copies (Color)

8.5 x 11	\$0.60 Each
8.5 x 14	\$0.75 Each
11 x 17	\$0.85 Each

Mylars

24 x 36	\$9.00 Each
32 x 42	\$13.00 Each

Plots (B&W)

11 X 17	\$ 0.21 Each
12 X 18	\$ 0.24 Each
15 X 21	\$ 0.35 Each
34 X 22	\$ 0.83 Each
24 X 36	\$ 0.96 Each
30 X 42	\$ 1.42 Each
36 X 48	\$ 1.92 Each

Plots (Color/Bond)

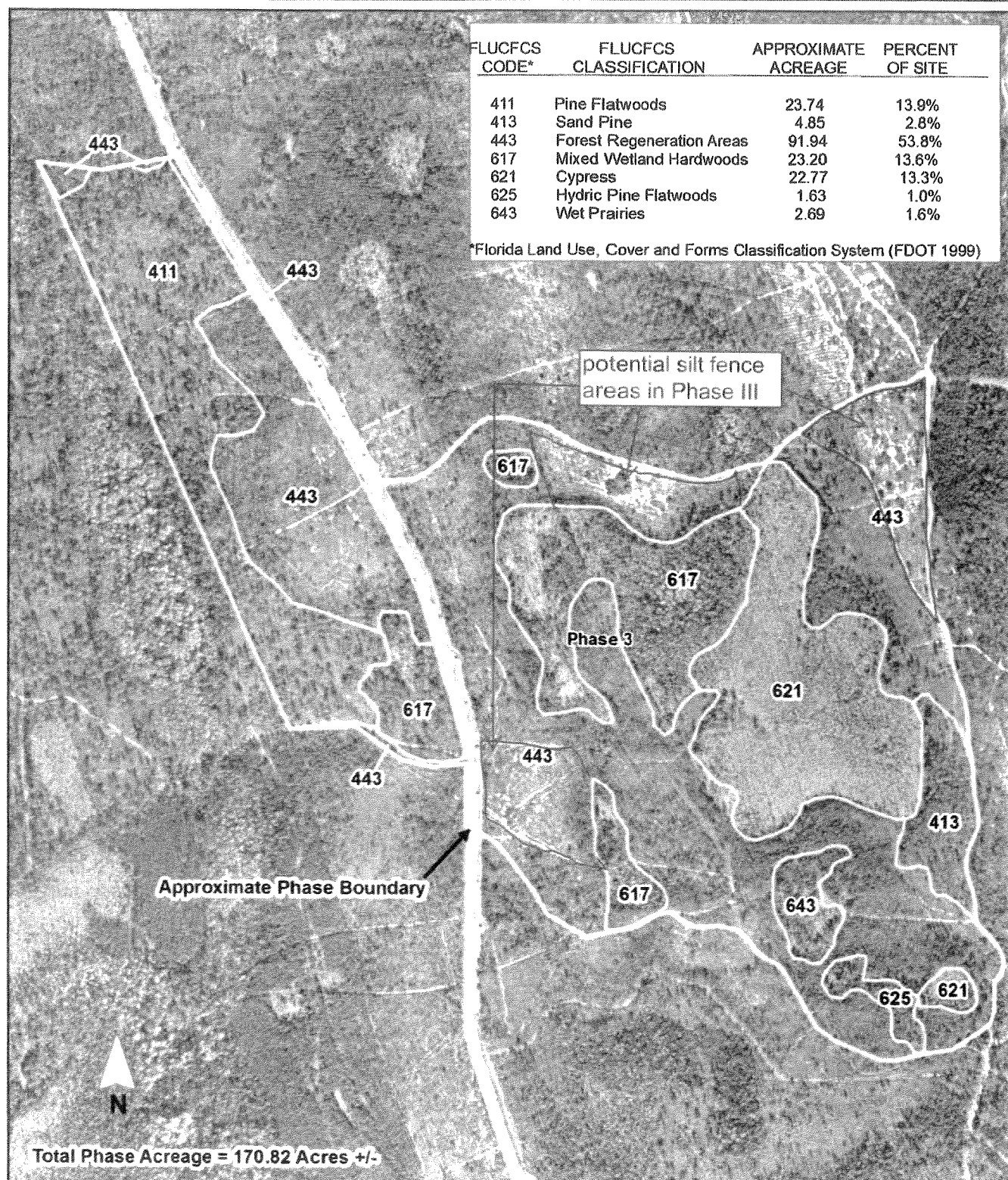
24 x 36	\$24.00 Each
30 x 42	\$35.00 Each
36 x 48	\$48.00 Each

Mileage

Phone	At Current IRS Rates
Postage	At Cost
Outside Reimbursables	At Cost

Billing and Reimbursable Rates Are Subject To Periodic Review and Adjustment.
Updated: January 5, 2015





Scale: 1" = 600'
 Date: July 2012
 Photo Date: 2012
 Project No.: 09208
 Biologist: AM GIS: DEM

PRELIMINARY VEGETATION AND LAND USE PHASE 3 MAP
 CITY OF PORT ORANGE GOPHER TORTOISE RECIPIENT SITE MONITORING
 SECTIONS 19, 20, 29 - 32 TOWNSHIP 16 SOUTH, RANGE 32 EAST
 VOLUSIA COUNTY, FLORIDA

FIGURE
 3C

EXHIBIT "1"

RESOLUTION NO. 07- 62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ESTABLISHING POLICIES AND FEES FOR RELOCATION OF GOPHER TORTOISES TO THE CITY OF PORT ORANGE RELOCATION BANK; PROVIDING FOR CONFLICTING RESOLUTIONS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange Tortoise relocation site has the potential for 1000 acres of suitable habitat located on portions of the central wellfield properties; and

WHEREAS, the first "phase" is already permitted by the State of Florida and has taken one approved relocation from the Eastport project; and

WHEREAS, staff recommends a tiered system to encourage the relocation of animals within our service area rather than destroying them through incidental take permits. The pricing scale also promotes relocation from local donor sites, while also promoting areas outside our geographic area to establish their own relocation sites; and

WHEREAS, the relocation bank should become self-sustaining with Phase I. Once Phase I has reached capacity, sufficient funds should be available for initial survey and permitting of Phase II. This practice would continue until the bank area is reasonably inhabited with animals in the entire 1000-acre area; and

WHEREAS, City sponsored projects would have preference over donor sites outside our service area; and

WHEREAS, the City Council has determined that policies and fees should be adopted for the operation of the gopher tortoise relocation bank as more particularly set forth hereinafter.

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

Section 1. The City Council hereby authorizes the fees and policies set forth in this resolution and for the relocation of gopher tortoises from donor sites both within the City service area and outside the City, more specifically as follows:

\$ 800* - per tortoise for relocation from donor sites within the City service area.

\$1,000* - per tortoise for relocation from a donor site outside the City service area but within Volusia County.

\$1,200* - per tortoise for relocation from a donor site outside Volusia County.

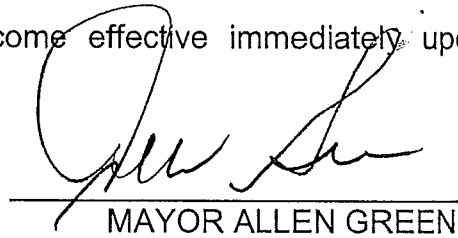
*The listed costs do not include any charges for capture, examination and transport.

Section 2. The City Council hereby authorizes all requests for relocation be done through the City's contract Forestry Management Company, CPH Engineers, with the approval of the City prior to actual relocation.

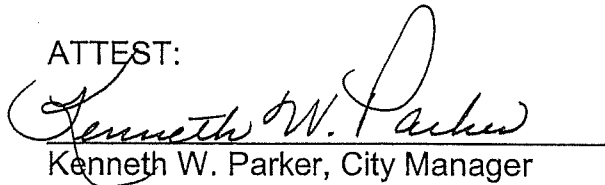
Section 3. The Gopher Tortoise Relocation Bank Administrator shall review the fees and policies set forth in this resolution at least every two years and shall determine the reasonable value of the gopher tortoise relocation. The Administrator shall recommend to the City Manager any adjustments deemed appropriate for relocation and for the policies of the City.

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

Section 5. This resolution shall become effective immediately upon adoption.

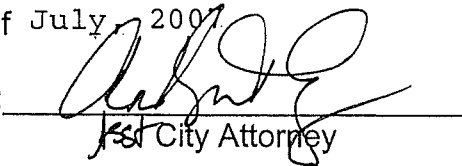

MAYOR ALLEN GREEN

ATTEST:


Kenneth W. Parker, City Manager

Adopted this 24th day of July, 2007

Reviewed and Approved:


City Attorney

C:\Legal\RES\gopher tortoise relocation bank.doc



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Resolution No. 15-44 - Dedication to the public of second segment of McGinnis Avenue west of South Williamson Blvd.

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: Move to approve Resolution No. 15-44 declaring and accepting the constructed second segment of McGinnis Avenue west of South Williamson Boulevard as a dedicated public right-of-way.

SUMMARY: With the development of Port Orange Plantation - Phase IV, Village C, the second segment of McGinnis Avenue has been constructed, adding 620 linear feet to the city roadway network; and which, upon adoption of the proposed Resolution, will be dedicated to the public and made available for use by the public and franchise utilities.

In 2004, by two separate warranty deeds, D.S.C. of Newark Enterprises, Inc. conveyed to the City of Port Orange certain real property for right-of-way purposes, then generically referred to as Collector Road B, now known as McGinnis Avenue. The first segment, 950 lineal feet west of South Williamson Boulevard, was constructed with Port Orange Plantation Phase 1 and dedicated to the public by Resolution No. 13-86.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	Reso. No. 15-44	Reso. No. 15-44.pdf
2.	As-Built Drawing	McGinnis - 2nd Segment_11-09066PP3-VILLAGE-C-C11.pdf

Johnson, Linda
Wilson, Rick
Neff, Andrew
Adumuah, Branford
Roberts, Margaret
Harden, David

Created/Initiated - 07/16/2015
Approved - 07/20/2015
Approved - 07/20/2015
Approved - 07/20/2015
Approved - 07/28/2015
Final Approval - 07/28/2015

RESOLUTION NO. 15- 44

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, DECLARING THE CITY COUNCIL'S INTENT TO ACCEPT, OPEN, DEDICATE AND ESTABLISH FOR PUBLIC PURPOSES THAT CERTAIN SECOND SEGMENT OF ROADWAY KNOWN AS MCGINNIS AVENUE FOR A DISTANCE OF 620 LINEAR FEET; PROVIDING FOR DEDICATION OF THE PROPERTY FOR PUBLIC ROADWAY; PROVIDING FOR CONFLICTING RESOLUTIONS; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City acquired from D.S.C. of Newark Enterprises, Inc., a Delaware corporation, by virtue of Warranty Deed recorded in Official Record Book 5451 at Page 229 of the Public Records of Volusia County, Florida a 100-ft. wide strip of property located in Section 13, Township 16 South, Range 32 East for right-of-way purposes; and

WHEREAS, the City, as owner of the above-referenced property previously dedicated the first segment of McGinnis Avenue from South Williamson Boulevard to Station 21+00.00 by Resolution No. 13-86; and

WHEREAS, the City desires to dedicate a second segment of constructed roadway to the public for all uses as a public right-of-way; and

WHEREAS, the City of Port Orange desires to accept, open, dedicate and establish for public purposes that certain roadway segment generally referred to as the second segment of McGinnis Avenue. This segment begins at Station 21+00.00 and extends to Station 27+20.00, a point west of Old Walker Way, for a total distance of 620 linear feet as said roadway segment is constructed and currently exists; and

WHEREAS, the City Council desires to exercise its police powers by dedication of the right of way for public purposes and improvements, including a roadway and utilities; and

WHEREAS, the City Council has determined that it is in the best interests of the citizens of the City of Port Orange to open, dedicate, and establish McGinnis Avenue as more particularly set forth hereinafter.

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

Section 1. The City Council of the City of Port Orange hereby declares its intent to accept, open, dedicate and establish for use by the public, public utilities and franchise utilities within the 100-ft wide limits of that certain public roadway referenced as McGinnis Avenue extending from previous construction to Station 27+20.00 for a distance of approximately 620 feet and as shown on the sketch attached hereto as Exhibit "A".

Section 2. All resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed to the extent of such conflict.

Section 3. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

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

MAYOR ALLEN GREEN

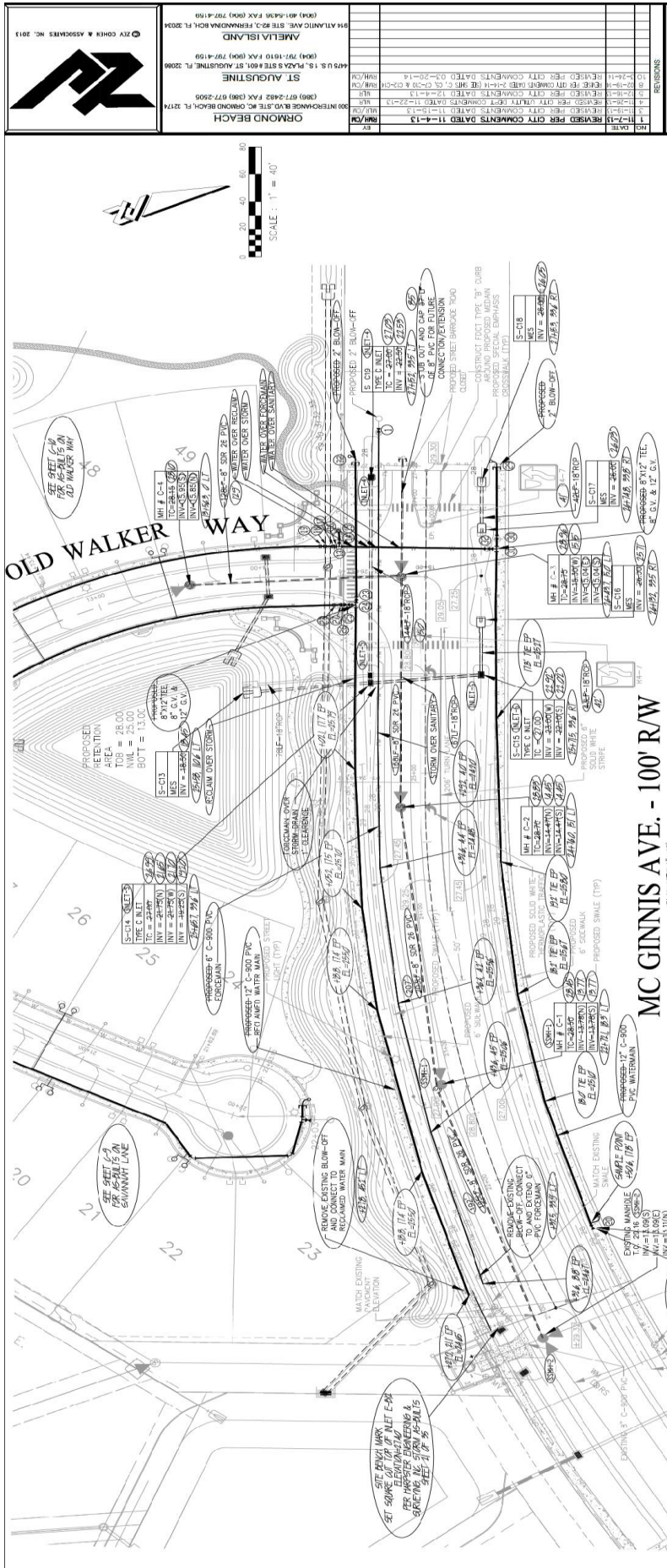
ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the _____ day of _____, 2015

Reviewed and Approved: _____
City Attorney

EXHIBIT "A"



Second segment of McGinnis Avenue, a 100-ft. wide public right of way, constructed as an off-site improvement with, and adjacent to Port Orange Plantation - Phase IV, Village C, a residential subdivision north of Town West Boulevard and west of South Williamson Boulevard.

Construction of this second segment begins at Station 21+00.00, extending to Station 27+20.00 for a total of 620 linear feet added to the existing roadway; includes 6-ft. wide concrete sidewalks on both sides, landscaped traffic control medians, storm drainage, and public utilities including but not specifically limited to: potable water, reclaimed water, and sanitary sewer mains.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Stormwater Maintenance Progress

DEPARTMENT: Public Works

RECOMMENDED MOTION: Accept the stormwater maintenance program update report.

SUMMARY: In February 2015, City Council requested regular updates regarding stormwater drainage maintenance efforts. The attached PowerPoint slides provide an update on the progress of the maintenance program.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	PowerPoint Presentation	Stormwater Maintenance Progress 7-21-15.pptx
----	-------------------------	--

Silvey, Mike
Adumuah, Branford
Rosen, Alan
Harden, David

Created/Initiated - 07/20/2015
Approved - 07/22/2015
Approved - 07/27/2015
Final Approval - 07/30/2015

Stormwater Drainage Maintenance Report

July 2, 2015 – July 14, 2015

**Branford N. Adumuah
Director of Public Works**



Swale, Ditch, and Canal Improvements

Improvements were made to approximately 5,352 linear feet of lowly brushed canals and ditches along Gladys Street, Dalford Road, Renner Road, and Charles Street as well as in the Freemanville area.

The Menzi Muck was operational and no manual clearing was done. An accumulated 42,867 linear feet of swales, ditches, and canals have been improved since October 24, 2014.



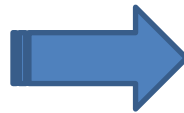
Ditch Improvements

Alexander Avenue Ditch

July 14, 2015



Before



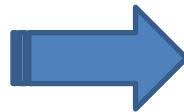
After



Ditch Improvements

Alexander Avenue Ditch (Near Railroad)

July 14, 2015



Before

After



Swale, Ditch, and Canal Improvements

Location	Section	From	To	Days	Feet	Hours	Comments
Gladys Street, Dalford Road, Renner Road, Charles Street (from 1 st Street to 3 rd Street), and the Daughtery Canal in the Freemanville area.	4,5, &8	7/2/15	7/14/15	11	5,352	47	Lowly brushed. No major obstructions. Menzi Muck equipment used.
Cambridge Canal between Cambridge Drive and Westminster Drive and ditch along Spruce Creek Road near Sunlake Estates and River Oaks.	4	6/18/15	7/2/15	14	2,389	23	Heavily brushed. Menzi Muck equipment used.
Cambridge Canal in Foxboro Subdivision, Cambridge Drive, and Westminster Drive to Spruce Creek Road	4	6/4/15	6/18/15	8	2,748	32	Moderately brushed parts of the canal. Menzi Muck equipment used. Limited manual clearing.
Cambridge Canal (Foxboro Subdivision) and Madeline Avenue	4	5/21/15	6/4/15	6	1,850	31	Heavily brushed canal. Menzi Muck equipment used. Some manual clearing efforts.
Madeline Ave. From Jackson St. to Sauls St. (North Side of Madeline)	2	5/7/15	5/21/15	3	335	12	Menzi Muck equipment down for repairs. Lots of hand clearing work. Many utility obstructions.
Madeline Ave. From Jackson St. to Sauls St. (South Side of Madeline)	2	4/29/15	5/7/15	7	3,015	39	
Madeline Ave Ditch			4/17/15		2,864		
West Ridge Ditch			4/9/15		2,230		
Ocean Ave & Halifax Dr			4/3/15		271		
Horizon Canal (I19 to B19)			3/20/15		5,640		
Riverside (US1 to Outfall)			2/6/15		757		
Ocean Ave to Alexander			1/9/15		505		
Alexander from RR to US1			1/9/15		1,502		



This table will be updated bi-weekly to show accumulated progress.

Swale, Ditch, and Canal Improvements Continued

Location	Section	From	To	Days	Feet	Hours	Comments
Jackson to Samms Ave			1/9/15		1,306		
Oak St - Jackson to Dunlawton			1/9/15		1,639		
Jackson St to Oak St			1/9/15		1,007		
3 rd St to 2 nd St			1/9/15		588		
5 th St to 2 nd St			12/16/14		473		
Deep Forest Ditch			12/12/14		1,675		
Spruce Creek Rd			12/4/14		1,655		
Charles & 5 th St			11/21/14		596		
Cambridge Canal			11/21/14		2,427		
Cambridge Canal			11/14/14		986		
Cambridge Canal			11/7/14		6,664		
Foxboro to Control Structure			10/31/14		640		
Cambridge Canal			10/31/14		3,733		
2 nd St Canal			10/24/14		1,025		
Total Feet Cleared					42,867		



This table will be updated bi-weekly to show accumulated progress.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Historic Tree Removal - 6222 Yellowstone Drive

DEPARTMENT: Community Development

RECOMMENDED MOTION: Move to approve the request to remove one historic tree located at 6222 Yellowstone Drive.

SUMMARY: The property owner at 6222 Yellowstone Drive is requesting to remove one 45-inch diameter live oak tree. The tree has caused damage to the house foundation and driveway due to its proximity to the structure and the forces exerted by the root system. The trunk of the tree is within a few feet of the exterior wall of the house. Tree roots are breaking up the driveway and the location of the tree impedes access to the garage. The majority of the large branch structure overhangs the roof causing further concern of potential property damage. The tree appears to be in a weakened state based on the sparse canopy and numerous dead limbs.

Based on the poor health and location of the tree and damage to the structure and pavement, staff recommends approval of the request to remove one historic 45-inch diameter live oak tree.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	Location Map	20150728163122396.pdf
2.	Photos of tree and pavement	6222 yellowstone photos.pdf

Momberger, Margaret
Clark, Wayne
Harden, David

Created/Initiated - 07/23/2015
Approved - 07/23/2015
Final Approval - 07/30/2015



Permit Application No.: 15-2715

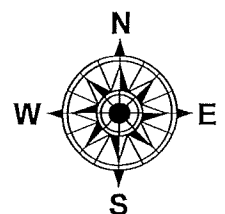
Applicant: Andrew Neff, property owner

Location: Lot 23, Riverwood Phase II
(6222 Yellowstone Drive)

Requested Action: To remove one historic tree (45-inch diameter Live Oak) located at 6222 Yellowstone Drive



Location Map
CITY OF PORT ORANGE
 DEPARTMENT OF COMMUNITY DEVELOPMENT











CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Task Authorization No. 4 under the Contract for Engineering Services with Kimley-Horn and Associates

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: Move to approve Task Authorization No 4 under the Master Contract for Engineering Services with Kimley-Horn and Associates in an amount not to exceed \$47,200; and to authorize the Mayor and City Clerk to execute all required contract documents.

SUMMARY: On August 27, 2014 City Council authorized the Public Utilities Department to enter into a standard contract for services for Water, Wastewater and Reclaimed Water Continuing Engineering Consultant Services with four different engineering firms. Accordingly, the City has entered into a Master Contract for Engineering Services with Kimley-Horn and Associates.

Task Authorization No 4's scope of services is for the design, permitting, bidding assistance and Engineer of Record services for of the Riverwalk Utility Improvements for an amount not to exceed \$47,200. Improvements consist of elimination of Pump Station 70, diverting wastewater flow by a gravity system and replacing and upsizing the 6-inch water main under Ridgewood Ave.

Project No.: AIO004
AIO004

Funding Account No.: 40308005336397
40508005336397

ATTACHMENTS:

1.	Task Authorization No 4	Task Authorization No4-KH Executed by vendor.pdf
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Wiggins, Julia
Wilson, Rick
Neff, Andrew
Roberts, Margaret
Harden, David

Created/Initiated - 07/09/2015
Approved - 07/09/2015
Approved - 07/14/2015
Approved - 07/28/2015
Final Approval - 07/28/2015

TASK AUTHORIZATION NO. 4
Master contract for Engineering Services dated March 17, 2015
Between the City of Port Orange, Florida and Kimley-Horn and Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **KIMLEY-HORN AND ASSOCIATES, INC.**, a North Carolina corporation registered to transact business in Florida whose principal address is 3001 Weston Parkway, Cary, North Carolina 27513 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated March 17, 2015, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

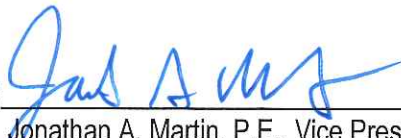
1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. In addition to all other terms and conditions contained in the Contract, Engineer shall provide services relating to the Riverwalk Park Utility Relocation / Upgrade as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization No. 4 Exhibit "A."
3. Engineer shall complete the services to be provided herein within 90 days of the date of written notice by the City to the Engineer.
4. In return for the services identified above, the City agrees to compensate engineer at the prices set forth in Exhibit "A" attached hereto and made a part hereof for all purposes, subject to a limit up to but not to exceed Forty-Seven Thousand Two Hundred Dollars no cents (\$47,200.00). 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.
5. 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 Engineer and the City until the City signs this Task Authorization.

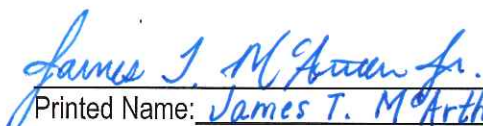
IN WITNESS WHEREOF, the Parties have made and executed this Task Authorization for the purposes herein expressed on the dates set forth below.

Witnesses:

KIMLEY-HORN AND ASSOCIATES, INC.


Printed Name: CHARLENE KUNSOLD

By: 
Jonathan A. Martin, P.E., Vice President


Printed Name: James T. McArthur Jr.

Date: 7-10-15

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____ By: _____
Allen Green, Mayor

Printed Name: _____ Date: _____

Witnesses:

ATTEST:

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

Printed Name: _____ Date: _____

[CA ____]

CITY OF PORT ORANGE
RIVERWALK PARK UTILITY RELOCATION/UPGRADE
SCOPE OF SERVICES AND FEE ESTIMATE
July 1, 2015

Identification of Project:

Project: Riverwalk Park Utility Relocation/Upgrade

Client: City of Port Orange

Project Understanding

The City is currently planning park improvements on the Riverwalk property. Dredging and Marine Consultants (DMC) is currently designing the park improvements. The City has also planned for utility improvements for the project as listed below:

- Eliminate the lift station (PS 70) and convert it to a gravity manhole. All existing flow from this lift station will be directed to the gravity system at Ocean/Ridgewood. All existing gravity sewer at the existing Halifax Mobile Home Park will be de-activated. The existing force main from PS 70 will need to be disconnected at the west side of Ridgewood Avenue.
- Up size the existing 6" water main on the east side of Ridgewood Avenue from Ocean Avenue to the service limit to an 8" or possibly 10" water main.

The City desires Kimley-Horn to assist the City in the design and permitting of the utility improvements.

Scope of Services

Task 1 – Survey

A special purpose survey will be provided by Sliger & Associates, Inc. to show improvements and elevations from the near edge of the median of Ridgewood Avenue, east to 50 feet beyond the right of way line, including the Intracoastal Villas property and Lot 1 of Riverland Park.

Accessible underground utilities will be located horizontally and vertically. Inaccessible underground utilities will be located horizontally if marked by the utility owners when contacted by Sunshine 811. In addition, the city will be contacted for any utility as-builts or information they can provide. Elevations will be obtained on a minimum 50 foot grid showing 1 foot contours.

Task 2 – Subsurface Utility Verification

In order to confirm utility locations, subsurface utility verification (soft digs) will be performed by Southeastern Surveying and Mapping Corporation as described below:

- Coordinate Sunshine 811 and utility locates to include supplemental calls to each locator to expedite the field marking of each subsurface utility as required by law.
- Expose the subject utilities by using non-destructive vacuum excavation methods at **eight (8)** specific locations as indicated on plan sheet(s) provided or marked by client in the field.
- Confirm/determine the vertical and horizontal position of the subject utilities and record the information, using the locate marks provided by the utility owners and/or their representatives unless otherwise specifically requested by client.
- Any asphalt/concrete removed will be repaired using like materials.

- Tie each test hole location to a minimum of three visible physical features to enable this data to be added to your base map and also enable future recovery.

The final product will be test hole reports/sketches of the project area reflecting all pertinent data for your use.

Task 3 – Engineering Design

Kimley-Horn will prepare 30% design drawings for the proposed utility improvements which will include the sanitary sewer system modifications and the upsizing of the existing 6" water main as stated in the above project understanding. The 30% design drawings will be submitted to the City of Port Orange for City review and coordination with the DMC park design. Upon receipt of comments and a design review meeting with the City, DMC and Kimley-Horn staff, Kimley-Horn will prepare the 90% design drawings. Upon City review, approval, and incorporation of any design changes due to permitting agency comments, Kimley-Horn will provide final design drawings for the utility improvements.

Task 4 – Permitting

Kimley-Horn will prepare permit application packages and submit such to the applicable agencies for the following permits that are expected to be required for the utility improvements.

- Volusia County Health Department Water System Construction Permit
- Florida Department of Environmental Protection Wastewater Collection System Construction Permit
- Florida Department of Transportation Utility Permit

Kimley-Horn will respond to all reasonable Requests for Additional Information (RAI's) from the permitting agencies listed above. Permit application fees will be paid out of the expense budget set below in Task 7.

Task 5 – Bid Documents and Specifications

After acceptance by the City of Port Orange of the Bidding Documents, the design phase will be complete. Kimley-Horn will then assist the City of Port Orange in the bid and award of the project, which will include the following services:

- Prepare technical specifications for the final design
- Assist the City of Port Orange in preparing for bid of the utility improvements.
- Attend a pre-bid meeting for prospective bidders, and prepare meeting minutes.
- Provide responses to questions raised by potential bidders during advertisement and review time.
- Prepare addendum during the advertisement.
- Review bids submitted and assist the City of Port Orange in evaluating bids.
- Prepare bid tabulation.
- Prepare a recommendation for award of bid.
- Prepare Contract Documents.
- Assemble Conformed Documents.

Task 6 – Construction Phase Services

To support the City of Port Orange with these tasks, Kimley-Horn will provide construction phase services which will include the following services:

- Review shop drawings and submittals as required for the utility improvements controlled by our

design documents.

- Review and reply to Contractor's request for information during construction phase.
- Site visits shall be coordinated with the City of Port Orange and Contractor to include one (1) pre-construction meeting, one (1) punch list inspection, and one (1) close-out review.
- Observe pressure test for the water main.
- Provide a review of 'as-built' documents submitted by a registered land surveyor.
- Prepare clearance and closeout packages that will need to be prepared and submitted to the Volusia County Health Department, Florida Department of Environmental Protection and the Florida Department of Transportation. in order for the new utility systems to obtain final clearances and be allowed to become operational

Task 7 - Expenses

Kimley-Horn will provide the permit application fees required for each of the permitting agencies listed above in Task 4. Expenses will also include in-house duplicating, local mileage, express mail and other incidental project expenses incurred in the design and permitting process.

Assumptions

The following assumptions were made in preparation of the above scope:

1. City will provide written review comments 2-3 days prior to review meetings
2. City will provide copies of available documents within 5 days of request.

Schedule

Kimley-Horn will provide our services as expeditiously as practicable to meet a mutually agreed upon schedule.

Method of Compensation

The Engineer will complete the above scope of services for a lump sum fee of \$47,200 inclusive of expenses. Invoicing will be on a billed on a percent complete basis per task. A breakdown of fee by task is as follows:

<i>Task</i>	<i>Description</i>	<i>Lump Sum Fee</i>
Task 1	Survey	\$4,700
Task 2	Subsurface Utility Verification	\$3,900
Task 3	Engineering Design	\$18,500
Task 4	Permitting	\$4,500
Task 5	Bid Documents and Specifications	\$6,750
Task 6	Construction Phase Services	\$5,900
Task 7	Expenses	\$2,950
Total:		\$47,200

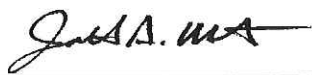
This work order will serve as an amendment to the Master Contract for Engineering Services dated March 17th, 2015.

ACCEPTED:

CITY OF PORT ORANGE, FLORIDA

KIMLEY-HORN AND ASSOCIATES, INC.

BY: _____

BY: 
Jonathan Martin, PE

TITLE: _____

TITLE: Vice President

DATE: _____

DATE: July 1, 2015



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Task Authorization No. 3 to the Contract with Quentin L. Hampton Associates, Inc. for Engineer of Record Services; South Atlantic Avenue Water Main Replacement

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: Move to Approve Task Authorization No 3 under the Contract for Engineering Services with Quentin L. Hampton Associates, Inc. for Engineer-of-Record Services for the South Atlantic Avenue Water Main Replacement, Volusia County JPA Project, in an amount not to exceed \$28,110; and to authorize the Mayor and City Clerk to execute all required contract documents.

SUMMARY:

On October 28, 2014 the Council adopted Resolution No 14-62 approving the Joint Project Agreement between Volusia County and the City of Port Orange for Utility Line Adjustment and Sidewalk Construction on South Atlantic Avenue in Wilbur-by-the-Sea. Quentin L. Hampton Associates were the design and permitting engineers for this required waterline relocation project and would be retained as the engineer-of-record under this proposed Task Authorization. Task Authorization No. 3 is attached with a not to exceed amount of \$28,110.

Utility work for this project includes replacement of a 6" aging water line with a new 8" line between Major Street and Teal Street along Atlantic Avenue in Wilbur-By-The-Sea.

Construction management for the entire project is provided by Volusia County. The sidewalk, storm water, and roadway items are the direct responsibility of Volusia County. Responsibility for the water line relocation is the City's with inspection on the proposed potable water line construction provided by City of Port Orange utility staff.

Project No.: URP010
URP010

Funding Account No.: 40508005336397
42108005336397

ATTACHMENTS:

1.	QLH - Task Authorization No 3 document	Task Authorization No 3 Documents and Exhibit.pdf
----	--	---

Wiggins, Julia	Created/Initiated - 06/10/2015
Wilson, Rick	Approved - 06/10/2015
Neff, Andrew	Approved - 06/10/2015
Riehm, Tracey	Approved - 06/14/2015
Roberts, Margaret	Approved - 07/28/2015
Harden, David	Final Approval - 07/28/2015

TASK AUTHORIZATION NO. 3

Master Contract for Engineering Services dated March 17, 2015 Between the City of Port Orange, Florida and 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 **QUENTIN L. HAMPTON ASSOCIATES, INC.**, a Florida corporation with its principal place of business at 4401 Eastport Parkway, Port Orange, Florida 32177 ("Contractor"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated March 17, 2015, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to the Engineer of Record services for the South Atlantic Avenue Water Main Replacement under the County of Volusia JPA Agreement as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "A."
3. Contractor shall complete the services to be provided herein within 300 days of the date of written notice by the City to the Contractor.
4. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Task Authorization Exhibit "A" attached hereto and made a part hereof for all purposes, subject to a limit up to but not to exceed Twenty-eight Thousand One Hundred Ten Dollars and no cents (\$28,110.00). 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.
5. 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.

[Remainder of this page intentionally left blank]

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

Witnesses:

QUENTIN L. HAMPTON ASSOCIATES, INC.

Printed Name: _____ By: _____
Brad T. Blais, President

Date: _____

Printed Name: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____ By: _____
Allen Green, Mayor

Printed Name: _____ Date: _____

Witnesses:

ATTEST:

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

Printed Name: _____ Date: _____

[CA ____]

Task Authorization No. 3

Exhibit "A"

Quentin L. Hampton Associates, Inc.

South Atlantic Avenue Water Main
Replacement

Engineer of Record

Scope of Services

BRAD T. BLAIS, P.E.
DAVID A. KING, P.E.
ANDREW M. GIANNINI, P.E.
KEVIN A. LEE, P.E.

Quentin L. Hampton Associates, Inc.
Consulting Engineers
P.O. DRAWER 290247
PORT ORANGE, FLORIDA 32129-0247

TELEPHONE: (386) 761-6810
FAX: (386) 761-3977
EMAIL: qlha@qlha.com

May 28, 2015

Fred Griffith, P.E.
Utility Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

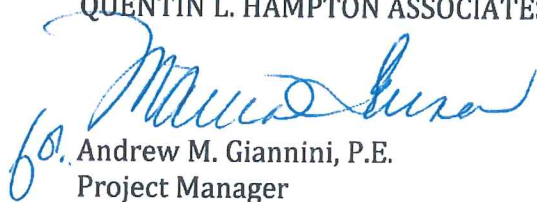
**CITY OF PORT ORANGE
SOUTH ATLANTIC AVENUE WATER MAIN REPLACEMENT
ENGINEER OF RECORD
SCOPE OF SERVICES AND FEE ESTIMATE**

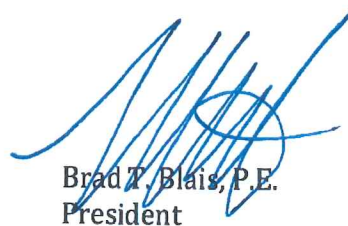
Dear Fred,

In accordance with your request, we are pleased to offer the enclosed scope of services and engineering fee estimate for Engineer of Record services for the above referenced project. This project has been incorporated into the Volusia County Sidewalk project. The County is currently advertising this project for bids to be received on June 25, 2015. The current engineer's estimate for construction is approximately \$700,000. The proposed fee for Engineer of Record Services is in accordance with our Utility Services Contract.

The attached Scope of Services and Fee Estimate (Attachments 'A' and 'B') further describe the proposed scope of work, duration and fee. Thank you for this opportunity to be of service. If you have additional questions, do not hesitate to call.

Respectfully,
QUENTIN L. HAMPTON ASSOCIATES, INC.


for Andrew M. Giannini, P.E.
Project Manager


Brad T. Blais, P.E.
President

BTB/KAL:bf

Enclosures: 'A' - Scope of Services
'B' - Fee Estimate

cc: Project File

ATTACHMENT 'A'
CITY OF PORT ORANGE
SOUTH ATLANTIC AVENUE WATER MAIN REPLACEMENT
SCOPE OF SERVICES AND FEE ESTIMATE

PROJECT OVERVIEW

The City of Port Orange (hereinafter referred to as CITY), desires Engineer of Record services for the subject project. The project involves replacement of the existing 6-inch A.C. and DIP water main with an 8-inch PVC water main from Major Street to Teal Street in Wilbur-By-The-Sea.

SCOPE OF WORK

- Review shop drawings and material certificates. Distribute reviewed shop drawings to the Contractor and the City.
- Provide assistance on an as needed basis for significant conflict resolutions.
- Attend pre-construction and monthly progress meetings.
- Visit site as needed to address conflicts (assume maximum of 10 visits).
- Review and answer Contractor's RFI's and change order requests (assumes 10 RFIs and two change order requests).
- Attend the substantial completion inspection.
- Prepare final 'Certification of Completion' for FDEP.
- Prepare construction record drawings incorporating all of the changes made during construction. Furnish City with an electronic copy of record drawings using AutoCAD format, and three (3) sets of prints.

EXCLUSIONS

The proposed scope specifically excludes: Inspection, Biological, surveying and/or legal services. The Scope of Services excludes all additional services not defined herein.

DURATION

The anticipated project duration is six (6) months.

FEE ESTIMATE

Estimated fees are calculated as follows, a detailed breakdown of fees is attached (Attachment 'B').

Engineer of Record/	
Project Manager: 114 hrs @ \$175/hr	\$19,950.00
Engineer Intern 34 hrs @ \$85/hr	\$2,890.00
Administrative Support 62 hrs @ \$55/hr	\$3,410.00
CADD Operator: 16 hrs @ \$85.00/hr	\$1,360.00
Printing and Miscellaneous Expenses	<u>\$500.00</u>
TOTAL ESTIMATED FEES	\$28,110.00

PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF QUENTIN L. HAMPTON ASSOCIATES, INC. MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

ATTACHMENT 'B'
CITY OF PORT ORANGE
SOUTH ATLANTIC AVENUE WATER MAIN REPLACEMENT
ENGINEER OF RECORD CONSTRUCTION PHASE SERVICES
FEE ESTIMATE

Task No.	Description	Project Manager (hours)	Project Engineer (hours)	CAD Technical (hours)	Engineering Intern (hours)	Admin. Support (hours)	Total Task (\$)
	Hourly Rate	\$175	\$150	\$85	\$85	\$55	See Below
1	Review shop drawings and material certificates. Distribute reviewed shop drawings to the Contractor and the City.	4	0	0	24	4	\$2,960
2	Provide assistance on an as needed basis for significant conflict resolutions. (assumes max. of 10 occurrences)	20	0	0	0	4	\$3,720
3	Attend pre-construction and monthly progress meetings. (assumes a total of six (6) meetings)	24	0	0	0	0	\$4,200
4	Visit site as needed to address conflicts.(assumes max. of 10 site visits)	20	0	0	0	10	\$4,050
5	Review and answer Contractor's RFI's and change order requests.(assumes max. of 10 RFIs and 2 COs)	28	0	0	0	20	\$6,000
6	Attend the substantial completion inspection.	4	0	0	0	0	\$700
7	Prepare partial and final 'Certification of Completion' for FDEP. (assumes 4 partial clearances and 1 final)	10	0	0	10	20	\$3,700
8	Prepare record drawings incorporating all of the changes made during construction. Furnish City with an electronic copy of record drawings using AutoCAD format, and three (3) sets of prints.	4	0	16	0	4	\$2,280
	Printing, Reimbursables						\$500
	Total	114	0	16	34	62	\$28,110

- (1) All fees to be billed on a lump sum basis except for "allowances" which will be billed at actual cost Plus 10%
(2) If Florida Sales Tax becomes due on professional services, the CITY shall reimburse QLH for the additional sales tax cost.

QUENTIN L. HAMPTON ASSOCIATES, INC.
RATES AND FEES SCHEDULE
CITY OF PORT ORANGE (9/14)

Expert Witness	\$250.00
Principal	\$185.00
Project Manager	\$175.00
Professional Engineer	\$150.00
Subsurface Utility Engineering (SUE) Project Manager	\$140.00
Engineering Intern	\$85.00
Chief Building Official	\$85.00
CADD Technician	\$85.00
Fire Safety Inspector/Fire Systems Plan Review	\$80.00
Production Supervisor	\$75.00
Engineering Analyst	\$75.00
GIS Technician	\$75.00
SUE Project Coordinator	\$75.00
Construction Services Supervisor	\$75.00
Building Plans Examiner	\$75.00
SUE Field Technician	\$62.00
Construction Project Representative (Inspector)	\$62.00
Grant/Funding Coordinator/Federal Grant Compliance Specialist	\$62.00
Building Inspector	\$62.00
Federal Grant Compliance Specialist	\$60.00
Sr. Administration Supervisor	\$60.00
SUE Administrative Support	\$55.00
Administration Support	\$55.00

EQUIPMENT RATES

SUE Vacuum Excavator	\$600.00 per day
SUE Ground Penetrating Radar (GPR)	\$150.00 per day
SUE Truck	\$300.00 per day

REIMBURSABLE EXPENSES:

Printing, SUE materials and other direct costs – Actual cost
 Sub-Consultant Services – Actual cost plus 10% administration fee
 Sales Tax – Actual cost if/when sales tax is applicable

SCHEDULE NOTES:

1. Schedule shall be subject to annual adjustments
2. Rates do not include sales tax
3. Building Inspection minimum charges may apply if inspections are sporadic/not grouped
4. Mileage (if outside Volusia County, or otherwise travel extensive) – will be charged at current IRS rates.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Third Amendment to Agreement with Volusia County for fire suppression service in certain unincorporated areas.

DEPARTMENT: Fire/Rescue Services

RECOMMENDED MOTION: Move to approve the third amendment to the agreement between the City of Port Orange and Volusia County, commencing on October 1, 2015 and ending September 30, 2016, for provision of fire services to certain inincorporated areas delineated in the attached map.

SUMMARY: In 1984, the City of Port Orange entered into an agreement with Volusia County to provide fire suppression and rescue services to unincorporated areas in the southeast quadrant of the City. Since this original agreement, there has been a series of amendments that have modified the agreed upon coverage area and payment for services to the City from the County. On October 1, 2012 the City entered into an agreement with Volusia County to provide fire services to certain unincorporated areas for the fee sum of \$85,680. On May 2, 2013 the City and Volusia County agreed to amend the October 1, 2012 agreement (First Amendment) to extend the term of said agreement from February 28, 2013 to September 30, 2013. Since September 30, 2013 the City of Port Orange has continued providing fire services in accordance with the October 1, 2012 agreement. Volusia County has continued to reimburse the City for these services on a quarterly basis. The monthly fee for this service was \$7,140.00.

On May 27, 2014 the City and Volusia County agreed to again amend the Agreement of October 1, 2012. This Second Amendment reduced the fee for services from \$85,680 to \$67,840.00 for the period of October 1, 2013 through September 30, 2014, with a further reduction to \$50,000 for October 1, 2014 through September 30, 2015.

This Third Amendment would extend the term of the agreement between the City of Port Orange and Volusia County to September 30, 2016 at the same fee, resulting in a payment from the County to the City in the amount of \$50,000 for fiscal 2016.

Project Funding Account
No.: No.:

ATTACHMENTS:

1.	Third Amendment to Agreement with Volusia County for Fire Suppression Service	.pdf
2.	Map	Map.pdf

Irby, Skip	Created/Initiated - 05/26/2015
Irby, Skip	Approved - 05/26/2015
Riehm, Tracey	Approved - 05/30/2015
Roberts, Margaret	Approved - 07/28/2015
Harden, David	Final Approval - 07/28/2015

**THIRD AMENDMENT TO AGREEMENT
BETWEEN THE CITY OF PORT ORANGE
AND
THE COUNTY OF VOLUSIA
REGARDING THE PROVISION OF
FIRE SUPPRESSION SERVICES TO A
CERTAIN SERVICE AREA**

This Third Amendment to Agreement Between the City of Port Orange and The County of Volusia Regarding the Provision of Fire Suppression Services to a Certain Service Area (“Third Amendment”) is made and entered into by and between the **COUNTY OF VOLUSIA, FLORIDA**, a body corporate and politic and a political subdivision of the State of Florida, with its business address at 123 W. Indiana Ave., DeLand, Florida 32720 (“County”), and the **CITY OF PORT ORANGE**, a municipal corporation under the laws of the State of Florida with administrative offices located at 1000 City Center Circle, Port Orange, Florida 32169 (hereinafter referred to as “Port Orange”), pursuant to Chapters 125 and 163 of the Florida Statutes (2013), and constitutes the third amendment to the original Agreement Between the City of Port Orange and The County of Volusia Regarding the Provision of Fire Suppression Services to a Certain Service Area, (hereinafter referred to as “Agreement.”)

WITNESSETH:

WHEREAS, on October 1, 2012, County entered into the Agreement with Port Orange for fire suppression services with an expiration date of February 28, 2013; and

WHEREAS, on May 2, 2013, the parties agreed to amend the Agreement through a first amendment to the Agreement to extend the contract term from February 28, 2013 through September 30, 2013; and

WHEREAS, the parties agreed to amend the Agreement through a second amendment to amend the fees for service and to extend the contract term from October 1, 2013 to September 30, 2015; and

WHEREAS, the parties hereby agree to further amend the Agreement by this Third Amendment to revise the indemnification clause and extend the contract term to September 30, 2016.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and other specific consideration set forth in this Third Amendment, the receipt and sufficiency of which is acknowledged by Volusia and Port Orange, the parties agree and stipulate as follows:

1. The foregoing recitals are true, correct and material to this Third Amendment and the Agreement.

2. **ARTICLE 9 – INDEMNIFICATION** is hereby amended to read as follows:

Each party shall be responsible for its sole negligence, breach of contract, or breach of this Agreement, subject to the limitations set forth in Section 768.28, Florida Statutes.

3. **ARTICLE 10 – TERM OF AGREEMENT** at Section 10.1 is hereby amended to read as follows:

10.1 This Agreement shall remain in full force and effect through September 30, 2016, (inclusive), unless this Agreement is otherwise extended or terminated in accordance with the terms hereof.

4. This Third Amendment is incorporated by reference into the Agreement as if fully set forth therein. Except as provided above, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect and are hereby ratified and reaffirmed by the parties hereto. In the event of any conflict or inconsistency between the provisions set forth in this Third Amendment and the Agreement or any amendments prior in time to this Third Amendment, this Third Amendment shall govern and control.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to the Agreement between PORT ORANGE and COUNTY Regarding the Provision of Fire Suppression Services to a Certain Service area to be executed by their duly authorized offices on the dates set forth below.

ATTEST:

COUNTY OF VOLUSIA

By: _____
Name: James T. Dinneen
Title: County Manager
Dated: _____

By: _____
Name: Jason P. Davis
Title: Chair, County Council
Dated: _____

ATTEST:

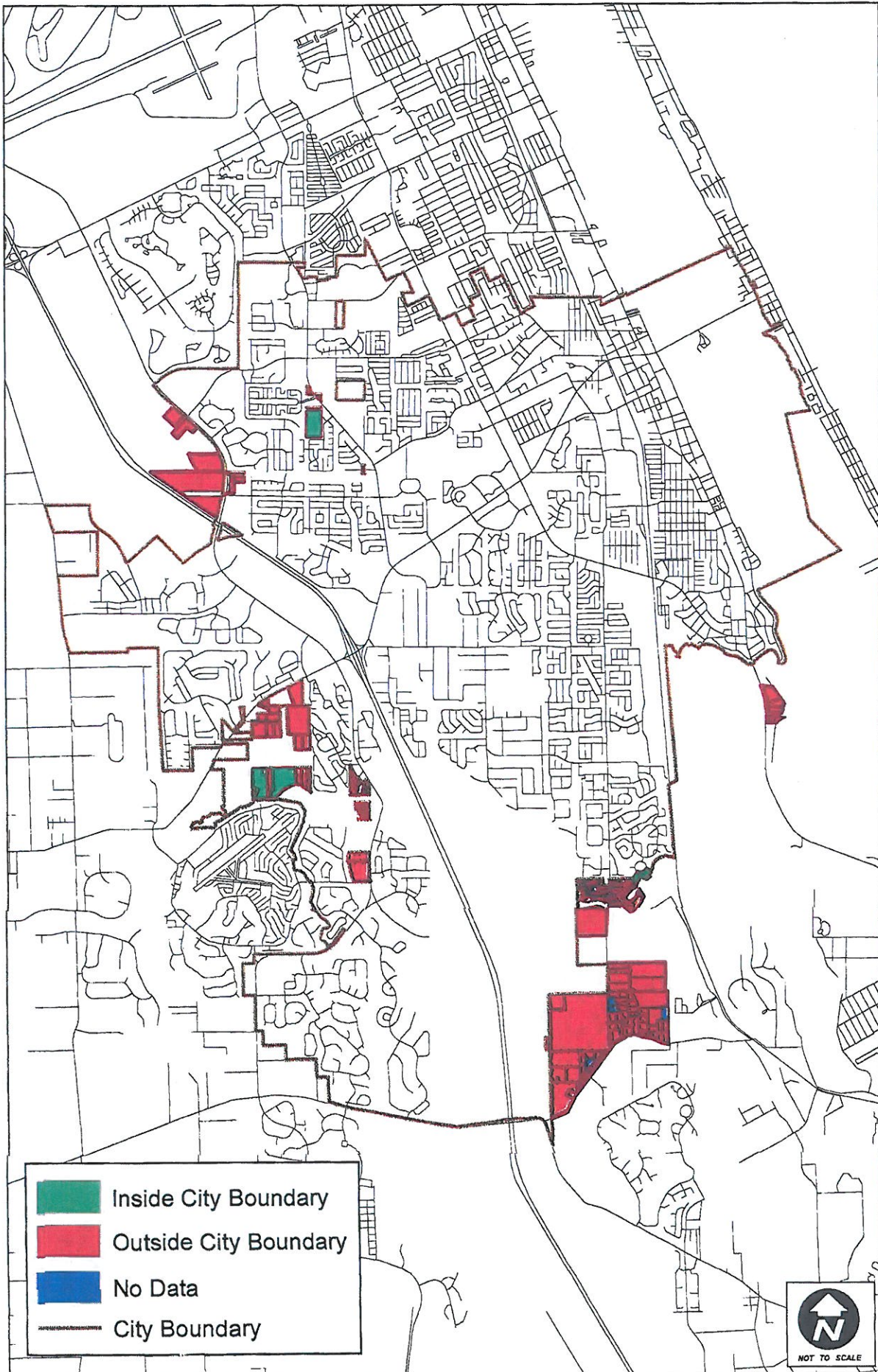
CITY OF PORT ORANGE

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

By: _____
Name: Allen Green
Title: Mayor
Dated: _____

Approved as to Form and Correctness:

Matthew J. Jones, Assist. City Attorney
Third Amendment to the Agreement
Between City of Port Orange and County
Of Volusia Regarding the Provision of Fire
Suppression Services to a Certain Service Area





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Contract Award to Magellan Advisors, LLC, for RFP #15-22; Information Technology Strategic Plan

DEPARTMENT: Administrative Services

RECOMMENDED MOTION: Move to accept the Selection Committee ranking of Magellan Advisors, LLC as the top ranked firm in response to RFP #15-22 and award a Standard Contract for Services to Magellan Advisors, LLC in an amount not to exceed \$42,525; and authorize the Mayor and City Clerk to execute this contract on behalf of the City.

SUMMARY: In March the City issued RFP #15-22, Consultant Services for Development of a Comprehensive Information Technology Strategic Plan. Proposals were received from ten firms, of which all were deemed responsive. The Selection Committee reviewed all ten proposals and invited four firms for oral presentations and interviews. All four firms accepted the invitation and presented to the Committee on July 1st, 2015. Of the four firms, the Committee ranked Magellan Advisors first, Berry Dunn second, Elert and Associates third, and Plante Moran fourth. Magellan Advisors has executed the Standard Contract for Services prepared by the City Attorney's office, and has provided the required insurance certificate listing the City as additional insured. In addition to the proposed contract the Committee's final ranking is attached for review. The RFP and copies of proposals from each of the firms are on file with the Purchasing Division and available for review upon request.

This project is fully budgeted and is to be completed by late-November (90 days from Notice to Proceed).

Project No.: ZMI038 Funding Account No.: 501-0700-519.31-13

ATTACHMENTS:

1.	Final Committee Ranking	15-22 Final Ranking Summary.pdf
2.	Magellan Advisors, LLC Standard Contract for Services	Magellan Advisors, LLC Standard Contract for Services.pdf

Hicks, James
Steinebach, Donna
Gomez, Joseph
Roberts, Margaret

Created/Initiated - 07/17/2015
Approved - 07/17/2015
Approved - 07/17/2015
Approved - 07/30/2015

Harden, David

Final Approval - 07/30/2015



The City of Port Orange
Committee Evaluation Tab



SUMMARY: FINAL RANKING

RFP #15-22: Consultant Services for I.T. Strategic Plan

Meeting Date: July 1, 2015 at 2:00PM

Committee member	Berry Dunn McNeil & Parker	Elert & Associates	Magellan Advisors	Plante & Moran
Scott Stiltner, Councilman	2	3	1	4
Donna Steinebach, Administrative Services Director	3	2	1	4
Wayne Clark, Community Development Director	2	4	1	3
Branford Adumuah, Public Works Director	3	2	1	4
James Hicks, I.T. Manager	1	4	2	3
(Lowest) Total points:	11	15	6	18
Rank:	2	3	1	4

Evaluation Committee for this RFP:

Scott Stiltner, Councilman

Donna Steinebach, Administrative Services Director

Wayne Clark, Community Development Director

Branford Adumuah, Public Works Director

James Hicks, I.T. Manager

Notes: (Top ranked firm)

1. Magellan



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this ____ day of _____, 2015, 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 **MAGELLAN ADVISORS, LLC**, a Florida limited liability corporation whose principal address is 999 18th Street, Suite 3000, Denver, Colorado ("Contractor"). (The City and Contractor are collectively referred to herein as the "Parties.")

1. Provision of Services

- (a) The Contractor hereby agrees to provide consultant services for an information technology strategic plan to guide the City of Port Orange over the next five (5) years in planning, procuring, implementing and managing the current and future information technology needs and resources of the City more specifically described in Request For Proposal No. 15-22. A copy of Request For Proposal No. 15-22 and Contractor's response thereto, are available in the Office of the City Clerk, City Hall, 1000 City Center, Port Orange, Florida 32129

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

Initial Term: The initial term of this Contract shall commence on the last date this Contract is signed by the Parties and shall continue until September 30, 2016 (the "Term").

Manner and Place: As outlined in Request For Proposal No. 15-22 as filed and Magellan Advisors Proposal as attached hereto as Exhibit "1", in accordance with and in a manner as required by all current federal, state, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances. Contractor shall not deliver goods or commerce services without a written purchase order(s), signed by an authorized agent of the City of Port Orange.

Time and Essence: The Contractor agrees that the work shall be started not later than the date indicated in the Purchase Order(s) and that the work shall be completed within 90 days.

2. City Obligations. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1", subject to a limit up to but not to exceed Forty-Two Thousand Five Hundred Twenty-Five and 00/100 Dollars (\$42,525.00). 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 Administration. The Information Technology Manager, James Hicks, shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

4. 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.

5. Termination for Convenience for Subcontractors. The Contractor intends to subcontract and to secure the services of Epic Engineering and Consulting Group, LLC, for services related to GIS systems as set forth in the scope of work. 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.

6. 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.

7. 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.

8. Public Records Compliance. Contractor shall not disclose any record that is confidential and exempt as permitted by law unless such disclosure is authorized by a majority vote of the City Council. 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.

(d) Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored

electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

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

9. Termination for Non-Appropriation of Funds

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

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

10. 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>	Coverage A - Statutory Coverage B - \$100,000	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
<u>Additional Coverage:</u>		All States (Broad Form) Voluntary Compensation	
Comprehensive General Liability (including Completed Operations and Contractual Liability)	<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>	Auto Liability Body Injury: \$100,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence.	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
<u>Additional Coverage:</u>		Non-Owned, Hired Car	
Property Insurance Builders Risk.	<u>Limits:</u>	Buildings Completed value of contract.	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.
<u>Additional Coverage:</u>		"All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	
Professional Liability (Errors & Omissions)	<u>Limits:</u>	Coverage- \$1,000,000 minimum	

11. 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.

12. 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.

13. 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.

14. 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.

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.**

22. Additional Provisions. As may have been outlined in Request For Proposal No. 15-22 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.

23. 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.

24. 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: James Hicks, Information Technology Manager
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5545

Contractor: Magellan Advisors, LLC
Attention: Courtney S. Violette
1000 South Pointe Drive
Suite 703
Miami Beach, Florida 33139
(786) 208-8952 – Telephone
(888) 330-0391 – Facsimile
cviolette@magellan-advisors.com

999 18th Street
Suite 3000
Denver, Colorado 80202

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.

25. 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.

26. 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]

Witnesses:

MAGELLAN ADVISORS, LLC

Printed Name: _____

By: _____

John Honker, Manager

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.

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by John Honker, as Manager of Magellan Advisors, LLC, a Florida limited liability corporation, and who:

[Notary: Please select one]

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

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Allen Green, Mayor

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Allen Green, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, 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:

[CA 4769]

IV. Project Approach

A. Project Approach

Magellan's approach is based on its considerable knowledge and experience in working with local governments. In the following pages, we present five (5) *Touchstone diagrams* for the city's consideration. The purpose is to display our understanding of the role of IT in supporting cities like the City of Port Orange. Working closely with EPIC, we have contributed to and leveraged their thought leadership in communicating what many people find to be not only complex, but sometimes cloaked – in its language and concepts, as if meant to make IT less understandable as a business discipline. The five *Touchstones* are:

1. Strategic IT Trends

These simple 'before' and 'after' diagrams are used to dramatize the emerging role of IT as less of a "hardware" shop and more of "consultancy". The core technology management is shifting to external vendors with 7x24 remote monitoring and restoration capabilities while IT professionals emerge into myriad business applications (between earth and clouds) to manage data, reporting, mobility, decision support, business workflows and seek new ways to optimize the city's software investments.

2. IT Assessment and Strategic Planning Methodology

This diagram provides a bird's-eye view of an entire project. As you will see, the diagram has five (5) phases to it. Those same five phases are used to drive the project activities as narratively presented in our "Statement of Work". The diagram reflects the data collection processes and the array of data analysis tools available to Magellan, if warranted. This *Touchstone* provides an overview of the flow of activities, which also presents the city with an early sense of the impact on individuals and work units within the city during the course of the project.

3. The Alignment of IT to the City's Goals

Perhaps the most critical construct for the development of the IT Strategic Plan is the alignment of IT resources, assets and investments with the City of Port Orange's Strategic Vision, which was recently completed by the Institute of Government at UCF. We have depicted our approach to alignment in a this third *Touchstone* to show the impact of strategic drivers in creating the Strategic Plan as undertaken by departmental line-of-business strategies, which in turn may require technology solutions based on applications, GIS and infrastructure. The diagram shows that the selection of technologies drives the design of the enterprise IT architecture and the selection of IT professional capabilities, skills and staffing.

4. Managing the IT Environment

Toward the goal of simplifying the IT Environment, EPIC developed a global view of the world of IT along with the "Ten Tier IT Assessment Framework" as an evaluation and reporting tool. Essentially, the Ten Tier Framework provides a common reference for everything an organization requires to support its business through information technology hardware,

software, resources, standards, policies and practices. The Ten Tier Framework compartmentalizes each IT domain and can simplify the dialogue between IT and non-IT professionals when working together to ensure that IT is enabling the success of the organization.

5. SWOT Analysis

The last *Touchstone* is the SWOT Analysis. Most everyone is familiar with the approach, but very often it is not understood in the context of the “big picture”. Magellan wants to communicate to the City that the data gathering and interviews are absolutely critical to the success of the project. As such, the documentation we request from IT, Finance and HR and the information and insight we hope staff will freely share with us deliver tremendous value to the City in terms of future investment decisions.

B. Strategic Alignment

Perhaps the most critical construct for the development of the IT Strategic Plan is the alignment of IT resources, assets and investments with the City of Port Orange’s Strategic Vision recently completed by the Institute of Government at UCF. The diagram shows that the selection of technologies drives the design of the enterprise IT architecture and the selection of IT professional capabilities, skills and staffing.

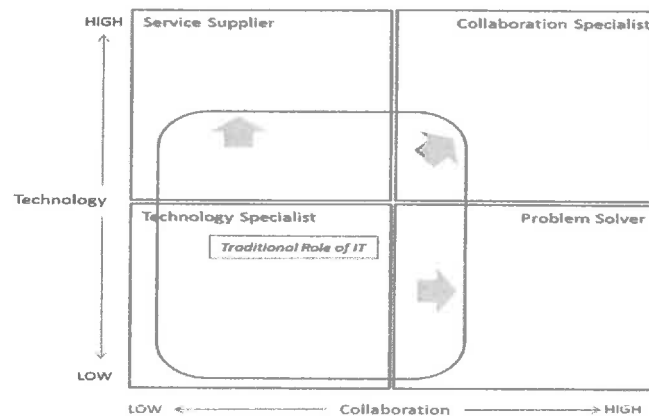
C. Strategic IT Trends

Magellan prepared the following information to provide practical context for this assessment and a future perspective of IT in local government over the next 3 to 5 years. These views are provided to inform and advise of the issues, challenges and concerns in today's local government IT industry.

1. Transforming the Role of IT

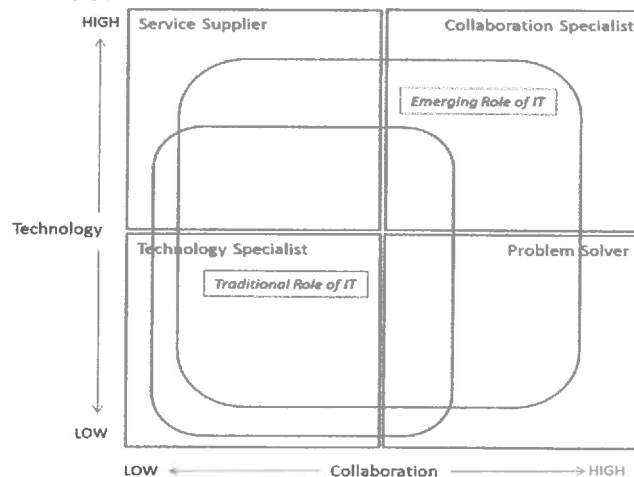
Magellan modified an established business strategy model to provide a *Before and After* visualization of the direction of the business of Managing the IT Environment. Common themes among our recommendations are technology, service provisioning, problem solving and collaboration.

The "Before" Model

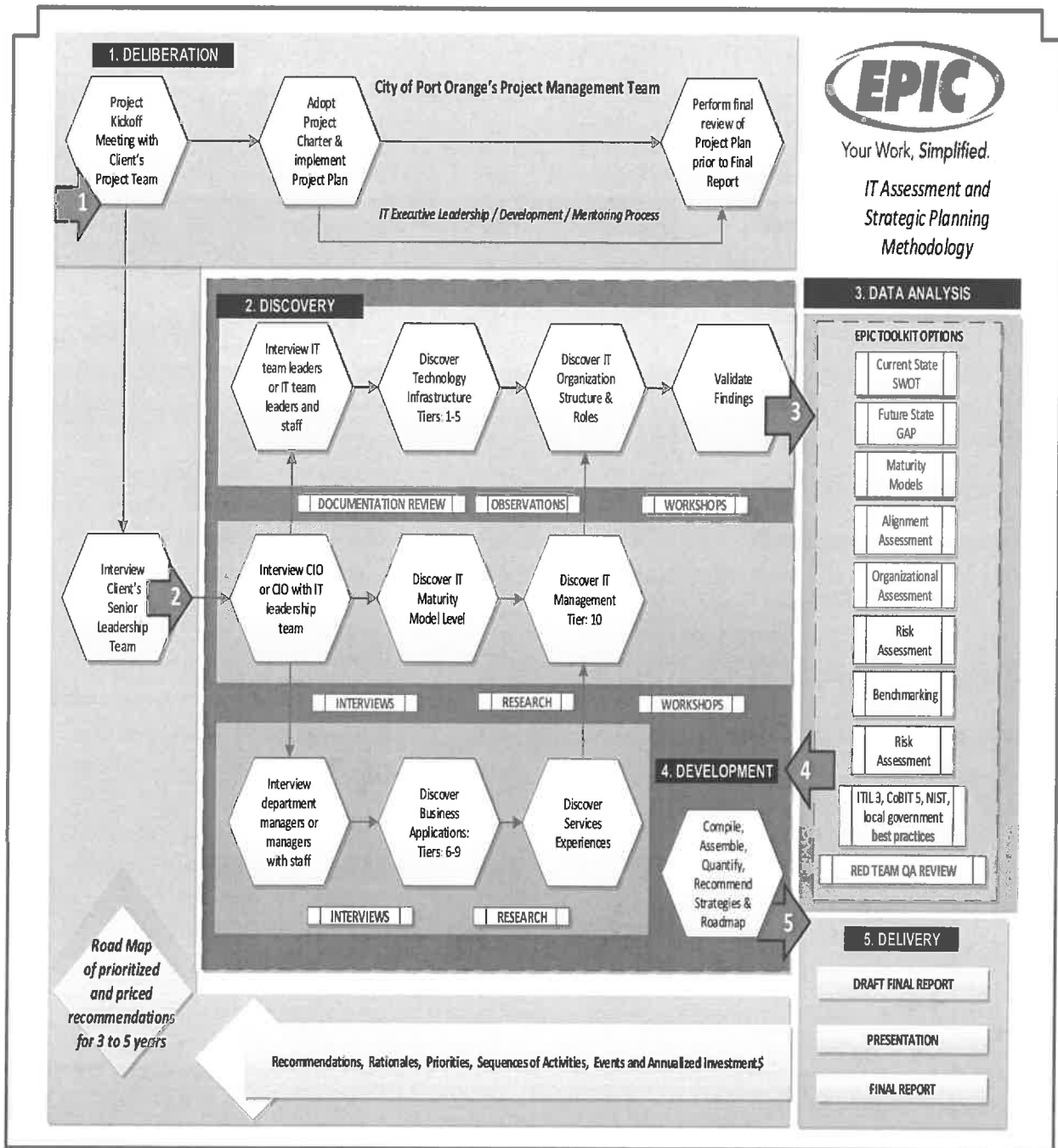


The model suggests that the organization's investment in developing its full time staff should be less in the "technology break-fix" quadrant and more in the "business problem solving" and collaborations quadrants.

The "After" Model



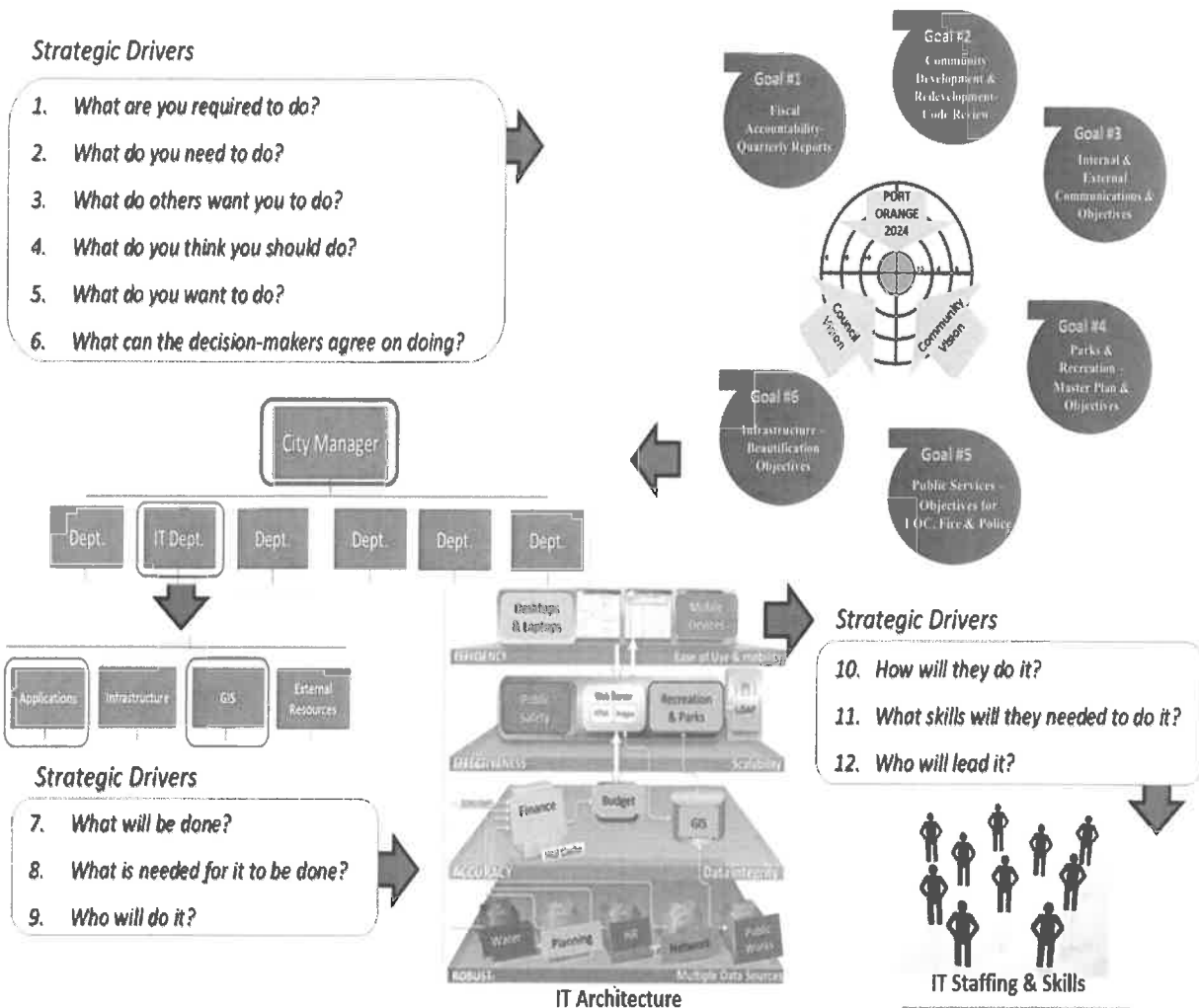
Methodology



Alignment

Model

Aligning Vision to Effort to attain Goal-driven Results



Goal-driven technology architecture dictates the IT structure, functions, responsibilities and management strategies.

D. Managing the IT Environment

THREE DOMAINS

Magellan has adopted the perspective promoted by EPIC that within every organization, regardless of size or industry, is a defined "IT Environment". The "IT Environment" is comprised of three domains: *IT Management*, *Software Applications* and *Technology Infrastructure*.

- Within each domain are groups of resources, assets, hardware, software, management policies, practices, principles and organizational values.
- Each domain is comprised of specific operating and capital budget appropriations.
- In each domain Magellan has met many professional individuals with the drive, commitment, knowledge, passion, expertise and experiences required for supporting respective IT functions; for performing required tasks and executing precise processes to produce business value for the organization, stakeholders and the people they serve.¹



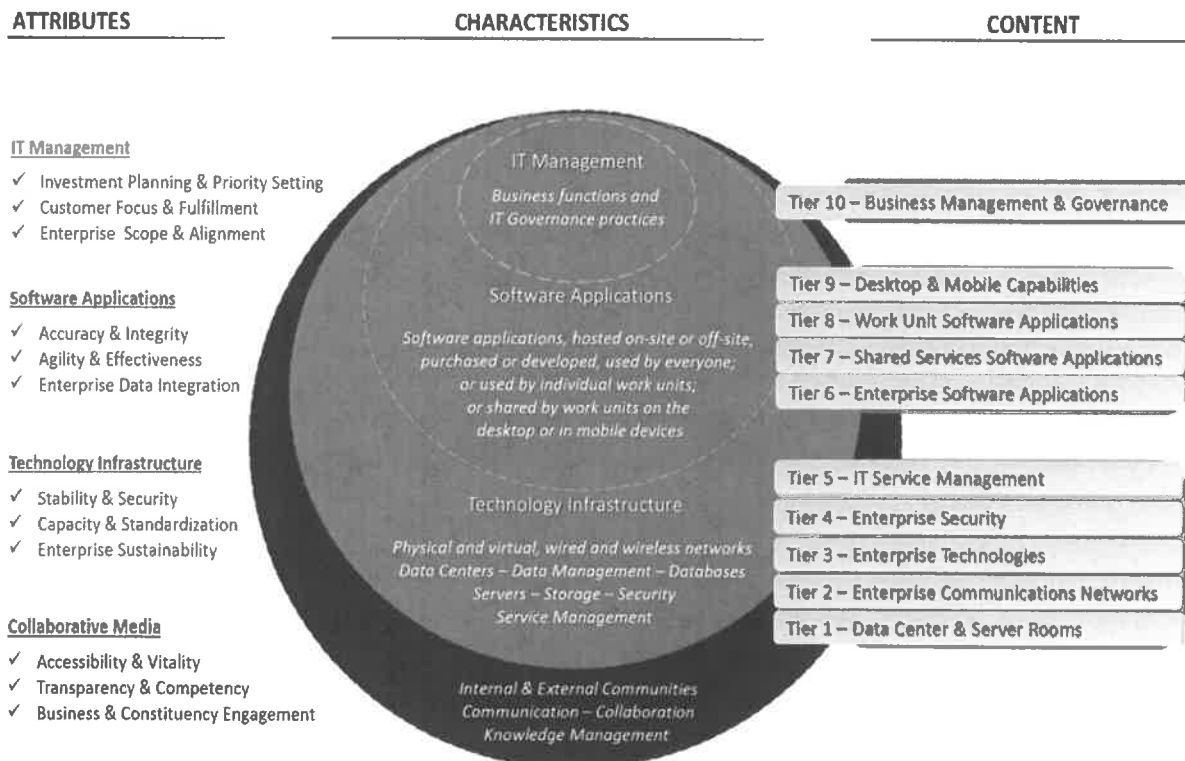
¹ Magellan and EPIC monitor the IT market of international research and advisory firms and industry standards organizations. In Central Florida, Magellan and EPIC work with the Florida Institute of Government at UCF, the Florida League of Cities (i.e., Florida Local Government Information Systems Association (FLGISA) and the Florida Benchmarking Consortium (FBC).

An IT department has primary responsibility for designing and managing these three domains. If managed proportionately, these domains can deliver constituent services with high value and reasonable costs.

E. EPIC's Ten Tier IT Assessment Framework

Toward the goal of simplifying a general understanding of the IT Environment, EPIC developed a "Ten Tier IT Assessment Framework" as an evaluation and reporting tool. The Ten Tier Assessment Framework focuses exclusively on the three domains for which the IT department is responsible. Each domain is comprised of groupings of IT-specific responsibilities. The groupings are referred to as Tiers. This distribution of Tiers creates a taxonomy or sorting structure that can simplify one's understanding of the IT Environment. The taxonomy provides ten Tiers into which the inventory of all items within the IT Environment can be classified and assessed within their functional context.

Within the Framework, each Tier contains an array of components, including hardware, software and IT-related services. The Framework also serves to simplify and contain conversations between IT and non-IT staff about the IT Environment. Tiers can be viewed as benchmark objects between organizations and can be compared for investment levels and budget assessments.



F. IT Management

At the top of the Framework is Tier 10 – Business Management and Governance. As implied, this Tier consists of policies, processes and practices related to planning, executing and governing the organization’s IT business goals and objectives. This Tier includes issues such as IT hiring, budgeting, as well as organization-wide IT training and planning relative to long term IT strategies and major purchases.

One of the key responsibilities placed in Tier 10 is the decision-making as to which software applications the organization should research, retain, replace or retire.

Each of these decisions is an organizational business decision – not an IT decision. Therefore, organization directors and department managers need to be engaged in the planning efforts to ensure that software requirements and related investments are not underutilized, neglected or duplicated. Software usage can be expensive and one measure of its usage is the number of people benefitting from its use. The process of engaging is called “IT Governance”.

G. Software Applications

Toward the goal of simplifying a general understanding of the IT Environment, the Framework presents the second domain, “Software Applications”. In this domain, EPIC assigned four Tiers (Tiers 6 through 9) to identify and evaluate four different types (or classifications) of software applications that the organization might decide to research, retain, replace or retire. The reason for the classifications is because all software is not the same; nor is it used in the same way, nor used by the same employees.

The classification of software into unique Tiers narrows the scope of discussions based on which employees use which software and how they are using it. Such a discussion usually entails measures of effort, time and cost; all of which are critical to the organization’s management of effective and efficient investment in technology and the performance of employees.

Tier 9 is “Desktop and Mobile Capabilities”, which refers to software applications and related hardware devices used by individual organization employees – Microsoft Word, Adobe and mobile email access, for example. Desktop and Mobile Capabilities are typically the least complex of the Software Applications Tiers to manage.

Tier 8 is “Work Unit Software Applications” or departmental, which refers to software used only by individual work groups – Parks Department, for example. No one else in the organization uses “RecWare” software. **NOTE:** A software application that is used to support IT system hardware is not included in Tier 8 as it is related to hardware and work processes in Tiers 1 through 5.

Tier 7 is “Shared Services Software Applications”, which refers to software that is shared by certain departments – GIS, for example. Access to GIS software is typically limited to specified individuals within organization departments or work units.

Tier 6 is “Enterprise Applications”, which refers to software used by everyone – Purchasing, for example. It is anticipated that at least one person in every department may use the Purchasing application. Enterprise Applications are typically the most expensive and the most complex to manage.

One of the key responsibilities distributed among the management practices in Tiers 6 through 9 is the decision-making as to which hardware the organization should research, retain, replace or retire to support the software used in Tier 6 through 9.

These decisions are both an organizational business decision and an IT decision. Therefore, organization directors and department managers need to be engaged in the planning efforts to ensure that its IT department has communicated and explained the complexities and values involved in running the organization’s hardware to support the organization’s software.

As with software, hardware-related investments can be underutilized, over utilized, neglected or duplicated. The absence of this conversation creates the potential to further devalue the organization’s investments in existing hardware and software – AND in the employees and vendors who work to support them. The process of engaging is called “IT Governance”.

As stated above, software usage can be expensive. The failure to provide the proper data center facility, hardware, networks and service and support capabilities that allow the software to operate as designed can greatly increase the cost of the software because it decreases its usefulness and value to the organization.

H. Technology Infrastructure

Further toward the goal of simplifying a general understanding of the IT Environment, the Framework presents the third domain, "Technology Infrastructure". In this domain, EPIC assigned Tiers 1 through 5 to identify and evaluate the core areas of technology facilities, systems, services and support. In each of the following Tiers, again the organization faces decisions to research, retain, replace or retire hardware, software and services.

In this domain, an organization's IT Department uses and/or is responsible for software that is classified as Tier 8 and Tier 9. Just as the Parks and Recreation Department is the only work unit in the organization that uses Active Net software, for example, an IT department is the exclusive user and/or custodian of software required to manage "core technologies" that run the infrastructure. The software is central to the workings of IT functions that benefit the entire organization.

These technologies include operating systems, servers, routers, switches, telephones, security requirements, system access account provisioning, desktop and network virus and malware detection, system backup and other diagnostic software, etc.

Tier 5 is "IT Service Management", which refers to policies, processes, practices and standards. In addition, this Tier includes the software applications required for managing asset inventory and processing work orders. An example of a Tier 5 component is software used for managing the Service Desk (aka Help Desk),

Tier 4 is "Enterprise Security", which refers to policies, processes, practices and standards. In addition, this Tier includes the software applications required for managing desktop, server and network security. An example of a Tier 4 component is a firewall, which may be both hardware and software.

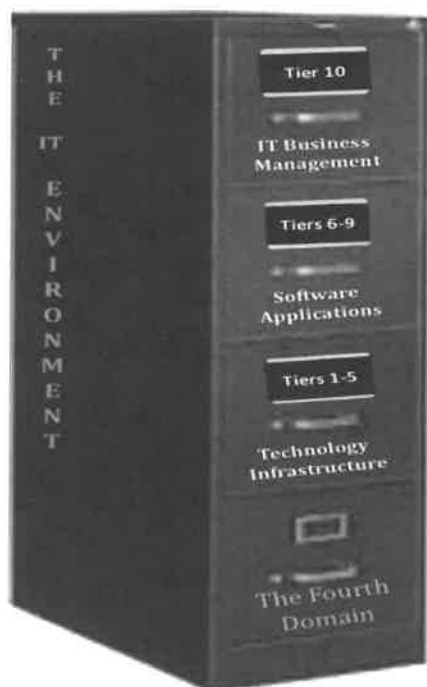
Tier 3 is "Enterprise Technologies", which refers to policies, processes, practices and standards. In addition, this Tier includes the software applications required to managing data, data backups and data storage. An example of a Tier 3 component is a server, which is both hardware and software.

Tier 2 is "Enterprise Communications Networks", which refers to policies, processes, practices and standards. In addition, this Tier includes the software applications required to manage wired and wireless communications networks. An example of a Tier

2 component is the organization's telephone system, which is both hardware and software.

Tier 1 is "Data Center and Server Rooms", which refers to physical locations that require facility security and environmental monitoring. This Tier includes the software applications required for providing access control solutions and alerting relative to temperature, humidity and electrical service.

- € One of the most important components of Tier 1 is Disaster Recovery Planning, which is included to reflect the need that organizations either maintain duplicate data centers with all the physical, environmental and security requirements – OR, make provisions to have access to a similar facility that will have these requirements fully functional when needed by the organization.
- € Disaster Recovery functions are addressed in Tier 3 – Enterprise Technologies with reference to the daily policy and practice of backing up data and storing the backed-up data securely on or off-site.
- € Disaster Recovery functions are also addressed in Tier 10 – IT Management with reference to Business Continuity Planning for the daily performance of IT functions and services.



Essentially, the Ten Tier Framework provides a common reference for everything an organization requires to support its business through information technology hardware, software, resources, standards, policies and practices.

The Ten Tier Framework compartmentalizes each IT domain and can simplify the dialogue between IT and non-IT professionals when working together to ensure that IT is enabling the success of the organization.

I. The Fourth Domain

In addition to the three domains is a fourth domain. In this area of responsibility, the organization publicly communicates its business through technologies that are focused on supporting internal and external collaboration and communications. The immediate beneficiaries of these communication methods are organization employees, citizens, businesses and other local governments.

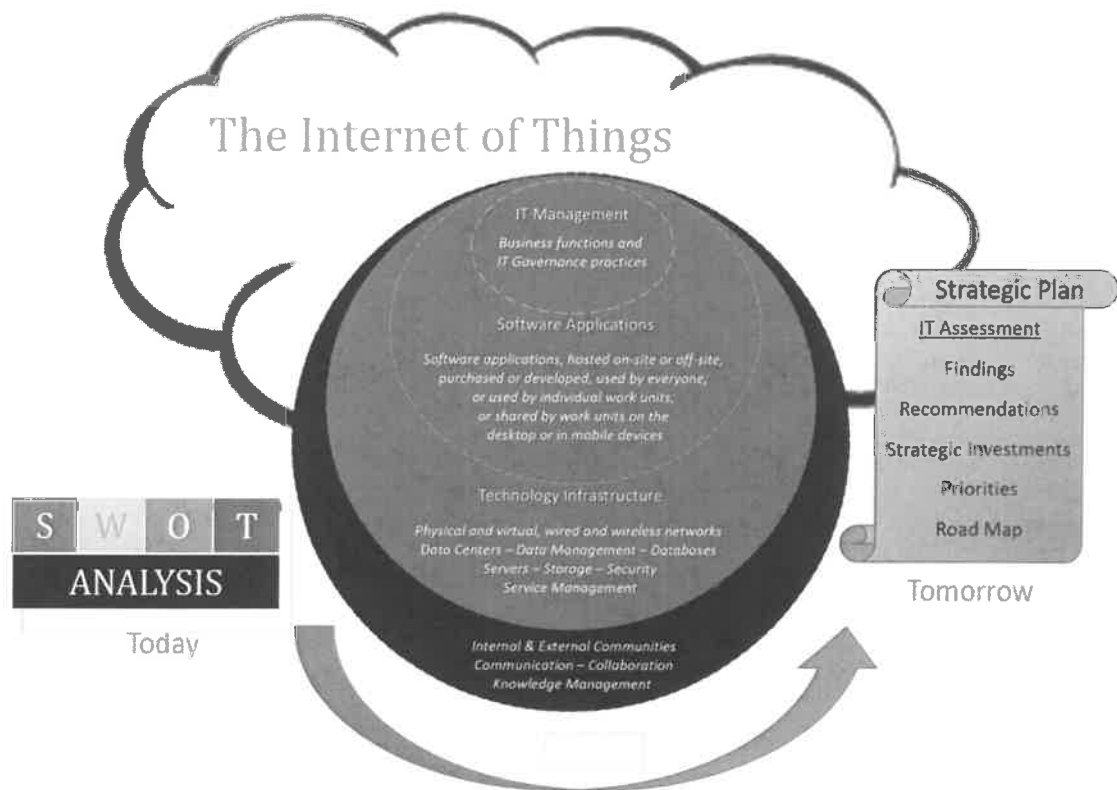
Responsibility for the Fourth Domain is most often placed among a combination of individuals and/or teams whose professional missions relate to Public Information or Human Resources. It is also common to find an Assistant or deputy organization manager leading collaborative teams of organizational employees in developing strategies, practices and content for the web site, the intranet, the newsletter and the recording and broadcasting of meetings and hearings. In support of this fourth domain, the IT department is responsible for ensuring that system security and data privacy strategies and practices are established and well-managed.

Maintaining a website is about maintaining communications content and tone. When a website is used by private companies as part of a competitive business strategy and is strongly linked to generating revenue, it might very well be maintained within the company by a business unit; but one that does not report to the IT department. For most local governments; however, Magellan recommends that communication channels such as the web site and council meeting broadcasting be outsourced to firms that specialize in those areas.

J. SWOT Analysis

Magellan performs a SWOT Analysis to deliver its perspective on the current status of the availability, readiness and usefulness of the products, services and practices defined within the three domains: IT Management, Software Applications and Technology Infrastructure. The SWOT Analysis serves the purpose of calling attention to the Strengths, Weaknesses, Opportunities and Threats for the "content" of each of the Ten Tiers within the IT Environment.

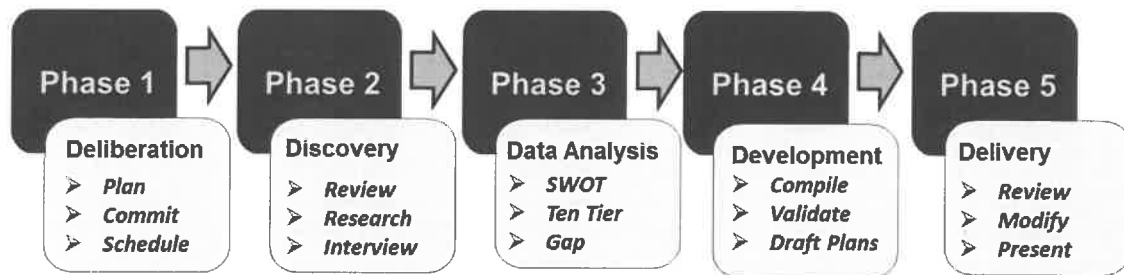
Magellan's findings and observations typically include a high-level inventory of IT products, services, standards, strategies and practices relative to each of the evaluated Tiers. For Magellan's purposes, the color green is the most positive, yellow is cautionary, gold is an opportunity and red is presently or potentially problematic.



NOTE: Gartner defines the *Internet of Things* as, "The network of physical objects accessed through the Internet that contain embedded technology to sense or interact with their internal states or the external environment. These billions of objects can be connected, know their location or status, and communicate with another object, system or a person."

V. Statement of Work

For targeted IS assessments or strategic planning engagements, the project approach is reflected in five phases each with multiple steps and tasks that may overlap in terms of scheduling and data gathering. The project banner reflects the sequence and the thematic purposes for each phase.



STEP1: DELIBERATION

- Task 1: The City and Magellan's Project Consultants (Magellan), will select a mutually agreeable date for the Project Initiation meeting.
- Task 2: The City will provide, for the review and assessment by Magellan, any documentation relating to their respective IT operations. The documentation may include, but not be limited to:
1. Current IT employee organization charts, including IT contractors
 2. IT employee and contractor job descriptions
 3. Listing and profile information on external service providers
 4. IT service catalog or listing of all business applications and infrastructure services
 5. Technology standards
 6. Listing and descriptive profiles of the current projects and initiatives
 7. Listing and descriptive profiles for all maintenance agreements
 8. Listing and descriptive profile of all software licenses
 9. Network and systems diagrams
 10. Internal IT policies and procedures
 11. IT O&M budgets for the past three (3) years
 12. IT capital budgets for the past seven (7) years

- Task 3: The City and Magellan will agree to an interview schedule that will accommodate up to twelve (12) 60 to 90-minute interviews that will focus on the City's current use of technology.
- Task 4: Once the interviews have been scheduled, Magellan will e-mail confirmations to each interviewee and attach an agenda and explanation of the issues to be discussed. The e-mail notice will also advise that members of their staff may be invited to the interviews to contribute to the discussion.

STEP 2: DISCOVERY

- Task 1: Magellan will continue the review of the documentation provided in Step 1 and will post the information to the appropriate space within EPIC's "Ten Tier IT Assessment Framework." From this point on, virtually all information gathered will be placed accordingly in the Framework. Magellan will initiate the dialogue on the enterprise architecture. Magellan will undertake an organizational assessment of the current IT roles and responsibilities in the context of the size of the internal service population and complexity of the IT environment. Magellan will assist the City in understanding the systemic relationships in terms of complexity, risk and market availability. This information will be reflected in an update version of the diagrams.
- Task 2: Magellan will conduct a 60-minute interview with the Interim City Manager, which will focus on the perceived mission, business drivers and legislative mandates relative to the use and management of the City's current technologies and technology services to better understand the expectations of the role of IT within the City. The interview may include issues relative to the current IT environment, range of services, organizational structure, professional staffing requirements, role of IT governance, management maturity, performance measurement practices and overall process discipline.
- Task 3: Following this interview, Magellan will review the data center/server room. This information will provide the Consultant with the opportunity to continue to populate the "Ten Tier IT Assessment Framework".
- Task 4: Magellan will interview the IT leadership team to gain a better understanding of the current status and to validate its understanding of the organizational

structure, professional staffing requirements, role of IT governance, management maturity, performance measurement practices and overall process discipline.

Task 5: Magellan will conduct a 60-minute interview with the City's Finance Director to review the IT Department's chart of accounts, budget appropriations and actual expenditures in addition to any funding sources. This data will provide a baseline against which any proposed changes can be measured. A critical aspect of this financial assessment is the validation of our accurate understanding of the financial data before we can determine the nature of potential benefits that may be derived from changes over the next 3 to 5 years.

Task 6: Magellan will conduct a 60-minute interview with the City's Human Resources Director, which will focus on the current organizational structure, position descriptions, salary ranges, benefits, history of salary studies and related information the HR Director may have available.

STEP 3: DATA ANALYSIS

Task 1: Using the data collected in Step 2, Magellan will identify the Strengths, Weaknesses, Opportunities, and Threats (SWOT) present in the current IT environment to determine the presence and level of risks or threats. The results of this analysis will become key components of the IT Assessment. Ultimately, the City will receive recommendations on how to sustain or enhance the strengths, overcome the weaknesses, exploit the opportunities or negate the threats.

Task 2: Magellan will perform an organizational assessment of the current IT roles and responsibilities in the context of the size of the service population and complexity of the IT environment.

STEP 4: DEVELOPMENT

Task 1: Magellan will use the findings from the SWOT Analysis to articulate the gaps between current state and desired state, which will produce the draft version of the recommendations.

- Task 2: Magellan will develop its recommendations for each of the Ten Tier items identified as requiring attention.
- Task 3: Magellan will present the draft version of the infrastructure assessment to an internal “Red Team” for vetting and approval of the document. The “Red Team” examination serves as a quality assurance process. It is a peer review staffed by Magellan and EPIC employees who are not directly involved in the data collection, assessment of findings and development of recommendations.
- Task 4: Magellan will modify the document based on the result of the “Red Team” exercise.
- Task 5: Magellan will compile and organize the data, findings, observations, calculations, conclusions, and recommendations into a single document – the draft version of the IT Strategic Plan, which will include a Road Map of IT decisions, actions, and investments for the City.

STEP 5: DELIVERY

- Task 1: Magellan will schedule a mutually agreeable time with the City to jointly review the Magellan’s findings and recommendations.
- Task 2: The City and Magellan will meet to jointly review the City’s questions, comments or concerns, validate the accuracy of the data, explain the roadmap and give recommendations to gain acceptance to the highest extent possible. The final version will include a Road Map of IT decisions, actions, and investments for the City. Magellan will send the draft Plan to the City for review and will then meet with the City for a detailed review.
- Task 3: Magellan will modify the document as agreed upon and submit the final version.
- Task 4: Magellan will develop the final version of the document and will send the digital and paper-bound versions to the City.

- Task 5: If requested, Magellan will deliver a formal presentation to the City's senior management team and/or to the City Council at a mutually agreeable date and time.

VI. Project Management

Courtney Violette, SVP Operations with Magellan Advisors will provide contract oversight. The Project Manager for this RFP will be Tom Babington, Vice President of Technology Solutions with EPIC. Mr. Babington can be contacted to answer any questions the City of Port Orange may have in regards to the submittal of this RFP.

Contact information for each is listed below:

Courtney Violette, SVP
Magellan Advisors, LLC
P: 386-931-3520
E: cviolette@magellan-advisors.com

Tom Babington, Vice President
EPIC Engineering & Consulting Services
P: 407-542-1653
E: tomb@epicgroupllc.com

Project Assumptions

- Magellan assumes that there will be open access to the City's documents, department heads, vendors and other organizations and individuals for interviews.
- Magellan assumes the ability to schedule timely appointments for these individuals.
- Magellan assumes that there will be open access to the City's facilities (e.g., data center and server rooms) in order to review technology equipment.

VII. Fee Proposal

Magellan estimates that this engagement can be completed within 3 months based upon the availability of City staff. The scheduling of City leadership may extend the 12-week period if Port Orange requests a presentation to the City Council. The tasks and related hours for each phase of the project are presented below. We have estimated 315 hours to complete the proposed tasks and present the final deliverables.

ESTIMATED SCHEDULE OF PLANNED ACTIVITIES PER WEEK & TOTAL HOURS	2	4	6	8	10	12	Total Hours
DELIBERATE - Project Kickoff - Meetings							20
DISCOVER - Interviews; Workshops - Research - Observation - Document reviews							55
DATA ANALYSIS Local Government and industry best practices based on experience, knowledge and frameworks such as ITIL and CoBIT 5							90
DEVELOP - Produce recommendations and rationale for making the recommendations - Prioritize recommendations - Price recommendations							100
DELIVER - Submit draft report - Meet to review draft report - Modify draft report - Deliver formal presentation of final version of the report - Deliver Final Report: - Executive Summary - Detailed Findings, Risks - Mitigation Strategies - Recommendations - Road Map - Actionable Project Plan							50

B. Cost of Services

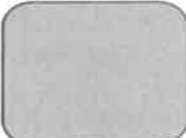
Total cost to the City of Port Orange is \$42,525 based on an estimated 315 hours of work at a rate of \$135 per hour. Pricing for the project is lump sum and includes all work to be completed by Magellan for the City as stated in this Proposal. The City of Port Orange has recently completed an IT Risk Assessment focusing on the City's information security posture. We believe it would be duplicative to assess this area of the City's Information Technology Department and its infrastructure yet again. We propose to incorporate the findings and strategies of the IT Risk Assessment into the City's IT Strategic Plan where relevant and have priced this engagement accordingly.

We estimate that over the 12-week duration of the project, approximately 15 days onsite will be required for successful completion of the project. During this time, Magellan will meet with City staff, stakeholders, and make presentations to the project team as well as other activities to be determined collectively between the City of Port Orange and Magellan Advisors. Schedules will also be determined cooperatively between the City of Port Orange and Magellan Advisors.

C. Task/Personnel Breakdown

Task	Classification of Personnel Assigned
DELIBERATE - Project Kickoff - Meetings	Project Manager Senior Consultant(s)
DISCOVER - Interviews; Workshops - Research - Observation - Document reviews	Project Manager Senior Consultant(s)
DATA ANALYSIS Local Government and industry best practices based on experience, knowledge and frameworks such as ITIL and CoBIT 5	Project Manager Senior Consultant(s)
DEVELOP - Produce recommendations and rationale for making the recommendations - Prioritize recommendations - Price recommendations	Project Manager Senior Consultant(s)
DELIVER - Submit draft report - Meet to review draft report - Modify draft report - Deliver formal presentation of final version of the report - Deliver Final Report: - Executive Summary - Detailed Findings, Risks - Mitigation Strategies - Recommendations - Road Map - Actionable Project Plan	Project Manager Senior Consultant(s)

D. Total Hours Breakdown

ESTIMATED SCHEDULE OF PLANNED ACTIVITIES PER WEEK & TOTAL HOURS							Total Hour s	Total Hours by Personnel Classification
	2	4	6	8	10	12		
DELIBERATE - Project Kickoff - Meetings							20	Project Manager – 10 Senior Consultant(s) – 10
DISCOVER - Interviews; Workshops - Research - Observation - Document reviews							55	Project Manager – 15 Senior Consultant(s) – 40
DATA ANALYSIS Local Government and industry best practices based on experience, knowledge and frameworks such as ITIL and CoBIT 5							90	Project Manager – 30 Senior Consultant(s) – 60
DEVELOP - Produce recommendations and rationale for making the recommendations - Prioritize recommendations - Price recommendations							100	Project Manager – 20 Senior Consultant(s) – 80
DELIVER - Submit draft report - Meet to review draft report - Modify draft report - Deliver formal presentation of final version of the report - Deliver Final Report: - Executive Summary - Detailed Findings, Risks - Mitigation Strategies - Recommendations - Road Map - Actionable Project Plan							50	Project Manager – 20 Senior Consultant(s) – 30



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Agreement with Quentin L. Hampton & Associates, Inc. for Design and Permitting Services for Stormwater Drainage Improvements in the White Acres Area

DEPARTMENT: Public Works

RECOMMENDED MOTION: Move to approve the Agreement with Quentin L. Hampton & Associates, Inc. for professional design and permitting services for stormwater drainage improvements in the White Acres Subdivision area for \$41,110, and authorize the Mayor and City Clerk to execute all required contract documents.

SUMMARY: Improvements to the stormwater drainage in the White Acres Subdivision area will help to increase stormwater conveyance and mitigate the potential for flooding. These improvements were requested by residents of White Acres who attended the public meeting on this project in January. The professional design and permitting services by Quentin L. Hampton & Associates, Inc. will include piping of existing ditches and the construction of swales above the installed pipes for proper treatment and conveyance of stormwater. Since QLH has already designed the sanitary sewer and road improvements planned as part of this project, they are the logical choice for designing the stormwater portion.

The proposed agreement is for \$41,110 and piggybacks on the Volusia County Contract for Stormwater & Environmental Engineering Consulting Services with Quentin L. Hampton & Associates, Inc.

Project No.: UET022 Funding Account No.: 412-1800-541-6397

ATTACHMENTS:

1.	Quentin L. Hampton Design Fee Proposal	QLH - White Acres.pdf
2.	Piggyback Agreement	QLH Piggyback Agreement - White Acres.pdf
3.	Quentin L. Hampton/Volusia County Agreement	Quentin Hampton - Volusia County.pdf

Cockcroft, Kynah
Adumuah, Branford
Riehm, Tracey
Roberts, Margaret

Created/Initiated - 07/23/2015
Approved - 07/23/2015
Approved - 07/30/2015
Approved - 07/30/2015

Harden, David

Final Approval - 07/30/2015

February 11, 2015

Fred Griffith, P.E.
Public Utilities Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

**RE: CITY OF PORT ORANGE
WHITE ACRES SUBDIVISION DRAINAGE IMPROVEMENTS
SCOPE OF SERVICES AND FEE ESTIMATE**

Dear Fred:

Per your request, Quentin L. Hampton Associates, Inc. (QLH) is pleased to offer this professional engineering services fee estimate for the services required for White Acres Subdivision drainage improvements.

The work involves the placement of pipe in the existing ditches and construction of swales above the pipe for water quality treatment. The City has applied to St. John's River Water Management District (SJRWMD) for a Cost Share Grant to assist with funding on this project. The City will improve its eligibility for grant dollars if the project is designed and permitted.

Please review the enclosed; if acceptable, forward a purchase order for the Notice to Proceed. We have included a draft Addendum for use on this project. Please contact our office if you have additional questions.

Sincerely,
QUENTIN L. HAMPTON ASSOCIATES, INC.



Andrew M. Giannini, P.E.
Project Manager



Brad T. Blais, P.E.
President

AMG/BTB:bf

Enclosures: Cost Estimate, Addendum

cc: Mike Silvey, COPO
QLH files

**CITY OF PORT ORANGE
WHITE ACRES SUBDIVISION DRAINAGE IMPROVEMENTS
SCOPE OF SERVICES AND FEE ESTIMATE**

In accordance with the terms of the Continuing Engineering Services Agreement dated March 15, 1988 between the City of Port Orange, Florida (City) and Quentin L. Hampton Associates, Inc. (QLH) the following Scope of Services and Fee Estimate are agreed to by the parties of the Agreement:

SCOPE OF SERVICES: Provide design, permitting, and bidding assistance for the project as described below. Construction phase services will be addressed in a separate future work authorization.

BASIS OF DESIGN: For determining the scope of work and estimating the fees for such, the following assumptions have been made:

The work involves the placement of pipe in the existing ditches and construction of swales above the pipe for water quality treatment. The City has applied to St. John's River Water Management District (SJRWMD) for a Cost Share Grant to assist with funding on this project. The City will be more eligible for the grant dollars if the project is designed and permitted.

SCOPE OF WORK: Design deliverables will include 90% and 100% construction plans and specifications in accordance with SJRWMD, Volusia County and Port Orange requirements. QLH will prepare and submit application packages to SJRWMD for Environmental Resource Permit. QLH will respond to all reasonable RAI's. The City will be responsible for all permit application fees. An allowance is included for such in this fee estimate.

QLH will assist the City in bidding the project including drafting the legal advertisement, preparing City standard bidding documents, distributing bidding documents to bidders/plan rooms, addressing bidders' questions, attend pre-bid meeting, prepare and issue addenda as needed, attend bid opening, review bids, prepare certified bid tabulation, review low bidder's qualifications, provide recommendation of award letter and attend City Council meeting for bid award.

Construction phase assistance will be addressed in a future proposal

ESTIMATED PROJECT COST: \$789,569

CITY'S PROPOSED PROJECT SCHEDULE:

QLH will strive to complete the project according to the following schedule. Upon authorization

Survey	Completed
90% Design	30 days
Permit Application Submittal/ Review/Revisions	Per SJRWMD Schedule
Bidding	Per City Schedule
100% Design	15 days following receipt of all comments from Agencies

SCHEDULE OF PAYMENT AND FEE BASIS:

<i>Work Description</i>	<i>Fee</i>
Design/Permitting (Construction Cost x 4.7%)	\$37,110.00
Bidding Assistance	\$2,500.00
Permit Fee Allowances (SJRWMD \$500)	\$500.00
Printing (allowance)	\$1,000.00
TOTAL ESTIMATED ENGINEERING FEE	\$41,110.00

If sales tax becomes due on professional services the City shall reimburse QLH for any applicable sales tax cost.

"PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF QUENTIN L. HAMPTON ASSOCIATES, INC. MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE."

Prepared by:
QUENTIN L. HAMPTON ASSOCIATES, INC.
-Consulting Engineers-
February 11, 2015

**CITY OF PORT ORANGE
WHITE ACRES SUBDIVISION DRAINAGE IMPROVEMENTS
ENGINEER'S OPINION OF CONSTRUCTION COST**

ITEM NO.	DESCRIPTION	QTY.	UNIT	UNIT PRICE	TOTAL PRICE
A.	PRELIMINARY ITEMS				
1	Mobilization	1	LS	\$10,000.00	\$10,000.00
2	Pre-Construction Video	1	LS	\$3,500.00	\$3,500.00
3	Hand Locate and Expose Existing Utilities	1	LS	\$6,000.00	\$6,000.00
4	Erosion Control / NPDES Permit Requirements	1	LS	\$7,500.00	\$7,500.00
5	Clearing and Grubbing	1	LS	\$40,000.00	\$40,000.00
6	Excavation, Embankment, and Grading	1	LS	\$80,000.00	\$80,000.00
	<i>Subtotal</i>				\$147,000.00
B	DRAINAGE				
1	Construct Drainage Structures / Incidentals				
	a) Type 'E' Inlet	20	EA	\$4,500.00	\$90,000.00
	b) Junction Box	4	EA	\$2,050.00	\$8,200.00
	c) Riprap - Sand Cement Endwalls	25	CY	\$150.00	\$3,750.00
2	Construct Drainage Pipe				
	a) 15" RCP	730	LF	\$32.00	\$23,360.00
	b) 14" X 23" ERCP	1,450	LF	\$55.00	\$79,750.00
	c) 19" X 30" ERCP	580	LF	\$136.00	\$78,880.00
	d) 29" X 45" ERCP	1,070	LF	\$165.00	\$176,550.00
	<i>Subtotal</i>				\$460,490.00
C	RESTORATION/MISCELLANEOUS				
1	Open Cut and Repair	550	SY	\$26.00	\$14,300.00
3	Concrete Driveways (6" Thick Fiber Reinforced)	150	SY	\$50.00	\$7,500.00
4	Furnish & Install Sod				
	a) Bahia	7,500	SY	\$3.00	\$22,500.00
	b) Staked Bahia	2,500	SY	\$5.00	\$12,500.00
	c) St. Augustine	2,000	SY	\$5.00	\$10,000.00
5	Temporary 4" Thick (RAP) Recycled Asphalt Pavement (where directed by Engineer)	100	SY	\$20.00	\$2,000.00
6	Shell Roads (8") (where directed by Engineer)	100	SY	\$25.00	\$2,500.00
7	Maintenance of Traffic	1	LS	\$18,000.00	\$18,000.00
8	Compliance with Florida "Trench Safety Act"	1	LS	\$5,000.00	\$5,000.00
9	"Record" Drawing Preparation	1	LS	\$15,000.00	\$15,000.00
10	Administrative Items	1	LS	\$5,000.00	\$1,000.00
	<i>Subtotal</i>				\$110,300.00
	<i>Total of Subtotals A thru C</i>				\$717,790.00
	<i>Contingency (10%)</i>				\$71,779.00
	TOTAL ESTIMATED CONSTRUCTION COST				\$789,569.00

- Notes: 1. Costs are based on most recent historical cost from local projects and FDOT Statewide Averages
2. QLH does not guarantee this estimate as there are numerous factors that could effect actual bid costs.



CITY OF PORT ORANGE PIGGYBACK AGREEMENT

This Piggyback Agreement is entered to this ____ day of _____, 2015, by and between the **CITY OF PORT ORANGE**, a Florida municipal whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **QUENTIN L. HAMPTON ASSOCIATES, INC.** ("Contractor"), a Florida corporation whose principal address is 4401 Eastport Parkway, Port Orange, Florida (collectively "the Parties").

WHEREAS, on the 27th day of June, 2014, the County of Volusia ("County"), a body corporate and politic and a political subdivision of the State of Florida, entered into Contract No. 14-SQ-55KW a contract for consulting services for stormwater & environmental engineering with Quentin L. Hampton & Associates, Inc. with an effective date of June 27, 2014, for a term of three (3) years (the "Volusia County Agreement"). The Volusia County Agreement may be renewed by the County if the County determines the renewal is in the best interest of the County; and

WHEREAS, by entering into this Piggyback Agreement, Contractor agrees to honor the terms of the Volusia County Agreement for consulting services for stormwater & environmental engineering with the City of Port Orange; and

WHEREAS, a copy of the Volusia County Agreement is available in the Office of the City Clerk, City Hall, 1000 City Center, Port Orange, Florida 32129; and

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

For good and valuable consideration, conditions and promises, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Term. The term of this Contract shall commence on the last date this Contract is signed by the Parties and shall continue for 180 days from the Notice to Proceed (the "Initial Term").
2. Renewals: This Contract may be renewed upon written agreement of the Parties.
3. Contractor Obligation. Contractor shall perform consulting services for stormwater & environmental engineering, more specifically described in Exhibit "1", attached hereto.
4. Authorization for Services. This Contract standing alone does not authorize the performance of any work or services to be provided by the Contractor 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 Purchase Order issued and executed by the City. The City reserves the right to contract with other parties for the services contemplated by this Contract, as determined in the City's sole and absolute discretion.
5. City Obligations. The City agrees to compensate Contractor at the unit costs set forth in Exhibit "1" of this Contract in an amount subject to a limit up to but not to exceed Forty-One Thousand One Hundred Ten and 00/100 Dollars (\$41,110.00) during 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. (The term "Fiscal Year" shall be defined as that one (1) year period commencing on October 1

and expiring on the following September 30). 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. Contract Administration. The Public Works Director, Branford Adumuah, shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

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

12. 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.

13. 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>	Coverage A - Statutory Coverage B - \$100,000	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
<u>Additional Coverage:</u>	All States (Broad Form) Voluntary Compensation	

Comprehensive General Liability (including Completed Operations and Contractual Liability)	<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>	Auto Liability Body Injury: \$100,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence.	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
<u>Additional Coverage:</u>		Non-Owned, Hired Car	
Property Insurance — Builders Risk.	<u>Limits:</u>	Buildings — Completed value of contract.	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.
<u>Additional Coverage:</u>		"All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	
Professional Liability (Errors & Omissions)	<u>Limits:</u>	Coverage- \$1,000,000 minimum	

14. 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.

15. 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. 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.

(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.

16. 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.

17. Inspection

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

(b) In 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. Controlling Law. **THIS CONTRACT 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.**

23. Additional Provisions

(a) As may have been outlined in the Volusia County Agreement 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.

(b) For the purposes of this Contract, any reference in the Volusia County Agreement to "County of Volusia", shall be construed to mean the "City of Port Orange."

(c) In the event of a conflict between the Volusia County Agreement and this Contract, this Contract with the City of Port Orange shall control.

24. 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.

25. 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: Branford Adumuah, Public Works Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

Contractor: Quentin L. Hampton Associates, Inc.
Attention: Brad T. Blais, P.E.
4401 Eastport Parkway
Port Orange, Florida 32127
(386) 761-6810 – Telephone
(386) 761-3977 – Facsimile

P.O. Drawer 290247
Port Orange, Florida 32129-0247

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.

26. 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.

27. 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]

Witnesses:

QUENTIN L. HAMPTON ASSOCIATES, INC.

Printed Name: _____

By: _____

Brad T. Blais, 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, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Brad T. Blais, as President of Quentin L. Hampton, Inc., a Florida corporation, and who:

[Notary: Please select one]

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

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Allen Green, Mayor

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Allen Green, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, 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:

[CA 4981]

CITY'S PROPOSED PROJECT SCHEDULE:

QLH will strive to complete the project according to the following schedule. Upon authorization

Survey	Completed
90% Design	30 days
Permit Application Submittal/ Review/Revisions	Per SJRWMD Schedule
Bidding	Per City Schedule
100% Design	15 days following receipt of all comments from Agencies

SCHEDULE OF PAYMENT AND FEE BASIS:

<i>Work Description</i>	<i>Fee</i>
Design/Permitting (Construction Cost x 4.7%)	\$37,110.00
Bidding Assistance	\$2,500.00
Permit Fee Allowances (SJRWMD \$500)	\$500.00
Printing (allowance)	\$1,000.00
TOTAL ESTIMATED ENGINEERING FEE	\$41,110.00

If sales tax becomes due on professional services the City shall reimburse QLH for any applicable sales tax cost.

"PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF QUENTIN L. HAMPTON ASSOCIATES, INC. MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE."

Prepared by:
QUENTIN L. HAMPTON ASSOCIATES, INC.
-Consulting Engineers-
February 11, 2015

**CITY OF PORT ORANGE
WHITE ACRES SUBDIVISION DRAINAGE IMPROVEMENTS
SCOPE OF SERVICES AND FEE ESTIMATE**

In accordance with the terms of the Continuing Engineering Services Agreement dated March 15, 1988 between the City of Port Orange, Florida (City) and Quentin L. Hampton Associates, Inc. (QLH) the following Scope of Services and Fee Estimate are agreed to by the parties of the Agreement:

SCOPE OF SERVICES: Provide design, permitting, and bidding assistance for the project as described below. Construction phase services will be addressed in a separate future work authorization.

BASIS OF DESIGN: For determining the scope of work and estimating the fees for such, the following assumptions have been made:

The work involves the placement of pipe in the existing ditches and construction of swales above the pipe for water quality treatment. The City has applied to St. John's River Water Management District (SJRWMD) for a Cost Share Grant to assist with funding on this project. The City will be more eligible for the grant dollars if the project is designed and permitted.

SCOPE OF WORK: Design deliverables will include 90% and 100% construction plans and specifications in accordance with SJRWMD, Volusia County and Port Orange requirements. QLH will prepare and submit application packages to SJRWMD for Environmental Resource Permit. QLH will respond to all reasonable RAI's. The City will be responsible for all permit application fees. An allowance is included for such in this fee estimate.

QLH will assist the City in bidding the project including drafting the legal advertisement, preparing City standard bidding documents, distributing bidding documents to bidders/plan rooms, addressing bidders' questions, attend pre-bid meeting, prepare and issue addenda as needed, attend bid opening, review bids, prepare certified bid tabulation, review low bidder's qualifications, provide recommendation of award letter and attend City Council meeting for bid award.

Construction phase assistance will be addressed in a future proposal

ESTIMATED PROJECT COST: \$789,569

**CITY OF PORT ORANGE
WHITE ACRES SUBDIVISION DRAINAGE IMPROVEMENTS
ENGINEER'S OPINION OF CONSTRUCTION COST**

ITEM NO.	DESCRIPTION	QTY.	UNIT	UNIT PRICE	TOTAL PRICE
A.	PRELIMINARY ITEMS				
1	Mobilization	1	LS	\$10,000.00	\$10,000.00
2	Pre-Construction Video	1	LS	\$3,500.00	\$3,500.00
3	Hand Locate and Expose Existing Utilities	1	LS	\$6,000.00	\$6,000.00
4	Erosion Control / NPDES Permit Requirements	1	LS	\$7,500.00	\$7,500.00
5	Clearing and Grubbing	1	LS	\$40,000.00	\$40,000.00
6	Excavation, Embankment, and Grading	1	LS	\$80,000.00	\$80,000.00
	Subtotal				\$147,000.00
B	DRAINAGE				
1	Construct Drainage Structures / Incidentals				
	a) Type 'E' Inlet	20	EA	\$4,500.00	\$90,000.00
	b) Junction Box	4	EA	\$2,050.00	\$8,200.00
	c) Riprap - Sand Cement Endwalls	25	CY	\$150.00	\$3,750.00
2	Construct Drainage Pipe				
	a) 15" RCP	730	LF	\$32.00	\$23,360.00
	b) 14" X 23" ERCP	1,450	LF	\$55.00	\$79,750.00
	c) 19" X 30" ERCP	580	LF	\$136.00	\$78,880.00
	d) 29" X 45" ERCP	1,070	LF	\$165.00	\$176,550.00
	Subtotal				\$460,490.00
C	RESTORATION/MISCELLANEOUS				
1	Open Cut and Repair	550	SY	\$26.00	\$14,300.00
3	Concrete Driveways (6" Thick Fiber Reinforced)	150	SY	\$50.00	\$7,500.00
4	Furnish & Install Sod				
	a) Bahia	7,500	SY	\$3.00	\$22,500.00
	b) Staked Bahia	2,500	SY	\$5.00	\$12,500.00
	c) St. Augustine	2,000	SY	\$5.00	\$10,000.00
5	Temporary 4" Thick (RAP) Recycled Asphalt Pavement (where directed by Engineer)	100	SY	\$20.00	\$2,000.00
6	Shell Roads (8") (where directed by Engineer)	100	SY	\$25.00	\$2,500.00
7	Maintenance of Traffic	1	LS	\$18,000.00	\$18,000.00
8	Compliance with Florida "Trench Safety Act"	1	LS	\$5,000.00	\$5,000.00
9	"Record" Drawing Preparation	1	LS	\$15,000.00	\$15,000.00
10	Administrative Items	1	LS	\$5,000.00	\$1,000.00
	Subtotal				\$110,300.00
	Total of Subtotals A thru C				\$717,790.00
	Contingency (10%)				\$71,779.00
	TOTAL ESTIMATED CONSTRUCTION COST				\$789,569.00

Notes: 1. Costs are based on most recent historical cost from local projects and FDOT Statewide Averages
2. QLH does not guarantee this estimate as there are numerous factors that could effect actual bid costs.

Prepared by
QUENTIN L HAMPTON ASSOCIATES, INC
Consulting Engineers

EXHIBIT "1"



FINANCIAL AND ADMINISTRATIVE SERVICES

Purchasing and Contracts

123 West Indiana Avenue • Room 302 • DeLand, FL 32720-4608

(386) 736-5935 • Fax (386) 736-5972

e-mail: purchasing@co.volusia.fl.us

www.volusia.org

July 7, 2014

PR-L-14-365

Mr. Brad Blais
Quentin L. Hampton Associates, Inc.
4401 Eastport Parkway
Port Orange, Florida 32127

RE: **Stormwater & Environmental Engineering**
RSQ # 14-SQ-55KW

Dear Mr. Blais:

Attached please find the executed contract document for the above-named project as approved by County Council on June 19, 2014.

If you need any further information or assistance, please contact our office at 386-626-6625 or kwilliams@volusia.org.

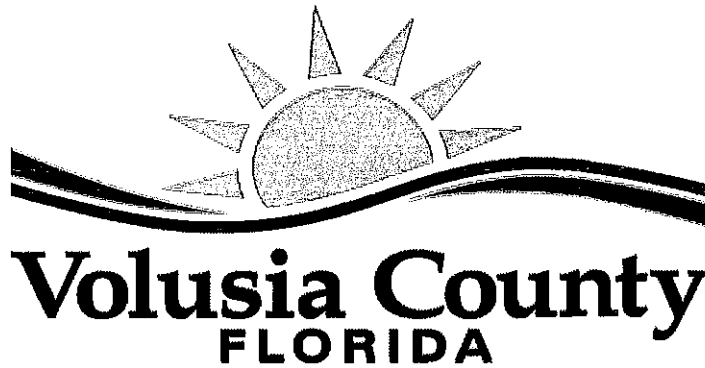
Sincerely,

Kathy Williams

Kathy Williams, MBA, CPPB
Procurement Analyst II

Enclosures

c: Judy Grim, Solid Waste
File



**CONTRACT FOR CONSULTING SERVICES
FOR
STORMWATER & ENVIRONMENTAL
ENGINEERING**

Between

THE COUNTY OF VOLUSIA

AND

QUENTIN L. HAMPTON & ASSOCIATES, INC

Contract No. 14-SQ-55KW

County of Volusia
Purchasing and Contracts Division
123 West Indiana Avenue, Room 302
Deland, Florida 32720-4608
www.volusia.org/purchasing

CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

This Contract made and entered by and between Quentin L. Hampton & Associates, Inc., duly authorized to conduct business in the State of Florida, whose principal place of business is located at 4401 Eastport Parkway, Port Orange, Florida, 32127 (hereinafter the "Consultant") and County of Volusia, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 (hereinafter "County").

RECITALS:

WHEREAS, the County requires a competent and qualified consultant to provide professional services in support of the County's operations; and

WHEREAS, the County has requested and received expressions of interest for the retention of services of consultants; and

WHEREAS, the County has determined that the Consultant is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual; and

WHEREAS, the County has determined pursuant to Florida Statutes 287.055 (a/k/a "Consultant's Competition Negotiation Act") and 337.105 that the Consultant is competent and qualified to furnish said services stated hereunder to the County and Consultant desires to provide professional services according to the terms and conditions hereunder, and

WHEREAS, it has been determined that the execution of this Contract is beneficial to the people of County of Volusia, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Contract, the receipt and sufficiency of which is acknowledged by the Consultant and County, the parties agree and stipulate as follows:

1. DEFINITIONS.

- 1.1. **Addendum:** A written explanation, interpretation, change, correction, addition, deletion, or modification of equal dignity herewith affecting the contract documents including drawing and specifications prepared by the Consultant, approved and issued by the County and/or distributed to third parties.
- 1.2. **Affidavit:** The instrument which is to be signed by the Contractor and submitted to the County upon the County's request through the Project Manager, upon completion of the job, showing that all bills have been paid. It shall also mean such instrument that may be requested by the County incidental to partial payments.
- 1.3. **Agency:** The state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under Sections 380.06 or 163.3220-163.3243 of the Florida Statutes.
- 1.4. **Amendment:** An amendment to an approved Task Assignment or this Contract in writing by the County, approved by the Director of Purchasing and Contracts, and signed by the County of equal dignity herewith authorizing an addition, deletion, or revision in the scope of work, or an adjustment in the Task Assignment price or the time for completion that is issued after execution

of the task assignment.

- 1.5. **Application for Progress Payment:** The current estimate form furnished and certified by the Consultant, which is to be used by Contractor in requesting progress payments.
- 1.6. **Architect:** A person or firm that is authorized to practice architecture pursuant to Florida Statute 481.299 or a general contractor who provides architectural services under a design-build contract authorized by F.S. 481.299(3).
- 1.7. **Architect/Engineer:** The design professional identified in the contract documents and who is licensed and registered in the State of Florida. The terms "Architect" and "Architect/Engineer (A/E)" means the architect/engineer or its authorized representative.
- 1.8. **Basic Contract:** This Contract between the County and the Consultant covering the services requested from a formal solicitation. Authorization for performance of services under the basic Contract shall be in the form of a written Task Assignment (see Task Assignment).
- 1.9. **Bid Documents:** The official forms on which the County requires formal bids to be prepared and submitted by the bidder.
- 1.10. **Calendar day:** Any day, including Saturdays, Sundays, and holidays, regardless of weather conditions.
- 1.11. **Change Order:** A written order to the Contractor signed by the County authorizing an addition, deletion, or revision in the work, or an adjustment in the contract price or time.
- 1.12. **Compensation:** The amount paid by the County to Consultant for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated which includes the total monies payable to the Consultant under a Task Assignment which includes all services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Task Assignment.
- 1.13. **Completion Date:** The date that the County or its designated representative approves and accepts all Work or Services for a Scope of Work in a Task Assignment or this Contract.
- 1.14. **Consultant:** The person or entity qualified to perform work under this Contract and any Task Assignment related thereto. In addition, Consultant must be a professional engineer or engineering firm, including an architect (or registered landscape architect, surveyor and mapper, professional engineer, architect or registered landscape architect providing professional services within the meaning of Section 287.055, F.S., who is registered in the State of Florida. In addition, the Consultant may be the Engineer or Architect or Landscape Architect of record or may provide services through and be subcontracted to the Engineer of record.
- 1.15. **Continuing contract:** A contract for professional services entered into in accordance with all the procedures of Section 287.055, F.S. between the County and a firm whereby the firm provides professional services to the County for projects for work of a specified nature as outlined in a this Contract and its associated Task Assignments as required by the County, with no time limitation except one governed by the termination provisions of this Contract and a Task Assignment.
- 1.16. **Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Contract.

- 1.17. **Contractor:** The person or entity qualified to perform work pursuant to Florida 489.105, F.S. under the Project and who is registered and licensed under the Florida Department of Business and Professional Regulation and in compliance with local laws or ordinances, other than a materialman or laborer, who enters into a contract with the County for improving real property in accordance with the Contract Documents.
- 1.18. **Contract Documents:** Contract documents shall include but are not limited to the following:
- (1) This Contract ("Basic Contract") and Exhibits;
 - (2) Task Assignments;
 - (3) Performance and payment bonds (if applicable);
 - (4) Letters of credit (*if applicable*);
 - (5) Certificates of insurance;
 - (6) Notice of Award and/or Notice to Proceed;
 - (7) The conditions of this Contract (general, special, supplementary, and other);
 - (8) Drawings;
 - (9) Project specifications;
 - (10) Written interpretations;
 - (11) Change orders;
 - (12) Project manuals;
 - (13) Addenda (including RSQs, RFPs and Consultant's responses to RFPs) issued before the execution of this Contract; and,
 - (14) Any valid modifications or Amendments to this Contract or Task Assignments issued after its execution of this Contract, and any Amendments to the foregoing.
- 1.19. **County Representative:** Also known as the Owner's representative who is the County Engineer or person designated by the County to review, approve and make decisions regarding the scope of work.
- 1.20. **County:** The County of Volusia, Florida, a political subdivision of the State of Florida for whom the work is to be performed.
- 1.21. **Deliverable:** The result(s) or end products or services of a Project or Task Assignment that meet the defined design or construction specifications, and functional parameters articulated in the Scope of Work for this Contract and a Task Assignment which, e.g., include but are not limited to: design drawings\specifications, structures, equipment, machinery, studies, reports, written documentation, training, systems or processes.
- 1.22. **Design criteria package:** Concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the Project.
- 1.23. **Design criteria professional:** A firm who holds a current certificate of registration under Chapter 481, F.S., to practice architecture or landscape architecture or a firm who holds a current certificate as a registered Engineer under Chapter 471, F.S., to practice engineering and who is employed by or under contract to the agency for the providing of professional Architect services,

Landscape Architect services, or Engineering services in connection with the preparation of the design criteria package.

- 1.24. **Drawings/Plans:** The official approved drawings or plans or exact reproductions thereof, which have been prepared, signed, sealed and dated by the Consultant, which shows the location, character, dimensions and details of the work to be done and which are considered part of the Contract Documents.
- 1.25. **Effective Date:** The date that this Contract, a Task Assignment, Addendum, Amendment, Modification is fully executed by Consultant and the County.
- 1.26. **Engineer:** The person, firm, or corporation named as such in the contract and/or authorized by the County to act as the County's representative or the County construction engineer authorized to practice engineering services pursuant to Florida Statute 471.03(2)(i)(2006) and who may serve as the County's engineers of construction, engineering and inspection. The term Engineer shall be synonymous with design architect/engineer or Architect/Engineer or Consultant.
- 1.27. **Engineer of Record:** The professional Engineer or engineering firm contracted or employed by the County and registered in the State of Florida who develops criteria and concept for the work, performs the analysis and is responsible for the preparation of the plans and specifications. The engineer of record may be County in-house staff or a Consultant retained by the County.
- 1.28. **Field Order:** A written instrument issued by the Consultant to the Contractor, which clarifies or interprets the drawings and technical specifications, and/or orders minor variations in the work, as opposed to a change in the work, and which does not involve an adjustment in contract price or time.
- 1.29. **Final Certificate of Payment:** A certificate for payment which shall constitute a representation of the Consultant to the County that the quantity of the work has been performed in accordance with the Contract Documents. The Consultant shall obtain from the Contractor(s) periodic waiver of liens and "no lien affidavits" at each payment
- 1.30. **Final Completion:** That date when (a) the Work is complete in accordance with the Contract Documents including the minor items identified during the final inspection, and (b) the Contractor has submitted its request for final payment including the Contractor's release and all Subcontractor affidavits.
- 1.31. **Firm:** Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.
- 1.32. **Inspector or Field Representative:** County Employee or an authorized representative of the Consultant assigned to make inspections of the work performed and materials furnished by the contractor.
- 1.33. **Modification:** A written Amendment to the Contract Documents approved by the County which includes but is not limited to the following:
 - 1.33.1. **Change Order:** A written order to the Contractor signed by the County authorizing an addition, deletion, revision in the Work, or an adjustment in the construction contract price or time issued after execution of the contract.
 - 1.33.2. **Field Order:** A written clarification, interpretation, minor change or alteration issued by the Consultant.

- 1.33.3. **Addenda:** A document written by the Consultant and approved by the County that is added to the original Contract Documents to clarify, revise, add to, or delete from the original Contract Documents or previous addenda. The document includes a written clarification or interpretation prepared by the Consultant.
- 1.34. **Notice of Award:** A written notice by County that the Consultant has been determined by a selection committee to be highly qualified and approved for an award of a contract.
- 1.35. **Notice to Proceed:** The official letter from the County to the Consultant establishing a date on which the Task Assignment will commence.
- 1.36. **Original Expiration Date:** The date that this Contract was originally intended to expire excluding any extensions or renewals of this Contract for a time certain.
- 1.37. **Owner:** The owner is Volusia County for whom all Work or Services under this Contract and any Task Assignment related thereto are performed by the Consultant.
- 1.38. **Pre-task Assignment/Conference:** The meeting scheduled by the County Project Manager of all the parties involved with the planning and execution of the Task Assignment(s).
- 1.39. **Professional Services:** 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.
- 1.40. **Project:** A fixed capital outlay study or planning activity described in the public notice of the County which includes the entire Scope of Work including the Scope of Work in any Task Assignment that shall be performed in accordance with the Contract Documents. A Project may include:
- 1.40.1. A grouping of minor construction, rehabilitation, or renovation activities.
- 1.40.2. A grouping of substantially similar construction, rehabilitation, or renovation activities.
- 1.41. **Project Manager or County Project Manager:** The County employee who is assigned to the Project and is responsible for the day-to-day administration and coordination of the Project for the County. The County may change the Project Manager at any time by providing notice to the Consultant and/or Contractor.
- 1.42. **Proposal:** The document submitted by the Consultant in response to a formal solicitation used to determine if the Consultant is highly qualified.
- 1.43. **Request for Information (RFI):** A prospective bidders' or Consultants' inquiries for information.
- 1.44. **Request for Statement of Qualifications (RSQ):** An invitation process initiated and used by the County to select contractor(s) or consultant(s) to perform work or provide services in a prospective project(s) based upon their apparent qualifications as submitted by them (respondents) in response to the invitation.
- 1.45. **Scope of Services/Work:** The general services/work, herein defined in this Contract, as well as the scope of work in a Task Assignment including responsibility for performing and complying

with all incidental matters pertaining thereto, as set out in the Task Assignment.

- 1.46. **Services:** Those services are the Professional Services of work or tasks as defined in Section 287.055, F.S. to be performed by the Consultant as provided for under this Contract and any Task Assignment which shall be performed by a duly licensed professional Engineer or Engineering firm, Architect or Architectural firm, Landscape Architect or Landscape Architectural firm, Surveyor, and/or Mapper who is registered in the State of Florida.
- 1.47. **Shop Drawings:** All diagrams, illustrations, brochures, schedules, and/or other data which are prepared by Contractor or Consultant, a subcontractor, manufacturer, supplier, distributor, or other person on behalf of the contractor, and which illustrate the equipment, material, or some portion of the work.
- 1.48. **Specifications:** The document that establishes the material and performance requirements of goods and services.
- 1.49. **State:** State of Florida.
- 1.50. **Subconsultant:** A person other than a materialman or laborer who enters into a contract with a Consultant for the performance of any part of the Basic Contract.
- 1.51. **Sub-subconsultant:** A person other than a materialman or laborer who enters into a contract with a sub-consultant for the performance of any part of such sub-consultant's contract.
- 1.52. **Substantial Completion:** The date as certified by the County's Project Manager when the Task Assignment or Project or a specified part as agreed to in writing by the parties is sufficiently completed to the satisfaction of County or its designated representative, in accordance with the Contract Documents, so that the project or specified part can be utilized for the purposes for which it was intended; or if there be no such certification, the date when final payment is due in accordance with the applicable Task Assignment.
- 1.53. **Task Assignment:** Specific, detailed services or work placed against an awarded and established continuing services Contract memorialized as an Amendment to this Contract by the parties prior to the commencement of such Work or Services by the Consultant.
- 1.54. **Work:** Any and all obligations, Services, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by Consultant under the Contract Documents, including the furnishing of all labor, materials, equipment and other incident.

- 2. **ORDER OF PRECEDENCE.** In the event of any inconsistency between this Contract and a Task Assignment and its attached documents or exhibits regarding the Scope of Work and the amount of Compensation paid to a Consultant, the Task Assignment and its attached documents or exhibits shall be controlling. For all other inconsistencies between this Contract and a Task Assignment and its attached documents or exhibits, this Contract shall be controlling.

3. SCOPE OF WORK.

- 3.1. **General Scope of Services.** The following general Scope of Services shall be governed by Section 3.2 of this Contract. The Consultant shall provide services under this Contract in accordance with the Scope of Services set forth in Exhibit "B".
 - 3.1.1. Provide all certifications ("Engineer of Record"), calculations, drawings, and any other documents required for special permits and authorizations from various government

bodies or agencies having jurisdiction over the project except for those permits that the County is responsible to provide to the consultant such as environmental surveys/permits, wetland identification surveys, traffic impact studies, property surveys, geotechnical studies/reports and quality control testing;

- 3.1.2. Prepare a time scaled diagram (Design Schedule) showing the proposed dates of completion of various design phases and scheduled completion of working drawings and technical specification manuals; submit the design schedule for County Project Manager's review and approval;
- 3.1.3. Obtain at least three quotes from subcontractors if any part of the Task Assignment requires a subcontractor to perform the Work;
- 3.1.4. Evaluate proposals furnished by the Contractor or a construction management firm, if requested by the County. Cooperate with and facilitate the performance of duties of a construction manager, if so required by the County;
- 3.1.5. The Work or Services to be rendered by the Consultant shall be commenced, as specified in the Task Assignments as may be issued hereunder, and shall be completed within the time specified therein;
- 3.1.6. If specified in a Task Assignment, furnish consultation and advice during the construction of a project and perform construction administration or commissioning services;
- 3.1.7. Furnish all other architectural/engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in the Task Assignment:
 - 3.1.7.1. **Investigation Phase.** Consultant shall visit the project site, initiate and hold project meetings as may be necessary to develop the design and preliminary sketches of the contemplated project. The Task Assignment shall specify the required number of visits necessary for the Consultant to design/develop construction plans and technical specification. The Consultant shall confer with the project manager to ascertain the number of site/project meetings. The number of site visits and/or project meetings shall depend upon the complexity of the project.
 - 3.1.7.2. **Design/Construction Plans and Specification.** Consultant shall submit design development documents and estimates of the approved design to the County for review. Each plan package and its component parts shall be prepared in accordance with the Task Assignment. The plans shall be of sufficient detail indicating floor plan layout, elevations, outline specifications, to illustrate the size and character of the entire project in its essentials as to kinds of material, type of structure, mechanical and electrical systems (if applicable), site work, and such other work as may be necessary for a completely functioning project. Consultant shall submit a cost estimate, if requested, or opinion estimate for this phase of the work for review and approval by the County. The estimate shall include, as required for the project, the identification of costs for heating, ventilation, plumbing, air conditioning, electrical lighting and power.
 - 3.1.7.3. Notwithstanding, Section 3.1.7.2, Consultant shall submit a cost estimate, if requested, or opinion estimates during each phase of the work. Estimates shall be submitted between 30, 60, and 90 percent, and again at the 100 percent stage of completion or as specified in the Task Assignment. Each estimate will

be utilized to review the Scope as may be necessary to complete the project within the construction budget. In the event that the project construction cost estimate exceeds the construction budget as set forth above, consultant shall, after review and upon written request of the County at Consultant's direct labor rates, pursuant to 3.2.6.1, continue to revise any or all of the project design, drawings, specifications, and estimates in a manner satisfactory to the County, until the revised estimate conforms to the County's budget. Consultant shall submit to the County for review the required number of sets of the contract plans, the latest cost estimate, and complete specification books as specified in the Task Assignment.

- 3.1.7.4. Each 100% final construction plan package shall be accurate, legible, complete in design, and suitable for public bidding purposes. Construction drawings shall meet the following minimum plans and design documentation packaging requirements:

- 3.1.7.4.1. Cover/Key Sheet
- 3.1.7.4.2. Summary of Pay Items, if applicable
- 3.1.7.4.3. Reference Points, if applicable
- 3.1.7.4.4. Typical Sections
- 3.1.7.4.5. Miscellaneous Detail Sheet

- 3.1.7.5. Consultant shall also prepare final construction drawings and technical specifications suitable for inclusion in a County prepared bidding package. The construction documents shall be prepared at the drawing scales specified in the Task Assignment for the development of the following elements:

- 3.1.7.5.1. Statement of probable costs of the project
- 3.1.7.5.2. Layout/site plan
- 3.1.7.5.3. Grading and drainage plans
- 3.1.7.5.4. Technical specifications that define materials appropriate for construction

- 3.1.7.6. Following the approval of design development documents and estimates of cost by the County, Consultant shall prepare construction Contract Documents that include plans, suitable for reproduction for the project in complete detail as per the Task Assignment.

- 3.1.7.7. **Completed Plans, Specifications, Documents, and Cost Estimate.** Upon completion and final approval by the County of the plans, specifications, other Contract Documents, and detailed construction cost estimates and/or opinion estimate of construction cost per task assignment, Consultant shall deliver to the County in the medium and number of copies specified in the Task Assignment the following:

- 3.1.7.7.1. Any data or field notes obtained pertaining to the project, including data and field notes obtained from additional surveys;
- 3.1.7.7.2. Complete final approved original tracings or electronic files of contract plans;
- 3.1.7.7.3. Typed masters or electronic files of Contract Documents, other than plans, suitable for reproduction on 8" x 11" paper; and

3.1.7.7.4. The last cost or opinion estimate of the construction cost in detail for approval by the County.

3.1.7.8. **Permitting Phase Services.** If required in the Task Assignment, Consultant shall be responsible for applying and assisting the County in securing all applicable permits; for preliminary coordination with the County and other appropriate regulatory agencies so that the design efforts are properly directed towards permit approval; for preparing and submitting permit packages based on preliminary coordination with the County; and for other appropriate regulatory agency requirements under the County's name at the time of submittal. Consultant shall include in the permit packages the site and system design information required by the County and other regulatory agencies, applicable sketches and calculations. Consultant shall respond to the requests of the County and other regulatory agencies concerning the submitted information; report to the County any requests for information not required at the time of permit submittal, as made known during the preliminary coordination; reproductions in excess of requirements; or regulation changes requiring permit resubmission. County shall be responsible for the permitting fees. The County, however, will not pay a fee to the Consultant when the Consultant is required to resubmit a permit package to a regulatory agency so as to address deficiencies, omissions, or corrections to the original permit package that are not attributable to changes in rules made by the regulatory agency after submission of the original permit package. Consultant shall attend the appropriate number of office and field meetings necessary for the preliminary coordination as set forth in a Task Assignment.

3.1.7.9. **Bidding Phase.** Consultant shall attend the pre-bid conference meeting at the location selected by the County. Consultant shall answer questions, as applicable, and take minutes as necessary for a written response; provide plan and specification clarification and prepare addenda to be issued by the County; review and evaluate bid packages from each respondent; and summarize in writing his/her recommendation based on the definition of responsive and responsible as defined in the Contract Documents.

3.1.7.10. **Construction Phase Services.** Consultant shall visit the project site, including attending job construction meetings, during construction to monitor the progress, quality of the work, and that the work is proceeding in accordance with the construction Contract Documents. During such visits, Consultant shall make reasonable efforts to protect the County against defects and deficiencies in the work of the contractors by informing the County Representative the work does not, in their opinion, conform to the Contract Documents. Consultant shall keep the County informed of the progress and quality of the work by submitting a written report of each visit. As part of the site visits, if required for the project, the Consultant's mechanical and electrical engineers shall also visit the project site and attend job construction meetings as requested to determine if the mechanical and electrical work is proceeding in accordance with the construction Contract Documents. Task Assignment shall specify the required number of visits necessary for the Consultant to monitor the progress and quality of work. Consultant shall perform the following tasks, including, but not limited to, assisting the County during the construction to verify that the project is completed in general conformance with the construction Contract Documents.

3.1.7.10.1. **Preconstruction Conference:** Consultant shall prepare the agenda,

if requested; attend the County's preconstruction conference meeting; prepare and submit notes of the meeting.

3.1.7.10.2. **Design Clarification Responses:** Consultant shall provide technical interpretation of the plans/drawings, specifications, and Contract Documents; evaluate requested deviation from the approved design or specification; and review and respond to requests for information (RFI) from the Contractor. Consultant shall prepare supplementary sketches as may be necessary for clarification of construction plans and assist in resolving actual field conditions encountered.

3.1.7.10.3. **Site Visits:** Consultant shall visit the job site to monitor the progress and quality of the work and determine, in general, if the work is proceeding in accordance with the intent of the Contract Documents including site visits for both substantial and final completion for each project. The Consultant shall route all job correspondence to the Contractors through County.

3.1.7.10.4. **Pay Request Review:** Consultant shall determine based on the observations and surveillance, as set forth above and on the evaluation of the Contractor's progress payment requests, the amount owed to the Contractor(s) and transmit the Contractor's payment requests to the County with recommendation for payment in accordance with the terms and conditions of the Contract Documents. The Consultant shall conduct visits to the project as necessary to determine the dates of Substantial and Final Completion and shall issue to the County a Final Certificate of Payment. Such certificate for payment shall constitute a representation of the Consultant to the County that the quantity of the work has been performed in accordance with the Contract Documents. The Consultant shall obtain from the Contractor(s) periodic waiver of liens and "no lien affidavits" at each payment. Additionally, at completion of the project, Consultant shall obtain from the Contractor(s) final waiver of lien, final "no lien affidavits," and final affidavit of release of liens prior to certification of Final Payment.

3.1.7.10.5. **"As-Built":** The Consultant shall prepare record drawings by reviewing and considering information or drawings provided by the contractor; revise original design drawings of the project and submit to the County hardcopy and an electronic file of the record drawing using information supplied by Contractor.

3.1.7.10.6. **Shop Drawing Review:** The Consultant shall review shop drawings and other data that the Contractor is required to submit. Consultant shall examine for compliance with design concept and recommend to County, approval or rejection of shop drawings and of material and equipment submitted as qualified for use in the project, based on literature and samples supplied by the Contractor through the County. Consultant shall submit to the County original drawings that will reflect all amendments to the Contract Documents. Consultant shall prepare any necessary change orders and assemble written guarantees required of the Contractors.

3.1.7.10.7. **Project Close-Out:** The Consultant shall make final review of construction to determine if work was completed in general conformance of the construction contract documents; assist in the preparation of final "punch list" when the project is substantially completed; assist in negotiating the final payment for construction; and submit a final letter report upon which final settlement and contract closeout can be based. If required, prepare and submit to Florida Department of Environmental Protection (FDEP) or Department of Health for approval, the FDEP certificate of completion of construction for both water and sewer.

3.1.7.11 **Deliverables.** Submit final design plans and support documents to the County for review and approval at specified junctures in the medium and number of copies specified in the Task Assignment. If required in the Task Assignment, each plan set submitted shall have the percentage completed for those submittals clearly indicated on the first sheet of each set of plans.

3.2. **Performance Criteria:**

- 3.2.1. All Work or Services shall be performed in accordance with the Contract Documents and shall be approved by the County in writing prior to commencing any Work or Service(s) described herein or in a Task Assignment.
- 3.2.2. This Contract standing alone does not authorize the performance of any Work or Services to be provided by the Consultant or require the County to place any orders for Work or a Service. Authorization for performance of professional services by the Consultant under this Contract shall be in the form of written Task Assignments issued and executed by the County and signed by the Consultant. A sample Task Assignment is attached hereto as Exhibit "A". Each Task Assignment shall describe the Services required, state the dates for commencement and completion of the Work, and establish the amount and method of payment.
- 3.2.3. Notwithstanding the General Scope of Work and Services provision in Section 3.1., the Scope of Work for a Project shall be set forth with specificity and describe in detail all specifications, plan requirements, deliverables, additional performance criteria, maximum not-to-exceed compensation, the commencement and completion dates, materials, equipment, testing and any other item or criteria required to complete the Work or Services in the Task Assignment. Each Task Assignment shall relate to the General Scope of Work and Services in Section 3.1 and shall supplement this Contract and be made a part thereof.
- 3.2.4. All materials and labor necessary to complete a Task Assignment shall be furnished by the Consultant unless the Contract Documents state otherwise. Said materials shall be of good quality and as specified in the Contract Documents; and all work and labor will be performed, pursuant to Section 7.3.5, to the satisfaction of the County.
- 3.2.5. The Consultant shall provide the services required herein strictly in an independent contractor relationship with the County and, except as expressly set forth herein, is not, nor shall be, construed to be an agent or employee of the County. For each purpose related to this Contract and each Task Assignment, Consultant and contractors, subcontractors or subconsultants shall be independent contractors with respect to the County and nothing herein shall create any association, partnership, joint venture or agency relationship between them. The County shall not provide vehicles or equipment

to the Consultant to perform the duties required by a Task Assignment under this Contract nor will the County pay for any business, travel, office or training expense or any other contract performance expense not specifically set forth in the scope of services of a Task Assignment. The Consultant is not exclusively bound to the County and may provide service to other private and public entities as long as the service by the Consultant for such entities does not conflict with the Consultant's services to the County in any Task Assignment.

- 3.2.6. As applicable to each Project performed by the Consultant during the term of this Contract or Task Assignment, the County may at any time, by written order, make changes within the general scope of a Task Assignment and the Work and/or Services to be performed through Amendments to the Task Assignment. Except as provided in this Contract otherwise, if any such change causes an increase or decrease in the Consultant's cost of, or the time required for performance of, the Project Work or Services, an equitable adjustment shall be made and this Contract shall be amended through the Amendment of the Task Assignment in writing stating the equitable adjustment prior to the commencement of Work covered by the equitable adjustment. Any claim by the Consultant for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change unless the County grants in writing an additional period of time before the completion of the Contract; otherwise, the claim shall be deemed waived. The Consultant shall proceed with the prosecution of the Work or Service as changed. Except as otherwise provided in this Contract, no charge for any extra work or materials shall be allowed or approved by the County.

- 3.2.6.1. **Changes to Scope of Work.** Either party may propose changes to the scope or time schedule of the Work or Services under a Task Assignment which shall be submitted to the other party in writing for consideration of feasibility and the likely effect on the cost and schedule for performance of the Work or Services. The parties shall mutually agree upon any proposed changes, including resulting equitable adjustments to costs and schedules for the performance of the Services. The agreed changes shall be documented in one (1) or more Amendments to the Task Assignment signed by the County and Consultant prior to the commencement of Work or Services covered by the equitable adjustment. If, despite good faith negotiations, the parties are unable to agree to the terms of an Amendment to a Task Assignment, the parties shall follow the dispute resolution process provided under Section 18.

- 3.2.7. **Time is of the Essence.** Time is of the essence for each Task Assignment issued under this Contract and all Projects performed in accordance herewith.

- 3.2.8. County and Consultant shall exhaust all methods to resolve issues, including but not limited to, the dispute resolution procedures in Section 18 of this Contract before any action is taken to declare the County or Consultant in default of this Contract.

4. TERM OF CONTRACT.

- 4.1. Subject to Section 4.2, the Term of this Contract shall commence on the Effective Date of this Contract or when it is fully executed by all parties and shall terminate three (3) years from the Effective Date. Except as provided in Section 4.2 the expiration of the term of a Task Assignment issued under this Contract shall have no effect upon this Contract. This Contract may be renewed by the County if the County determines that renewal is in the best interest of the County and satisfies the requirements of Section 287.055, F.S. Said renewal shall be in writing and made a part of this Contract and shall incorporate this Contract by reference.

- 4.2. All Task Assignments issued under this Contract shall terminate at the expiration of the term of the Task Assignment, unless amended in writing by the parties, or the term of this Contract, except if a Task Assignment issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion Date of said Task Assignment, including any Amendments thereto, and after all Work or Services under the Task Assignment have been approved and accepted by County's Project Manager. As such, the obligations entered therein by both parties under this Contract and said Task Assignment shall remain in full force and effect until completion of all Work or Services performed under this Contract and/or the Task Assignment.
- 4.3. The Work or Services to be rendered by the Consultant shall be commenced, as specified in the Task Assignments as may be issued hereunder, and shall be completed within the time specified therein.
- 4.4. No new or additional Task Assignments shall be issued after the Original Expiration Date of this Basic Contract. The extension of this Contract to coincide with the completion of an existing Task Assignment issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the County or the Consultant to enter into a new or additional Task Assignment after the original expiration date of this Contract, unless this Contract is renewed prior to entering into an Contract for a new or additional Task Assignment.

5. CONTRACT PRICE AND COMPENSATION.

- 5.1. For Work, Services, or each separate Project performed under a Task Assignment during the term of the Contract, the Consultant shall be paid Compensation for all Work or Services performed in a Task Assignment, including labor and materials on a "fixed fee," "time and materials", "cost-plus-a-fixed-fee" or "guaranteed maximum-not-to-exceed" basis as applicable in the Task Assignment. The Task Assignment shall state the method of Compensation.
 - 5.1.1. Regardless of the method of Compensation, e.g., "fixed fee", "time and materials", "cost-plus-a-fixed-fee" or "guaranteed maximum-not-to-exceed" basis, Compensation shall not be adjusted because of errors or omissions which are not the fault of the County in computing the Project or Task Assignment costs which result in an increase in the cost of the Task Assignment or because the time for completion varies from the original estimate, including completion or substantial completion of the Task Assignment prior to the scheduled or Contract or Task Assignment completion date or on account of County's election to furnish any of the Work or Services. In addition, Consultant shall certify in the Task Assignment that the original contract price or Compensation for a Project or Task Assignment and any additions thereto shall be adjusted to exclude any significant sums by which the County determines the contract price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
 - 5.1.2. **Reimbursable Expenses:** Subject to the County's Travel and Reimbursement Policy, Sections 112.061 (7) and (8), Florida Statutes, or their successor, reimbursable expenses include actual and verifiable expenditures without any mark-up made by the Consultant or Consultant's employees and/or agents that directly relate to the Task Assignment and to the expenses listed in the following subparagraphs:
 - 5.1.2.1. Expenses of transportation, when traveling is directly related to the Project and necessary, based on and in accordance with the Scope of Work of a Task Assignment;

- 5.1.2.2. Long distance calls and telegrams;
 - 5.1.2.3. Fees paid for securing approval of authorities having jurisdiction over the tasks of the Project or Task Assignment;
 - 5.1.2.4. Expenses of reproductions;
 - 5.1.2.5. Postage and handling of drawings and specifications;
 - 5.1.2.6. Any other expenses related to the Project; and
 - 5.1.2.7. If authorized in the Task Assignment, the cost of other expenditures made by the Consultant that relate directly to the Scope of Work in the Task Assignment.
- 5.1.3. **Truth-in-Negotiation Certificate.** For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or Compensation in a Task Assignment over \$150,000.00, Consultant shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation are accurate, complete, and current at the time of contracting. Any Professional Service contract or Task Assignment under which such a certificate is required must contain a provision that the original contract price or Compensation and any additions thereto will be adjusted to exclude any significant sums by which the County determines the contract price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or Compensation adjustments must be made within one (1) year following the end of the contract. Otherwise, such adjustments shall be deemed waived by the Consultant and null and void for the purposes of this Contract or the Task Assignment. The signature on this Contract by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
- 5.1.4. **Fixed Fee or Price & Guaranteed Maximum-Not-To-Exceed Compensation.** The total Fixed Fee or Price and Guaranteed Maximum-Not-To-Exceed Compensation for a Task Assignment shall be comprised of the total cost of the project, including all design engineering, materials, machinery, equipment, labor, temporary construction, capital spare parts, reimbursable expenses, all mark-ups for overhead and profit. In addition, the Task Assignment shall state with specificity the commencement and completion dates, all materials, contingency and escalation allowances, any and all expenses (including those referenced in Section 5.1.2 herein), and all other items of cost necessary to complete the Task Assignment, whether furnished by County, Consultant, third parties, or others. A Scope of Work for a Task Assignment specifying Compensation on guaranteed maximum-not-to-exceed basis shall allocate the guaranteed maximum-not-to-exceed price or Compensation among, and provide for payments against specified deliverables and performance.
- 5.1.5. **Retainage.** The County shall have the right to withhold retainage from Compensation paid to a Consultant. Should the County decide that retainage shall be withheld from Compensation, the amount to be retained from each payment to the Consultant shall be:
- A. ☐ % of the total contract price.
 - B. ☐ % of each payment of a milestone payment based on a Project milestone

schedule.

C. ☒ No retainage will be taken.

The County shall have the right to withhold retainage from Compensation paid to a Consultant. Should the County decide that retainage shall be withheld from Compensation; the amount to be retained from each payment to the Consultant shall be stated in the Task Assignment. The retainage shall be included with the final payment after all Work or Services for the Task Assignment have been approved and accepted by the County and all disputed invoices have been resolved by the parties. The County shall never be required to pay an amount that would leave unpaid from the contract price or Compensation an amount less than the amount County would need to have in order to pay another Consultant to complete the Work or Services should Consultant fail to complete the Work in a Task Assignment remaining incomplete as of that date.

5.1.6. **Payments.**

5.1.6.1. **Punch List.** If County, in its reasonable discretion, does not consider a Project substantially complete, the County shall notify Consultant in writing giving the reasons. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment, and the certificate shall state the time within which those items shall be completed or corrected, the time to be within the contract time. Disputes regarding payments shall be resolved through the dispute resolution procedure articulated in Section 18 of this Contract.

5.1.6.2. **Approval of Final Payment.** If, on the basis of the County Project Manager's observation and review of Consultant's Work or Services performed during the Task Assignment, final inspection and review of the final application for payment and the County Project Manager's satisfaction that the work has been completed and Consultant has fulfilled all of its obligations under the Contract Documents, County Project Manager, after receipt of the final application for payment, indicate in writing his or her approval of payment and present the application to Accounts Payable for payment. Otherwise, the County Project Manager shall return the application to the Consultant, indicating in writing the reasons for refusing to approve final payment, in which case the Consultant will make the necessary corrections and resubmit the application.

5.1.6.3. **Invoice Detail.** Regardless of the method of compensation, e.g., "fixed fee", "time and materials", or "guaranteed maximum not-to-exceed" basis, the Consultant shall submit an invoice for which Professional Services were rendered to the County in response to its request therefore upon the completion and acceptance of the services detailed in Section 3.1 herein. Each invoice shall show detailed explanations of the services accomplished by labor hours by classification, associated rates, any material or subcontracted costs and any indirect rates or costs in accordance with the prices set forth in a Task Assignment. All of the above shall sum to the total amount requested.

5.1.7. **Invoices.** Invoices or payment requests shall be addressed by Consultant and submitted to the County's Project Manager. The Consultant shall submit:

A. ☒ A monthly statement for Professional Services rendered to the date of the

statement subject to Section 5.1.5. The monthly statements shall reflect the Work or Services actually completed at the time of billing.

- B. ☐ A Final Statement for each County requested Project indicating the Work or Services actually completed after final acceptance of said Work or Services by the County. The Consultant's determination of the Work or Services actually completed is to be prepared by the Consultant, and accompanied by such supporting data as may be required by the County Project Manager. County Project Manager shall review the Consultant's statement and notify the Consultant in writing within twenty (20) business days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.

- 5.1.8. For each Task Assignment, Consultant shall submit a monthly statement for Professional Services rendered to the date of the statement. The monthly statements shall reflect the Work or Services actually completed at the time of billing. The Consultant's determination of the Work or Services actually completed is to be prepared by the Consultant, and accompanied by such supporting data as may be required by the County Project Manager. County Project Manager shall review the Consultant's statement and notify the Consultant in writing within twenty (20) days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.
- 5.1.9. The County may withhold payment of any specific invoiced charges in a pay request or monthly statement which it disputes in good faith and pay all undisputed charges on the invoice, pay request or monthly statement.
- 5.1.10. Within forty-five (45) days of acceptance by the County Project Manager of all the Work or Services for which Consultant has submitted the monthly statement of professional services, the Consultant shall be paid the unpaid balance of any money due for any undisputed Work or Services covered by said statement. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Part VII of Chapter 218 Florida Statutes, as amended.
- 5.1.11. **Taxes.** County is a tax exempt entity and shall not be charged or invoiced for the payment of taxes for Work or Services performed under this Contract.
- 5.1.12. Pursuant to the terms and conditions articulated in this Contract, an appropriate fee shall be negotiated for each specific Project or Task Assignment to be performed under this Contract and such fee shall be stipulated, together with the Scope of Work for each Task Assignment or project, in separate Task Assignments to this Contract.
- 5.1.13. **Consultant's Continuing Obligations.** Consultant's obligation to perform the Work or services and complete the Task Assignment in accordance with the Contract Documents shall be absolute. Neither approval of any progress nor final payment to Consultant, nor the issuance of a certificate of substantial completion, nor any payment by County to Consultant under the Contract Documents nor any act of acceptance by the County nor any failure to do so, nor any correction of defective work by County shall constitute an acceptance of Work or Services not in accordance with the Contract Documents.

6. TERMINATION.

- 6.1. The performance of Work or Services under this Contract may be terminated for convenience or

non-appropriation of funds by the County in accordance with this clause in whole or from time to time in part, upon at least thirty (30) days prior written notice to Consultant whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Consultant of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the subsequent date upon which such termination becomes effective.

- 6.2. Upon receipt of such notification, Consultant shall inform County of the extent to which performance is completed and unless notified in writing by the County otherwise, the Consultant shall take no further steps towards completion of the Project. Upon payment by County, Consultant shall deliver to County any and all completed Deliverables and Deliverables-in-progress that then exist for all outstanding Projects. If the County terminates any Project due to the Consultant's failure to meet a completion deadline as set forth in Section 7 herein, the County may seek the services for the Project from another Consultant. Payment will be made to the Consultant pursuant to 6.3.15.
- 6.3. After receipt of a Notice of Termination as set forth in Section 6.1 above, and except as otherwise directed by the County, the Consultant shall:
 - 6.3.1. Stop work under the Contract or Task Assignment on the date and to the extent specified in the notice of termination.
 - 6.3.2. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract or Task Assignment, as it is not terminated.
 - 6.3.3. Terminate all orders and subcontracts pursuant to Article 6 to the extent that they relate to the performance of Work or Services terminated by the notice of termination.
 - 6.3.4. Assign to the County, in the manner, at the times and to the extent directed by the County, all of the right, title, and interest of the Consultant under the orders and subcontracts so terminated, in which case the County shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - 6.3.5. With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts. County's approval of such settlements shall be final for all the purposes of Section 6. In addition, Consultant shall transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County:
 - 6.3.5.1. Sketches, calculations, reports, models, studies and other Work-in-process, completed Work or Services, supplies, and other materials produced as a part of, or acquired in connection with the performance of the Work or Services terminated by the notice of termination; and,
 - 6.3.5.2. Completed or partially completed designs, plans, drawings, information, and other property, which, if had been completed, would have been required to be furnished to the County.
 - 6.3.6. Complete performance of such part of the Work or Services as shall not have been terminated by the notice of termination.
 - 6.3.7. After receipt of a notice of termination, the Consultant shall submit to the County its

termination claim, in the form and with a certification as prescribed by the County. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one (1) or more extensions in writing are granted by the County, upon request of the Consultant made in writing within such thirty (30) day period or authorized extension thereof. Upon failure of the Consultant to submit its termination claim within the time allowed, the County may determine on the basis of information available to it, the amount, if any, due to the Consultant by reason of the termination and shall there upon pay to the Consultant the amount so determined.

6.3.8. Subject to the provisions of Section 6.3.7., the Consultant and the County may agree upon the whole or any part of the amount or amounts to be paid to the Consultant by reason of the total or partial termination of work pursuant to Article 6 which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price or Compensation as reduced by the amount of payments otherwise made and as further reduced by the contract price of Compensation for Work not terminated. As such, the Contract shall be amended accordingly and the Consultant shall be paid the agreed amount. Nothing herein, prescribing the amount to be paid to the Consultant in the event of failure of the Consultant and the County to agree upon the whole amount to be paid to the Consultant by reason of the termination of Work or Services pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Consultant.

6.3.9. In the event of the failure of the Consultant and the County to agree as provided in 6.3.8. above upon the whole amount to be paid to the Consultant by reason of the termination of Work pursuant to Article 6, the County shall pay to the Consultant the amounts determined by the County as follows, but without duplication of any amounts already agreed upon by the parties.

6.3.9.1. For completed Work or Services accepted by the County, the price or prices or Compensation specified in the Task Assignment for such work, less any payments previously made.

6.3.9.1.1. Notwithstanding Section 5.1.4., the total compensation shall include the total of the following:

6.3.9.1.1.1. The costs incurred by the Consultant in the performance of the Work and Services terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the Work and Services paid or to be paid for under Section 6.3.9.1. hereof;

6.3.9.1.1.2. The cost of settling and paying claims arising out of the termination of Work or Services under subcontracts or orders as provided herein, which are properly chargeable to the terminated portion of the Contract exclusive of amounts paid or payable on account of work or services delivered or furnished by subconsultants or Sub-subconsultants prior to the effective date of termination, which amounts shall be included in the costs payable herein; and,

6.3.10. This Contract or a Task Assignment may be terminated by Consultant if Consultant

provides a minimum of thirty (30) days written notice to the Director of Purchasing. In the event Consultant breaches any of the terms and conditions of this Contract or Task Assignment, and after receipt of notice from County of said breach and time to cure the same the Consultant fails to cure the breach, the County may take over the Work and Services and complete the same by Task Assignment; or otherwise, the Consultant shall be liable to the County for any increased cost of the Project reasonably incurred by the County in the process of completing the Consultant's unfinished Work and Services.

As such, County may apply unpaid Compensation due and owing to Consultant prior to the default as a set off against the costs incurred by the County for taking over such Work or Services.

6.3.11. In the event that there is a partial termination of this Contract or a Task Assignment by the County or Consultant because of non-appropriation by County, subject to Section 4 - Term of Contract and Section 5 - Contract Price and Compensation, Consultant shall be paid in accordance with terms of this Section 6, to the date of termination on a prorated basis for any task, milestone, or Deliverable started but not completed which were designated for payment on a payment schedule provided to the County prior to the commencement of work on the task, milestone or Deliverable which is the subject of the partial termination. County's obligation to pay Consultant under this Contract or Task Assignment is limited to the budgeted amount for the fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 5-Contract Price and Compensation. Consultant and County shall be obligated to continue performance under this Contract for the work or services within the Scope of Work or Services under this Contract which is not the subject of the partial termination by non-appropriation.

6.3.12. If termination of this Contract or Task Assignment occurs for any reason:

6.3.12.1 The County shall continue to have the unfettered right to use or access any license, designs, plans, or exhibits, any of the Deliverables or work products from tasks or milestones, arising under that Contract or Task Assignment and produced pursuant to the Contract Documents for which the County has paid prior to termination of this Contract or Task Assignment or for which County makes payment after termination of this Contract or Task Assignment.

6.3.13. Except as otherwise provided in this Contract, Consultant shall return to the County all County confidential information in Consultant's possession and Consultant shall certify in a written document signed by the Consultant that all such information has been returned.

6.3.14. Except as provided in Section 6.3.12.1., the County shall return to Consultant or destroy all Consultant's confidential information in the County's possession (including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Consultant's Confidential Information and all copies of any of the foregoing (in whatever medium recorded)) and all third-party products in its possession not yet accepted and not yet paid for in full together with all copies of documentation and other material related thereto, and shall certify in a written document signed by the County Project Manager that all such information and material has been returned or destroyed.

- 6.3.15. For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Section 4 - Term of Contract, Section 5 - Contract Price and Compensation, and this Article 6, the County shall cause payments to be made to Consultant within thirty (30) days of receipt of invoice. Consultant shall invoice the County for any sums Consultant claims to be owed by County under this Contract for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment and County shall pay any undisputed amount within thirty (30) days.
- 6.3.16. In the event of termination by the County for non-appropriation, for all items or products ordered by Consultant before receipt by Consultant of the notice of termination which Consultant could not cancel without imposition of a fee, the County shall cause payments to be made to Consultant within thirty (30) days of receipt of an undisputed invoice for all cancellation, restocking or residual fees resulting from the cancellation or return of third party products ordered from or shipped by the vendor thereof prior to the effective date of the termination.
- 6.3.17. All provisions of this Contract which impose or contemplate continuing obligations on a party will survive the expiration or termination of this Contract.

7. RESPONSIBILITY OF CONSULTANT.

- 7.1. Consultant shall be duly licensed under the laws of the State of Florida as an Architect, Engineer, Landscape Architect, Mapper or Surveyor for the purposes of this Contract and to satisfy the requirements of Section 287.055, F.S.
- 7.2. Consistent with Article 3 herein, Consultant's performance of Work or Services shall be in accordance with the terms and conditions of this Contract and the applicable Task Assignment(s). The Consultant's performance of Work or Services shall be as a professional consultant to the County to carry out the activities of a Task Assignment under the direction of the County's Project Manager.
- 7.3. Consultant shall perform Work or Services required under this Contract or Task Assignment, including but not limited to reports, studies, schedules, estimates, the development or preparation of plans, specifications, and cost estimates pertaining to a Project. Consultant shall confer with the County Project Manager to ascertain the functional or design criteria of each Task Assignment. The services of Consultant shall also include of the following:
- 7.3.1. Unless otherwise provided in this Contract or Task Assignment, Consultant shall commence in accordance with the Contract Documents the Services required for the Project or Task Assignment within ten (10) days of the County's Notice to Proceed.
- 7.3.2. Consultant shall verify to the County for the applicable Task Assignment that all designs, and specifications, and all data reports, studies, plans, bulletins, schedules, and other drawings therewith conform to the Scope of Work in the Task Assignment and applicable governmental regulations, statutes, and ordinances, including any amendments thereto. Said certification shall be in the form acceptable to the County and made a part of this Contract and attached to the Task Assignment and incorporated herein by reference.
- 7.3.3. Consultant covenants, and agrees that there are no obligations, commitments, or impediments of any kind that shall limit or prevent Consultant's performance of the Work or Services.

- 7.3.4. The Consultant covenants and agrees that it will not contract for or accept employment for the performance of any Work or Service with any individual, business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract with the County.
- 7.3.5. Consultant covenants and agrees that all of the Work or Services to be furnished by Consultant under this Contract and any Task Assignment from the inception of this Contract or Task Assignment until the Project has been fully completed, shall be of the standard and quality that prevail among similarly situated licensed professional consultants engaged in the Consultant's profession or practice in the State of Florida under the same or similar circumstances involving the design and/or construction of the Project.
- 7.3.6. Consultant covenants and agrees that all of the Work or Services to be furnished by Consultant shall be in accordance with the most current specifications or technology at the time this Contract is fully executed for projects such as the Project in the Task Assignment as of the time Consultant delivers to County the drawings, specifications and/or Deliverables. Thereafter, Consultant shall keep the County informed of any changes or advancements in such specifications or technology occurring any time prior to or during actual implementation of the Project.
- 7.3.7. Consultant covenants and agrees as follows:
- 7.3.7.1. Consultant recognizes that its special talent, training, and experience caused the County to select Consultant to be the prime professional on the Project or Task Assignment;
 - 7.3.7.2. Consultant comprehends the specifications and requirements of the Scope of Work of the applicable Task Assignment and the use of the same in their entirety to provide Project Deliverables; and
 - 7.3.7.3. Consultant possesses the special skills to recognize material errors or omissions that shall make a Deliverable fail to perform within the specifications and requirements of the Scope of Work for the applicable Task Assignment.
- 7.3.8. Consultant covenants and agrees that any Project data, reports, studies, designs, drawings, specifications and requirements prepared by Consultant or its agents or subconsultants shall be completed, pursuant to Section 7.3.5. In addition, Consultant shall include in any such reports, studies, bulletins, schedules, designs, drawings, and/or specifications warnings about known hazards to the Project.
- 7.3.9. Consultant covenants and agrees to the following: (1) the Project plans and specifications shall conform to their foreseeable use in the Project with all the amenities as set forth in the plans and specifications in the Task Assignment; and, (2) the Consultant shall produce Deliverables made pursuant to Section 7.3.5. Consultant's duties, as set forth herein, shall at no time be in any way diminished by reason of any approval by County of any plans or specifications in a Task Assignment, nor shall Consultant be released from any liability by reason of such approval by County, it being understood that County at all times is ultimately relying on Consultant's skill, expertise, and knowledge in preparing the plans and specifications or any other documentation. As such, said approval shall not be a defense to a claim or cause of action for contribution or indemnification by the County.

- 7.3.10. Consultant covenants and agrees that all persons connected with Consultant directly in charge of the professional work are duly registered and licensed under Florida law and pursuant to this Contract.
- 7.3.11. Consultant covenants and agrees that it shall be liable for all errors or omissions proximately caused by Consultant, if any, in judgment relative to the Work or Services of any Task Assignment under which Consultant provides Work or Services.
- 7.3.12. Consultant covenants and agrees to call to County's attention anything of any nature in any deliverables, reports, studies, bulletins, schedules, designs, drawings, documentation, plans, specifications, requirements or instructions prepared by Consultant or data supplied to Consultant by the County or any other party that Consultant regards in Consultant's professional opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such data is furnished in the Project.
- 7.3.13. Consultant covenants and agrees to furnish efficient business administration of the Project and perform all Work or Services in the most expeditious and economical manner consistent with the standard of care applicable to a Consultant with the degree of skills and diligence.
- 7.3.14. Consistent with Section 7.3.11., Consultant covenants and agrees that it shall, at its own cost, make good any defects in its Work or Services as soon as Consultant becomes aware of such defects or is notified of such defects. Should Consultant refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then County, pursuant to Section 6., shall be entitled to make good such defective Services at the expense of Consultant and/or terminate this Contract and the Task Assignment. This commitment by Consultant is in addition to, and not in substitution for, any other remedy for defective Work or Services that County may have at law or in equity.
- 7.3.15. Consultant covenants and agrees to provide all necessary and required plans for the successful design or completion of a Project as agreed to in the Task Assignment's Scope of Work and as governed by this Contract. Written Deliverables shall be made and delivered in accordance with this Contract or Task Contract. Each written Deliverable shall be accurate, legible and suitable for public bidding purposes. For recommendations concerning the plan preparation of studies, plans, or specifications, the Consultant should refer to the latest applicable manuals as determined by the County Project Manager. All studies, plans, drawings or specifications must meet the County's requirements to obtain permits or government documents, licenses and certificates as applicable in a Task Assignment. In addition the Consultant shall have the following responsibilities:
- 7.3.15.1. Consultant shall be responsible for preliminary coordination with the County and other appropriate regulatory agencies so that design efforts are properly directed towards permit approval;
- 7.3.15.2. If applicable in a Task Assignment, prepare permit packages based on preliminary coordination with the County and other appropriate regulatory agency's requirements at the time of submittal. The permit packages shall include site and system design information required by the County and other regulatory agencies, applicable sketches and calculations as set forth in the Task Assignment;

- 7.3.15.3. Consultant shall respond to the requests of the County and other regulatory agencies concerning the submitted information. The Consultant shall report to the County any requests for information not required at the time of permit submittal, as made known during preliminary coordination, reproductions in excess of requirements, or regulation changes requiring permit resubmission:
- 7.3.15.4. The County shall provide the permitting fees, but shall not pay an additional fee to the Consultant when the Consultant is required to resubmit a permit package to a regulatory agency so as to address deficiencies, omissions, or corrections to the original permit package that were the responsibility of the Consultant and that are not attributable to changes in rules made by the regulatory agency since submission of the original permit package:
- 7.3.15.5. Consultant shall review all design and shop drawings and other data that the Consultant is required to submit to the County or any state, local or federal agency. These drawings shall be reviewed for general conformance with the design concept of the Project and scope of work of the Task Assignment and general compliance with the information given in the Contract Documents;
- 7.3.15.6. Consultant shall make final review of Project Deliverables to determine if Work or Services were completed in general conformance with the Contract Documents; and
- 7.3.15.7. Consultant shall prepare and submit a schedule or time line of each task listed in a Task Assignment.
- 7.3.16. **Annual Statement of Qualifications.** Annually, the Consultant shall submit to the County's Contracts Administrator statements of qualifications and performance data confirming that Consultant is a duly licensed and registered professional Architect, Engineer, Landscape Architect, or Surveyor and Mapper as applicable in connection with Consultant's professional practice and the Services or Work provided to the County under this Contract.
- 7.3.17. **Design Phase.** As required by the County, Consultant shall submit a certain number of sets of design development documents and/or estimates as specified in the Task Assignment to the County for review. The plans and specifications shall be of sufficient detail indicating, e.g., floor plan layout, elevations, outline specifications to fix and illustrate the size and character of the entire Project in its essentials as to kinds of material, type of structure, mechanical and electrical systems, site work, and such other work as may be necessary for a completely functioning Project or completed design drawings and specification. As requested by the County Project Manager, the Consultant shall submit a unit cost or opinion of cost estimate for this phase of the Work or Services for review and approval of County. This estimate or opinion shall include, e.g., identification of costs for heating, ventilation, plumbing, air conditioning, and electrical lighting and power, and other items applicable to the Project or Task Assignment.
- 7.3.18. **Final Review of Plans, Specifications, and Estimates.**
 - 7.3.18.1. As requested by the County or as set forth in a Task Assignment, Consultant shall submit to County for review copies of the Project plans and specifications, and copies of the latest detailed cost estimate.

- 7.3.18.2. Upon completion and final approval by County of the Project plans, specifications, other Contract Documents, and cost estimates (if required in the Task Assignment), Consultant shall deliver to County as part of the contract obligation or as set forth in the Task Assignment, unless otherwise noted completed plans, designs, drawings, specifications, documents, and cost or opinion estimates.
 - 7.3.18.3. Consultant shall submit to County original drawings and specifications that shall reflect all amendments to the Contract Documents.
 - 7.3.18.4. Consultant agrees to furnish all services, materials, labor, and all other items required to undertake and complete all Work or Services required by this Contract or any Task Assignment in accordance with the drawings, plans, and specifications submitted to the County by Consultant or relied upon by the Consultant to complete the Project or Task Assignment.
- 7.4. **Assurance.** Consultant gives County its assurance that all Work or Services performed under this Contract shall be timely performed, pursuant to Section 7.3.5., and in accordance with the specifications and requirements of the Contract Documents and of any inspections (if applicable), tests (if applicable) or approvals required under the Contract Documents. All Work not conforming to the specifications and requirements of the Scope of Work of a Task Assignment or of the inspections, tests (if applicable) or approvals in a Task Assignment shall be considered materially defective and constitute a breach of this Contract or the Task Assignment.
- 7.5. **Tests and Inspections.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected and tested, and Consultant has agreed in a Task Assignment to perform such services, Consultant shall furnish the County's Project Manager with the required certificates of inspection, testing or approval. All tests shall be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization that may be required by law or the Contract Documents.
- 7.6. The Consultant shall be responsible for the professional and technical accuracy and the coordination of all data, reports and any other service furnished by the Consultant under this Contract or any Task Assignment. The Consultant shall, without additional cost to the County, correct or revise any errors or deficiencies in its Work or Service for which it is responsible.
- 7.7. All Work performed by Consultant including all general provisions, special provisions, job specifications, drawings, Addendum, Amendments to Task Assignments, written interpretations, and written orders for minor changes in Work, shall comply with the Scope of Work of a Task Assignment and all applicable local laws, codes, ordinances and statutes and the performance criteria in Section 3.2. Otherwise, if Consultant is an Architect or Engineer, only work certified by said consultant, which in whole or part constitutes, a Deliverable in a Task Assignment shall comply with the Scope of Work in a Task Assignment and all applicable local laws, codes, ordinances and statutes. Work not covered by Contract Documents in a Task Assignment shall not be required in a Project unless the County in its sole discretion determines that it is required by reasonable inference as being necessary to produce the intended Deliverable(s).
- 7.8. If applicable in a Task Assignment, Consultant will supervise and direct all Work or Services efficiently and pursuant to Section 7.3.5. As such, Consultant shall be solely responsible for the means, methods, techniques, sequences and procedures for the design or development of a Deliverable. Further, Consultant shall be responsible for assuring the County that finished Deliverables complies accurately with the Contract Documents or plans and specifications of the

Scope of Work in the applicable Task Assignment.

- 7.9. Consultant will make periodic visits as delineated in the Task Assignment to the site to observe the progress and quality of the executed construction Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents or Task Assignment. The efforts of the Consultant shall be directed toward providing assurance for the County that all Work completed in a Task Assignment shall conform to the requirements of the Scope of Work of the Task Assignment. On the basis of Consultant's observations, skills and experience, Consultant shall keep the County informed of the progress of all Work and shall endeavor to guard the County against defects and deficiencies in the Work. As required in the Task Assignment, each site visit will be followed by a report to the client of known deviations from the Contract Documents or plans and specifications in the Scope of Work of a Task Assignment.
- 7.10. Consultant shall issue with reasonable promptness all written clarifications or interpretations of a Task Assignment (in the form of drawings or otherwise as requested by the County) that Consultant may determine are necessary, which shall be consistent with or reasonably inferable from the overall intent of the Task Assignment.
- 7.11. Concerning Subconsultants.**
- 7.11.1. Consultant shall not employ any subconsultant, other person or organization against whom the County may have reasonable objection, nor shall Consultant be required to employ any subconsultant against whom it has reasonable objection. Consultant shall not make any substitution for any subconsultant who has been accepted by the County without the County's approval.
- 7.11.2. County's disapproval or requirement of removal or replacement of Consultant's employee or subconsultant shall be deemed for lawful reasons if in County's reasonable judgment, such Consultant's employee or subconsultant poses a threat or causes harm to the health, welfare, safety or morale of the County or its agencies, personnel or property or who fails any drug test administered in connection with this Contract, or who has been convicted of a felony or a misdemeanor involving "moral turpitude" or has been released or dishonorably discharged or separated under other than honorable conditions from any of the Armed Forces of the United States.
- 7.11.3. Consultant shall be fully responsible for all negligent acts and omissions of its subconsultant or sub-subconsultants and of persons directly or indirectly employed by them and of persons for whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any contractual relationship between any subconsultant and the County or any obligation on the part of the County to pay or to see to the payment of any moneys due any subconsultant, except as may otherwise be required by law. County may furnish to any subconsultant to the extent practicable, evidence of amounts paid to Consultant on account of specific work done in accordance with the schedule of values.
- 7.11.4. Consultant agrees to bind specifically every subconsultant to the applicable terms and conditions of the Contract Documents and the terms and conditions of Section 1-3 and 16 of this Contract for the benefit of the County.
- 7.11.5. The Consultant shall require all subconsultants or sub-subconsultants or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the County and the Consultant.

- 7.11.6. Any subcontractors or subconsultants and/or outside associates required by the Consultant in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified for each Project assigned under this Contract. Any substitution of such subcontractors, subconsultants or associates will be subject to the prior written approval of the County Project Manager.
- 7.11.7. Consultant shall save and hold the County harmless from any and all claims or actions by Consultant's subconsultants or sub-subconsultants for payment of monies such subconsultant or sub-subconsultants claims to be owed by Consultant for Work performed under this Contract or a Task Assignment, provided that the County has paid Consultant in accordance with the terms of this Contract.
- 7.11.8. Nothing in this Contract or a Task Assignment shall create any obligation on the part of the County to pay directly to any subconsultants or sub-subconsultants of Consultant any monies due to such subconsultant or sub-subconsultants or claims of a subconsultant or sub-subconsultant for amounts owed by Consultant to subconsultant or sub-subconsultant for Work performed under this Contract or Task Assignment.

8. AUTHORIZATION FOR SERVICES.

- 8.1. **No Guarantee to Perform Projects.** The County makes no covenant or promise as to the number of available Projects, nor that the Consultant will perform any Project for the County during the life of this Contract. The County reserves the right to contract with other parties for the services contemplated by this Contract as determined in the County's sole and absolute discretion.
- 8.2. **Certifications for Completed Work.** Consultant shall sign and seal (hereinafter "Certification") all completed Work under a Task Assignment as required as a licensed professional or under Florida law; otherwise, the County Project Manager shall not have the authority to approve completed Work or Services and Consultant shall not be entitled to payment for the Work or Services covered by uncertified Work. In the event the County Project Manager accepts and approves completed Work bearing no such certification by the Consultant, such acceptance and approval shall not relieve Consultant or its subconsultants or agents of any liability for any defects, omissions or errors in the Deliverables of completed Work of a Task Assignment until such work is certified by Consultant.

9. INDEMNIFICATION.

- 9.1. Consultant shall, at its own expense, indemnify and hold harmless the County and its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys, and employees from and against all claims of every kind and nature (including losses incurred or suffered in consequences either of bodily injury to any person or damage to property), damages, losses and expenses including reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and its subconsultants or sub-subconsultants or agents performing Work or Services under this Contract or a Task Assignment, caused by any negligent act or omission of Consultant, any of Consultant's subconsultants or sub-subconsultants, anyone employed by any of them or anyone for whose acts any of them may be liable, except the Consultant will not be required to indemnify and hold the County harmless if such claim, damage, loss and expense is the result of the sole negligence of the County, or of anyone directly or indirectly employed by the County or anyone for whose acts the County may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Contract.

- 9.2. In all claims against the County or any of its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys and employees by any employee of Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant, contractor or any subcontractor or subconsultant under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 9.3. If Consultant is licensing, providing or developing software, including derivative works for use by the County, Consultant agrees to protect and indemnify and hold harmless the County, its agents, elected officials and employees of the County from and against any and all claims, demands, actions, and causes of action which may arise asserting that all or any part of the Consultant licensed applications provided under any software owned by Consultant and licensed to County or provided by Consultant for use thereof by the County, infringes or misappropriates any third party's United States patent, copyright or any trade secret protected under United States law.
- 9.3.1. In addition to the foregoing indemnification provision, Consultant shall also take the following steps to assure that County can continually use the software which Consultant has directly licensed to County or provided for use thereof by the County in substantially the same manner delivered or subsequently enhanced or modified by:
- 9.3.1.1. Promptly replace the allegedly infringing or misappropriated item or items with compatible, functionally equivalent items which are not alleged to be infringing or misappropriated; or
 - 9.3.1.2. Promptly modify the alleged infringing or misappropriated item or items to eliminate the alleged infringement or misappropriation without impairing County's intended use of the licensed applications and/or sublicensed applications in any manner; or
 - 9.3.1.3. Promptly procure the right for the County to continue to use the licensed applications and/or sublicensed applications without modification; and
 - 9.3.1.4. Unless otherwise agreed by the parties, promptly shall mean that the events described herein shall occur in no less than sixty (60) days from the date that notice of the claim is received by Consultant unless otherwise agreed by the Parties.
- 9.4. **Confidential Information and Indemnification.** If Consultant is licensing or developing software (including derivative works) for use by the County, Consultant grants County a perpetual, fully-paid, non-assignable, non-exclusive, royalty-free license to use Consultant's software deliverables developed or licensed under a Task Assignment. Said license includes software owned by Consultant which is furnished under this Contract or a Task Assignment, for County's internal use with such use to include the right to modify such deliverable(s) and to create derivative works for such internal use including, without limitation, the right to use such deliverable(s).
- 9.5. The terms "proprietary software, sensitive information" and "trade secret" shall constitute Confidential Information and shall be that which is defined in and exempt from disclosure pursuant to Florida Statutes, Chapter 119, and Section I, Section 24 of the Florida Constitution ("Florida Public Records Law"), and Chapter 812 of the Florida Statutes. In addition and for the purposes of this Contract and any Task Assignment, Confidential Information shall include confidential information and/or trade secret information disclosed by Consultant to County that

is expressly identified in writing by Consultant and Consultant's subconsultants or sub-subconsultants. Any Confidential Information provided to County by Consultant must be expressly identified in a "Nondisclosure Contract for Confidential Materials" form which Consultant may obtain from the County's Purchasing Division.

9.5.1. Confidential Information and/or Trade Secret do not include the following:

- 9.5.1.1. Information already known or independently developed the party in possession; or
- 9.5.1.2. Information in the public domain through no wrongful act of the party in possession; or
- 9.5.1.3. Information received by the party in possession from a third party who was free to disclose it; or
- 9.5.1.4. Information regularly disclosed to third parties without restriction on disclosure, or
- 9.5.1.5. Information required to be disclosed by law or an order of a court of competent jurisdiction.

9.6. In the event that Consultant does not enable the County to use that which Consultant has delivered through accomplishing one or more of the alternatives set forth above within aforementioned time period set forth herein during the term of this Contract or Task Assignment, Consultant shall be in material default of this Contract and subject to Section 6: Termination.

9.7. If Consultant is granting a license or develops software for the County in a Task Assignment, it hereby warrants and represents that:

- 9.7.1. Consultant is the sole owner of all right, title, and interest in and to the Consultant licensed software, user manuals and documentation, including all patents, copyrights, copyright rights, trade secrets, trademarks, trade names and all proprietary and intellectual rights and confidential information contained therein, and that it is authorized to enter into this Contract and grant County a perpetual license; and
- 9.7.2. No portion of any licenses or right granted to the County to use Consultant's software pursuant to the terms of the applicable software license Contract of Consultant for any work performed under this Contract or Task Assignment violates or is protected by right, title, interest or similar right of any third person or entity.

10. LIMITATION OF LIABILITY AND REMEDIES.

10.1. **Sovereign Immunity.** The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any Section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity of limits of liability of County beyond any statutory limited waiver of immunity of 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 County for damages regardless of the number or nature of claims in tort, equity or contract shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit on any third party for the purpose of allowing any claim against County which would otherwise be barred under the doctrine of sovereign immunity or

operation of law.

11. COUNTY REPRESENTATIVE.

- 11.1. The Work or Services shall be provided by the Consultant under the direction of the authorized County Representative, except as limited by the County's Purchasing and Contracts Procedures (see www.volusia.org/purchasing), who shall have decision authority subject to the requirements of the County's Purchasing Procedures Manual for all phases of the Work, including general direction, review and approval of the Work or Services.
- 11.2. Neither the County Representative's review, approval or acceptance of, nor payment for any of the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Consultant shall be and remain liable to the County for all costs of any kind which were incurred by the County as a result of the Consultant's negligent performance of the services furnished under this Contract.

12. REUSE AND OWNERSHIP OF DOCUMENTS.

- 12.1. Provided that Consultant has been paid by County for all completed Work in the applicable Task Assignment in accordance with the terms of this Contract, the County shall have unlimited rights, for the benefit of the County, in all reports, statistical data, specifications, notes and other Consultant's work produced in the performance of this Contract, including right to copy plans for any purpose including for the use and maintenance of the Deliverable(s) of a Project. If County determines to reuse or adapt plans signed and sealed by Consultant, Consultant shall be entitled to further reasonable compensation at rates agreed upon by County and Consultant prior to executing and commencing any Work in a Task Assignment. Said rates shall be incorporated in the Task Assignment. Further, all documents prepared by Consultant pursuant to this Contract are instruments of service in respect of the Project or Task Assignment. The Consultant shall not be liable for the negligent reuse by the County of said documents.
- 12.2. All deliverables analyses, reference data, survey data, plans and reports or any other form of written instrument or document that may result from the Consultant's Work or Services or that have been created during the course of the Consultant's performance under this Contract shall become property of the County and/or "works made for hire" (as defined under the 1976 Copyright Act (Title 17 of the United States Code) as amended) after final payment is made to the Consultant.

13. EXPERT WITNESS

- 13.1. If requested by the County, the Consultant shall serve as an expert or professional witness for the County in any legal proceedings arising in connection with this Contract. The expert or professional witness fee for Consultant shall be a reasonable rate negotiated at the time the Consultant is called for such a duty.

14. AUDIT AND EXAMINATION OF RECORDS

- 14.1. For purposes of verifying that invoices submitted, in conjunction with the negotiation of this Contract or any Contract change or other modification are accurate, complete, and current, the County Project Manager, or County's authorized representative(s), shall - until the expiration of three (3) years from the date of final payment under this Contract - have the right to examine those books, records, documents and other supporting data that will permit adequate evaluation of the invoices submitted, along with the computations and projections used therein that were prepared by the Consultant in connection with work under this Contract. Unless the price is

based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices are set by law or regulation. The Consultant agrees to insert the substance of this clause in all subcontracts hereunder so as to apply until three (3) years after final payment under the subcontract.

16. INSURANCE REQUIREMENTS.

16.1. Required Types of Insurance:

The Consultant shall purchase and maintain at its own expense, during the term of this Contract the following types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to the County:

SCHEDULE

LIMITS

Workers' Compensation

Florida Statutory Coverage

Commercial General Liability	\$2,000,000. General Aggregate
.....	\$2,000,000. Products/CompOps Aggregate
Products-Completed Operation.....	\$1,000,000. Personal/Advertising Injury
.....	\$1,000,000. Each Occurrence

(The County of Volusia shall be named as an additional insured under all of the above Commercial General Liability coverage.)

Auto Liability\$1,000,000. CSL
All autos-owned, hired or no-owned
(Symbol 1 Coverage)

Professional Liability.....\$1,000,000. (Project Specific)
(Errors & Omissions)

16.1.1. Minimum underlying coverage's shall include Commercial General Liability, Automobile Liability and Workers' Compensation/Employer's Liability. Umbrella liability limit will not be required to be carried by subconsultants.

16.1.2. Umbrella or Excess Liability policies may be used to obtain the total limits of liability required to meet the required limits of coverage stated above. Evidence of such coverage should clearly demonstrate the underlying coverage's/policies that are included.

16.1.3. **Workers' Compensation Insurance.** Workers' Compensation insurance is required for all employees of the Consultant, employed or hired to perform or provide Work or Services under this Contract or that is in any way connected with Work or Services performed under this Contract, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory amount shown above per occurrence.

16.1.3.1. Consultant and its Subconsultants, or any associated or subsidiary company doing Work on County property or under this Contract must be named in the Workers' Compensation coverage or provide proof of their own Workers'

Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Consultant's Subconsultants fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Subconsultant of the Consultant, the Consultant shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).

16.1.4. Commercial General Liability Insurance. Commercial General Liability insurance, with a limit of not less than the amounts shown above with an aggregate limit and per occurrence basis, including coverage for the Consultant's operations "broad form" property damage coverage's protecting itself, its employees, agents, for claims for damages caused by bodily injury, property damage, or personal or advertising injury, products liability/completed operations including what is commonly known as groups A, B, and C (libel, false arrest, slander). Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Consultant arising from Work or Services performed under this Contract. Public liability coverage shall include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Consultant's contract to indemnify, and hold harmless the County as provided in this Contract. The commercial general liability policy shall be endorsed to include the County as an additional insured. The commercial general liability policy shall provide exclusive coverage for the location or project site where the Work or Services are to be performed under this Contract. In the alternative, the commercial general liability policy shall be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the County Risk Manager.

16.1.5. Motor Vehicle Liability. The Consultant shall secure and maintain during the term of this Contract, motor vehicle coverage in the split limit amounts of no less than the amounts shown above per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above (including "Any Auto" Symbol 1 coverage), protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle.

16.1.6. Professional Liability. The Consultant shall ensure that it secures and maintains, during the term of this Contract, Professional Liability insurance with limits of no less than the amount shown above contemplated by this Contract. Such policy shall cover all the Consultant's professional liabilities and broad enough to include errors and omissions specific to Consultant's professional liability for direct and contingent design errors and Architect's/Engineers professional liability with no exclusions for design-build work.

16.1.6.1. If the Consultant fails to secure and maintain the professional liability insurance coverage required herein, the Consultant shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.

16.1.6.2. The Consultant must maintain a retroactive date prior to or equal to the effective date of this Contract. The Consultant shall purchase a Supplemental Extended Reporting Period ("SERP") with a minimum reporting period of not less than three (3) years in the event a sub-consultant's policy is canceled, not renewed, switched to occurrence form, or any other event which requires a purchase of

SERP to cover a gap in insurance for claims which may arise under or related to this Contract. The Consultant's purchase of the SERP shall not relieve the Consultant of the obligation to provide replacement coverage. In addition, the Consultant shall require have the sub-consultant's carrier immediately inform the Consultant, and the County of Volusia's Risk Management Division and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under this Contract.

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

16.2. General Insurance Requirements:

- 16.2.1. All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
- 16.2.2. Approval by County of any policy of insurance shall not relieve Consultant from its responsibility to maintain the insurance coverage required herein for the performance of Work or Services by the Consultant or its Subconsultants for the entire term of this Contract and for such longer periods of time as may be required under other clauses of this Contract.
- 16.2.3. **Waiver of Subrogation.** The Consultant hereby waives all rights against the County and its Subconsultants to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of this Contract. The Consultant shall require similar waivers from all its Subconsultants. This provision applies to all policies of insurance required under this Contract (including Workers' Compensation, and general liability).
- 16.2.4. **County Not Liable for Paying Deductibles.** For all insurance required by Consultant, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the Consultant's business or any Subconsultant performing Work or Services on behalf of the Consultant or for the Consultant's benefit under this Contract.
- 16.2.5. **Cancellation Notices.** During the term of this Contract, Consultant shall be responsible for promptly advising and providing the County's Risk Management and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under this Contract within two (2) business days of receipt of such notice or change.
- 16.2.6. For any on-site Work performed by or on behalf of Consultant on County property, the County shall be named as an additional insured or additional named insured subject to review and determination by County's Risk Manager on all policies required under this Contract.
- 16.2.7. Deductibles. For purposes of this Contract, Contractor shall not obtain an insurance policy with a deductible or self-insurance provision.

16.3. Proof of Insurance:

- 16.3.1. The Consultant shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.
- 16.3.2. The Consultant shall furnish proof of insurance acceptable to the County prior to or at the time of execution of this Contract and the Consultant shall not commence Work or provide any Service until the Consultant has obtained all the insurance required under this Contract and such insurance has been filed with and approved by the County. Upon request from the County, the Consultant shall furnish copies of the following types of insurance policies and any changes or amendments thereto, during its normal business hours, to the County and County's Risk Management and Purchasing and Contracts Divisions, prior to the commencement of any contractual obligations. This Contract may be terminated by the County, without penalty or expense to County, if at any time during the term of this Contract proof of any insurance required hereunder is not provided to the County.
- 16.3.3. All certificates of insurance shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by this Article. No Work or Services by Consultant or its Subconsultants shall be commenced until County has approved these policies or certificates of insurance. Further, the Consultant agrees that the County shall make no payments pursuant to the terms of this Contract until all required proof or evidence of insurance has been provided to the County. This Consultant may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.
- 16.3.4. The Consultant shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of this Contract. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Consultant's expense or terminate this Contract but County has no obligation to renew any policies.
- 16.4. The provisions of this Article shall survive the cancellation or termination of this Contract.

17. LOCAL GOVERNMENT POLICIES.

- 17.1. **Public Records Law.** Consultant acknowledges that the County and Consultant are required to comply with the Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Contract and that said statute controls over the terms of this Contract. To the extent practicable, the County agrees to notify Consultant of any public records request concerning the Consultant or matters relating to the services provided under this Contract. Consultant agrees to comply with all provisions of such Public Record Act as they apply to the Consultant.
- 17.2. **Payments Subject to Appropriation.** Notwithstanding any other term or provision of this Contract, the continuation of this Contract or Task Assignment beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. If at any time funds are not appropriated for the Services and Deliverables provided or to be provided under this Contract or Task Assignment, cancellation

shall be accepted by Consultant with thirty (30) days prior written notice, but failure to give such notice shall be of no effect. Termination by the County due to non-appropriation shall be without a termination charge by Consultant. County shall not be obligated to pay Consultant under this Contract beyond the date of termination except as set forth in Section 6 – Termination. County's obligation to pay Consultant is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 5 – Contract Price and Compensation. The parties agree to review the Project Work plan and remaining Work to be performed in advance of each new fiscal year for the County to compare the funding allocated for the next fiscal year to the cost of the remaining Scope of Work of the Project or Task Assignment, to determine whether or not the allocated funding will be adequate to cover all Work to be completed in the next fiscal year. The cost of the remaining Project shall be the fixed fee/lump sum or price, maximum-not-to-exceed compensation less all amounts paid and less all amounts on pending undisputed invoices. Unless the parties agree that the funding allocated for the next fiscal year is adequate for the next fiscal year's Work, either party may terminate this Contract in accordance with the provisions of Section 6 – Termination.

- 17.3. **Truth-in-Negotiations.** Consultant's signature on this Contract or a Task Assignment shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Assignment are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Consultant has disclosed all debts or fees owed to or that are pending before the County prior to the execution of this Contract or a Task Assignment.
- 17.4. **No Code Violation or Past Due Debt.** Consultant warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the Volusia County Code of Ordinances, and does not owe the County any past due debt. Any breach of the foregoing warranty and representation shall be a material breach of this Contract and the County shall have the right to terminate this Contract as set forth herein.
- 17.5. **Changes Due to Public Welfare.** The County and Consultant agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law or Ordinance.
- 17.6. **Compliance with Applicable Laws.** Consultant shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Contract. Consultant shall protect and indemnify County and all its officers, agents, servants and employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order or decree caused or committed by Consultant, its representatives, subconsultants, professional associates, agents, servants or employees. Additionally, Consultant shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Contract from the federal government, State of Florida, County of Volusia or municipalities when legally required and maintain same in full force and effect during the term of this Contract.
- 17.7. **Nondiscrimination and Americans with Disabilities Act.** Consultant shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. Consultant agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA)

in the course of providing all Services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under this Contract, Consultant agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for Work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

17.7.1 In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the county's ADA Coordinator at 386-248-1760 for assistance, at least two business days before any meeting date. Assisted listening system receivers are available for the hearing impaired, and can be obtained from the Deputy Clerk by contacting the county's ADA Coordinator at 386-248-1760. Read the full ADA Notice under The American with Disabilities Act (Title II). Read the County of Volusia Grievance Procedure under The Americans with Disabilities Act (Title II).

17.8. **Drug Free Workplace.** The County of Volusia is a drug-free and smoke-free workplace. Consultant agrees that it shall provide a drug-free environment to its personnel during the term of this Contract and will comply, subject to the prior receipt thereof, with the County's policies on drug-free and smoke-free work place during the term of this Contract.

17.9. **Background Checks.** Consultant and County understand that certain areas of the County's premises may not be available to Consultant's personnel without background checks and that such access is not required to perform the services contemplated by this Contract.

17.10. **Employment of Illegal Aliens.** Consultant certifies that it does not knowingly or willingly and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

17.11. **Prohibition Against Contingent Fees:**

17.11.1. The Consultant warrants that he or she or it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract and that he or she or it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, compensation, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the County shall have the right to terminate this Contract or Task Assignment without liability and, at its sole discretion, to deduct from the contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

17.11.2. Consultant understands and acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Consultant, who offers, agrees, or contracts to solicit or secure County contracts for professional services for any other individual, company, corporation, partnership,

or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

17.11.3. Any Architect, professional Engineer, or registered Surveyor and Mapper, or any group, association, company, corporation, firm, or partnership thereof that is a Consultant under this Contract, who offers to pay, or pays, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

17.11.4. Any County official, agent or employee who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the County and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

17.12. EQUAL OPPORTUNITY; DISADVANTAGED BUSINESS ENTERPRISES:

17.12.1. During the performance of this Contract, the Consultant agrees as follows:

17.12.1.1. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, up-grading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

17.12.1.2. Municipal Code section 2-269, County Ordinance No. 90-20, § 9,5-17-90 of the County Council of the County of Volusia, establishing policies and procedures for the Disadvantaged and Women's Business Enterprises program shall be part of this Contract and the Consultant shall endeavor to fulfill the goals and policies of this Resolution as applicable to this Contract.

18. DISPUTE RESOLUTION.

18.1. The parties to this Contract shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract in accordance with the provisions set forth in this Section. The Consultant and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Contract or Task Assignment and any applicable Scope of Services. Issues shall be escalated to successive management levels as indicated in Section 18.3.

18.2. If a dispute develops between the parties concerning any provision under this Contract or Task

Assignment, or the interpretation thereof, or any conduct by the other party under these Contracts, and the parties are unable to resolve such dispute within five (5) days, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.

- 18.3. Upon issuance of a Dispute Notice, the Project Managers or designated representative(s) shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers or designated representative(s) shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative(s) within five (5) business days, the Project Managers or designated representative(s) shall escalate the dispute as indicated below.

Business Days	Consultant's Representative	County Representative
5	Consultant	Project Manager
10	Consultant's Engagement Manager	Director of Purchasing and Contracts
15	Consultant's Business Unit Manager or Designee	Chief Financial Officer

- 18.4. **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this Section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction. If litigation is prematurely commenced, it shall be stayed until the mediator makes the required certification.

19. FORCE MAJEURE.

- 19.1. Neither party will be liable for any failure or delay in the performance of its obligations under this Contract (and the failure or delay will not be deemed a default of this Contract or grounds for termination) if both of the following conditions are satisfied: (i) the failure or delay could not have been prevented by reasonable precautions, and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) the failure or delay is caused, directly or indirectly, by reason of fire or other casualty, natural disaster, epidemic or accident; strikes or labor disputes; inability to procure raw materials, equipment, power or supplies; war, terrorism or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency or intergovernmental body other than a party hereto; or any other act or condition beyond the reasonable control of the non-performing party. Accordingly, the parties further agree that:
- 19.2. Upon the occurrence of an event which satisfies both of the above conditions (a "Force Majeure Event"), the non-performing party will be excused from any further performance of those obligations under this Contract affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use

commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

19.3. Upon the occurrence of a Force Majeure Event, the non-performing party will notify the other party within two (2) business days of the failure, or as soon as possible after such failure or delay if the Force Majeure Event prevents compliance within two (2) business days, of the occurrence of a Force Majeure Event and will describe in reasonable detail the nature of the Force Majeure Event.

19.4. In the event of a Force Majeure Event, the time for performance by the parties under the applicable Project shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of this Contract.

20. CLAIMS NOTICE.

20.1. The Consultant shall timely report in writing to the County's Director of Risk Management any incident which it believes might result in a claim or claims against the County under any of the coverages mentioned herein.

Name: County of Volusia, Florida
Personnel/Risk Management Division
Address: 230 North Woodland Boulevard, Suite 250
DeLand, Florida 32720
Telephone: (386) 736-5963
Fax: (386) 822-5006

21. SUCCESSORS AND ASSIGNS.

21.1. Consultant may not assign or otherwise convey Contractor's rights and/or obligations under this Contract without first providing County with a processing fee of Five Hundred Dollars (US\$500.00) and obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to posting a performance bond. Any consent by the County under this section shall be by written amendment to the Contract in a form and substance specified by the County in its sole discretion. If Consultant desires to assign or otherwise convey its rights and/or obligations under this Contract, Consultant shall, no less than one hundred twenty (120) days prior to the assignment's proposed effective date, provide County with a written request for County's consent.

Failure by the Consultant to obtain the County's consent in accordance with this section prior to assignment or other conveyance shall: 1) constitute a material breach of the Contract; and 2) entitle the County to retain any and all legal rights, claims and defense to enforce this section, including, but not limited to, injunctive, declaratory, damages and attorney's fees and costs. Payment of any sum by the County in accordance with the Contract to the Consultant or any person or entity prior to the Consultant obtaining the County's consent to the assignment shall not constitute a waiver of the rights of the County under this section.

Nothing herein shall preclude the right of the County to waive its rights under this section but no waiver shall be granted by the County without amendment to the Contract. The Consultant is hereby placed on notice that the County may demand a discount of up ten percent (10%) from those rates or compensation for the goods or services established in the Contract as a condition to execution of the amendment.

- 22. ADDITIONAL RIGHTS AND REMEDIES.** The rights and remedies of the County provided for under this Contract are in addition to any other rights and remedies provided by law; the County may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, with-holding, recoupment, or counterclaim, either during or after performance of this Contract.
- 23. MBE.** This Contract is entered into by the County and Consultant pursuant to the minority business enterprise procurement goals under Section 287.09, F.S.
- 24. CONTROLLING LAW.** This Contract or Task Assignment is to be governed by the laws of the State of Florida. Venue for any litigation between the parties to this Contract or Task Assignment shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorneys fees relating to any dispute arising under the Contract.
- 25. MODIFICATIONS TO CONTRACT.** This Contract or Task Assignment and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.
- 26. NOTICE.** All notice required under this Contract or Task Assignment shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

In the case of County:	with a copies of legal notices to:
County of Volusia Attn: Director of Purchasing and Contracts Address: 123 W. Indiana Ave., Room 302 DeLand, Florida 32720 Phone: (386) 736-5935 Fax: (386) 736-5972	County of Volusia Attn: County Attorney Address: 123 W. Indiana Ave., Room 301 DeLand, Florida 32720 Phone: (386) 736-5950 Fax: (386) 736-5990
In the case of Consultant:	with a copy of legal notices to:
Quentin L. Hampton Associates, Inc. Attn: Brad Blais P.E., President Address: 4401 Eastport Parkway Port Orange, Florida, 32127 Phone: (386) 761-6810 E-mail: bblais@qlha.com	Quentin L. Hampton Associates, Inc. Attn: Brad Blais P.E., President Address: 4401 Eastport Parkway Port Orange, Florida, 32127 Phone: (386) 761-6810 E-mail: bblais@qlha.com

- 27.** This Contract or Task Assignment, together with any exhibits, schedules, attachments and amendments thereto constitute the entire Contract between County and Consultant and supersede all prior written or oral understandings.

IN WITNESS WHEREOF, the parties have made and executed this Contract for Consulting Services for Stormwater and Environmental Engineering Services, the day and year below written.

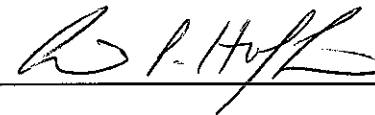
CONSULTANT: Quentin L. Hampton Associates, Inc.

BY: 
(Signature)

(SEAL)

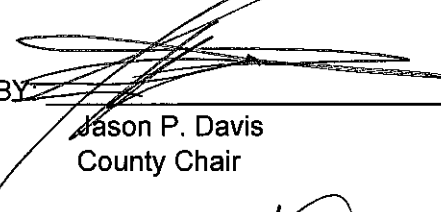
BY: PRESIDENT
Corporate Officer Name & Title

Date: 4/25/14

ATTEST: 

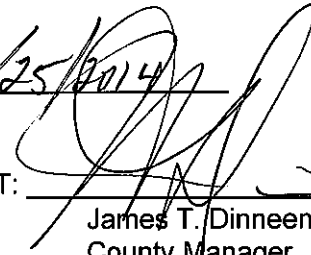
Date: 4/25/14

COUNTY OF VOLUSIA

BY: 
Jason P. Davis
County Chair

(SEAL)

Date: 6/25/2014

ATTEST: 
James T. Dinneen
County Manager

Date: 6/27/14

County Council Approval Date: 6/19/2014

Exhibit "A" – Sample Task Assignment
Exhibit "B" – Proposal dated 02-06-2014

EXHIBIT "A"

[FOR COUNTY USE ONLY]

**TASK ASSIGNMENT NO. X
TO THE
CONTRACT FOR PROFESSIONAL CONSULTING SERVICES
FOR [TYPE OF SERVICE]
BETWEEN THE COUNTY OF VOLUSIA
AND THE FIRM OF
[NAME AND ADDRESS OF FIRM]**

PROJECT TITLE: [NAME OF PROJECT]

PROJECT NUMBER:

I. PURPOSE

This is an attachment to the Contract for Professional Consulting Services for [Type of Service] dated [Date of contract] between the County of Volusia (COUNTY) and the consulting firm of [Name of Firm] (CONSULTANT) and made a part thereof. The purpose of this Task Assignment is to specify the required services of the CONSULTANT.

II. SCOPE OF WORK

The CONSULTANT'S Scope of Work for [Project Title] shall include the following tasks as outlined and attached hereto as Exhibit "A."

III. DELIVERABLES

The CONSULTANT shall produce and deliver to the COUNTY the deliverables outlined and attached hereto as Exhibit "A."

IV. SCHEDULES AND TIME FOR COMPLETION

This Task Assignment shall commence upon Notice to Proceed and continue until the scope of work is completed and accepted by the county. Within ten (10) days after receipt of Notice to Proceed (or other authorizing document), the CONSULTANT shall provide a proposed schedule of payments associated with the deliverables which is acceptable to the COUNTY. If schedule is altered due to unforeseen delays the County's project manager shall be notified at once. Failure to meet the scheduled completion date may be grounds for Termination for Default.

V. METHOD OF COMPENSATION

Payment will be in accordance with the Contract for Professional Consulting Services No. [RSQ #] for [Type of Service]. Compensation for all services, material, supplies, training and any other items or requirements necessary to complete the work as described herein, shall not exceed a grand total amount of [amount in word] DOLLARS and [XX/100] (\$) consisting of [a fixed fee amount of] [amount in word] DOLLARS and [XX/100] (\$) for consulting services and a [fixed fee or not to exceed] amount of [amount in word] DOLLARS and [XX/100] (\$) for reimbursable expenses payable at the rates attached hereto as Exhibit "A" or "B." At no time shall work fees exceed said amount of compensation herein without a written and executed amendment.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Authorize Payment for City Utility Relocation per the Joint Project Agreement with Volusia County for South Atlantic Avenue Sidewalk/Roadway/Water System Improvements in Wilbur-by-the Sea

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: Move to approve the payment to Volusia County, as required in the Joint Project Agreement between the City and the County, for construction of utilities in conjunction with South Atlantic Avenue Improvements, in the amount of \$693,153, plus \$40,000 for unforeseen conditions for a total of \$733,153; and to authorize the Mayor and City Clerk to execute all contract documents

SUMMARY: The City signed a JPA with Volusia County for this project on October 28, 2014. The County and City staffs along with City engineering consultants have since prepared joint design plans to modify the roadway, construct new drainage systems, sidewalks, and install relocated and upsized potable waterlines from Marcelle Avenue south to Toronita Avenue within Wilbur-by-the-Sea. The City's existing waterlines are in direct conflict with a majority of the proposed storm drainage system.

This project is being constructed by Volusia County to improve safety of pedestrians and drainage throughout the area. In order to use this opportunity to relocate our water line concurrent with the roadway construction under one contract, utility design plans were completed by Quentin L. Hampton Associates (QLH) and the necessary permits obtained for relocation of the waterlines. Work includes construction of a relocated and upsized 8" potable water main along the route and replacement of all connecting water mains and services to avoid the proposed storm water drainage system.

Volusia County advertised this JPA Project and bids were opened on June 25, 2015. Of the five bids received Masci Construction was determined to be the lowest responsive bidder by the County. The County has recently notified us by letter (attached) of their intention to award a contract in late August to Masci Construction. The City is required to provide the funding for the bid at the outset of the project per the JPA.

Should our portion of this project incur overruns on unforeseen construction items, the agreement also provides for settling up with the County at the completion of the project. The County will be serving as the project administrator for all contract payments, including securing the various bonds and insurance requirements, assisting in overseeing construction, and other administrative functions. Quentin Hampton and Assoc. will provide engineer-of-record services for our water line throughout the duration of this project. Project management and inspection services will be performed by Public Utilities staff.

Attachments include the executed JPA and communication from Volusia County.

Project No.: URP010

URP010

URP010

URP010

Funding Account No.: 40302005336397

40308005336397

40508005336397

42108005336397

ATTACHMENTS:

1.	Letter from Volusia County	Letter to City of Port Orange 7-13-15.pdf
2.	JPA Agreement	10-21-14 COV Port Orange-Joint Project Agreement-South Atlantic Avenue.pdf
3.	Resol 14-62	Resol 14-62.pdf

Wiggins, Julia

Wilson, Rick

Neff, Andrew

Riehm, Tracey

Roberts, Margaret

Harden, David

Created/Initiated - 07/16/2015

Approved - 07/16/2015

Approved - 07/20/2015

Approved - 07/21/2015

Approved - 07/28/2015

Final Approval - 07/28/2015



**PUBLIC WORKS DEPARTMENT
Engineering & Construction Division**

July 13, 2015

Fred W. Griffith, P.E.
Public Utilities Engineer
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Re: JPA between County and City of Port Orange for
City's potable water line adjustments during County's
Sidewalk construction work on South Atlantic Avenue
in Wilbur-by-the-Sea

Dear Mr. Griffith:

Per the attached JPA the county shall not award the referenced joint project without prior review by the city of the city's utility work portion of the bid and issuance of a city check in the amount of the utility portion of the bid. As you can see from the previously submitted low bid documents the utility work is \$688,747.00 plus \$4,406.00 for bonds for a total of \$693,153.00.

It is suggested that the city also obtain authorization of 10% more to cover any unexpected items that would require an expedited approval from the city to avoid a contractor delay claim. If acceptable the 10% could be in the form of a purchase order.

Please make the check out to County of Volusia and mailed to my attention at 123 West Indiana Avenue, DeLand, FL 32720. It would be appreciated if this could be approved at the July 21st Council meeting so we can award the contract in the first week of August.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gerald N. Brinton", is written over a horizontal line.

Gerald N. Brinton, County Engineer/
Director of Engineering & Construction

cc: Kimberly Secord, County Utility Coordinator

**JOINT PROJECT AGREEMENT BETWEEN COUNTY OF VOLUSIA AND THE CITY
OF PORT ORANGE FOR UTILITY LINE ADJUSTMENT AND SIDEWALK
CONSTRUCTION ON SOUTH ATLANTIC AVENUE IN WILBUR-BY-THE-SEA**

THIS JOINT PROJECT AGREEMENT (AGREEMENT) is made and entered into by and between the County of Volusia (COUNTY), a political subdivision of the State of Florida, and the City of Port Orange (CITY), a municipal corporation of the State of Florida, for adjustments to the CITY's potable water lines to avoid conflicts within the COUNTY's construction work on South Atlantic Avenue in Wilbur-by-the-Sea. Each of the above individually may be referred to as Party, and collectively as Parties.

WITNESSETH:

WHEREAS, the COUNTY is constructing, reconstructing, improving or otherwise changing a portion of South Atlantic Avenue in Wilbur-by-the-Sea, designated by the COUNTY as Project #4992 (COUNTY'S SIDEWALK WORK); and

WHEREAS, the COUNTY prepared design drawings and specifications for installation of approximately one mile of new sidewalk and associated underground stormwater facilities for the COUNTY'S SIDEWALK WORK; and

WHEREAS, the CITY is willing to make adjustments to the CITY's existing potable water lines (CITY'S UTILITY WORK) within the COUNTY'S right-of-way to avoid conflicts with the COUNTY'S SIDEWALK WORK; and

WHEREAS, the CITY will prepare, at its expense, design drawings for the CITY'S UTILITY WORK, and will furnish the COUNTY with a complete set of design drawings covering all construction requirements of the CITY'S UTILITY WORK; and

WHEREAS, the COUNTY and the CITY have determined that it would be in the best interest of the general public to enter into this AGREEMENT providing for construction of the CITY'S UTILITY WORK during and coincident with the COUNTY'S SIDEWALK WORK; and

WHEREAS, the CITY, by this AGREEMENT, agrees to assume all costs incurred for the CITY'S UTILITY WORK; and

WHEREAS, the COUNTY, by this AGREEMENT, agrees to assume all costs incurred for the COUNTY'S SIDEWALK WORK.

NOW, THEREFORE, in consideration of the mutual covenants, promises, warranties and undertakings of the Parties contained herein and other good and valuable consideration given by each Party to the other, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto stipulate and agree as follows:

A. MUTUAL COOPERATION

The COUNTY and CITY shall mutually participate in this AGREEMENT and shall work cooperatively to coordinate and accomplish all aspects of both the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK. The COUNTY and CITY agree to endeavor to fulfill the responsibilities and complete the work set forth in this AGREEMENT, and any amendment, modification, supplement or change order, which may be approved by the COUNTY and the CITY subsequent to execution of this AGREEMENT, as expeditiously as possible.

B. CITY RESPONSIBILITIES

1. BID DOCUMENTS

At its sole cost and expense, the CITY shall prepare all necessary plans and documents relating to the CITY'S UTILITY WORK for inclusion of the CITY'S UTILITY WORK in the bid documents for the COUNTY'S SIDEWALK WORK. The CITY shall provide to the COUNTY all final and complete plans and documents relating to the CITY'S UTILITY WORK for inclusion in the COUNTY'S bid documents.

Each Party shall be responsible for the accuracy and completeness of its own plans and documents.

2. PLAN COORDINATION

The CITY agrees to coordinate its plans for the CITY'S UTILITY WORK with the COUNTY'S SIDEWALK WORK plans to avoid conflict or construction delays. The CITY shall work proactively with the COUNTY to eliminate any conflicts that may exist between the CITY'S UTILITY WORK and the COUNTY'S SIDEWALK WORK. The basis of survey and other survey information for the CITY'S UTILITY WORK shall be consistent with the COUNTY'S SIDEWALK WORK plans.

3. CONFLICTS

The Parties expressly agree that the COUNTY'S SIDEWALK WORK shall take priority over the CITY'S UTILITY WORK. The CITY'S UTILITY WORK shall be designed, located or relocated to avoid conflict between the CITY'S UTILITY WORK and the COUNTY'S SIDEWALK WORK. Any conflicts between the existing or proposed facilities in the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK shall be adjusted or relocated to adequately accommodate the COUNTY'S SIDEWALK WORK at the CITY'S sole expense.

4. CITY REPRESENTATIVES

At its own expense, the CITY shall provide a knowledgeable representative to respond to any CITY'S UTILITY WORK related questions during the advertisement and bidding of the COUNTY'S SIDEWALK WORK. The CITY shall also provide a knowledgeable representative to attend any project meetings prior to and during the performance of the CITY'S UTILITY WORK.

At its own expense, the CITY shall provide for the review and approval of shop drawings and any other submittals relating to the CITY'S UTILITY WORK during the construction of the COUNTY'S SIDEWALK WORK. The review and approval of any shop drawings and submittals shall be performed in a timely manner and shall not delay the COUNTY'S SIDEWALK WORK.

At its own expense, the CITY shall provide one on-site technician to observe the construction and assist in the coordination of testing of the CITY'S UTILITY WORK. At its own expense, the CITY shall provide for all testing required for the CITY'S UTILITY WORK, including, but not limited to, soil density and compaction testing. Field survey control, if required by the CITY for the CITY'S UTILITY WORK, shall be furnished by the COUNTY.

During construction, the CITY'S on-site technician shall furnish the County Engineer or designee with daily progress reports or diary records, approved quantities and amounts for weekly, monthly and final estimates. Any deficiencies noted in construction shall be immediately reported to the County Engineer or designee, and the COUNTY shall maintain all necessary controls relative to the quality of construction. The CITY's on-site technician may communicate directly with the contractor's field representatives and shall include the County Engineer or designee in all communications.

C. COUNTY RESPONSIBILITIES

1. SIDEWALK WORK PLANS

The COUNTY shall provide to the CITY one paper copy and one electronic copy of the COUNTY'S SIDEWALK WORK plans. The electronic version of the COUNTY'S SIDEWALK WORK plans shall be in AutoCADD format. If necessary, the CITY shall be responsible for the conversion of the COUNTY'S SIDEWALK WORK plans to any other format at its own expense.

2. PLAN COORDINATION

The COUNTY agrees to coordinate its plans for the COUNTY'S SIDEWALK WORK with the CITY'S UTILITY WORK plans to avoid conflict or construction delays. The COUNTY shall work proactively with the CITY to eliminate any conflicts that may exist between the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK. The

basis of survey and other survey information for the COUNTY'S SIDEWALK WORK shall be consistent with the CITY'S UTILITY WORK plans.

D. PROJECT PROCESS

1. BID DOCUMENTS

The COUNTY shall be responsible for the assembly of all necessary bid documents for the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK. The COUNTY shall be responsible for advertisement, bidding, award and administration of the construction contract for the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK. The plans, specifications and bid documents for the CITY'S UTILITY WORK shall be included in the COUNTY'S SIDEWALK WORK bid package and separately labeled as "CITY'S UTILITY WORK" for clarification.

2. NOTIFICATION & AWARD

After the COUNTY receives, opens, and evaluates the combined COUNTY'S SIDEWALK WORK and CITY'S UTILITY WORK bids, the COUNTY will notify the CITY, in writing, of the COUNTY'S intent to award the contract. The CITY shall notify the COUNTY of its acceptance of the COUNTY'S selection, in writing, within ten (10) days of receipt of notice, including the CITY'S intent to exercise any options permitted by this paragraph. The notice to the CITY by the COUNTY shall include the amount of the CITY'S UTILITY WORK listed separately. The CITY understands and agrees that the COUNTY intends to award the contract to the lowest responsive and responsible bidder for the combined COUNTY'S SIDEWALK WORK and CITY'S UTILITY WORK; however, the COUNTY reserves the right to select and award the contract based on the lowest responsive and responsible bid for the COUNTY'S SIDEWALK WORK. Additionally, the COUNTY may award the contract to the lowest responsive and responsible bidder for the CITY'S UTILITY WORK, if the CITY pays any difference between the bid for the COUNTY'S SIDEWALK WORK associated with the CITY'S selection, and the lowest responsive and responsible bid for the COUNTY'S SIDEWALK WORK.

3. NO OBLIGATION

The COUNTY is under no obligation to accept any of the bids received at the bid opening for the combined COUNTY'S SIDEWALK WORK and CITY'S UTILITY WORK, and may, at its option, without incurring any obligation to the CITY, reject all bids or any part of any bid received at bid opening.

4. CHANGE ORDERS

For any change to the CITY'S UTILITY WORK, a change order shall be requested in writing by the CITY, at the CITY'S sole expense. Any such request shall include a

written description of the changed work and a sketch in a form acceptable to the COUNTY. The COUNTY shall review the change order documents only for their effect on the COUNTY'S SIDEWALK WORK and the overall cost of the contract. An authorized CITY representative shall sign the change order documents prior to submittal to the COUNTY.

5. CONSTRUCTION

All services and work under the construction contract shall be performed to the satisfaction of the County Engineer. All questions, difficulties and disputes of whatever nature which may arise under the construction contract including, but not limited to, the prosecution and fulfillment of the services thereunder and the character, quality, amount and value thereof, shall be decided by the County Engineer after consultation with the CITY. The decision of the County Engineer upon all such questions, difficulties and disputes thereunder shall be final. The CITY shall be provided the contractor's monthly pay requests for the amount of the CITY'S UTILITY WORK for review and acceptance as to the percentage or quantities, as applicable, of work completed prior to the COUNTY issuing payment to the contractor from the CITY'S initial payment to the COUNTY.

6. OWNERSHIP

Upon completion and acceptance of the work and receipt by the CITY of as-built drawings of the completed work, the CITY shall own, control, maintain and be responsible for all of the CITY'S utility facilities according to the COUNTY'S standard use permit conditions for occupancy of public rights-of-way. The CITY agrees that it shall:

- (a) Maintain and keep in good repair, or cause to be maintained and kept in good repair, all such facilities or utilities within the right-of-way of the COUNTY; and
- (b) Comply with all provisions of law and the COUNTY'S manual with amendments and specifications for traffic control routing and parking; and
- (c) Conform with all other regulations of the COUNTY pertaining to occupancy of public rights-of-way.

E. CITY FUNDING

The CITY agrees to provide a cash payment to the COUNTY, in advance of the award of the contract, to fully fund the CITY'S UTILITY WORK, including any administrative or contingency costs as agreed to by the Parties.

Upon final completion of all construction, the COUNTY will conduct a true-up of all bid quantities, including change orders, whether increasing or decreasing the costs of the

CITY'S UTILITY WORK, and a final reconciliation of all CITY'S UTILITY WORK costs will be prepared by the COUNTY and provided to the CITY for review and acceptance. If the CITY's initial cash payment to the COUNTY for the CITY'S UTILITY WORK is less than the final amount of the CITY'S UTILITY WORK based on the final reconciliation, the COUNTY will invoice the CITY for the shortfall amount. The CITY, within thirty (30) days of receipt of the invoice and final reconciliation, shall pay to the COUNTY any shortfall amount. Conversely, if the CITY'S initial cash payment to the COUNTY for the CITY'S UTILITY WORK is more than the final CITY'S UTILITY WORK costs based on the final reconciliation, the COUNTY shall pay to the CITY the amount overpaid within thirty (30) days after the CITY'S acceptance of the final reconciliation.

F. INDEMNIFICATION

Each Party shall be responsible for its sole negligence, breach of contract, or breach of this AGREEMENT, subject to the limitations in Section 768.28, Florida Statutes (2013).

G. MISCELLANEOUS

1. NOTICES

Any notice, statement, demand or other communication required or permitted to be delivered, served or given by either Party to the other shall be deemed delivered, served or given, if mailed in any general or branch United States Post Office (USPS) enclosed in a registered or certified envelope addressed to the respective Party, as follows:

TO COUNTY: GERALD N. BRINTON, P.E.
 COUNTY ENGINEER
 123 WEST INDIANA AVENUE
 DELAND FL 32720

TO CITY: PUBLIC UTILITIES DEPT.
 CITY OF PORT ORANGE
 1000 CITY CENTER CIRCLE
 PORT ORANGE FL 32129

2. COUNTY FUNDING

The COUNTY'S responsibilities under this AGREEMENT are contingent upon the appropriation of funds required for the COUNTY'S SIDEWALK WORK.

3. LAW/VENUE

The applicable laws of the State of Florida shall govern the validity, interpretation, construction and performance of this AGREEMENT. Venue for any suit involving this

AGREEMENT shall be Volusia County, Florida.

4. AGREEMENT TERM

This AGREEMENT shall be effective on the executed date of the COUNTY and shall continue in full force and effect until final reconciliation and payment in full by the CITY under this AGREEMENT is received by the COUNTY.

5. FORCE MAJEURE

Neither the COUNTY nor the CITY shall be liable to the other for any failure to perform under this AGREEMENT to the extent such performance is prevented by an act of God, war, riot, natural catastrophe, or other event beyond the control of the nonperforming Party and which could not have been avoided or overcome by the exercise of due diligence; providing that the Party claiming the excuse from performance has (a) promptly notified the other Party of the occurrence of the event and its estimated duration; (b) promptly remedied or mitigated the effect of the event to the extent possible; and (c) resumed performance as soon as possible.

6. ASSIGNMENT

No assignment, delegation, transfer or novation of this AGREEMENT or any part thereof shall be made unless approved in writing by the Parties.

7. HEADINGS

All section headings contained herein are included for convenience only and shall not affect in any manner the construction or interpretation of the AGREEMENT.

8. SEVERABILITY

In the event that any provision of this AGREEMENT shall for any reason be determined invalid, illegal or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements to this AGREEMENT or such other appropriate actions as shall implement and give effect to the intentions of the Parties reflected herein. All other provisions of this AGREEMENT, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

9. AMENDMENT

The AGREEMENT may only be amended, modified or supplemented in writing which must be duly executed by the COUNTY and CITY.

10. ENTIRE AGREEMENT

All negotiations, proposals and draft agreements prior to the date of execution of this AGREEMENT are hereby superseded by this AGREEMENT. This AGREEMENT shall constitute the entire AGREEMENT of the COUNTY and CITY with respect to the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK.

11. SUCCESSORS AND ASSIGNS

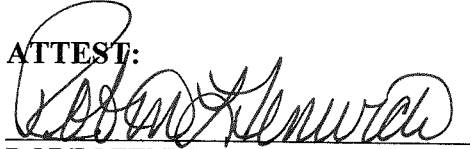
This AGREEMENT shall be binding upon and inure to the benefit of the respective successors, assigns, administrators and managers of the COUNTY and the CITY.

12. EXECUTION OF DOCUMENTS

This AGREEMENT shall be executed in two (2) duplicate originals, any of which shall be regarded for all purposes as an original and all of which shall constitute one and the same instrument. The COUNTY shall retain one (1) fully executed copy and the CITY shall retain one (1) fully executed copy.

IN WITNESS WHEREOF, the Parties hereto have made and executed this AGREEMENT as of the COUNTY'S execution date written below.

ATTEST:


ROBIN FENWICK

CITY OF PORT ORANGE

BY:


ALLEN GREEN
MAYOR

DATE:

10/28/14

ATTEST:

JAMES T. DINNEEN
COUNTY MANAGER

VOLUSIA COUNTY

BY:

JASON P. DAVIS, CHAIR
COUNTY COUNCIL

DATE: _____

APPROVED AS TO FORM:

PRINT NAME:

VOLUSIA COUNTY ATTORNEY'S OFFICE

**JOINT PROJECT AGREEMENT BETWEEN COUNTY OF VOLUSIA AND THE CITY
OF PORT ORANGE FOR UTILITY LINE ADJUSTMENT AND SIDEWALK
CONSTRUCTION ON SOUTH ATLANTIC AVENUE IN WILBUR-BY-THE-SEA**

THIS JOINT PROJECT AGREEMENT (AGREEMENT) is made and entered into by and between the County of Volusia (COUNTY), a political subdivision of the State of Florida, and the City of Port Orange (CITY), a municipal corporation of the State of Florida, for adjustments to the CITY's potable water lines to avoid conflicts within the COUNTY's construction work on South Atlantic Avenue in Wilbur-by-the-Sea. Each of the above individually may be referred to as Party, and collectively as Parties.

WITNESSETH:

WHEREAS, the COUNTY is constructing, reconstructing, improving or otherwise changing a portion of South Atlantic Avenue in Wilbur-by-the-Sea, designated by the COUNTY as Project #4992 (COUNTY'S SIDEWALK WORK); and

WHEREAS, the COUNTY prepared design drawings and specifications for installation of approximately one mile of new sidewalk and associated underground stormwater facilities for the COUNTY'S SIDEWALK WORK; and

WHEREAS, the CITY is willing to make adjustments to the CITY's existing potable water lines (CITY'S UTILITY WORK) within the COUNTY'S right-of-way to avoid conflicts with the COUNTY'S SIDEWALK WORK; and

WHEREAS, the CITY will prepare, at its expense, design drawings for the CITY'S UTILITY WORK, and will furnish the COUNTY with a complete set of design drawings covering all construction requirements of the CITY'S UTILITY WORK; and

WHEREAS, the COUNTY and the CITY have determined that it would be in the best interest of the general public to enter into this AGREEMENT providing for construction of the CITY'S UTILITY WORK during and coincident with the COUNTY'S SIDEWALK WORK; and

WHEREAS, the CITY, by this AGREEMENT, agrees to assume all costs incurred for the CITY'S UTILITY WORK; and

WHEREAS, the COUNTY, by this AGREEMENT, agrees to assume all costs incurred for the COUNTY'S SIDEWALK WORK.

NOW, THEREFORE, in consideration of the mutual covenants, promises, warranties and undertakings of the Parties contained herein and other good and valuable consideration given by each Party to the other, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto stipulate and agree as follows:

A. MUTUAL COOPERATION

The COUNTY and CITY shall mutually participate in this AGREEMENT and shall work cooperatively to coordinate and accomplish all aspects of both the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK. The COUNTY and CITY agree to endeavor to fulfill the responsibilities and complete the work set forth in this AGREEMENT, and any amendment, modification, supplement or change order, which may be approved by the COUNTY and the CITY subsequent to execution of this AGREEMENT, as expeditiously as possible.

B. CITY RESPONSIBILITIES

1. BID DOCUMENTS

At its sole cost and expense, the CITY shall prepare all necessary plans and documents relating to the CITY'S UTILITY WORK for inclusion of the CITY'S UTILITY WORK in the bid documents for the COUNTY'S SIDEWALK WORK. The CITY shall provide to the COUNTY all final and complete plans and documents relating to the CITY'S UTILITY WORK for inclusion in the COUNTY'S bid documents.

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3. CONFLICTS

The Parties expressly agree that the COUNTY'S SIDEWALK WORK shall take priority over the CITY'S UTILITY WORK. The CITY'S UTILITY WORK shall be designed, located or relocated to avoid conflict between the CITY'S UTILITY WORK and the COUNTY'S SIDEWALK WORK. Any conflicts between the existing or proposed facilities in the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK shall be adjusted or relocated to adequately accommodate the COUNTY'S SIDEWALK WORK at the CITY'S sole expense.

4. CITY REPRESENTATIVES

At its own expense, the CITY shall provide a knowledgeable representative to respond to any CITY'S UTILITY WORK related questions during the advertisement and bidding of the COUNTY'S SIDEWALK WORK. The CITY shall also provide a knowledgeable representative to attend any project meetings prior to and during the performance of the CITY'S UTILITY WORK.

At its own expense, the CITY shall provide for the review and approval of shop drawings and any other submittals relating to the CITY'S UTILITY WORK during the construction of the COUNTY'S SIDEWALK WORK. The review and approval of any shop drawings and submittals shall be performed in a timely manner and shall not delay the COUNTY'S SIDEWALK WORK.

At its own expense, the CITY shall provide one on-site technician to observe the construction and assist in the coordination of testing of the CITY'S UTILITY WORK. At its own expense, the CITY shall provide for all testing required for the CITY'S UTILITY WORK, including, but not limited to, soil density and compaction testing. Field survey control, if required by the CITY for the CITY'S UTILITY WORK, shall be furnished by the COUNTY.

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C. COUNTY RESPONSIBILITIES

1. SIDEWALK WORK PLANS

The COUNTY shall provide to the CITY one paper copy and one electronic copy of the COUNTY'S SIDEWALK WORK plans. The electronic version of the COUNTY'S SIDEWALK WORK plans shall be in AutoCADD format. If necessary, the CITY shall be responsible for the conversion of the COUNTY'S SIDEWALK WORK plans to any other format at its own expense.

2. PLAN COORDINATION

The COUNTY agrees to coordinate its plans for the COUNTY'S SIDEWALK WORK with the CITY'S UTILITY WORK plans to avoid conflict or construction delays. The COUNTY shall work proactively with the CITY to eliminate any conflicts that may exist between the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK. The

basis of survey and other survey information for the COUNTY'S SIDEWALK WORK shall be consistent with the CITY'S UTILITY WORK plans.

D. PROJECT PROCESS

1. BID DOCUMENTS

The COUNTY shall be responsible for the assembly of all necessary bid documents for the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK. The COUNTY shall be responsible for advertisement, bidding, award and administration of the construction contract for the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK. The plans, specifications and bid documents for the CITY'S UTILITY WORK shall be included in the COUNTY'S SIDEWALK WORK bid package and separately labeled as "CITY'S UTILITY WORK" for clarification.

2. NOTIFICATION & AWARD

After the COUNTY receives, opens, and evaluates the combined COUNTY'S SIDEWALK WORK and CITY'S UTILITY WORK bids, the COUNTY will notify the CITY, in writing, of the COUNTY'S intent to award the contract. The CITY shall notify the COUNTY of its acceptance of the COUNTY'S selection, in writing, within ten (10) days of receipt of notice, including the CITY'S intent to exercise any options permitted by this paragraph. The notice to the CITY by the COUNTY shall include the amount of the CITY'S UTILITY WORK listed separately. The CITY understands and agrees that the COUNTY intends to award the contract to the lowest responsive and responsible bidder for the combined COUNTY'S SIDEWALK WORK and CITY'S UTILITY WORK; however, the COUNTY reserves the right to select and award the contract based on the lowest responsive and responsible bid for the COUNTY'S SIDEWALK WORK. Additionally, the COUNTY may award the contract to the lowest responsive and responsible bidder for the CITY'S UTILITY WORK, if the CITY pays any difference between the bid for the COUNTY'S SIDEWALK WORK associated with the CITY'S selection, and the lowest responsive and responsible bid for the COUNTY'S SIDEWALK WORK.

3. NO OBLIGATION

The COUNTY is under no obligation to accept any of the bids received at the bid opening for the combined COUNTY'S SIDEWALK WORK and CITY'S UTILITY WORK, and may, at its option, without incurring any obligation to the CITY, reject all bids or any part of any bid received at bid opening.

4. CHANGE ORDERS

For any change to the CITY'S UTILITY WORK, a change order shall be requested in writing by the CITY, at the CITY'S sole expense. Any such request shall include a

written description of the changed work and a sketch in a form acceptable to the COUNTY. The COUNTY shall review the change order documents only for their effect on the COUNTY'S SIDEWALK WORK and the overall cost of the contract. An authorized CITY representative shall sign the change order documents prior to submittal to the COUNTY.

5. CONSTRUCTION

All services and work under the construction contract shall be performed to the satisfaction of the County Engineer. All questions, difficulties and disputes of whatever nature which may arise under the construction contract including, but not limited to, the prosecution and fulfillment of the services thereunder and the character, quality, amount and value thereof, shall be decided by the County Engineer after consultation with the CITY. The decision of the County Engineer upon all such questions, difficulties and disputes thereunder shall be final. The CITY shall be provided the contractor's monthly pay requests for the amount of the CITY'S UTILITY WORK for review and acceptance as to the percentage or quantities, as applicable, of work completed prior to the COUNTY issuing payment to the contractor from the CITY'S initial payment to the COUNTY.

6. OWNERSHIP

Upon completion and acceptance of the work and receipt by the CITY of as-built drawings of the completed work, the CITY shall own, control, maintain and be responsible for all of the CITY'S utility facilities according to the COUNTY'S standard use permit conditions for occupancy of public rights-of-way. The CITY agrees that it shall:

- (a) Maintain and keep in good repair, or cause to be maintained and kept in good repair, all such facilities or utilities within the right-of-way of the COUNTY; and
- (b) Comply with all provisions of law and the COUNTY'S manual with amendments and specifications for traffic control routing and parking; and
- (c) Conform with all other regulations of the COUNTY pertaining to occupancy of public rights-of-way.

E. CITY FUNDING

The CITY agrees to provide a cash payment to the COUNTY, in advance of the award of the contract, to fully fund the CITY'S UTILITY WORK, including any administrative or contingency costs as agreed to by the Parties.

Upon final completion of all construction, the COUNTY will conduct a true-up of all bid quantities, including change orders, whether increasing or decreasing the costs of the

CITY'S UTILITY WORK, and a final reconciliation of all CITY'S UTILITY WORK costs will be prepared by the COUNTY and provided to the CITY for review and acceptance. If the CITY's initial cash payment to the COUNTY for the CITY'S UTILITY WORK is less than the final amount of the CITY'S UTILITY WORK based on the final reconciliation, the COUNTY will invoice the CITY for the shortfall amount. The CITY, within thirty (30) days of receipt of the invoice and final reconciliation, shall pay to the COUNTY any shortfall amount. Conversely, if the CITY'S initial cash payment to the COUNTY for the CITY'S UTILITY WORK is more than the final CITY'S UTILITY WORK costs based on the final reconciliation, the COUNTY shall pay to the CITY the amount overpaid within thirty (30) days after the CITY'S acceptance of the final reconciliation.

F. INDEMNIFICATION

Each Party shall be responsible for its sole negligence, breach of contract, or breach of this AGREEMENT, subject to the limitations in Section 768.28, Florida Statutes (2013).

G. MISCELLANEOUS

1. NOTICES

Any notice, statement, demand or other communication required or permitted to be delivered, served or given by either Party to the other shall be deemed delivered, served or given, if mailed in any general or branch United States Post Office (USPS) enclosed in a registered or certified envelope addressed to the respective Party, as follows:

TO COUNTY: GERALD N. BRINTON, P.E.
 COUNTY ENGINEER
 123 WEST INDIANA AVENUE
 DELAND FL 32720

TO CITY: PUBLIC UTILITIES DEPT.
 CITY OF PORT ORANGE
 1000 CITY CENTER CIRCLE
 PORT ORANGE FL 32129

2. COUNTY FUNDING

The COUNTY'S responsibilities under this AGREEMENT are contingent upon the appropriation of funds required for the COUNTY'S SIDEWALK WORK.

3. LAW/VENUE

The applicable laws of the State of Florida shall govern the validity, interpretation, construction and performance of this AGREEMENT. Venue for any suit involving this

AGREEMENT shall be Volusia County, Florida.

4. AGREEMENT TERM

This AGREEMENT shall be effective on the executed date of the COUNTY and shall continue in full force and effect until final reconciliation and payment in full by the CITY under this AGREEMENT is received by the COUNTY.

5. FORCE MAJEURE

Neither the COUNTY nor the CITY shall be liable to the other for any failure to perform under this AGREEMENT to the extent such performance is prevented by an act of God, war, riot, natural catastrophe, or other event beyond the control of the nonperforming Party and which could not have been avoided or overcome by the exercise of due diligence; providing that the Party claiming the excuse from performance has (a) promptly notified the other Party of the occurrence of the event and its estimated duration; (b) promptly remedied or mitigated the effect of the event to the extent possible; and (c) resumed performance as soon as possible.

6. ASSIGNMENT

No assignment, delegation, transfer or novation of this AGREEMENT or any part thereof shall be made unless approved in writing by the Parties.

7. HEADINGS

All section headings contained herein are included for convenience only and shall not affect in any manner the construction or interpretation of the AGREEMENT.

8. SEVERABILITY

In the event that any provision of this AGREEMENT shall for any reason be determined invalid, illegal or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements to this AGREEMENT or such other appropriate actions as shall implement and give effect to the intentions of the Parties reflected herein. All other provisions of this AGREEMENT, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

9. AMENDMENT

The AGREEMENT may only be amended, modified or supplemented in writing which must be duly executed by the COUNTY and CITY.

10. ENTIRE AGREEMENT

All negotiations, proposals and draft agreements prior to the date of execution of this AGREEMENT are hereby superseded by this AGREEMENT. This AGREEMENT shall constitute the entire AGREEMENT of the COUNTY and CITY with respect to the COUNTY'S SIDEWALK WORK and the CITY'S UTILITY WORK.

11. SUCCESSORS AND ASSIGNS

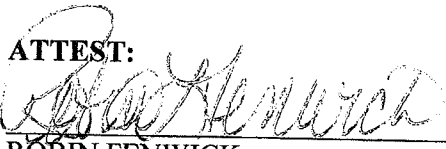
This AGREEMENT shall be binding upon and inure to the benefit of the respective successors, assigns, administrators and managers of the COUNTY and the CITY.

12. EXECUTION OF DOCUMENTS

This AGREEMENT shall be executed in two (2) duplicate originals, any of which shall be regarded for all purposes as an original and all of which shall constitute one and the same instrument. The COUNTY shall retain one (1) fully executed copy and the CITY shall retain one (1) fully executed copy.

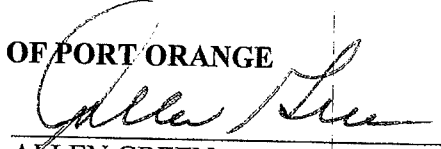
IN WITNESS WHEREOF, the Parties hereto have made and executed this AGREEMENT as of the COUNTY'S execution date written below.

ATTEST:


ROBIN FENWICK

CITY OF PORT ORANGE

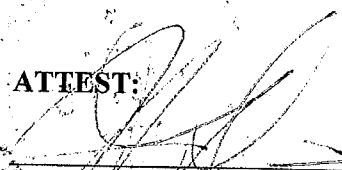
BY:


ALLEN GREEN
MAYOR

DATE:

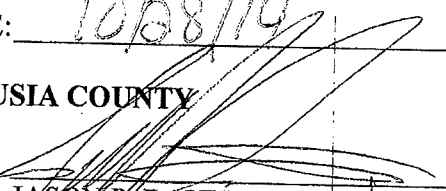
10/28/14

ATTEST:


JAMES T. DINNEEN
COUNTY MANAGER

VOLUSIA COUNTY

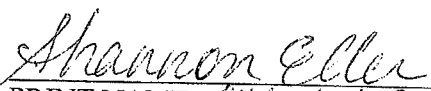
BY:


JASON P. DAVIS, CHAIR
COUNTY COUNCIL

DATE:

10/19/2014

APPROVED AS TO FORM:


PRINT NAME: SHANNON ELLER
VOLUSIA COUNTY ATTORNEY'S OFFICE

RESOLUTION NO. 14-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE JOINT PROJECT AGREEMENT ("JPA") BETWEEN THE CITY OF PORT ORANGE AND THE COUNTY OF VOLUSIA FOR SOUTH ATLANTIC AVENUE SIDEWALK, ROADWAY, AND WATER SYSTEM IMPROVEMENTS IN WILBUR-BY-THE-SEA; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, an JPA authorizing the City of Port Orange to enter into an agreement with the County of Volusia for the South Atlantic Avenue Sidewalk / Roadway / and Water System Improvements in Wilbur-by-the Sea;

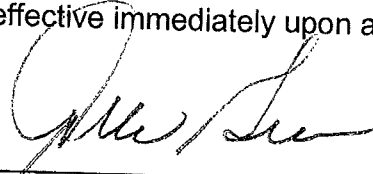
WHEREAS, the County of Volusia has been working with city staff and our engineering consultants over the past year to prepare joint design plans to modify the roadway, construct new drainage systems and sidewalks, and install relocated and upsized potable waterlines.

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

Section 1. The City Council for the City of Port Orange hereby approves the Joint Project Agreement ("JPA") with the County of Volusia for the South Atlantic Avenue Sidewalk / Roadway / and Water System Improvements in Wilbur-by-the Sea.

Section 2. The Mayor and City Clerk are hereby authorized to execute said JPA on behalf of the City of Port Orange.

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



MAYOR ALLEN GREEN

ATTEST:


Robin L. Fenwick, CMC, City Clerk

Adopted on the 28 day of October, 2014.

Reviewed and Approved: 
City Attorney



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: SunTrust Banking Services Contract Extension

DEPARTMENT: Finance

RECOMMENDED MOTION: Move to approve extension of our banking services contract with SunTrust and authorize the City Manager to execute all necessary documents.

SUMMARY: On January 5, 2010 the City council approved RFP#10-02 for the City's General Banking Services. The Contract's effective date was October 1, 2010 with an initial term of three (3) years and up to two (2) two year extensions for a potential total term extending until September 30, 2017 if mutually agreeable to both parties.

On March 26, 2013 the City council approved an extension to the contract for two (2) years. The extension provided by Suntrust was approved with an earlier expiration date of March 31, 2013. City staff desires to exercise the second two (2) year extension that will expire on March 31, 2017. SunTrust has agreed in writing to the extension, and is guaranteeing an Earnings Credit Rate (ECR) of 0.65% and a Municipal Now rate of 0.23% for the first year of the contract extension. During the second year of the contract, SunTrust has agreed to an ECR of 0.60% and a Municipal Now rate competitive with the market rate.

Finance recommends approval of the two (2) year extension of the contract including the amended terms detailed in the attached letter of agreement.

Project Funding Account
No.: No.:

ATTACHMENTS:

1.	Original SunTrust Agreement Oct 2010	Suntrust banking contract 01-05-10.pdf
2.	SunTrust Extension March 2013	Suntrust banking services renewal 03 26 2013.pdf
3.	SunTrust Renewal letter	SunTrust offer letter 7-22-15 (not executed).pdf
4.	Terms and Conditions 7-2015	SunTrust - TreasuryManagementMasterAgreement 2015.pdf

Riehm, Tracey
Riehm, Tracey
Roberts, Margaret
Harden, David

Created/Initiated - 07/18/2015
Approved - 07/18/2015
Approved - 07/28/2015
Final Approval - 07/28/2015



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 1/05/10

SUBJECT: Approval of Ranking and Authorization for Mayor and City Manager to sign contract with Sun Trust Bank for the City's General Banking Services

DEPARTMENT: FINANCE

RECOMMENDED MOTION:

Approve the final ranking and authorize Mayor and City Manager to sign contract with Sun Trust Bank for the City's General Banking Services.

SUMMARY:

The City issued request for proposals for General Banking Services. A Mandatory pre-bid was held and subsequently five-(5) addendas were issued. Three-(3) submittals were received, from Wachovia (Wells Fargo); Fifth Third and Sun Trust. The Selection Committee met to discuss and evaluate the responses. Mel Hamilton, from Public Finance Management (PFM), assisted the Committee review. Our evaluation focused on the most important higher volume items in order to compare services and related cost as offset by earning credits.

It was determined by the Committee that the guaranteed earnings rate of 40 basis points (bp) on invested reserves with immediate access and the 75 (bp) earnings credit paying for banking costs, the Sun Trust's proposal approximated the cost of Wachovia's. With the added ranking points available for additional offices located within the City limits and adequate services provided, Sun Trust was unanimously ranked number one; Wachovia ranked number two and Fifth Third as three. Without a transition period and transition costs, there are very few changes other than a few cost savings, particularly in the debit services area. The Committee and City Staff therefore recommends Council approve the ranking and authorize the Mayor and City Manager to sign on behalf of the City, the contract with Sun Trust for the City's General Banking Services.

Funding for regular banking service is offset from interest earnings. Credit card costs for services are funded by each user Department.

ATTACHMENTS: ☐ Ordinance ☐ Resolution ☐ Budget Resolution

☒ Other ☒ Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD

John A. Shelley Finance Director

Date

FINANCE DEPARTMENT

Approved as to Budget Requirements

Date

CITY ATTORNEY

Approved as to Form and Legality

Date

CITY MANAGER

Approved Agenda Item For:

COUNCIL ACTION:

☐ Approved as Recommended
☐ Continued to Date Certain

☐ Disapproved
☐ Approved with Modification:

☐ Tabled Indefinitely

12/17/09

1/5/10

CITY OF PORT ORANGE
STANDARD CONTRACT FOR SERVICES

This Contract is entered into this 5 day of JAN, 2010, by and between the City of Port Orange, Florida, or its authorized agents, and the Contractor identified below for materials and services identified herein, on the following terms and conditions.

1. Definitions:

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

2. Provision of Services:

- (a) The Contractor hereby agrees to provide the following equipment, materials, labor and other such related services to the City for "**R.F.P. # 10-02 General Banking Services.**"

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

Time: Commencement: Contract will commence April 1, 2010 for a three (3) year period of time with an option for renewal of two (2) two years for a possible total of 6 years and 6 months.

Place: As specified and outlined in above referenced R.F.P. listed above
Manner as required by all State and local Building and Land Development Codes, laws, ordinances as outlined in the above named R.F.P.

3. Time and Essence

Commencement: April 1, 2010 for a 2 years six-(6) month period of time with two – two (2) year renewal options for a possible total of six years and 6 month.

4. City Obligations.

In return for the services identified above, the City shall provide the Contractor the following:

As outlined on the attached Bid Form hereto attached and marked as Exhibit "A".

5. Termination for Convenience of the City:

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

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

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

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

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

(iii) terminate all subcontractors 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 its best efforts to mitigate any damages which may be sustained by him 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 their 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 to this Contract, shall pay from the using department's budget reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or 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 --

(A) cost of work performed or supplies delivered;

(B) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above;

(C) 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 16 of this contract concerning Disputes.

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

7. Termination for Default.

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

8. Examination of Records.

(a) The Contractor agrees that the City, or any duly authorized representative, shall until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any directly 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 directly 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 subcontractors or purchase orders for public utility services at rates established for uniform applicability to the general public.

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

9. Termination of Non-Appropriation of Funds.

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

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

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

INSURANCE	STANDARDS	COMMENTS
Workers = <u>Limits:</u> Compensation Additional Coverage: Special Conditions:	Coverage A-Statutory Coverage B-\$100,000 All States (Broad Form) Voluntary Compensation 30 days notice of cancellation to the Governmental Entity, Waiver of Subrogation in lieu of additional insured will suffice.	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
Comprehensive General <u>Limits:</u> Liability (including Completed Operations and Contractual Liability) Special Conditions:	Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000 aggregate 30 day notice of cancellation to the Governmental Entity, Additional Insured.	When the contract work on or under the 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.
<u>Comprehensive Limits:</u> Business, Automobile Liability to include all automobiles. Additional Coverage: Special Conditions:	Auto Liability Bodily Injury: \$250,000 each person \$500,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car 30 days notice of cancellation to the Governmental Entity, Additional Insured.	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage.

Property <u>Limits:</u> Insurance Builders Risk Additional Coverage: Special Conditions:	Buildings-Completed Value of contract. An All Risk: coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner names as AIMA 30 days notice of cancellation	If the Contractor requires handling or installation of Owners equipment, coverage should be furnished on an All Risk form, including transit and Owner shall be named
Professional Limits: Liability (Errors & Omissions) Special Conditions:	Coverage \$1,000,000 minimum 30 days notice of cancellation tot he Governmental Entity	

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

12. Assignability of Contract.

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

13. Modifications or Changes to this Contract.

(a) Change Orders. The Finance Director, with the concurrence of the City's signatory to this Contract, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance; provided that no Contractor shall be excused from performance under the changed contract by failure to agree to such changes, and it is the express purpose of this provision to permit unilateral changes in the Contract subject to the conditions and limitations herein.

(b) If any change under this clause causes an increase or decrease in the contractor's cost of, or time required for, the equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the contractor, or the City, of any kind in connection with such change, including all costs and damages related to or

incidental to such change. Failure to agree to any adjustment shall not excuse a contractor from proceeding with the Contract as changed.

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

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

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

14. Warranties.

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

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

15. Additional Warranties.

Contractor further expressly warrants that manufacturer must provide a one (1) year Warranty on unit. This shall cover 100% of all component failures due to defects in workmanship or repeated use. Routine maintenance including filters, tires, brake shoes, and drums are not included. Warranty claims shall be handled by manufacturer or distributor. This is a minimum acceptable warranty. Warranty will be considered in bid award. Manufactures shall present best available warrant for vehicle bid. Distributor must have facility to conduct warranty work in a timely manner.

16. Additional Bond Security.

If any surety upon any bond furnished in connection with this Contract becomes unacceptable to the City, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the City and a person supplying labor and materials in the prosecution of work contemplated by this Contract.

17. Inspection.

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

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

rejected or required to be corrected shall be removed or, if permitted or required by the Finance Director, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the City either (i) may by Contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned. The City thereby; or (ii) may terminate this Contract for default as provided in the clause of this Contract entitled "Termination for Default". Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Finance Director may require the delivery of such supplies at a reduction in price which is equitable under the circumstances.

Acceptance of rejection of the supplies shall be made as promptly practicable after delivery, except as otherwise provided in this Contract; by failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the City therefore.

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

19. Contract Administration--Delegation of Authority. Contract administration of this Contract will be performed by the City Manager's Department. The specific individual assigned to administer this contract is: Kenneth W. Parker, City Manager or his designee, John A. Shelley, Finance Director. The contract administrators are not authorized to approve changes to this Contract unless such authority has been delegated to the contract administrators in writing and has been approved by the City signatories to this Contract. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract.

19. Liability for Loss or Damage.

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

20. Non-discrimination.

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

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

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

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

21. Disputes.

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

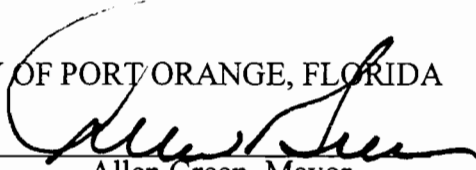
22. Additional Provisions.

As outlined in R.F.P. # 10-02 General Banking Services

23. Integration Clause.

This Contract 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.

CITY OF PORT ORANGE, FLORIDA


Allen Green, Mayor

DATE: 1/7/10

CITY OF PORT ORANGE, FLORIDA

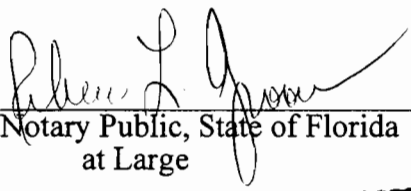

Kenneth W. Parker, City Manager

DATE: 1/7/10

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 7th day of January, ²⁰¹⁰ ~~2009~~, by Allen Green, Mayor and by Kenneth W. Parker, City Manager, of the City of Port Orange, a Florida municipality, on behalf of the city. He is personally known to me and did not take an oath.


Notary Public, State of Florida
at Large

Commission



SunTrust Bank
Company

By: [Signature]
Authorized Official or Company Representative
Scott H. Ricker, FRP

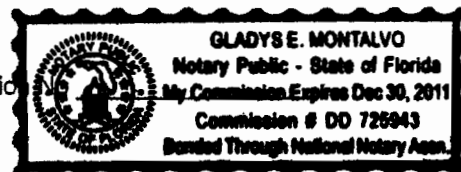
Date: 12/10/09

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 10 day of
December, 2009, by Scott H. Ricker, Authorized Official or
Authorized Representative of SunTrust Bank, a Florida Company
and resident, who is personally known to me or who has produced _____ as
identification and who did (did not) take an oath.

Gladys E. Montalvo
Notary Public, State of
Florida

Commission





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE March 26, 2013

Consent item: yes ☒ no ☐

SUBJECT: Contract extension with SunTrust for City Banking services

DEPARTMENT: Finance Department

RECOMMENDED MOTION: Approve a two (2) year extension of the current contract with SunTrust for City Banking Services.

SUMMARY:

On January 5, 2010 the City council approved the R.F.P. award #10-02 for the City's General Banking Services. The contract effective date was October 1, 2010 with an initial term of three (3) years with up to 2 two (2) year renewal options, if mutually agreeable to both parties.

City staff has expressed the desire to exercise the first two(2) year renewal option. Sun Trust has agreed, in writing, to the extension. Sun Trust has agreed to guarantee an Earnings Credit rate (ECR) of .65% and a Municipal Now interest rate of .23% for the first year of the contract extension. Also Sun Trust has agreed to an ECR of .60% for the second year of the extension with a Municipal Now Rate at a competitive market rate. Staff as compared the offered rates with current market rates and have found them to be competitive.

Staff recommends approval of the two (2) year extension of the existing contract with the amended terms detailed in the attached letter of agreement dated March 11, 2013. Please see the attachments for the specific detail.

ATTACHMENTS: ☐ Budget Resolution ☐ Ordinance/Resolution

☒ Support Documents (contract, agreement, etc.) ☐ Other

DEPARTMENT HEAD:

Submitted

Date

FINANCE DEPARTMENT:

Approved as to Budget Requirements

Date 3/15/13

CITY ATTORNEY:

Approved as to Form and Legality

Date

CITY MANAGER:

Approved Agenda Item for:

COUNCIL ACTION: ☐ Approved as Recommended ☐ Disapproved ☐ Tabled Indefinitely
☐ Continued to Date Certain _____(date) ☐ Approved with following modification:

Follow up letter/action to be taken by ☐ Department, ☐ Clerk's office or ☐ N/A



Michelle R. Baggett
First Vice President
Treasury and Payment Solutions

SunTrust Bank
Mail Code: FL-Orlando-1044
200 S. Orange Ave
Orlando, FL 32801
Tel 407.237.5723
Fax 407.237.6791
Michelle.Baggett@suntrust.com

March 11, 2013
Mr. Greg Kisela, City Manager
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Re: Letter Agreement to Amend the City of Port Orange Standard Contract for Services with SunTrust Bank

Dear Mr. Kisela:

This Letter Agreement Amendment (the "Amendment") hereby amends the City of Port Orange Standard Contract for Services (the "Contract") entered into January 5, 2010 by the City of Port Orange, Florida (the "City") and SunTrust Bank ("SunTrust"). All future references to the "Contract" shall include the Contract as amended by this Amendment.

The City and SunTrust wish to amend the Contract as follows:

1. Section 3, "Time and Essence" shall be amended as follows:
Commencement: The parties wish to extend the contract, and such extension shall commence on March 31, 2013 for 2 years, and shall terminate on March 31, 2015.
2. SunTrust will provide an above-standard earnings credit rate and municipal now interest rate. For the first 24 months of the contract extension from April 1, 2013 through March 31, 2015, the Earnings Credit Rate will be guaranteed at .65%, and the Municipal Now Interest Rate will be guaranteed at .23%. For the second year of the contract extension, the ECR will be .60%, and the Municipal Now Rate will be reviewed and a competitive market rate will be offered to the City.
3. Section 23, "Integration Clause" shall be deleted and replaced with the following:
The parties agree that City will execute the SunTrust Treasury Management Master Agreement (the "Master Agreement"), which will govern the City's use of the treasury management services during the term of the Contract. To the extent there is a conflict between the Contract, including but not

limited provisions regarding termination, liability, and indemnification, and the Master Agreement, the Master Agreement (Section 2, Organization of Agreement) will govern.

The City and SunTrust agree that this Amendment may be executed by in counterparts, all of which counterparts taken together shall be deemed to constitute one and the same instrument. Each party represents that the person signing below is an authorized signer and has the authority to bind the party.

IN WITNESS WHEREOF, this Amendment has been executed as of the date first set forth above.

CITY OF PORT ORANGE,
FLORIDA

SUNTRUST BANK

By: _____
Its: _____

By: Michelle Baggett
Its: First Vice President

1. Introduction. SunTrust Bank offers a full range of treasury management services to our clients. Throughout this master agreement, (a) SunTrust Bank is referred to as "we," "us" or "our," (b) the treasury management services described in our treasury management terms and conditions referred to below are referred to as the "services," (c) this master agreement and the other documents described below are together referred to as the "agreement," (d) the person or entity using one or more of the services is referred to as "you" or "your" and (e) the individuals identified in any resolution, certificate, delegation of authority or other document that you have given us as having authority to enter into or amend the agreement on your behalf are referred to as your "authorized signers."

When you sign this master agreement you are agreeing to be bound by the terms and conditions of the agreement. The agreement is a legally binding contract that can only be changed as provided in this master agreement.

2. Organization of Agreement. As indicated above, the agreement is made up of several documents, each of which serves a special purpose. The relevant documents and their purposes are as follows:

(a) Treasury Management Terms and Conditions. Our treasury management terms and conditions fall into two categories (i) the general terms and conditions that govern the use of all services and (ii) the specific terms and conditions that govern the use of each individual service. The most recent version of our treasury management terms and conditions is always posted on the following website: www.suntrust.com/treasuryterms. You may access it at any time by visiting the site and opening the document with the password we have given you. We will also give you a printed copy of the current version of those terms and conditions upon request.

(b) Master Agreement. This master agreement describes the structure of the agreement and sets forth certain of the basic contractual provisions relating to your use of the services.

(c) Reference Materials. The reference materials for a service provide details regarding the functionality of that service, as well as certain formatting and other technical requirements that you must follow when using that service. Reference materials may include, without limitation, a user manual, a quick reference guide, a service demo and/or file formats and specifications. Not every service has reference materials.

(d) Delegation of Authority. A delegation of authority is optional. By using one, you are giving other people within your company authority with respect to the agreement and/or the services.

(e) Service Profiles. A service profile reflects certain instructions you give us regarding your setup for a particular service, such as the account(s) linked to that service, the authorized users for that service and the options you select for that service.

(f) Implementation/Setup Forms. An implementation/setup form is an internal document that we use to record additional information and/or instructions you give us with respect to a particular service.

(g) Online Services and Software Materials. We may grant to you a nonexclusive, nontransferable, limited license or sublicense to use one or more software programs in connection with certain services. There may be a separate license agreement (which may be a "shrink wrap" or "click wrap" agreement and may be with us or a third-party vendor) and/or user manual for

some of those software programs. Those software programs and those other items are all part of the software materials. There may also be additional online or "click wrap" terms for the use of the online services. The agreement, online terms and any applicable separate license agreement and user manual set forth the terms and conditions relating to your right to use those online services and software programs as well as important instructions and requirements for their use.

(h) Rules and Regulations. The rules and regulations for deposit accounts that you maintain with us set forth certain general provisions relating to the establishment, maintenance and operation of your deposit accounts.

(i) City of Port Orange Standard Contract for Services, dated January 5, 2010, and any amendments thereto.

If there is any inconsistency on a particular issue among the documents that make up the agreement, the documents will control that particular issue in the order set forth from top to bottom above.

3. Amendments. We may change or add to the provisions of this master agreement and any of the general terms and conditions by giving you 30 calendar days' prior notice. We may change or add to the terms and conditions for any individual service by giving you 10 calendar days' prior notice. We may change the information in the implementation/setup forms without giving you notice. If you continue to use a service after any of these changes or additions become effective (or you earlier confirm a service profile for an affected service), you are bound by those changes or additions. If a change or addition is required by applicable law, clearing house rules or funds transfer system rules, or if we believe that the change or addition is necessary for the security or integrity of the systems that we use in providing any services for you, we may give you notice of the change or addition promptly after we make it. In that case, you are bound by the change or addition unless you terminate your use of the relevant service(s) immediately after you receive our notice. We may change or add to the terms of the software materials or the rules and regulations by following the procedures set forth in those documents.

4. New Services. If we agree to provide a new service for you, we will create one or more service profiles reflecting certain instructions you give us regarding your setup for that new service and send or otherwise make them available to you. You may not use that service until you have confirmed (in a manner acceptable to us) that those service profiles are correct, you have successfully completed any required testing or training for that service and we have completed our implementation of your setup for that service. If you attempt to use a new service without satisfying one or more of these conditions, we may refuse to provide that service but, if we do provide it, you are bound by the terms of the agreement relating to that service (including, without limitation, the general terms and conditions and the terms and conditions for that new service).

5. Changes to Your Setup. If we agree to change your setup for a service in response to your instructions and those instructions are of the type reflected on a service profile, we will send or otherwise make one or more service profiles reflecting those instructions available to you. That change will not take effect until you have confirmed (in a manner acceptable to us) that those service profiles are correct, you have successfully completed any required testing or training for the change and we have completed our implementation of the change. In that regard, changes to your setup for a service reflected on a service profile will be implemented either on an "incremental" basis or a



TREASURY MANAGEMENT MASTER AGREEMENT

"complete replacement" basis, as reflected and to the extent indicated in the service profile.

If a change is implemented to your setup for a service on an incremental basis, that change supplements (as an addition, deletion or modification), but does not replace, the information in your setup for that service. For example, if an incremental service profile indicates that it adds a new authorized user for a service, all existing authorized users for that service continue to be authorized users unless you specifically request that we delete one or more of them and that deletion is reflected in a separate service profile that you confirm (in a manner acceptable to us).

If a change is implemented to your setup for a service on a complete replacement basis, the information identified in that service profile completely replaces the information in your setup for that service, to the extent indicated in that service profile. In that regard, information can be completely replaced (a) only for the account(s) identified on the service profile, (b) only for the combination of the account(s) and linked feature(s) of the service identified on the service profile or (c) for all accounts using the service.

For example, if a service profile indicates that it completely replaces all of your previous service profiles for a service with respect to the account(s) identified in that service profile, then only the authorized users identified in that service profile are authorized to use the service with respect to the identified account(s). However, none of your service profiles for other accounts using that service are affected and all authorized users listed on them continue to be authorized users with respect to those other accounts.

Alternatively, if a service profile indicates that it completely replaces all of your previous service profiles for the combination of an account and lockbox identified in that service profile, then only the image delivery option(s) selected in that service profile will be provided with respect to the combination of the identified account and lockbox. However, none of your service profiles for other combinations of accounts and lockboxes for that service are affected and all image delivery options selected in them will continue to be provided with respect to those other combinations of accounts and lockboxes.

Finally, if a service profile indicates that it completely replaces all of your previous service profiles for a service, then only the options identified in that service profile will apply with respect to any of your accounts using that service. None of your previous service profiles for that service are effective and none of the options identified on them will apply with respect to any of your accounts using the service.

We may refuse to accept letters, e-mails or other forms of communication that instruct us to change your setup for a service if those instructions are of the type reflected on a service profile. However, you agree that we may (at our option) accept an e-mail that purports to be from one of your authorized signers and that instructs us to delete one or more accounts from your setup for a service without requiring you to confirm a service profile reflecting that instruction.

6. Electronic Records and Signatures. You consent to the use of electronic records and signatures with respect to your use of the services. Without limiting the types of electronic signatures we may accept, you agree that, if we elect (at

our option) to send a service profile to you as an attachment to an e-mail message, you (a) will be deemed to have confirmed that service profile is correct if we receive an e-mail message to that effect that purports to be from one of your authorized signers, (b) adopt that e-mail message as your electronic signature with the intent to sign that service profile and (c) will be bound by that service profile to the same extent as if one of your authorized signers had printed, signed and given it to us.

7. Acknowledgement of Receipt and Agreement to be Bound. By signing below (and each time you confirm a service profile), you acknowledge that you have received (or have been given electronic access, including the necessary password, to) a complete copy of, and that you have read, understand and agree to be bound by all provisions of our treasury management terms and conditions (including, without limitation, those that **(a) limit our liability to you, (b) describe your obligations to us, (c) authorize us to rely on authorization codes, and to the extent permitted by applicable law, (d) waive the right to a jury trial and (e) require binding arbitration**) in the form and with the content then posted on the identified website (as we may update them from time to time) with respect to your use of all services.

Signature. This master agreement has been signed and delivered (which you agree may be by facsimile or e-mail attachment) on your behalf by the person whose name is printed below. That person represents and warrants to us that he or she is one of your authorized signers and that you have taken all action required by your organizational documents to authorize him or her to sign and deliver this master agreement (and any other documents we may require with respect to the services) on your behalf. The agreement completely replaces any other ones you have given us in the past with respect to the services, except that any instructions you have given us under any such past agreements continue to be effective until replaced or deleted in accordance with the agreement (including, without limitation, through a service profile or an implementation/setup form).

Client Name: _____

Authorized Signer: _____

Print Name: _____

Print Title: _____

Address: _____

E-Mail: _____

Phone: _____

Fax: _____

Date: _____



Treasury Management Terms and Conditions

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General Terms and Conditions for All Services

1. Introduction. SunTrust Bank offers a full range of treasury management services to our clients. Throughout these terms and conditions, (a) SunTrust Bank is referred to as "we," "us" or "our," (b) the treasury management services described in these terms and conditions are referred to as the "services," (c) these terms and conditions and the other documents described below are together referred to as the "agreement," (d) the person or entity using one or more of the services is referred to as "you" or "your" and (e) the individuals identified in any resolution, certificate, delegation of authority or other document that you have given us as having authority to enter into or amend the agreement on your behalf are referred to as your "authorized signers."

2. Organization of Agreement. As indicated above, the agreement is made up of several documents, each of which serves a special purpose. The relevant documents and their purposes are as follows:

(a) Treasury Management Terms and Conditions. Our treasury management terms and conditions fall into two categories (i) the general terms and conditions that govern the use of all services and (ii) the specific terms and conditions that govern the use of each individual service. The most recent version of our treasury management terms and conditions is always posted on the following website: www.suntrust.com/treasuryterms. You may access it at any time by visiting the site and opening the document with the password we have given you. We will also give you a printed copy of the current version of those terms and conditions upon request.

(b) Master Agreement. The master agreement describes the structure of the agreement and sets forth certain of the basic contractual provisions relating to your use of the services.

(c) Reference Materials. The reference materials for a service provide details regarding the functionality of that service, as well as certain formatting and other technical requirements that you must follow when using that service. Reference materials may include, without limitation, a user manual, a quick reference guide, a service demo and/or file formats and specifications. Not every service has reference materials.

(d) Delegation of Authority. A delegation of authority is optional. By using one, you are giving other people within your company authority with respect to the agreement and/or the services.

(e) Service Profiles. A service profile reflects certain instructions you give us regarding your setup for a particular service, such as the account(s) linked to that service, the authorized users for that service and the options you select for that service.

(f) Implementation/Setup Forms. An implementation/setup form is an internal document that we use to record additional information and/or instructions you give us with respect to a particular service.

(g) Online Services and Software Materials. We may grant to you a nonexclusive, nontransferable, limited license or sublicense to

use one or more software programs in connection with certain services. There may be a separate license agreement (which may be a "shrink wrap" or "click wrap" agreement and may be with us or a third-party vendor) and/or user manual for some of those software programs. Those software programs and those other items are all part of the software materials. There may also be additional online or "click wrap" terms for the use of the online services. The agreement, online terms and any applicable separate license agreement and user manual set forth the terms and conditions relating to your right to use those online services and software programs as well as important instructions and requirements for their use.

(h) Rules and Regulations. The rules and regulations for deposit accounts that you maintain with us set forth certain general provisions relating to the establishment, maintenance and operation of your deposit accounts.

(i) City of Port Orange Standard Contract for Services, dated January 5, 2010, and any amendments thereto.

If there is any inconsistency on a particular issue among the documents that make up the agreement, the documents will control that particular issue in the order set forth from top to bottom above.

3. Amendments. We may change or add to the provisions of the master agreement and any of these general terms and conditions by giving you 30 calendar days' prior notice. We may change or add to the terms and conditions for any individual service by giving you 10 calendar days' prior notice. We may change the information in the implementation/setup forms without giving you notice. If you continue to use a service after any of these changes or additions become effective (or you earlier confirm a service profile for an affected service), you are bound by those changes or additions. If a change or addition is required by applicable law, clearing house rules or funds transfer system rules, or if we believe that the change or addition is necessary for the security or integrity of the systems that we use in providing any services for you, we may give you notice of the change or addition promptly after we make it. In that case, you are bound by the change or addition unless you terminate your use of the relevant service(s) immediately after you receive our notice. We may change or add to the terms of the software materials or the rules and regulations by following the procedures set forth in those documents.

4. New Services. If we agree to provide a new service for you, we will create one or more service profiles reflecting certain instructions you give us regarding your setup for that new service and send or otherwise make them available to you. You may not use that service until you have confirmed (in a manner acceptable to us) that those service profiles are correct, you have successfully completed any required testing or training for that service and we have completed our implementation of your setup for that service. If you attempt to use a new service without satisfying one or more of these conditions, we may refuse to provide that service but, if we do provide it, you are bound by the terms of the agreement relating to that service (including, without



limitation, these general terms and conditions and the terms and conditions for that new service).

the type reflected on a service profile, we will send or otherwise make one or more service profiles reflecting those instructions available to you. That change will not take effect until you have confirmed (in a manner acceptable to us) that those service profiles are correct, you have successfully completed any required testing or training for the change and we have completed our implementation of the change. In that regard, changes to your setup for a service reflected on a service profile will be implemented either on an "incremental" basis or a "complete replacement" basis, as reflected and to the extent indicated in the service profile.

If a change is implemented to your setup for a service on an incremental basis, that change supplements (as an addition, deletion or modification), but does not replace, the information in your setup for that service. For example, if an incremental service profile indicates that it adds a new authorized user for a service, all existing authorized users for that service continue to be authorized users unless you specifically request that we delete one or more of them and that deletion is reflected in a separate service profile that you confirm (in a manner acceptable to us).

If a change is implemented to your setup for a service on a complete replacement basis, the information identified in that service profile completely replaces the information in your setup for that service, to the extent indicated in that service profile. In that regard, information can be completely replaced (a) only for the account(s) identified on the service profile, (b) only for the combination of the account(s) and linked feature(s) of the service identified on the service profile or (c) for all accounts using the service.

For example, if a service profile indicates that it completely replaces all of your previous service profiles for a service with respect to the account(s) identified in that service profile, then only the authorized users identified in that service profile are authorized to use the service with respect to the identified account(s). However, none of your service profiles for other accounts using that service are affected and all authorized users listed on them continue to be authorized users with respect to those other accounts.

Alternatively, if a service profile indicates that it completely replaces all of your previous service profiles for the combination of an account and lockbox identified in that service profile, then only the image delivery option(s) selected in that service profile will be provided with respect to the combination of the identified account and lockbox. However, none of your service profiles for other combinations of accounts and lockboxes for that service are affected and all image delivery options selected in them will continue to be provided with respect to those other combinations of accounts and lockboxes.

Finally, if a service profile indicates that it completely replaces all of your previous service profiles for a service, then only the options identified in that service profile will apply with respect to any of your accounts using that service. None of your previous service profiles for that service are

5. Changes to Your Setup. If we agree to change your setup for a service in response to your instructions and those instructions are of

effective and none of the options identified on them will apply with respect to any of your accounts using the service.

We may refuse to accept letters, e-mails or other forms of communication that instruct us to change your setup for a service if those instructions are of the type reflected on a service profile. However, you agree that we may (at our option) accept an e-mail that purports to be from one of your authorized signers and that instructs us to delete one or more accounts from your setup for a service without requiring you to confirm a service profile reflecting that instruction.

6. Electronic Records and Signatures. You consent to the use of electronic records and signatures with respect to your use of the services. Without limiting the types of electronic signatures we may accept, you agree that, if we elect (at our option) to send a service profile to you as an attachment to an e-mail message, you (a) will be deemed to have confirmed that service profile is correct if we receive an e-mail message to that effect that purports to be from one of your authorized signers, (b) adopt that e-mail message as your electronic signature with the intent to sign that service profile and (c) will be bound by that service profile to the same extent as if one of your authorized signers had printed, signed and given it to us.

7. Receipt and Agreement to be Bound by Governing Documents. Your use of a service is governed by the master agreement, these treasury management terms and conditions and the other documents described in either of them. Each time you confirm a service profile for a service you (a) acknowledge that you have received (or have been given electronic access, including the necessary password, to) a complete copy of, and (b) agree that, except to the extent your use of a particular service is governed by a prior agreement, you have read, understand and, agree to be bound by, all provisions of these treasury management terms and conditions in the form and with the content then posted on the identified website (as we may update them from time to time) with respect all services you are then using.

8. Our Right to Delay or Refuse to Process Transactions. We may delay, refuse to process and/or impose a specific fee with respect to any item, transaction or instruction with respect to a service which (a) does not comply with the provisions of the agreement relating to that particular service, (b) is not complete, correct and current, (c) is greater in frequency or number than is permitted for the relevant account or service, (d) is for an amount that is less than the minimum amount permitted for the relevant account or service, (e) relates to an account that has been closed or exceeds the amount of available funds in the relevant account (or would reduce the balance of the available funds in the relevant account below any required minimum balance), (f) we believe in good faith is not genuine, conflicts with another instruction or relates to funds or an account over which there is a dispute or restriction on withdrawal, (g) we suspect results from a breach in the confidentiality of a security procedure or authorization code or relates to an account or service that we suspect is being used for, or is the target of, fraudulent or illegal activity, or (h) might cause us to violate applicable law or otherwise expose us to liability. We may also suspend your ability to

use a service if any of the circumstances described in clause (g) or (h) in the prior sentence occurs.

9. Overdrafts. As noted above, we may delay and/or refuse to process any item, transaction or instruction that exceeds the amount of available funds in the relevant account (or would reduce the balance of the available funds in the relevant account below any required minimum balance). If we decide in our discretion to process an item, transaction or instruction that exceeds the amount of available funds in the relevant account (or would reduce the balance of the available funds in the relevant account below any required minimum balance), you agree to reimburse us on demand for (a) the full amount of any overdraft or other shortfall created by that item, transaction or instruction, (b) all overdraft fees and charges we may impose from time to time, (c) interest on the amount of the overdraft or other shortfall at the rate we may impose from time to time for the day the overdraft or other shortfall was created and for each following day until the overdraft or other shortfall has been paid, and (d) all costs and expenses (including, without limitation, attorney's fees) we incur in collecting the overdraft or other shortfall, or any fees, charges or interest relating to it, from you.

10. Security Procedures and Authorization Codes. Some of the services require you to implement appropriate security procedures that are outlined in the terms and conditions for those services. The security procedures are designed to verify the authenticity of instructions that we receive (including, at our option, confirmation of service profiles by your authorized signers) and to control access to information and services. They are not designed to detect errors in the content or transmission of instructions or information. We may rely on the security procedures to control access to information and services and to determine whether any instructions we receive are authentic. You will be bound by all instructions issued in your name and accepted by us in compliance with the applicable security procedures, whether or not you or one of your authorized users actually gave us those instructions. The security procedures may require the use of PINs, user ID numbers, passwords, test keys, algorithms or other codes, all of which are referred to as "authorization codes." In some cases, we will provide all of the authorization codes (which, for some services, may be the same for multiple users). In these cases, we will either give the authorization codes directly to your users (or, if we have elected to permit your authorized signers to confirm service profiles by using authorization codes, then in that case directly to your authorized signers) or we will give them to the person within your company that you have designated as your "contact" or security administrator (as defined below). If we elect to give the authorization codes to your contact, that person is then responsible for distributing the authorization codes to your users. In other cases, you will be required to appoint a person within your company who has the authority to determine who is permitted to use certain services on your behalf. That individual is referred to as your "security administrator." Some services give you the option of designating more than one contact and/or security administrator. In these cases, we may give all of the authorization codes to a single contact or security administrator or (at our option) we may give a portion of the authorization codes to a particular contact or security administrator with the rest of the authorization codes going to another contact or security administrator. If we do not give all of the authorization codes to a single security administrator, your security

administrator must obtain the other portions of the authorization codes from the other contact or security administrator who received them. After obtaining the other portions of the authorization codes, your security administrator is responsible for creating and providing authorization codes for and establishing limits on each user's authority to initiate transactions, access information and use services on your behalf. You are completely responsible for controlling access to and maintaining the confidentiality of the security procedures and authorization codes and you must promptly report any breach of that confidentiality to us. You are also completely responsible for the actions of your contacts, your security administrators, any users to whom we or your contacts or security administrators have provided authorization codes and any other person who has obtained access to your authorization codes. In some cases, a third party vendor may provide the authorization codes on our behalf. We may send the reference materials and any notices regarding a service to your contact(s) for that service as reflected in your service profiles for that service as they are in effect at the relevant time.

11. Authorized Signers. As indicated above, your authorized signers are those individuals identified in any resolution, certificate, delegation of authority or other document that you have given us as having authority to enter into or amend the agreement on your behalf. We may act upon any oral or written instructions we receive that we believe in good faith to have been given by one of your authorized signers (including instructions sent by facsimile, e-mail or other electronic method). In addition, if we have elected to permit your authorized signers to confirm service profiles by using authorization codes, any person giving us an appropriate authorization code will be deemed to have authority to confirm service profiles, even if he or she is not otherwise one of your authorized signers.

12. Authorized Persons. The individuals who have authority to give us instructions, access information and use services on your behalf are those that are reflected in your delegation of authority, if you have executed one, or any other separate written resolution or other document relating to the services that you have given us. These individuals may be referred to as "authorized representatives," "authorized users," "authorized persons" or similar terms in these general terms and conditions and/or the terms and conditions for particular services. In addition, if you use a service that involves authorization codes, any person giving us an appropriate authorization code will be deemed to have authority to give us instructions, access information and use services on your behalf, even if he or she is not otherwise designated as having authority to do so. You may also authorize third party processors and other agents to give us instructions, access information and use services on your behalf. We may act upon any oral or written instructions we receive that we believe in good faith to have been given by an authorized person (including instructions sent by facsimile or other electronic method). We are authorized to follow the instructions of your contact, your security administrator or any person designated as having authority to act on your behalf (or that gives us or uses an appropriate authorization code) until we receive written notice that his or her authority (or authorization code) has been terminated and we have had a reasonable time to act upon that notice. At our option, we may require written confirmation of instructions that are given orally or by facsimile.

13. Our Online Services and Software Materials.

(a) Use of Online Services. We offer several online services (including data transmission services) that allow you to electronically access information concerning your accounts, give us instructions regarding certain transactions with respect to your accounts and use of the services, and transmit and receive data files to or from us. We can also use online services to electronically provide you reports, confirmations, statements and other information regarding your accounts and use of the services. The instructions that you can give us through online services vary by service. These online services may require you to comply with various security procedures, including that you use authorization codes. You agree to provide us with all information we request to enable us to activate your ability to use online services. Some of the online services have specific formatting and other technical requirements, as we may specify from time to time. You agree to comply with these requirements when using the online services and to allow us to test and approve your setup for an online service or data transmission service before you begin using it. Certain of the online services may also require you to comply with certain online terms and/or use software that we license or sublicense to you. Your use of the online services and any software materials is subject to the online terms, any accompanying license agreement and the other terms of the agreement.

(b) Nonexclusive License. Your rights in the online services and software materials are limited to a nonexclusive license to use them solely in connection with your use of the services for your internal business purposes. You may not transfer or assign any of your rights with respect to the license, and the license will be automatically revoked if the agreement is terminated generally or with respect to the particular service to which the online services or software materials relate. If your license is revoked, you must return the software materials and any copies or extracts that you have made to us immediately. You may not (i) sublicense, sell, lease, distribute or (except with respect to your employees or agents) provide access to any of the online services or software materials to any third party, (ii) use the online services or software materials in a service bureau, time-sharing, outsourcing or similar arrangement, (iii) use the online services or software materials in any manner that is not expressly permitted by the agreement, (iv) modify, decompile, reverse engineer, disassemble or create derivative works from the online services or software materials or (v) copy all or part of the online services or software materials, except as necessary for reasonable back up purposes or (vi) take any actions or engage in any conduct that violates our rights (or those of our vendor) with respect to the online services or software materials.

(c) Proprietary Rights. Except as otherwise set forth in the online terms, the software materials or the terms and conditions for the relevant service, we or our vendor retain all ownership and other rights in the online services and software materials and in any related trade secrets, copyrights and other intellectual property rights. In addition, you acknowledge that the online services and software materials contain valuable, confidential, trade secret information that belongs to us or to our vendor. You will not disclose or otherwise make that information available to any person other than your employees or agents that need to use the online services or software materials in

order for you to use the services, and as to agents, have agreed in writing to comply with the restrictions on use in the agreement. You will instruct those employees or agents to keep the online services and software materials confidential by using the same care and discretion that you use with respect to your own confidential property and trade secrets. Your obligations of confidentiality regarding the online services and software materials will continue after termination of the agreement and your use of the services for so long as that information remains a trade secret or is otherwise subject to the protection of applicable law.

(d) Accounts at other Institutions. Some of our online services have the ability to access information concerning accounts at other financial institutions. In order for you to take advantage of this functionality, you must give written instructions to the other financial institution(s) to make information regarding those accounts available to us and the other financial institution(s) must give us written instructions to make that information available to you through one of our online services. We are not responsible for any inaccuracies in any information provided by the other financial institution(s) or for any errors or delays in any service caused by the other financial institution(s).

(e) No Guarantees or Responsibility. We make no guarantees and have no responsibility with respect to (i) the operation of any online service or software materials being uninterrupted, error free or free from program limitations, (ii) defects in the online services or software materials or any information provided through them, (iii) the online services, the servers that make them available or the software materials being free of viruses, disabling devices or other harmful components, (iv) any information or reports that are transmitted over the Internet, a wireless network, or sent by e-mail or other electronic method remaining confidential or being accurate, or (v) any person gaining unauthorized access to the online services, unless we failed to meet our standard of care in giving that person an authorization code. If an online service is not available or you are unable to access an online service, you agree to use another method (such as written instructions) to access your accounts or use the services.

14. Your Equipment, Communications Capabilities and Software. Several of the services require you to have certain equipment, communications capabilities or software. You are responsible for providing and maintaining (at your cost and expense) any equipment, communications capabilities or software (other than software we provide in connection with certain of our services) necessary for any of the services that you use. It is your responsibility to insure that the equipment, communications capabilities and software you select are compatible with those that we use from time to time to provide the services. We have no responsibility if any equipment, communications capabilities or software that you use is defective or is not compatible with ours, even if you have told us what equipment, communications capabilities and software you intend to use or we have previously approved its use.

15. Fraud Detection/Deterrence. Payment system fraud has increased dramatically in recent years due to a number of factors. From time to time we may make certain products and services that are designed to detect and/or deter payment system fraud available to you. While no product or service will be completely effective, we believe that

the products and services we offer will reduce the likelihood of certain types of fraudulent transactions occurring in your accounts. As a result, you agree that if you fail to implement any of these products or services that we specifically offer to you, (a) you will be precluded from asserting any claims against us with respect to any unauthorized, altered, counterfeit or other fraudulent transactions occurring in your accounts that the product or service was designed to detect or deter, (b) we will not be required to recredit your accounts or otherwise have any liability for such transactions, and (c) you will indemnify us for any loss or expense (including, without limitation, reasonable attorneys' fees to the extent permitted by law) relating in any way to such transactions, so long as we otherwise satisfied our duty of care with respect to the other aspects of such transactions. This obligation to indemnify, defend and hold harmless is limited to the extent provided under Section 768.28, Florida Statutes.

16. Fees and Taxes. You will pay us all fees that we disclose to you for any of the services that you use in accordance with City of Port Orange Standard Contract for Services, dated January 5, 2010, and any amendments thereto. We may change or add new fees for services from time to time. If you continue to use the service after the change becomes effective, you agree to pay the new fees. In addition, you agree to pay any taxes (other than taxes based on our net income) relating to the services that you use and to pay any out-of-pocket expenses we incur in performing the services for you, including any communication, access, transmission and data processing charges. Your accounts are also subject to the fees set forth in the schedule of fees described in the rules and regulations. We may change those fees by following the procedures set forth in the rules and regulations. We may collect any fees, taxes or expenses by debiting your accounts with us, offsetting those amounts against any earnings credits relating to any analysis of your deposit accounts, or other applicable method. We reserve the right to charge interest on any amounts that are not paid within 30 calendar days of the due date. We will apply all debits, credits and payments first to unpaid interest and then to fees, taxes and expenses in the order in which they were due. If you fail to pay any amount that you owe us under this agreement, we have the option of canceling or suspending the performance of any further services for you.

17. Term and Termination. Unless a shorter period of notice is provided in the terms and conditions for the relevant service or we mutually agree to a shorter period of notice, the agreement will continue in effect until either you or we give 30 calendar days' prior written notice of termination to the other party. Any such termination may be for the entire agreement or for a particular service. In addition, we may terminate this agreement or any service immediately and without giving you prior written notice if (a) you violate this agreement, (b) any representation or warranty you make to us fails to be true and correct in any material respect, (c) we believe in good faith that there has been a material adverse change in your financial or business condition, (d) you make a general assignment for the benefit of creditors or become a debtor in any bankruptcy or other insolvency or liquidation proceeding, (e) we determine that changes in applicable laws, regulations, clearing house rules or funds transfer system rules have made it impracticable for us to perform under the agreement generally or with respect to a particular service or (f) any of the circumstances described in clause (g)

or (h) of Section 8 of these general terms and conditions occurs. Even though the agreement may be terminated entirely or with respect to a particular service, all provisions relating to your indemnification obligations, your obligations concerning confidential information and limitations on our liability will continue to apply and will survive termination. You also continue to be liable for any obligations that you incurred prior to the termination of the agreement or any service, those that you incur in the process of terminating the agreement or a particular service and for any outstanding transactions.

18. Your Representations and Warranties. Each time you use a service you represent and warrant to us that (a) you are duly organized, validly existing and in good standing under the laws of your state of organization, (b) you have full power and authority to carry on your business and to enter into and perform your obligations under the agreement, (c) you have taken all actions necessary to enter into and perform your obligations under the agreement, (d) all resolutions or other authorizations you have given to us are true, accurate and complete in all material respects, (e) all assumed or fictitious names that you use have been duly registered or filed with the applicable governmental authorities, (f) you have obtained all necessary consents or authorizations for you to enter into the agreement, (g) this agreement is legally binding on you, (h) each person whose name is written or printed on your delegation of authority, if you have executed one, or any resolution or other separate written authorization concerning the agreement or any service has complete authority to bind you in all transactions relating to the agreement or any service, (i) you are neither bankrupt nor insolvent nor have you made an assignment for the benefit of creditors or sought the protection of any bankruptcy, insolvency or liquidation proceeding, nor do you have the present intention to do so, (j) you have not commenced any dissolution proceedings and no governmental authority having jurisdiction over you has served a notice of its intent to suspend or revoke your operations, and (k) the agreement does not violate any law, regulation or agreement to which you are a party. You also make the representations and warranties that are set forth in the terms and conditions for a service each time you use that service. You agree to immediately notify us if any representation or warranty you make to us is no longer true.

19. Liability and Indemnification.

(a) **Your Duty of Care.** You must exercise good faith and ordinary care in performing your obligations under the agreement. In addition, you must promptly examine each written or electronic confirmation, report, periodic statement, notice or other document related to any services and notify us of any error, omission or other discrepancy reflected in such confirmation, report, periodic statement, notice or document within 30 days (or such shorter period of time specified in the terms and conditions for the relevant service) after we send or make it available to you.

(b) **Our Duty of Care.** In performing the services for you, you agree that we are not acting as a fiduciary for you or for your benefit and that our responsibility is limited to acting in good faith and exercising ordinary care. In that regard, the services have several unique characteristics that relate to our duty of care. For example, most of the services involve large volumes of items or transactions that are processed

in a highly automated environment. The procedures set forth in the terms and conditions and/or the reference materials for each service have been designed in light of those characteristics to maximize your ability to use that service in an efficient manner while minimizing your cost and inconvenience. You agree that the procedures for each service are commercially reasonable and that we will be deemed to have exercised ordinary care if we substantially comply with the procedures. You also agree that clerical errors, mistakes in judgment, and occasional or unintentional deviations by us from the procedures will not be deemed to constitute a failure on our part to exercise ordinary care. You also agree that we will not be deemed to have failed to exercise ordinary care with respect to any error, delay or failure to perform that is caused by (i) fire, natural disaster, strike, civil unrest, terrorism, failure of computer or communications facilities, (ii) the acts or omissions of any third party (including any Federal Reserve Bank, clearing house or funds transfer system) or (iii) any circumstance beyond our reasonable control or for which we do not have responsibility under the agreement.

(c) Conditions on Our Liability. We will have no liability to you unless we fail to satisfy our duty of care as described above. If we fail to satisfy our duty of care, you agree to the maximum extent permitted by law that we will have no liability for any losses or damages resulting from that failure unless (i) you have complied with the terms of the agreement and satisfied your duty of care as described above (including your duty to discover and report any error, omission or other discrepancy reflected in any confirmation, report, periodic statement, notice or document to us within the applicable period), (ii) you take all reasonable actions to limit your losses or damage, (iii) promptly give us written proof of your losses or damages and cooperate with us in investigating the error, omission or other discrepancy and your losses or damages, and (iv) you bring any claim, action or proceeding against us with respect to any error, omission or discrepancy within one year after it occurred (in that regard, if the error, omission or discrepancy is a repetitive one, all such errors, omissions or discrepancies will be deemed to have occurred on the date of the first such error, omission or discrepancy).

(d) Limits on Our Liability. If we fail to satisfy our duty of care and you have satisfied the conditions to our liability, both as described above, then you agree to the maximum extent permitted by law that our liability to you will be limited to your monetary losses or damages that are a direct result of that failure, up to the lesser of (i) the amount of the transaction to which the error, omission or other discrepancy relates or (ii) the amount of the fees that you have paid us for the service in question for the six months preceding the month in which the failure occurred. You also agree to the maximum extent permitted by law that we will never be liable to you for any indirect, consequential, special, punitive or exemplary losses or damages (including, without limitation, lost profits, loss of data, business interruption or delay, time, savings, property or goodwill), without regard to the form of your claim or action or whether your claim is in contract, tort or otherwise, and even if we knew such losses or damages were possible or likely. To the extent we are required by applicable law to pay you interest on any amount for which we are liable under this section, that interest will be determined by using the "federal funds rate" we paid at the close of business on each day during the period beginning on the day such failure occurred until we have paid you the

full amount of our liability. If we reimburse you for any losses or damages, you agree to transfer all of your rights relating to the transactions in question to us and to assist us in any efforts or legal actions that we may take to recover those amounts from any third party.

(e) Disclaimer of Warranties. To the maximum extent permitted by law, we disclaim all representations and warranties of any kind, whether express, implied or statutory, with respect to the services, the software materials, the online services, and any equipment or software that you use in connection with the services, including the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement.

(f) Your Indemnification Obligations. Unless finally determined by a court or arbitrator having proper jurisdiction to have been caused exclusively by our gross negligence or intentional misconduct, you agree to defend, indemnify, protect and hold us, our affiliates and our respective officers, directors, employees, attorneys, agents and representatives harmless from and against any and all liabilities, claims, damages, losses, demands, fines (including those imposed by any Federal Reserve Bank, clearing house or funds transfer system), judgments, disputes, costs, charges and expenses (including litigation expenses, other costs of investigation or defense and reasonable attorneys' fees) which relate in any way to the services, the software materials or the agreement (including those caused by: (i) your failure to comply with any of the provisions of the agreement, (ii) the failure of any of the representations or warranties that you make to us to be true and correct in all respects at any time or (iii) any instructions you give us). This obligation to indemnify, defend and hold harmless is limited to the extent provided under Section 768.28, Florida Statutes.

20. Arbitration. Either you or we have the right to require that any dispute, controversy or claim arising out of or relating to the agreement or any breach, termination or invalidity thereof, including any dispute concerning the scope of this arbitration clause, be settled by binding arbitration in accordance with Title 9 of the United States Code and the Commercial Arbitration Rules of the American Arbitration Association (the "Rules"). Any arbitration proceeding will be conducted before a panel of three neutral arbitrators, or one neutral arbitrator if the amount in dispute does not exceed \$500,000, all of whom must be attorneys engaged in the practice of banking law for ten years or more. You and we will each select one arbitrator, or if the arbitration is conducted by only one arbitrator you and we will jointly select the arbitrator. The arbitrator that you select and the arbitrator that we select will, within 10 days of their appointment, select a third, neutral arbitrator. In the event that they are unable to do so, you, we or either of our attorneys may request the American Arbitration Association to appoint the third neutral arbitrator. Prior to the commencement of hearings, each of the arbitrators appointed must take an oath of impartiality. Judgment upon any award rendered by the arbitrators may be entered and enforced by any court of competent jurisdiction. The place of the arbitration will be in the city where our principal office is located. In rendering any award the arbitrators will determine the rights and obligations of the parties in accordance with the laws of the state governing this agreement. The arbitrators are not empowered to award damages

in excess of the amounts expressly provided for by the agreement. All statutes of limitation that would otherwise apply to a judicial action will apply to any arbitration or reference proceeding under the agreement. The arbitrators must award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" means all reasonable pre-award expenses of the arbitration, including the arbitrator's fee, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees and attorneys' fees. Neither you nor we may disclose the existence, content or result of any arbitration under the agreement without the prior written consent of the other.

21. Jury Trial Waiver. You and we both knowingly, voluntarily, intentionally and irrevocably waive any right to a trial by jury with respect to any litigation based on, arising out of or relating to the agreement, the services, or any other document, instrument, transaction, course of conduct, course of dealing, statements (whether verbal or written) or your or our actions. This provision is a material inducement for us to enter into the agreement. You also acknowledge that none of our representatives or agents has represented that we would not seek to enforce this jury trial waiver in the event of any litigation.

22. Miscellaneous.

(a) **Notices.** Any notices under the agreement may be given by mail, personal delivery, fax, e-mail or other electronic means. We may use any address (including e-mail or other electronic addresses) for you shown in our records that we believe in good faith is valid. Any notice we send you will be effective when sent or we otherwise make the notice available to you through an online service. You must send any notices to us to your treasury management services sales officer. Any notice you send us is effective when we actually receive it.

(b) **Severability.** Any provision of the agreement that is invalid or unenforceable in any jurisdiction will, as to such jurisdiction and to the extent of such invalidity or unenforceability, be deemed replaced with a valid and enforceable provision as similar as possible to the one replaced and all of the remaining provisions of the agreement will remain in full force and effect.

(c) **Binding Agreement/Benefit.** The agreement binds and benefits both you and us and our respective legal representatives, successors and assigns. The agreement is not for the benefit of any third party, and no third party has any right against either you or us under the agreement.

(d) **Confidentiality of the Agreement.** You acknowledge that the agreement contains valuable, confidential, trade secret information that belongs to us. You will not disclose or otherwise make that information available to any person other than your employees or agents that need it in order for you to use the services and, as to agents, have agreed in writing to comply with the restrictions on use in the agreement. You will instruct those employees or agents to keep the agreement confidential by using the same care and discretion that you use with respect to your own confidential property and trade secrets. Your obligations of confidentiality regarding the agreement will continue

after termination of the agreement and your use of the services for so long as that information remains a trade secret or is otherwise subject to the protection of applicable law.

(e) **Entire Agreement.** The agreement is the complete and exclusive statement of the agreement between you and us with respect to the services. The agreement completely replaces any other ones you have given us in the past with respect to the services, except that any instructions you have given us under any such past agreements continue to be effective until replaced or deleted in accordance with the agreement (including, without limitation, through a service profile or an implementation/setup form).

(f) **Headings and Certain References.** The headings used in the agreement are for reference purposes only and should not be considered when interpreting the agreement. Whenever the term "including" is used in the agreement, it means "including, without limitation". Whenever the term "days" is used in the agreement, it is a reference to calendar days unless that reference specifies it is business days or banking days.

(g) **Assignment.** You may not assign the agreement or any of your rights or duties under it to any third party without our prior written consent. We may assign the agreement to any of our affiliates or successors or to any other person or entity in connection with a sale of assets without obtaining your consent. In addition, we may delegate our duties under the agreement to third party vendors without giving you notice of, or obtaining your consent to, such delegation.

(h) **Applicable Law and Jurisdiction.** The agreement is governed by and should be interpreted in accordance with the applicable federal laws and the internal laws of the state in which your principal account with us is located. You consent to the exclusive jurisdiction and venue of any court located in that state.

(i) **Attorneys Fees.** The prevailing party in any proceeding arising out of or relating to the agreement is entitled to recover its attorney's fees and costs, in addition to any other remedy it may be entitled to under applicable law.

(j) **Telephonic Communications.** You consent to the recording of telephone conversations of your personnel in connection with the agreement and assume responsibility for obtaining the consent of, and giving notice to, such personnel. The decision to record any telephone conversation is solely at our discretion and we will not have any liability for failing to do so in any particular circumstance.

(k) **Remedies.** The rights, powers, remedies and privileges provided for you in the agreement are your sole and exclusive rights, powers, remedies and privileges with respect to the services and any failure by us to perform the services in accordance with the terms of the agreement. The rights, powers, remedies and privileges provided for us in the agreement are in addition to any rights, powers, remedies and privileges with respect to the services or any failure by you to comply with the terms of the agreement that we have under applicable law or otherwise, and we may exercise any or all of those rights, powers, remedies and privileges in any order.

(l) No Waiver of Rights. A failure or delay by us in exercising any right, power or privilege in respect of the agreement will not be presumed to operate as a waiver of that or any other right, power or privilege, and a single or partial exercise by us of any right, power or privilege will not be presumed to preclude any subsequent or further exercise by us of that or any other right, power or privilege.

(m) No Strict Construction. In the event an ambiguity or question of intent or interpretation of the agreement arises, the agreement should be construed as if you and we both drafted the agreement, and no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any provisions of the agreement will apply.

(n) Financial Accommodation. You acknowledge that the agreement is an agreement to provide a "financial accommodation" as that term is defined in the federal bankruptcy laws and, as a result, that neither you nor any bankruptcy trustee (including you when acting as a debtor-in-possession) have the ability to assume or reject the agreement as an executory contract.

(o) Financial Statements. You agree to provide us with financial statements and other financial information that we may reasonably request from time to time.

(p) Our Records. You agree that our records regarding the features and accounts that you have asked us to include in our implementation of your setup for any service (including the implementation/setup forms for that service) will be deemed correct and will control in the event of any dispute regarding your setup for that service. This provision applies even if we have not given you a copy of those records or you have not signed any documents included in those records.

(q) Authority for Other Entities. If you ask us to include accounts that belong to another person or entity in our implementation of your setup for the services, then (a) you represent and warrant to us that the other person or entity has given you authority to access its accounts through use of any service to the same extent as if you owned them, (b) each reference to "you" or "your" in the agreement will be deemed to be a collective reference to you and each other person or entity whose accounts are included in our implementation of your setup for the services, (c) all of the provisions set forth in the agreement will apply to the accounts as if you owned them, (d) you are deemed to be using a service with respect to any of the accounts included in our implementation of your setup for that service, (e) each person who is authorized to act on your behalf with respect to a service is also authorized to act on your behalf to the same extent with respect to the accounts of each other person or entity whose accounts are included in our implementation of your setup for that service, and (f) you and each other person or entity whose accounts are included in our implementation of your setup for the services are jointly and severally liable for all indemnification, confidentiality and other obligations to us under the agreement. We may require written confirmation from the other person or entity that it has authorized you to include its accounts in our implementation of your setup for the services and you agree to notify us immediately if that authority is revoked or changed. For purposes of this provision, if an account that belongs to another person or entity is included in our implementation of your setup of a service, you will be deemed to have asked us to include that account in our implementation of your setup of that service even though an exhibit, service profile, or other form or document (whether now or hereafter in effect) reflects that other person or entity as the client or customer.

Account Reconciliation Service

1. Description of the ARP Service. The SunTrust Account Reconciliation or "ARP" service allows you to facilitate the reconciliation of your accounts by exchanging information with us regarding checks that you have issued against your accounts and/or checks deposited into your accounts. Details regarding the functionality of the ARP service and certain formatting and other technical requirements that you must follow when using the ARP service are provided in the ARP reference materials as we update them from time to time.

2. Operation of the Service. You must tell us (in a form that is acceptable to us) which ARP service you desire for each account that is included in your setup for the ARP service. Except as otherwise provided in these ARP terms and conditions or the ARP reference materials, all check, deposit or other information exchanged between us

in connection with the ARP service will be transmitted electronically in the format we specify. Check, deposit and other information you send us must be received by us no later than the cutoff time for such information reflected in the ARP reference materials. You may select a daily, monthly, weekly or bi-weekly statement cycle for each account included in your setup for the ARP service. If you fail to designate a statement cutoff on our ARP calendar, the statement cycle will be monthly with a cutoff at the end of the calendar month.

3. Suspension of Service. You agree that you will be in material breach of these ARP terms and conditions if you repeatedly fail to meet any of the deadlines described above. In addition to any other rights we may have under the agreement or applicable law, we may immediately suspend your use of the ARP service.

Accounts Receivable Conversion Service

1. Description of the Accounts Receivable Conversion Service. Accounts Receivable Conversion or "ARC" is a standard National Automated Clearing House Association or "NACHA" entry class that provides clients using our Scannable Lockbox, or "SLB," and ACH origination services the ability to convert eligible checks deposited through their lockbox service into automated clearing house entries.

The ARC service allows eligible checks received via the U.S. mail (or equivalent service, such as an overnight delivery service) for the payment of goods and services to be converted to single-entry debits using the ARC entry class code. We will act as your agent or for purposes of the NACHA rules as your service provider to evaluate lockbox items for conversion to ARC entries or to process the item

through lockbox check processing. Each lockbox item selected for conversion will be the source document for the related ARC entry. Details regarding the ARC service functionality and certain other technical requirements that you must follow when using the ARC service are provided in our SLB service reference materials and our ACH origination service reference materials, as we update either of them from time to time.

2. Function of ARC Service. We will allow you to use the ARC service only once you have been set up for our SLB service and have been qualified and set up for our ACH origination service. You may use the ARC service with respect to the account(s) and lockbox(es) that are identified on your ARC service profiles, as they are in effect the relevant time, if those account(s) are designated account(s) for the ACH origination service and we have agreed to include those account(s) and lockbox(es) in your set up for the ARC service. In that regard, if a service profile for SLB service includes information indicating your election to use ARC service, that service profile constitutes an ARC service profile as well. We will act as the originating depository financial institution or "ODFI" with respect to the ARC entries created as part of this service. You will be the "originator" for each of those ARC entries. By confirming an ARC service profile, you agree to be bound by and comply with the NACHA Operating Rules and Operating Guidelines.

3. Our Obligations. We, acting as your agent, will originate ARC entries, and the amount, the routing number, the account number, and the check serial number for each such ARC entry will be in accordance with the source document. We will retain a reproducible, legible image of the front and back each source document for two years from the Settlement Date of the ARC entry and we will provide commercially reasonable secure storage of the source document image and all related banking information. The original source document will be destroyed by us after it has been converted to an ARC entry. The source document (or any equivalent document) for the ARC entry will not be presented by us for payment unless the ARC entry is returned by the receiving depository financial institution or "RDFI". We will provide any necessary file totals to authorize release of your ARC entries in lieu of PAL Totals as described in the ACH origination service terms and conditions.

4. Your Representations and Warranties. You will provide a clear and conspicuous notice to the receiver of ARC entries, prior to the receipt of each source document that will be used as the basis for the origination of an ARC entry, that receipt of the receiver's check will be deemed to be the receiver's authorization for a debit entry to the receiver's account in accordance with the terms of the source document. The notice you provide will incorporate the Federal Reserve System Regulation E safe harbor language or substantially similar language such as:

"When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction."

You acknowledge that utilization of the ARC service will result in different obligations and liabilities for you with regard to electronic funds transfer legal and regulatory environment as compared to the legal and regulatory environment for accounts receivable paid by check.

5. ARC Return Items. Any ARC entry returned for insufficient funds will automatically be represented one additional time. Any ARC entry returned for any other reason will be prepared as a source document or its equivalent and processed as an item through lockbox check processing. If the item is returned, then the item will be sent back to the client in their daily remittance package and their account will be debited for the funds.

6. Data Transmission. All required data transmissions between you and us will utilize the appropriate online service made available by us.

7. Termination. The ARC service may be terminated by prior written notice by either you or us or by termination of the SLB service or the ACH origination service.

8. ACH Origination Service and Scannable Lockbox Service. These ARC service terms and conditions are expressly made a part of the terms and conditions of the ACH origination service terms and conditions and SLB service terms and conditions. Terms defined in the terms and conditions for the ACH origination service have the same meanings when used in these ARC service terms and conditions, and terms defined in the terms and conditions for the SLB service have the same meanings when used in these ARC service terms and conditions. If there is any inconsistency on a particular issue between these ARC service terms and conditions and the terms and conditions of the ACH origination service or the SLB service, these ARC service terms and conditions will control.

WLB service for you with respect to the account(s) described in those instructions.

3. Request for Image Services. The Image services enable you to view images of checks and remittance payment information that are received through your lockbox. You can access these images and transaction information through Image Browser, Image CD ROM and/or Image Transmission file. Details regarding these services, their functionality and certain requirements that you must follow when using the Image services are provided in the Image reference materials as they are updated from time to time. We will provide you one or more of the following image service(s) as reflected in your WLB service profiles as they are in effect at the relevant time:

(a) Image Browser - internet-based access to your lockbox images and data with flexible viewing parameters and search capability for check and document information using a specific date or several search criteria, administrative management over users and their access privileges, Web-accessible historical data, exportable transaction information, check and document images that can be emailed directly from this Image service and annotation tools that can be used to create notes or highlight information on check or document images that can be saved for future reference. Batch Download, Full Text Search, Remitter Keying capabilities and direct access to the image browser using Lockbox Programmer Interface are also available as additional service selections. You must designate (in a form that is acceptable to us) a security administrator responsible for setting up and maintaining your users' access to the Image Browser service. We will assign a unique user-specific user ID and password to this designated security administrator and enable access to Image Browser service for the lockbox accounts which have been set up for you. This person has all of the rights and duties described in the general terms and conditions. If you implement image archival services as part of your Image Browser service and your Image Browser service is later terminated, upon request from you, we can create a CD ROM of your archived data and mail it to you.

(b) Image CD ROM - after delivery by mail, you have access to your lockbox images along with index fields of information for long term archival purposes. CD ROM of lockbox images can be downloaded onto your computer. You must designate (in a form that is acceptable to us) a security administrator responsible for using the software needed to access the CD ROM of your lockbox images. The CD ROM will be encrypted to protect your data during transit in the mail. We will provide (by e-mail) a unique PIN number that your security administrator will use to de-encrypt and access the CD ROM. This person has all of the rights and responsibilities described in the general terms and conditions.

(c) Image Transmission file - customized access to your lockbox images along with index fields of information that can be downloaded directly into your Accounts Receivable systems. Image Transmission files are encrypted and are transmitted using File Transfer Protocol (FTP). You must designate (in a form that is acceptable to us) a technical contact responsible for receiving or retrieving your Image Transmission files. You will retrieve your Image Transmission files by accessing a FTP site and by using the unique user ID and password assigned to your company. If you elect for us to "push" your Image Transmission files to you, you can provide us the information needed to

access your computer system to deliver the files. We will send the URL address and the user ID and password to the person you designate as your contact. This person has all of the rights and duties described in the general terms and conditions.

You agree that the security procedures for each of the Image services you select are commercially reasonable.

4. Processing of Deposits. We will establish one or more post office boxes or "lockboxes" in your name as described in your WLB service profiles as they are in effect at the relevant time. On each banking day after a lockbox has been established, we will process the checks, drafts and money orders (all of which are referred to as "items") received in a lockbox in accordance with the instructions in effect at the relevant time and send you deposit advices for those items.

(a) Endorsement. We will endorse items for deposit with our standard lockbox endorsement and deposit them to the relevant account. We will not be liable for any failure to endorse an item properly.

(b) Forwarding Items. If you receive an item that should have been delivered to a lockbox, you may forward it to our lockbox department. If you have more than one lockbox, you must designate the lockbox through which we should process the item.

(c) Inspection of Items. We will use good faith efforts to inspect items as follows: (i) an item containing a payee name that does not reasonably correspond with your acceptable payee list (if you have given us one) will be handled in accordance with the instructions in effect at the relevant time; and (ii) if an item contains inconsistent written and numeric amounts, then: (A) if the item is accompanied by an invoice and one of the amounts is consistent with the invoice amount, the item will be deposited for the invoice amount or (B) if (1) the item is accompanied by an invoice and neither of the amounts is consistent with the invoice amount or (2) the item is not accompanied by an invoice, the item will be deposited for the written amount unless the instructions that are in effect at the relevant time direct otherwise. You agree that we do not fail to exercise good faith efforts to inspect an item solely because we process it in a manner inconsistent with this paragraph.

(d) Signature, Date or Disputed Items. We will not inspect (i) any item for the drawer's signature or date or (ii) unless otherwise agreed in writing and in exchange for the payment of a separate per item fee, any item and/or accompanying correspondence for "payment in full" or other similar payment dispute language. We will not be liable for any loss resulting from processing any such items, including any items we may inspect for "payment in full" or similar payment dispute language under a separate written agreement.

(e) Cash and Other Property. We will deposit any cash received in a lockbox into the relevant account. Any property other than items, cash and related remittance materials received in a lockbox will be sent to you. You agree that we have no liability for any cash or other property received in a lockbox.

5. Remittance Materials. We will only return to you the original remittance materials (such as invoices, payment coupons, correspondence and the like) received in a lockbox if the instructions in effect at the relevant time direct us to return those materials. We will destroy the original remittance materials within 10 days after we receive them. Once we destroy the original remittance materials, the images of them that we may capture during their processing will be the only source of information about their contents. You agree that we will have no liability for any missing image or if any image we capture is not legible.

6. Affiliate Deposits. If you have not given us an acceptable payee list, you represent and warrant to us that you have the authority to have each item received in a lockbox endorsed and deposited into your account(s), even if the payee name on an item is not your name as shown in our records. In addition, if you have given us an acceptable

payee list, you represent and warrant to us that if any name on that list that is a separate legal entity (rather than merely a "d/b/a" or trade name that you use), you have authority from that entity to have items payable to it endorsed and deposited into your account(s). You agree to provide us with satisfactory evidence of that authority upon request.

7. Return Items. Unless otherwise stated in the instructions, we will handle dishonored or returned items in accordance with our rules and regulations for deposit accounts in effect at the relevant time.

8. Termination. If your use of the WLB service or the agreement is terminated, we will complete the processing of items we received prior to the termination date. For a period of 90 days after the termination date, we will forward all lockbox remittances to you or as you may otherwise direct (in a form acceptable to us). After that time, we will stamp all remittances "refused" and return them to the sender.

Wire Transfer Service

1. Description of the Wire Transfer Service. The SunTrust Wire Transfer service is a funds transfer system that is available over the Internet through certain designated online services or dedicated telephone lines for sending and settling payment orders among participating financial institutions. You may use the Wire Transfer service with respect to the accounts and authorized senders that you have identified (by your confirmation of a Wire Schedule A and H Service Profile and acceptance of the SunTrust Funds Transfer Agreement) and that we have included in our implementation of your setup for the Wire Transfer service. Details regarding the SunTrust Funds Transfer Agreement are provided as an addendum to these Terms and Conditions as we update them from time to time. In the event of any conflict between these Terms and Conditions and the SunTrust Funds Transfer Agreement, the Agreement will prevail.

2. Designation of Authorized Senders. In order to use the Wire Transfer service, you must designate person(s) as Authorized Senders who will initiate and verify payment orders and provide instructions with respect to any authorized account. These persons will have all of the rights and responsibilities described in the SunTrust Funds Transfer Agreement and will be identified in your Wire Transfer service profiles as they are in effect at the relevant time.

3. Security Procedures. The security procedures for the Wire Transfer service include the requirement that your Authorized Senders use the PIN codes that we will assign as described in the SunTrust Funds Transfer Agreement. You agree that these security procedures, as defined in the SunTrust Funds Transfer Agreement are commercially reasonable.

Zero Balance Account Service

1. Description of the ZBA Service. The SunTrust Zero Balance Account or "ZBA" service allows you to manage your cash flow by aggregating debit and credit entries from one or more zero balance or "subsidiary" accounts to a master account on a daily basis.

2. Daily Posting and Funding. You may use the ZBA service with respect to the subsidiary accounts, master accounts any supermaster accounts (if any) reflected in your ZBA service profiles as they are in effect at the relevant time and that we have included in our implementation of your setup of the ZBA service. At the end of each banking day, we will transfer all debit and credit entries that were posted to a subsidiary account that banking day to the master account for that subsidiary account as identified in your ZBA service profiles as they are in effect at the relevant time, so that each subsidiary account has a zero ledger balance (or the target ledger balance, if any, indicated for that subsidiary account in your ZBA service profiles as they are in effect at the relevant time) at the end of each banking day. We will do this by posting to the relevant master account a single debit entry equal to the total amount of all checks, drafts, withdrawals and other debits (if any) in each subsidiary account, and a single credit entry equal to the total amount of all deposits, transfers and other credits (if any) in each subsidiary account or, at your option, we will post to the relevant master

account a single entry equal to the net debit or credit activity in each subsidiary account. When we post these entries to a master account, we will also post offsetting entries to the relevant subsidiary account. You agree to maintain sufficient available balances at all times in each master account identified in your ZBA service profiles as they are in effect at the relevant time to cover any debit activity (and any target ledger balances) of all subsidiary accounts funded by that master account as well as any debits presented directly against that master account. We are not obligated to pay checks, drafts, withdrawal requests or other debits presented against a master account or a subsidiary account unless there are sufficient available funds on deposit in the applicable master account. You agree that we may fund subsidiary account activity from the applicable master account identified in your ZBA service profiles as they are in effect at the relevant time whether or not the ownership and/or authorized signers of the subsidiary account are the same as those for the master account.

3. Super Master Accounts. If you have identified one or more super master accounts in your ZBA service profiles as they are in effect at the relevant time, any master account funded by the super master account will be treated as a subsidiary account of that super master account.

4. Duration and Changing of Options. Once you have confirmed a service profile for this service and we have included the information from it in our implementation of your setup for the ZBA service, we will post the total of all debits and the total of all credits (or, at your option, the net amount of all debits and credits) from each subsidiary account to the relevant master account in accordance with the selections reflected in that service profile for this service until (a) your use of the ZBA service or the agreement is terminated or (b) you confirm a ZBA service profile that adds, deletes or modifies your previous selections and we have had a reasonable time to act on it before we receive the relevant debits or credits.

5. Termination of Service. We may terminate the ZBA service immediately by giving you notice of the termination. You may terminate the ZBA service by giving us notice of the termination, provided that any termination by you will not be effective until we have had a reasonable time to act on your notice.

This **SunTrust Funds Transfer Agreement**, the terms and conditions of which are set forth below, shall govern all funds transfers between Bank and Customer.

1. Definitions. The following are defined terms:

Account means the account(s) designated by Customer on its Schedule A to this Agreement (as superseded from time to time by Customer as provided herein) to be used as the source of payment for Payment Orders.

Authorized Sender means a person designated by Customer on its Schedule A to this Agreement (as superseded from time to time by Customer as provided herein), authorized to submit and/or verify Payment Orders and Instructions to Bank.

Bank means the SunTrust Bank(s) where the Account is maintained, its/their successors and assigns.

Confirmation means any notice (oral, written, electronic, or otherwise) informing Customer of the date and amount of each Transfer to or from an Account.

Customer means the individual who or entity which signed Schedule A to this Agreement.

Instructions means the Transfer related directions given by an Authorized Sender to Bank, including amendments or cancellations of Payment Orders.

Payment Order means a request (oral, written, or electronic) from an Authorized Sender directing Bank to initiate a Transfer from an Account.

International Payment Order means a Payment Order in which the beneficiary's bank is located outside of the United States.

PIN means the personal identification number assigned by Bank to each Authorized Sender.

Repetitive Transfers mean Transfers initiated by Payment Orders in which the debit and beneficiary information designated by Customer on its Schedule B to this Agreement (as amended from time to time by Customer) remains constant, but the date and dollar amount vary.

Standing Order Transfers mean Transfers made as ordered by Customer on its Schedule D to this Agreement (as amended from time to time by Customer) in which the debit and beneficiary information remain constant, but the date and dollar amount may vary.

Statement means Customer's periodic Account statement.

Transfer means a transfer of funds by Fedwire, SWIFT, telex, computer terminal, electronic, or other means, including Repetitive Transfers and Standing Order Transfers, but excluding transfers made through the ACH system, as defined by the operating rules of the National Automated Clearing House Association.

Test Key means a method for detecting errors in the amount of a Payment Order through codes, mathematical equations, identifying words, or numbers.

2. Authorized Sender.

Authorized Senders may provide Payment Orders and Instructions to Bank with respect to any authorized Account. If Customer desires to revoke or modify the authority of any Authorized Sender or add additional Authorized Senders, Customer shall execute and deliver to Bank a new Schedule A which shall supersede its prior Schedule A and revoke all prior authorizations. **In addition to listing new Authorized**

Senders, any subsequent Schedule A must list all Authorized Senders designated on its prior Schedule A and state whether or not there is any revocation or change of authority for each previously listed Authorized Sender. Bank shall have no liability for any loss arising from Customer's failure to provide information revoking or changing an Authorized Sender's authority in the manner stated above. Any new Schedule A shall not be effective until accepted by Bank and Bank has had a reasonable time to act upon it.

3. Form of Instructions.

Bank may act upon Payment Orders or Instructions. Any Payment Order or Instruction which does not comply with Bank's procedures or which exceeds the available balance of the funds on deposit in an Account may be canceled from Bank's wire system without notice to Customer or liability to Bank.

Special Instructions. Customer may elect to authorize Repetitive Transfers on its Schedule B and Standing Order Transfers on its Schedule D to this Agreement. Bank's assignment, if any, of a repetitive code for Repetitive Transfers is not a security procedure and will not be used as such.

Electronic Instructions. If Bank accepts Customer's election to initiate Payment Orders and Instructions from Customer's electronic access system, Customer shall be responsible for the security and confidentiality of Customer's system and for the accuracy and completeness of any data received by Bank. Bank will not verify any electronically initiated Transfer.

4. Confirmations and Duty to Report Errors.

The date and amount of each Transfer are described on the applicable Statement. Subject to the charges referenced in Paragraph 12, herein, Bank may also deliver Confirmations to Customer at the address, telephone/facsimile number or other communications system specified by Customer. Customer may elect on its Schedule E to this Agreement, to receive facsimile Confirmations. A Customer initiating Transfers from its electronic access system may receive on-line Confirmation of each Transfer. Bank will not deliver next day notice of receipt of incoming Transfers. Customer shall examine upon receipt, but in no event later than 30 days after receipt, any Statement or Confirmation (whichever first occurs) and notify Bank of errors, if any. Failure to notify Bank of any error within such 30 day time period shall relieve Bank of all liability for the Transfers reflected in such Statement or Confirmation.

5. Amendment or Cancellation of Payment Orders.

Any Instruction canceling or amending a Payment Order is not effective unless Bank has received such Instruction at a time and in a manner affording Bank a reasonable opportunity to act before making the Transfer. If an Authorized Sender requests that Bank attempt to recover transferred funds, Customer may be required to deposit funds with Bank or provide other payment assurances that are satisfactory to Bank to cover the cost, expense, charges, and/or attorneys' fees incurred by Bank in its recovery attempt. Bank's attempt to recover funds shall not be an acceptance of responsibility for the completed Transfer. Bank does not guarantee the recovery of all or any part of a Transfer.

6. Deadlines.

Bank shall establish deadlines for the receipt of Payment Orders and Instructions, including cancellations and amendments. Payment Orders and Instructions received after the deadline shall be treated as received on the next business day. Bank may, in its sole discretion, execute Payment Orders received after the deadline on that same business day only as an accommodation to Customer.

7. Security Procedures.

Acknowledgment and Amendment. Customer acknowledges that the Bank's security procedures are commercially reasonable. Bank reserves the right to change the security procedures from time to time.

PINs. Bank shall assign a PIN to each Authorized Sender which must be used each time an Authorized Sender makes or verifies Transfers or provides Instructions. Customer shall be responsible for maintaining the confidentiality of the PINs and shall promptly report any breach of confidentiality to Bank.

Verification. Bank may, in its sole discretion, verify or authenticate any Payment Order or Instruction by contacting Customer by telephone or by any other means deemed reasonable by Bank, but Bank is under no obligation to do so. If Bank is unable to verify or authenticate a Payment Order or Instruction, it is within the Bank's sole discretion to either effect or refuse such Payment Order or Instruction. Bank will not verify any Transfer initiated electronically.

Test Key. Bank may upon Customer's written request, provide a Test Key for detecting errors in the amount of a Payment Order. If Customer elects to use a Test Key, any Payment Order which passes the Test Key shall be deemed correct as to amount. Bank and Customer acknowledge that no other error detection procedure for dollar amount verification has been established.

8. Recording.

Customer consents to Bank recording telephone calls, including, without limitation, Payment Orders and Instructions. Customer assumes the responsibility for obtaining the consent of the Authorized Senders for these recordings. The recordings made shall be conclusive confirmation of Payment Orders and Instructions. Customer acknowledges that not all calls will be recorded.

9. International Transactions.

International Payment Orders. If Bank receives a U.S. Dollar-denominated International Payment Order, then (except as provided in the next sentence) Customer hereby instructs Bank to either:

(a) convert the amount of such International Payment Order into the currency (the "Conversion Currency") of the country in which the beneficiary's bank is located (at Bank's sale rate for the Conversion Currency in effect on the date Bank executes such International Payment Order), execute such International Payment Order by issuing a payment order for the corresponding amount of the Conversion Currency and forward to the beneficiary's bank the relevant currency conversion data; or

(b) execute such International Payment Order by issuing a U.S. Dollar-denominated payment order in the amount of such International Payment Order to an intermediary bank and instruct such intermediary bank to convert the amount of such payment order into the Conversion Currency (at such intermediary bank's sale rate for the Conversion

Currency in effect on the date such intermediary bank executes such payment order).

Bank will not convert (or instruct an intermediary bank to convert) a U.S. Dollar-denominated International Payment Order into the Conversion Currency if (1) such International Payment Order specifies an intermediary bank, (2) the amount of such International Payment Order exceeds an amount (the "Conversion Cap") specified by Bank and in effect on the date it executes such International Payment Order, (3) the Conversion Currency is not a currency (an "Eligible Currency") specified by Bank as one into which it will convert U.S. Dollar-denominated International Payment Orders on the date Bank executes such International Payment Order, (4) Customer gives an Instruction (a "No-Conversion Instruction") along with such International Payment Order that it is not to be converted into the Conversion Currency or (5) such International Payment Order is subject to an opt out election for automatic currency conversion as reflected on a Schedule H to this Agreement (if any) that is in effect on the date Bank executes such International Payment Order.

Bank's experience is that a very high percentage of U.S. Dollar-denominated International Payment Orders are converted into the Conversion Currency by the beneficiary's bank before being made available to the beneficiary. Bank believes the conversion of U.S. Dollar-denominated International Payment Orders into the Conversion Currency before they are executed by Bank may offer several benefits to Customer and/or the beneficiary, including earlier conversion, better exchange rates and expedited availability of funds. However, Customer is solely responsible for determining if the conversion of a U.S. Dollar-denominated International Payment Order into the Conversion Currency is consistent with Customer's contractual and other obligations to the beneficiary. If such conversion is not consistent with those obligations, Customer should give Bank a No-Conversion Instruction along with the International Payment Order. Moreover, if Bank receives a demand from the beneficiary or the beneficiary's bank for reimbursement of sums relating to the conversion of a U.S. Dollar-denominated International Payment Order, Bank will seek an Instruction from Customer as to whether Bank should remit those sums to the beneficiary's bank (in which event, they will be charged to the Account).

Information regarding the current Conversion Cap and Eligible Currencies may be obtained by contacting Bank. In that regard, Bank may determine the Eligible Currencies without regard to whether it trades those currencies generally. If Customer desires to ensure that Bank executes an International Payment Order in a currency other than U.S. Dollars, then Customer should denominate that International Payment Order in the desired currency.

If Bank receives an International Payment Order that is denominated in a currency other than U.S. Dollars, Bank will convert the funds from the Account into the requested currency (at Bank's sale rate for that currency in effect on the date Bank executes such International Payment Order). Any returned funds will be converted by Bank into U.S. Dollars at Bank's then current buy rate for that currency on the day of return. Bank shall not be liable for any resulting exchange losses. If, as a result of the exchange rate, excess funds have been remitted, such funds will be returned to the Account less the exchange costs.

Customer hereby instructs Bank that it may (a) obtain payment of its charges for services and expenses in connection with the execution of an International Payment Order by issuing a payment order in an amount equal to the amount of that International Payment Order less

the amount of the charges and (b) instruct any subsequent receiving bank to obtain payment of its charges in the same manner.

10. Name and Account Number Inconsistency.

Customer shall ensure the accuracy of its Payment Orders and Instructions. If a Payment Order inconsistently describes the beneficiary, beneficiary's bank, or intermediary bank by name and number, payment might be made by the intermediary or beneficiary's bank on the basis of the number even if the number identifies a person or bank other than the named beneficiary or bank. Customer shall be responsible for any loss associated with such inconsistency.

11. Liability.

Duty of Reasonable Care. Bank shall exercise good faith and reasonable care in performing the services provided for in this Agreement. Customer shall exercise good faith and reasonable care in observing and maintaining security procedures, in communicating Payment Orders and Instructions to Bank and in reviewing Statements and Confirmations for errors.

Limitation of Liability. Bank shall only be liable as provided by applicable law for any error or delay and shall have no liability for not effecting a Transfer if: (a) Bank receives actual notice or has reason to believe that Customer has filed or commenced a petition or proceeding for relief under any bankruptcy, insolvency, or similar law; (b) the ownership of the funds to be transferred or the Authorized Sender's authority to do so are in question; (c) Bank suspects a breach of the security procedures; (d) Bank suspects that the Account has been used for illegal or fraudulent purposes; (e) Bank attempts to verify a Payment Order and is unable to do so; (f) Customer does not have available funds to effect the Transfer; (g) Bank reasonably believes that a Transfer is prohibited by federal law or regulation, including, but not limited to, those promulgated by the Office of Foreign Assets Control/Department of the Treasury; or (h) otherwise so provided in this Agreement.

Customer will hold Bank harmless: (w) if Bank acts in accordance with Payment Orders and Instructions, including, but not limited to, amendments or cancellations; (x) if Bank attempts to recover funds upon the request of an Authorized Sender; (y) for any loss resulting from the unauthorized access to or use of PINs; or (z) for any matters referenced in this Agreement for which Customer has responsibility. This obligation to hold harmless is limited to the extent provided under Section 768.28, Florida Statutes.

Any damages or other compensation due Customer resulting from Bank's negligence shall be limited to interest on the funds at issue at the federal funds rate paid by Bank at the close of business on each day the error or delay remains uncorrected; provided, however, if Bank is unable to recover the funds from the transferee who has no claim to all or any portion of the funds erroneously transferred as a result of the Bank's negligence, Bank shall be liable for Customer's actual loss, not to exceed the amount of funds which Bank is unable to recover, plus interest at the rate described above. Bank shall not be responsible for any loss, damage, liability, or claim, arising directly or indirectly, from any error, delay, or failure to perform any of its obligations hereunder which is caused by fire, natural disaster, strike, civil unrest, any inoperable communications facilities, or any other circumstance beyond the reasonable control of the Bank. In no event shall Bank be liable to

Customer for indirect, consequential, special, punitive, or exemplary damages.

12. Fees.

Customer shall pay all fees and charges which Bank may, from time to time, impose for the performance of services provided in this Agreement. In addition, Customer shall reimburse Bank for all out-of-pocket expenses incurred by Bank in effecting Payment Orders and Instructions, including cancellations, amendments and attempted recoveries.

13. Notices.

Oral notices, Instructions, directions, Confirmations, verifications, or other oral communications with respect to Transfers and this Agreement shall be given, if to Bank, to Customer's assigned relationship manager, and, if to Customer, to the telephone number provided by Customer on its Schedule A to this Agreement. Written notices, Instructions, directions, Confirmations, verifications, or other written communications with respect to Transfers and this Agreement shall be sent, if to Bank, at the Bank's address on the Statement, and if to Customer, at the address provided by Customer on its Schedule A to this Agreement. Either party may change its telephone number or address by giving written notice to the other party.

14. Applicable Law, Jurisdiction and Account Agreement.

This Agreement is subject to all applicable Federal Reserve Bank operating circulars and any other applicable provisions of Federal law. If Bank uses Fedwire to effect a Transfer, Federal Reserve Board Regulation J, Subpart B shall apply. Except as so provided, this Agreement shall be governed by and interpreted in accordance with the laws of the state in which the Account is located. Customer consents to the jurisdiction and venue of any court located in such state, selected by Bank in its sole discretion. The parties agree that, in the event of a dispute, they will submit same to mediation prior to any legal action. The terms and conditions of any schedule, account agreement, signature card, authority, and the Bank's Rules and Regulations for Deposit Accounts are incorporated herein by reference. If any conflict or inconsistency exists between the terms and conditions of this Agreement and any of the above, this Agreement shall control.

15. Jury Trial Waiver.

Customer and Bank hereby knowingly, voluntarily, intentionally, and irrevocably waive the right either of them may have to a trial by jury in respect to any litigation, whether in contract or tort, at law or in equity, based hereon, or arising out of, under or in connection with this Agreement and any other document or instrument contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This provision is a material inducement for Bank entering into this Agreement. Further, Customer hereby certifies that no representative or agent of Bank, or Bank's counsel, has represented, expressly or otherwise, that Bank would not, in the event of such litigation, seek to enforce this waiver of right to jury trial provision. No representative or agent of Bank, or Bank's counsel has the authority to waive, condition, or modify this provision.



16. Amendment and Termination.

This Agreement may be amended by Bank from time to time by written notice to Customer. Any use of services provided hereunder after Customer's receipt of the notice shall constitute acceptance of the terms of the amendment. Either party may terminate this Agreement by giving at least 30 days prior written notice to the other party. Bank may terminate this Agreement immediately, without prior notice to Customer, if: (a) the Account(s) has no annual activity or has been closed; (b) Bank suspects a breach of Customer's security procedures; (c) Bank receives actual notice or has reason to believe that Customer has filed or commenced a petition or proceeding for relief under any bankruptcy, insolvency, or similar law; or (d) Bank suspects that the Account(s) have been used for illegal or fraudulent purposes.

17. Miscellaneous.

This Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, successors, and assigns, by merger or otherwise. If any provision of this Agreement shall be declared invalid or unenforceable, said provision shall be ineffective to the extent it is invalid, without in any way affecting the remaining provisions of this Agreement.

Client Name: _____
Authorized Signer: _____
Print Name: _____
Print Title: _____
Date: _____

SunTrust Bank	
Authorized Signer:	
Print Name:	
Print Title:	
Date:	



Brian S. Orth
First Vice President

SunTrust Bank
200 South Orange Avenue
Orlando, Florida 32801
Tel 407. 237.6764
Fax 407.835-0234
brian.orth@suntrust.com

July 22, 2015

David Harden
Interim City Manager
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

RE: Letter Agreement to Amend the City of Port Orange Standard Contract for Services with SunTrust Bank

Dear Mr. Harden,

This Letter Agreement Amendment (the "Amendment") hereby allows the City of Port Orange, pursuant to terms contained within the Standard Contract for Services (the "Contract") entered into January 5, 2010 by the City of Port Orange, Florida (the "City") and SunTrust Bank ("SunTrust") to amend the existing Contract as detailed below. All future references to the Contract shall include the Contract as amended by this Amendment.

The City and SunTrust wish to amend the Contract as follows:

1. Section 3, "Time and Essence" shall be amended as follows:
Commencement: The parties wish to extend the Contract, and such extension shall commence on April 1, 2015, for 2 years, and shall terminate on March 31, 2017.
2. SunTrust will provide an above-standard earnings credit rate and municipal now interest rate through March 31, 2016 the Earnings Credit Rate will be guaranteed at .65%, and the Municipal Now Interest Rate will be guaranteed at .23%. For the second year of the Contract extension, the ECR will be .60%, and the Municipal Now Rate will be reviewed and a competitive market rate will be offered to the City.
3. Section 23, "Integration Clause" shall be deleted and replaced with the following:
The parties agree that the City will execute the SunTrust Treasury Management Master Agreement (the "Master Agreement"), which will govern the City's use of the treasury management services during the term of the Contract. To the extent there is a conflict

between the Contract, including but not limited provisions regarding termination, liability, and indemnification, and the Master Agreement, the Master Agreement (Section 2, Organization of Agreement) will govern.

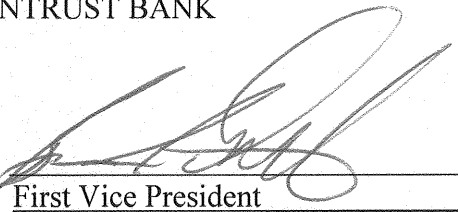
The City and SunTrust agree that this Amendment may be executed by in counterparts, all of which counterparts taken together shall be deemed to constitute one and the same instrument. Each party represents that the person signing below is an authorized signer and has the authority to bind the party.

IN WITNESS WHEREOF, this Amendment has been executed as of the date first set forth above.

CITY OF PORT ORANGE, FLORIDA

SUNTRUST BANK

By: _____
Its: Interim City Manager

By: _____
Its: First Vice President



TREASURY MANAGEMENT MASTER AGREEMENT

1. Introduction. Throughout this master agreement, SunTrust Bank is referred to as "we," "us," "our," or "the bank". The various treasury management services described in our treasury management terms and conditions (defined below) are referred to as the "services". This master agreement, the treasury management terms and conditions, and the other documents defined below are together referred to as the "agreement". The entity using our services is referred to as "client", "customer", "you" or "your". Each individual identified in any resolution or other similar document that we accept from you who is authorized to enter into agreements such as this master agreement on your behalf is referred to as your "authorized signer". Each authorized signer is also authorized to give us instructions related to the services.

The authorized signer who signs this agreement represents and warrants that you have legal capacity to execute and perform the agreement and that any actions required by your organizational documents or governance procedures to enter into and perform the agreement have been taken. The agreement is a legally binding contract that can only be changed by the means specified in it. By accepting services from us you agree that you are bound to the terms and conditions of the agreement.

2. Organization of Agreement. The agreement is made up of the documents described below. If there is any inconsistency on a particular issue among the documents that make up the agreement, the documents will control that issue in the order set forth from top to bottom below.

The documents and their purposes are:

(a) The Treasury Management Terms and Conditions. Our treasury management terms and conditions contains a general terms and conditions section that applies to all services, and a second section that describes the specific terms and conditions that apply to each individual service. The most recent version of our treasury management terms and conditions is always posted on the following website: www.suntrust.com/treasuryterms. By accepting services from us, you are charged with notice of the treasury management terms and conditions and, at all times while you are receiving services, you agree that you are bound by its then current content posted on the website, subject to your right to receive notice of changes to it as specified in Section 3 of this master agreement.

(b) The Master Agreement. This master agreement describes the structure of the agreement and sets forth some of the basic contractual provisions relating to use of the services.

(c) Ancillary Implementation Agreements. Certain services can pose higher risks to you and to the bank and lead to disputes between you and us. Therefore we may, in our discretion, require that your authorized signers confirm a request to receive such services and the operational details related to such request by executing an Ancillary Implementation Agreement ("AIA"). Examples of AIAs include AIAs relating to funds transfer ("wire") and Automated Clearing House ("ACH") services. Any required AIA will be provided at the time we implement a service that requires one. We will not implement the relevant service until the required AIA is executed and returned to us by one of your authorized signers.

(d) Service Confirmations. A service confirmation is a document that is sent to your authorized signer(s) during the implementation process. It memorializes instructions you have given us regarding our implementation of a service for you, such as the account(s) linked to that service, the authorized users for that service, and the options you have selected for that service. Not all

services you request will result in the transmission of a service confirmation to you at the time the service is implemented, but when a service confirmation is generated it will be sent by e-mail. The facts and details we provide in each service confirmation are deemed accurate as of the time you commence using the applicable service and at all times thereafter unless you notify us of any discrepancies or inaccuracies before you begin using the service. A service confirmation may also be sent when we modify or add a service at your request where your request reflects a change to instructions that were reflected on a prior service confirmation (or on an exhibit to a service schedule, a service profile, or other document previously used to record such instructions).

(e) Online Services and Software Materials. Where software is used in connection with a service, we grant you a nonexclusive, nontransferable, limited license or sublicense to use such software solely in connection with and while receiving that service. A separate license agreement (in the form of a "shrink wrap" or "click wrap" agreement with us or a third party vendor) may be required and there may also be a user manual for the software or certain online services. The software and those other items constitute "software materials". Any license agreement, online terms, and/or user manual sets forth the terms and conditions relating to use of those online services and software materials as well as important instructions and requirements for their use.

(f) Implementation/Setup Forms. An implementation/setup form is a document used by the bank to capture additional information and instructions you may give us with respect to a particular service, such as the billing account for the service, contact information and information reporting preferences specified by you. These forms are not sent to you to review. However, absent a finding of manifest error on the part of the bank in creating such forms in the ordinary course of providing the services to you, the content of such forms will be deemed accurate and correct.

(g) Deposit Rules and Regulations. The rules and regulations for deposit accounts that you maintain with us set forth certain general provisions relating to the establishment, maintenance and operation of your deposit accounts. The rules and regulations shall continue to apply to and govern the terms of your deposit accounts.

(h) The Delegation of Authority. Use of a delegation of authority is optional. By using one, your authorized signers give other individuals within your company ("delegates") certain authority with respect to all the services you receive or some sub-set of those services as specified in the delegation of authority. If a delegation of authority is used, a delegate has the authority conferred by such delegation for such services until that authority is revoked by one of your authorized signers. Such delegated powers include the power to receive and respond to service confirmations, execute AIAs when required, and to otherwise provide us instructions in the same manner as an authorized signer. Such powers are subject to the same conditions as stated herein when the bank interacts with an authorized signer in matters related to AIAs, service confirmations, new services, modifications to existing services or removal of services.

3. Amendments to Agreements. We may add to, change or delete provisions in this master agreement, the general terms and conditions, or terms and conditions for any individual service in our discretion. We will attempt to give an authorized signer at least 30 calendar days' prior notice of these changes. It is your obligation to maintain up-to-date contact information with us at all times. If you continue to use a service after any modification becomes effective, you are bound by such modification. If a modification is required by applicable law, clearing house rules or funds transfer system rules, or if we



TREASURY MANAGEMENT MASTER AGREEMENT

believe the change is necessary to preserve the security or integrity of the systems that we use in providing any service, or to protect the bank or you from risk of immediate, significant loss, we may give you (and all customers impacted by that change) notice of the modification promptly after we make it. In such case, you are bound by the modification as of the date you receive notice of it unless you terminate your use of the relevant service(s) within a reasonable period of time after you receive our notice. We may modify the terms of the software materials or the deposit rules and regulations by following the procedures set forth in those documents.

4. New Services. When we implement a new service for you, we may create an AIA or a service confirmation for that new service. As noted in the definition of an AIA, if the service requires an AIA, you may not use that service until you have executed and returned the AIA. However, any service confirmation we send will be deemed accurate and correct as of the time you begin using the service. You do not need to contact us when you receive the service confirmation unless you notice errors in it, in which case you must notify us of such errors before you begin using the service. For any new service, you must also successfully complete any testing or training we may require for that service. If you attempt to use a new service without satisfying one or more of these conditions, we may refuse to provide that service. However, if we do provide it before you have satisfied all required conditions, you agree to be bound by the terms of the agreement relating to that service including the general terms and conditions, the terms and conditions for that new service, and the specifications stated in any service confirmation that you did not dispute prior to your use of the new service.

5. Modifications to Existing Services and Changes to Your Setup. If we agree to change our implementation of a service for you in response to your instructions and those instructions are of the type that were reflected on a prior service confirmation (or on an exhibit to a service schedule, a service profile, or other document previously used to record such instructions) at the time of initial implementation of the service, we may send or otherwise make a new service confirmation reflecting those instructions available to you. If the change impacts information that should be captured on an AIA, we will send a new AIA to your authorized signer, and the change will not take effect until an authorized signer has executed and returned the new AIA to us. You must also successfully complete any required testing or training for the change. We may, in our discretion, accept written instructions we deem acceptable as sufficient record from an authorized signer to memorialize the request to remove a service or make a change to a service. At our election and in our discretion, we may accept telephonic instructions for changes to a service or removal of service from an authorized signer on a recorded line. However, we may, in our discretion, refuse to accept letters, e-mails or other forms of communications containing requests to change prior instructions or remove services if we deem

the information provided in such communications to be insufficient, or we question the source of any such information or the authority of the individual making the request, or for any other reason that we, in good faith, believe will protect you or us from a significant loss.

6. Electronic Records and Signatures. You consent to the use of electronic records and signatures with respect to your use of the services. In addition, you agree that, when you receive a service confirmation as an attachment to an e-mail message, (a) you will be deemed to have confirmed that the content of that service confirmation is correct if we do not receive a prompt response informing us of any inaccuracy in the service confirmation, and (b) you will be deemed to have accepted the service in conformity with the implementation details specified in that service confirmation, including any account numbers listed therein and any persons listed therein who are identified as having authority to use the specified services and access the relevant accounts. It is your responsibility to provide us accurate e-mail contact information for your authorized signers and to notify us of any changes to that information so that we can communicate important information to them.

7. Signature. This master agreement may be delivered to us by giving the signed original of it to your treasury management contact or sending it by facsimile or e-mail attachment. It may also be transmitted by any electronic signature process we specifically adopt and accept for this purpose. The individual signing this agreement represents and warrants that he or she is, in fact, one of your authorized signers. This master agreement and the comprehensive agreement it describes completely replaces any prior agreements you may have with us with respect to the services or the subject matter referred to herein. However, any previous instructions you have given us while those prior agreements were in effect continue to be effective until replaced or deleted in accordance with the agreement including through a service confirmation, an AIA, or other written instruction provided by you that is acceptable to us.

IN WITNESS WHEREOF, client has executed this master agreement as of the date set forth below.

Client Name:	CITY OF PORT ORANGE
Authorized Signer:	
Print Name:	DAVID HARDEN
Print Title:	CITY MANAGER
Date:	07-21-2015



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Change Order No. 3 to McMahan Construction Contract for the Williamson Blvd. Regional Lift Station

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: Move to approve Change Order No 3 to McMahan Construction Contract for the Williamson Blvd. Regional Lift Station Project, Bid Award #15-14, in the amount of \$3,167 and add 21 additional days to the contract duration, for a total revised contract amount of \$1,338,727; and authorize the Mayor and City Clerk to execute all required contract documents.

SUMMARY: The Williamson Blvd. Regional Lift Station Project is now being constructed to provide additional pumping station capacity for existing and future development along the Williamson Blvd. corridor. Change Orders Nos. 1 and 2 were recently approved at the department level.

On June 9, 2015 Deductive Change Order No 1 provided for the reuse of the existing louvers at the new location saving \$1,500 by eliminating the need to purchase a new louver for the relocated generator.

On June 12, 2015 Deductive Change Order No 2 provided for reuse of the existing automatic transfer switch at the new location saving \$1,940 by eliminating the need to purchase a new Automatic Transfer Switch for the relocated generator. Both of these change orders were within the approval limits as established in the City's purchasing policy.

Change Order No 3 is being presented for Council approval. This change order includes additional compensation to be paid to the contractor for the cost increase concerning the Port Orange Building Permit fee. The actual cost of the permit was \$13,167 as compared to our original allowance of \$10,000 listed in the contract documents. The additional 21 days time to be added to the contract is also documented in Change Order No 3. This additional time requested is due to the additional processing time of the building permit because of a slight design clarification being required to the construction documents, prior to the building permit being issued. The project schedule will be revised accordingly.

The total cost modification to the construction contract to date for these three change orders combined is a net deduction of \$273 for a total revised contract amount of \$1,338,727. Staff recommends approval of Change Order No 3.

Project No.: SLS003 Funding Account No.: 40304015356397

ATTACHMENTS:

1.	Change Order No 3	Change Order No 3 - cc 8.4.15.pdf
2.	Change Order No 3 - Support Doc's	Change Order No 3 - supporting documents.pdf

Wiggins, Julia	Created/Initiated - 07/21/2015
Wilson, Rick	Approved - 07/21/2015
Neff, Andrew	Approved - 07/21/2015
Roberts, Margaret	Approved - 07/28/2015
Harden, David	Final Approval - 07/28/2015

CHANGE ORDER NO. 3

To the Agreement for Construction dated April 21, 2015
McMahan Construction Company, Inc., Contractor

Project: Bid B15-14 Williamson Blvd. Regional Lift Station

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE: Original Contract Price: \$1,339,000	CHANGE IN CONTRACT TIMES: Original Contract Times Substantial Completion: 270 days Final Completion 300 days (April 9, 2016)
Net changes from previous Change Order: No. 1 - \$1,500 deduction No. 2 - \$1,940 deduction -\$3,440	Changes in contract time from previous Change Orders: No. _ : _ days 0 days
Contract Price prior to this Change Order: \$1,335,560	Contract Completion Date prior to this Change Order: Final Completion: April 9, 2016
Net Increase (decrease) of this Change Order No. 3 : \$3,167	Changes in contract time requested this Change Order No. 3 : (Requires Council Approval) 21 days
Contract Price with all approved Change Orders: \$1,338,727	Contract Times with all approved Change Orders: Final Completion: <u>April 30, 2016</u>

CHANGES ORDERED:

- I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the Agreement for Construction entered into by and between the parties on April 21, 2015.
- II. REQUIRED CHANGES: To provide for additional cost of permit fees and to extend the contract by 21 days. No goods shall be delivered nor services commenced hereunder until this Change Order has been fully executed by all parties.
- III. JUSTIFICATION: Change Order No 3 is needed to change the contract expiration date from April 9, 2016 to April 30, 2016 and to increase the contract by **Three Thousand One Hundred Sixty-seven dollars and no cents (\$3,167)**. Contract increase is due to required permitting fees.
- IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Agreement for Construction subject to a limit up to but not to exceed **One Million Three Hundred Thirty-eight Thousand Seven Hundred Twenty-seven dollars and no cents (\$1,338,727)**. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.

Acknowledgments:

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

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

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

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

RECOMMENDED BY:
FRED GRIFFITH, PE
Department Project Manager

ACCEPTED BY:
McMAHAN CONSTRUCTION COMPANY INC.
Contractor

By: _____
Printed Name: Fred Griffith, PE
Title: Public Utilities Engineer

By: _____
Printed Name: John Justus, Jr.
Title: Executive Vice President

Date Signed: _____

Date Signed: _____

RECOMMENDED BY:
WADE TRIM, INC.
City's Representative

RECOMMENDED BY:
QUENTIN L. HAMPTON ASSOCIATES, INC
Engineer of Record

By: _____
Printed Name: Edward G. Fontanin
Title: Vice President

By: _____
Printed Name: Brad T. Blais
Title: President

Date Signed: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Printed Name: Andrew Neff
Title: Public Utilities Director

Date Signed: _____

City Manager

By: _____
Printed Name: David Harden
Title: Interim City Manager

Date Signed: _____

If Council approval is required:

Affirmed:

By: _____
Printed Name: Allen Green
Title: Mayor

Robin L. Fenwick, CMC, City Clerk

Date Signed: _____

Date Signed: _____



July 16, 2015

Mr. Fred Griffith, PE
Port Orange Utilities
1000 City Center Circle
Port Orange, FL 32129

RE: Williamson Lift Station - Construction Change Order No. 3

Fred:

Wade Trim has reviewed the proposed Change Order No. 3 request from McMahan Construction for the Williamson Lift Station project. According to the proposed change order, the Contractor is requesting \$3,167.12 and a contract extension time of 21 days.

Bid item #7 of the contract documents provided \$10,000 for permits and allowances. Since the building permit fee of \$13,167.12 exceeds the amount allowed in the contract documents in the amount of \$3,167.12, Wade Trim finds this request reasonable and recommends the monetary request for reimbursement. Please refer to the Schedule of Unit Prices and the building permit invoice attached to this letter.

The time frame for the building permit approval process is as follows:

- May 14, 2015 – Preconstruction Meeting. Contractor requested that the Notice to Proceed (NTP) be issued upon receipt of the building permit anticipated for June 15
- May 29, 2015 – Permit Plans submitted to Building Department
- June 22, 2015 – Review Comments received from the Building Department
- June 25, 2015 – Review comments addressed and submitted to Building Department
- July 2, 2015 – Building Department notifies Contractor of permit approval.
- July 5, 2015 – Permit obtained due to July 4th holiday.

The time frame from June 15th (NTP) to receipt of the permit on July 5th equates to 21 days. The additional time period requested for obtaining the permit appears reasonable based longer than anticipated review process and the added time for comment correspondence and resubmittal. Wade Trim therefore recommends the additional time of 21 days be added to the contract corresponding to a modified Final Completion date of May 2, 2016.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

WADE TRIM, INC.

Oscar E. Duarte, PE
Project Manager

Wade Trim Associates, Inc.
3790 Dixie Highway, NE
Suite D
www.wadetrim.com
Palm Bay, FL 32905

321.728.3389
321.728.3393 fax

**SECTION 00310
SCHEDULE OF UNIT PRICES**

**CITY OF PORT ORANGE
WILLIAMSON BOULEVARD REGIONAL LIFT STATION
BID#**

<i>ITEM NO.</i>	<i>DESCRIPTION</i>	<i>QTY</i>	<i>UNIT</i>	<i>UNIT COST</i>	<i>TOTAL</i>
1	Demolition	1	LS	20,000.00	20,000.00
2	Sitework & Yard Piping	1	LS	511,000.00	511,000.00
3	New Regional Lift Station	1	LS	590,000.00	590,000.00
4	Electrical/Instrumentation	1	LS	130,000.00	130,000.00
5	Clark Lift Station	1	LS	75,000.00	75,000.00
6	As-Built Plans	1	LS	3,000.00	3,000.00
7	Permit Fees & Allowances	1	LS	\$10,000.00	\$10,000.00
BID TOTAL					\$1,339,000.00

Submitted by: John Justus, Jr., Executive Vice President

Contractor: McMahan Construction Co., Inc.

Address: 123 East Indiana Avenue, DeLand, FL 32724

Telephone: (386) 734-1071

Fax: (386) 738-2692

State of Florida Certified General Contractor or Underground Contractor (Required Information)

CGC059437 &

Licensee: John Justus, Jr., Executive Vice President

License No: CUC057309

Griffith, Fred

From: John Justus <jejmcci@bellsouth.net>
Sent: Tuesday, July 14, 2015 1:06 PM
To: Oscar Duarte
Cc: Griffith, Fred; Neff, Andrew; Wilson, Rick; Brad Blais
Subject: Williamson Blvd. Regional Lift Station project - CCR #3
Attachments: 1211 _20150714125545.pdf

Oscar

The following is the timeline per our records for the building permit application/approval:

- Preconstruction meeting on 5/14 – permit plans requested
- Notice to proceed established for 6/15, provided building permit is approved, per Preconstruction meeting notes
- Picked up signed/sealed permit plans at QLH's office on 5/28 & submitted to the building department on 5/29
- Plan review comments received 6/22 via email Al Tischler with the building department & forwarded to Wade Trim/QLH/City
- Plan review comments addressed immediately by QLH & submitted to building department by McMahan as a Revision on 6/25
- Building department notifies McMahan on 7/2 pm that permit is ready to pickup
- With 7/3 holiday, McMahan picked up permit on 7/6.

The additional time request of 21 days is from 6/15(original NTP) to 7/6(permit ready for pickup). Attached is a copy of the preconstruction meeting minutes(pgs 1&2), the 6/22 email from the building department, and our 6/25 project status report provided at the progress meeting. Upon review, please advise if you need anything additional. Contact us with any questions. Thanks.

John Justus
McMahan Construction
(386) 734-1071



CITY OF PORT ORANGE-BUILDING DIVISION

INSPECTION HOTLINE: (386) 506-5603 OR WWW.PORT-ORANGE.ORG

PERMIT CARD

PERMIT NUMBER: 15-2476 ISSUE DATE: 7/2/15
JOB ADDRESS: 5955 S. Williamson Blvd.
OWNER NAME: City of P.O.
CONTRACTOR NAME: Mc Mahan Construction Co.
DESCRIPTION OF WORK: Lift Station

BUILDING:	DATE	INITIALS	PLUMBING:	DATE	INITIALS
FOOTING/FOUNDATION (100)			1 ST ROUGH (505)		
SLAB (105)			2 ND ROUGH (510)		
BOND BEAM/LINTEL (115)			SEWER (515)		
SHEATHING-ROOF/WALL (125)			ABOVE CEILING (520)		
FILLED CELL (110)			PLUMBING FINAL (550)		
LATH (140)					
FRAMING (Partial) (121)			MECHANICAL:		
FRAMING (120)			ROUGH (405)		
INSULATION (130)			ABOVE CEILING (410)		
DRYWALL/SCREW (145)			GREASE HOOD TEST (420)		
FIREWALL (146)			GREASE HOOD FINAL (425)		
DRIVEWAY/SIDEWALK (150)			MECHANICAL FINAL (450)		
MOBILE HOME SET UP (155)					
MOBILE HOME FINAL (156)			MECHANICAL:		
BUILDING FINAL (190) *			WALK IN COOLER ROUGH (405)		
			WALK IN COOLER FINAL (450)		
BUILDING (MISC):					
			GAS:		
ROOFING:			ROUGH (305)		
DRY-IN (170)			PRESSURE TEST (320)		
FLASHING (171)			GAS FINAL (350)		
IN-PROGRESS (180)					
ROOF FINAL (190)			ELECTRIC: Economy Electrical		
			TEMP POLE/TUG (205)		
FIRE ALARM:			UNDERGROUND (210)		
ALARM FINAL			ROUGH (215)		
			ABOVE CEILING (219)		
FIRE SPRINKLER:			PRE-POWER (220)		
SPRINKLER FINAL			DISCONNECT & RECONNECT (225)		
			ELECTRIC FINAL (250) *		
FIRE SUPPRESSION:					
SUPPRESSION FINAL			ELECTRIC (LOW VOLTAGE):		
			ROUGH (215)		
FIRE (MISC):			ELECTRIC FINAL (250)		

*****CONSTRUCTION PERMIT*****
 CITY OF PORT ORANGE--BUILDING DIVISION--WWW.PORT-ORANGE.ORG
 1000 CITY CENTER CIRCLE PORT ORANGE, FL 32129-9619
 PHONE 386-506-5602 FAX 386-506-5699 INSPECT 386-506-5603

Application Number 15-00002476 Date 6/26/15
 Property Address 5955 S WILLIAMSON BLVD
 Parcel Number: 6319-00-00-0054
 Alternate ID: RECLAIM STORAGE TANK
 Tenant nbr, name CITY OF PORT ORANGE
 Application type description STRUCTURE OTHER THAN BUILDING
 Subdivision Name
 Application valuation 1209000

Application desc
 LIFT STATION

Owner

THE CITY OF PORT ORANGE
 1000 CITY CENTER CIR
 PORT ORANGE FL 32129
 (386) 506-5753

Contractor

MCAHAN CONSTRUCTION CO INC
 JOHN JUSTUS JR
 123 EAST INDIANA AVE
 DELAND FL 32724
 (386) 734-1071

Permit ELEC (COMM) (MISC) (05/02/11)
 Additional desc . . . ELECTRICAL
 Sub Contractor . . . ECONOMY ELECTRIC INC/LATOUR EN
 Permit Fee 1235.00 Plan Check Fee00
 Issue Date Valuation 130000
 Expiration Date . . . 12/23/15

Permit BLDG (COMM) (05/02/11)
 Additional desc . . . LIFT STATION
 Permit Fee 11485.50 Plan Check Fee00
 Issue Date Valuation 1209000
 Expiration Date . . . 12/23/15

Other Fees ARCHIVE FEE 5.00
 FIRE PLAN REVIEW FEE 60.00
 RESUBMITTAL FEE 50.00
 BLDG SURCHARGE (DBPR) B 190.81
 BLDG SURCHARGE (DBPR) A 190.81

Fee summary	Charged	Paid	Credited	Due
Permit Fee Total	12720.50	.00	.00	12720.50
Plan Check Total	.00	.00	.00	.00
Other Fee Total	496.62	50.00	.00	446.62
Grand Total	13217.12	50.00	.00	13167.12

SIGNED BY: () CONTRACTOR () OWNER () AUTHORIZED REPRESENTATIVE

PRINTED NAME: _____ DATE: _____

SIGNATURE: _____

Customer
 Copy

W CITY OF PORT ORANGE
*** CUSTOMER RECEIPT ***
Oper: SLAUGHTERBEAC Type: CC Drawer: 1
Date: 7/07/15 10 Receipt no: 236574

Description	Quantity	Amount
2015 2476		
5955 S WILLIAMSON BLVD		
DAYTONA BEACH, FL 32124		
EP BUILDING PERMITS		
	1.00	\$13167.12
Trans number:		6058405

Tender detail		
CK CHECK	83734	\$13167.12
Total tendered		\$13167.12
Total payment		\$13167.12

Trans date: 7/06/15 Time: 15:42:51



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Agreement with Dredging & Marine Consultants, LLC for Design and Permitting Services for Bank Stabilization at the City Center Retention Pond and Refurbishment of Causeway Docks

DEPARTMENT: Public Works

RECOMMENDED MOTION: Move to approve the Agreement with Dredging & Marine Consultants, LLC for professional design services for bank stabilization at the City Hall retention pond and refurbishment of causeway docks for \$65,450, and authorize the Mayor and City Clerk to execute all required contract documents.

SUMMARY: The retention pond in City Center is experiencing bank erosion at various locations as well as gradual settling of the concrete platform north of City Hall. If not promptly addressed, there is the potential for a complete undermining and failure of certain parts of the public sidewalk around the pond, retention walls, and concrete platform.

The professional services by Dredging & Marine Consultants, LLC will include design and permitting for stabilization of the shoreline and platform and repairs to any damaged outfall, retaining wall, and sidewalk. The cost for the professional services is \$41,950

In addition, three docks at the causeway need refurbishment. The design for that will include replacement components for the fishing pier beneath Dunlawton Bridge on both the east and west banks as well as the pier between the two bridges on the north side of the causeway. The cost for the professional services is \$23,500. Accordingly, the total cost for the two designs is \$65,450.

The proposed agreement piggybacks on the Volusia County Contract (No. 12-SQ-118KW) for Consulting for Coastal Engineering Services with Dredging & Marine Consultants, LLC.

Project No.: TDB
QPC062

Funding Account No.: 412-1800-541-6397
315-5100-572-6397

ATTACHMENTS:

1.	DMC /Volusia County Agreement	DMC - Volusia County.pdf
2.	Piggyback Agreement	Dredging & Marine Consultants Piggyback Agreement.pdf

Cockcroft, Kynah
Adumuah, Branford
Riehm, Tracey
Roberts, Margaret
Harden, David

Created/Initiated - 07/23/2015
Approved - 07/23/2015
Approved - 07/29/2015
Approved - 07/30/2015
Final Approval - 07/30/2015



FINANCIAL AND ADMINISTRATIVE SERVICES

Purchasing and Contracts

123 West Indiana Avenue • Room 302 • DeLand, FL 32720-4608

(386) 736-5935 • Fax (386) 736-5972

e-mail: purchasing@co.volusia.fl.us
www.volusia.org

September 17, 2012

PR-L-12-625

Mr. Shailesh K. Patel
Dredging & Marine Consultants, LLC
4643 S. Clyde Morris Boulevard
Port Orange, Florida 32129

RE: **Coastal Engineering Services**
RSQ # 12-SQ-118KW

Dear Mr. Patel:

Attached please find the executed contract document for the above-named project as approved by County Council on September 6, 2012.

If you need any further information or assistance, please contact our office at 386-626-6625 or kwilliams@co.volusia.fl.us

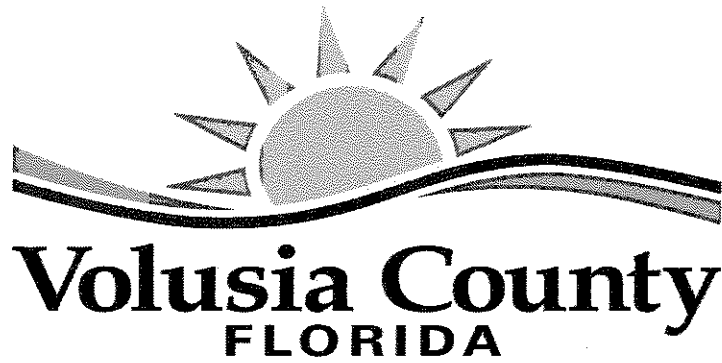
Sincerely,

A handwritten signature in blue ink that reads "Kathy Williams". The signature is fluid and cursive, with the first name "Kathy" and last name "Williams" clearly distinguishable.

Kathy Williams, MBA, CPPB
Procurement Analyst II

Enclosures

c: Michael Ulrich, Director of Water Resources & Utilities
File



**CONTRACT FOR CONSULTING SERVICES
FOR
COASTAL ENGINEERING SERVICES**

Between

THE COUNTY OF VOLUSIA

AND

DREDGING & MARINE CONSULTANTS, LLC

Contract No. 12-SQ-118KW

Expiration Date: 9/12/2015

County of Volusia
Purchasing and Contracts Division
123 West Indiana Avenue, Room 302
Deland, Florida 32720-4608
www.volusia.org/purchasing

CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

This Contract made and entered by and between Dredging & Marine Consultants, LLC, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 4643 S. Clyde Morris Boulevard, Port Orange, FL 32129 (hereinafter the "Consultant") and County of Volusia, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 (hereinafter "County").

RECITALS:

WHEREAS, the County requires a competent and qualified consultant to provide professional services in support of the County's operations; and

WHEREAS, the County has requested and received expressions of interest for the retention of services of consultants; and

WHEREAS, the County has determined that the Consultant is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual; and

WHEREAS, the County has determined pursuant to Florida Statutes 287.055 (a/k/a "Consultant's Competition Negotiation Act") and 337.105 that the Consultant is competent and qualified to furnish said services stated hereunder to the County and Consultant desires to provide professional services according to the terms and conditions hereunder, and

WHEREAS, it has been determined that the execution of this Contract is beneficial to the people of County of Volusia, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Contract, the receipt and sufficiency of which is acknowledged by the Consultant and County, the parties agree and stipulate as follows:

1. DEFINITIONS

- 1.1. **Addendum:** A written explanation, interpretation, change, correction, addition, deletion, or modification of equal dignity herewith affecting the contract documents including drawing and specifications prepared by the Consultant, approved and issued by the County and/or distributed to third parties.
- 1.2. **Affidavit:** The instrument which is to be signed by the Contractor and submitted to the County upon the County's request through the Project Manager, upon completion of the job, showing that all bills have been paid. It shall also mean such instrument that may be requested by the County incidental to partial payments.
- 1.3. **Agency:** The state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under Sections 380.06 or 163.3220-163.3243 of the Florida Statutes.
- 1.4. **Amendment:** An amendment to an approved Task Assignment or this Contract in writing by the County, approved by the Director of Purchasing and Contracts, and signed by the County of equal dignity herewith authorizing an addition, deletion, or revision in the scope of work, or an adjustment in the task assignment price or the time for completion that is issued after execution

of the task assignment.

- 1.5. **Application for Progress Payment:** The current estimate form furnished and certified by the Consultant, which is to be used by Contractor in requesting progress payments.
- 1.6. **Architect:** A person or firm that is authorized to practice architecture pursuant to Florida Statute 481.299 or a general contractor who provides architectural services under a design-build contract authorized by F.S. 481.299(3).
- 1.7. **Architect/Engineer:** The design professional identified in the contract documents and who is licensed and registered in the State of Florida. The terms "Architect" and "Architect/Engineer (A/E)" means the architect/engineer or its authorized representative.
- 1.8. **Basic Contract:** This Contract between the County and the Consultant covering the services requested from a formal solicitation. Authorization for performance of services under the basic Contract shall be in the form of a written Task Assignment (see Task Assignment).
- 1.9. **Bid Documents:** The official forms on which the County requires formal bids to be prepared and submitted by the bidder.
- 1.10. **Calendar day:** Any day, including Saturdays, Sundays, and holidays, regardless of weather conditions.
- 1.11. **Change Order:** A written order to the Contractor signed by the County authorizing an addition, deletion, or revision in the work, or an adjustment in the contract price or time.
- 1.12. **Compensation:** The amount paid by the County to Consultant for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated which includes the total monies payable to the Consultant under a Task Assignment which includes all services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Task Assignment.
- 1.13. **Completion Date:** The date that the County or its designated representative approves and accepts all Work or Services for a Scope of Work in a Task Assignment or this Contract.
- 1.14. **Consultant:** The person or entity qualified to perform work under this Contract and any Task Assignment related thereto. In addition, Consultant must be a professional engineer or engineering firm, including an architect (or registered landscape architect, surveyor and mapper, professional engineer, architect or registered landscape architect providing professional services within the meaning of Section 287.055, F.S., who is registered in the State of Florida. In addition, the Consultant may be the engineer or architect or landscape architect of record or may provide services through and be subcontracted to the engineer of record.
- 1.15. **Continuing contract:** A contract for professional services entered into in accordance with all the procedures of Section 287.055, F.S. between the County and a firm whereby the firm provides professional services to the County for projects for work of a specified nature as outlined in a this Contract and its associated Task Assignments as required by the County, with no time limitation except one governed by the termination provisions of this Contract and a Task Assignment.
- 1.16. **Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Contract.

- 1.17. **Contractor:** The person or entity qualified to perform work pursuant to Florida 489.105, F.S. under the Project and who is registered and licensed under the Florida Department of Business and Professional Regulation and in compliance with local laws or ordinances, other than a materialman or laborer, who enters into a contract with the County for improving real property in accordance with the Contract Documents.
- 1.18. **Contract Documents:** Contract documents shall include but are not limited to the following:
- (1) This Contract ("Basic Contract") and Exhibits;
 - (2) Task Assignments;
 - (3) Performance and payment bonds (if applicable);
 - (4) Letters of credit (if applicable);
 - (5) Certificates of insurance;
 - (6) Notice of Award and/or Notice to Proceed;
 - (7) The conditions of this Contract (general, special, supplementary, and other);
 - (8) Drawings;
 - (9) Project specifications;
 - (10) Written interpretations;
 - (11) Change orders;
 - (12) Project manuals;
 - (13) Addenda (including RSQs, RFPs and Consultant's responses to RFPs) issued before the execution of this Contract; and,
 - (14) Any valid modifications or amendments to this Contract or Task Assignments issued after its execution of this Contract, and any Amendments to the foregoing.
- 1.19. **County Representative:** Also known as the Owner's representative who is the County Engineer or person designated by the County to review, approve and make decisions regarding the scope of work.
- 1.20. **County:** The County of Volusia, Florida, a political subdivision of the State of Florida for whom the work is to be performed.
- 1.21. **Deliverable:** The result(s) or end products or services of a Project or Task Assignment that meet the defined design or construction specifications, and functional parameters articulated in the Scope of Work for this Contract and a Task Assignment which, e.g., include but are not limited to: design drawings\specifications, structures, equipment, machinery, studies, reports, written documentation, training, systems or processes.
- 1.22. **Design-build firm:** A partnership, corporation, or other legal entity that:
- 1.22.1. Is certified under Section 489.119, F.S. to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
 - 1.22.2. Is certified under Section 471.023, F.S. to practice or to offer to practice engineering; certified under Section 481.219, F.S. to practice or to offer to practice architecture; or certified under Section 481.319, F.S. to practice or to offer to practice landscape architecture.
- 1.23. **Design-build contract:** A single contract with a design-build firm for the design and construction of a public construction project.

- 1.24. **Design criteria package:** Concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the Project.
- 1.25. **Design criteria professional:** A firm who holds a current certificate of registration under Chapter 481, F.S., to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under Chapter 471, F.S., to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.
- 1.26. **Drawings/Plans:** The official approved drawings or plans or exact reproductions thereof, which have been prepared, signed, sealed and dated by the Consultant, which shows the location, character, dimensions and details of the work to be done and which are considered part of the Contract Documents.
- 1.27. **Effective Date:** The date that this Contract, a Task Assignment, Addendum, Amendment, Modification is fully executed by Consultant and the County.
- 1.28. **Engineer:** The person, firm, or corporation named as such in the contract and/or authorized by the County to act as the County's representative or the County construction engineer authorized to practice engineering services pursuant to Florida Statute 471.03(2)(i)(2006) and who may serve as the County's engineers of construction, engineering and inspection. The term Engineer shall be synonymous with design architect/engineer or architect/engineer or Consultant.
- 1.29. **Engineer of Record:** The professional engineer or engineering firm contracted or employed by the County and registered in the State of Florida who develops criteria and concept for the work, performs the analysis and is responsible for the preparation of the plans and specifications. The engineer of record may be County in-house staff or a Consultant retained by the County.
- 1.30. **Field Order:** A written instrument issued by the Consultant to the Contractor, which clarifies or interprets the drawings and technical specifications, and/or orders minor variations in the work, as opposed to a change in the work, and which does not involve an adjustment in contract price or time.
- 1.31. **Final Certificate of Payment:** A certificate for payment which shall constitute a representation of the Consultant to the County that the quantity of the work has been performed in accordance with the Contract Documents. The Consultant shall obtain from the Contractor(s) periodic waiver of liens and "no lien affidavits" at each payment
- 1.32. **Final Completion:** That date when (a) the Work is complete in accordance with the Contract Documents including the minor items identified during the final inspection, and (b) the Contractor has submitted its request for final payment including the Contractor's release and all Subcontractor affidavits.
- 1.33. **Firm:** Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.

- 1.34. **Inspector or Field Representative:** County Employee or an authorized representative of the Consultant assigned to make inspections of the work performed and materials furnished by the Contractor.
- 1.35. **Landscape Architect:** A person or firm that is authorized to practice landscape architecture pursuant to Florida Statute 481.311.
- 1.36. **Modification:** A written Amendment to the Contract Documents approved by the County which includes but is not limited to the following:
- 1.36.1. **Change Order:** A written order to the Contractor signed by the County authorizing an addition, deletion, revision in the Work, or an adjustment in the construction contract price or time issued after execution of the contract.
 - 1.36.2. **Field Order:** A written clarification, interpretation, minor change or alteration issued by the Consultant.
 - 1.36.3. **Addenda:** A document written by the Consultant and approved by the County that is added to the original Contract Documents to clarify, revise, add to, or delete from the original Contract Documents or previous addenda. The document includes a written clarification or interpretation prepared by the Consultant.
- 1.37. **Notice of Award:** A written notice by County that the Consultant has been determined by a selection committee to be highly qualified and approved for an award of a contract.
- 1.38. **Notice to Proceed:** The official letter from the County to the Consultant establishing a date on which the Task Assignment will commence.
- 1.39. **Original Expiration Date:** The date that this Contract was originally intended to expire excluding any extensions or renewals of this Contract for a time certain.
- 1.40. **Owner:** The owner is Volusia County for whom all Work or Services under this Contract and any Task Assignment related thereto are performed by the Consultant.
- 1.41. **Pre-task Assignment/Conference:** The meeting scheduled by the County Project Manager of all the parties involved with the planning and execution of the Task Assignment(s).
- 1.42. **Professional Services:** 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.
- 1.43. **Project:** A fixed capital outlay study or planning activity described in the public notice of the County which includes the entire Scope of Work including the Scope of Work in any Task Assignment that shall be performed in accordance with the Contract Documents. A Project may include:
- 1.43.1. A grouping of minor construction, rehabilitation, or renovation activities.
 - 1.43.2. A grouping of substantially similar construction, rehabilitation, or renovation activities.

- 1.44. **Project Manager or County Project Manager:** The County employee who is assigned to the Project and is responsible for the day-to-day administration and coordination of the Project for the County. The County may change the Project Manager at any time by providing notice to the Consultant and/or Contractor.
- 1.45. **Proposal:** The document submitted by the Consultant in response to a formal solicitation used to determine if the Consultant is highly qualified.
- 1.46. **Request for Information (RFI):** A prospective bidders' or Consultants' inquiries for information.
- 1.47. **Request for Proposal (RFP):** An invitation process initiated by the County soliciting proposals (offers) to invitation from contractors or consultants (bidders) to perform work or provide services in one or more projects on behalf of the County.
- 1.48. **Request for Statement of Qualifications (RSQ):** An invitation process initiated and used by the County to select contractor(s) or consultant(s) to perform work or provide services in a prospective project(s) based upon their apparent qualifications as submitted by them (respondents) in response to the invitation.
- 1.49. **Scope of Services/Work:** The general services/work, herein defined in this Contract, as well as the scope of work in a Task Assignment including responsibility for performing and complying with all incidental matters pertaining thereto, as set out in the Task Assignment.
- 1.50. **Services:** Those services are the Professional services of work or tasks as defined in Section 287.055, F.S. to be performed by the Consultant as provided for under this Contract and any Task Assignment which shall be performed by a duly licensed professional engineer or engineering firm, architect or architectural firm, landscape architect or landscape architectural firm, surveyor, and/or mapper who is registered in the State of Florida.
- 1.51. **Shop Drawings:** All diagrams, illustrations, brochures, schedules, and/or other data which are prepared by Contractor or Consultant, a subcontractor, manufacturer, supplier, distributor, or other person on behalf of the contractor, and which illustrate the equipment, material, or some portion of the work.
- 1.52. **Specifications:** The document that establishes the material and performance requirements of goods and services.
- 1.53. **State:** State of Florida.
- 1.54. **Subconsultant:** A person other than a materialman or laborer who enters into a contract with a Consultant for the performance of any part of the Basic Contract.
- 1.55. **Sub-subconsultant:** A person other than a materialman or laborer who enters into a contract with a subconsultant for the performance of any part of such Subconsultant's contract.
- 1.56. **Substantial Completion:** The date as certified by the County's Project Manager when the Task Assignment or Project or a specified part as agreed to in writing by the parties is sufficiently completed to the satisfaction of County or its designated representative, in accordance with the Contract Documents, so that the project or specified part can be utilized for the purposes for which it was intended; or if there be no such certification, the date when final payment is due in accordance with the applicable Task Assignment.
- 1.57. **Task Assignment:** Specific, detailed services or work placed against an awarded and

established continuing services Contract memorialized as an Amendment to this Contract by the parties prior to the commencement of such Work or Services by the Consultant.

- 1.58. **Work:** Any and all obligations, Services, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by Consultant under the Contract Documents, including the furnishing of all labor, materials, equipment and other incident.

2. ORDER OF PRECEDENCE

- 2.1. In the event of any inconsistency between this Contract and a Task Assignment and its attached documents or exhibits regarding the Scope of Work and the amount of Compensation paid to a Consultant, the Task Assignment and its attached documents or exhibits shall be controlling. For all other inconsistencies between this Contract and a Task Assignment and its attached documents or exhibits, this Contract shall be controlling.

3. SCOPE OF WORK

- 3.1. **General Scope of Services.** The following general Scope of Services shall be governed by Section 3.2 of this Contract. The Consultant shall provide services under this Contract in accordance with the Scope of Services set forth in Exhibit "B".
- 3.1.1 Provide all certifications ("Engineer of Record"), calculations, drawings, and any other documents required for special permits and authorizations from various government bodies or agencies having jurisdiction over the project except for those permits that the County is responsible to provide to the consultant such as environmental surveys/permits, wetland identification surveys, traffic impact studies, property surveys, geotechnical studies/reports and quality control testing;
- 3.1.2 Prepare a time scaled diagram (Design Schedule) showing the proposed dates of completion of various design phases and scheduled completion of working drawings and technical specification manuals; submit the design schedule for County Project Manager's review and approval;
- 3.1.3 Obtain at least three quotes from subcontractors if any part of the Task Assignment requires a subcontractor to perform the Work;
- 3.1.4 Evaluate proposals furnished by the Contractor or a construction management firm, if requested by the County. Cooperate with and facilitate the performance of duties of a construction manager, if so required by the County;
- 3.1.5 The Work or Services to be rendered by the Consultant shall be commenced, as specified in the Task Assignments as may be issued hereunder, and shall be completed within the time specified therein;
- 3.1.6 If specified in a Task Assignment, furnish consultation and advice during the construction of a project and perform construction administration or commissioning services;
- 3.1.7 Furnish all other architectural/engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in the Task Assignment:
- 3.1.7.1 **Investigation Phase.** Consultant shall visit the project site, initiate and hold project meetings as may be necessary to develop the design and preliminary

sketches of the contemplated project. The Task Assignment shall specify the required number of visits necessary for the Consultant to design/develop construction plans and technical specification. The Consultant shall confer with the project manager to ascertain the number of site/project meetings. The number of site visits and/or project meetings shall depend upon the complexity of the project.

3.1.7.2 **Design/Construction Plans and Specification.** Consultant shall submit design development documents and estimates of the approved design to the County for review. Each plan package and its component parts shall be prepared in accordance with the Task Assignment. The plans shall be of sufficient detail indicating floor plan layout, elevations, outline specifications, to illustrate the size and character of the entire project in its essentials as to kinds of material, type of structure, mechanical and electrical systems (if applicable), site work, and such other work as may be necessary for a completely functioning project. Consultant shall submit a cost estimate, if requested, or opinion estimate for this phase of the work for review and approval by the County. The estimate shall include, as required for the project, the identification of costs for heating, ventilation, plumbing, air conditioning, electrical lighting and power.

3.1.7.3 Notwithstanding Section 3.1.7.2, Consultant shall submit a cost estimate, if requested, or opinion estimates during each phase of the work. Estimates shall be submitted between 30, 60, and 90 percent, and again at the 100 percent stage of completion or as specified in the Task Assignment. Each estimate will be utilized to review the Scope as may be necessary to complete the project within the construction budget. In the event that the project construction cost estimate exceeds the construction budget as set forth above, consultant shall, after review and upon written request of the County at Consultant's direct labor rates, pursuant to 3.2.6.1, continue to revise any or all of the project design, drawings, specifications, and estimates in a manner satisfactory to the County, until the revised estimate conforms to the County's budget. Consultant shall submit to the County for review the required number of sets of the contract plans, the latest cost estimate, and complete specification books as specified in the Task Assignment.

3.1.7.4 Each 100% final construction plan package shall be accurate, legible, complete in design, and suitable for public bidding purposes. Construction drawings shall meet the following minimum plans and design documentation packaging requirements:

- 3.1.7.4.1 Cover/Key Sheet
- 3.1.7.4.2 Summary of Pay Items, if applicable
- 3.1.7.4.3 Reference Points, if applicable
- 3.1.7.4.4 Typical Sections
- 3.1.7.4.5 Miscellaneous Detail Sheet

3.1.7.5 Consultant shall also prepare final construction drawings and technical specifications suitable for inclusion in a County prepared bidding package. The construction documents shall be prepared at the drawing scales specified in the Task Assignment for the development of the following elements:

- 3.1.7.5.1 Statement of probable costs of the project
- 3.1.7.5.2 Layout/site plan
- 3.1.7.5.3 Grading and drainage plans

- 3.1.7.5.4 Technical specifications that define materials appropriate for construction
- 3.1.7.6 Following the approval of design development documents and estimates of cost by the County, Consultant shall prepare construction Contract Documents that include plans, suitable for reproduction for the project in complete detail as per the Task Assignment.
- 3.1.7.7 **Completed Plans, Specifications, Documents, and Cost Estimate.** Upon completion and final approval by the County of the plans, specifications, other Contract Documents, and detailed construction cost estimates and/or opinion estimate of construction cost per task assignment, Consultant shall deliver to the County in the medium and number of copies specified in the Task Assignment the following:
- 3.1.7.7.1 Any data or field notes obtained pertaining to the project, including data and field notes obtained from additional surveys;
- 3.1.7.7.2 Complete final approved original tracings or electronic files of contract plans;
- 3.1.7.7.3 Typed masters or electronic files of Contract Documents, other than plans, suitable for reproduction on 8" x 11" paper; and
- 3.1.7.7.4 The last cost or opinion estimate of the construction cost in detail for approval by the County.
- 3.1.7.8 **Permitting Phase Services.** If required in the Task Assignment, Consultant shall be responsible for applying and assisting the County in securing all applicable permits; for preliminary coordination with the County and other appropriate regulatory agencies so that the design efforts are properly directed towards permit approval; for preparing and submitting permit packages based on preliminary coordination with the County; and for other appropriate regulatory agency requirements under the County's name at the time of submittal. Consultant shall include in the permit packages the site and system design information required by the County and other regulatory agencies, applicable sketches and calculations. Consultant shall respond to the requests of the County and other regulatory agencies concerning the submitted information; report to the County any requests for information not required at the time of permit submittal, as made known during the preliminary coordination; reproductions in excess of requirements; or regulation changes requiring permit resubmission. County shall be responsible for the permitting fees. The County, however, will not pay a fee to the Consultant when the Consultant is required to resubmit a permit package to a regulatory agency so as to address deficiencies, omissions, or corrections to the original permit package that are not attributable to changes in rules made by the regulatory agency after submission of the original permit package. Consultant shall attend the appropriate number of office and field meetings necessary for the preliminary coordination as set forth in a Task Assignment.
- 3.1.7.9 **Bidding Phase.** Consultant shall attend the pre-bid conference meeting at the location selected by the County. Consultant shall answer questions, as applicable, and take minutes as necessary for a written response; provide plan and specification clarification and prepare addenda to be issued by the County; review and evaluate bid packages from each respondent; and summarize in

writing his/her recommendation based on the definition of responsive and responsible as defined in the Contract Documents.

3.1.7.10 Construction Phase Services. Consultant shall visit the project site, including attending job construction meetings, during construction to monitor the progress, quality of the Work, and that the Work is proceeding in accordance with the construction Contract Documents. During such visits, Consultant shall make reasonable efforts to protect the County against defects and deficiencies in the work of the contractors by informing the County Representative the work does not, in their opinion, conform to the Contract Documents. Consultant shall keep the County informed of the progress and quality of the work by submitting a written report of each visit. As part of the site visits, if required for the project, the Consultant's mechanical and electrical engineers shall also visit the project site and attend job construction meetings as requested to determine if the mechanical and electrical work is proceeding in accordance with the construction Contract Documents. Task Assignment shall specify the required number of visits necessary for the Consultant to monitor the progress and quality of work. Consultant shall perform the following tasks, including, but not limited to, assisting the County during the construction to verify that the project is completed in general conformance with the construction Contract Documents.

3.1.7.10.1 Preconstruction Conference: Consultant shall prepare the agenda, if requested; attend the County's preconstruction conference meeting; prepare and submit notes of the meeting.

3.1.7.10.2 Design Clarification Responses: Consultant shall provide technical interpretation of the plans/drawings, specifications, and Contract Documents; evaluate requested deviation from the approved design or specification; and review and respond to requests for information (RFI) from the Contractor. Consultant shall prepare supplementary sketches as may be necessary for clarification of construction plans and assist in resolving actual field conditions encountered.

3.1.7.10.3 Site Visits: Consultant shall visit the job site to monitor the progress and quality of the Work and determine, in general, if the Work is proceeding in accordance with the intent of the Contract Documents including site visits for both substantial and final completion for each project. The Consultant shall route all job correspondence to the Contractors through County.

3.1.7.10.4 Pay Request Review: Consultant shall determine based on the observations and surveillance, as set forth above and on the evaluation of the Contractor's progress payment requests, the amount owed to the Contractor(s) and transmit the Contractor's payment requests to the County with recommendation for payment in accordance with the terms and conditions of the Contract Documents. The Consultant shall conduct visits to the project as necessary to determine the dates of Substantial and Final Completion and shall issue to the County a Final Certificate of Payment. Such certificate for payment shall constitute a representation of the Consultant to the County that the quantity of the work has been performed in accordance with the Contract Documents. The Consultant shall obtain from the Contractor(s)

periodic waiver of liens and "no lien affidavits" at each payment. Additionally, at completion of the project, Consultant shall obtain from the Contractor(s) final waiver of lien, final "no lien affidavits," and final affidavit of release of liens prior to certification of Final Payment.

3.1.7.10.5 **"As-Built"**: The Consultant shall prepare record drawings by reviewing and considering information or drawings provided by the contractor; revise original design drawings of the project and submit to the County hardcopy and an electronic file of the record drawing using information supplied by Contractor.

3.1.7.10.6 **Shop Drawing Review**: The Consultant shall review shop drawings and other data that the Contractor is required to submit. Consultant shall examine for compliance with design concept and recommend to County, approval or rejection of shop drawings and of material and equipment submitted as qualified for use in the project, based on literature and samples supplied by the Contractor through the County. Consultant shall submit to the County original drawings that will reflect all amendments to the Contract Documents. Consultant shall prepare any necessary change orders and assemble written guarantees required of the Contractors.

3.1.7.10.7 **Project Close-Out**: The Consultant shall make final review of construction to determine if work was completed in general conformance of the construction contract documents; assist in the preparation of final "punch list" when the project is substantially completed; assist in negotiating the final payment for construction; and submit a final letter report upon which final settlement and contract closeout can be based. If required, prepare and submit to Florida Department of Environmental Protection (FDEP) or Department of Health for approval, the FDEP certificate of completion of construction for both water and sewer.

3.1.7.11 **Deliverables**. Submit final design plans and support documents to the County for review and approval at specified junctures in the medium and number of copies specified in the Task Assignment. If required in the Task Assignment, each plan set submitted shall have the percentage completed for those submittals clearly indicated on the first sheet of each set of plans.

3.2. **Performance Criteria**:

3.2.1. All Work or Services shall be performed in accordance with the Contract Documents and shall be approved by the County in writing prior to commencing any Work or Service(s) described herein or in a Task Assignment.

3.2.2. This Contract standing alone does not authorize the performance of any Work or Services to be provided by the Consultant or require the County to place any orders for Work or a Service. Authorization for performance of professional services by the Consultant under this Contract shall be in the form of written Task Assignments issued and executed by the County and signed by the Consultant. A sample Task Assignment is attached hereto as Exhibit "A". Each Task Assignment shall describe the Services required, state the dates for commencement and completion of the Work, and establish

the amount and method of payment.

- 3.2.3. Notwithstanding the General Scope of Work and Services provision in Section 3.1., the Scope of Work for a Project shall be set forth with specificity and describe in detail all specifications, plan requirements, deliverables, additional performance criteria, maximum not-to-exceed compensation, the commencement and completion dates, materials, equipment, testing and any other item or criteria required to complete the Work or Services in the Task Assignment. Each Task Assignment shall relate to the General Scope of Work and Services in Section 3.1 and shall supplement this Contract and be made a part thereof.
- 3.2.4. All materials and labor necessary to complete a Task Assignment shall be furnished by the Consultant unless the Contract Documents state otherwise. Said materials shall be of good quality and as specified in the Contract Documents; and all work and labor will be performed, pursuant to Section 7.3.5, to the satisfaction of the County.
- 3.2.5. The Consultant shall provide the services required herein strictly in an independent contractor relationship with the County and, except as expressly set forth herein, is not, nor shall be, construed to be an agent or employee of the County. For each purpose related to this Contract and each Task Assignment, Consultant and contractors, subcontractors or subconsultants shall be independent contractors with respect to the County and nothing herein shall create any association, partnership, joint venture or agency relationship between them. The County shall not provide vehicles or equipment to the Consultant to perform the duties required by a Task Assignment under this Contract nor will the County pay for any business, travel, office or training expense or any other contract performance expense not specifically set forth in the scope of services of a Task Assignment. The Consultant is not exclusively bound to the County and may provide service to other private and public entities as long as the service by the Consultant for such entities does not conflict with the Consultant's services to the County in any Task Assignment.
- 3.2.6. As applicable to each Project performed by the Consultant during the term of this Contract or Task Assignment, the County may at any time, by written order, make changes within the general scope of a Task Assignment and the Work and/or Services to be performed through Amendments to the Task Assignment. Except as provided in this Contract otherwise, if any such change causes an increase or decrease in the Consultant's cost of, or the time required for performance of, the Project Work or Services, an equitable adjustment shall be made and this Contract shall be amended through the Amendment of the Task Assignment in writing stating the equitable adjustment prior to the commencement of Work covered by the equitable adjustment. Any claim by the Consultant for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change unless the County grants in writing an additional period of time before the completion of the Contract; otherwise, the claim shall be deemed waived. The Consultant shall proceed with the prosecution of the Work or Service as changed. Except as otherwise provided in this Contract, no charge for any extra work or materials shall be allowed or approved by the County.
- 3.2.6.1. **Changes to Scope of Work.** Either party may propose changes to the scope or time schedule of the Work or Services under a Task Assignment which shall be submitted to the other party in writing for consideration of feasibility and the likely effect on the cost and schedule for performance of the Work or Services. The parties shall mutually agree upon any proposed changes, including resulting equitable adjustments to costs and schedules for the

performance of the Services. The agreed changes shall be documented in one (1) or more Amendments to the Task Assignment signed by the County and Consultant prior to the commencement of Work or Services covered by the equitable adjustment. If, despite good faith negotiations, the parties are unable to agree to the terms of an Amendment to a Task Assignment, the parties shall follow the dispute resolution process provided under Section 17.

3.2.7. **Time is of the Essence.** Time is of the essence for each Task Assignment issued under this Contract and all Projects performed in accordance herewith.

3.2.8. County and Consultant shall exhaust all methods to resolve issues, including but not limited to, the dispute resolution procedures in Section 17 of this Contract before any action is taken to declare the County or Consultant in default of this Contract.

4. TERM OF CONTRACT

4.1. Subject to Section 4.2, the Term of this Contract shall commence on the Effective Date of this Contract or when it is fully executed by all parties and shall terminate three (3) years from the Effective Date. Except as provided in Section 4.2 the expiration of the term of a Task Assignment issued under this Contract shall have no effect upon this Contract. This Contract may be renewed by the County if the County determines that renewal is in the best interest of the County and satisfies the requirements of Section 287.055, F.S. Said renewal shall be in writing and made a part of this Contract and shall incorporate this Contract by reference.

4.2. All Task Assignments issued under this Contract shall terminate at the expiration of the term of the Task Assignment, unless amended in writing by the parties, or the term of this Contract, except if a Task Assignment issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion Date of said Task Assignment, including any Amendments thereto, and after all Work or Services under the Task Assignment have been approved and accepted by County's Project Manager. As such, the obligations entered therein by both parties under this Contract and said Task Assignment shall remain in full force and effect until completion of all Work or Services performed under this Contract and/or the Task Assignment.

4.3. The Work or Services to be rendered by the Consultant shall be commenced, as specified in the Task Assignments as may be issued hereunder, and shall be completed within the time specified therein.

4.4. No new or additional Task Assignments shall be issued after the Original Expiration Date of this Basic Contract. The extension of this Contract to coincide with the completion of an existing Task Assignment issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the County or the Consultant to enter into a new or additional Task Assignment after the original expiration date of this Contract, unless this Contract is renewed prior to entering into an Contract for a new or additional Task Assignment.

5. CONTRACT PRICE AND COMPENSATION

5.1. For Work, Services, or each separate Project performed under a Task Assignment during the term of the Contract, the Consultant shall be paid Compensation for all Work or Services performed in a Task Assignment, including labor and materials on a "fixed fee," "time and materials", "cost-plus-a-fixed-fee" or "guaranteed maximum-not-to-exceed" basis as applicable in the Task Assignment. The Task Assignment shall state the method of Compensation.

5.1.1. Regardless of the method of Compensation, e.g., “fixed fee”, “time and materials”, “cost-plus-a-fixed-fee” or “guaranteed maximum-not-to-exceed” basis, Compensation shall not be adjusted because of errors or omissions which are not the fault of the County in computing the Project or Task Assignment costs which result in an increase in the cost of the Task Assignment or because the time for completion varies from the original estimate, including completion or substantial completion of the Task Assignment prior to the scheduled or Contract or Task Assignment completion date or on account of County’s election to furnish any of the Work or Services. In addition, Consultant shall certify in the Task Assignment that the original contract price or Compensation for a Project or Task Assignment and any additions thereto shall be adjusted to exclude any significant sums by which the County determines the contract price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.

5.1.2. **Reimbursable Expenses.**

5.1.2.1. Subject to the County’s Travel and Reimbursement Policy, Sections 112.061 (7) and (8), Florida Statutes, or their successor, reimbursable expenses include actual and verifiable expenditures without any mark-up made by the Consultant or Consultant’s employees and/or agents that directly relate to the Task Assignment and to the expenses listed in the following subparagraphs:

5.1.2.1.1. Expenses of transportation, when traveling is directly related to the Project and necessary, based on and in accordance with the Scope of Work of a Task Assignment;

5.1.2.1.2. Long distance calls and telegrams;

5.1.2.1.3. Fees paid for securing approval of authorities having jurisdiction over the tasks of the Project or Task Assignment;

5.1.2.1.4. Expenses of reproductions;

5.1.2.1.5. Postage and handling of drawings and specifications;

5.1.2.1.6. Any other expenses related to the Project; and

5.1.2.1.7. If authorized in the Task Assignment, the cost of other expenditures made by the Consultant that relate directly to the Scope of Work in the Task Assignment.

5.1.3. **Truth-in-Negotiation Certificate.** For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or Compensation in a Task Assignment over \$150,000.00, Consultant shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation are accurate, complete, and current at the time of contracting. Any Professional Service contract or Task Assignment under which such a certificate is required must contain a provision that the original contract price or Compensation and any additions thereto will be adjusted to exclude any significant sums by which the County determines the contract price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or Compensation adjustments must be made within one (1) year following the end of the contract. Otherwise, such adjustments shall be deemed waived by the Consultant and null and void for the purposes of this Contract or the Task Assignment.

The signature on this Contract by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

5.1.4. **Fixed Fee or Price & Guaranteed Maximum-Not-To-Exceed Compensation.** The total Fixed Fee or Price and Guaranteed Maximum-Not-To-Exceed Compensation for a Task Assignment shall be comprised of the total cost of the project, including all design engineering, materials, machinery, equipment, labor, temporary construction, capital spare parts, reimbursable expenses, all mark-ups for overhead and profit. In addition, the Task Assignment shall state with specificity the commencement and completion dates, all materials, contingency and escalation allowances, any and all expenses (including those referenced in Section 5.1.2 herein), and all other items of cost necessary to complete the Task Assignment, whether furnished by County, Consultant, third parties, or others. A Scope of Work for a Task Assignment specifying Compensation on guaranteed maximum-not-to-exceed basis shall allocate the guaranteed maximum-not-to-exceed price or Compensation among, and provide for payments against specified deliverables and performance.

5.1.5. **Retainage.** The County shall have the right to withhold retainage from Compensation paid to a Consultant. Should the County decide that retainage shall be withheld from Compensation, the amount to be retained from each payment to the Consultant shall be:

- A. ☐ % of the total contract price.
- B. ☐ % of each payment of a milestone payment based on a Project milestone schedule.
- C. ☒ No retainage will be taken.

The County shall have the right to withhold retainage from Compensation paid to a Consultant. Should the County decide that retainage shall be withheld from Compensation, the amount to be retained from each payment to the Consultant shall be stated in the Task Assignment. The retainage shall be included with the final payment after all Work or Services for the Task Assignment have been approved and accepted by the County and all disputed invoices have been resolved by the parties. The County shall never be required to pay an amount that would leave unpaid from the contract price or Compensation an amount less than the amount County would need to have in order to pay another Consultant to complete the Work or Services should Consultant fail to complete the Work in a Task Assignment remaining incomplete as of that date.

5.1.6. **Payments.**

5.1.6.1. **Punch List.** If County, in its reasonable discretion, does not consider a Project substantially complete, the County shall notify Consultant in writing giving the reasons. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment, and the certificate shall state the time within which those items shall be completed or corrected, the time to be within the contract time. Disputes regarding payments shall be resolved through the dispute resolution procedure articulated in Section 17 of this Contract.

5.1.6.2. **Approval of Final Payment.** If, on the basis of the County Project Manager's observation and review of Consultant's Work or Services performed during

the Task Assignment, final inspection and review of the final application for payment and the County Project Manager's satisfaction that the work has been completed and Consultant has fulfilled all of its obligations under the Contract Documents, County Project Manager, after receipt of the final application for payment, indicate in writing his or her approval of payment and present the application to Accounts Payable for payment. Otherwise, the County Project Manager shall return the application to the Consultant, indicating in writing the reasons for refusing to approve final payment, in which case the Consultant will make the necessary corrections and resubmit the application.

5.1.6.3 **Invoice Detail.** Regardless of the method of compensation, e.g., "fixed fee", "time and materials", or "guaranteed maximum not-to-exceed" basis, the Consultant shall submit an invoice for which Professional Services were rendered to the County in response to its request therefore upon the completion and acceptance of the services detailed in Section 3.1 herein. Each invoice shall show detailed explanations of the services accomplished by labor hours by classification, associated rates, any material or subcontracted costs and any indirect rates or costs in accordance with the prices set forth in a Task Assignment. All of the above shall sum to the total amount requested.

5.1.7. **Invoices.** Invoices or payment requests shall be addressed by Consultant and submitted to the County's Project Manager. The Consultant shall submit:

- A. ☒ A monthly statement for Professional Services rendered to the date of the statement subject to Section 5.1.5. The monthly statements shall reflect the Work or Services actually completed at the time of billing.
- B. ☐ A Final Statement for each County requested Project indicating the Work or Services actually completed after final acceptance of said Work or Services by the County. The Consultant's determination of the Work or Services actually completed is to be prepared by the Consultant, and accompanied by such supporting data as may be required by the County Project Manager. County Project Manager shall review the Consultant's statement and notify the Consultant in writing within twenty (20) business days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.

5.1.8. For each Task Assignment, Consultant shall submit a monthly statement for Professional Services rendered to the date of the statement. The monthly statements shall reflect the Work or Services actually completed at the time of billing. The Consultant's determination of the Work or Services actually completed is to be prepared by the Consultant, and accompanied by such supporting data as may be required by the County Project Manager. County Project Manager shall review the Consultant's statement and notify the Consultant in writing within twenty (20) days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.

5.1.9. The County may withhold payment of any specific invoiced charges in a pay request or monthly statement which it disputes in good faith and pay all undisputed charges on the invoice, pay request or monthly statement.

5.1.10. Within forty-five (45) days of acceptance by the County Project Manager of all the Work

or Services for which Consultant has submitted the monthly statement of Professional Services, the Consultant shall be paid the unpaid balance of any money due for any undisputed Work or Services covered by said statement. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Part VII of Chapter 218 Florida Statutes, as amended.

- 5.1.11. **Taxes.** County is a tax exempt entity and shall not be charged or invoiced for the payment of taxes for Work or Services performed under this Contract.
- 5.1.12. Pursuant to the terms and conditions articulated in this Contract, an appropriate fee shall be negotiated for each specific Project or Task Assignment to be performed under this Contract and such fee shall be stipulated, together with the Scope of Work for each Task Assignment or project, in separate Task Assignments to this Contract.
- 5.1.13. **Consultant's Continuing Obligations.** Consultant's obligation to perform the Work or services and complete the Task Assignment in accordance with the Contract Documents shall be absolute. Neither approval of any progress nor final payment to Consultant, nor the issuance of a certificate of substantial completion, nor any payment by County to Consultant under the Contract Documents nor any act of acceptance by the County nor any failure to do so, nor any correction of defective work by County shall constitute an acceptance of Work or Services not in accordance with the Contract Documents.

6. TERMINATION

- 6.1. The performance of Work or Services under this Contract may be terminated for convenience or non-appropriation of funds by the County in accordance with this clause in whole or from time to time in part, upon at least thirty (30) days prior written notice to Consultant whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Consultant of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the subsequent date upon which such termination becomes effective.
- 6.2. Upon receipt of such notification, Consultant shall inform County of the extent to which performance is completed and unless notified in writing by the County otherwise, the Consultant shall take no further steps towards completion of the Project. Upon payment by County, Consultant shall deliver to County any and all completed Deliverables and Deliverables-in-progress that then exist for all outstanding Projects. If the County terminates any Project due to the Consultant's failure to meet a completion deadline as set forth in Section 7 herein, the County may seek the services for the Project from another Consultant. Payment will be made to the Consultant pursuant to 6.3.15.
- 6.3. After receipt of a Notice of Termination as set forth in Section 6.1 above, and except as otherwise directed by the County, the Consultant shall:
 - 6.3.1. Stop work under the Contract or Task Assignment on the date and to the extent specified in the Notice of Termination.
 - 6.3.2. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract or Task Assignment, as it is not terminated.
 - 6.3.3. Terminate all orders and subcontracts pursuant to Article 6 to the extent that they relate to the performance of Work or Services terminated by the notice of termination.

- 6.3.4. Assign to the County, in the manner, at the times and to the extent directed by the County, all of the right, title, and interest of the Consultant under the orders and subcontracts so terminated, in which case the County shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- 6.3.5. With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts. County's approval of such settlements shall be final for all the purposes of Section 6. In addition, Consultant shall transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County:
- 6.3.5.1. Sketches, calculations, reports, models, studies and other Work-in-process, completed Work or Services, supplies, and other materials produced as a part of, or acquired in connection with the performance of the Work or Services terminated by the notice of termination; and,
 - 6.3.5.2. Completed or partially completed designs, plans, drawings, information, and other property, which, if had been completed, would have been required to be furnished to the County.
- 6.3.6. Complete performance of such part of the Work or Services as shall not have been terminated by the notice of termination.
- 6.3.7. After receipt of a notice of termination, the Consultant shall submit to the County its termination claim, in the form and with a certification as prescribed by the County. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one (1) or more extensions in writing are granted by the County, upon request of the Consultant made in writing within such thirty (30) day period or authorized extension thereof. Upon failure of the Consultant to submit its termination claim within the time allowed, the County may determine on the basis of information available to it, the amount, if any, due to the Consultant by reason of the termination and shall there upon pay to the Consultant the amount so determined.
- 6.3.8. Subject to the provisions of Section 6.3.7, the Consultant and the County may agree upon the whole or any part of the amount or amounts to be paid to the Consultant by reason of the total or partial termination of work pursuant to Article 6 which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price or Compensation as reduced by the amount of payments otherwise made and as further reduced by the contract price of Compensation for Work not terminated. As such, the Contract shall be amended accordingly and the Consultant shall be paid the agreed amount. Nothing herein, prescribing the amount to be paid to the Consultant in the event of failure of the Consultant and the County to agree upon the whole amount to be paid to the Consultant by reason of the termination of Work or Services pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Consultant.
- 6.3.9. In the event of the failure of the Consultant and the County to agree as provided in 6.3.8. above upon the whole amount to be paid to the Consultant by reason of the termination of Work pursuant to Article 6, the County shall pay to the Consultant the amounts determined by the County as follows, but without duplication of any amounts already agreed upon by the parties.

6.3.9.1. For completed Work or Services accepted by the County, the price or prices or Compensation specified in the Task Assignment for such work, less any payments previously made.

6.3.9.1.1. Notwithstanding Section 5.1.4, the total compensation shall include the total of the following:

6.3.9.1.1.1. The costs incurred by the Consultant in the performance of the Work and Services terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the Work and Services paid or to be paid for under Section 6.3.9.1. hereof;

6.3.9.1.1.2. The cost of settling and paying claims arising out of the termination of Work or Services under subcontracts or orders as provided herein, which are properly chargeable to the terminated portion of the Contract exclusive of amounts paid or payable on account of Work or Services delivered or furnished by subconsultants or Sub-subconsultants prior to the effective date of termination, which amounts shall be included in the costs payable herein; and,

6.3.10. This Contract or a Task Assignment may be terminated by Consultant if Consultant provides a minimum of thirty (30) days written notice to the Director of Purchasing and Contracts. In the event Consultant breaches any of the terms and conditions of this Contract or Task Assignment, and after receipt of notice from County of said breach and time to cure the same the Consultant fails to cure the breach, the County may take over the Work and Services and complete the same by Task Assignment; or otherwise, the Consultant shall be liable to the County for any increased cost of the Project reasonably incurred by the County in the process of completing the Consultant's unfinished Work and Services. As such, County may apply unpaid Compensation due and owing to Consultant prior to the default as a set off against the costs incurred by the County for taking over such Work or Services.

6.3.11 In the event that there is a partial termination of this Contract or a Task Assignment by the County or Consultant because of non-appropriation by County, subject to Section 4 - Term of Contract and Section 5 - Contract Price and Compensation, Consultant shall be paid in accordance with terms of this Section 6, to the date of termination on a prorated basis for any task, milestone, or Deliverable started but not completed which were designated for payment on a payment schedule provided to the County prior to the commencement of Work on the task, milestone or Deliverable which is the subject of the partial termination. County's obligation to pay Consultant under this Contract or Task Assignment is limited to the budgeted amount for the fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the Compensation set forth in Section 5-Contract Price and Compensation. Consultant and County shall be obligated to continue performance under this Contract for the Work or Services within the Scope of Work or Services under this Contract which is not the subject of the partial termination by non-appropriation.

6.3.12 If termination of this Contract or Task Assignment occurs for any reason:

- 6.3.12.1 The County shall continue to have the unfettered right to use or access any license, designs, plans, or exhibits, any of the Deliverables or Work products from tasks or milestones, arising under that Contract or Task Assignment and produced pursuant to the Contract Documents for which the County has paid prior to termination of this Contract or Task Assignment or for which County makes payment after termination of this Contract or Task Assignment.
- 6.3.13 Except as otherwise provided in this Contract, Consultant shall return to the County all County confidential information in Consultant's possession and Consultant shall certify in a written document signed by the Consultant that all such information has been returned.
- 6.3.14 Except as provided in Section 6.3.12.1, the County shall return to Consultant or destroy all Consultant's confidential information in the County's possession (including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Consultant's Confidential Information and all copies of any of the foregoing (in whatever medium recorded)) and all third-party products in its possession not yet accepted and not yet paid for in full together with all copies of documentation and other material related thereto, and shall certify in a written document signed by the County Project Manager that all such information and material has been returned or destroyed.
- 6.3.15 For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Section 4 - Term of Contract, Section 5 - Contract Price and Compensation, and this Article 6, the County shall cause payments to be made to Consultant within thirty (30) days of receipt of invoice. Consultant shall invoice the County for any sums Consultant claims to be owed by County under this Contract for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment and County shall pay any undisputed amount within thirty (30) days.
- 6.3.16 In the event of termination by the County for non-appropriation, for all items or products ordered by Consultant before receipt by Consultant of the Notice of Termination which Consultant could not cancel without imposition of a fee, the County shall cause payments to be made to Consultant within thirty (30) days of receipt of an undisputed invoice for all cancellation, restocking or residual fees resulting from the cancellation or return of third party products ordered from or shipped by the vendor thereof prior to the effective date of the termination.
- 6.3.17 All provisions of this Contract which impose or contemplate continuing obligations on a party will survive the expiration or termination of this Contract.

7. RESPONSIBILITY OF CONSULTANT

- 7.1. Consultant shall be duly licensed under the laws of the State of Florida as an architect, engineer, landscape architect, mapper or surveyor for the purposes of this Contract and to satisfy the requirements of Section 287.055, F.S.
- 7.2. Consistent with Article 3 herein, Consultant's performance of Work or Services shall be in accordance with the terms and conditions of this Contract and the applicable Task Assignment(s). The Consultant's performance of Work or Services shall be as a professional

consultant to the County to carry out the activities of a Task Assignment under the direction of the County's Project Manager.

- 7.3. Consultant shall perform Work or Services required under this Contract or Task Assignment, including but not limited to reports, studies, schedules, estimates, the development or preparation of plans, specifications, and cost estimates pertaining to a Project. Consultant shall confer with the County Project Manager to ascertain the functional or design criteria of each Task Assignment. The Services of Consultant shall also include of the following:
- 7.3.1. Unless otherwise provided in this Contract or Task Assignment, Consultant shall commence in accordance with the Contract Documents the Services required for the Project or Task Assignment within ten (10) days of the County's Notice to Proceed.
 - 7.3.2. Consultant shall verify to the County for the applicable Task Assignment that all designs, and specifications, and all data reports, studies, plans, bulletins, schedules, and other drawings therewith conform to the Scope of Work in the Task Assignment and applicable governmental regulations, statutes, and ordinances, including any amendments thereto. Said certification shall be in the form acceptable to the County and made a part of this Contract and attached to the Task Assignment and incorporated herein by reference.
 - 7.3.3. Consultant covenants, and agrees that there are no obligations, commitments, or impediments of any kind that shall limit or prevent Consultant's performance of the Work or Services.
 - 7.3.4. The Consultant covenants and agrees that it will not contract for or accept employment for the performance of any Work or Service with any individual, business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract with the County.
 - 7.3.5. Consultant covenants and agrees that all of the Work or Services to be furnished by Consultant under this Contract and any Task Assignment from the inception of this Contract or Task Assignment until the Project has been fully completed, shall be of the standard and quality that prevail among similarly situated licensed professional consultants engaged in the Consultant's profession or practice in the State of Florida under the same or similar circumstances involving the design and/or construction of the Project.
 - 7.3.6. Consultant covenants and agrees that all of the Work or Services to be furnished by Consultant shall be in accordance with the most current specifications or technology at the time this Contract is fully executed for projects such as the Project in the Task Assignment as of the time Consultant delivers to County the drawings, specifications and/or Deliverables. Thereafter, Consultant shall keep the County informed of any changes or advancements in such specifications or technology occurring any time prior to or during actual implementation of the Project.
 - 7.3.7. Consultant covenants and agrees as follows:
 - 7.3.7.1. Consultant recognizes that its special talent, training, and experience caused the County to select Consultant to be the prime professional on the Project or Task Assignment;
 - 7.3.7.2. Consultant comprehends the specifications and requirements of the Scope of Work of the applicable Task Assignment and the use of the same in their

entirety to provide Project Deliverables; and

- 7.3.7.3. Consultant possesses the special skills to recognize material errors or omissions that shall make a Deliverable fail to perform within the specifications and requirements of the Scope of Work for the applicable Task Assignment.
- 7.3.8. Consultant covenants and agrees that any Project data, reports, studies, designs, drawings, specifications and requirements prepared by Consultant or its agents or subconsultants shall be completed, pursuant to Section 7.3.5. In addition, Consultant shall include in any such reports, studies, bulletins, schedules, designs, drawings, and/or specifications warnings about known hazards to the Project.
- 7.3.9. Consultant covenants and agrees to the following: (1) the Project plans and specifications shall conform to their foreseeable use in the Project with all the amenities as set forth in the plans and specifications in the Task Assignment; and, (2) the Consultant shall produce Deliverables made pursuant to Section 7.3.5. Consultant's duties, as set forth herein, shall at no time be in any way diminished by reason of any approval by County of any plans or specifications in a Task Assignment, nor shall Consultant be released from any liability by reason of such approval by County, it being understood that County at all times is ultimately relying on Consultant's skill, expertise, and knowledge in preparing the plans and specifications or any other documentation. As such, said approval shall not be a defense to a claim or cause of action for contribution or indemnification by the County.
- 7.3.10. Consultant covenants and agrees that all persons connected with Consultant directly in charge of the professional Work are duly registered and licensed under Florida law and pursuant to this Contract.
- 7.3.11. Consultant covenants and agrees that it shall be liable for all errors or omissions proximately caused by Consultant, if any, in judgment relative to the Work or Services of any Task Assignment under which Consultant provides Work or Services.
- 7.3.12. Consultant covenants and agrees to call to County's attention anything of any nature in any Deliverables, reports, studies, bulletins, schedules, designs, drawings, documentation, plans, specifications, requirements or instructions prepared by Consultant or data supplied to Consultant by the County or any other party that Consultant regards in Consultant's professional opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such data is furnished in the Project.
- 7.3.13. Consultant covenants and agrees to furnish efficient business administration of the Project and perform all Work or Services in the most expeditious and economical manner consistent with the standard of care applicable to a Consultant with the degree of skills and diligence.
- 7.3.14. Consistent with Section 7.3.11., Consultant covenants and agrees that it shall, at its own cost, make good any defects in its Work or Services as soon as Consultant becomes aware of such defects or is notified of such defects. Should Consultant refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then County, pursuant to Section 6, shall be entitled to make good such defective Services at the expense of Consultant and/or terminate this Contract and the Task Assignment. This commitment by Consultant is in addition to, and not in substitution for, any other remedy for defective Work or Services that County

may have at law or in equity.

- 7.3.15. Consultant covenants and agrees to provide all necessary and required plans for the successful design or completion of a Project as agreed to in the Task Assignment's Scope of Work and as governed by this Contract. Written Deliverables shall be made and delivered in accordance with this Contract or Task Contract. Each written Deliverable shall be accurate, legible and suitable for public bidding purposes. For recommendations concerning the plan preparation of studies, plans, or specifications, the Consultant should refer to the latest applicable manuals as determined by the County Project Manager. All studies, plans, drawings or specifications must meet the County's requirements to obtain permits or government documents, licenses and certificates as applicable in a Task Assignment. In addition the Consultant shall have the following responsibilities:
- 7.3.15.1. Consultant shall be responsible for preliminary coordination with the County and other appropriate regulatory agencies so that design efforts are properly directed towards permit approval;
 - 7.3.15.2. If applicable in a Task Assignment, prepare permit packages based on preliminary coordination with the County and other appropriate regulatory agency's requirements at the time of submittal. The permit packages shall include site and system design information required by the County and other regulatory agencies, applicable sketches and calculations as set forth in the Task Assignment;
 - 7.3.15.3. Consultant shall respond to the requests of the County and other regulatory agencies concerning the submitted information. The Consultant shall report to the County any requests for information not required at the time of permit submittal, as made known during preliminary coordination, reproductions in excess of requirements, or regulation changes requiring permit resubmission;
 - 7.3.15.4. The County shall provide the permitting fees, but shall not pay an additional fee to the Consultant when the Consultant is required to resubmit a permit package to a regulatory agency so as to address deficiencies, omissions, or corrections to the original permit package that were the responsibility of the Consultant and that are not attributable to changes in rules made by the regulatory agency since submission of the original permit package;
 - 7.3.15.5. Consultant shall review all design and shop drawings and other data that the Consultant is required to submit to the County or any state, local or federal agency. These drawings shall be reviewed for general conformance with the design concept of the Project and scope of work of the Task Assignment and general compliance with the information given in the Contract Documents;
 - 7.3.15.6. Consultant shall make final review of Project Deliverables to determine if Work or Services were completed in general conformance with the Contract Documents; and
 - 7.3.15.7. Consultant shall prepare and submit a schedule or time line of each task listed in a Task Assignment.
- 7.3.16. **Annual Statement of Qualifications.** Annually, the Consultant shall submit to the County's Contracts Administrator statements of qualifications and performance data

confirming that Consultant is a duly licensed and registered professional architect, engineer, landscape architect, or surveyor and mapper as applicable in connection with Consultant's professional practice and the Services or Work provided to the County under this Contract.

- 7.3.17. **Design Phase.** As required by the County, Consultant shall submit a certain number of sets of design development documents and/or estimates as specified in the Task Assignment to the County for review. The plans and specifications shall be of sufficient detail indicating, e.g., floor plan layout, elevations, outline specifications to fix and illustrate the size and character of the entire Project in its essentials as to kinds of material, type of structure, mechanical and electrical systems, site work, and such other work as may be necessary for a completely functioning Project or completed design drawings and specification. As requested by the County Project Manager, the Consultant shall submit a unit cost or opinion of cost estimate for this phase of the Work or Services for review and approval of County. This estimate or opinion shall include, e.g., identification of costs for heating, ventilation, plumbing, air conditioning, and electrical lighting and power, and other items applicable to the Project or Task Assignment.

7.3.18. **Final Review of Plans, Specifications, and Estimates.**

- 7.3.18.1. As requested by the County or as set forth in a Task Assignment, Consultant shall submit to County for review copies of the Project plans and specifications, and copies of the latest detailed cost estimate.
- 7.3.18.2. Upon completion and final approval by County of the Project plans, specifications, other Contract Documents, and cost estimates (if required in the Task Assignment), Consultant shall deliver to County as part of the contract obligation or as set forth in the Task Assignment, unless otherwise noted completed plans, designs, drawings, specifications, documents, and cost or opinion estimates.
- 7.3.18.3. Consultant shall submit to County original drawings and specifications that shall reflect all amendments to the Contract Documents.
- 7.3.18.4. Consultant agrees to furnish all services, materials, labor, and all other items required to undertake and complete all Work or Services required by this Contract or any Task Assignment in accordance with the drawings, plans, and specifications submitted to the County by Consultant or relied upon by the Consultant to complete the Project or Task Assignment.

- 7.4. **Assurance.** Consultant gives County its assurance that all Work or Services performed under this Contract shall be timely performed, pursuant to Section 7.3.5, and in accordance with the specifications and requirements of the Contract Documents and of any inspections (if applicable), tests (if applicable) or approvals required under the Contract Documents. All Work not conforming to the specifications and requirements of the Scope of Work of a Task Assignment or of the inspections, tests (if applicable) or approvals in a Task Assignment shall be considered materially defective and constitute a breach of this Contract or the Task Assignment.

- 7.5. **Tests and Inspections.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected and tested, and Consultant has agreed in a Task Assignment to perform such services, Consultant shall furnish the County's Project Manager with the required certificates of inspection, testing or approval. All tests shall be in accordance with the methods prescribed by the

American Society for Testing and Materials or such other applicable organization that may be required by law or the Contract Documents.

- 7.6. The Consultant shall be responsible for the professional and technical accuracy and the coordination of all data, reports and any other service furnished by the Consultant under this Contract or any Task Assignment. The Consultant shall, without additional cost to the County, correct or revise any errors or deficiencies in its Work or Service for which it is responsible.
- 7.7. All Work performed by Consultant including all general provisions, special provisions, job specifications, drawings, Addendum, Amendments to Task Assignments, written interpretations, and written orders for minor changes in Work, shall comply with the Scope of Work of a Task Assignment and all applicable local laws, codes, ordinances and statutes and the performance criteria in Section 3.2. Otherwise, if Consultant is an architect or engineer, only Work certified by said consultant, which in whole or part constitutes, a Deliverable in a Task Assignment shall comply with the Scope of Work in a Task Assignment and all applicable local laws, codes, ordinances and statutes. Work not covered by Contract Documents in a Task Assignment shall not be required in a Project unless the County in its sole discretion determines that it is required by reasonable inference as being necessary to produce the intended Deliverable(s).
- 7.8. If applicable in a Task Assignment, Consultant will supervise and direct all Work or Services efficiently and pursuant to Section 7.3.5. As such, Consultant shall be solely responsible for the means, methods, techniques, sequences and procedures for the design or development of a Deliverable. Further, Consultant shall be responsible for assuring the County that finished Deliverables complies accurately with the Contract Documents or plans and specifications of the Scope of Work in the applicable Task Assignment.
- 7.9. Consultant will make periodic visits as delineated in the Task Assignment to the site to observe the progress and quality of the executed construction Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents or Task Assignment. The efforts of the Consultant shall be directed toward providing assurance for the County that all Work completed in a Task Assignment shall conform to the requirements of the Scope of Work of the Task Assignment. On the basis of Consultant's observations, skills and experience, Consultant shall keep the County informed of the progress of all Work and shall endeavor to guard the County against defects and deficiencies in the Work. As required in the Task Assignment, each site visit will be followed by a report to the client of known deviations from the Contract Documents or plans and specifications in the Scope of Work of a Task Assignment.
- 7.10. Consultant shall issue with reasonable promptness all written clarifications or interpretations of a Task Assignment (in the form of drawings or otherwise as requested by the County) that Consultant may determine are necessary, which shall be consistent with or reasonably inferable from the overall intent of the Task Assignment.
- 7.11. **Concerning Subconsultants**
 - 7.11.1. Consultant shall not employ any subconsultant, other person or organization against whom the County may have reasonable objection, nor shall Consultant be required to employ any subconsultant against whom it has reasonable objection. Consultant shall not make any substitution for any subconsultant who has been accepted by the County without the County's approval.
 - 7.11.2. County's disapproval or requirement of removal or replacement of Consultant's employee or subconsultant shall be deemed for lawful reasons if in County's reasonable judgment, such Consultant's employee or subconsultant poses a threat or causes harm to the health, welfare, safety or morale of the County or its agencies,

personnel or property or who fails any drug test administered in connection with this Contract, or who has been convicted of a felony or a misdemeanor involving "moral turpitude" or has been released or dishonorably discharged or separated under other than honorable conditions from any of the Armed Forces of the United States.

- 7.11.3. Consultant shall be fully responsible for all negligent acts and omissions of its subconsultant or sub-subconsultants and of persons directly or indirectly employed by them and of persons for whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any contractual relationship between any subconsultant and the County or any obligation on the part of the County to pay or to see to the payment of any moneys due any subconsultant, except as may otherwise be required by law. County may furnish to any subconsultant to the extent practicable, evidence of amounts paid to Consultant on account of specific work done in accordance with the schedule of values.
- 7.11.4. Consultant agrees to bind specifically every subconsultant to the applicable terms and conditions of the Contract Documents and the terms and conditions of Section 1-3 and 16 of this Contract for the benefit of the County.
- 7.11.5. The Consultant shall require all subconsultants or sub-subconsultants or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the County and the Consultant.
- 7.11.6. Any subcontractors or subconsultants and/or outside associates required by the Consultant in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified for each Project assigned under this Contract. Any substitution of such subcontractors, subconsultants or associates will be subject to the prior written approval of the County Project Manager.
- 7.11.7. Consultant shall save and hold the County harmless from any and all claims or actions by Consultant's subconsultants or sub-subconsultants for payment of monies such subconsultant or sub-subconsultants claims to be owed by Consultant for Work performed under this Contract or a Task Assignment, provided that the County has paid Consultant in accordance with the terms of this Contract.
- 7.11.8. Nothing in this Contract or a Task Assignment shall create any obligation on the part of the County to pay directly to any subconsultants or sub-subconsultants of Consultant any monies due to such subconsultant or sub-subconsultants or claims of a subconsultant or sub-subconsultant for amounts owed by Consultant to subconsultant or sub-subconsultant for Work performed under this Contract or Task Assignment.

8. AUTHORIZATION FOR SERVICES

- 8.1. **No Guarantee to Perform Projects.** The County makes no covenant or promise as to the number of available Projects, nor that the Consultant will perform any Project for the County during the life of this Contract. The County reserves the right to contract with other parties for the services contemplated by this Contract as determined in the County's sole and absolute discretion.
- 8.2. **Certifications for Completed Work.** Consultant shall sign and seal (hereinafter "Certification") all completed Work under a Task Assignment as required as a licensed professional or under Florida law; otherwise, the County Project Manager shall not have the authority to approve

completed Work or Services and Consultant shall not be entitled to payment for the Work or Services covered by uncertified Work. In the event the County Project Manager accepts and approves completed Work bearing no such certification by the Consultant, such acceptance and approval shall not relieve Consultant or its subconsultants or agents of any liability for any defects, omissions or errors in the Deliverables of completed Work of a Task Assignment until such work is certified by Consultant.

9. INDEMNIFICATION

- 9.1. Consultant shall, at its own expense, indemnify and hold harmless the County and its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys, and employees from and against all claims of every kind and nature (including losses incurred or suffered in consequences either of bodily injury to any person or damage to property), damages, losses and expenses including reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and its subconsultants or sub-subconsultants or agents performing Work or Services under this Contract or a Task Assignment, caused by any negligent act or omission of Consultant, any of Consultant's subconsultants or sub-subconsultants, anyone employed by any of them or anyone for whose acts any of them may be liable, except the Consultant will not be required to indemnify and hold the County harmless if such claim, damage, loss and expense is the result of the sole negligence of the County, or of anyone directly or indirectly employed by the County or anyone for whose acts the County may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Contract.
- 9.2. In all claims against the County or any of its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys and employees by any employee of Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant, contractor or any subcontractor or subconsultant under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 9.3. If Consultant is licensing, providing or developing software, including derivative works for use by the County, Consultant agrees to protect and indemnify and hold harmless the County, its agents, elected officials and employees of the County from and against any and all claims, demands, actions, and causes of action which may arise asserting that all or any part of the Consultant licensed applications provided under any software owned by Consultant and licensed to County or provided by Consultant for use thereof by the County, infringes or misappropriates any third party's United States patent, copyright or any trade secret protected under United States law.
 - 9.3.1. In addition to the foregoing indemnification provision, Consultant shall also take the following steps to assure that County can continually use the software which Consultant has directly licensed to County or provided for use thereof by the County in substantially the same manner delivered or subsequently enhanced or modified by:
 - 9.3.1.1. Promptly replace the allegedly infringing or misappropriated item or items with compatible, functionally equivalent items which are not alleged to be infringing or misappropriated; or
 - 9.3.1.2. Promptly modify the alleged infringing or misappropriated item or items to eliminate the alleged infringement or misappropriation without impairing County's intended use of the licensed applications and/or sublicensed

applications in any manner; or

9.3.1.3. Promptly procure the right for the County to continue to use the licensed applications and/or sublicensed applications without modification; and

9.3.1.4. Unless otherwise agreed by the parties, promptly shall mean for the purposes of this Section that the events described herein shall occur in no less than sixty (60) days from the date that notice of the claim is received by Consultant unless otherwise agreed by the parties.

9.4. **Confidential Information and Indemnification.** If Consultant is licensing or developing software (including derivative works) for use by the County, Consultant grants County a perpetual, fully-paid, non-assignable, non-exclusive, royalty-free license to use Consultant's software deliverables developed or licensed under a Task Assignment. Said license includes software owned by Consultant which is furnished under this Contract or a Task Assignment, for County's internal use with such use to include the right to modify such deliverable(s) and to create derivative works for such internal use including, without limitation, the right to use such deliverable(s).

9.5. The terms "proprietary software, sensitive information" and "trade secret" shall constitute Confidential Information and shall be that which is defined in and exempt from disclosure pursuant to Florida Statutes, Chapter 119, and Section I, Section 24 of the Florida Constitution ("Florida Public Records Law"), and Chapter 812 of the Florida Statutes. In addition and for the purposes of this Contract and any Task Assignment, Confidential Information shall include confidential information and/or trade secret information disclosed by Consultant to County that is expressly identified in writing by Consultant and Consultant's subconsultants or sub-subconsultants. Any Confidential Information provided to County by Consultant must be expressly identified in a "Nondisclosure Contract for Confidential Materials" form which Consultant may obtain from the County's Purchasing Division.

9.5.1. Confidential Information and/or Trade Secret do not include the following:

9.5.1.1. Information already known or independently developed the party in possession; or

9.5.1.2. Information in the public domain through no wrongful act of the party in possession; or

9.5.1.3. Information received by the party in possession from a third party who was free to disclose it; or

9.5.1.4. Information regularly disclosed to third parties without restriction on disclosure, or

9.5.1.5. Information required to be disclosed by law or an order of a court of competent jurisdiction.

9.6. In the event that Consultant does not enable the County to use that which Consultant has delivered through accomplishing one or more of the alternatives set forth above within aforementioned time period set forth herein during the term of this Contract or Task Assignment, Consultant shall be in material default of this Contract and subject to Section 6: Termination.

9.7. If Consultant is granting a license or develops software for the County in a Task Assignment, it hereby warrants and represents that:

- 9.7.1. Consultant is the sole owner of all right, title, and interest in and to the Consultant licensed software, user manuals and documentation, including all patents, copyrights, copyright rights, trade secrets, trademarks, trade names and all proprietary and intellectual rights and confidential information contained therein, and that it is authorized to enter into this Contract and grant County a perpetual license; and
- 9.7.2. No portion of any licenses or right granted to the County to use Consultant's software pursuant to the terms of the applicable software license Contract of Consultant for any work performed under this Contract or Task Assignment violates or is protected by right, title, interest or similar right of any third person or entity.

10. LIMITATION OF LIABILITY AND REMEDIES

- 10.1. **Sovereign Immunity.** The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any Section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity of limits of liability of County beyond any statutory limited waiver of immunity of 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 County for damages regardless of the number or nature of claims in tort, equity or contract shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit on any third party for the purpose of allowing any claim against County which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.
- 10.2. If Consultant should become entitled to claim damages against the County for breach of contract arising from a Task Assignment, County will be liable only for the amount of Consultant's actual direct damages up to the amount of the Task Assignment(s) that is the subject of the claim. In no event shall either party be liable to the other for any incidental, indirect, special, punitive or consequential damages even if the party knew or should have known about the possibility of such damages for violations of any provision of this Contract or Task Assignment.

11. COUNTY REPRESENTATIVE

- 11.1. The Work or Services shall be provided by the Consultant under the direction of the authorized County Representative, except as limited by the County's Purchasing and Contracts procedures, who shall have decision authority subject to the requirements of the County's Purchasing Procedures Manual for all phases of the Work, including general direction, review and approval of the Work or Services.
- 11.2. Neither the County Representative's review, approval or acceptance of, nor payment for any of the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Consultant shall be and remain liable to the County for all costs of any kind which were incurred by the County as a result of the Consultant's negligent performance of the services furnished under this Contract.

12. REUSE AND OWNERSHIP OF DOCUMENTS

- 12.1. Provided that Consultant has been paid by County for all completed Work in the applicable Task Assignment in accordance with the terms of this Contract, the County shall have unlimited rights, for the benefit of the County, in all reports, statistical data, specifications, notes and other Consultant's work produced in the performance of this Contract, including right to copy plans for any purpose including for the use and maintenance of the Deliverable(s) of a Project. If County determines to reuse or adapt plans signed and sealed by Consultant, Consultant shall be entitled

to further reasonable Compensation at rates agreed upon by County and Consultant prior to executing and commencing any Work in a Task Assignment. Said rates shall be incorporated in the Task Assignment. Further, all documents prepared by Consultant pursuant to this Contract are instruments of service in respect of the Project or Task Assignment. The Consultant shall not be liable for the negligent reuse by the County of said documents.

- 12.2. All deliverables analyses, reference data, survey data, plans and reports or any other form of written instrument or document that may result from the Consultant's Work or Services or that have been created during the course of the Consultant's performance under this Contract shall become property of the County and/or "works made for hire" (as defined under the 1976 Copyright Act (Title 17 of the United States Code) as amended) after final payment is made to the Consultant.

13. EXPERT WITNESS

- 13.1. If requested by the County, the Consultant shall serve as an expert or professional witness for the County in any legal proceedings arising in connection with this Contract. The expert or professional witness fee for Consultant shall be a reasonable rate negotiated at the time the Consultant is called for such a duty.

14. AUDIT AND EXAMINATION OF RECORDS

- 14.1. For purposes of verifying that invoices submitted, in conjunction with the negotiation of this Contract or any Contract change or other modification are accurate, complete, and current, the County Project Manager, or County's authorized representative(s), shall - until the expiration of three (3) years from the date of final payment under this Contract - have the right to examine those books, records, documents and other supporting data that will permit adequate evaluation of the invoices submitted, along with the computations and projections used therein that were prepared by the Consultant in connection with work under this Contract. Unless the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices are set by law or regulation. The Consultant agrees to insert the substance of this clause in all subcontracts hereunder so as to apply until three (3) years after final payment under the subcontract.

15. INSURANCE REQUIREMENTS

15.1. Required Types of Insurance

The insurance requirements listed below shall be required for all projects. However, additional insurance may be required for subsequent Task Assignments or Contract Amendments as determined by the Volusia County Risk Manager.

The Consultant shall purchase and maintain at its own expense, during the term of this Contract the following types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to the County:

<u>SCHEDULE</u>	<u>LIMITS</u>
Workers' Compensation	Florida Statutory Coverage
Employers Liability	\$100,000. Each Accident
(including Appropriate Federal Acts)	\$500,000. Disease Policy Limit
	\$100,000. Each Employee/Disease

Commercial General Liability\$2,000,000. General Aggregate
.....\$2,000,000. Products/CompOps Aggregate

Products-Completed Operation.....\$1,000,000. Personal/Advertising Injury
.....\$1,000,000. Each Occurrence

(The County of Volusia shall be named as an additional insured under all of the above Commercial General Liability coverage.)

Auto Liability.....\$1,000,000. CSL
All autos-owned, hired or no-owned
(Symbol 1 Coverage)

Professional Liability\$1,000,000.
(Errors & Omissions)

15.1.1 Minimum underlying coverage's shall include Commercial General Liability, Automobile Liability and Workers' Compensation/Employer's Liability. Umbrella liability limit will not be required to be carried by subconsultants.

15.1.2 Umbrella or Excess Liability policies may be used to obtain the total limits of liability required to meet the required limits of coverage stated above. Evidence of such coverage should clearly demonstrate the underlying coverage's/policies that are included.

15.1.3 Workers' Compensation Insurance. As stated in Section 15.1., Workers' Compensation insurance is required for all employees of the Consultant, employed or hired to perform or provide Work or Services under this Contract or that is in any way connected with Work or Services performed under this Contract, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory amount shown above per occurrence.

15.1.3.1 Consultant and its Subconsultants, or any associated or subsidiary company doing Work on County property or under this Contract must be named in the Workers' Compensation coverage or provide proof of their own Workers' Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Consultant's Subconsultants fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Subconsultant of the Consultant, the Consultant shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).

15.1.4 Commercial General Liability Insurance. As stated in Section 15.1., Commercial General Liability insurance, with a limit of not less than the amounts shown above with an aggregate limit and per occurrence basis, including coverage for the Consultant's operations "broad form" property damage coverage's protecting itself, its employees, agents, for claims for damages caused by bodily injury, property damage, or personal or advertising injury, products liability/completed operations including what is commonly known as groups A, B, and C (libel, false arrest, slander). Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Consultant arising from Work or Services performed under this Contract.

Public liability coverage shall include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Consultant's contract to indemnify, and hold harmless the County as provided in this Contract. The commercial general liability policy shall be endorsed to include the County as an additional insured. The commercial general liability policy shall provide exclusive coverage for the location or project site where the Work or Services are to be performed under this Contract. In the alternative, the commercial general liability policy shall be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the County Risk Manager.

- 15.1.5 Motor Vehicle Liability. As stated in Section 15.1., the Consultant shall secure and maintain during the term of this Contract, motor vehicle coverage in the split limit amounts of no less than the amounts shown above per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above (including "Any Auto" Symbol 1 coverage), protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle.
- 15.1.6 Professional Liability. As stated in Section 15.1., the Consultant shall ensure that it secures and maintains, during the term of this Contract, Professional Liability insurance with limits of no less than the amount shown above contemplated by this Contract. Such policy shall cover all the Consultant's professional liabilities and broad enough to include errors and omissions specific to Consultant's professional liability for direct and contingent design errors and Architect's/Engineers professional liability with no exclusions for design-build work.
- 15.1.6.1 If the Consultant fails to secure and maintain the professional liability insurance coverage required herein, the Consultant shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.
- 15.1.6.2 The Consultant must maintain a retroactive date prior to or equal to the effective date of this Contract. The Consultant shall purchase a Supplemental Extended Reporting Period ("SERP") with a minimum reporting period of not less than three (3) years in the event a Subconsultant's policy is canceled, not renewed, switched to occurrence form, or any other event which requires a purchase of SERP to cover a gap in insurance for claims which may arise under or related to this Contract. The Consultant's purchase of the SERP shall not relieve the Consultant of the obligation to provide replacement coverage. In addition, the Consultant shall require have the Subconsultant's carrier immediately inform the Consultant, and the County of Volusia's Risk Management Division and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under this Contract.
- 15.1.7 Coverage's for professional liability shall be provided on an Occurrence form or a Claims Made form with a retroactive date equal to at least the first date of this Contract and with a three year reporting option beyond the expiration date of this Contract including any amendments to the Contract term. County shall be included as an additional named insured under the pollution liability insurance policy
- 15.1.8 Primary and Excess Coverage. Any insurance required may be provided by primary and excess insurance policies.

15.2 Insurance Requirements

15.2.1 General Insurance Requirements:

- 15.2.1.1 All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
- 15.2.1.2 Approval by County of any policy of insurance shall not relieve Consultant from its responsibility to maintain the insurance coverage required herein for the performance of Work or Services by the Consultant or its Subconsultants for the entire term of this Contract and for such longer periods of time as may be required under other clauses of this Contract.
- 15.2.1.3 Waiver of Subrogation. The Consultant hereby waives all rights against the County and its Subconsultants to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of this Contract. The Consultant shall require similar waivers from all its Subconsultants. This provision applies to all policies of insurance required under this Contract (including Workers' Compensation, and general liability).
- 15.2.1.4 County Not Liable for Paying Deductibles. For all insurance required by Consultant, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the Consultant's business or any Subconsultant performing Work or Services on behalf of the Consultant or for the Consultant's benefit under this Contract.
- 15.2.1.5 Cancellation Notices. During the term of this Contract, Consultant shall be responsible for promptly advising and providing the County's Risk Management and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under this Contract within two (2) business days of receipt of such notice or change.
- 15.2.1.6 For any on-site Work performed by or on behalf of Consultant on County property, the County shall be named as an additional insured or additional named insured subject to review and determination by County's Risk Manager on all policies required under this Contract.
- 15.2.1.7 Deductibles. For purposes of this Contract, Consultant shall not obtain an insurance policy with a deductible or self-insurance provision.

15.3 Proof of Insurance

- 15.3.1 The Consultant shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.
- 15.3.2 The Consultant shall furnish proof of insurance acceptable to the County prior to or at the time of execution of this Contract and the Consultant shall not commence Work or provide any Service until the Consultant has obtained all the insurance required under this Contract

and such insurance has been filed with and approved by the County. Upon request from the County, the Consultant shall furnish copies of the following types of insurance policies and any changes or amendments thereto, during its normal business hours, to the County and County's Risk Management and Purchasing and Contracts Divisions, prior to the commencement of any contractual obligations. This Contract may be terminated by the County, without penalty or expense to County, if at any time during the term of this Contract proof of any insurance required hereunder is not provided to the County.

15.3.3 All certificates of insurance shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by this Article. No Work or Services by Consultant or its Subconsultants shall be commenced until County has approved these policies or certificates of insurance. Further, the Consultant agrees that the County shall make no payments pursuant to the terms of this Contract until all required proof or evidence of insurance has been provided to the County. This Consultant may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.

15.3.4 The Consultant shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of this Contract. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Consultant's expense or terminate this Contract but County has no obligation to renew any policies.

15.4 The provisions of this Article shall survive the cancellation or termination of this Contract.

16. LOCAL GOVERNMENT POLICIES

16.1. Public Records Law. Consultant acknowledges that the County and Consultant are required to comply with the Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Contract and that said statute controls over the terms of this Contract. To the extent practicable, the County agrees to notify Consultant of any public records request concerning the Consultant or matters relating to the services provided under this Contract. Consultant agrees to comply with all provisions of such Public Record Act as they apply to the Consultant.

16.2. Payments Subject to Appropriation. Notwithstanding any other term or provision of this Contract, the continuation of this Contract or Task Assignment beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. If at any time funds are not appropriated for the Services and Deliverables provided or to be provided under this Contract or Task Assignment, cancellation shall be accepted by Consultant with thirty (30) days prior written notice, but failure to give such notice shall be of no effect. Termination by the County due to nonappropriation shall be without a termination charge by Consultant. County shall not be obligated to pay Consultant under this Contract beyond the date of termination except as set forth in Section 6 – Termination. County's obligation to pay Consultant is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 5 – Contract Price and Compensation. The parties agree to review the Project Work plan and remaining Work to be performed in advance of each new fiscal year for the County to compare the funding allocated for the next fiscal year to the cost of the remaining Scope of Work of the Project or Task Assignment, to determine whether or not the allocated funding will be adequate to cover all Work to be completed in the next fiscal year. The cost of the remaining

Project shall be the Fixed Fee/Lump Sum or Price, Maximum-Not-To-Exceed Compensation less all amounts paid and less all amounts on pending undisputed invoices. Unless the parties agree that the funding allocated for the next fiscal year is adequate for the next fiscal year's Work, either party may terminate this Contract in accordance with the provisions of Section 6 – Termination.

- 16.3. Truth-in-Negotiations. Consultant's signature on this Contract or a Task Assignment shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Assignment are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Consultant has disclosed all debts or fees owed to or that are pending before the County prior to the execution of this Contract or a Task Assignment.
- 16.4. Changes Due to Public Welfare. The County and Consultant agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law or Ordinance.
- 16.5. Compliance with Applicable Laws. Consultant shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Contract. Consultant shall protect and indemnify County and all its officers, agents, servants and employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order or decree caused or committed by Consultant, its representatives, subconsultants, professional associates, agents, servants or employees. Additionally, Consultant shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Contract from the federal government, State of Florida, County of Volusia or municipalities when legally required and maintain same in full force and effect during the term of this Contract.
- 16.6. Nondiscrimination and Americans with Disabilities Act. Consultant shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. Consultant agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing all Services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under this Contract, Consultant agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.
- 16.7. Drug Free Workplace. The County of Volusia is a drug-free and smoke-free workplace. Consultant agrees that it shall provide a drug-free environment to its personnel during the term of this Contract and will comply, subject to the prior receipt thereof, with the County's policies on drug-free and smoke-free work place during the term of this Contract.
- 16.8. Background Checks. Consultant and County understand that certain areas of the County's premises may not be available to Consultant's personnel without background checks and that such access is not required to perform the services contemplated by this Contract.
- 16.9. Employment of Illegal Aliens. Consultant certifies that it does not knowingly or willingly and will not during the performance of the Contract employ illegal alien workers or otherwise violate the

provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

16.10. Prohibition Against Contingent Fees.

16.10.1. The Consultant warrants that he or she or it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract and that he or she or it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, compensation, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the County shall have the right to terminate this Contract or Task Assignment without liability and, at its sole discretion, to deduct from the contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

16.10.2. Consultant understands and acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Consultant, who offers, agrees, or contracts to solicit or secure County contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

16.10.3. Any architect, professional engineer, or registered surveyor and mapper, or any group, association, company, corporation, firm, or partnership thereof that is a Consultant under this Contract, who offers to pay, or pays, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

16.10.4. Any County official, agent or employee who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the County and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

16.11. EQUAL OPPORTUNITY; DISADVANTAGED BUSINESS ENTERPRISES

16.11.1. During the performance of this Contract, the Consultant agrees as follows:

16.11.1.1. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, up-grading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

16.11.1.2. Municipal Code section 2-269, County Ordinance No. 90-20, § 9,5-17-90 of the County Council of the County of Volusia, establishing policies and procedures for the Disadvantaged and Women's Business Enterprises program shall be part of this Contract and the Consultant shall endeavor to fulfill the goals and policies of this Resolution as applicable to this Contract.

17. DISPUTE RESOLUTION

- 17.1. The parties to this Contract shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract in accordance with the provisions set forth in this Section. The Consultant and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Contract or Task Assignment and any applicable Scope of Services. Issues shall be escalated to successive management levels as indicated in Section 17.3.
- 17.2. If a dispute develops between the parties concerning any provision under this Contract or Task Assignment, or the interpretation thereof, or any conduct by the other party under these Contracts, and the parties are unable to resolve such dispute within five (5) days, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.
- 17.3. Upon issuance of a Dispute Notice, the Project Managers or designated representative(s) shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers or designated representative(s) shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative(s) within five (5) business days, the Project Managers or designated representative(s) shall escalate the dispute as indicated below.

Business Days	Consultant's Representative	County Representative
5	Consultant	Project Manager
10	Consultant's Engagement Manager	Director of Purchasing and Contracts
15	Consultant's Business Unit Manager or Designee	Chief Financial Officer

- 17.4. **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this Section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction. If litigation is prematurely commenced, it shall be stayed until the mediator makes the required certification.

18. FORCE MAJEURE

- 18.1 Neither party will be liable for any failure or delay in the performance of its obligations under this Contract (and the failure or delay will not be deemed a default of this Contract or grounds for termination) if both of the following conditions are satisfied: (i) the failure or delay could not have been prevented by reasonable precautions, and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) the failure or delay is caused, directly or indirectly, by reason of fire or other casualty, natural disaster, epidemic or accident; strikes or labor disputes; inability to procure raw materials, equipment, power or supplies; war, terrorism or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency or intergovernmental body other than a party hereto; or any other act or condition beyond the reasonable control of the non-performing party. Accordingly, the parties further agree that:
- 18.2 Upon the occurrence of an event which satisfies both of the above conditions (a "Force Majeure Event"), the non-performing party will be excused from any further performance of those obligations under this Contract affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 18.3 Upon the occurrence of a Force Majeure Event, the non-performing party will notify the other party within two (2) business days of the failure, or as soon as possible after such failure or delay if the Force Majeure Event prevents compliance within two (2) business days, of the occurrence of a Force Majeure Event and will describe in reasonable detail the nature of the Force Majeure Event.
- 18.4 In the event of a Force Majeure Event, the time for performance by the parties under the applicable Project shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of this Contract.

19. CLAIMS NOTICE

- 19.1 The Consultant shall timely report in writing to the County's Director of Risk Management any incident which it believes might result in a claim or claims against the County under any of the coverages mentioned herein.

Name: County of Volusia, Florida
Personnel/Risk Management Division
Address: 230 North Woodland Boulevard, Suite 250
DeLand, Florida 32720
Telephone: (386) 736-5963
Fax: (386) 822-5006

20. SUCCESSORS AND ASSIGNS

- 20.1. Consultant may not assign or otherwise convey Contractor's rights and/or obligations under this Contract without first providing County with a processing fee of Five Hundred Dollars (US\$500.00) and obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to posting a performance bond. Any consent by the County under this section shall be by written amendment to the Contract in a form and substance specified by the County in its sole discretion. If Consultant desires to assign or otherwise convey its rights and/or obligations under this Contract, Consultant shall, no less than one hundred twenty (120) days prior to the assignment's proposed effective date, provide County with a written request for County's consent.

Failure by the Consultant to obtain the County's consent in accordance with this section prior to assignment or other conveyance shall: 1) constitute a material breach of the Contract; and 2) entitle the County to retain any and all legal rights, claims and defense to enforce this section, including, but not limited to, injunctive, declaratory, damages and attorney's fees and costs. Payment of any sum by the County in accordance with the Contract to the Consultant or any person or entity prior to the Consultant obtaining the County's consent to the assignment shall not constitute a waiver of the rights of the County under this section.

Nothing herein shall preclude the right of the County to waive its rights under this section but no waiver shall be granted by the County without amendment to the Contract. The Consultant is hereby placed on notice that the County may demand a discount of up ten percent (10%) from those rates or compensation for the goods or services established in the Contract as a condition to execution of the amendment.

21. ADDITIONAL RIGHTS AND REMEDIES

- 21.1. The rights and remedies of the County provided for under this Contract are in addition to any other rights and remedies provided by law; the County may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, with-holding, recoupment, or counterclaim, either during or after performance of this Contract.

22. MBE

- 22.1. This Contract is entered into by the County and Consultant pursuant to the minority business enterprise procurement goals under Section 287.09, F.S. (2006).

23. CONTROLLING LAW

- 23.1. This Contract or Task Assignment is to be governed by the laws of the State of Florida. Venue for any litigation between the parties to this Contract or Task Assignment shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorneys fees relating to any dispute arising under the Contract.

24. MODIFICATIONS TO CONTRACT

- 24.1. This Contract or Task Assignment and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.

25. NOTICE

- 25.1 All notice required under this Contract or Task Assignment shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

In the case of County:	with a copies of legal notices to:

County of Volusia Attn: Director of Purchasing and Contracts Address: 123 W. Indiana Ave., Room 302 DeLand, Florida 32720 Phone: (386) 736-5935 Fax: (386) 736-5972	County of Volusia Attn: County Attorney Address: 123 W. Indiana Ave., Room 301 DeLand, Florida 32720 Phone: (386) 736-5950 Fax: (386) 736-5990
In the case of Consultant:	with a copy of legal notices to:
Attn: Shailesh K. Patel, M.Sc., CPSSc Address: 4643 S. Clyde Morris Boulevard Port Orange, Florida 32129 Phone: (386) 304-6505 E-mail: spatel@dmces.com	Attn: Shailesh K. Patel, M.Sc., CPSSc Address: 4643 S. Clyde Morris Boulevard Port Orange, Florida 32129 Phone: (386) 304-6505 E-mail: spatel@dmces.com

26. This Contract or Task Assignment, together with any exhibits, schedules, attachments and Amendments thereto constitute the entire Contract between County and Consultant and supersede all prior written or oral understandings.

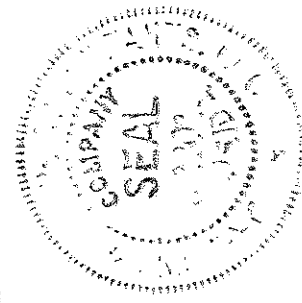
IN WITNESS WHEREOF, the parties have made and executed this Contract for Consulting Services for Professional Coastal Engineering Services, the day and year below written.

CONSULTANT: Dredging & Marine Consultants, LLC

BY: _____


(Signature)

(SEAL)



BY: SHAILESH K. PATEL, MANAGING MEMBER
Corporate Officer Name & Title

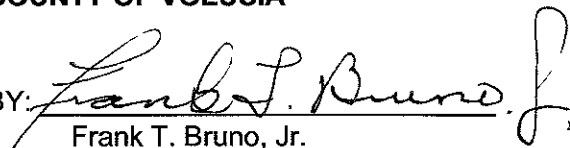
Date: 9-4-2012

ATTEST: Curtis N. Todd

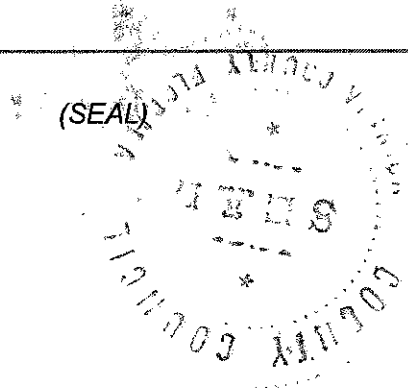
Date: 9-4-2012

COUNTY OF VOLUSIA

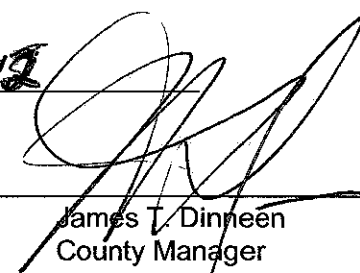
BY: _____


Frank T. Bruno, Jr.
County Chair

(SEAL)



Date: 9/11/2012

ATTEST: 
James T. Dinneen
County Manager

Date: 9/12/2012

County Council Approval Date: 09/06/2012

Exhibit "A" -- Sample Task Assignment
Exhibit "B" -- Proposal dated 06/21/2012

EXHIBIT "A"

[FOR COUNTY USE ONLY]

**TASK ASSIGNMENT NO. X
TO THE
CONTRACT FOR PROFESSIONAL CONSULTING SERVICES
FOR [TYPE OF SERVICE]
BETWEEN THE COUNTY OF VOLUSIA
AND THE FIRM OF
[NAME AND ADDRESS OF FIRM]**

PROJECT TITLE: [NAME OF PROJECT]

PROJECT NUMBER:

I. PURPOSE

This is an attachment to the Contract for Professional Consulting Services for [Type of Service] dated [Date of contract] between the County of Volusia (COUNTY) and the consulting firm of [Name of Firm] (CONSULTANT) and made a part thereof. The purpose of this Task Assignment is to specify the required services of the CONSULTANT.

II. SCOPE OF WORK

The CONSULTANT'S Scope of Work for [Project Title] shall include the following tasks as outlined and attached hereto as Exhibit "A."

III. DELIVERABLES

The CONSULTANT shall produce and deliver to the COUNTY the deliverables outlined and attached hereto as Exhibit "A."

IV. SCHEDULES AND TIME FOR COMPLETION

This Task Assignment shall commence upon Notice to Proceed and continue until the scope of work is completed and accepted by the county. Within ten (10) days after receipt of Notice to Proceed (or other authorizing document), the CONSULTANT shall provide a proposed schedule of payments associated with the deliverables which is acceptable to the COUNTY. If schedule is altered due to unforeseen delays the County's project manager shall be notified at once. Failure to meet the scheduled completion date may be grounds for Termination for Default.

V. METHOD OF COMPENSATION

Payment will be in accordance with the Contract for Professional Consulting Services No. [RSQ #] for [Type of Service]. Compensation for all services, material, supplies, training and any other items or requirements necessary to complete the work as described herein, shall not exceed a grand total amount of [amount in word] DOLLARS and [XX/100] (\$) consisting of [a fixed fee amount of] [amount in word] DOLLARS and [XX/100] (\$) for consulting services and a [fixed fee or not to exceed] amount of [amount in word] DOLLARS and [XX/100] (\$) for reimbursable expenses payable at the rates attached hereto as Exhibit "A" or "B." At no time shall work fees exceed said amount of compensation herein without a written and executed amendment.

Progressive
P.O. Box 94739
Cleveland, OH 44101
1-800-895-2886

Policy number: 05998976-4

Underwritten by:
Progressive Express Ins Company
January 18, 2012
Page 1 of 1

Certificate of Insurance

Certificate Holder	Insured	Agent
Additional Insured CITY OF PORT ST LUCIE 121 SW PORT ST LUCIE BLVD PORT ST LUCIE, FL 34984	DMC LLC 4643 S CLYD MRRS 302 PORT ORANGE, FL 32129	PROG COMMERCIAL PO BOX 94739 CLEVELAND, OH 44101

This document certifies that insurance policies identified below have been issued by the designated insurer to the insured named above for the period(s) indicated. This Certificate is issued for information purposes only. It confers no rights upon the certificate holder and does not change, alter, modify, or extend the coverages afforded by the policies listed below. The coverages afforded by the policies listed below are subject to all the terms, exclusions, limitations, endorsements, and conditions of these policies.

Policy Effective Date: Oct 1, 2011

Policy Expiration Date: Oct 1, 2012

Insurance coverage(s)	Limits
Bodily Injury/Property Damage	\$1,000,000 Combined Single Limit
Employer's Non-Owned Auto BIPD	\$1,000,000 Combined Single Limit
Hired Auto Bodily Injury/Property Damage	\$1,000,000 Combined Single Limit

Description of Location/Vehicles/Special Items

Scheduled autos only

City of Port St. Lucie a political subdivision of the State of FL its Officers, Empolyees, Agents as additional insured. Contract # 20120007R

Certificate number

01812MCL976

Please be advised that additional insureds and loss payees will be notified in the event of a mid-term cancellation.



DREDG-1

OP ID: NY

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/04/12

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER SIHLE INSURANCE GROUP, INC. P. O. BOX 160398 ALTAMONTE SPRINGS, FL 32716 Louis R. Biron		407-869-0962 407-774-0936	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS:	FAX (A/C, No):
			INSURER(S) AFFORDING COVERAGE	
			INSURER A : Endurance American Specialty	
			INSURER B : Summit Consulting, Inc.	
			INSURER C :	
			INSURER D :	
			INSURER E :	
			INSURER F :	

INSURED
Dredging & Marine Consultants, LLC
4643 S Clyde Morris Blvd, #302
Port Orange, FL 32129

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY	X		ECC101004391-02	11/28/11	11/28/12	EACH OCCURRENCE \$ 2,000,000	
	X COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000	
							CLAIMS-MADE ☒ OCCUR	MED EXP (Any one person) \$ 5,000
							X pollution & prof	PERSONAL & ADV INJURY \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000	
	POLICY ☐ PRO-JECT ☐ LOC ☐						PRODUCTS - COMP/OP AGG \$ 2,000,000	
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$	
	ANY AUTO						BODILY INJURY (Per person) \$	
	ALL OWNED AUTOS						BODILY INJURY (Per accident) \$	
	HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$	
	UMBRELLA LIAB						EACH OCCURRENCE \$	
	EXCESS LIAB						AGGREGATE \$	
	DED						\$	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N ☐	N/A	0830511690000	06/22/12	06/22/13	X WC STATUTORY LIMITS \$	
	E.L. EACH ACCIDENT \$ 1,000,000							
	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000							
	E.L. DISEASE - POLICY LIMIT \$ 1,000,000							
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)							
	If yes, describe under DESCRIPTION OF OPERATIONS below							

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

Certificate Holder Listed as Additional Insured as to General Liability

Contract#12-SQ-118KW

Cancellation notice is 30 days with the exception of non payment which is 10

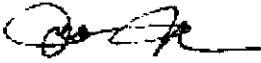
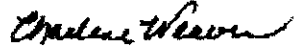
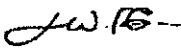
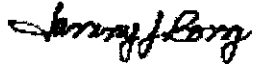
CERTIFICATE HOLDER**CANCELLATION****VOLUSIA**

County of Volusia
123 W. Indiana Ave.
Deland, FL 32725

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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Date: 09/06/2012		AGENDA ITEM		Item: 05
☐ Ordinance	☐ Resolution	☐ Budget Resolution	☒ Other	
Department: Aviation And Economic Resources				
Division: Coastal (formerly Port Authority)				
Subject: Selection of firms to provide coastal engineering services.				
Frederick Karl Director Aviation and Economic Resources 	Jeaniene Jennings Director Purchasing  Approved in Accordance with Purchasing Policies and Procedures	Legal Daniel D. Eckert County Attorney Director Legal Department 	County Manager's Office Charlene Weaver, CPA, CFO Deputy County Manager 	
Joe Nolin Director Coastal 	Tammy Bong Director Management and Budget  Approved as to Budget Requirements	Approved as to Form and Legality		
Council Action: Approved As Recommended				
Modification:				
Fund Number(s):	Description:			Amount:
999 Various	N/A			\$0.00
Total Item Budget: \$0.00				
Staff Contact(s):		Phone:	Ext.	
Rick Karl		386 248 8083	18318	
Joe Nolin		386 248 8075	18335	
Charles Hargrove		386 736 5950	12530	
Summary/Highlights:				
The county solicited statements of qualifications to provide coastal engineering services (RSQ 12-SQ-118KW). The county received 10 responses as detailed on the attached tabulation sheet. An evaluation committee comprised of Josh Wagner, county council member; Gerald N. Brinton, P.E., county engineer; Karen Feaster, director of airport services, airport and port; Judy Grim, director, road and bridge division; and Joe Nolin, director, coastal division reviewed the responses. The committee recommends award of contracts to the following two firms: 1) Dredging & Marine Consultants, Port Orange, Florida; and 2) Taylor Engineering, Inc., Jacksonville, Florida.				

The contracts will be for three years. Authorization for services shall be by written task assignment. The work and dollar amount for each assignment will be negotiated on an as-needed basis per project. All work will be accomplished in accordance with the approved budget.

Recommended Motion: Approval.



CITY OF PORT ORANGE PIGGYBACK AGREEMENT

This Piggyback Agreement is entered to this ____ day of _____, 2015, by and between the **CITY OF PORT ORANGE**, a Florida municipal whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **DREDGING & MARINE CONSULTANTS, L.L.C.** ("Contractor"), a Florida limited liability corporation, whose principal address is 4643 South Clyde Morris Boulevard, Unit 302, Port Orange, Florida 32129 (collectively "the Parties").

WHEREAS, on the 12th day of September, 2012, the County of Volusia ("County"), a body corporate and politic and a political subdivision of the State of Florida, entered into Contract No. 12-SQ-118KW an contract for consulting services for coastal engineering services with Dredging & Marine Consultants, L.L.C. with an effective date of September 12, 2012, for a term of three (3) years (the "Volusia County Agreement"). The Volusia County Agreement may be renewed by the County if the County determines the renewal is in the best interest of the County; and

WHEREAS, by entering into this Piggyback Agreement, Contractor agrees to honor the terms of the Volusia County Agreement for consulting services for consulting services for coastal engineering services with the City of Port Orange; and

WHEREAS, a copy of the Volusia County Agreement is available in the Office of the City Clerk, City Hall, 1000 City Center, Port Orange, Florida 32129; and

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

For good and valuable consideration, conditions and promises, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Term.** The term of this Contract shall commence on the last date this Contract is signed by the Parties and shall continue until September 12, 2015 (the "Initial Term").
2. **Renewals:** This Contract may be renewed upon written agreement of the Parties.
3. **Contractor Obligation.** Contractor shall perform consulting services for coastal engineering services, more specifically described in Dredging & Marine Consultants, L.L.C. Design and Permitting City Center Shoreline Stabilization Scope of Services, Budget, and Schedule letter dated July 10, 2015 attached hereto as Exhibit "1" and Dredging & Marine Consultants, L.L.C. Causeway Dock Refurbishment Engineering Design, Permitting and Bidding letter dated June 18, 2015 attached hereto as Exhibit "2".
4. **Authorization for Services.** This Contract standing alone does not authorize the performance of any work or services to be provided by the Contractor 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 written Purchase Order(s) issued and executed by the City and signed by the Contractor. The City reserves the right to contract with other parties for the services contemplated by this Contract, as determined in the City's sole and absolute discretion.

5. City Obligations. The City agrees to compensate Contractor at the costs set forth in Exhibit "1" in an amount subject to a limit up to but not to exceed Forty-One Thousand Nine Hundred Fifty and 00/100 Dollars (\$41,950.00) for City Center Shoreline Stabilization, and Exhibit "2" in an amount subject to a limit up to but not to exceed Twenty-Three Thousand Five Hundred and 00/100 Dollars (\$23,500.00) for Causeway Dock Refurbishment. Total cost of this Contract is subject to a limit up to but not to exceed Sixty-Five Thousand Four Hundred Fifty and 00/100 Dollars (\$65,450.00) during 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. (The term "Fiscal Year" shall be defined as that one (1) year period commencing on October 1 and expiring on the following September 30). 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. Contract Administration. The Public Works Director, Branford Adumuah, shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

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

12. 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.

13. 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>	Coverage A - Statutory Coverage B - \$100,000	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
<u>Additional Coverage:</u>		All States (Broad Form) Voluntary Compensation	
Comprehensive General Liability (including Completed Operations and Contractual Liability)	<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>	Auto Liability Bodily Injury: \$100,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence.	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
<u>Additional Coverage:</u>		Non-Owned, Hired Car	
Property Insurance — Builders Risk.	<u>Limits:</u>	Buildings — Completed value of contract.	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.
<u>Additional Coverage:</u>		"All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	
Professional Liability (Errors & Omissions)	<u>Limits:</u>	Coverage- \$1,000,000 minimum	

14. 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.

15. 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. 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.

(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.

16. **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.

17. **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.

18. **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.

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 CONTRACT 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

(a) As may have been outlined in the Volusia County Agreement 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.

(b) For the purposes of this Contract, any reference in the Volusia County Agreement to "County of Volusia", shall be construed to mean the "City of Port Orange."

(c) In the event of a conflict between the Volusia County Agreement and this Contract, this Contract with the City of Port Orange shall control.

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: Branford Adumuah, Public Works Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

Contractor: Dredging & Marine Consultants, L.L.C.
Attention: Shailesh K. Patel, Managing Member
4643 S. Clyde Morris Blvd.,
Unit 302
Port Orange, Florida 32129
(386) 304-6505
spatel@dmces.com

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]

Witnesses:

Dredging & Marine Consultants, L.L.C.

By: _____

Shailesh K. Patel, Managing Member

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

Printed Name: _____

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Shailesh K. Patel, as Managing Member of Dredging & Marine Consultants, L.L.C., a Florida limited liability corporation, and who:

[Notary: Please select one]

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

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Allen Green, Mayor

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Allen Green, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

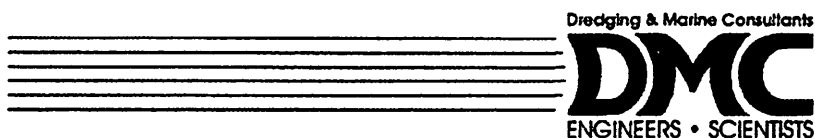
Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, 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:

[CA 4980]



July 10, 2015

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

**RE: Engineering Services for Engineering, Design and Permitting
City Center Shoreline Stabilization
Scope of Services, Budget, and Schedule**

Mr. Silvey:

Dredging & Marine Consultants, LLC (DMC) is pleased to submit the following proposal to assist the City of Port Orange with the engineering and design to stabilize the existing shoreline at the City Center Lake, repair and improve drainage outfalls, retaining walls and sidewalks that have eroded through ongoing stormwater runoff. Upon receipt of the survey and geotechnical info DMC will be able to more accurately propose what specific improvements will be appropriate to improve and stabilize the City Center lake shoreline and structures.

Services and Budget: DMC will assist LCWA with the following tasks:

1. SURVEYING- \$14,900.00

- DMC will coordinate a hydrographic, topographic and structure survey of the proposed project area. This will include cross-sections throughout the proposed project area, Seasonal High and Seasonal Low Water Elevations, elevations and locations of existing structures, roads, sidewalks and location of existing trees. This cost may be reduced if existing and accurate survey info of the proposed project area and existing structures can be provided by the City.

2. GEOTECHNICAL- \$6,450.00

- DMC will coordinate standard penetration test (SPT) borings in the locations identified for shoreline stabilization or structure construction. These borings will provide values for firmness of existing soils and be supplemented by engineering analysis of the boring data. This cost may be reduced if existing and accurate geotechnical data for the proposed project area and existing structures can be provided by the City.

3. ENGINEERING & DESIGN- \$20,600.00

- DMC staff will complete all the engineering and design necessary to stabilize the existing shoreline at the City Center lake, improve drainage and repair the outfalls, retaining walls and sidewalks that have been damaged through ongoing erosion.
- DMC staff will generate preliminary concept designs for City review and all engineering and design drawings (plans) necessary for proposed improvements. A 30% and 60% completion meeting will be held with City staff and once the 90% plans are completed and reviewed with the City, DMC will complete the 100% engineering drawings and the technical specifications for bidding.
- DMC staff will provide an engineer's cost estimate for the proposed improvements.

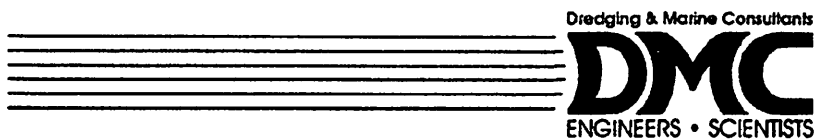
TOTAL FEES: \$41,950.00

Schedule: These services will be completed according to the City project timeline from the date of Notice-to-Proceed. The anticipated timeline may be extended by the permitting process.

Should you have any further questions please call 386-304-6505. We look forward to your authorization (Notice-to-Proceed) and to working with you on this project. Thank you.

Respectfully,
Dredging and Marine Consultants, LLC

Shailesh K. Patel, M.Sc., CPSSc.
Project Manager



June 18, 2015

Ms. Susan Lovallo
Parks and Recreation Director
City of Port Orange
4655 City Center Circle
Port Orange, FL 32129

**RE: Causeway Dock Refurbishment
Engineering Design, Permitting and Bidding**

Ms. Lovallo:

Dredging & Marine Consultants LLC (DMC) is pleased to submit the following proposal to provide engineering design, permitting and bidding services for refurbishment of three docks along the causeway. It is our intention to design replacement of all the necessary components to the fishing piers beneath the Dunlawton Bridge on both the east and west banks as well as the fishing pier located between the two bridges on the north side of the causeway.

Scope of Services: DMC will assist with the following services as indicated in the tasks below. If any of the below tasks are deemed un-necessary by the client or regulatory agencies as the project progresses tasks can be removed or scaled back upon request.

1. Survey – DMC will coordinate a location survey of the existing structures. All elevations will be referenced to Mean Low Water (MLW) and horizontal positioning referenced to NGVD 1929. .

2. Engineering Design – DMC will assess the existing structures and assemble plans to repair or replace components deemed necessary to upgrade the structures. At this time it is understood that the decking, railing, benches, stringers and associated hardware will most likely need replacement and that the existing trash receptacles can be reused. It is also understood that the City would like the new railings to match the proposed cable, timber and synthetic timber design proposed for Riverwalk Park.

3. Electrical Engineering – DMC will coordinate the design of new lighting throughout the Causeway Park Fishing Pier located on the east side of the river beneath the Dunlawton Bridge. The proposed lighting will match the current Riverwalk Park design with lights beneath the top railing.

4. Permitting – DMC will submit an application to receive an exemption letter from the Florida Department of Environmental Protection (FDEP) for the proposed repairs. This letter will most likely be necessary to receive any grant funding. This task does not include any permit fees; they will be the responsibility of the City and are likely to be \$150.

5. Bidding – DMC will assemble a bid package including; bid sheet, technical specifications, and engineers cost estimate to solicit bids for the proposed improvements. In addition, DMC staff will conduct a pre-bid meeting and respond to all requests for additional information (RFI's) submitted by the contractors during the bidding process.

Budget: This work can be accomplished for a lump sum fee of **\$23,500**. If any additional work is required or services such as the survey can be eliminated the City will be notified beforehand, additional services will be provided on an hourly basis. The costs per task are as follows:

1. **Survey – \$2,900**
2. **Engineering Design – \$8,300**
3. **Electric Engineering – \$4,500**
4. **Permitting – \$3,200**
5. **Bidding – \$4,600**

Schedule: These services will be completed according to the Clients project timeline from the date of Notice-to-Proceed. However permitting may delay the project timeline.

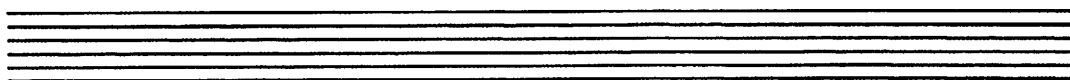
Should you have any further questions please call 386-304-6505. We look forward to your authorization (Notice-to-Proceed) and to working with you on this project. Thank you.

Respectfully,

Dredging & Marine Consultants, LLC



Niles Cyzycki
Project Manager





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Agreement with Quentin L. Hampton & Associates, Inc. for Design Services to Replace Failing Culvert at Ryanwood Subdivision Entrance

DEPARTMENT: Public Works

RECOMMENDED MOTION: Move to approve the Agreement with Quentin L. Hampton & Associates, Inc. for professional design services to design a replacement for the deteriorated culvert at the entrance to Ryanwood Subdivision for \$25,650, and authorize the Mayor and City Clerk to execute all required contract documents.

SUMMARY: The only access road to the Ryanwood Subdivision crosses the Halifax Canal from Canal View Boulevard. Underneath the access road is a culvert through which the Halifax Canal flows.

This culvert has deteriorated to the point of failure. Although temporary repairs were completed after last September's flooding, the culvert needs to be replaced as soon as possible. Failure of the culvert will not only eliminate the only entry and exit from Ryanwood Subdivision but could also cause a major disruption in conveyance of stormwater in the Halifax Canal and cause additional flooding in the vicinity. Accordingly, an engineering design is needed for a new and resized culvert that can be constructed to replace the existing one.

The proposed agreement is for \$25,650 and piggybacks on the Volusia County Contract for Stormwater & Environmental Engineering Consulting Services with Quentin L. Hampton & Associates, Inc. The design is projected to be completed 180 days from the notice to proceed.

Project No.: DIP062 Funding Account No.: 41218005416397

ATTACHMENTS:

1.	Quentin L. Hampton Fee Proposal	Quentin L. Hampton Fee Proposal - Ryanwood Pipe Replacement.pdf
2.	Piggyback Agreement	QLH Piggyback Agreement - Ryanwood.pdf
3.	Quentin L. Hampton/Volusia County Agreement	Quentin Hampton - Volusia County.pdf

Cockcroft, Kynah
Adumuah, Branford

Created/Initiated - 07/23/2015
Approved - 07/23/2015

Riehm, Tracey
Roberts, Margaret
Harden, David

Approved - 07/30/2015
Approved - 07/30/2015
Final Approval - 07/30/2015

BRAD T. BLAIS, P.E.
DAVID A. KING, P.E.
ANDREW M. GIANNINI, P.E.
KEVIN A. LEE, P.E.

Quentin L. Hampton Associates, Inc.
Consulting Engineers
P.O. DRAWER 290247
PORT ORANGE, FLORIDA 32129-0247

TELEPHONE: (386) 761-6810
FAX: (386) 761-3977
EMAIL: qlha@qlha.com

October 27, 2014
REVISED

Mike Silvey
Interim Public Works Director
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

**RE: CITY OF PORT ORANGE
RYANWOOD SUBDIVISION ENTRANCE CULVERT REPLACEMENT**

Dear Mr. Silvey:

Per your request, Quentin L. Hampton Associates, Inc. (QLH) is pleased to offer this revised professional engineering services fee estimate for the services required for Ryanwood Subdivision Entrance Culvert Replacement.

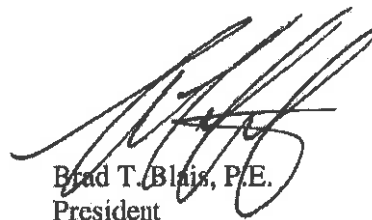
The work involves the replacement of the existing deteriorated culverts with a box culvert or other per City selection. Relocation/replacement of existing utilities is also included in the work.

Please review the enclosed and, if acceptable, forward a purchase order for the Notice to Proceed. We have included a draft of Addendum No. 29 for use on this project, if acceptable. Please contact our office if you have any questions.

Sincerely,
QUENTIN L. HAMPTON ASSOCIATES, INC.



Andrew M. Giannini, P.E.
Project Manager



Brad T. Blais, P.E.
President

AMG/BTB:kw

Enclosures: Cost Estimate, Addendum 29

cc: Kenny Ho, P.E., City of Port Orange
QLH files

**CITY OF PORT ORANGE
RYANWOOD SUBDIVISION ENTRANCE CULVERT REPLACEMENT
SCOPE OF SERVICES AND FEE ESTIMATE**

In accordance with the terms of the Continuing Engineering Services Agreement dated March 15, 1988 between the City of Port Orange, Florida (City) and Quentin L. Hampton Associates, Inc. (QLH) the following Scope of Services and Fee Estimate are agreed to by the parties of the Agreement:

SCOPE OF SERVICES: Provide design, permitting, and bidding assistance for the project as described below. Construction phase services will be addressed in a separate future work authorization.

BASIS OF DESIGN: For determining the scope of work and estimating the fees for such, the following assumptions have been made:

The project involves the total replacement of the existing deteriorated culvert crossing with a new concrete box culvert bridge to be located at the existing location. The design will meet the Federal/FDOT load rating required for the crossing. Traffic to/from the Ryanwood subdivision will be routed via a temporary road connection between Ryanwood and Herbert Street. The project will also include the relocation and/or replacement of the existing 6" water main, as required.

SCOPE OF WORK: Design deliverables will include 90% and 100% construction plans and specifications in accordance with SJRWMD, Volusia County and Port Orange requirements. QLH will prepare and submit application packages to SJRWMD and Volusia County for Environmental Resource Permit and Use Permit, respectively. QLH will also prepare and submit permit applications to VCHD for the water main work. QLH will respond to all reasonable RAI's. The City will be responsible for all permit application fees.

QLH will assist the City in bidding the project including drafting the legal advertisement, preparing City standard bidding documents, distributing bidding documents to bidders/plan rooms, addressing bidders' questions, attend pre-bid meeting, prepare and issue addenda as needed, attend bid opening, review bids, prepare certified bid tabulation, review low bidder's qualifications, provide recommendation of award letter and attend City Council meeting for bid award.

QLH will provide construction phase service as requested including shop drawing review, testing results review, field visits during construction (8 visits @ 2 hours each), and certification of completion.

ESTIMATED PROJECT COST: \$240,000

CITY'S PROPOSED PROJECT SCHEDULE:

QLH will strive to complete the project according to the following schedule. Upon authorization

Survey	30 days
90% Design	30 days
Permit Application Submittal/ Review/Revisions	Per SJRWMD/VC/VCHD Schedule
Bidding	Per City Schedule
100% Design	15 days following receipt of all comments from Agencies

SCHEDULE OF PAYMENT AND FEE BASIS:

<i>Work Description</i>	<i>Fee</i>
Survey (Sliger or Geo Services, Allowance)	\$1,500.00
Design/Permitting (Construction Cost x 5.3%)	12,720.00
Geotechnical Engineer Allowance	2,500.00
Bidding Assistance	2,500.00
Construction Phase Services	4,480.00
Permit Fee Allowances (VCHD \$950 + SJRWMD \$500)	1,450.00
Printing (allowance)	500.00
TOTAL ESTIMATED ENGINEERING FEE	\$25,650.00

If sales tax becomes due on professional services the City shall reimburse QLH for any applicable sales tax cost.

“PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF QUENTIN L. HAMPTON ASSOCIATES, INC. MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.”

Prepared by:
QUENTIN L. HAMPTON ASSOCIATES, INC.
-Consulting Engineers-
October 24, 2014

**CITY OF PORT ORANGE
 RYANWOOD SUBDIVISION ENTRANCE CULVERT REPLACEMENT
 CONSTRUCTION COST ESTIMATE**

Item	Description	Qty	Unit	Unit Price	Total Price
1	Mobilization, Dewatering, Environmental, Layout	1	LS	\$ 15,000.00	\$ 15,000.00
2	Construct temporary access for residents	1	LS	\$ 28,000.00	\$ 28,000.00
3	Demolish existing culvert and Road	1	LS	\$ 20,000.00	\$ 20,000.00
4	Relocate Utilities (water main crossing, etc)	1	LS	\$ 18,000.00	\$ 18,000.00
5	Dual 5' x 8' Box Culvert or equivalent	40	LF	\$ 600.00	\$ 24,000.00
6	Wingwalls	2	EA	\$ 5,000.00	\$ 10,000.00
7	Embankment	1	LS	\$ 10,000.00	\$ 10,000.00
8	Asphalt Pavement	250	SY	\$ 100.00	\$ 25,000.00
9	Restoration including removing temp access	1	LS	\$ 50,000.00	\$ 50,000.00
				Sub-Total	\$ 200,000.00
				Misc and General Conditions @ 20%	\$ 40,000.00
				TOTAL ESTIMATED CONSTRUCTION COST	\$ 240,000.00

Prepared by:
 QUENTIN L. HAMPTON ASSOCIATES, INC.
 -Consulting Engineers-
 October 24, 2014



CITY OF PORT ORANGE PIGGYBACK AGREEMENT

This Piggyback Agreement is entered to this ____ day of _____, 2015, by and between the **CITY OF PORT ORANGE**, a Florida municipal whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **QUENTIN L. HAMPTON ASSOCIATES, INC.** ("Contractor"), a Florida corporation whose principal address is 4401 Eastport Parkway, Port Orange, Florida (collectively "the Parties").

WHEREAS, on the 27th day of June, 2014, the County of Volusia ("County"), a body corporate and politic and a political subdivision of the State of Florida, entered into Contract No. 14-SQ-55KW a contract for consulting services for stormwater & environmental engineering with Quentin L. Hampton & Associates, Inc. with an effective date of June 27, 2014, for a term of three (3) years (the "Volusia County Agreement"). The Volusia County Agreement may be renewed by the County if the County determines the renewal is in the best interest of the County; and

WHEREAS, by entering into this Piggyback Agreement, Contractor agrees to honor the terms of the Volusia County Agreement for consulting services for stormwater & environmental engineering with the City of Port Orange; and

WHEREAS, a copy of the Volusia County Agreement is available in the Office of the City Clerk, City Hall, 1000 City Center, Port Orange, Florida 32129; and

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

For good and valuable consideration, conditions and promises, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Term.** The term of this Contract shall commence on the last date this Contract is signed by the Parties and shall continue for 180 days from the Notice to Proceed (the "Initial Term").
2. **Renewals.** This Contract may be renewed upon written agreement of the Parties.
3. **Contractor Obligation.** Contractor shall perform consulting services for stormwater & environmental engineering, more specifically described in Exhibit "1", attached hereto.
4. **Authorization for Services.** This Contract standing alone does not authorize the performance of any work or services to be provided by the Contractor 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 written Notice to Proceed issued and executed by the City and signed by the Contractor. The City reserves the right to contract with other parties for the services contemplated by this Contract, as determined in the City's sole and absolute discretion.
5. **City Obligations.** The City agrees to compensate Contractor at the unit costs set forth in Exhibit "1" of this Contract in an amount subject to a limit up to but not to exceed Twenty-Five Thousand Six Hundred Fifty and 00/100 Dollars (\$25,650.00) during 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. (The term "Fiscal Year" shall be defined as that one (1) year period commencing on October 1

and expiring on the following September 30). 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. Contract Administration. The Public Works Director, Branford Adumuah, shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

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

12. 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.

13. 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>	Coverage A - Statutory Coverage B - \$100,000	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
<u>Additional Coverage:</u>	All States (Broad Form) Voluntary Compensation	

Comprehensive General Liability (including Completed Operations and Contractual Liability)	<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>	Auto Liability Bodily Injury: \$100,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence.	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
<u>Additional Coverage:</u>		Non-Owned, Hired Car	
Property Insurance — Builders Risk.	<u>Limits:</u>	Buildings — Completed value of contract.	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.
<u>Additional Coverage:</u>		"All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	
Professional Liability (Errors & Omissions)	<u>Limits:</u>	Coverage- \$1,000,000 minimum	

14. 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.

15. 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. 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.

(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.

16. 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.

17. 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.

18. 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.

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 CONTRACT 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

(a) As may have been outlined in the Volusia County Agreement 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.

(b) For the purposes of this Contract, any reference in the Volusia County Agreement to "County of Volusia", shall be construed to mean the "City of Port Orange."

(c) In the event of a conflict between the Volusia County Agreement and this Contract, this Contract with the City of Port Orange shall control.

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: Branford Adumuah, Public Works Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

Contractor: Quentin L. Hampton Associates, Inc.
Attention: Brad T. Blais, P.E.
4401 Eastport Parkway
Port Orange, Florida 32127
(386) 761-6810 – Telephone
(386) 761-3977 – Facsimile

P.O. Drawer 290247
Port Orange, Florida 32129-0247

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]

Witnesses:

QUENTIN L. HAMPTON ASSOCIATES, INC.

Printed Name: _____

By: _____

Brad T. Blais, 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, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Brad T. Blais, as President of Quentin L. Hampton, Inc., a Florida corporation, and who:

[Notary: Please select one]

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

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Allen Green, Mayor

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Allen Green, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, 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:

[CA 4982]

CITY'S PROPOSED PROJECT SCHEDULE:

QLH will strive to complete the project according to the following schedule. Upon authorization

Survey	30 days
90% Design	30 days
Permit Application Submittal/ Review/Revisions	Per SJRWMD/VC/VCHD Schedule
Bidding	Per City Schedule
100% Design	15 days following receipt of all comments from Agencies

SCHEDULE OF PAYMENT AND FEE BASIS:

<i>Work Description</i>	<i>Fee</i>
Survey (Sliger or Geo Services, Allowance)	\$1,500.00
Design/Permitting (Construction Cost x 5.3%)	12,720.00
Geotechnical Engineer Allowance	2,500.00
Bidding Assistance	2,500.00
Construction Phase Services	4,480.00
Permit Fee Allowances (VCHD \$950 + SJRWMD \$500)	1,450.00
Printing (allowance)	500.00
TOTAL ESTIMATED ENGINEERING FEE	\$25,650.00

If sales tax becomes due on professional services the City shall reimburse QLH for any applicable sales tax cost.

“PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF QUENTIN L. HAMPTON ASSOCIATES, INC. MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.”

Prepared by:
QUENTIN L. HAMPTON ASSOCIATES, INC.
-Consulting Engineers-
October 24, 2014

**CITY OF PORT ORANGE
RYANWOOD SUBDIVISION ENTRANCE CULVERT REPLACEMENT
SCOPE OF SERVICES AND FEE ESTIMATE**

In accordance with the terms of the Continuing Engineering Services Agreement dated March 15, 1988 between the City of Port Orange, Florida (City) and Quentin L. Hampton Associates, Inc. (QLH) the following Scope of Services and Fee Estimate are agreed to by the parties of the Agreement:

SCOPE OF SERVICES: Provide design, permitting, and bidding assistance for the project as described below. Construction phase services will be addressed in a separate future work authorization.

BASIS OF DESIGN: For determining the scope of work and estimating the fees for such, the following assumptions have been made:

The project involves the total replacement of the existing deteriorated culvert crossing with a new concrete box culvert bridge to be located at the existing location. The design will meet the Federal/FDOT load rating required for the crossing. Traffic to/from the Ryanwood subdivision will be routed via a temporary road connection between Ryanwood and Herbert Street. The project will also include the relocation and/or replacement of the existing 6" water main, as required.

SCOPE OF WORK: Design deliverables will include 90% and 100% construction plans and specifications in accordance with SJRWMD, Volusia County and Port Orange requirements. QLH will prepare and submit application packages to SJRWMD and Volusia County for Environmental Resource Permit and Use Permit, respectively. QLH will also prepare and submit permit applications to VCHD for the water main work. QLH will respond to all reasonable RAI's. The City will be responsible for all permit application fees.

QLH will assist the City in bidding the project including drafting the legal advertisement, preparing City standard bidding documents, distributing bidding documents to bidders/plan rooms, addressing bidders' questions, attend pre-bid meeting, prepare and issue addenda as needed, attend bid opening, review bids, prepare certified bid tabulation, review low bidder's qualifications, provide recommendation of award letter and attend City Council meeting for bid award.

QLH will provide construction phase service as requested including shop drawing review, testing results review, field visits during construction (8 visits @ 2 hours each), and certification of completion.

ESTIMATED PROJECT COST: \$240,000

**CITY OF PORT ORANGE
 RYANWOOD SUBDIVISION ENTRANCE CULVERT REPLACEMENT
 CONSTRUCTION COST ESTIMATE**

Item	Description	Qty	Unit	Unit Price	Total Price
1	Mobilization, Dewatering, Environmental, Layout	1	LS	\$ 15,000.00	\$ 15,000.00
2	Construct temporary access for residents	1	LS	\$ 28,000.00	\$ 28,000.00
3	Demolish existing culvert and Road	1	LS	\$ 20,000.00	\$ 20,000.00
4	Relocate Utilities (water main crossing, etc)	1	LS	\$ 18,000.00	\$ 18,000.00
5	Dual 5' x 8' Box Culvert or equivalent	40	LF	\$ 600.00	\$ 24,000.00
6	Wingwalls	2	EA	\$ 5,000.00	\$ 10,000.00
7	Embankment	1	LS	\$ 10,000.00	\$ 10,000.00
8	Asphalt Pavement	250	SY	\$ 100.00	\$ 25,000.00
9	Restoration including removing temp access	1	LS	\$ 50,000.00	\$ 50,000.00
				Sub-Total	\$ 200,000.00
				Misc and General Conditions @ 20%	\$ 40,000.00
				TOTAL ESTIMATED CONSTRUCTION COST	\$ 240,000.00

Prepared by:
 QUENTIN L. HAMPTON ASSOCIATES, INC.
 -Consulting Engineers-
 October 24, 2014



FINANCIAL AND ADMINISTRATIVE SERVICES

Purchasing and Contracts

123 West Indiana Avenue • Room 302 • DeLand, FL 32720-4608

(386) 736-5935 • Fax (386) 736-5972

e-mail: purchasing@co.volusia.fl.us

www.volusia.org

July 7, 2014

PR-L-14-365

Mr. Brad Blais
Quentin L. Hampton Associates, Inc.
4401 Eastport Parkway
Port Orange, Florida 32127

RE: **Stormwater & Environmental Engineering**
RSQ # 14-SQ-55KW

Dear Mr. Blais:

Attached please find the executed contract document for the above-named project as approved by County Council on June 19, 2014.

If you need any further information or assistance, please contact our office at 386-626-6625 or kwilliams@volusia.org.

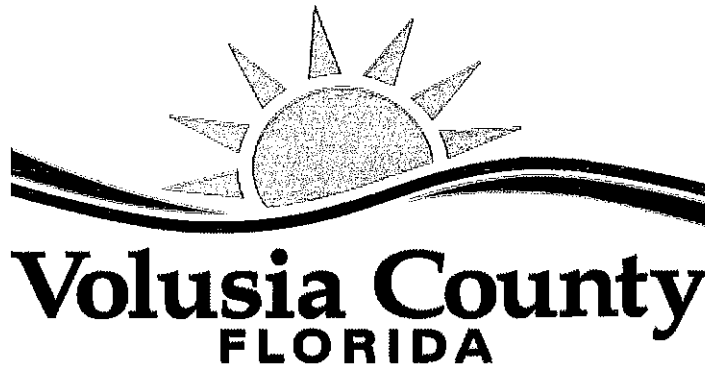
Sincerely,

Kathy Williams

Kathy Williams, MBA, CPPB
Procurement Analyst II

Enclosures

c: Judy Grim, Solid Waste
File



**CONTRACT FOR CONSULTING SERVICES
FOR
STORMWATER & ENVIRONMENTAL
ENGINEERING**

Between

THE COUNTY OF VOLUSIA

AND

QUENTIN L. HAMPTON & ASSOCIATES, INC

Contract No. 14-SQ-55KW

County of Volusia
Purchasing and Contracts Division
123 West Indiana Avenue, Room 302
Deland, Florida 32720-4608
www.volusia.org/purchasing

CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

This Contract made and entered by and between Quentin L. Hampton & Associates, Inc., duly authorized to conduct business in the State of Florida, whose principal place of business is located at 4401 Eastport Parkway, Port Orange, Florida, 32127 (hereinafter the "Consultant") and County of Volusia, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 (hereinafter "County").

RECITALS:

WHEREAS, the County requires a competent and qualified consultant to provide professional services in support of the County's operations; and

WHEREAS, the County has requested and received expressions of interest for the retention of services of consultants; and

WHEREAS, the County has determined that the Consultant is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual; and

WHEREAS, the County has determined pursuant to Florida Statutes 287.055 (a/k/a "Consultant's Competition Negotiation Act") and 337.105 that the Consultant is competent and qualified to furnish said services stated hereunder to the County and Consultant desires to provide professional services according to the terms and conditions hereunder, and

WHEREAS, it has been determined that the execution of this Contract is beneficial to the people of County of Volusia, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Contract, the receipt and sufficiency of which is acknowledged by the Consultant and County, the parties agree and stipulate as follows:

1. DEFINITIONS.

- 1.1. **Addendum:** A written explanation, interpretation, change, correction, addition, deletion, or modification of equal dignity herewith affecting the contract documents including drawing and specifications prepared by the Consultant, approved and issued by the County and/or distributed to third parties.
- 1.2. **Affidavit:** The instrument which is to be signed by the Contractor and submitted to the County upon the County's request through the Project Manager, upon completion of the job, showing that all bills have been paid. It shall also mean such instrument that may be requested by the County incidental to partial payments.
- 1.3. **Agency:** The state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under Sections 380.06 or 163.3220-163.3243 of the Florida Statutes.
- 1.4. **Amendment:** An amendment to an approved Task Assignment or this Contract in writing by the County, approved by the Director of Purchasing and Contracts, and signed by the County of equal dignity herewith authorizing an addition, deletion, or revision in the scope of work, or an adjustment in the Task Assignment price or the time for completion that is issued after execution

of the task assignment.

- 1.5. **Application for Progress Payment:** The current estimate form furnished and certified by the Consultant, which is to be used by Contractor in requesting progress payments.
- 1.6. **Architect:** A person or firm that is authorized to practice architecture pursuant to Florida Statute 481.299 or a general contractor who provides architectural services under a design-build contract authorized by F.S. 481.299(3).
- 1.7. **Architect/Engineer:** The design professional identified in the contract documents and who is licensed and registered in the State of Florida. The terms "Architect" and "Architect/Engineer (A/E)" means the architect/engineer or its authorized representative.
- 1.8. **Basic Contract:** This Contract between the County and the Consultant covering the services requested from a formal solicitation. Authorization for performance of services under the basic Contract shall be in the form of a written Task Assignment (see Task Assignment).
- 1.9. **Bid Documents:** The official forms on which the County requires formal bids to be prepared and submitted by the bidder.
- 1.10. **Calendar day:** Any day, including Saturdays, Sundays, and holidays, regardless of weather conditions.
- 1.11. **Change Order:** A written order to the Contractor signed by the County authorizing an addition, deletion, or revision in the work, or an adjustment in the contract price or time.
- 1.12. **Compensation:** The amount paid by the County to Consultant for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated which includes the total monies payable to the Consultant under a Task Assignment which includes all services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Task Assignment.
- 1.13. **Completion Date:** The date that the County or its designated representative approves and accepts all Work or Services for a Scope of Work in a Task Assignment or this Contract.
- 1.14. **Consultant:** The person or entity qualified to perform work under this Contract and any Task Assignment related thereto. In addition, Consultant must be a professional engineer or engineering firm, including an architect (or registered landscape architect, surveyor and mapper, professional engineer, architect or registered landscape architect providing professional services within the meaning of Section 287.055, F.S., who is registered in the State of Florida. In addition, the Consultant may be the Engineer or Architect or Landscape Architect of record or may provide services through and be subcontracted to the Engineer of record.
- 1.15. **Continuing contract:** A contract for professional services entered into in accordance with all the procedures of Section 287.055, F.S. between the County and a firm whereby the firm provides professional services to the County for projects for work of a specified nature as outlined in a this Contract and its associated Task Assignments as required by the County, with no time limitation except one governed by the termination provisions of this Contract and a Task Assignment.
- 1.16. **Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Contract.

- 1.17. **Contractor:** The person or entity qualified to perform work pursuant to Florida 489.105, F.S. under the Project and who is registered and licensed under the Florida Department of Business and Professional Regulation and in compliance with local laws or ordinances, other than a materialman or laborer, who enters into a contract with the County for improving real property in accordance with the Contract Documents.
- 1.18. **Contract Documents:** Contract documents shall include but are not limited to the following:
- (1) This Contract ("Basic Contract") and Exhibits;
 - (2) Task Assignments;
 - (3) Performance and payment bonds (if applicable);
 - (4) Letters of credit (*if applicable*);
 - (5) Certificates of insurance;
 - (6) Notice of Award and/or Notice to Proceed;
 - (7) The conditions of this Contract (general, special, supplementary, and other);
 - (8) Drawings;
 - (9) Project specifications;
 - (10) Written interpretations;
 - (11) Change orders;
 - (12) Project manuals;
 - (13) Addenda (including RSQs, RFPs and Consultant's responses to RFPs) issued before the execution of this Contract; and,
 - (14) Any valid modifications or Amendments to this Contract or Task Assignments issued after its execution of this Contract, and any Amendments to the foregoing.
- 1.19. **County Representative:** Also known as the Owner's representative who is the County Engineer or person designated by the County to review, approve and make decisions regarding the scope of work.
- 1.20. **County:** The County of Volusia, Florida, a political subdivision of the State of Florida for whom the work is to be performed.
- 1.21. **Deliverable:** The result(s) or end products or services of a Project or Task Assignment that meet the defined design or construction specifications, and functional parameters articulated in the Scope of Work for this Contract and a Task Assignment which, e.g., include but are not limited to: design drawings\specifications, structures, equipment, machinery, studies, reports, written documentation, training, systems or processes.
- 1.22. **Design criteria package:** Concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the Project.
- 1.23. **Design criteria professional:** A firm who holds a current certificate of registration under Chapter 481, F.S., to practice architecture or landscape architecture or a firm who holds a current certificate as a registered Engineer under Chapter 471, F.S., to practice engineering and who is employed by or under contract to the agency for the providing of professional Architect services,

Landscape Architect services, or Engineering services in connection with the preparation of the design criteria package.

- 1.24. **Drawings/Plans:** The official approved drawings or plans or exact reproductions thereof, which have been prepared, signed, sealed and dated by the Consultant, which shows the location, character, dimensions and details of the work to be done and which are considered part of the Contract Documents.
- 1.25. **Effective Date:** The date that this Contract, a Task Assignment, Addendum, Amendment, Modification is fully executed by Consultant and the County.
- 1.26. **Engineer:** The person, firm, or corporation named as such in the contract and/or authorized by the County to act as the County's representative or the County construction engineer authorized to practice engineering services pursuant to Florida Statute 471.03(2)(i)(2006) and who may serve as the County's engineers of construction, engineering and inspection. The term Engineer shall be synonymous with design architect/engineer or Architect/Engineer or Consultant.
- 1.27. **Engineer of Record:** The professional Engineer or engineering firm contracted or employed by the County and registered in the State of Florida who develops criteria and concept for the work, performs the analysis and is responsible for the preparation of the plans and specifications. The engineer of record may be County in-house staff or a Consultant retained by the County.
- 1.28. **Field Order:** A written instrument issued by the Consultant to the Contractor, which clarifies or interprets the drawings and technical specifications, and/or orders minor variations in the work, as opposed to a change in the work, and which does not involve an adjustment in contract price or time.
- 1.29. **Final Certificate of Payment:** A certificate for payment which shall constitute a representation of the Consultant to the County that the quantity of the work has been performed in accordance with the Contract Documents. The Consultant shall obtain from the Contractor(s) periodic waiver of liens and "no lien affidavits" at each payment
- 1.30. **Final Completion:** That date when (a) the Work is complete in accordance with the Contract Documents including the minor items identified during the final inspection, and (b) the Contractor has submitted its request for final payment including the Contractor's release and all Subcontractor affidavits.
- 1.31. **Firm:** Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.
- 1.32. **Inspector or Field Representative:** County Employee or an authorized representative of the Consultant assigned to make inspections of the work performed and materials furnished by the contractor.
- 1.33. **Modification:** A written Amendment to the Contract Documents approved by the County which includes but is not limited to the following:
 - 1.33.1. **Change Order:** A written order to the Contractor signed by the County authorizing an addition, deletion, revision in the Work, or an adjustment in the construction contract price or time issued after execution of the contract.
 - 1.33.2. **Field Order:** A written clarification, interpretation, minor change or alteration issued by the Consultant.

- 1.33.3. **Addenda:** A document written by the Consultant and approved by the County that is added to the original Contract Documents to clarify, revise, add to, or delete from the original Contract Documents or previous addenda. The document includes a written clarification or interpretation prepared by the Consultant.
- 1.34. **Notice of Award:** A written notice by County that the Consultant has been determined by a selection committee to be highly qualified and approved for an award of a contract.
- 1.35. **Notice to Proceed:** The official letter from the County to the Consultant establishing a date on which the Task Assignment will commence.
- 1.36. **Original Expiration Date:** The date that this Contract was originally intended to expire excluding any extensions or renewals of this Contract for a time certain.
- 1.37. **Owner:** The owner is Volusia County for whom all Work or Services under this Contract and any Task Assignment related thereto are performed by the Consultant.
- 1.38. **Pre-task Assignment/Conference:** The meeting scheduled by the County Project Manager of all the parties involved with the planning and execution of the Task Assignment(s).
- 1.39. **Professional Services:** 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.
- 1.40. **Project:** A fixed capital outlay study or planning activity described in the public notice of the County which includes the entire Scope of Work including the Scope of Work in any Task Assignment that shall be performed in accordance with the Contract Documents. A Project may include:
- 1.40.1. A grouping of minor construction, rehabilitation, or renovation activities.
- 1.40.2. A grouping of substantially similar construction, rehabilitation, or renovation activities.
- 1.41. **Project Manager or County Project Manager:** The County employee who is assigned to the Project and is responsible for the day-to-day administration and coordination of the Project for the County. The County may change the Project Manager at any time by providing notice to the Consultant and/or Contractor.
- 1.42. **Proposal:** The document submitted by the Consultant in response to a formal solicitation used to determine if the Consultant is highly qualified.
- 1.43. **Request for Information (RFI):** A prospective bidders' or Consultants' inquiries for information.
- 1.44. **Request for Statement of Qualifications (RSQ):** An invitation process initiated and used by the County to select contractor(s) or consultant(s) to perform work or provide services in a prospective project(s) based upon their apparent qualifications as submitted by them (respondents) in response to the invitation.
- 1.45. **Scope of Services/Work:** The general services/work, herein defined in this Contract, as well as the scope of work in a Task Assignment including responsibility for performing and complying

with all incidental matters pertaining thereto, as set out in the Task Assignment.

- 1.46. **Services:** Those services are the Professional Services of work or tasks as defined in Section 287.055, F.S. to be performed by the Consultant as provided for under this Contract and any Task Assignment which shall be performed by a duly licensed professional Engineer or Engineering firm, Architect or Architectural firm, Landscape Architect or Landscape Architectural firm, Surveyor, and/or Mapper who is registered in the State of Florida.
- 1.47. **Shop Drawings:** All diagrams, illustrations, brochures, schedules, and/or other data which are prepared by Contractor or Consultant, a subcontractor, manufacturer, supplier, distributor, or other person on behalf of the contractor, and which illustrate the equipment, material, or some portion of the work.
- 1.48. **Specifications:** The document that establishes the material and performance requirements of goods and services.
- 1.49. **State:** State of Florida.
- 1.50. **Subconsultant:** A person other than a materialman or laborer who enters into a contract with a Consultant for the performance of any part of the Basic Contract.
- 1.51. **Sub-subconsultant:** A person other than a materialman or laborer who enters into a contract with a sub-consultant for the performance of any part of such sub-consultant's contract.
- 1.52. **Substantial Completion:** The date as certified by the County's Project Manager when the Task Assignment or Project or a specified part as agreed to in writing by the parties is sufficiently completed to the satisfaction of County or its designated representative, in accordance with the Contract Documents, so that the project or specified part can be utilized for the purposes for which it was intended; or if there be no such certification, the date when final payment is due in accordance with the applicable Task Assignment.
- 1.53. **Task Assignment:** Specific, detailed services or work placed against an awarded and established continuing services Contract memorialized as an Amendment to this Contract by the parties prior to the commencement of such Work or Services by the Consultant.
- 1.54. **Work:** Any and all obligations, Services, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by Consultant under the Contract Documents, including the furnishing of all labor, materials, equipment and other incident.

- 2. **ORDER OF PRECEDENCE.** In the event of any inconsistency between this Contract and a Task Assignment and its attached documents or exhibits regarding the Scope of Work and the amount of Compensation paid to a Consultant, the Task Assignment and its attached documents or exhibits shall be controlling. For all other inconsistencies between this Contract and a Task Assignment and its attached documents or exhibits, this Contract shall be controlling.

3. SCOPE OF WORK.

- 3.1. **General Scope of Services.** The following general Scope of Services shall be governed by Section 3.2 of this Contract. The Consultant shall provide services under this Contract in accordance with the Scope of Services set forth in Exhibit "B".
 - 3.1.1. Provide all certifications ("Engineer of Record"), calculations, drawings, and any other documents required for special permits and authorizations from various government

bodies or agencies having jurisdiction over the project except for those permits that the County is responsible to provide to the consultant such as environmental surveys/permits, wetland identification surveys, traffic impact studies, property surveys, geotechnical studies/reports and quality control testing;

- 3.1.2. Prepare a time scaled diagram (Design Schedule) showing the proposed dates of completion of various design phases and scheduled completion of working drawings and technical specification manuals; submit the design schedule for County Project Manager's review and approval;
- 3.1.3. Obtain at least three quotes from subcontractors if any part of the Task Assignment requires a subcontractor to perform the Work;
- 3.1.4. Evaluate proposals furnished by the Contractor or a construction management firm, if requested by the County. Cooperate with and facilitate the performance of duties of a construction manager, if so required by the County;
- 3.1.5. The Work or Services to be rendered by the Consultant shall be commenced, as specified in the Task Assignments as may be issued hereunder, and shall be completed within the time specified therein;
- 3.1.6. If specified in a Task Assignment, furnish consultation and advice during the construction of a project and perform construction administration or commissioning services;
- 3.1.7. Furnish all other architectural/engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in the Task Assignment:
 - 3.1.7.1. **Investigation Phase.** Consultant shall visit the project site, initiate and hold project meetings as may be necessary to develop the design and preliminary sketches of the contemplated project. The Task Assignment shall specify the required number of visits necessary for the Consultant to design/develop construction plans and technical specification. The Consultant shall confer with the project manager to ascertain the number of site/project meetings. The number of site visits and/or project meetings shall depend upon the complexity of the project.
 - 3.1.7.2. **Design/Construction Plans and Specification.** Consultant shall submit design development documents and estimates of the approved design to the County for review. Each plan package and its component parts shall be prepared in accordance with the Task Assignment. The plans shall be of sufficient detail indicating floor plan layout, elevations, outline specifications, to illustrate the size and character of the entire project in its essentials as to kinds of material, type of structure, mechanical and electrical systems (if applicable), site work, and such other work as may be necessary for a completely functioning project. Consultant shall submit a cost estimate, if requested, or opinion estimate for this phase of the work for review and approval by the County. The estimate shall include, as required for the project, the identification of costs for heating, ventilation, plumbing, air conditioning, electrical lighting and power.
 - 3.1.7.3. Notwithstanding, Section 3.1.7.2, Consultant shall submit a cost estimate, if requested, or opinion estimates during each phase of the work. Estimates shall be submitted between 30, 60, and 90 percent, and again at the 100 percent stage of completion or as specified in the Task Assignment. Each estimate will

be utilized to review the Scope as may be necessary to complete the project within the construction budget. In the event that the project construction cost estimate exceeds the construction budget as set forth above, consultant shall, after review and upon written request of the County at Consultant's direct labor rates, pursuant to 3.2.6.1, continue to revise any or all of the project design, drawings, specifications, and estimates in a manner satisfactory to the County, until the revised estimate conforms to the County's budget. Consultant shall submit to the County for review the required number of sets of the contract plans, the latest cost estimate, and complete specification books as specified in the Task Assignment.

- 3.1.7.4. Each 100% final construction plan package shall be accurate, legible, complete in design, and suitable for public bidding purposes. Construction drawings shall meet the following minimum plans and design documentation packaging requirements:

- 3.1.7.4.1. Cover/Key Sheet
- 3.1.7.4.2. Summary of Pay Items, if applicable
- 3.1.7.4.3. Reference Points, if applicable
- 3.1.7.4.4. Typical Sections
- 3.1.7.4.5. Miscellaneous Detail Sheet

- 3.1.7.5. Consultant shall also prepare final construction drawings and technical specifications suitable for inclusion in a County prepared bidding package. The construction documents shall be prepared at the drawing scales specified in the Task Assignment for the development of the following elements:

- 3.1.7.5.1. Statement of probable costs of the project
- 3.1.7.5.2. Layout/site plan
- 3.1.7.5.3. Grading and drainage plans
- 3.1.7.5.4. Technical specifications that define materials appropriate for construction

- 3.1.7.6. Following the approval of design development documents and estimates of cost by the County, Consultant shall prepare construction Contract Documents that include plans, suitable for reproduction for the project in complete detail as per the Task Assignment.

- 3.1.7.7. **Completed Plans, Specifications, Documents, and Cost Estimate.** Upon completion and final approval by the County of the plans, specifications, other Contract Documents, and detailed construction cost estimates and/or opinion estimate of construction cost per task assignment, Consultant shall deliver to the County in the medium and number of copies specified in the Task Assignment the following:

- 3.1.7.7.1. Any data or field notes obtained pertaining to the project, including data and field notes obtained from additional surveys;
- 3.1.7.7.2. Complete final approved original tracings or electronic files of contract plans;
- 3.1.7.7.3. Typed masters or electronic files of Contract Documents, other than plans, suitable for reproduction on 8" x 11" paper; and

3.1.7.7.4. The last cost or opinion estimate of the construction cost in detail for approval by the County.

3.1.7.8. **Permitting Phase Services.** If required in the Task Assignment, Consultant shall be responsible for applying and assisting the County in securing all applicable permits; for preliminary coordination with the County and other appropriate regulatory agencies so that the design efforts are properly directed towards permit approval; for preparing and submitting permit packages based on preliminary coordination with the County; and for other appropriate regulatory agency requirements under the County's name at the time of submittal. Consultant shall include in the permit packages the site and system design information required by the County and other regulatory agencies, applicable sketches and calculations. Consultant shall respond to the requests of the County and other regulatory agencies concerning the submitted information; report to the County any requests for information not required at the time of permit submittal, as made known during the preliminary coordination; reproductions in excess of requirements; or regulation changes requiring permit resubmission. County shall be responsible for the permitting fees. The County, however, will not pay a fee to the Consultant when the Consultant is required to resubmit a permit package to a regulatory agency so as to address deficiencies, omissions, or corrections to the original permit package that are not attributable to changes in rules made by the regulatory agency after submission of the original permit package. Consultant shall attend the appropriate number of office and field meetings necessary for the preliminary coordination as set forth in a Task Assignment.

3.1.7.9. **Bidding Phase.** Consultant shall attend the pre-bid conference meeting at the location selected by the County. Consultant shall answer questions, as applicable, and take minutes as necessary for a written response; provide plan and specification clarification and prepare addenda to be issued by the County; review and evaluate bid packages from each respondent; and summarize in writing his/her recommendation based on the definition of responsive and responsible as defined in the Contract Documents.

3.1.7.10. **Construction Phase Services.** Consultant shall visit the project site, including attending job construction meetings, during construction to monitor the progress, quality of the work, and that the work is proceeding in accordance with the construction Contract Documents. During such visits, Consultant shall make reasonable efforts to protect the County against defects and deficiencies in the work of the contractors by informing the County Representative the work does not, in their opinion, conform to the Contract Documents. Consultant shall keep the County informed of the progress and quality of the work by submitting a written report of each visit. As part of the site visits, if required for the project, the Consultant's mechanical and electrical engineers shall also visit the project site and attend job construction meetings as requested to determine if the mechanical and electrical work is proceeding in accordance with the construction Contract Documents. Task Assignment shall specify the required number of visits necessary for the Consultant to monitor the progress and quality of work. Consultant shall perform the following tasks, including, but not limited to, assisting the County during the construction to verify that the project is completed in general conformance with the construction Contract Documents.

3.1.7.10.1. **Preconstruction Conference:** Consultant shall prepare the agenda,

if requested; attend the County's preconstruction conference meeting; prepare and submit notes of the meeting.

3.1.7.10.2. **Design Clarification Responses:** Consultant shall provide technical interpretation of the plans/drawings, specifications, and Contract Documents; evaluate requested deviation from the approved design or specification; and review and respond to requests for information (RFI) from the Contractor. Consultant shall prepare supplementary sketches as may be necessary for clarification of construction plans and assist in resolving actual field conditions encountered.

3.1.7.10.3. **Site Visits:** Consultant shall visit the job site to monitor the progress and quality of the work and determine, in general, if the work is proceeding in accordance with the intent of the Contract Documents including site visits for both substantial and final completion for each project. The Consultant shall route all job correspondence to the Contractors through County.

3.1.7.10.4. **Pay Request Review:** Consultant shall determine based on the observations and surveillance, as set forth above and on the evaluation of the Contractor's progress payment requests, the amount owed to the Contractor(s) and transmit the Contractor's payment requests to the County with recommendation for payment in accordance with the terms and conditions of the Contract Documents. The Consultant shall conduct visits to the project as necessary to determine the dates of Substantial and Final Completion and shall issue to the County a Final Certificate of Payment. Such certificate for payment shall constitute a representation of the Consultant to the County that the quantity of the work has been performed in accordance with the Contract Documents. The Consultant shall obtain from the Contractor(s) periodic waiver of liens and "no lien affidavits" at each payment. Additionally, at completion of the project, Consultant shall obtain from the Contractor(s) final waiver of lien, final "no lien affidavits," and final affidavit of release of liens prior to certification of Final Payment.

3.1.7.10.5. **"As-Built":** The Consultant shall prepare record drawings by reviewing and considering information or drawings provided by the contractor; revise original design drawings of the project and submit to the County hardcopy and an electronic file of the record drawing using information supplied by Contractor.

3.1.7.10.6. **Shop Drawing Review:** The Consultant shall review shop drawings and other data that the Contractor is required to submit. Consultant shall examine for compliance with design concept and recommend to County, approval or rejection of shop drawings and of material and equipment submitted as qualified for use in the project, based on literature and samples supplied by the Contractor through the County. Consultant shall submit to the County original drawings that will reflect all amendments to the Contract Documents. Consultant shall prepare any necessary change orders and assemble written guarantees required of the Contractors.

3.1.7.10.7. **Project Close-Out:** The Consultant shall make final review of construction to determine if work was completed in general conformance of the construction contract documents; assist in the preparation of final "punch list" when the project is substantially completed; assist in negotiating the final payment for construction; and submit a final letter report upon which final settlement and contract closeout can be based. If required, prepare and submit to Florida Department of Environmental Protection (FDEP) or Department of Health for approval, the FDEP certificate of completion of construction for both water and sewer.

3.1.7.11 **Deliverables.** Submit final design plans and support documents to the County for review and approval at specified junctures in the medium and number of copies specified in the Task Assignment. If required in the Task Assignment, each plan set submitted shall have the percentage completed for those submittals clearly indicated on the first sheet of each set of plans.

3.2. **Performance Criteria:**

- 3.2.1. All Work or Services shall be performed in accordance with the Contract Documents and shall be approved by the County in writing prior to commencing any Work or Service(s) described herein or in a Task Assignment.
- 3.2.2. This Contract standing alone does not authorize the performance of any Work or Services to be provided by the Consultant or require the County to place any orders for Work or a Service. Authorization for performance of professional services by the Consultant under this Contract shall be in the form of written Task Assignments issued and executed by the County and signed by the Consultant. A sample Task Assignment is attached hereto as Exhibit "A". Each Task Assignment shall describe the Services required, state the dates for commencement and completion of the Work, and establish the amount and method of payment.
- 3.2.3. Notwithstanding the General Scope of Work and Services provision in Section 3.1., the Scope of Work for a Project shall be set forth with specificity and describe in detail all specifications, plan requirements, deliverables, additional performance criteria, maximum not-to-exceed compensation, the commencement and completion dates, materials, equipment, testing and any other item or criteria required to complete the Work or Services in the Task Assignment. Each Task Assignment shall relate to the General Scope of Work and Services in Section 3.1 and shall supplement this Contract and be made a part thereof.
- 3.2.4. All materials and labor necessary to complete a Task Assignment shall be furnished by the Consultant unless the Contract Documents state otherwise. Said materials shall be of good quality and as specified in the Contract Documents; and all work and labor will be performed, pursuant to Section 7.3.5, to the satisfaction of the County.
- 3.2.5. The Consultant shall provide the services required herein strictly in an independent contractor relationship with the County and, except as expressly set forth herein, is not, nor shall be, construed to be an agent or employee of the County. For each purpose related to this Contract and each Task Assignment, Consultant and contractors, subcontractors or subconsultants shall be independent contractors with respect to the County and nothing herein shall create any association, partnership, joint venture or agency relationship between them. The County shall not provide vehicles or equipment

to the Consultant to perform the duties required by a Task Assignment under this Contract nor will the County pay for any business, travel, office or training expense or any other contract performance expense not specifically set forth in the scope of services of a Task Assignment. The Consultant is not exclusively bound to the County and may provide service to other private and public entities as long as the service by the Consultant for such entities does not conflict with the Consultant's services to the County in any Task Assignment.

- 3.2.6. As applicable to each Project performed by the Consultant during the term of this Contract or Task Assignment, the County may at any time, by written order, make changes within the general scope of a Task Assignment and the Work and/or Services to be performed through Amendments to the Task Assignment. Except as provided in this Contract otherwise, if any such change causes an increase or decrease in the Consultant's cost of, or the time required for performance of, the Project Work or Services, an equitable adjustment shall be made and this Contract shall be amended through the Amendment of the Task Assignment in writing stating the equitable adjustment prior to the commencement of Work covered by the equitable adjustment. Any claim by the Consultant for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change unless the County grants in writing an additional period of time before the completion of the Contract; otherwise, the claim shall be deemed waived. The Consultant shall proceed with the prosecution of the Work or Service as changed. Except as otherwise provided in this Contract, no charge for any extra work or materials shall be allowed or approved by the County.

- 3.2.6.1. **Changes to Scope of Work.** Either party may propose changes to the scope or time schedule of the Work or Services under a Task Assignment which shall be submitted to the other party in writing for consideration of feasibility and the likely effect on the cost and schedule for performance of the Work or Services. The parties shall mutually agree upon any proposed changes, including resulting equitable adjustments to costs and schedules for the performance of the Services. The agreed changes shall be documented in one (1) or more Amendments to the Task Assignment signed by the County and Consultant prior to the commencement of Work or Services covered by the equitable adjustment. If, despite good faith negotiations, the parties are unable to agree to the terms of an Amendment to a Task Assignment, the parties shall follow the dispute resolution process provided under Section 18.

- 3.2.7. **Time is of the Essence.** Time is of the essence for each Task Assignment issued under this Contract and all Projects performed in accordance herewith.

- 3.2.8. County and Consultant shall exhaust all methods to resolve issues, including but not limited to, the dispute resolution procedures in Section 18 of this Contract before any action is taken to declare the County or Consultant in default of this Contract.

4. TERM OF CONTRACT.

- 4.1. Subject to Section 4.2, the Term of this Contract shall commence on the Effective Date of this Contract or when it is fully executed by all parties and shall terminate three (3) years from the Effective Date. Except as provided in Section 4.2 the expiration of the term of a Task Assignment issued under this Contract shall have no effect upon this Contract. This Contract may be renewed by the County if the County determines that renewal is in the best interest of the County and satisfies the requirements of Section 287.055, F.S. Said renewal shall be in writing and made a part of this Contract and shall incorporate this Contract by reference.

- 4.2. All Task Assignments issued under this Contract shall terminate at the expiration of the term of the Task Assignment, unless amended in writing by the parties, or the term of this Contract, except if a Task Assignment issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion Date of said Task Assignment, including any Amendments thereto, and after all Work or Services under the Task Assignment have been approved and accepted by County's Project Manager. As such, the obligations entered therein by both parties under this Contract and said Task Assignment shall remain in full force and effect until completion of all Work or Services performed under this Contract and/or the Task Assignment.
- 4.3. The Work or Services to be rendered by the Consultant shall be commenced, as specified in the Task Assignments as may be issued hereunder, and shall be completed within the time specified therein.
- 4.4. No new or additional Task Assignments shall be issued after the Original Expiration Date of this Basic Contract. The extension of this Contract to coincide with the completion of an existing Task Assignment issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the County or the Consultant to enter into a new or additional Task Assignment after the original expiration date of this Contract, unless this Contract is renewed prior to entering into an Contract for a new or additional Task Assignment.

5. CONTRACT PRICE AND COMPENSATION.

- 5.1. For Work, Services, or each separate Project performed under a Task Assignment during the term of the Contract, the Consultant shall be paid Compensation for all Work or Services performed in a Task Assignment, including labor and materials on a "fixed fee," "time and materials", "cost-plus-a-fixed-fee" or "guaranteed maximum-not-to-exceed" basis as applicable in the Task Assignment. The Task Assignment shall state the method of Compensation.
 - 5.1.1. Regardless of the method of Compensation, e.g., "fixed fee", "time and materials", "cost-plus-a-fixed-fee" or "guaranteed maximum-not-to-exceed" basis, Compensation shall not be adjusted because of errors or omissions which are not the fault of the County in computing the Project or Task Assignment costs which result in an increase in the cost of the Task Assignment or because the time for completion varies from the original estimate, including completion or substantial completion of the Task Assignment prior to the scheduled or Contract or Task Assignment completion date or on account of County's election to furnish any of the Work or Services. In addition, Consultant shall certify in the Task Assignment that the original contract price or Compensation for a Project or Task Assignment and any additions thereto shall be adjusted to exclude any significant sums by which the County determines the contract price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
 - 5.1.2. **Reimbursable Expenses:** Subject to the County's Travel and Reimbursement Policy, Sections 112.061 (7) and (8), Florida Statutes, or their successor, reimbursable expenses include actual and verifiable expenditures without any mark-up made by the Consultant or Consultant's employees and/or agents that directly relate to the Task Assignment and to the expenses listed in the following subparagraphs:
 - 5.1.2.1. Expenses of transportation, when traveling is directly related to the Project and necessary, based on and in accordance with the Scope of Work of a Task Assignment;

- 5.1.2.2. Long distance calls and telegrams;
 - 5.1.2.3. Fees paid for securing approval of authorities having jurisdiction over the tasks of the Project or Task Assignment;
 - 5.1.2.4. Expenses of reproductions;
 - 5.1.2.5. Postage and handling of drawings and specifications;
 - 5.1.2.6. Any other expenses related to the Project; and
 - 5.1.2.7. If authorized in the Task Assignment, the cost of other expenditures made by the Consultant that relate directly to the Scope of Work in the Task Assignment.
- 5.1.3. **Truth-in-Negotiation Certificate.** For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or Compensation in a Task Assignment over \$150,000.00, Consultant shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation are accurate, complete, and current at the time of contracting. Any Professional Service contract or Task Assignment under which such a certificate is required must contain a provision that the original contract price or Compensation and any additions thereto will be adjusted to exclude any significant sums by which the County determines the contract price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or Compensation adjustments must be made within one (1) year following the end of the contract. Otherwise, such adjustments shall be deemed waived by the Consultant and null and void for the purposes of this Contract or the Task Assignment. The signature on this Contract by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
- 5.1.4. **Fixed Fee or Price & Guaranteed Maximum-Not-To-Exceed Compensation.** The total Fixed Fee or Price and Guaranteed Maximum-Not-To-Exceed Compensation for a Task Assignment shall be comprised of the total cost of the project, including all design engineering, materials, machinery, equipment, labor, temporary construction, capital spare parts, reimbursable expenses, all mark-ups for overhead and profit. In addition, the Task Assignment shall state with specificity the commencement and completion dates, all materials, contingency and escalation allowances, any and all expenses (including those referenced in Section 5.1.2 herein), and all other items of cost necessary to complete the Task Assignment, whether furnished by County, Consultant, third parties, or others. A Scope of Work for a Task Assignment specifying Compensation on guaranteed maximum-not-to-exceed basis shall allocate the guaranteed maximum-not-to-exceed price or Compensation among, and provide for payments against specified deliverables and performance.
- 5.1.5. **Retainage.** The County shall have the right to withhold retainage from Compensation paid to a Consultant. Should the County decide that retainage shall be withheld from Compensation, the amount to be retained from each payment to the Consultant shall be:
- A. ☐ % of the total contract price.
 - B. ☐ % of each payment of a milestone payment based on a Project milestone

schedule.

C. ☒ No retainage will be taken.

The County shall have the right to withhold retainage from Compensation paid to a Consultant. Should the County decide that retainage shall be withheld from Compensation; the amount to be retained from each payment to the Consultant shall be stated in the Task Assignment. The retainage shall be included with the final payment after all Work or Services for the Task Assignment have been approved and accepted by the County and all disputed invoices have been resolved by the parties. The County shall never be required to pay an amount that would leave unpaid from the contract price or Compensation an amount less than the amount County would need to have in order to pay another Consultant to complete the Work or Services should Consultant fail to complete the Work in a Task Assignment remaining incomplete as of that date.

5.1.6. **Payments.**

5.1.6.1. **Punch List.** If County, in its reasonable discretion, does not consider a Project substantially complete, the County shall notify Consultant in writing giving the reasons. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment, and the certificate shall state the time within which those items shall be completed or corrected, the time to be within the contract time. Disputes regarding payments shall be resolved through the dispute resolution procedure articulated in Section 18 of this Contract.

5.1.6.2. **Approval of Final Payment.** If, on the basis of the County Project Manager's observation and review of Consultant's Work or Services performed during the Task Assignment, final inspection and review of the final application for payment and the County Project Manager's satisfaction that the work has been completed and Consultant has fulfilled all of its obligations under the Contract Documents, County Project Manager, after receipt of the final application for payment, indicate in writing his or her approval of payment and present the application to Accounts Payable for payment. Otherwise, the County Project Manager shall return the application to the Consultant, indicating in writing the reasons for refusing to approve final payment, in which case the Consultant will make the necessary corrections and resubmit the application.

5.1.6.3. **Invoice Detail.** Regardless of the method of compensation, e.g., "fixed fee", "time and materials", or "guaranteed maximum not-to-exceed" basis, the Consultant shall submit an invoice for which Professional Services were rendered to the County in response to its request therefore upon the completion and acceptance of the services detailed in Section 3.1 herein. Each invoice shall show detailed explanations of the services accomplished by labor hours by classification, associated rates, any material or subcontracted costs and any indirect rates or costs in accordance with the prices set forth in a Task Assignment. All of the above shall sum to the total amount requested.

5.1.7. **Invoices.** Invoices or payment requests shall be addressed by Consultant and submitted to the County's Project Manager. The Consultant shall submit:

A. ☒ A monthly statement for Professional Services rendered to the date of the

statement subject to Section 5.1.5. The monthly statements shall reflect the Work or Services actually completed at the time of billing.

- B. ☐ A Final Statement for each County requested Project indicating the Work or Services actually completed after final acceptance of said Work or Services by the County. The Consultant's determination of the Work or Services actually completed is to be prepared by the Consultant, and accompanied by such supporting data as may be required by the County Project Manager. County Project Manager shall review the Consultant's statement and notify the Consultant in writing within twenty (20) business days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.

- 5.1.8. For each Task Assignment, Consultant shall submit a monthly statement for Professional Services rendered to the date of the statement. The monthly statements shall reflect the Work or Services actually completed at the time of billing. The Consultant's determination of the Work or Services actually completed is to be prepared by the Consultant, and accompanied by such supporting data as may be required by the County Project Manager. County Project Manager shall review the Consultant's statement and notify the Consultant in writing within twenty (20) days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.
- 5.1.9. The County may withhold payment of any specific invoiced charges in a pay request or monthly statement which it disputes in good faith and pay all undisputed charges on the invoice, pay request or monthly statement.
- 5.1.10. Within forty-five (45) days of acceptance by the County Project Manager of all the Work or Services for which Consultant has submitted the monthly statement of professional services, the Consultant shall be paid the unpaid balance of any money due for any undisputed Work or Services covered by said statement. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Part VII of Chapter 218 Florida Statutes, as amended.
- 5.1.11. **Taxes.** County is a tax exempt entity and shall not be charged or invoiced for the payment of taxes for Work or Services performed under this Contract.
- 5.1.12. Pursuant to the terms and conditions articulated in this Contract, an appropriate fee shall be negotiated for each specific Project or Task Assignment to be performed under this Contract and such fee shall be stipulated, together with the Scope of Work for each Task Assignment or project, in separate Task Assignments to this Contract.
- 5.1.13. **Consultant's Continuing Obligations.** Consultant's obligation to perform the Work or services and complete the Task Assignment in accordance with the Contract Documents shall be absolute. Neither approval of any progress nor final payment to Consultant, nor the issuance of a certificate of substantial completion, nor any payment by County to Consultant under the Contract Documents nor any act of acceptance by the County nor any failure to do so, nor any correction of defective work by County shall constitute an acceptance of Work or Services not in accordance with the Contract Documents.

6. TERMINATION.

- 6.1. The performance of Work or Services under this Contract may be terminated for convenience or

non-appropriation of funds by the County in accordance with this clause in whole or from time to time in part, upon at least thirty (30) days prior written notice to Consultant whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Consultant of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the subsequent date upon which such termination becomes effective.

- 6.2. Upon receipt of such notification, Consultant shall inform County of the extent to which performance is completed and unless notified in writing by the County otherwise, the Consultant shall take no further steps towards completion of the Project. Upon payment by County, Consultant shall deliver to County any and all completed Deliverables and Deliverables-in-progress that then exist for all outstanding Projects. If the County terminates any Project due to the Consultant's failure to meet a completion deadline as set forth in Section 7 herein, the County may seek the services for the Project from another Consultant. Payment will be made to the Consultant pursuant to 6.3.15.
- 6.3. After receipt of a Notice of Termination as set forth in Section 6.1 above, and except as otherwise directed by the County, the Consultant shall:
 - 6.3.1. Stop work under the Contract or Task Assignment on the date and to the extent specified in the notice of termination.
 - 6.3.2. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract or Task Assignment, as it is not terminated.
 - 6.3.3. Terminate all orders and subcontracts pursuant to Article 6 to the extent that they relate to the performance of Work or Services terminated by the notice of termination.
 - 6.3.4. Assign to the County, in the manner, at the times and to the extent directed by the County, all of the right, title, and interest of the Consultant under the orders and subcontracts so terminated, in which case the County shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - 6.3.5. With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts. County's approval of such settlements shall be final for all the purposes of Section 6. In addition, Consultant shall transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County:
 - 6.3.5.1. Sketches, calculations, reports, models, studies and other Work-in-process, completed Work or Services, supplies, and other materials produced as a part of, or acquired in connection with the performance of the Work or Services terminated by the notice of termination; and,
 - 6.3.5.2. Completed or partially completed designs, plans, drawings, information, and other property, which, if had been completed, would have been required to be furnished to the County.
 - 6.3.6. Complete performance of such part of the Work or Services as shall not have been terminated by the notice of termination.
 - 6.3.7. After receipt of a notice of termination, the Consultant shall submit to the County its

termination claim, in the form and with a certification as prescribed by the County. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one (1) or more extensions in writing are granted by the County, upon request of the Consultant made in writing within such thirty (30) day period or authorized extension thereof. Upon failure of the Consultant to submit its termination claim within the time allowed, the County may determine on the basis of information available to it, the amount, if any, due to the Consultant by reason of the termination and shall there upon pay to the Consultant the amount so determined.

6.3.8. Subject to the provisions of Section 6.3.7., the Consultant and the County may agree upon the whole or any part of the amount or amounts to be paid to the Consultant by reason of the total or partial termination of work pursuant to Article 6 which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price or Compensation as reduced by the amount of payments otherwise made and as further reduced by the contract price of Compensation for Work not terminated. As such, the Contract shall be amended accordingly and the Consultant shall be paid the agreed amount. Nothing herein, prescribing the amount to be paid to the Consultant in the event of failure of the Consultant and the County to agree upon the whole amount to be paid to the Consultant by reason of the termination of Work or Services pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Consultant.

6.3.9. In the event of the failure of the Consultant and the County to agree as provided in 6.3.8. above upon the whole amount to be paid to the Consultant by reason of the termination of Work pursuant to Article 6, the County shall pay to the Consultant the amounts determined by the County as follows, but without duplication of any amounts already agreed upon by the parties.

6.3.9.1. For completed Work or Services accepted by the County, the price or prices or Compensation specified in the Task Assignment for such work, less any payments previously made.

6.3.9.1.1. Notwithstanding Section 5.1.4., the total compensation shall include the total of the following:

6.3.9.1.1.1. The costs incurred by the Consultant in the performance of the Work and Services terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the Work and Services paid or to be paid for under Section 6.3.9.1. hereof;

6.3.9.1.1.2. The cost of settling and paying claims arising out of the termination of Work or Services under subcontracts or orders as provided herein, which are properly chargeable to the terminated portion of the Contract exclusive of amounts paid or payable on account of work or services delivered or furnished by subconsultants or Sub-subconsultants prior to the effective date of termination, which amounts shall be included in the costs payable herein; and,

6.3.10. This Contract or a Task Assignment may be terminated by Consultant if Consultant

provides a minimum of thirty (30) days written notice to the Director of Purchasing. In the event Consultant breaches any of the terms and conditions of this Contract or Task Assignment, and after receipt of notice from County of said breach and time to cure the same the Consultant fails to cure the breach, the County may take over the Work and Services and complete the same by Task Assignment; or otherwise, the Consultant shall be liable to the County for any increased cost of the Project reasonably incurred by the County in the process of completing the Consultant's unfinished Work and Services.

As such, County may apply unpaid Compensation due and owing to Consultant prior to the default as a set off against the costs incurred by the County for taking over such Work or Services.

6.3.11. In the event that there is a partial termination of this Contract or a Task Assignment by the County or Consultant because of non-appropriation by County, subject to Section 4 - Term of Contract and Section 5 - Contract Price and Compensation, Consultant shall be paid in accordance with terms of this Section 6, to the date of termination on a prorated basis for any task, milestone, or Deliverable started but not completed which were designated for payment on a payment schedule provided to the County prior to the commencement of work on the task, milestone or Deliverable which is the subject of the partial termination. County's obligation to pay Consultant under this Contract or Task Assignment is limited to the budgeted amount for the fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 5-Contract Price and Compensation. Consultant and County shall be obligated to continue performance under this Contract for the work or services within the Scope of Work or Services under this Contract which is not the subject of the partial termination by non-appropriation.

6.3.12. If termination of this Contract or Task Assignment occurs for any reason:

6.3.12.1 The County shall continue to have the unfettered right to use or access any license, designs, plans, or exhibits, any of the Deliverables or work products from tasks or milestones, arising under that Contract or Task Assignment and produced pursuant to the Contract Documents for which the County has paid prior to termination of this Contract or Task Assignment or for which County makes payment after termination of this Contract or Task Assignment.

6.3.13. Except as otherwise provided in this Contract, Consultant shall return to the County all County confidential information in Consultant's possession and Consultant shall certify in a written document signed by the Consultant that all such information has been returned.

6.3.14. Except as provided in Section 6.3.12.1., the County shall return to Consultant or destroy all Consultant's confidential information in the County's possession (including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Consultant's Confidential Information and all copies of any of the foregoing (in whatever medium recorded)) and all third-party products in its possession not yet accepted and not yet paid for in full together with all copies of documentation and other material related thereto, and shall certify in a written document signed by the County Project Manager that all such information and material has been returned or destroyed.

- 6.3.15. For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Section 4 - Term of Contract, Section 5 - Contract Price and Compensation, and this Article 6, the County shall cause payments to be made to Consultant within thirty (30) days of receipt of invoice. Consultant shall invoice the County for any sums Consultant claims to be owed by County under this Contract for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment and County shall pay any undisputed amount within thirty (30) days.
- 6.3.16. In the event of termination by the County for non-appropriation, for all items or products ordered by Consultant before receipt by Consultant of the notice of termination which Consultant could not cancel without imposition of a fee, the County shall cause payments to be made to Consultant within thirty (30) days of receipt of an undisputed invoice for all cancellation, restocking or residual fees resulting from the cancellation or return of third party products ordered from or shipped by the vendor thereof prior to the effective date of the termination.
- 6.3.17. All provisions of this Contract which impose or contemplate continuing obligations on a party will survive the expiration or termination of this Contract.

7. RESPONSIBILITY OF CONSULTANT.

- 7.1. Consultant shall be duly licensed under the laws of the State of Florida as an Architect, Engineer, Landscape Architect, Mapper or Surveyor for the purposes of this Contract and to satisfy the requirements of Section 287.055, F.S.
- 7.2. Consistent with Article 3 herein, Consultant's performance of Work or Services shall be in accordance with the terms and conditions of this Contract and the applicable Task Assignment(s). The Consultant's performance of Work or Services shall be as a professional consultant to the County to carry out the activities of a Task Assignment under the direction of the County's Project Manager.
- 7.3. Consultant shall perform Work or Services required under this Contract or Task Assignment, including but not limited to reports, studies, schedules, estimates, the development or preparation of plans, specifications, and cost estimates pertaining to a Project. Consultant shall confer with the County Project Manager to ascertain the functional or design criteria of each Task Assignment. The services of Consultant shall also include of the following:
- 7.3.1. Unless otherwise provided in this Contract or Task Assignment, Consultant shall commence in accordance with the Contract Documents the Services required for the Project or Task Assignment within ten (10) days of the County's Notice to Proceed.
- 7.3.2. Consultant shall verify to the County for the applicable Task Assignment that all designs, and specifications, and all data reports, studies, plans, bulletins, schedules, and other drawings therewith conform to the Scope of Work in the Task Assignment and applicable governmental regulations, statutes, and ordinances, including any amendments thereto. Said certification shall be in the form acceptable to the County and made a part of this Contract and attached to the Task Assignment and incorporated herein by reference.
- 7.3.3. Consultant covenants, and agrees that there are no obligations, commitments, or impediments of any kind that shall limit or prevent Consultant's performance of the Work or Services.

- 7.3.4. The Consultant covenants and agrees that it will not contract for or accept employment for the performance of any Work or Service with any individual, business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract with the County.
- 7.3.5. Consultant covenants and agrees that all of the Work or Services to be furnished by Consultant under this Contract and any Task Assignment from the inception of this Contract or Task Assignment until the Project has been fully completed, shall be of the standard and quality that prevail among similarly situated licensed professional consultants engaged in the Consultant's profession or practice in the State of Florida under the same or similar circumstances involving the design and/or construction of the Project.
- 7.3.6. Consultant covenants and agrees that all of the Work or Services to be furnished by Consultant shall be in accordance with the most current specifications or technology at the time this Contract is fully executed for projects such as the Project in the Task Assignment as of the time Consultant delivers to County the drawings, specifications and/or Deliverables. Thereafter, Consultant shall keep the County informed of any changes or advancements in such specifications or technology occurring any time prior to or during actual implementation of the Project.
- 7.3.7. Consultant covenants and agrees as follows:
- 7.3.7.1. Consultant recognizes that its special talent, training, and experience caused the County to select Consultant to be the prime professional on the Project or Task Assignment;
 - 7.3.7.2. Consultant comprehends the specifications and requirements of the Scope of Work of the applicable Task Assignment and the use of the same in their entirety to provide Project Deliverables; and
 - 7.3.7.3. Consultant possesses the special skills to recognize material errors or omissions that shall make a Deliverable fail to perform within the specifications and requirements of the Scope of Work for the applicable Task Assignment.
- 7.3.8. Consultant covenants and agrees that any Project data, reports, studies, designs, drawings, specifications and requirements prepared by Consultant or its agents or subconsultants shall be completed, pursuant to Section 7.3.5. In addition, Consultant shall include in any such reports, studies, bulletins, schedules, designs, drawings, and/or specifications warnings about known hazards to the Project.
- 7.3.9. Consultant covenants and agrees to the following: (1) the Project plans and specifications shall conform to their foreseeable use in the Project with all the amenities as set forth in the plans and specifications in the Task Assignment; and, (2) the Consultant shall produce Deliverables made pursuant to Section 7.3.5. Consultant's duties, as set forth herein, shall at no time be in any way diminished by reason of any approval by County of any plans or specifications in a Task Assignment, nor shall Consultant be released from any liability by reason of such approval by County, it being understood that County at all times is ultimately relying on Consultant's skill, expertise, and knowledge in preparing the plans and specifications or any other documentation. As such, said approval shall not be a defense to a claim or cause of action for contribution or indemnification by the County.

- 7.3.10. Consultant covenants and agrees that all persons connected with Consultant directly in charge of the professional work are duly registered and licensed under Florida law and pursuant to this Contract.
- 7.3.11. Consultant covenants and agrees that it shall be liable for all errors or omissions proximately caused by Consultant, if any, in judgment relative to the Work or Services of any Task Assignment under which Consultant provides Work or Services.
- 7.3.12. Consultant covenants and agrees to call to County's attention anything of any nature in any deliverables, reports, studies, bulletins, schedules, designs, drawings, documentation, plans, specifications, requirements or instructions prepared by Consultant or data supplied to Consultant by the County or any other party that Consultant regards in Consultant's professional opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such data is furnished in the Project.
- 7.3.13. Consultant covenants and agrees to furnish efficient business administration of the Project and perform all Work or Services in the most expeditious and economical manner consistent with the standard of care applicable to a Consultant with the degree of skills and diligence.
- 7.3.14. Consistent with Section 7.3.11., Consultant covenants and agrees that it shall, at its own cost, make good any defects in its Work or Services as soon as Consultant becomes aware of such defects or is notified of such defects. Should Consultant refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then County, pursuant to Section 6., shall be entitled to make good such defective Services at the expense of Consultant and/or terminate this Contract and the Task Assignment. This commitment by Consultant is in addition to, and not in substitution for, any other remedy for defective Work or Services that County may have at law or in equity.
- 7.3.15. Consultant covenants and agrees to provide all necessary and required plans for the successful design or completion of a Project as agreed to in the Task Assignment's Scope of Work and as governed by this Contract. Written Deliverables shall be made and delivered in accordance with this Contract or Task Contract. Each written Deliverable shall be accurate, legible and suitable for public bidding purposes. For recommendations concerning the plan preparation of studies, plans, or specifications, the Consultant should refer to the latest applicable manuals as determined by the County Project Manager. All studies, plans, drawings or specifications must meet the County's requirements to obtain permits or government documents, licenses and certificates as applicable in a Task Assignment. In addition the Consultant shall have the following responsibilities:
- 7.3.15.1. Consultant shall be responsible for preliminary coordination with the County and other appropriate regulatory agencies so that design efforts are properly directed towards permit approval;
- 7.3.15.2. If applicable in a Task Assignment, prepare permit packages based on preliminary coordination with the County and other appropriate regulatory agency's requirements at the time of submittal. The permit packages shall include site and system design information required by the County and other regulatory agencies, applicable sketches and calculations as set forth in the Task Assignment;

- 7.3.15.3. Consultant shall respond to the requests of the County and other regulatory agencies concerning the submitted information. The Consultant shall report to the County any requests for information not required at the time of permit submittal, as made known during preliminary coordination, reproductions in excess of requirements, or regulation changes requiring permit resubmission:
- 7.3.15.4. The County shall provide the permitting fees, but shall not pay an additional fee to the Consultant when the Consultant is required to resubmit a permit package to a regulatory agency so as to address deficiencies, omissions, or corrections to the original permit package that were the responsibility of the Consultant and that are not attributable to changes in rules made by the regulatory agency since submission of the original permit package:
- 7.3.15.5. Consultant shall review all design and shop drawings and other data that the Consultant is required to submit to the County or any state, local or federal agency. These drawings shall be reviewed for general conformance with the design concept of the Project and scope of work of the Task Assignment and general compliance with the information given in the Contract Documents;
- 7.3.15.6. Consultant shall make final review of Project Deliverables to determine if Work or Services were completed in general conformance with the Contract Documents; and
- 7.3.15.7. Consultant shall prepare and submit a schedule or time line of each task listed in a Task Assignment.
- 7.3.16. **Annual Statement of Qualifications.** Annually, the Consultant shall submit to the County's Contracts Administrator statements of qualifications and performance data confirming that Consultant is a duly licensed and registered professional Architect, Engineer, Landscape Architect, or Surveyor and Mapper as applicable in connection with Consultant's professional practice and the Services or Work provided to the County under this Contract.
- 7.3.17. **Design Phase.** As required by the County, Consultant shall submit a certain number of sets of design development documents and/or estimates as specified in the Task Assignment to the County for review. The plans and specifications shall be of sufficient detail indicating, e.g., floor plan layout, elevations, outline specifications to fix and illustrate the size and character of the entire Project in its essentials as to kinds of material, type of structure, mechanical and electrical systems, site work, and such other work as may be necessary for a completely functioning Project or completed design drawings and specification. As requested by the County Project Manager, the Consultant shall submit a unit cost or opinion of cost estimate for this phase of the Work or Services for review and approval of County. This estimate or opinion shall include, e.g., identification of costs for heating, ventilation, plumbing, air conditioning, and electrical lighting and power, and other items applicable to the Project or Task Assignment.
- 7.3.18. **Final Review of Plans, Specifications, and Estimates.**
 - 7.3.18.1. As requested by the County or as set forth in a Task Assignment, Consultant shall submit to County for review copies of the Project plans and specifications, and copies of the latest detailed cost estimate.

- 7.3.18.2. Upon completion and final approval by County of the Project plans, specifications, other Contract Documents, and cost estimates (if required in the Task Assignment), Consultant shall deliver to County as part of the contract obligation or as set forth in the Task Assignment, unless otherwise noted completed plans, designs, drawings, specifications, documents, and cost or opinion estimates.
 - 7.3.18.3. Consultant shall submit to County original drawings and specifications that shall reflect all amendments to the Contract Documents.
 - 7.3.18.4. Consultant agrees to furnish all services, materials, labor, and all other items required to undertake and complete all Work or Services required by this Contract or any Task Assignment in accordance with the drawings, plans, and specifications submitted to the County by Consultant or relied upon by the Consultant to complete the Project or Task Assignment.
- 7.4. **Assurance.** Consultant gives County its assurance that all Work or Services performed under this Contract shall be timely performed, pursuant to Section 7.3.5., and in accordance with the specifications and requirements of the Contract Documents and of any inspections (if applicable), tests (if applicable) or approvals required under the Contract Documents. All Work not conforming to the specifications and requirements of the Scope of Work of a Task Assignment or of the inspections, tests (if applicable) or approvals in a Task Assignment shall be considered materially defective and constitute a breach of this Contract or the Task Assignment.
- 7.5. **Tests and Inspections.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected and tested, and Consultant has agreed in a Task Assignment to perform such services, Consultant shall furnish the County's Project Manager with the required certificates of inspection, testing or approval. All tests shall be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization that may be required by law or the Contract Documents.
- 7.6. The Consultant shall be responsible for the professional and technical accuracy and the coordination of all data, reports and any other service furnished by the Consultant under this Contract or any Task Assignment. The Consultant shall, without additional cost to the County, correct or revise any errors or deficiencies in its Work or Service for which it is responsible.
- 7.7. All Work performed by Consultant including all general provisions, special provisions, job specifications, drawings, Addendum, Amendments to Task Assignments, written interpretations, and written orders for minor changes in Work, shall comply with the Scope of Work of a Task Assignment and all applicable local laws, codes, ordinances and statutes and the performance criteria in Section 3.2. Otherwise, if Consultant is an Architect or Engineer, only work certified by said consultant, which in whole or part constitutes, a Deliverable in a Task Assignment shall comply with the Scope of Work in a Task Assignment and all applicable local laws, codes, ordinances and statutes. Work not covered by Contract Documents in a Task Assignment shall not be required in a Project unless the County in its sole discretion determines that it is required by reasonable inference as being necessary to produce the intended Deliverable(s).
- 7.8. If applicable in a Task Assignment, Consultant will supervise and direct all Work or Services efficiently and pursuant to Section 7.3.5. As such, Consultant shall be solely responsible for the means, methods, techniques, sequences and procedures for the design or development of a Deliverable. Further, Consultant shall be responsible for assuring the County that finished Deliverables complies accurately with the Contract Documents or plans and specifications of the

Scope of Work in the applicable Task Assignment.

- 7.9. Consultant will make periodic visits as delineated in the Task Assignment to the site to observe the progress and quality of the executed construction Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents or Task Assignment. The efforts of the Consultant shall be directed toward providing assurance for the County that all Work completed in a Task Assignment shall conform to the requirements of the Scope of Work of the Task Assignment. On the basis of Consultant's observations, skills and experience, Consultant shall keep the County informed of the progress of all Work and shall endeavor to guard the County against defects and deficiencies in the Work. As required in the Task Assignment, each site visit will be followed by a report to the client of known deviations from the Contract Documents or plans and specifications in the Scope of Work of a Task Assignment.
- 7.10. Consultant shall issue with reasonable promptness all written clarifications or interpretations of a Task Assignment (in the form of drawings or otherwise as requested by the County) that Consultant may determine are necessary, which shall be consistent with or reasonably inferable from the overall intent of the Task Assignment.
- 7.11. Concerning Subconsultants.**
- 7.11.1. Consultant shall not employ any subconsultant, other person or organization against whom the County may have reasonable objection, nor shall Consultant be required to employ any subconsultant against whom it has reasonable objection. Consultant shall not make any substitution for any subconsultant who has been accepted by the County without the County's approval.
- 7.11.2. County's disapproval or requirement of removal or replacement of Consultant's employee or subconsultant shall be deemed for lawful reasons if in County's reasonable judgment, such Consultant's employee or subconsultant poses a threat or causes harm to the health, welfare, safety or morale of the County or its agencies, personnel or property or who fails any drug test administered in connection with this Contract, or who has been convicted of a felony or a misdemeanor involving "moral turpitude" or has been released or dishonorably discharged or separated under other than honorable conditions from any of the Armed Forces of the United States.
- 7.11.3. Consultant shall be fully responsible for all negligent acts and omissions of its subconsultant or sub-subconsultants and of persons directly or indirectly employed by them and of persons for whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any contractual relationship between any subconsultant and the County or any obligation on the part of the County to pay or to see to the payment of any moneys due any subconsultant, except as may otherwise be required by law. County may furnish to any subconsultant to the extent practicable, evidence of amounts paid to Consultant on account of specific work done in accordance with the schedule of values.
- 7.11.4. Consultant agrees to bind specifically every subconsultant to the applicable terms and conditions of the Contract Documents and the terms and conditions of Section 1-3 and 16 of this Contract for the benefit of the County.
- 7.11.5. The Consultant shall require all subconsultants or sub-subconsultants or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the County and the Consultant.

- 7.11.6. Any subcontractors or subconsultants and/or outside associates required by the Consultant in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified for each Project assigned under this Contract. Any substitution of such subcontractors, subconsultants or associates will be subject to the prior written approval of the County Project Manager.
- 7.11.7. Consultant shall save and hold the County harmless from any and all claims or actions by Consultant's subconsultants or sub-subconsultants for payment of monies such subconsultant or sub-subconsultants claims to be owed by Consultant for Work performed under this Contract or a Task Assignment, provided that the County has paid Consultant in accordance with the terms of this Contract.
- 7.11.8. Nothing in this Contract or a Task Assignment shall create any obligation on the part of the County to pay directly to any subconsultants or sub-subconsultants of Consultant any monies due to such subconsultant or sub-subconsultants or claims of a subconsultant or sub-subconsultant for amounts owed by Consultant to subconsultant or sub-subconsultant for Work performed under this Contract or Task Assignment.

8. AUTHORIZATION FOR SERVICES.

- 8.1. **No Guarantee to Perform Projects.** The County makes no covenant or promise as to the number of available Projects, nor that the Consultant will perform any Project for the County during the life of this Contract. The County reserves the right to contract with other parties for the services contemplated by this Contract as determined in the County's sole and absolute discretion.
- 8.2. **Certifications for Completed Work.** Consultant shall sign and seal (hereinafter "Certification") all completed Work under a Task Assignment as required as a licensed professional or under Florida law; otherwise, the County Project Manager shall not have the authority to approve completed Work or Services and Consultant shall not be entitled to payment for the Work or Services covered by uncertified Work. In the event the County Project Manager accepts and approves completed Work bearing no such certification by the Consultant, such acceptance and approval shall not relieve Consultant or its subconsultants or agents of any liability for any defects, omissions or errors in the Deliverables of completed Work of a Task Assignment until such work is certified by Consultant.

9. INDEMNIFICATION.

- 9.1. Consultant shall, at its own expense, indemnify and hold harmless the County and its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys, and employees from and against all claims of every kind and nature (including losses incurred or suffered in consequences either of bodily injury to any person or damage to property), damages, losses and expenses including reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and its subconsultants or sub-subconsultants or agents performing Work or Services under this Contract or a Task Assignment, caused by any negligent act or omission of Consultant, any of Consultant's subconsultants or sub-subconsultants, anyone employed by any of them or anyone for whose acts any of them may be liable, except the Consultant will not be required to indemnify and hold the County harmless if such claim, damage, loss and expense is the result of the sole negligence of the County, or of anyone directly or indirectly employed by the County or anyone for whose acts the County may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Contract.

- 9.2. In all claims against the County or any of its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys and employees by any employee of Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant, contractor or any subcontractor or subconsultant under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 9.3. If Consultant is licensing, providing or developing software, including derivative works for use by the County, Consultant agrees to protect and indemnify and hold harmless the County, its agents, elected officials and employees of the County from and against any and all claims, demands, actions, and causes of action which may arise asserting that all or any part of the Consultant licensed applications provided under any software owned by Consultant and licensed to County or provided by Consultant for use thereof by the County, infringes or misappropriates any third party's United States patent, copyright or any trade secret protected under United States law.
- 9.3.1. In addition to the foregoing indemnification provision, Consultant shall also take the following steps to assure that County can continually use the software which Consultant has directly licensed to County or provided for use thereof by the County in substantially the same manner delivered or subsequently enhanced or modified by:
- 9.3.1.1. Promptly replace the allegedly infringing or misappropriated item or items with compatible, functionally equivalent items which are not alleged to be infringing or misappropriated; or
 - 9.3.1.2. Promptly modify the alleged infringing or misappropriated item or items to eliminate the alleged infringement or misappropriation without impairing County's intended use of the licensed applications and/or sublicensed applications in any manner; or
 - 9.3.1.3. Promptly procure the right for the County to continue to use the licensed applications and/or sublicensed applications without modification; and
 - 9.3.1.4. Unless otherwise agreed by the parties, promptly shall mean that the events described herein shall occur in no less than sixty (60) days from the date that notice of the claim is received by Consultant unless otherwise agreed by the Parties.
- 9.4. **Confidential Information and Indemnification.** If Consultant is licensing or developing software (including derivative works) for use by the County, Consultant grants County a perpetual, fully-paid, non-assignable, non-exclusive, royalty-free license to use Consultant's software deliverables developed or licensed under a Task Assignment. Said license includes software owned by Consultant which is furnished under this Contract or a Task Assignment, for County's internal use with such use to include the right to modify such deliverable(s) and to create derivative works for such internal use including, without limitation, the right to use such deliverable(s).
- 9.5. The terms "proprietary software, sensitive information" and "trade secret" shall constitute Confidential Information and shall be that which is defined in and exempt from disclosure pursuant to Florida Statutes, Chapter 119, and Section I, Section 24 of the Florida Constitution ("Florida Public Records Law"), and Chapter 812 of the Florida Statutes. In addition and for the purposes of this Contract and any Task Assignment, Confidential Information shall include confidential information and/or trade secret information disclosed by Consultant to County that

is expressly identified in writing by Consultant and Consultant's subconsultants or sub-subconsultants. Any Confidential Information provided to County by Consultant must be expressly identified in a "Nondisclosure Contract for Confidential Materials" form which Consultant may obtain from the County's Purchasing Division.

9.5.1. Confidential Information and/or Trade Secret do not include the following:

- 9.5.1.1. Information already known or independently developed the party in possession; or
- 9.5.1.2. Information in the public domain through no wrongful act of the party in possession; or
- 9.5.1.3. Information received by the party in possession from a third party who was free to disclose it; or
- 9.5.1.4. Information regularly disclosed to third parties without restriction on disclosure, or
- 9.5.1.5. Information required to be disclosed by law or an order of a court of competent jurisdiction.

9.6. In the event that Consultant does not enable the County to use that which Consultant has delivered through accomplishing one or more of the alternatives set forth above within aforementioned time period set forth herein during the term of this Contract or Task Assignment, Consultant shall be in material default of this Contract and subject to Section 6: Termination.

9.7. If Consultant is granting a license or develops software for the County in a Task Assignment, it hereby warrants and represents that:

- 9.7.1. Consultant is the sole owner of all right, title, and interest in and to the Consultant licensed software, user manuals and documentation, including all patents, copyrights, copyright rights, trade secrets, trademarks, trade names and all proprietary and intellectual rights and confidential information contained therein, and that it is authorized to enter into this Contract and grant County a perpetual license; and
- 9.7.2. No portion of any licenses or right granted to the County to use Consultant's software pursuant to the terms of the applicable software license Contract of Consultant for any work performed under this Contract or Task Assignment violates or is protected by right, title, interest or similar right of any third person or entity.

10. LIMITATION OF LIABILITY AND REMEDIES.

10.1. **Sovereign Immunity.** The County expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any Section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity of limits of liability of County beyond any statutory limited waiver of immunity of 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 County for damages regardless of the number or nature of claims in tort, equity or contract shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit on any third party for the purpose of allowing any claim against County which would otherwise be barred under the doctrine of sovereign immunity or

operation of law.

11. COUNTY REPRESENTATIVE.

- 11.1. The Work or Services shall be provided by the Consultant under the direction of the authorized County Representative, except as limited by the County's Purchasing and Contracts Procedures (see www.volusia.org/purchasing), who shall have decision authority subject to the requirements of the County's Purchasing Procedures Manual for all phases of the Work, including general direction, review and approval of the Work or Services.
- 11.2. Neither the County Representative's review, approval or acceptance of, nor payment for any of the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Consultant shall be and remain liable to the County for all costs of any kind which were incurred by the County as a result of the Consultant's negligent performance of the services furnished under this Contract.

12. REUSE AND OWNERSHIP OF DOCUMENTS.

- 12.1. Provided that Consultant has been paid by County for all completed Work in the applicable Task Assignment in accordance with the terms of this Contract, the County shall have unlimited rights, for the benefit of the County, in all reports, statistical data, specifications, notes and other Consultant's work produced in the performance of this Contract, including right to copy plans for any purpose including for the use and maintenance of the Deliverable(s) of a Project. If County determines to reuse or adapt plans signed and sealed by Consultant, Consultant shall be entitled to further reasonable compensation at rates agreed upon by County and Consultant prior to executing and commencing any Work in a Task Assignment. Said rates shall be incorporated in the Task Assignment. Further, all documents prepared by Consultant pursuant to this Contract are instruments of service in respect of the Project or Task Assignment. The Consultant shall not be liable for the negligent reuse by the County of said documents.
- 12.2. All deliverables analyses, reference data, survey data, plans and reports or any other form of written instrument or document that may result from the Consultant's Work or Services or that have been created during the course of the Consultant's performance under this Contract shall become property of the County and/or "works made for hire" (as defined under the 1976 Copyright Act (Title 17 of the United States Code) as amended) after final payment is made to the Consultant.

13. EXPERT WITNESS

- 13.1. If requested by the County, the Consultant shall serve as an expert or professional witness for the County in any legal proceedings arising in connection with this Contract. The expert or professional witness fee for Consultant shall be a reasonable rate negotiated at the time the Consultant is called for such a duty.

14. AUDIT AND EXAMINATION OF RECORDS

- 14.1. For purposes of verifying that invoices submitted, in conjunction with the negotiation of this Contract or any Contract change or other modification are accurate, complete, and current, the County Project Manager, or County's authorized representative(s), shall - until the expiration of three (3) years from the date of final payment under this Contract - have the right to examine those books, records, documents and other supporting data that will permit adequate evaluation of the invoices submitted, along with the computations and projections used therein that were prepared by the Consultant in connection with work under this Contract. Unless the price is

based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices are set by law or regulation. The Consultant agrees to insert the substance of this clause in all subcontracts hereunder so as to apply until three (3) years after final payment under the subcontract.

16. INSURANCE REQUIREMENTS.

16.1. Required Types of Insurance:

The Consultant shall purchase and maintain at its own expense, during the term of this Contract the following types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to the County:

SCHEDULE

LIMITS

Workers' Compensation

Florida Statutory Coverage

Commercial General Liability	\$2,000,000. General Aggregate
.....	\$2,000,000. Products/CompOps Aggregate
Products-Completed Operation.....	\$1,000,000. Personal/Advertising Injury
.....	\$1,000,000. Each Occurrence

(The County of Volusia shall be named as an additional insured under all of the above Commercial General Liability coverage.)

Auto Liability\$1,000,000. CSL
All autos-owned, hired or no-owned
(Symbol 1 Coverage)

Professional Liability.....\$1,000,000. (Project Specific)
(Errors & Omissions)

16.1.1. Minimum underlying coverage's shall include Commercial General Liability, Automobile Liability and Workers' Compensation/Employer's Liability. Umbrella liability limit will not be required to be carried by subconsultants.

16.1.2. Umbrella or Excess Liability policies may be used to obtain the total limits of liability required to meet the required limits of coverage stated above. Evidence of such coverage should clearly demonstrate the underlying coverage's/policies that are included.

16.1.3. **Workers' Compensation Insurance.** Workers' Compensation insurance is required for all employees of the Consultant, employed or hired to perform or provide Work or Services under this Contract or that is in any way connected with Work or Services performed under this Contract, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory amount shown above per occurrence.

16.1.3.1. Consultant and its Subconsultants, or any associated or subsidiary company doing Work on County property or under this Contract must be named in the Workers' Compensation coverage or provide proof of their own Workers'

Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Consultant's Subconsultants fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Subconsultant of the Consultant, the Consultant shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).

16.1.4. Commercial General Liability Insurance. Commercial General Liability insurance, with a limit of not less than the amounts shown above with an aggregate limit and per occurrence basis, including coverage for the Consultant's operations "broad form" property damage coverage's protecting itself, its employees, agents, for claims for damages caused by bodily injury, property damage, or personal or advertising injury, products liability/completed operations including what is commonly known as groups A, B, and C (libel, false arrest, slander). Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Consultant arising from Work or Services performed under this Contract. Public liability coverage shall include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Consultant's contract to indemnify, and hold harmless the County as provided in this Contract. The commercial general liability policy shall be endorsed to include the County as an additional insured. The commercial general liability policy shall provide exclusive coverage for the location or project site where the Work or Services are to be performed under this Contract. In the alternative, the commercial general liability policy shall be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the County Risk Manager.

16.1.5. Motor Vehicle Liability. The Consultant shall secure and maintain during the term of this Contract, motor vehicle coverage in the split limit amounts of no less than the amounts shown above per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above (including "Any Auto" Symbol 1 coverage), protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle.

16.1.6. Professional Liability. The Consultant shall ensure that it secures and maintains, during the term of this Contract, Professional Liability insurance with limits of no less than the amount shown above contemplated by this Contract. Such policy shall cover all the Consultant's professional liabilities and broad enough to include errors and omissions specific to Consultant's professional liability for direct and contingent design errors and Architect's/Engineers professional liability with no exclusions for design-build work.

16.1.6.1. If the Consultant fails to secure and maintain the professional liability insurance coverage required herein, the Consultant shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.

16.1.6.2. The Consultant must maintain a retroactive date prior to or equal to the effective date of this Contract. The Consultant shall purchase a Supplemental Extended Reporting Period ("SERP") with a minimum reporting period of not less than three (3) years in the event a sub-consultant's policy is canceled, not renewed, switched to occurrence form, or any other event which requires a purchase of

SERP to cover a gap in insurance for claims which may arise under or related to this Contract. The Consultant's purchase of the SERP shall not relieve the Consultant of the obligation to provide replacement coverage. In addition, the Consultant shall require have the sub-consultant's carrier immediately inform the Consultant, and the County of Volusia's Risk Management Division and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under this Contract.

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

16.2. General Insurance Requirements:

- 16.2.1. All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
- 16.2.2. Approval by County of any policy of insurance shall not relieve Consultant from its responsibility to maintain the insurance coverage required herein for the performance of Work or Services by the Consultant or its Subconsultants for the entire term of this Contract and for such longer periods of time as may be required under other clauses of this Contract.
- 16.2.3. **Waiver of Subrogation.** The Consultant hereby waives all rights against the County and its Subconsultants to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of this Contract. The Consultant shall require similar waivers from all its Subconsultants. This provision applies to all policies of insurance required under this Contract (including Workers' Compensation, and general liability).
- 16.2.4. **County Not Liable for Paying Deductibles.** For all insurance required by Consultant, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the Consultant's business or any Subconsultant performing Work or Services on behalf of the Consultant or for the Consultant's benefit under this Contract.
- 16.2.5. **Cancellation Notices.** During the term of this Contract, Consultant shall be responsible for promptly advising and providing the County's Risk Management and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under this Contract within two (2) business days of receipt of such notice or change.
- 16.2.6. For any on-site Work performed by or on behalf of Consultant on County property, the County shall be named as an additional insured or additional named insured subject to review and determination by County's Risk Manager on all policies required under this Contract.
- 16.2.7. Deductibles. For purposes of this Contract, Contractor shall not obtain an insurance policy with a deductible or self-insurance provision.

16.3. Proof of Insurance:

- 16.3.1. The Consultant shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.
- 16.3.2. The Consultant shall furnish proof of insurance acceptable to the County prior to or at the time of execution of this Contract and the Consultant shall not commence Work or provide any Service until the Consultant has obtained all the insurance required under this Contract and such insurance has been filed with and approved by the County. Upon request from the County, the Consultant shall furnish copies of the following types of insurance policies and any changes or amendments thereto, during its normal business hours, to the County and County's Risk Management and Purchasing and Contracts Divisions, prior to the commencement of any contractual obligations. This Contract may be terminated by the County, without penalty or expense to County, if at any time during the term of this Contract proof of any insurance required hereunder is not provided to the County.
- 16.3.3. All certificates of insurance shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by this Article. No Work or Services by Consultant or its Subconsultants shall be commenced until County has approved these policies or certificates of insurance. Further, the Consultant agrees that the County shall make no payments pursuant to the terms of this Contract until all required proof or evidence of insurance has been provided to the County. This Consultant may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.
- 16.3.4. The Consultant shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of this Contract. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Consultant's expense or terminate this Contract but County has no obligation to renew any policies.
- 16.4. The provisions of this Article shall survive the cancellation or termination of this Contract.

17. LOCAL GOVERNMENT POLICIES.

- 17.1. **Public Records Law.** Consultant acknowledges that the County and Consultant are required to comply with the Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Contract and that said statute controls over the terms of this Contract. To the extent practicable, the County agrees to notify Consultant of any public records request concerning the Consultant or matters relating to the services provided under this Contract. Consultant agrees to comply with all provisions of such Public Record Act as they apply to the Consultant.
- 17.2. **Payments Subject to Appropriation.** Notwithstanding any other term or provision of this Contract, the continuation of this Contract or Task Assignment beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. If at any time funds are not appropriated for the Services and Deliverables provided or to be provided under this Contract or Task Assignment, cancellation

shall be accepted by Consultant with thirty (30) days prior written notice, but failure to give such notice shall be of no effect. Termination by the County due to non-appropriation shall be without a termination charge by Consultant. County shall not be obligated to pay Consultant under this Contract beyond the date of termination except as set forth in Section 6 – Termination. County's obligation to pay Consultant is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 5 – Contract Price and Compensation. The parties agree to review the Project Work plan and remaining Work to be performed in advance of each new fiscal year for the County to compare the funding allocated for the next fiscal year to the cost of the remaining Scope of Work of the Project or Task Assignment, to determine whether or not the allocated funding will be adequate to cover all Work to be completed in the next fiscal year. The cost of the remaining Project shall be the fixed fee/lump sum or price, maximum-not-to-exceed compensation less all amounts paid and less all amounts on pending undisputed invoices. Unless the parties agree that the funding allocated for the next fiscal year is adequate for the next fiscal year's Work, either party may terminate this Contract in accordance with the provisions of Section 6 – Termination.

- 17.3. **Truth-in-Negotiations.** Consultant's signature on this Contract or a Task Assignment shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Assignment are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Consultant has disclosed all debts or fees owed to or that are pending before the County prior to the execution of this Contract or a Task Assignment.
- 17.4. **No Code Violation or Past Due Debt.** Consultant warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the Volusia County Code of Ordinances, and does not owe the County any past due debt. Any breach of the foregoing warranty and representation shall be a material breach of this Contract and the County shall have the right to terminate this Contract as set forth herein.
- 17.5. **Changes Due to Public Welfare.** The County and Consultant agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law or Ordinance.
- 17.6. **Compliance with Applicable Laws.** Consultant shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Contract. Consultant shall protect and indemnify County and all its officers, agents, servants and employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order or decree caused or committed by Consultant, its representatives, subconsultants, professional associates, agents, servants or employees. Additionally, Consultant shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Contract from the federal government, State of Florida, County of Volusia or municipalities when legally required and maintain same in full force and effect during the term of this Contract.
- 17.7. **Nondiscrimination and Americans with Disabilities Act.** Consultant shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. Consultant agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA)

in the course of providing all Services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under this Contract, Consultant agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for Work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

17.7.1 In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the county's ADA Coordinator at 386-248-1760 for assistance, at least two business days before any meeting date. Assisted listening system receivers are available for the hearing impaired, and can be obtained from the Deputy Clerk by contacting the county's ADA Coordinator at 386-248-1760. Read the full ADA Notice under The American with Disabilities Act (Title II). Read the County of Volusia Grievance Procedure under The Americans with Disabilities Act (Title II).

17.8. **Drug Free Workplace.** The County of Volusia is a drug-free and smoke-free workplace. Consultant agrees that it shall provide a drug-free environment to its personnel during the term of this Contract and will comply, subject to the prior receipt thereof, with the County's policies on drug-free and smoke-free work place during the term of this Contract.

17.9. **Background Checks.** Consultant and County understand that certain areas of the County's premises may not be available to Consultant's personnel without background checks and that such access is not required to perform the services contemplated by this Contract.

17.10. **Employment of Illegal Aliens.** Consultant certifies that it does not knowingly or willingly and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

17.11. **Prohibition Against Contingent Fees:**

17.11.1. The Consultant warrants that he or she or it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract and that he or she or it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, compensation, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the County shall have the right to terminate this Contract or Task Assignment without liability and, at its sole discretion, to deduct from the contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

17.11.2. Consultant understands and acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Consultant, who offers, agrees, or contracts to solicit or secure County contracts for professional services for any other individual, company, corporation, partnership,

or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

17.11.3. Any Architect, professional Engineer, or registered Surveyor and Mapper, or any group, association, company, corporation, firm, or partnership thereof that is a Consultant under this Contract, who offers to pay, or pays, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

17.11.4. Any County official, agent or employee who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the County and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

17.12. EQUAL OPPORTUNITY; DISADVANTAGED BUSINESS ENTERPRISES:

17.12.1. During the performance of this Contract, the Consultant agrees as follows:

17.12.1.1. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, up-grading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

17.12.1.2. Municipal Code section 2-269, County Ordinance No. 90-20, § 9,5-17-90 of the County Council of the County of Volusia, establishing policies and procedures for the Disadvantaged and Women's Business Enterprises program shall be part of this Contract and the Consultant shall endeavor to fulfill the goals and policies of this Resolution as applicable to this Contract.

18. DISPUTE RESOLUTION.

18.1. The parties to this Contract shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract in accordance with the provisions set forth in this Section. The Consultant and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Contract or Task Assignment and any applicable Scope of Services. Issues shall be escalated to successive management levels as indicated in Section 18.3.

18.2. If a dispute develops between the parties concerning any provision under this Contract or Task

Assignment, or the interpretation thereof, or any conduct by the other party under these Contracts, and the parties are unable to resolve such dispute within five (5) days, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.

- 18.3. Upon issuance of a Dispute Notice, the Project Managers or designated representative(s) shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers or designated representative(s) shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative(s) within five (5) business days, the Project Managers or designated representative(s) shall escalate the dispute as indicated below.

Business Days	Consultant's Representative	County Representative
5	Consultant	Project Manager
10	Consultant's Engagement Manager	Director of Purchasing and Contracts
15	Consultant's Business Unit Manager or Designee	Chief Financial Officer

- 18.4. **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this Section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction. If litigation is prematurely commenced, it shall be stayed until the mediator makes the required certification.

19. FORCE MAJEURE.

- 19.1. Neither party will be liable for any failure or delay in the performance of its obligations under this Contract (and the failure or delay will not be deemed a default of this Contract or grounds for termination) if both of the following conditions are satisfied: (i) the failure or delay could not have been prevented by reasonable precautions, and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) the failure or delay is caused, directly or indirectly, by reason of fire or other casualty, natural disaster, epidemic or accident; strikes or labor disputes; inability to procure raw materials, equipment, power or supplies; war, terrorism or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency or intergovernmental body other than a party hereto; or any other act or condition beyond the reasonable control of the non-performing party. Accordingly, the parties further agree that:
- 19.2. Upon the occurrence of an event which satisfies both of the above conditions (a "Force Majeure Event"), the non-performing party will be excused from any further performance of those obligations under this Contract affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use

commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

19.3. Upon the occurrence of a Force Majeure Event, the non-performing party will notify the other party within two (2) business days of the failure, or as soon as possible after such failure or delay if the Force Majeure Event prevents compliance within two (2) business days, of the occurrence of a Force Majeure Event and will describe in reasonable detail the nature of the Force Majeure Event.

19.4. In the event of a Force Majeure Event, the time for performance by the parties under the applicable Project shall be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of this Contract.

20. CLAIMS NOTICE.

20.1. The Consultant shall timely report in writing to the County's Director of Risk Management any incident which it believes might result in a claim or claims against the County under any of the coverages mentioned herein.

Name: County of Volusia, Florida
Personnel/Risk Management Division
Address: 230 North Woodland Boulevard, Suite 250
DeLand, Florida 32720
Telephone: (386) 736-5963
Fax: (386) 822-5006

21. SUCCESSORS AND ASSIGNS.

21.1. Consultant may not assign or otherwise convey Contractor's rights and/or obligations under this Contract without first providing County with a processing fee of Five Hundred Dollars (US\$500.00) and obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to posting a performance bond. Any consent by the County under this section shall be by written amendment to the Contract in a form and substance specified by the County in its sole discretion. If Consultant desires to assign or otherwise convey its rights and/or obligations under this Contract, Consultant shall, no less than one hundred twenty (120) days prior to the assignment's proposed effective date, provide County with a written request for County's consent.

Failure by the Consultant to obtain the County's consent in accordance with this section prior to assignment or other conveyance shall: 1) constitute a material breach of the Contract; and 2) entitle the County to retain any and all legal rights, claims and defense to enforce this section, including, but not limited to, injunctive, declaratory, damages and attorney's fees and costs. Payment of any sum by the County in accordance with the Contract to the Consultant or any person or entity prior to the Consultant obtaining the County's consent to the assignment shall not constitute a waiver of the rights of the County under this section.

Nothing herein shall preclude the right of the County to waive its rights under this section but no waiver shall be granted by the County without amendment to the Contract. The Consultant is hereby placed on notice that the County may demand a discount of up ten percent (10%) from those rates or compensation for the goods or services established in the Contract as a condition to execution of the amendment.

- 22. ADDITIONAL RIGHTS AND REMEDIES.** The rights and remedies of the County provided for under this Contract are in addition to any other rights and remedies provided by law; the County may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, with-holding, recoupment, or counterclaim, either during or after performance of this Contract.
- 23. MBE.** This Contract is entered into by the County and Consultant pursuant to the minority business enterprise procurement goals under Section 287.09, F.S.
- 24. CONTROLLING LAW.** This Contract or Task Assignment is to be governed by the laws of the State of Florida. Venue for any litigation between the parties to this Contract or Task Assignment shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorneys fees relating to any dispute arising under the Contract.
- 25. MODIFICATIONS TO CONTRACT.** This Contract or Task Assignment and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.
- 26. NOTICE.** All notice required under this Contract or Task Assignment shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

In the case of County:	with a copies of legal notices to:
County of Volusia Attn: Director of Purchasing and Contracts Address: 123 W. Indiana Ave., Room 302 DeLand, Florida 32720 Phone: (386) 736-5935 Fax: (386) 736-5972	County of Volusia Attn: County Attorney Address: 123 W. Indiana Ave., Room 301 DeLand, Florida 32720 Phone: (386) 736-5950 Fax: (386) 736-5990
In the case of Consultant:	with a copy of legal notices to:
Quentin L. Hampton Associates, Inc. Attn: Brad Blais P.E., President Address: 4401 Eastport Parkway Port Orange, Florida, 32127 Phone: (386) 761-6810 E-mail: bblais@qlha.com	Quentin L. Hampton Associates, Inc. Attn: Brad Blais P.E., President Address: 4401 Eastport Parkway Port Orange, Florida, 32127 Phone: (386) 761-6810 E-mail: bblais@qlha.com

- 27.** This Contract or Task Assignment, together with any exhibits, schedules, attachments and amendments thereto constitute the entire Contract between County and Consultant and supersede all prior written or oral understandings.

IN WITNESS WHEREOF, the parties have made and executed this Contract for Consulting Services for Stormwater and Environmental Engineering Services, the day and year below written.

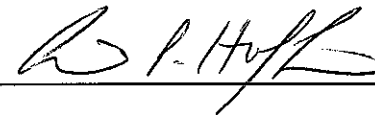
CONSULTANT: Quentin L. Hampton Associates, Inc.

BY: 
(Signature)

(SEAL)

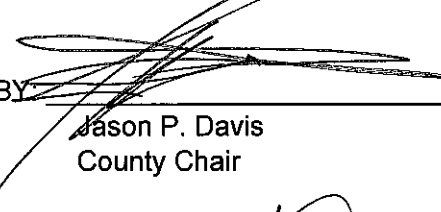
BY: PRESIDENT
Corporate Officer Name & Title

Date: 4/25/14

ATTEST: 

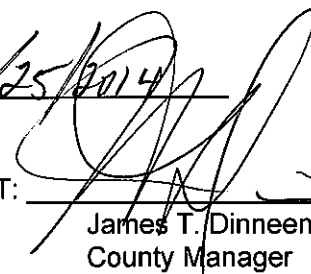
Date: 4/25/14

COUNTY OF VOLUSIA

BY: 
Jason P. Davis
County Chair

(SEAL)

Date: 6/25/2014

ATTEST: 
James T. Dinneen
County Manager

Date: 6/27/14

County Council Approval Date: 6/19/2014

Exhibit "A" – Sample Task Assignment
Exhibit "B" – Proposal dated 02-06-2014

EXHIBIT "A"

[FOR COUNTY USE ONLY]

**TASK ASSIGNMENT NO. X
TO THE
CONTRACT FOR PROFESSIONAL CONSULTING SERVICES
FOR [TYPE OF SERVICE]
BETWEEN THE COUNTY OF VOLUSIA
AND THE FIRM OF
[NAME AND ADDRESS OF FIRM]**

PROJECT TITLE: [NAME OF PROJECT]

PROJECT NUMBER:

I. PURPOSE

This is an attachment to the Contract for Professional Consulting Services for [Type of Service] dated [Date of contract] between the County of Volusia (COUNTY) and the consulting firm of [Name of Firm] (CONSULTANT) and made a part thereof. The purpose of this Task Assignment is to specify the required services of the CONSULTANT.

II. SCOPE OF WORK

The CONSULTANT'S Scope of Work for [Project Title] shall include the following tasks as outlined and attached hereto as Exhibit "A."

III. DELIVERABLES

The CONSULTANT shall produce and deliver to the COUNTY the deliverables outlined and attached hereto as Exhibit "A."

IV. SCHEDULES AND TIME FOR COMPLETION

This Task Assignment shall commence upon Notice to Proceed and continue until the scope of work is completed and accepted by the county. Within ten (10) days after receipt of Notice to Proceed (or other authorizing document), the CONSULTANT shall provide a proposed schedule of payments associated with the deliverables which is acceptable to the COUNTY. If schedule is altered due to unforeseen delays the County's project manager shall be notified at once. Failure to meet the scheduled completion date may be grounds for Termination for Default.

V. METHOD OF COMPENSATION

Payment will be in accordance with the Contract for Professional Consulting Services No. [RSQ #] for [Type of Service]. Compensation for all services, material, supplies, training and any other items or requirements necessary to complete the work as described herein, shall not exceed a grand total amount of [amount in word] DOLLARS and [XX/100] (\$) consisting of [a fixed fee amount of] [amount in word] DOLLARS and [XX/100] (\$) for consulting services and a [fixed fee or not to exceed] amount of [amount in word] DOLLARS and [XX/100] (\$) for reimbursable expenses payable at the rates attached hereto as Exhibit "A" or "B." At no time shall work fees exceed said amount of compensation herein without a written and executed amendment.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Agreement with McKim & Creed Inc. for Design Services to Replace Failing Pipe Culverts under Pineland Avenue and Isabelle Avenue at Niver Street

DEPARTMENT: Public Works

RECOMMENDED MOTION: Move to approve the Agreement with McKim & Creed Inc. for professional design services to replace failing pipe culverts under Pineland Avenue and Isabelle Avenue at Niver Street for \$22,927, and authorize the Mayor and City Clerk to execute all required contract documents upon the city attorney's approval of the contract documents.

SUMMARY: Pineland Avenue and Isabelle Avenue reach Niver Street by crossing a canal on the north side of Niver. The culverts where these two Avenues cross the canal are failing, making it necessary to temporarily close the roads to vehicular traffic. The deteriorated pipes convey stormwater through the canal toward an outfall.

The pipes must be replaced as soon as possible. Failure of the pipes will not only cause a major disruption in stormwater conveyance and possible flooding but also present a potential safety hazard to motorists. Accordingly, an engineering design is needed for new and resized pipes that can be installed to replace the existing pipes.

The proposed agreement is for \$22,927 and piggybacks on the Volusia County Contract for Stormwater & Environmental Engineering Consulting Services with McKim & Creed Inc. The design is projected to be completed 180 days from the notice to proceed.

Project No.: TBD Funding Account No.: 412-1800-541-6397

ATTACHMENTS:

1.	Piggyback Agreement	McKim & Creed Inc Piggyback Agreement.pdf
2.	Niver Street Map	Niver St Map.pdf
3.	McKim & Creed/Volusia County Agreement	McKim & Creed - Volusia County.pdf

Cockcroft, Kynah
Adumuah, Branford
Riehm, Tracey

Created/Initiated - 07/23/2015
Approved - 07/23/2015
Approved - 07/30/2015

Roberts, Margaret
Harden, David

Approved - 07/30/2015
Final Approval - 07/30/2015



CITY OF PORT ORANGE PIGGYBACK AGREEMENT

This Piggyback Agreement is entered to this ____ day of _____, 2015, by and between the **CITY OF PORT ORANGE**, a Florida municipal whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **McKIM & CREED, INC.** ("Contractor"), a North Carolina corporation registered to transact business in Florida, whose principal address is 1730 Varsity Drive, Suite 500, Raleigh, North Carolina 27606 (collectively "the Parties").

WHEREAS, on the 27th day of June, 2014, the County of Volusia ("County"), a body corporate and politic and a political subdivision of the State of Florida, entered into Contract No. 14-SQ-55KW an contract for consulting services for stormwater & environmental engineering with McKim & Creed, Inc. with an effective date of June 27, 2014, for a term of three (3) years (the "Volusia County Agreement"). The Volusia County Agreement may be renewed by the County if the County determines the renewal is in the best interest of the County; and

WHEREAS, by entering into this Piggyback Agreement, Contractor agrees to honor the terms of the Volusia County Agreement for consulting services for stormwater & environmental engineering with the City of Port Orange; and

WHEREAS, a copy of the Volusia County Agreement is available in the Office of the City Clerk, City Hall, 1000 City Center, Port Orange, Florida 32129; and

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

For good and valuable consideration, conditions and promises, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Term.** The term of this Contract shall commence on the last date this Contract is signed by the Parties and shall continue until June 27, 2017 (the "Initial Term").
2. **Renewals.** This Contract may be renewed upon written agreement of the Parties.
3. **Contractor Obligation.** Contractor shall perform consulting services for stormwater & environmental engineering, more specifically described in Exhibit "1", attached hereto.
4. **Authorization for Services.** This Contract standing alone does not authorize the performance of any work or services to be provided by the Contractor 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 written Purchase Order(s) issued and executed by the City and signed by the Contractor. The City reserves the right to contract with other parties for the services contemplated by this Contract, as determined in the City's sole and absolute discretion.
5. **City Obligations.** The City agrees to compensate Contractor at the unit costs set forth in Exhibit "1" of this Contract in an amount subject to a limit up to but not to exceed Twenty-Two Thousand Nine Hundred Twenty-Seven and 00/100 Dollars (\$22,927.00) during 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. (The term "Fiscal Year" shall be defined as that one (1) year period commencing on October 1 and expiring on the following September 30). 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. Contract Administration. The Public Works Director, Branford Adumuah, shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice."

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

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

12. 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.

13. 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 Contractor 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>	Auto Liability Bodily Injury: \$100,000 each person \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence.	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
<u>Additional Coverage:</u>		Non-Owned, Hired Car	
Property Insurance — Builders Risk.	<u>Limits:</u>	Buildings — Completed value of contract.	If the Contractor requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
<u>Additional Coverage:</u>		"All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	
Professional Liability (Errors & Omissions)	<u>Limits:</u>	Coverage- \$1,000,000 minimum	

14. 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.

15. 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. 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.

(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.

16. 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.

17. 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.

18. 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.

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 CONTRACT 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

(a) As may have been outlined in the Volusia County Agreement 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.

(b) For the purposes of this Contract, any reference in the Volusia County Agreement to "County of Volusia", shall be construed to mean the "City of Port Orange."

(c) In the event of a conflict between the Volusia County Agreement and this Contract, this Contract with the City of Port Orange shall control.

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: Branford Adumuah, Public Works Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

Contractor: McKim & Creed, Inc.
Attention: John T. Lucey, President
1730 Varsity Drive
Suite 1500
Raleigh, North Carolina 27606

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]

Witnesses:

McKIM & CREED, INC.

Printed Name: _____

By: _____

John T. Lucey, 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, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Printed Name: _____

Date: _____

STATE OF NORTH CAROLINA
COUNTY OF WAKE

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by John T. Lucey, as President of McKim & Creed, Inc., a North Carolina corporation registered to transact business in Florida, and who:

[Notary: Please select one]

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

Notary Public, State of North Carolina

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____ By: _____
Allen Green, Mayor

Printed Name: _____ Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Allen Green, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

Witnesses:

ATTEST:

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

Printed Name: _____ Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, 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:

[CA 4979]

EXHIBIT A

SLIGER & ASSOCIATES
incorporated



July 10, 2015

Mr. Curtis Burkett, P.E., Regional Manager
McKim & Creed
139 Executive Circle, Suite 201
Daytona Beach, FL 32114

Delivered via email

Re: *Proposal of Surveying and Mapping Services # 15-202*
Niver Street Culvert Replacement, Port Orange, Florida

Dear Curtis:

Sliger & Associates (S&A) is pleased to submit our proposal for Surveying and Mapping Services for the above referenced project.

SCOPE OF WORK

Task 1) Prepare specific purpose topographic survey of the canal in the center of Niver Street. The limits of the survey will be from the west side of Orange Avenue to the east side of Rogers Street, from the near curb to the near curb on each side of the canal. All improvements within the limits, including utility crossings, will be located. Bridge and culvert crossings will be located with elevations of pipes and headwalls shown. Trees 6" and greater diameter at breast height will be located. Elevations along the canal will be obtained at 100 foot intervals. One foot contours will be shown.

FEE:

\$5,200.00

FEE FOR DELIVERABLES: Prints, Mylars, CDs and shipping charges will be billed at our current rates. An AutoCAD 2009 digital file will also be available.

Any additional work will be performed at our standard hourly rates, or negotiated at such time.

• Professional Land Surveyor	\$110/hr
• Project Manager	\$110/hr
• Field Survey Crew with Total Station	\$135/hr
• CAD Technician	\$80/hr
• Research	\$50/hr
• Clerical	\$40/hr

Thank you for considering Sliger & Associates. Should you have any questions regarding our approach to this project or wish to discuss the project in more detail, please do not hesitate to call.

Sincerely,

Joseph E. Zapert, P.L.S., President

JEZ/m

M:\WINWORD\PROPOSAL\Niver Street Culvert Replacement\McKimCreedBurkett15-202.doc

Phone 386.761.5385

Free 877.775.4437

Fax 386.760.0619

3921 Nova Road * Port Orange, FL 32127 * www.sligerassociates.com

EXHIBIT "1"

EXHIBIT B
FEE MATRIX
CITY OF PORT ORANGE
ENGINEERING SERVICES FOR
PINELAND AVENUE NIVER STREET DRAINAGE IMPROVEMENTS

ENGINEERING SERVICES FEE PROPOSAL

TASK NO.	DESCRIPTION	Principal Rate: \$195.00		Sr. Project Manager \$170.00		Sr. Project Engineer \$152.00		Engineer Intern \$78.00		Designer II \$94.00		Sr. Admin. Assistant \$63.00		Reimbursable Expenses	Subconsultants	TOTAL PER TASK
		HOURS	TOTAL	HOURS	TOTAL	HOURS	TOTAL	HOURS	TOTAL	HOURS	TOTAL	HOURS	TOTAL			
TASK 1	Kick-off Meeting and Data Collection		\$0.00	2	\$340.00	4	\$608.00	8	\$624.00		\$0.00	4	\$252.00	\$50.00	\$5,200.00	\$7,074.00
TASK 2	Preliminary Design Services	3	\$585.00	2	\$340.00	6	\$912.00	16	\$1,248.00	32	\$3,008.00	2	\$126.00	\$50.00		\$6,269.00
TASK 3	Final Design Services	6	\$1,170.00	2	\$340.00	8	\$1,216.00	26	\$2,028.00	26	\$2,444.00	8	\$504.00	\$120.00		\$7,822.00
TASK 4	Permitting Services		\$0.00			2	\$304.00	8	\$624.00	4	\$376.00	6	\$378.00	\$80.00		\$1,762.00
													SUBTOTAL	\$300.00	\$5,200.00	\$22,927.00
													TOTAL			\$22,927.00

REIMBURSABLE EXPENSES			
No. of Items	Description	Unit Price	TOTAL PRICE
0	Travel Mileage	\$0.565	\$0
170	24"x36" copies	\$1.50	\$255
500	8-1/2"x11" copies	\$0.06	\$30
100	11" x 17" copies	\$0.15	\$15
Shipping Services (UPS)			
Subtotal Miscellaneous Expenses			
Sliger & Associates, Inc (Survey Services)			\$300
			\$5,200
Subtotal Subconsultants			
TOTAL REIMBURSABLES (Included in Total Above)			\$5,500



**SCOPE OF SERVICES
ENGINEERING SERVICES FOR
CITY OF PORT ORANGE
PINELAND AVENUE AND NIVER STREET STORMWATER IMPROVEMENTS
SCOPE OF SERVICES**

Background

The City of Port Orange (CITY) is requesting professional design services from McKim & Creed (ENGINEER) to address a current drainage issue at the intersection of Pineland Avenue and Niver Street within the Commonwealth Estates. The drainage issues include the upstream canal section and the pipe crossing at Niver Street and Isabella Avenue, which is showing signs of possible failure. The canal itself extends to the east until it terminates at the west side of Rogers Avenue.

The project involves the design of a replacement pipe for the Pineland Avenue and Isabella Avenue crossings. In order to design this replacement a stormwater modeling effort will be necessary to establish the drainage basin for each crossing and the anticipated flow through the pipes during 10-year and 25-year storm events. Based on site observations performed by ENGINEER staff on July 8, 2015, the following elements will be utilized for the purpose of design and construction:

- The ENGINEER will use the existing County Contour elevations that are published in order to establish drainage boundaries for use within the modeling effort. However, we will engage the services of Sliger and Associates, Inc. to provide the specific survey information on the pipe crossings, headwalls, top of bank, toe of slope, and canal cross sections.
- The roadway crossing at Pineland will be replaced with this design effort. ENGINEER will assume that the use of a standard asphalt pavement section per the CITY standards would be acceptable for this location instead of the concrete pavement section. This will save on construction cost yet still maintain life cycle. Adjustments to the drainage flume locations may be necessary in order to accommodate the new road construction. The ENGINEER will assume that FDOT guard rails will be acceptable for reconstruction at Pineland crossing instead of the construction of the concrete walls. This will also reduce construction cost and allow for better roadside drainage.
- Work limits for reconstruction will only be within the area of pipe replacement at both Pineland Avenue and Isabella Avenue crossings. However, the modeling effort will include the entire contributing drainage basin to these pipe locations. No ditch improvements are anticipated with this design effort.
- The ENGINEER will assume that the material under each roadway crossing is suitable for pipe replacement and thus will not engage a geotechnical firm at this time. However, if during construction material is found to be unsuitable, it will need to be replaced with good material. Our documents will indicate this so that a cost in the bid will be obtained in case this may occur.

ENGINEER's Scope of Services on this project includes the following tasks:

TASK 1: PROJECT MANAGEMENT, KICK-OFF MEETING AND DATA COLLECTION

Task 1.1 – Project Setup and Coordination

ENGINEER will develop project documents that will include project setup, project schedule, project management plan, hard and electronic filing systems, and conduct internal kick-off meeting with the design team.

Task 1.2 – Kick-Off Meeting

ENGINEER will conduct a project kick-off meeting with the Project Team and CITY staff to review project goals, scope of work, project schedule, and administrative issues. Following the meeting, ENGINEER will prepare written minutes of the project meeting and distribute to the attendees.

Task 1.3 – Data Collection

ENGINEER will collect and use the following additional items for designing the conveyance system:

- Volusia County LiDAR data.
- Survey Services: The ENGINEER proposes to obtain a topographic survey for a portion of a canal and adjacent Niver Street. ENGINEER will subcontract the survey portion of this project to Sliger & Associates, Inc. as identified in Exhibit A, proposal, and incorporated by reference herein.

TASK 2: PRELIMINARY DESIGN SERVICES

Task 2.1: Evaluation

The ENGINEER will evaluate the following:

- Review existing conditions:
 - Delineate the drainage area contributing run off to the area using the latest Volusia County LiDAR data and aerial maps of the region.
 - Review local hydrology utilizing readily available Land Use, topology, and soils data/information.
 - Review as-built and record drawing information provided by the CITY for potable water and sanitary sewer infrastructure in the vicinity of the area in order to determine possible conflict locations with proposed stormwater improvements.
 - Model the existing conditions for the 10-year and 25-year design storm events to determine the existing depth and rate of stormwater runoff for the contributing drainage area.

Task 2.2: Design Conveyance System and Prepare Plans

ENGINEER will provide preliminary plans and technical specifications for the following:

- Design a storm water conveyance system to convey a minimum of the 10-year and 25-year storm events.

ENGINEER will prepare an opinion of probable cost for the construction of the proposed conveyance system.

ENGINEER will prepare a 60% submittal package which will include three (3) 24"x36" copies of the plans and specifications, and one (1) copy of the Engineer's Opinion of Probable Construction Cost (EOPCC) ($\pm 60\%$) which shall be submitted to the CITY for review and comment.

ENGINEER will meet with the CITY at the 60% design stage for the review of the construction drawings and the opinion of probable construction cost. Following the meeting, ENGINEER will prepare written minutes of the project meeting and distribute to the attendees.

TASK 3: FINAL DESIGN SERVICES

Task 3.1: 90% Design Services

Based on the CITY's 60% review comments, ENGINEER will advance the 60% design to 90% completion. ENGINEER will produce the design plans and technical specifications for the stormwater conveyance system design to include comments from the 60% review meeting which will be incorporated into the 90% design.

Task 3.2: 90% Design Submittal

ENGINEER will prepare a 90% submittal package which will include three (3) 24"x36" copies of the plans, one (1) copy of the Project Manual, and one (1) copy of the Engineer's Opinion of Probable Construction Cost which shall be submitted to the CITY for review and comment.

Task 3.3: 90% Review Meeting

ENGINEER will attend a meeting with the CITY at the 90% design stage for the review of the construction drawings and project manual and opinion of probable construction cost. Following the meeting, ENGINEER will prepare written minutes of the project meeting and distribute to the attendees.

Task 3.4: 100% Design

Based on the CITY's 90% review comments, ENGINEER will advance the 90% design to final completion.

Task 3.5: 100% Design Submittal

The final design submittal package to the CITY will include will include two (2) signed and sealed 100% plans (24"x36"), two (2) copies of the Project Manual, two (2) copies of the Final Engineer's Opinion of Probable Cost, and one (1) CD containing electronic PDF's of construction documents.

TASK 4: PERMITTING

ENGINEER will coordinate and attend a Pre-Application meeting with St. Johns River Water Management District (SJRWMD) to discuss project specifics and permitting requirements prior to the 60% design plan meeting with the CITY.

ENGINEER will prepare a single Environmental Permitting Support document that is sufficient for submittal to SJRWMD. This project should be able to fall under the General Permit criteria based on its size and maintenance need.

This Scope of Services includes a response to one (1) Request for Additional Information (RAI) from the SJRWMD. Additionally, this Scope of Services does not include preparation or submittal of a wetland mitigation plan as it does not appear that mitigation will be necessary. If it is determined that a wetland mitigation plan is necessary, those services can be negotiated as additional services.

It is not anticipated that permits for utilities and/or right-of-way use will be required and are not included in this scope of services.

BIDDING AND CONSTRUCTION ADMINISTRATION SERVICES

Bidding and Construction Administration Services were not requested as part of this proposal and are not included in the Scope of Services.

SCHEDULE

The ENGINEER agrees to finish the professional services contained within this proposal within 90 days of receiving the notice to proceed and requested information from the CITY.

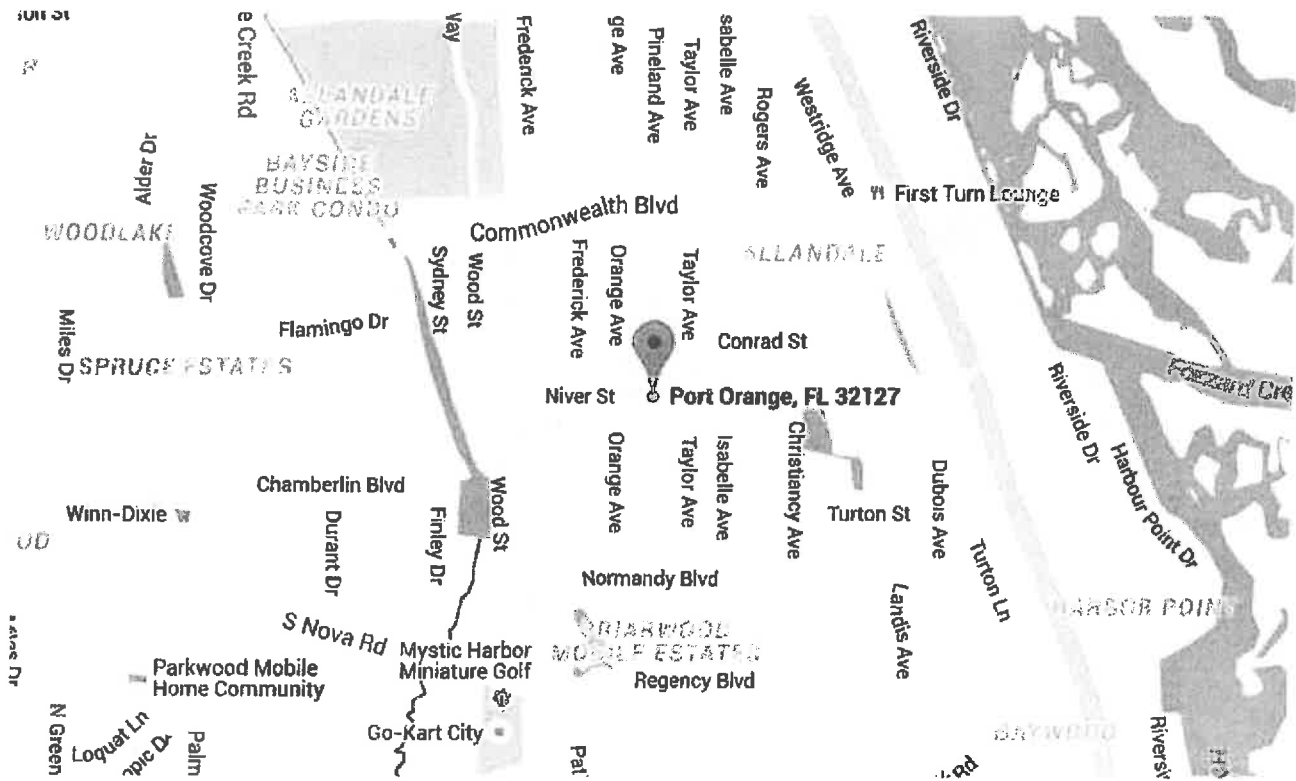
COMPENSATION

ENGINEER is proposing to complete the Scope of Services described for a Lump Sum Fee of \$22,927.00. A Services Fee Matrix is attached as Exhibit B.

ASSUMPTIONS AND EXCLUSIONS:

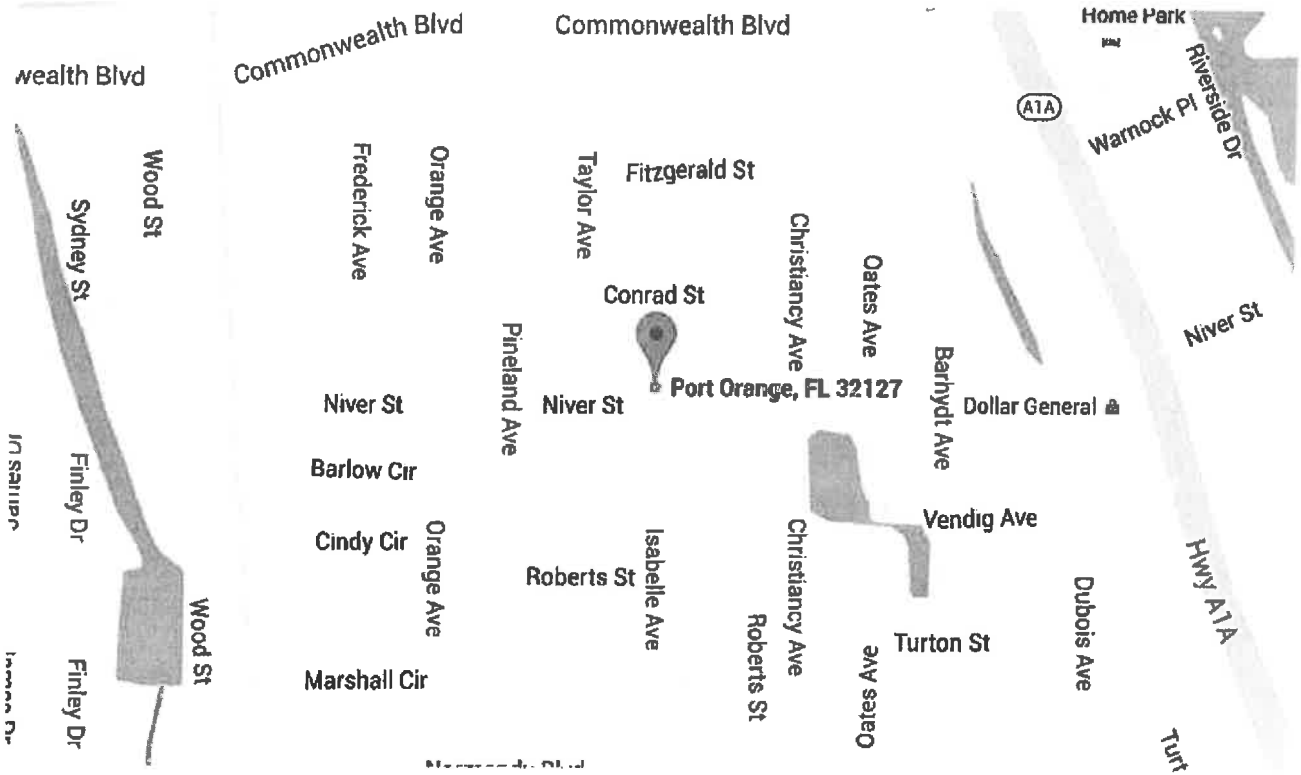
- ENGINEER shall use generally accepted SCS curve numbers for residential neighborhoods; a detailed analysis of each pervious or impervious surface throughout the drainage basin is NOT required.
- All permit fees are excluded from this Scope of Services and will be the responsibility of the CITY. It is expected that CITY will supply permit fees to ENGINEER for permit applications.
- The cost above assumes that the new conveyance system will be placed within existing drainage easements, drainage right-of-ways or CITY Road right-of-ways. Easement acquisition is not included in this proposal.
- NRCS soils maps and data will be utilized. A Site-Specific Geotechnical investigation is not included.
- A Dewatering Permit is excluded from this Scope of Services.
- A SWPPP and NPDES permit application shall be the responsibility of the contractor and are not included.
- CITY will notify the ENGINEER of any property encumbrances including utilities, right of ways, and easements that exist on or adjacent to the project area.
- ENGINEER shall be entitled to rely upon the accuracy of data and information provided by the CITY or others without independent review or evaluation unless provided otherwise.

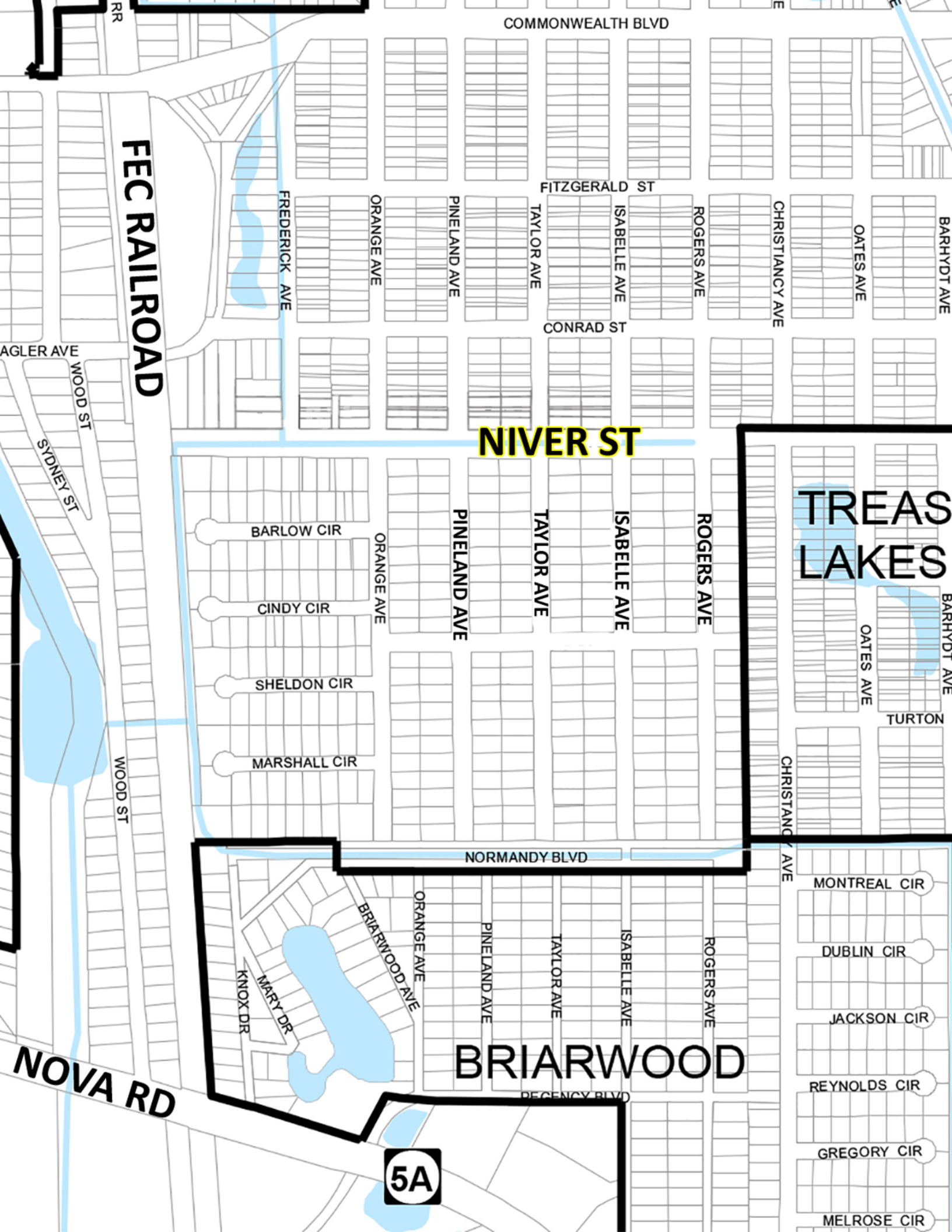
Niver St & Pineland Ave
Niver St & Pineland Ave, Port Orange, FL 32127



Isabelle Ave & Niver St

Isabelle Ave & Niver St, Port Orange, FL 32127





COMMONWEALTH BLVD

FITZGERALD ST

TAYLOR AVE

ISABELLE AVE

ROGERS AVE

CHRISTANCY AVE

OATES AVE

BARHYDT AVE

CONRAD ST

FEC RAILROAD

FREDERICK AVE

ORANGE AVE

PINELAND AVE

AGLER AVE

WOOD ST

SYDNEY ST

NIVER ST

TREAS
LAKES

BARLOW CIR

CINDY CIR

SHELDON CIR

MARSHALL CIR

PINELAND AVE

TAYLOR AVE

ISABELLE AVE

ROGERS AVE

OATES AVE

TURTON

CHRISTANCY AVE

NORMANDY BLVD

MONTREAL CIR

DUBLIN CIR

JACKSON CIR

REYNOLDS CIR

GREGORY CIR

MELROSE CIR

ORANGE AVE

BRIARWOOD AVE

KNOX DR

MARY DR

PINELAND AVE

TAYLOR AVE

ISABELLE AVE

ROGERS AVE

BRIARWOOD

REGENCY BLVD

NOVA RD

5A



FINANCIAL AND ADMINISTRATIVE SERVICES

Purchasing and Contracts

123 West Indiana Avenue • Room 302 • DeLand, FL 32720-4608

(386) 736-5935 • Fax (386) 736-5972

e-mail: purchasing@co.volusia.fl.us

www.volusia.org

July 7, 2014

PR-L-14-363

Mr. Curtis Burkett
McKim & Creed, Inc.
1901 Mason Avenue, Suite 102
Daytona Beach, Florida 32117

**RE: Stormwater & Environmental Engineering
RSQ # 14-SQ-55KW**

Dear Mr. Burkett:

Attached please find the executed contract document for the above-named project as approved by County Council on June 19, 2014.

If you need any further information or assistance, please contact our office at 386-626-6625 or kwilliams@volusia.org.

Sincerely,

Kathy Williams

Kathy Williams, MBA, CPPB
Procurement Analyst II

Enclosures

c: Judy Grim, Solid Waste
File



**CONTRACT FOR CONSULTING SERVICES
FOR
STORMWATER & ENVIRONMENTAL
ENGINEERING**

Between

THE COUNTY OF VOLUSIA

AND

McKIM & CREED, INC.

Contract No. 14-SQ-55KW

County of Volusia
Purchasing and Contracts Division
123 West Indiana Avenue, Room 302
Deland, Florida 32720-4608
www.volusia.org/purchasing

CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

This Contract made and entered by and between McKim & Creed, Inc., duly authorized to conduct business in the State of Florida, whose principal place of business is located at 1901 Mason Avenue, Suite 102, Daytona Beach, Florida, 32117 (hereinafter the "Consultant") and County of Volusia, a body corporate and politic and a subdivision of the State of Florida, whose address is County of Volusia, 123 West Indiana Avenue, DeLand, Florida 32720 (hereinafter "County").

RECITALS:

WHEREAS, the County requires a competent and qualified consultant to provide professional services in support of the County's operations; and

WHEREAS, the County has requested and received expressions of interest for the retention of services of consultants; and

WHEREAS, the County has determined that the Consultant is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual; and

WHEREAS, the County has determined pursuant to Florida Statutes 287.055 (a/k/a "Consultant's Competition Negotiation Act") and 337.105 that the Consultant is competent and qualified to furnish said services stated hereunder to the County and Consultant desires to provide professional services according to the terms and conditions hereunder, and

WHEREAS, it has been determined that the execution of this Contract is beneficial to the people of County of Volusia, Florida.

NOW, THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Contract, the receipt and sufficiency of which is acknowledged by the Consultant and County, the parties agree and stipulate as follows:

1. DEFINITIONS.

- 1.1. **Addendum:** A written explanation, interpretation, change, correction, addition, deletion, or modification of equal dignity herewith affecting the contract documents including drawing and specifications prepared by the Consultant, approved and issued by the County and/or distributed to third parties.
- 1.2. **Affidavit:** The instrument which is to be signed by the Contractor and submitted to the County upon the County's request through the Project Manager, upon completion of the job, showing that all bills have been paid. It shall also mean such instrument that may be requested by the County incidental to partial payments.
- 1.3. **Agency:** The state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under Sections 380.06 or 163.3220-163.3243 of the Florida Statutes.
- 1.4. **Amendment:** An amendment to an approved Task Assignment or this Contract in writing by the County, approved by the Director of Purchasing and Contracts, and signed by the County of equal dignity herewith authorizing an addition, deletion, or revision in the scope of work, or an adjustment in the Task Assignment price or the time for completion that is issued after execution

of the task assignment.

- 1.5. **Application for Progress Payment:** The current estimate form furnished and certified by the Consultant, which is to be used by Contractor in requesting progress payments.
- 1.6. **Architect:** A person or firm that is authorized to practice architecture pursuant to Florida Statute 481.299 or a general contractor who provides architectural services under a design-build contract authorized by F.S. 481.299(3).
- 1.7. **Architect/Engineer:** The design professional identified in the contract documents and who is licensed and registered in the State of Florida. The terms "Architect" and "Architect/Engineer (A/E)" means the architect/engineer or its authorized representative.
- 1.8. **Basic Contract:** This Contract between the County and the Consultant covering the services requested from a formal solicitation. Authorization for performance of services under the basic Contract shall be in the form of a written Task Assignment (see Task Assignment).
- 1.9. **Bid Documents:** The official forms on which the County requires formal bids to be prepared and submitted by the bidder.
- 1.10. **Calendar day:** Any day, including Saturdays, Sundays, and holidays, regardless of weather conditions.
- 1.11. **Change Order:** A written order to the Contractor signed by the County authorizing an addition, deletion, or revision in the work, or an adjustment in the contract price or time.
- 1.12. **Compensation:** The amount paid by the County to Consultant for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated which includes the total monies payable to the Consultant under a Task Assignment which includes all services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Task Assignment.
- 1.13. **Completion Date:** The date that the County or its designated representative approves and accepts all Work or Services for a Scope of Work in a Task Assignment or this Contract.
- 1.14. **Consultant:** The person or entity qualified to perform work under this Contract and any Task Assignment related thereto. In addition, Consultant must be a professional engineer or engineering firm, including an architect (or registered landscape architect, surveyor and mapper, professional engineer, architect or registered landscape architect providing professional services within the meaning of Section 287.055, F.S., who is registered in the State of Florida. In addition, the Consultant may be the Engineer or Architect or Landscape Architect of record or may provide services through and be subcontracted to the Engineer of record.
- 1.15. **Continuing contract:** A contract for professional services entered into in accordance with all the procedures of Section 287.055, F.S. between the County and a firm whereby the firm provides professional services to the County for projects for work of a specified nature as outlined in a this Contract and its associated Task Assignments as required by the County, with no time limitation except one governed by the termination provisions of this Contract and a Task Assignment.
- 1.16. **Contract Administrator:** The Director of Purchasing and Contracts or his/her designee responsible for addressing any concerns within this Contract.

- 1.17. **Contractor:** The person or entity qualified to perform work pursuant to Florida 489.105, F.S. under the Project and who is registered and licensed under the Florida Department of Business and Professional Regulation and in compliance with local laws or ordinances, other than a materialman or laborer, who enters into a contract with the County for improving real property in accordance with the Contract Documents.
- 1.18. **Contract Documents:** Contract documents shall include but are not limited to the following:
- (1) This Contract ("Basic Contract") and Exhibits;
 - (2) Task Assignments;
 - (3) Performance and payment bonds (if applicable);
 - (4) Letters of credit (*if applicable*);
 - (5) Certificates of insurance;
 - (6) Notice of Award and/or Notice to Proceed;
 - (7) The conditions of this Contract (general, special, supplementary, and other);
 - (8) Drawings;
 - (9) Project specifications;
 - (10) Written interpretations;
 - (11) Change orders;
 - (12) Project manuals;
 - (13) Addenda (including RSQs, RFPs and Consultant's responses to RFPs) issued before the execution of this Contract; and,
 - (14) Any valid modifications or Amendments to this Contract or Task Assignments issued after its execution of this Contract, and any Amendments to the foregoing.
- 1.19. **County Representative:** Also known as the Owner's representative who is the County Engineer or person designated by the County to review, approve and make decisions regarding the scope of work.
- 1.20. **County:** The County of Volusia, Florida, a political subdivision of the State of Florida for whom the work is to be performed.
- 1.21. **Deliverable:** The result(s) or end products or services of a Project or Task Assignment that meet the defined design or construction specifications, and functional parameters articulated in the Scope of Work for this Contract and a Task Assignment which, e.g., include but are not limited to: design drawings\specifications, structures, equipment, machinery, studies, reports, written documentation, training, systems or processes.
- 1.22. **Design criteria package:** Concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the Project.
- 1.23. **Design criteria professional:** A firm who holds a current certificate of registration under Chapter 481, F.S., to practice architecture or landscape architecture or a firm who holds a current certificate as a registered Engineer under Chapter 471, F.S., to practice engineering and who is employed by or under contract to the agency for the providing of professional Architect services,

Landscape Architect services, or Engineering services in connection with the preparation of the design criteria package.

- 1.24. **Drawings/Plans:** The official approved drawings or plans or exact reproductions thereof, which have been prepared, signed, sealed and dated by the Consultant, which shows the location, character, dimensions and details of the work to be done and which are considered part of the Contract Documents.
- 1.25. **Effective Date:** The date that this Contract, a Task Assignment, Addendum, Amendment, Modification is fully executed by Consultant and the County.
- 1.26. **Engineer:** The person, firm, or corporation named as such in the contract and/or authorized by the County to act as the County's representative or the County construction engineer authorized to practice engineering services pursuant to Florida Statute 471.03(2)(i)(2006) and who may serve as the County's engineers of construction, engineering and inspection. The term Engineer shall be synonymous with design architect/engineer or Architect/Engineer or Consultant.
- 1.27. **Engineer of Record:** The professional Engineer or engineering firm contracted or employed by the County and registered in the State of Florida who develops criteria and concept for the work, performs the analysis and is responsible for the preparation of the plans and specifications. The engineer of record may be County in-house staff or a Consultant retained by the County.
- 1.28. **Field Order:** A written instrument issued by the Consultant to the Contractor, which clarifies or interprets the drawings and technical specifications, and/or orders minor variations in the work, as opposed to a change in the work, and which does not involve an adjustment in contract price or time.
- 1.29. **Final Certificate of Payment:** A certificate for payment which shall constitute a representation of the Consultant to the County that the quantity of the work has been performed in accordance with the Contract Documents. The Consultant shall obtain from the Contractor(s) periodic waiver of liens and "no lien affidavits" at each payment
- 1.30. **Final Completion:** That date when (a) the Work is complete in accordance with the Contract Documents including the minor items identified during the final inspection, and (b) the Contractor has submitted its request for final payment including the Contractor's release and all Subcontractor affidavits.
- 1.31. **Firm:** Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.
- 1.32. **Inspector or Field Representative:** County Employee or an authorized representative of the Consultant assigned to make inspections of the work performed and materials furnished by the contractor.
- 1.33. **Modification:** A written Amendment to the Contract Documents approved by the County which includes but is not limited to the following:
 - 1.33.1. **Change Order:** A written order to the Contractor signed by the County authorizing an addition, deletion, revision in the Work, or an adjustment in the construction contract price or time issued after execution of the contract.
 - 1.33.2. **Field Order:** A written clarification, interpretation, minor change or alteration issued by the Consultant.

- 1.33.3. **Addenda:** A document written by the Consultant and approved by the County that is added to the original Contract Documents to clarify, revise, add to, or delete from the original Contract Documents or previous addenda. The document includes a written clarification or interpretation prepared by the Consultant.
- 1.34. **Notice of Award:** A written notice by County that the Consultant has been determined by a selection committee to be highly qualified and approved for an award of a contract.
- 1.35. **Notice to Proceed:** The official letter from the County to the Consultant establishing a date on which the Task Assignment will commence.
- 1.36. **Original Expiration Date:** The date that this Contract was originally intended to expire excluding any extensions or renewals of this Contract for a time certain.
- 1.37. **Owner:** The owner is Volusia County for whom all Work or Services under this Contract and any Task Assignment related thereto are performed by the Consultant.
- 1.38. **Pre-task Assignment/Conference:** The meeting scheduled by the County Project Manager of all the parties involved with the planning and execution of the Task Assignment(s).
- 1.39. **Professional Services:** 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.
- 1.40. **Project:** A fixed capital outlay study or planning activity described in the public notice of the County which includes the entire Scope of Work including the Scope of Work in any Task Assignment that shall be performed in accordance with the Contract Documents. A Project may include:
- 1.40.1. A grouping of minor construction, rehabilitation, or renovation activities.
- 1.40.2. A grouping of substantially similar construction, rehabilitation, or renovation activities.
- 1.41. **Project Manager or County Project Manager:** The County employee who is assigned to the Project and is responsible for the day-to-day administration and coordination of the Project for the County. The County may change the Project Manager at any time by providing notice to the Consultant and/or Contractor.
- 1.42. **Proposal:** The document submitted by the Consultant in response to a formal solicitation used to determine if the Consultant is highly qualified.
- 1.43. **Request for Information (RFI):** A prospective bidders' or Consultants' inquiries for information.
- 1.44. **Request for Statement of Qualifications (RSQ):** An invitation process initiated and used by the County to select contractor(s) or consultant(s) to perform work or provide services in a prospective project(s) based upon their apparent qualifications as submitted by them (respondents) in response to the invitation.
- 1.45. **Scope of Services/Work:** The general services/work, herein defined in this Contract, as well as the scope of work in a Task Assignment including responsibility for performing and complying

with all incidental matters pertaining thereto, as set out in the Task Assignment.

- 1.46. **Services:** Those services are the Professional Services of work or tasks as defined in Section 287.055, F.S. to be performed by the Consultant as provided for under this Contract and any Task Assignment which shall be performed by a duly licensed professional Engineer or Engineering firm, Architect or Architectural firm, Landscape Architect or Landscape Architectural firm, Surveyor, and/or Mapper who is registered in the State of Florida.
- 1.47. **Shop Drawings:** All diagrams, illustrations, brochures, schedules, and/or other data which are prepared by Contractor or Consultant, a subcontractor, manufacturer, supplier, distributor, or other person on behalf of the contractor, and which illustrate the equipment, material, or some portion of the work.
- 1.48. **Specifications:** The document that establishes the material and performance requirements of goods and services.
- 1.49. **State:** State of Florida.
- 1.50. **Subconsultant:** A person other than a materialman or laborer who enters into a contract with a Consultant for the performance of any part of the Basic Contract.
- 1.51. **Sub-subconsultant:** A person other than a materialman or laborer who enters into a contract with a sub-consultant for the performance of any part of such sub-consultant's contract.
- 1.52. **Substantial Completion:** The date as certified by the County's Project Manager when the Task Assignment or Project or a specified part as agreed to in writing by the parties is sufficiently completed to the satisfaction of County or its designated representative, in accordance with the Contract Documents, so that the project or specified part can be utilized for the purposes for which it was intended; or if there be no such certification, the date when final payment is due in accordance with the applicable Task Assignment.
- 1.53. **Task Assignment:** Specific, detailed services or work placed against an awarded and established continuing services Contract memorialized as an Amendment to this Contract by the parties prior to the commencement of such Work or Services by the Consultant.
- 1.54. **Work:** Any and all obligations, Services, duties and responsibilities necessary to the successful completion of the Project assigned to or undertaken by Consultant under the Contract Documents, including the furnishing of all labor, materials, equipment and other incident.

2. **ORDER OF PRECEDENCE.** In the event of any inconsistency between this Contract and a Task Assignment and its attached documents or exhibits regarding the Scope of Work and the amount of Compensation paid to a Consultant, the Task Assignment and its attached documents or exhibits shall be controlling. For all other inconsistencies between this Contract and a Task Assignment and its attached documents or exhibits, this Contract shall be controlling.

3. SCOPE OF WORK.

3.1. **General Scope of Services.** The following general Scope of Services shall be governed by Section 3.2 of this Contract. The Consultant shall provide services under this Contract in accordance with the Scope of Services set forth in Exhibit "B".

3.1.1. Provide all certifications ("Engineer of Record"), calculations, drawings, and any other documents required for special permits and authorizations from various government

bodies or agencies having jurisdiction over the project except for those permits that the County is responsible to provide to the consultant such as environmental surveys/permits, wetland identification surveys, traffic impact studies, property surveys, geotechnical studies/reports and quality control testing;

- 3.1.2. Prepare a time scaled diagram (Design Schedule) showing the proposed dates of completion of various design phases and scheduled completion of working drawings and technical specification manuals; submit the design schedule for County Project Manager's review and approval;
- 3.1.3. Obtain at least three quotes from subcontractors if any part of the Task Assignment requires a subcontractor to perform the Work;
- 3.1.4. Evaluate proposals furnished by the Contractor or a construction management firm, if requested by the County. Cooperate with and facilitate the performance of duties of a construction manager, if so required by the County;
- 3.1.5. The Work or Services to be rendered by the Consultant shall be commenced, as specified in the Task Assignments as may be issued hereunder, and shall be completed within the time specified therein;
- 3.1.6. If specified in a Task Assignment, furnish consultation and advice during the construction of a project and perform construction administration or commissioning services;
- 3.1.7. Furnish all other architectural/engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in the Task Assignment:
 - 3.1.7.1. **Investigation Phase.** Consultant shall visit the project site, initiate and hold project meetings as may be necessary to develop the design and preliminary sketches of the contemplated project. The Task Assignment shall specify the required number of visits necessary for the Consultant to design/develop construction plans and technical specification. The Consultant shall confer with the project manager to ascertain the number of site/project meetings. The number of site visits and/or project meetings shall depend upon the complexity of the project.
 - 3.1.7.2. **Design/Construction Plans and Specification.** Consultant shall submit design development documents and estimates of the approved design to the County for review. Each plan package and its component parts shall be prepared in accordance with the Task Assignment. The plans shall be of sufficient detail indicating floor plan layout, elevations, outline specifications, to illustrate the size and character of the entire project in its essentials as to kinds of material, type of structure, mechanical and electrical systems (if applicable), site work, and such other work as may be necessary for a completely functioning project. Consultant shall submit a cost estimate, if requested, or opinion estimate for this phase of the work for review and approval by the County. The estimate shall include, as required for the project, the identification of costs for heating, ventilation, plumbing, air conditioning, electrical lighting and power.
 - 3.1.7.3. Notwithstanding, Section 3.1.7.2, Consultant shall submit a cost estimate, if requested, or opinion estimates during each phase of the work. Estimates shall be submitted between 30, 60, and 90 percent, and again at the 100 percent stage of completion or as specified in the Task Assignment. Each estimate will

be utilized to review the Scope as may be necessary to complete the project within the construction budget. In the event that the project construction cost estimate exceeds the construction budget as set forth above, consultant shall, after review and upon written request of the County at Consultant's direct labor rates, pursuant to 3.2.6.1, continue to revise any or all of the project design, drawings, specifications, and estimates in a manner satisfactory to the County, until the revised estimate conforms to the County's budget. Consultant shall submit to the County for review the required number of sets of the contract plans, the latest cost estimate, and complete specification books as specified in the Task Assignment.

- 3.1.7.4. Each 100% final construction plan package shall be accurate, legible, complete in design, and suitable for public bidding purposes. Construction drawings shall meet the following minimum plans and design documentation packaging requirements:

- 3.1.7.4.1. Cover/Key Sheet
- 3.1.7.4.2. Summary of Pay Items, if applicable
- 3.1.7.4.3. Reference Points, if applicable
- 3.1.7.4.4. Typical Sections
- 3.1.7.4.5. Miscellaneous Detail Sheet

- 3.1.7.5. Consultant shall also prepare final construction drawings and technical specifications suitable for inclusion in a County prepared bidding package. The construction documents shall be prepared at the drawing scales specified in the Task Assignment for the development of the following elements:

- 3.1.7.5.1. Statement of probable costs of the project
- 3.1.7.5.2. Layout/site plan
- 3.1.7.5.3. Grading and drainage plans
- 3.1.7.5.4. Technical specifications that define materials appropriate for construction

- 3.1.7.6. Following the approval of design development documents and estimates of cost by the County, Consultant shall prepare construction Contract Documents that include plans, suitable for reproduction for the project in complete detail as per the Task Assignment.

- 3.1.7.7. **Completed Plans, Specifications, Documents, and Cost Estimate.** Upon completion and final approval by the County of the plans, specifications, other Contract Documents, and detailed construction cost estimates and/or opinion estimate of construction cost per task assignment, Consultant shall deliver to the County in the medium and number of copies specified in the Task Assignment the following:

- 3.1.7.7.1. Any data or field notes obtained pertaining to the project, including data and field notes obtained from additional surveys;
- 3.1.7.7.2. Complete final approved original tracings or electronic files of contract plans;
- 3.1.7.7.3. Typed masters or electronic files of Contract Documents, other than plans, suitable for reproduction on 8" x 11" paper; and

3.1.7.7.4. The last cost or opinion estimate of the construction cost in detail for approval by the County.

3.1.7.8. **Permitting Phase Services.** If required in the Task Assignment, Consultant shall be responsible for applying and assisting the County in securing all applicable permits; for preliminary coordination with the County and other appropriate regulatory agencies so that the design efforts are properly directed towards permit approval; for preparing and submitting permit packages based on preliminary coordination with the County; and for other appropriate regulatory agency requirements under the County's name at the time of submittal. Consultant shall include in the permit packages the site and system design information required by the County and other regulatory agencies, applicable sketches and calculations. Consultant shall respond to the requests of the County and other regulatory agencies concerning the submitted information; report to the County any requests for information not required at the time of permit submittal, as made known during the preliminary coordination; reproductions in excess of requirements; or regulation changes requiring permit resubmission. County shall be responsible for the permitting fees. The County, however, will not pay a fee to the Consultant when the Consultant is required to resubmit a permit package to a regulatory agency so as to address deficiencies, omissions, or corrections to the original permit package that are not attributable to changes in rules made by the regulatory agency after submission of the original permit package. Consultant shall attend the appropriate number of office and field meetings necessary for the preliminary coordination as set forth in a Task Assignment.

3.1.7.9. **Bidding Phase.** Consultant shall attend the pre-bid conference meeting at the location selected by the County. Consultant shall answer questions, as applicable, and take minutes as necessary for a written response; provide plan and specification clarification and prepare addenda to be issued by the County; review and evaluate bid packages from each respondent; and summarize in writing his/her recommendation based on the definition of responsive and responsible as defined in the Contract Documents.

3.1.7.10. **Construction Phase Services.** Consultant shall visit the project site, including attending job construction meetings, during construction to monitor the progress, quality of the work, and that the work is proceeding in accordance with the construction Contract Documents. During such visits, Consultant shall make reasonable efforts to protect the County against defects and deficiencies in the work of the contractors by informing the County Representative the work does not, in their opinion, conform to the Contract Documents. Consultant shall keep the County informed of the progress and quality of the work by submitting a written report of each visit. As part of the site visits, if required for the project, the Consultant's mechanical and electrical engineers shall also visit the project site and attend job construction meetings as requested to determine if the mechanical and electrical work is proceeding in accordance with the construction Contract Documents. Task Assignment shall specify the required number of visits necessary for the Consultant to monitor the progress and quality of work. Consultant shall perform the following tasks, including, but not limited to, assisting the County during the construction to verify that the project is completed in general conformance with the construction Contract Documents.

3.1.7.10.1. **Preconstruction Conference:** Consultant shall prepare the agenda,

if requested; attend the County's preconstruction conference meeting; prepare and submit notes of the meeting.

3.1.7.10.2. **Design Clarification Responses:** Consultant shall provide technical interpretation of the plans/drawings, specifications, and Contract Documents; evaluate requested deviation from the approved design or specification; and review and respond to requests for information (RFI) from the Contractor. Consultant shall prepare supplementary sketches as may be necessary for clarification of construction plans and assist in resolving actual field conditions encountered.

3.1.7.10.3. **Site Visits:** Consultant shall visit the job site to monitor the progress and quality of the work and determine, in general, if the work is proceeding in accordance with the intent of the Contract Documents including site visits for both substantial and final completion for each project. The Consultant shall route all job correspondence to the Contractors through County.

3.1.7.10.4. **Pay Request Review:** Consultant shall determine based on the observations and surveillance, as set forth above and on the evaluation of the Contractor's progress payment requests, the amount owed to the Contractor(s) and transmit the Contractor's payment requests to the County with recommendation for payment in accordance with the terms and conditions of the Contract Documents. The Consultant shall conduct visits to the project as necessary to determine the dates of Substantial and Final Completion and shall issue to the County a Final Certificate of Payment. Such certificate for payment shall constitute a representation of the Consultant to the County that the quantity of the work has been performed in accordance with the Contract Documents. The Consultant shall obtain from the Contractor(s) periodic waiver of liens and "no lien affidavits" at each payment. Additionally, at completion of the project, Consultant shall obtain from the Contractor(s) final waiver of lien, final "no lien affidavits," and final affidavit of release of liens prior to certification of Final Payment.

3.1.7.10.5. **"As-Built":** The Consultant shall prepare record drawings by reviewing and considering information or drawings provided by the contractor; revise original design drawings of the project and submit to the County hardcopy and an electronic file of the record drawing using information supplied by Contractor.

3.1.7.10.6. **Shop Drawing Review:** The Consultant shall review shop drawings and other data that the Contractor is required to submit. Consultant shall examine for compliance with design concept and recommend to County, approval or rejection of shop drawings and of material and equipment submitted as qualified for use in the project, based on literature and samples supplied by the Contractor through the County. Consultant shall submit to the County original drawings that will reflect all amendments to the Contract Documents. Consultant shall prepare any necessary change orders and assemble written guarantees required of the Contractors.

3.1.7.10.7. **Project Close-Out:** The Consultant shall make final review of construction to determine if work was completed in general conformance of the construction contract documents; assist in the preparation of final "punch list" when the project is substantially completed; assist in negotiating the final payment for construction; and submit a final letter report upon which final settlement and contract closeout can be based. If required, prepare and submit to Florida Department of Environmental Protection (FDEP) or Department of Health for approval, the FDEP certificate of completion of construction for both water and sewer.

3.1.7.11 **Deliverables.** Submit final design plans and support documents to the County for review and approval at specified junctures in the medium and number of copies specified in the Task Assignment. If required in the Task Assignment, each plan set submitted shall have the percentage completed for those submittals clearly indicated on the first sheet of each set of plans.

3.2. Performance Criteria:

- 3.2.1. All Work or Services shall be performed in accordance with the Contract Documents and shall be approved by the County in writing prior to commencing any Work or Service(s) described herein or in a Task Assignment.
- 3.2.2. This Contract standing alone does not authorize the performance of any Work or Services to be provided by the Consultant or require the County to place any orders for Work or a Service. Authorization for performance of professional services by the Consultant under this Contract shall be in the form of written Task Assignments issued and executed by the County and signed by the Consultant. A sample Task Assignment is attached hereto as Exhibit "A". Each Task Assignment shall describe the Services required, state the dates for commencement and completion of the Work, and establish the amount and method of payment.
- 3.2.3. Notwithstanding the General Scope of Work and Services provision in Section 3.1., the Scope of Work for a Project shall be set forth with specificity and describe in detail all specifications, plan requirements, deliverables, additional performance criteria, maximum not-to-exceed compensation, the commencement and completion dates, materials, equipment, testing and any other item or criteria required to complete the Work or Services in the Task Assignment. Each Task Assignment shall relate to the General Scope of Work and Services in Section 3.1 and shall supplement this Contract and be made a part thereof.
- 3.2.4. All materials and labor necessary to complete a Task Assignment shall be furnished by the Consultant unless the Contract Documents state otherwise. Said materials shall be of good quality and as specified in the Contract Documents; and all work and labor will be performed, pursuant to Section 7.3.5, to the satisfaction of the County.
- 3.2.5. The Consultant shall provide the services required herein strictly in an independent contractor relationship with the County and, except as expressly set forth herein, is not, nor shall be, construed to be an agent or employee of the County. For each purpose related to this Contract and each Task Assignment, Consultant and contractors, subcontractors or subconsultants shall be independent contractors with respect to the County and nothing herein shall create any association, partnership, joint venture or agency relationship between them. The County shall not provide vehicles or equipment

to the Consultant to perform the duties required by a Task Assignment under this Contract nor will the County pay for any business, travel, office or training expense or any other contract performance expense not specifically set forth in the scope of services of a Task Assignment. The Consultant is not exclusively bound to the County and may provide service to other private and public entities as long as the service by the Consultant for such entities does not conflict with the Consultant's services to the County in any Task Assignment.

3.2.6. As applicable to each Project performed by the Consultant during the term of this Contract or Task Assignment, the County may at any time, by written order, make changes within the general scope of a Task Assignment and the Work and/or Services to be performed through Amendments to the Task Assignment. Except as provided in this Contract otherwise, if any such change causes an increase or decrease in the Consultant's cost of, or the time required for performance of, the Project Work or Services, an equitable adjustment shall be made and this Contract shall be amended through the Amendment of the Task Assignment in writing stating the equitable adjustment prior to the commencement of Work covered by the equitable adjustment. Any claim by the Consultant for adjustment under this Section must be asserted in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change unless the County grants in writing an additional period of time before the completion of the Contract; otherwise, the claim shall be deemed waived. The Consultant shall proceed with the prosecution of the Work or Service as changed. Except as otherwise provided in this Contract, no charge for any extra work or materials shall be allowed or approved by the County.

3.2.6.1. **Changes to Scope of Work.** Either party may propose changes to the scope or time schedule of the Work or Services under a Task Assignment which shall be submitted to the other party in writing for consideration of feasibility and the likely effect on the cost and schedule for performance of the Work or Services. The parties shall mutually agree upon any proposed changes, including resulting equitable adjustments to costs and schedules for the performance of the Services. The agreed changes shall be documented in one (1) or more Amendments to the Task Assignment signed by the County and Consultant prior to the commencement of Work or Services covered by the equitable adjustment. If, despite good faith negotiations, the parties are unable to agree to the terms of an Amendment to a Task Assignment, the parties shall follow the dispute resolution process provided under Section 18.

3.2.7. **Time is of the Essence.** Time is of the essence for each Task Assignment issued under this Contract and all Projects performed in accordance herewith.

3.2.8. County and Consultant shall exhaust all methods to resolve issues, including but not limited to, the dispute resolution procedures in Section 18 of this Contract before any action is taken to declare the County or Consultant in default of this Contract.

4. TERM OF CONTRACT.

4.1. Subject to Section 4.2, the Term of this Contract shall commence on the Effective Date of this Contract or when it is fully executed by all parties and shall terminate three (3) years from the Effective Date. Except as provided in Section 4.2 the expiration of the term of a Task Assignment issued under this Contract shall have no effect upon this Contract. This Contract may be renewed by the County if the County determines that renewal is in the best interest of the County and satisfies the requirements of Section 287.055, F.S. Said renewal shall be in writing and made a part of this Contract and shall incorporate this Contract by reference.

- 4.2. All Task Assignments issued under this Contract shall terminate at the expiration of the term of the Task Assignment, unless amended in writing by the parties, or the term of this Contract, except if a Task Assignment issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion Date of said Task Assignment, including any Amendments thereto, and after all Work or Services under the Task Assignment have been approved and accepted by County's Project Manager. As such, the obligations entered therein by both parties under this Contract and said Task Assignment shall remain in full force and effect until completion of all Work or Services performed under this Contract and/or the Task Assignment.
- 4.3. The Work or Services to be rendered by the Consultant shall be commenced, as specified in the Task Assignments as may be issued hereunder, and shall be completed within the time specified therein.
- 4.4. No new or additional Task Assignments shall be issued after the Original Expiration Date of this Basic Contract. The extension of this Contract to coincide with the completion of an existing Task Assignment issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the County or the Consultant to enter into a new or additional Task Assignment after the original expiration date of this Contract, unless this Contract is renewed prior to entering into an Contract for a new or additional Task Assignment.

5. CONTRACT PRICE AND COMPENSATION.

- 5.1. For Work, Services, or each separate Project performed under a Task Assignment during the term of the Contract, the Consultant shall be paid Compensation for all Work or Services performed in a Task Assignment, including labor and materials on a "fixed fee," "time and materials", "cost-plus-a-fixed-fee" or "guaranteed maximum-not-to-exceed" basis as applicable in the Task Assignment. The Task Assignment shall state the method of Compensation.
 - 5.1.1. Regardless of the method of Compensation, e.g., "fixed fee", "time and materials", "cost-plus-a-fixed-fee" or "guaranteed maximum-not-to-exceed" basis, Compensation shall not be adjusted because of errors or omissions which are not the fault of the County in computing the Project or Task Assignment costs which result in an increase in the cost of the Task Assignment or because the time for completion varies from the original estimate, including completion or substantial completion of the Task Assignment prior to the scheduled or Contract or Task Assignment completion date or on account of County's election to furnish any of the Work or Services. In addition, Consultant shall certify in the Task Assignment that the original contract price or Compensation for a Project or Task Assignment and any additions thereto shall be adjusted to exclude any significant sums by which the County determines the contract price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs.
 - 5.1.2. **Reimbursable Expenses:** Subject to the County's Travel and Reimbursement Policy, Sections 112.061 (7) and (8), Florida Statutes, or their successor, reimbursable expenses include actual and verifiable expenditures without any mark-up made by the Consultant or Consultant's employees and/or agents that directly relate to the Task Assignment and to the expenses listed in the following subparagraphs:
 - 5.1.2.1. Expenses of transportation, when traveling is directly related to the Project and necessary, based on and in accordance with the Scope of Work of a Task Assignment;

- 5.1.2.2. Long distance calls and telegrams;
 - 5.1.2.3. Fees paid for securing approval of authorities having jurisdiction over the tasks of the Project or Task Assignment;
 - 5.1.2.4. Expenses of reproductions;
 - 5.1.2.5. Postage and handling of drawings and specifications;
 - 5.1.2.6. Any other expenses related to the Project; and
 - 5.1.2.7. If authorized in the Task Assignment, the cost of other expenditures made by the Consultant that relate directly to the Scope of Work in the Task Assignment.
- 5.1.3. **Truth-in-Negotiation Certificate.** For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or Compensation in a Task Assignment over \$150,000.00, Consultant shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the Compensation are accurate, complete, and current at the time of contracting. Any Professional Service contract or Task Assignment under which such a certificate is required must contain a provision that the original contract price or Compensation and any additions thereto will be adjusted to exclude any significant sums by which the County determines the contract price or Compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or Compensation adjustments must be made within one (1) year following the end of the contract. Otherwise, such adjustments shall be deemed waived by the Consultant and null and void for the purposes of this Contract or the Task Assignment. The signature on this Contract by Consultant shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
- 5.1.4. **Fixed Fee or Price & Guaranteed Maximum-Not-To-Exceed Compensation.** The total Fixed Fee or Price and Guaranteed Maximum-Not-To-Exceed Compensation for a Task Assignment shall be comprised of the total cost of the project, including all design engineering, materials, machinery, equipment, labor, temporary construction, capital spare parts, reimbursable expenses, all mark-ups for overhead and profit. In addition, the Task Assignment shall state with specificity the commencement and completion dates, all materials, contingency and escalation allowances, any and all expenses (including those referenced in Section 5.1.2 herein), and all other items of cost necessary to complete the Task Assignment, whether furnished by County, Consultant, third parties, or others. A Scope of Work for a Task Assignment specifying Compensation on guaranteed maximum-not-to-exceed basis shall allocate the guaranteed maximum-not-to-exceed price or Compensation among, and provide for payments against specified deliverables and performance.
- 5.1.5. **Retainage.** The County shall have the right to withhold retainage from Compensation paid to a Consultant. Should the County decide that retainage shall be withheld from Compensation, the amount to be retained from each payment to the Consultant shall be:
- A. ☐ % of the total contract price.
 - B. ☐ % of each payment of a milestone payment based on a Project milestone

schedule.

C. ☒ No retainage will be taken.

The County shall have the right to withhold retainage from Compensation paid to a Consultant. Should the County decide that retainage shall be withheld from Compensation; the amount to be retained from each payment to the Consultant shall be stated in the Task Assignment. The retainage shall be included with the final payment after all Work or Services for the Task Assignment have been approved and accepted by the County and all disputed invoices have been resolved by the parties. The County shall never be required to pay an amount that would leave unpaid from the contract price or Compensation an amount less than the amount County would need to have in order to pay another Consultant to complete the Work or Services should Consultant fail to complete the Work in a Task Assignment remaining incomplete as of that date.

5.1.6. Payments.

5.1.6.1. **Punch List.** If County, in its reasonable discretion, does not consider a Project substantially complete, the County shall notify Consultant in writing giving the reasons. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment, and the certificate shall state the time within which those items shall be completed or corrected, the time to be within the contract time. Disputes regarding payments shall be resolved through the dispute resolution procedure articulated in Section 18 of this Contract.

5.1.6.2. **Approval of Final Payment.** If, on the basis of the County Project Manager's observation and review of Consultant's Work or Services performed during the Task Assignment, final inspection and review of the final application for payment and the County Project Manager's satisfaction that the work has been completed and Consultant has fulfilled all of its obligations under the Contract Documents, County Project Manager, after receipt of the final application for payment, indicate in writing his or her approval of payment and present the application to Accounts Payable for payment. Otherwise, the County Project Manager shall return the application to the Consultant, indicating in writing the reasons for refusing to approve final payment, in which case the Consultant will make the necessary corrections and resubmit the application.

5.1.6.3. **Invoice Detail.** Regardless of the method of compensation, e.g., "fixed fee", "time and materials", or "guaranteed maximum not-to-exceed" basis, the Consultant shall submit an invoice for which Professional Services were rendered to the County in response to its request therefore upon the completion and acceptance of the services detailed in Section 3.1 herein. Each invoice shall show detailed explanations of the services accomplished by labor hours by classification, associated rates, any material or subcontracted costs and any indirect rates or costs in accordance with the prices set forth in a Task Assignment. All of the above shall sum to the total amount requested.

5.1.7. **Invoices.** Invoices or payment requests shall be addressed by Consultant and submitted to the County's Project Manager. The Consultant shall submit:

A. ☒ A monthly statement for Professional Services rendered to the date of the

statement subject to Section 5.1.5. The monthly statements shall reflect the Work or Services actually completed at the time of billing.

- B. ☐ A Final Statement for each County requested Project indicating the Work or Services actually completed after final acceptance of said Work or Services by the County. The Consultant's determination of the Work or Services actually completed is to be prepared by the Consultant, and accompanied by such supporting data as may be required by the County Project Manager. County Project Manager shall review the Consultant's statement and notify the Consultant in writing within twenty (20) business days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.

- 5.1.8. For each Task Assignment, Consultant shall submit a monthly statement for Professional Services rendered to the date of the statement. The monthly statements shall reflect the Work or Services actually completed at the time of billing. The Consultant's determination of the Work or Services actually completed is to be prepared by the Consultant, and accompanied by such supporting data as may be required by the County Project Manager. County Project Manager shall review the Consultant's statement and notify the Consultant in writing within twenty (20) days from receipt of the statement if any amounts requested are disputed or lack adequate support or documentation.
- 5.1.9. The County may withhold payment of any specific invoiced charges in a pay request or monthly statement which it disputes in good faith and pay all undisputed charges on the invoice, pay request or monthly statement.
- 5.1.10. Within forty-five (45) days of acceptance by the County Project Manager of all the Work or Services for which Consultant has submitted the monthly statement of professional services, the Consultant shall be paid the unpaid balance of any money due for any undisputed Work or Services covered by said statement. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Part VII of Chapter 218 Florida Statutes, as amended.
- 5.1.11. **Taxes.** County is a tax exempt entity and shall not be charged or invoiced for the payment of taxes for Work or Services performed under this Contract.
- 5.1.12. Pursuant to the terms and conditions articulated in this Contract, an appropriate fee shall be negotiated for each specific Project or Task Assignment to be performed under this Contract and such fee shall be stipulated, together with the Scope of Work for each Task Assignment or project, in separate Task Assignments to this Contract.
- 5.1.13. **Consultant's Continuing Obligations.** Consultant's obligation to perform the Work or services and complete the Task Assignment in accordance with the Contract Documents shall be absolute. Neither approval of any progress nor final payment to Consultant, nor the issuance of a certificate of substantial completion, nor any payment by County to Consultant under the Contract Documents nor any act of acceptance by the County nor any failure to do so, nor any correction of defective work by County shall constitute an acceptance of Work or Services not in accordance with the Contract Documents.

6. TERMINATION.

- 6.1. The performance of Work or Services under this Contract may be terminated for convenience or

non-appropriation of funds by the County in accordance with this clause in whole or from time to time in part, upon at least thirty (30) days prior written notice to Consultant whenever the County shall determine that such termination is in the best interest of the County. Any such termination shall be effected by delivery to the Consultant of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the subsequent date upon which such termination becomes effective.

- 6.2. Upon receipt of such notification, Consultant shall inform County of the extent to which performance is completed and unless notified in writing by the County otherwise, the Consultant shall take no further steps towards completion of the Project. Upon payment by County, Consultant shall deliver to County any and all completed Deliverables and Deliverables-in-progress that then exist for all outstanding Projects. If the County terminates any Project due to the Consultant's failure to meet a completion deadline as set forth in Section 7 herein, the County may seek the services for the Project from another Consultant. Payment will be made to the Consultant pursuant to 6.3.15.
- 6.3. After receipt of a Notice of Termination as set forth in Section 6.1 above, and except as otherwise directed by the County, the Consultant shall:
 - 6.3.1. Stop work under the Contract or Task Assignment on the date and to the extent specified in the notice of termination.
 - 6.3.2. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract or Task Assignment, as it is not terminated.
 - 6.3.3. Terminate all orders and subcontracts pursuant to Article 6 to the extent that they relate to the performance of Work or Services terminated by the notice of termination.
 - 6.3.4. Assign to the County, in the manner, at the times and to the extent directed by the County, all of the right, title, and interest of the Consultant under the orders and subcontracts so terminated, in which case the County shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - 6.3.5. With the approval of the County and to the extent required by the County, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts. County's approval of such settlements shall be final for all the purposes of Section 6. In addition, Consultant shall transfer title and deliver to the County, in the manner, at the times, and to the extent, if any, directed by the County:
 - 6.3.5.1. Sketches, calculations, reports, models, studies and other Work-in-process, completed Work or Services, supplies, and other materials produced as a part of, or acquired in connection with the performance of the Work or Services terminated by the notice of termination; and,
 - 6.3.5.2. Completed or partially completed designs, plans, drawings, information, and other property, which, if had been completed, would have been required to be furnished to the County.
 - 6.3.6. Complete performance of such part of the Work or Services as shall not have been terminated by the notice of termination.
 - 6.3.7. After receipt of a notice of termination, the Consultant shall submit to the County its

termination claim, in the form and with a certification as prescribed by the County. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one (1) or more extensions in writing are granted by the County, upon request of the Consultant made in writing within such thirty (30) day period or authorized extension thereof. Upon failure of the Consultant to submit its termination claim within the time allowed, the County may determine on the basis of information available to it, the amount, if any, due to the Consultant by reason of the termination and shall there upon pay to the Consultant the amount so determined.

6.3.8. Subject to the provisions of Section 6.3.7., the Consultant and the County may agree upon the whole or any part of the amount or amounts to be paid to the Consultant by reason of the total or partial termination of work pursuant to Article 6 which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the total contract price or Compensation as reduced by the amount of payments otherwise made and as further reduced by the contract price of Compensation for Work not terminated. As such, the Contract shall be amended accordingly and the Consultant shall be paid the agreed amount. Nothing herein, prescribing the amount to be paid to the Consultant in the event of failure of the Consultant and the County to agree upon the whole amount to be paid to the Consultant by reason of the termination of Work or Services pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Consultant.

6.3.9. In the event of the failure of the Consultant and the County to agree as provided in 6.3.8. above upon the whole amount to be paid to the Consultant by reason of the termination of Work pursuant to Article 6, the County shall pay to the Consultant the amounts determined by the County as follows, but without duplication of any amounts already agreed upon by the parties.

6.3.9.1. For completed Work or Services accepted by the County, the price or prices or Compensation specified in the Task Assignment for such work, less any payments previously made.

6.3.9.1.1. Notwithstanding Section 5.1.4., the total compensation shall include the total of the following:

6.3.9.1.1.1. The costs incurred by the Consultant in the performance of the Work and Services terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the Work and Services paid or to be paid for under Section 6.3.9.1. hereof;

6.3.9.1.1.2. The cost of settling and paying claims arising out of the termination of Work or Services under subcontracts or orders as provided herein, which are properly chargeable to the terminated portion of the Contract exclusive of amounts paid or payable on account of work or services delivered or furnished by subconsultants or Sub-subconsultants prior to the effective date of termination, which amounts shall be included in the costs payable herein; and,

6.3.10. This Contract or a Task Assignment may be terminated by Consultant if Consultant

provides a minimum of thirty (30) days written notice to the Director of Purchasing. In the event Consultant breaches any of the terms and conditions of this Contract or Task Assignment, and after receipt of notice from County of said breach and time to cure the same the Consultant fails to cure the breach, the County may take over the Work and Services and complete the same by Task Assignment; or otherwise, the Consultant shall be liable to the County for any increased cost of the Project reasonably incurred by the County in the process of completing the Consultant's unfinished Work and Services.

As such, County may apply unpaid Compensation due and owing to Consultant prior to the default as a set off against the costs incurred by the County for taking over such Work or Services.

6.3.11. In the event that there is a partial termination of this Contract or a Task Assignment by the County or Consultant because of non-appropriation by County, subject to Section 4 - Term of Contract and Section 5 - Contract Price and Compensation, Consultant shall be paid in accordance with terms of this Section 6, to the date of termination on a prorated basis for any task, milestone, or Deliverable started but not completed which were designated for payment on a payment schedule provided to the County prior to the commencement of work on the task, milestone or Deliverable which is the subject of the partial termination. County's obligation to pay Consultant under this Contract or Task Assignment is limited to the budgeted amount for the fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 5-Contract Price and Compensation. Consultant and County shall be obligated to continue performance under this Contract for the work or services within the Scope of Work or Services under this Contract which is not the subject of the partial termination by non-appropriation.

6.3.12. If termination of this Contract or Task Assignment occurs for any reason:

6.3.12.1 The County shall continue to have the unfettered right to use or access any license, designs, plans, or exhibits, any of the Deliverables or work products from tasks or milestones, arising under that Contract or Task Assignment and produced pursuant to the Contract Documents for which the County has paid prior to termination of this Contract or Task Assignment or for which County makes payment after termination of this Contract or Task Assignment.

6.3.13. Except as otherwise provided in this Contract, Consultant shall return to the County all County confidential information in Consultant's possession and Consultant shall certify in a written document signed by the Consultant that all such information has been returned.

6.3.14. Except as provided in Section 6.3.12.1., the County shall return to Consultant or destroy all Consultant's confidential information in the County's possession (including, without limitation, all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment or other documents or property relating to such Consultant's Confidential Information and all copies of any of the foregoing (in whatever medium recorded)) and all third-party products in its possession not yet accepted and not yet paid for in full together with all copies of documentation and other material related thereto, and shall certify in a written document signed by the County Project Manager that all such information and material has been returned or destroyed.

- 6.3.15. For all undisputed outstanding invoices submitted to the County prior to the effective date of the termination and subject to Section 4 - Term of Contract, Section 5 - Contract Price and Compensation, and this Article 6, the County shall cause payments to be made to Consultant within thirty (30) days of receipt of invoice. Consultant shall invoice the County for any sums Consultant claims to be owed by County under this Contract for work performed from the last invoice to the effective date of termination. County shall review such invoice for payment and County shall pay any undisputed amount within thirty (30) days.
- 6.3.16. In the event of termination by the County for non-appropriation, for all items or products ordered by Consultant before receipt by Consultant of the notice of termination which Consultant could not cancel without imposition of a fee, the County shall cause payments to be made to Consultant within thirty (30) days of receipt of an undisputed invoice for all cancellation, restocking or residual fees resulting from the cancellation or return of third party products ordered from or shipped by the vendor thereof prior to the effective date of the termination.
- 6.3.17. All provisions of this Contract which impose or contemplate continuing obligations on a party will survive the expiration or termination of this Contract.

7. RESPONSIBILITY OF CONSULTANT.

- 7.1. Consultant shall be duly licensed under the laws of the State of Florida as an Architect, Engineer, Landscape Architect, Mapper or Surveyor for the purposes of this Contract and to satisfy the requirements of Section 287.055, F.S.
- 7.2. Consistent with Article 3 herein, Consultant's performance of Work or Services shall be in accordance with the terms and conditions of this Contract and the applicable Task Assignment(s). The Consultant's performance of Work or Services shall be as a professional consultant to the County to carry out the activities of a Task Assignment under the direction of the County's Project Manager.
- 7.3. Consultant shall perform Work or Services required under this Contract or Task Assignment, including but not limited to reports, studies, schedules, estimates, the development or preparation of plans, specifications, and cost estimates pertaining to a Project. Consultant shall confer with the County Project Manager to ascertain the functional or design criteria of each Task Assignment. The services of Consultant shall also include of the following:
- 7.3.1. Unless otherwise provided in this Contract or Task Assignment, Consultant shall commence in accordance with the Contract Documents the Services required for the Project or Task Assignment within ten (10) days of the County's Notice to Proceed.
- 7.3.2. Consultant shall verify to the County for the applicable Task Assignment that all designs, and specifications, and all data reports, studies, plans, bulletins, schedules, and other drawings therewith conform to the Scope of Work in the Task Assignment and applicable governmental regulations, statutes, and ordinances, including any amendments thereto. Said certification shall be in the form acceptable to the County and made a part of this Contract and attached to the Task Assignment and incorporated herein by reference.
- 7.3.3. Consultant covenants, and agrees that there are no obligations, commitments, or impediments of any kind that shall limit or prevent Consultant's performance of the Work or Services.

- 7.3.4. The Consultant covenants and agrees that it will not contract for or accept employment for the performance of any Work or Service with any individual, business, corporation or government unit that would create a conflict of interest in the performance of its obligations pursuant to this Contract with the County.
- 7.3.5. Consultant covenants and agrees that all of the Work or Services to be furnished by Consultant under this Contract and any Task Assignment from the inception of this Contract or Task Assignment until the Project has been fully completed, shall be of the standard and quality that prevail among similarly situated licensed professional consultants engaged in the Consultant's profession or practice in the State of Florida under the same or similar circumstances involving the design and/or construction of the Project.
- 7.3.7. Consultant covenants and agrees as follows:
- 7.3.7.1. Consultant recognizes that its special talent, training, and experience caused the County to select Consultant to be the prime professional on the Project or Task Assignment;
 - 7.3.7.2. Consultant comprehends the specifications and requirements of the Scope of Work of the applicable Task Assignment and the use of the same in their entirety to provide Project Deliverables; and
 - 7.3.7.3. Consultant possesses the special skills to recognize material errors or omissions that shall make a Deliverable fail to perform within the specifications and requirements of the Scope of Work for the applicable Task Assignment.
- 7.3.8. Consultant covenants and agrees that any Project data, reports, studies, designs, drawings, specifications and requirements prepared by Consultant or its agents or subconsultants shall be completed, pursuant to Section 7.3.5. In addition, Consultant shall include in any such reports, studies, bulletins, schedules, designs, drawings, and/or specifications warnings about known hazards to the Project.
- 7.3.9. Consultant covenants and agrees to the following: (1) the Project plans and specifications shall conform to their foreseeable use in the Project with all the amenities as set forth in the plans and specifications in the Task Assignment; and, (2) the Consultant shall produce Deliverables made pursuant to Section 7.3.5. Consultant's duties, as set forth herein, shall at no time be in any way diminished by reason of any approval by County of any plans or specifications in a Task Assignment, nor shall Consultant be released from any liability by reason of such approval by County, it being understood that County at all times is ultimately relying on Consultant's skill, expertise, and knowledge in preparing the plans and specifications or any other documentation. As such, said approval shall not be a defense to a claim or cause of action for contribution or indemnification by the County.
- 7.3.10. Consultant covenants and agrees that all persons connected with Consultant directly in charge of the professional work are duly registered and licensed under Florida law and pursuant to this Contract.
- 7.3.11. Consultant covenants and agrees that it shall be liable for all negligent errors or omissions proximately caused by Consultant, if any, in judgment relative to the Work or Services of any Task Assignment under which Consultant provides Work or Services.

- 7.3.12. Consultant covenants and agrees to call to County's attention anything of any nature in any deliverables, reports, studies, bulletins, schedules, designs, drawings, documentation, plans, specifications, requirements or instructions prepared by Consultant or data supplied to Consultant by the County or any other party that Consultant regards in Consultant's professional opinion as unsuitable, improper, or inaccurate in connection with the purposes for which such data is furnished in the Project.
- 7.3.13. Consistent with Section 7.3.11., Consultant covenants and agrees that it shall, at its own cost, make good any defects, caused by the Consultant's or Sub-Consultants negligence, in its Work or Services as soon as Consultant becomes aware of such defects or is notified of such defects. Should Consultant refuse or neglect to make good such defects within a reasonable time after receiving notice requesting such remedial work, then County, pursuant to Section 6., shall be entitled to make good such defective Services at the expense of Consultant and/or terminate this Contract and the Task Assignment. This commitment by Consultant is in addition to, and not in substitution for, any other remedy for defective Work or Services that County may have at law or in equity.
- 7.3.14. Consultant covenants and agrees to provide all necessary and required plans for the successful design or completion of a Project as agreed to in the Task Assignment's Scope of Work and as governed by this Contract. Written Deliverables shall be made and delivered in accordance with this Contract or Task Contract. Each written Deliverable shall be accurate, legible and suitable for public bidding purposes. For recommendations concerning the plan preparation of studies, plans, or specifications, the Consultant should refer to the latest applicable manuals as determined by the County Project Manager. All studies, plans, drawings or specifications must meet the County's requirements to obtain permits or government documents, licenses and certificates as applicable in a Task Assignment. In addition the Consultant shall have the following responsibilities:
- 7.3.14.1. Consultant shall be responsible for preliminary coordination with the County and other appropriate regulatory agencies so that design efforts are properly directed towards permit approval;
- 7.3.14.2. If applicable in a Task Assignment, prepare permit packages based on preliminary coordination with the County and other appropriate regulatory agency's requirements at the time of submittal. The permit packages shall include site and system design information required by the County and other regulatory agencies, applicable sketches and calculations as set forth in the Task Assignment;
- 7.3.14.3. Consultant shall respond to the requests of the County and other regulatory agencies concerning the submitted information. The Consultant shall report to the County any requests for information not required at the time of permit submittal, as made known during preliminary coordination, reproductions in excess of requirements, or regulation changes requiring permit resubmission:
- 7.3.14.4. The County shall provide the permitting fees, but shall not pay an additional fee to the Consultant when the Consultant is required to resubmit a permit package to a regulatory agency so as to address deficiencies, omissions, or corrections to the original permit package that were the responsibility of the Consultant and that are not attributable to changes in rules made by the

regulatory agency since submission of the original permit package:

- 7.3.14.5. Consultant shall review all design and shop drawings and other data that the Consultant is required to submit to the County or any state, local or federal agency. These drawings shall be reviewed for general conformance with the design concept of the Project and scope of work of the Task Assignment and general compliance with the information given in the Contract Documents;
 - 7.3.14.6. Consultant shall make final review of Project Deliverables to determine if Work or Services were completed in general conformance with the Contract Documents; and
 - 7.3.14.7. Consultant shall prepare and submit a schedule or time line of each task listed in a Task Assignment.
- 7.3.15. **Annual Statement of Qualifications.** Annually, the Consultant shall submit to the County's Contracts Administrator statements of qualifications and performance data confirming that Consultant is a duly licensed and registered professional Architect, Engineer, Landscape Architect, or Surveyor and Mapper as applicable in connection with Consultant's professional practice and the Services or Work provided to the County under this Contract.
- 7.3.16. **Design Phase.** As required by the County, Consultant shall submit a certain number of sets of design development documents and/or estimates as specified in the Task Assignment to the County for review. The plans and specifications shall be of sufficient detail indicating, e.g., floor plan layout, elevations, outline specifications to fix and illustrate the size and character of the entire Project in its essentials as to kinds of material, type of structure, mechanical and electrical systems, site work, and such other work as may be necessary for a completely functioning Project or completed design drawings and specification. As requested by the County Project Manager, the Consultant shall submit a unit cost or opinion of cost estimate for this phase of the Work or Services for review and approval of County. This estimate or opinion shall include, e.g., identification of costs for heating, ventilation, plumbing, air conditioning, and electrical lighting and power, and other items applicable to the Project or Task Assignment.
- 7.3.17. **Final Review of Plans, Specifications, and Estimates.**
- 7.3.17.1. As requested by the County or as set forth in a Task Assignment, Consultant shall submit to County for review copies of the Project plans and specifications, and copies of the latest detailed cost estimate.
 - 7.3.17.2. Upon completion and final approval by County of the Project plans, specifications, other Contract Documents, and cost estimates (if required in the Task Assignment), Consultant shall deliver to County as part of the contract obligation or as set forth in the Task Assignment, unless otherwise noted completed plans, designs, drawings, specifications, documents, and cost or opinion estimates.
 - 7.3.17.3. Consultant shall submit to County original drawings and specifications that shall reflect all amendments to the Contract Documents.
 - 7.3.17.4. Consultant agrees to furnish all services, materials, labor, and all other items required to undertake and complete all Work or Services required by this

Contract or any Task Assignment in accordance with the drawings, plans, and specifications submitted to the County by Consultant or relied upon by the Consultant to complete the Project or Task Assignment.

- 7.4. **Assurance.** Consultant gives County its assurance that all Work or Services performed under this Contract shall be timely performed, pursuant to Section 7.3.5., and in accordance with the specifications and requirements of the Contract Documents and of any inspections (if applicable), tests (if applicable) or approvals required under the Contract Documents. All Work not conforming to the specifications and requirements of the Scope of Work of a Task Assignment or of the inspections, tests (if applicable) or approvals in a Task Assignment shall be considered materially defective and constitute a breach of this Contract or the Task Assignment.
- 7.5. **Tests and Inspections.** If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected and tested, and Consultant has agreed in a Task Assignment to perform such services, Consultant shall furnish the County's Project Manager with the required certificates of inspection, testing or approval. All tests shall be in accordance with the methods prescribed by the American Society for Testing and Materials or such other applicable organization that may be required by law or the Contract Documents.
- 7.6. The Consultant shall be responsible for the professional and technical accuracy and the coordination of all data, reports and any other service furnished by the Consultant under this Contract or any Task Assignment. The Consultant shall, without additional cost to the County, correct or revise any errors or deficiencies in its Work or Service for which it is responsible.
- 7.7. All Work performed by Consultant including all general provisions, special provisions, job specifications, drawings, Addendum, Amendments to Task Assignments, written interpretations, and written orders for minor changes in Work, shall comply with the Scope of Work of a Task Assignment and all applicable local laws, codes, ordinances and statutes and the performance criteria in Section 3.2. Otherwise, if Consultant is an Architect or Engineer, only work certified by said consultant, which in whole or part constitutes, a Deliverable in a Task Assignment shall comply with the Scope of Work in a Task Assignment and all applicable local laws, codes, ordinances and statutes. Work not covered by Contract Documents in a Task Assignment shall not be required in a Project unless the County in its sole discretion determines that it is required by reasonable inference as being necessary to produce the intended Deliverable(s).
- 7.8. If applicable in a Task Assignment, Consultant will supervise and direct all Work or Services efficiently and pursuant to Section 7.3.5. As such, Consultant shall be solely responsible for the means, methods, techniques, sequences and procedures for the design or development of a Deliverable. Further, Consultant shall be responsible for assuring the County that finished Deliverables complies accurately with the Contract Documents or plans and specifications of the Scope of Work in the applicable Task Assignment.
- 7.9. Consultant will make periodic visits as delineated in the Task Assignment to the site to observe the progress and quality of the executed construction Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents or Task Assignment. The efforts of the Consultant shall be directed toward providing assurance for the County that all Work completed in a Task Assignment shall conform to the requirements of the Scope of Work of the Task Assignment. On the basis of Consultant's observations, skills and experience, Consultant shall keep the County informed of the progress of all Work and shall endeavor to guard the County against defects and deficiencies in the Work. As required in the Task Assignment, each site visit will be followed by a report to the client of known deviations from the Contract Documents or plans and specifications in the Scope of Work of a Task Assignment.

7.10. Consultant shall issue with reasonable promptness all written clarifications or interpretations of a Task Assignment (in the form of drawings or otherwise as requested by the County) that Consultant may determine are necessary, which shall be consistent with or reasonably inferable from the overall intent of the Task Assignment.

7.11. Concerning Subconsultants.

- 7.11.1. Consultant shall not employ any subconsultant, other person or organization against whom the County may have reasonable objection, nor shall Consultant be required to employ any subconsultant against whom it has reasonable objection. Consultant shall not make any substitution for any subconsultant who has been accepted by the County without the County's approval.
- 7.11.2. County's disapproval or requirement of removal or replacement of Consultant's employee or subconsultant shall be deemed for lawful reasons if in County's reasonable judgment, such Consultant's employee or subconsultant poses a threat or causes harm to the health, welfare, safety or morale of the County or its agencies, personnel or property or who fails any drug test administered in connection with this Contract, or who has been convicted of a felony or a misdemeanor involving "moral turpitude" or has been released or dishonorably discharged or separated under other than honorable conditions from any of the Armed Forces of the United States.
- 7.11.3. Consultant shall be fully responsible for all negligent acts and omissions of its subconsultant or sub-subconsultants and of persons directly or indirectly employed by them and of persons for whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract Documents shall create any contractual relationship between any subconsultant and the County or any obligation on the part of the County to pay or to see to the payment of any moneys due any subconsultant, except as may otherwise be required by law. County may furnish to any subconsultant to the extent practicable, evidence of amounts paid to Consultant on account of specific work done in accordance with the schedule of values.
- 7.11.4. Consultant agrees to bind specifically every subconsultant to the applicable terms and conditions of the Contract Documents and the terms and conditions of Section 1-3 and 16 of this Contract for the benefit of the County.
- 7.11.5. The Consultant shall require all subconsultants or sub-subconsultants or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the County and the Consultant.
- 7.11.6. Any subcontractors or subconsultants and/or outside associates required by the Consultant in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified for each Project assigned under this Contract. Any substitution of such subcontractors, subconsultants or associates will be subject to the prior written approval of the County Project Manager.
- 7.11.7. Consultant shall save and hold the County harmless from any and all claims or actions by Consultant's subconsultants or sub-subconsultants for payment of monies such subconsultant or sub-subconsultants claims to be owed by Consultant for Work performed under this Contract or a Task Assignment, provided that the County has paid Consultant in accordance with the terms of this Contract.

- 7.11.8 Nothing in this Contract or a Task Assignment shall create any obligation on the part of the County to pay directly to any subconsultants or sub-subconsultants of Consultant any monies due to such subconsultant or sub-subconsultants or claims of a subconsultant or sub-subconsultant for amounts owed by Consultant to subconsultant or sub-subconsultant for Work performed under this Contract or Task Assignment.

8. AUTHORIZATION FOR SERVICES.

- 8.1. **No Guarantee to Perform Projects.** The County makes no covenant or promise as to the number of available Projects, nor that the Consultant will perform any Project for the County during the life of this Contract. The County reserves the right to contract with other parties for the services contemplated by this Contract as determined in the County's sole and absolute discretion.
- 8.2. **Certifications for Completed Work.** Consultant shall sign and seal (hereinafter "Certification") all completed Work under a Task Assignment as required as a licensed professional or under Florida law; otherwise, the County Project Manager shall not have the authority to approve completed Work or Services and Consultant shall not be entitled to payment for the Work or Services covered by uncertified Work. In the event the County Project Manager accepts and approves completed Work bearing no such certification by the Consultant, such acceptance and approval shall not relieve Consultant or its subconsultants or agents of any liability for any defects, omissions or errors in the Deliverables of completed Work of a Task Assignment until such work is certified by Consultant.

9. INDEMNIFICATION.

- 9.1. Consultant shall, at its own expense, indemnify and hold harmless the County and its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys, and employees from and against all claims of every kind and nature (including losses incurred or suffered in consequences either of bodily injury to any person or damage to property), damages, losses and expenses including reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and its subconsultants or sub-subconsultants or agents performing Work or Services under this Contract or a Task Assignment, caused by any negligent act or omission of Consultant, any of Consultant's subconsultants or sub-subconsultants, anyone employed by any of them or anyone for whose acts any of them may be liable, except the Consultant will not be required to indemnify and hold the County harmless if such claim, damage, loss and expense is the result of the sole negligence of the County, or of anyone directly or indirectly employed by the County or anyone for whose acts the County may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Contract.
- 9.2. In all claims against the County or any of its public officials (elected and appointed), successors and successors in interest, officers, agents, attorneys and employees by any employee of Consultant, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, this indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant, contractor or any subcontractor or subconsultant under workers' compensation acts, disability benefit acts or other employee benefit acts.
- 9.3. If Consultant is licensing, providing or developing software, including derivative works for use by the County, Consultant agrees to protect and indemnify and hold harmless the County, its agents, elected officials and employees of the County from and against any and all claims,

demands, actions, and causes of action which may arise asserting that all or any part of the Consultant licensed applications provided under any software owned by Consultant and licensed to County or provided by Consultant for use thereof by the County, infringes or misappropriates any third party's United States patent, copyright or any trade secret protected under United States law.

9.3.1. In addition to the foregoing indemnification provision, Consultant shall also take the following steps to assure that County can continually use the software which Consultant has directly licensed to County or provided for use thereof by the County in substantially the same manner delivered or subsequently enhanced or modified by:

9.3.1.1. Promptly replace the allegedly infringing or misappropriated item or items with compatible, functionally equivalent items which are not alleged to be infringing or misappropriated; or

9.3.1.2. Promptly modify the alleged infringing or misappropriated item or items to eliminate the alleged infringement or misappropriation without impairing County's intended use of the licensed applications and/or sublicensed applications in any manner; or

9.3.1.3. Promptly procure the right for the County to continue to use the licensed applications and/or sublicensed applications without modification; and

9.3.1.4. Unless otherwise agreed by the parties, promptly shall mean that the events described herein shall occur in no less than sixty (60) days from the date that notice of the claim is received by Consultant unless otherwise agreed by the Parties.

9.4. **Confidential Information and Indemnification.** If Consultant is licensing or developing software (including derivative works) for use by the County, Consultant grants County a perpetual, fully-paid, non-assignable, non-exclusive, royalty-free license to use Consultant's software deliverables developed or licensed under a Task Assignment. Said license includes software owned by Consultant which is furnished under this Contract or a Task Assignment, for County's internal use with such use to include the right to modify such deliverable(s) and to create derivative works for such internal use including, without limitation, the right to use such deliverable(s).

9.5. The terms "proprietary software, sensitive information" and "trade secret" shall constitute Confidential Information and shall be that which is defined in and exempt from disclosure pursuant to Florida Statutes, Chapter 119, and Section I, Section 24 of the Florida Constitution ("Florida Public Records Law"), and Chapter 812 of the Florida Statutes. In addition and for the purposes of this Contract and any Task Assignment, Confidential Information shall include confidential information and/or trade secret information disclosed by Consultant to County that is expressly identified in writing by Consultant and Consultant's subconsultants or sub-subconsultants. Any Confidential Information provided to County by Consultant must be expressly identified in a "Nondisclosure Contract for Confidential Materials" form which Consultant may obtain from the County's Purchasing Division.

9.5.1. Confidential Information and/or Trade Secret do not include the following:

9.5.1.1. Information already known or independently developed the party in possession; or

9.5.1.2. Information in the public domain through no wrongful act of the party in

possession; or

9.5.1.3. Information received by the party in possession from a third party who was free to disclose it; or

9.5.1.4. Information regularly disclosed to third parties without restriction on disclosure, or

9.5.1.5. Information required to be disclosed by law or an order of a court of competent jurisdiction.

9.6. In the event that Consultant does not enable the County to use that which Consultant has delivered through accomplishing one or more of the alternatives set forth above within aforementioned time period set forth herein during the term of this Contract or Task Assignment, Consultant shall be in material default of this Contract and subject to Section 6: Termination.

9.7. If Consultant is granting a license or develops software for the County in a Task Assignment, it hereby warrants and represents that:

9.7.1. Consultant is the sole owner of all right, title, and interest in and to the Consultant licensed software, user manuals and documentation, including all patents, copyrights, copyright rights, trade secrets, trademarks, trade names and all proprietary and intellectual rights and confidential information contained therein, and that it is authorized to enter into this Contract and grant County a perpetual license; and

9.7.2. No portion of any licenses or right granted to the County to use Consultant's software pursuant to the terms of the applicable software license Contract of Consultant for any work performed under this Contract or Task Assignment violates or is protected by right, title, interest or similar right of any third person or entity.

10. LIMITATION OF LIABILITY AND REMEDIES.

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

11. COUNTY REPRESENTATIVE.

11.1. The Work or Services shall be provided by the Consultant under the direction of the authorized County Representative, except as limited by the County's Purchasing and Contracts Procedures (see www.volusia.org/purchasing), who shall have decision authority subject to the requirements of the County's Purchasing Procedures Manual for all phases of the Work, including general direction, review and approval of the Work or Services.

11.2. Neither the County Representative's review, approval or acceptance of, nor payment for any of

the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Consultant shall be and remain liable to the County for all costs of any kind which were incurred by the County as a result of the Consultant's negligent performance of the services furnished under this Contract.

12. REUSE AND OWNERSHIP OF DOCUMENTS.

- 12.1. Provided that Consultant has been paid by County for all completed Work in the applicable Task Assignment in accordance with the terms of this Contract, the County shall have unlimited rights, for the benefit of the County, in all reports, statistical data, specifications, notes and other Consultant's work produced in the performance of this Contract, including right to copy plans for any purpose including for the use and maintenance of the Deliverable(s) of a Project. If County determines to reuse or adapt plans signed and sealed by Consultant, Consultant shall be entitled to further reasonable compensation at rates agreed upon by County and Consultant prior to executing and commencing any Work in a Task Assignment. Said rates shall be incorporated in the Task Assignment. Further, all documents prepared by Consultant pursuant to this Contract are instruments of service in respect of the Project or Task Assignment. The Consultant shall not be liable for the negligent reuse by the County of said documents.
- 12.2. All deliverables analyses, reference data, survey data, plans and reports or any other form of written instrument or document that may result from the Consultant's Work or Services or that have been created during the course of the Consultant's performance under this Contract shall become property of the County and/or "works made for hire" (as defined under the 1976 Copyright Act (Title 17 of the United States Code) as amended) after final payment is made to the Consultant.

13. EXPERT WITNESS

- 13.1. If requested by the County, the Consultant shall serve as an expert or professional witness for the County in any legal proceedings arising in connection with this Contract. The expert or professional witness fee for Consultant shall be a reasonable rate negotiated at the time the Consultant is called for such a duty.

14. AUDIT AND EXAMINATION OF RECORDS

- 14.1. For purposes of verifying that invoices submitted, in conjunction with the negotiation of this Contract or any Contract change or other modification are accurate, complete, and current, the County Project Manager, or County's authorized representative(s), shall - until the expiration of three (3) years from the date of final payment under this Contract - have the right to examine those books, records, documents and other supporting data that will permit adequate evaluation of the invoices submitted, along with the computations and projections used therein that were prepared by the Consultant in connection with work under this Contract. Unless the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices are set by law or regulation. The Consultant agrees to insert the substance of this clause in all subcontracts hereunder so as to apply until three (3) years after final payment under the subcontract.

16. INSURANCE REQUIREMENTS.

16.1. Required Types of Insurance:

The Consultant shall purchase and maintain at its own expense, during the term of this Contract the following types and amounts of insurance with limits no less than those shown below, in the

form and from companies satisfactory to the County:

SCHEDULE

LIMITS

Workers' Compensation

Florida Statutory Coverage

Commercial General Liability\$2,000,000. General Aggregate
.....\$2,000,000. Products/CompOps Aggregate
Products-Completed Operation.....\$1,000,000. Personal/Advertising Injury
.....\$1,000,000. Each Occurrence

(The County of Volusia shall be named as an additional insured under all of the above Commercial General Liability coverage.)

Auto Liability\$1,000,000. CSL
All autos-owned, hired or no-owned
(Symbol 1 Coverage)

Professional Liability.....\$1,000,000. (Project Specific)
(Errors & Omissions)

- 16.1.1. Minimum underlying coverage's shall include Commercial General Liability, Automobile Liability and Workers' Compensation/Employer's Liability. Umbrella liability limit will not be required to be carried by subconsultants.
- 16.1.2. Umbrella or Excess Liability policies may be used to obtain the total limits of liability required to meet the required limits of coverage stated above. Evidence of such coverage should clearly demonstrate the underlying coverage's/policies that are included.
- 16.1.3. **Workers' Compensation Insurance.** Workers' Compensation insurance is required for all employees of the Consultant, employed or hired to perform or provide Work or Services under this Contract or that is in any way connected with Work or Services performed under this Contract, without exclusion for any class of employee, and shall comply fully with the Florida Workers' Compensation Law (Chapter 440, Florida Statutes, Workers' Compensation Insurance) and include Employers' Liability Insurance with limits no less than the statutory amount shown above per occurrence.
- 16.1.3.1. Consultant and its Subconsultants, or any associated or subsidiary company doing Work on County property or under this Contract must be named in the Workers' Compensation coverage or provide proof of their own Workers' Compensation coverage, without exclusion of any class of employee, and with a minimum of the statutory limits per occurrence for Employer's liability coverage. Further, if the Consultant's Subconsultants fail to obtain Workers' Compensation insurance and a claim is made against the County by the uncovered employee of said Subconsultant of the Consultant, the Consultant shall indemnify, defend, and hold harmless the County from all claims for all costs including attorney's fees and costs arising under said employee(s) Workers' Compensation insurance claim(s).
- 16.1.4. **Commercial General Liability Insurance.** Commercial General Liability insurance, with a limit of not less than the amounts shown above with an aggregate limit and per occurrence basis, including coverage for the Consultant's operations "broad form" property damage

coverage's protecting itself, its employees, agents, for claims for damages caused by bodily injury, property damage, or personal or advertising injury, products liability/completed operations including what is commonly known as groups A, B, and C (libel, false arrest, slander). Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the Consultant arising from Work or Services performed under this Contract. Public liability coverage shall include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the Consultant's contract to indemnify, and hold harmless the County as provided in this Contract. The commercial general liability policy shall be endorsed to include the County as an additional insured. The commercial general liability policy shall provide exclusive coverage for the location or project site where the Work or Services are to be performed under this Contract. In the alternative, the commercial general liability policy shall be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the County Risk Manager.

16.1.5. Motor Vehicle Liability. The Consultant shall secure and maintain during the term of this Contract, motor vehicle coverage in the split limit amounts of no less than the amounts shown above per person, per occurrence for bodily injury and for property damage or a combined single limit of the amount shown above (including "Any Auto" Symbol 1 coverage), protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle.

16.1.6. Professional Liability. The Consultant shall ensure that it secures and maintains, during the term of this Contract, Professional Liability insurance with limits of no less than the amount shown above contemplated by this Contract. Such policy shall cover all the Consultant's professional liabilities and broad enough to include errors and omissions specific to Consultant's professional liability for direct and contingent design errors and Architect's/Engineers professional liability with no exclusions for design-build work.

16.1.6.1. If the Consultant fails to secure and maintain the professional liability insurance coverage required herein, the Consultant shall be liable to the County and agrees to indemnify, defend, and hold harmless the County against all claims, actions, losses or damages that would have been covered by such insurance.

16.1.6.2. The Consultant must maintain a retroactive date prior to or equal to the effective date of this Contract. The Consultant shall purchase a Supplemental Extended Reporting Period ("SERP") with a minimum reporting period of not less than three (3) years in the event a sub-consultant's policy is canceled, not renewed, switched to occurrence form, or any other event which requires a purchase of SERP to cover a gap in insurance for claims which may arise under or related to this Contract. The Consultant's purchase of the SERP shall not relieve the Consultant of the obligation to provide replacement coverage. In addition, the Consultant shall require have the sub-consultant's carrier immediately inform the Consultant, and the County of Volusia's Risk Management Division and the Purchasing and Contracts Division of any contractual obligations that may alter its professional liability coverage under this Contract.

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

16.2. General Insurance Requirements:

- 16.2.1. All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
- 16.2.2. Approval by County of any policy of insurance shall not relieve Consultant from its responsibility to maintain the insurance coverage required herein for the performance of Work or Services by the Consultant or its Subconsultants for the entire term of this Contract and for such longer periods of time as may be required under other clauses of this Contract.
- 16.2.3. **Waiver of Subrogation.** The Consultant hereby waives all rights against the County and its Subconsultants to the extent of the risk coverage by any insurance policy required hereunder for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of this Contract. The Consultant shall require similar waivers from all its Subconsultants. This provision applies to all policies of insurance required under this Contract (including Workers' Compensation, and general liability).
- 16.2.4. **County Not Liable for Paying Deductibles.** For all insurance required by Consultant, the County shall not be responsible or liable for paying deductibles for any claim arising out of or related to the Consultant's business or any Subconsultant performing Work or Services on behalf of the Consultant or for the Consultant's benefit under this Contract.
- 16.2.5. **Cancellation Notices.** During the term of this Contract, Consultant shall be responsible for promptly advising and providing the County's Risk Management and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the County under this Contract within two (2) business days of receipt of such notice or change.
- 16.2.6. For any on-site Work performed by or on behalf of Consultant on County property, the County shall be named as an additional insured or additional named insured subject to review and determination by County's Risk Manager on all policies required under this Contract.
- 16.2.7. Deductibles. For purposes of this Contract, Contractor shall not obtain an insurance policy with a deductible or self-insurance provision.

16.3. Proof of Insurance:

- 16.3.1. The Consultant shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.
- 16.3.2. The Consultant shall furnish proof of insurance acceptable to the County prior to or at the time of execution of this Contract and the Consultant shall not commence Work or provide any Service until the Consultant has obtained all the insurance required under this Contract and such insurance has been filed with and approved by the County.

Upon request from the County, the Consultant shall furnish copies of the following types of insurance policies and any changes or amendments thereto, during its normal business hours, to the County and County's Risk Management and Purchasing and Contracts Divisions, prior to the commencement of any contractual obligations. This Contract may be terminated by the County, without penalty or expense to County, if at any time during the term of this Contract proof of any insurance required hereunder is not provided to the County.

- 16.3.3. All certificates of insurance shall clearly indicate that the Consultant has obtained insurance of the type, amount and classification required by this Article. No Work or Services by Consultant or its Subconsultants shall be commenced until County has approved these policies or certificates of insurance. Further, the Consultant agrees that the County shall make no payments pursuant to the terms of this Contract until all required proof or evidence of insurance has been provided to the County. This Consultant may be terminated by the County, without penalty or expense, if proof of any insurance required hereunder is not provided to the County.
- 16.3.4. The Consultant shall file replacement certificates with the County at the time of expiration or termination of the required insurance occurring during the term of this Contract. In the event such insurance lapses, the County expressly reserves the right to renew the insurance policies at the Consultant's expense or terminate this Contract but County has no obligation to renew any policies.
- 16.4. The provisions of this Article shall survive the cancellation or termination of this Contract.

17. LOCAL GOVERNMENT POLICIES.

- 17.1. **Public Records Law.** Consultant acknowledges that the County and Consultant are required to comply with the Florida Constitution, and Chapter 119, Florida Statutes, in the handling of the materials created under this Contract and that said statute controls over the terms of this Contract. To the extent practicable, the County agrees to notify Consultant of any public records request concerning the Consultant or matters relating to the services provided under this Contract. Consultant agrees to comply with all provisions of such Public Record Act as they apply to the Consultant.
- 17.2. **Payments Subject to Appropriation.** Notwithstanding any other term or provision of this Contract, the continuation of this Contract or Task Assignment beyond a single fiscal year of County is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes. If at any time funds are not appropriated for the Services and Deliverables provided or to be provided under this Contract or Task Assignment, cancellation shall be accepted by Consultant with thirty (30) days prior written notice, but failure to give such notice shall be of no effect. Termination by the County due to non-appropriation shall be without a termination charge by Consultant. County shall not be obligated to pay Consultant under this Contract beyond the date of termination except as set forth in Section 6 – Termination. County's obligation to pay Consultant is limited to the budgeted amount for a fiscal year approved by the Volusia County Council for the then current fiscal year of this Contract and is otherwise limited to legally available non-ad valorem tax revenues. Consultant shall have no right to compel the Volusia County Council to appropriate funds for any fiscal year to pay the compensation set forth in Section 5 – Contract Price and Compensation. The parties agree to review the Project Work plan and remaining Work to be performed in advance of each new fiscal year for the County to compare the funding allocated for the next fiscal year to the cost of the remaining Scope of Work of the Project or Task

Assignment, to determine whether or not the allocated funding will be adequate to cover all Work to be completed in the next fiscal year. The cost of the remaining Project shall be the fixed fee/lump sum or price, maximum-not-to-exceed compensation less all amounts paid and less all amounts on pending undisputed invoices. Unless the parties agree that the funding allocated for the next fiscal year is adequate for the next fiscal year's Work, either party may terminate this Contract in accordance with the provisions of Section 6 – Termination.

- 17.3. **Truth-in-Negotiations.** Consultant's signature on this Contract or a Task Assignment shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Assignment are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Consultant has disclosed all debts or fees owed to or that are pending before the County prior to the execution of this Contract or a Task Assignment.
- 17.4. **No Code Violation or Past Due Debt.** Consultant warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the Volusia County Code of Ordinances, and does not owe the County any past due debt. Any breach of the foregoing warranty and representation shall be a material breach of this Contract and the County shall have the right to terminate this Contract as set forth herein.
- 17.5. **Changes Due to Public Welfare.** The County and Consultant agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law or Ordinance.
- 17.6. **Compliance with Applicable Laws.** Consultant shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Contract. Consultant shall protect and indemnify County and all its officers, agents, servants and employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order or decree caused or committed by Consultant, its representatives, subconsultants, professional associates, agents, servants or employees. Additionally, Consultant shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Contract from the federal government, State of Florida, County of Volusia or municipalities when legally required and maintain same in full force and effect during the term of this Contract.
- 17.7. **Nondiscrimination and Americans with Disabilities Act.** Consultant shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. Consultant agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing all Services funded by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under this Contract, Consultant agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for Work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

- 17.7.1 In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the county's ADA Coordinator at 386-248-1760 for assistance, at least two business days before any meeting date. Assisted listening system receivers are available for the hearing impaired, and can be obtained from the Deputy Clerk by contacting the county's ADA Coordinator at 386-248-1760. Read the full [ADA Notice](#) under The American with Disabilities Act (Title II). Read the [County of Volusia Grievance Procedure](#) under The Americans with Disabilities Act (Title II).
- 17.8. **Drug Free Workplace.** The County of Volusia is a drug-free and smoke-free workplace. Consultant agrees that it shall provide a drug-free environment to its personnel during the term of this Contract and will comply, subject to the prior receipt thereof, with the County's policies on drug-free and smoke-free work place during the term of this Contract.
- 17.9. **Background Checks.** Consultant and County understand that certain areas of the County's premises may not be available to Consultant's personnel without background checks and that such access is not required to perform the services contemplated by this Contract.
- 17.10. **Employment of Illegal Aliens.** Consultant certifies that it does not knowingly or willingly and will not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.
- 17.11. **Prohibition Against Contingent Fees:**
- 17.11.1. The Consultant warrants that he or she or it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this Contract and that he or she or it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, compensation, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, the County shall have the right to terminate this Contract or Task Assignment without liability and, at its sole discretion, to deduct from the contract price or compensation, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.
- 17.11.2. Consultant understands and acknowledges that any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for the Consultant, who offers, agrees, or contracts to solicit or secure County contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this State, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.
- 17.11.3. Any Architect, professional Engineer, or registered Surveyor and Mapper, or any group, association, company, corporation, firm, or partnership thereof that is a Consultant under this Contract, who offers to pay, or pays, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall, upon conviction in

a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

17.11.4. Any County official, agent or employee who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the County and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in Sections 775.082 or 775.083 of the Florida Statutes.

17.12. EQUAL OPPORTUNITY; DISADVANTAGED BUSINESS ENTERPRISES:

17.12.1. During the performance of this Contract, the Consultant agrees as follows:

17.12.1.1. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. The Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, up-grading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

17.12.1.2. Municipal Code section 2-269, County Ordinance No. 90-20, § 9,5-17-90 of the County Council of the County of Volusia, establishing policies and procedures for the Disadvantaged and Women's Business Enterprises program shall be part of this Contract and the Consultant shall endeavor to fulfill the goals and policies of this Resolution as applicable to this Contract.

18. DISPUTE RESOLUTION.

18.1. The parties to this Contract shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract in accordance with the provisions set forth in this Section. The Consultant and County Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Contract or Task Assignment and any applicable Scope of Services. Issues shall be escalated to successive management levels as indicated in Section 18.3.

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

18.3. Upon issuance of a Dispute Notice, the Project Managers or designated representative(s) shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers or designated representative(s) shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If

such dispute is not resolved by the Project Managers or designated representative(s) within five (5) business days, the Project Managers or designated representative(s) shall escalate the dispute as indicated below.

Business Days	Consultant's Representative	County Representative
5	Consultant	Project Manager
10	Consultant's Engagement Manager	Director of Purchasing and Contracts
15	Consultant's Business Unit Manager or Designee	Chief Financial Officer

18.4. **Formal Dispute Resolution.** At any point after issuance of a Dispute Notice under this Section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction. If litigation is prematurely commenced, it shall be stayed until the mediator makes the required certification.

19. FORCE MAJEURE.

19.1. Neither party will be liable for any failure or delay in the performance of its obligations under this Contract (and the failure or delay will not be deemed a default of this Contract or grounds for termination) if both of the following conditions are satisfied: (i) the failure or delay could not have been prevented by reasonable precautions, and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and (ii) the failure or delay is caused, directly or indirectly, by reason of fire or other casualty, natural disaster, epidemic or accident; strikes or labor disputes; inability to procure raw materials, equipment, power or supplies; war, terrorism or other violence; any law, order, proclamation, regulation, ordinance, demand, or requirement of any governmental agency or intergovernmental body other than a party hereto; or any other act or condition beyond the reasonable control of the non-performing party. Accordingly, the parties further agree that:

19.2. Upon the occurrence of an event which satisfies both of the above conditions (a "Force Majeure Event"), the non-performing party will be excused from any further performance of those obligations under this Contract affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.

19.3. Upon the occurrence of a Force Majeure Event, the non-performing party will notify the other party within two (2) business days of the failure, or as soon as possible after such failure or delay if the Force Majeure Event prevents compliance within two (2) business days, of the occurrence of a Force Majeure Event and will describe in reasonable detail the nature of the Force Majeure Event.

19.4. In the event of a Force Majeure Event, the time for performance by the parties under the applicable Project shall be extended for a period of time equal to the time lost by reason of

such cause through execution of a Change Order pursuant to the terms of this Contract.

20. CLAIMS NOTICE.

- 20.1. The Consultant shall timely report in writing to the County's Director of Risk Management any incident which it believes might result in a claim or claims against the County under any of the coverages mentioned herein.

Name: County of Volusia, Florida
Personnel/Risk Management Division
Address: 230 North Woodland Boulevard, Suite 250
DeLand, Florida 32720
Telephone: (386) 736-5963
Fax: (386) 822-5006

21. SUCCESSORS AND ASSIGNS.

- 21.1. Consultant may not assign or otherwise convey Contractor's rights and/or obligations under this Contract without first providing County with a processing fee of Five Hundred Dollars (US\$500.00) and obtaining County's prior written consent, which consent County may withhold, limit and/or condition in County's sole discretion, including, but not limited to posting a performance bond. Any consent by the County under this section shall be by written amendment to the Contract in a form and substance specified by the County in its sole discretion. If Consultant desires to assign or otherwise convey its rights and/or obligations under this Contract, Consultant shall, no less than one hundred twenty (120) days prior to the assignment's proposed effective date, provide County with a written request for County's consent.

Failure by the Consultant to obtain the County's consent in accordance with this section prior to assignment or other conveyance shall: 1) constitute a material breach of the Contract; and 2) entitle the County to retain any and all legal rights, claims and defense to enforce this section, including, but not limited to, injunctive, declaratory, damages and attorney's fees and costs. Payment of any sum by the County in accordance with the Contract to the Consultant or any person or entity prior to the Consultant obtaining the County's consent to the assignment shall not constitute a waiver of the rights of the County under this section.

Nothing herein shall preclude the right of the County to waive its rights under this section but no waiver shall be granted by the County without amendment to the Contract. The Consultant is hereby placed on notice that the County may demand a discount of up ten percent (10%) from those rates or compensation for the goods or services established in the Contract as a condition to execution of the amendment.

- 22. ADDITIONAL RIGHTS AND REMEDIES.** The rights and remedies of the County provided for under this Contract are in addition to any other rights and remedies provided by law; the County may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, with-holding, recoupment, or counterclaim, either during or after performance of this Contract.
- 23. MBE.** This Contract is entered into by the County and Consultant pursuant to the minority business enterprise procurement goals under Section 287.09, F.S.
- 24. CONTROLLING LAW.** This Contract or Task Assignment is to be governed by the laws of the State of Florida. Venue for any litigation between the parties to this Contract or Task Assignment shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own

costs and attorneys fees relating to any dispute arising under the Contract.

25. **MODIFICATIONS TO CONTRACT.** This Contract or Task Assignment and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.
26. **NOTICE.** All notice required under this Contract or Task Assignment shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

In the case of County:	with a copies of legal notices to:
County of Volusia Attn: Director of Purchasing and Contracts Address: 123 W. Indiana Ave., Room 302 DeLand, Florida 32720 Phone: (386) 736-5935 Fax: (386) 736-5972	County of Volusia Attn: County Attorney Address: 123 W. Indiana Ave., Room 301 DeLand, Florida 32720 Phone: (386) 736-5950 Fax: (386) 736-5990
In the case of Consultant:	with a copy of legal notices to:
McKim & Creed, Inc. Attn: Curtis Burkett PE Address: 1901 Mason Avenue, Suite 102 Daytona Beach, Florida, 32117 Phone: (386) 274-2828 E-mail: cburkett@mckimcreed.com	McKim & Creed, Inc. Attn: Curtis Burkett PE Address: 1901 Mason Avenue, Suite 102 Daytona Beach, Florida, 32117 Phone: (386) 274-2828 E-mail: cburkett@mckimcreed.com

27. This Contract or Task Assignment, together with any exhibits, schedules, attachments and amendments thereto constitute the entire Contract between County and Consultant and supersede all prior written or oral understandings.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the parties have made and executed this Contract for Consulting Services for Stormwater and Environmental Engineering Services, the day and year below written.

CONSULTANT: McKim & Creed, Inc.

BY: *Curt R. Burkett*
(Signature)

BY: *Curtis R. Burkett - Asst. V.P.*
Corporate Officer Name & Title

Date: *6/2/14*

ATTEST: *Doreen M. Padgett*

Date: *6/2/2014*

COUNTY OF VOLUSIA

BY: *[Signature]*
Jason P. Davis
County Chair

Date: *6/25/2014*

ATTEST: *[Signature]*
James T. Dinneen
County Manager

Date: *6/27/14*

County Council Approval Date: *6/19/2014*

Exhibit "A" – Sample Task Assignment

Exhibit "B" – Proposal dated 02-06-2014

EXHIBIT "A"

[FOR COUNTY USE ONLY]

**TASK ASSIGNMENT NO. X
TO THE
CONTRACT FOR PROFESSIONAL CONSULTING SERVICES
FOR [TYPE OF SERVICE]
BETWEEN THE COUNTY OF VOLUSIA
AND THE FIRM OF
[NAME AND ADDRESS OF FIRM]**

PROJECT TITLE: [NAME OF PROJECT]

PROJECT NUMBER:

I. PURPOSE

This is an attachment to the Contract for Professional Consulting Services for [Type of Service] dated [Date of contract] between the County of Volusia (COUNTY) and the consulting firm of [Name of Firm] (CONSULTANT) and made a part thereof. The purpose of this Task Assignment is to specify the required services of the CONSULTANT.

II. SCOPE OF WORK

The CONSULTANT'S Scope of Work for [Project Title] shall include the following tasks as outlined and attached hereto as Exhibit "A."

III. DELIVERABLES

The CONSULTANT shall produce and deliver to the COUNTY the deliverables outlined and attached hereto as Exhibit "A."

IV. SCHEDULES AND TIME FOR COMPLETION

This Task Assignment shall commence upon Notice to Proceed and continue until the scope of work is completed and accepted by the county. Within ten (10) days after receipt of Notice to Proceed (or other authorizing document), the CONSULTANT shall provide a proposed schedule of payments associated with the deliverables which is acceptable to the COUNTY. If schedule is altered due to unforeseen delays the County's project manager shall be notified at once. Failure to meet the scheduled completion date may be grounds for Termination for Default.

V. METHOD OF COMPENSATION

Payment will be in accordance with the Contract for Professional Consulting Services No. [RSQ #] for [Type of Service]. Compensation for all services, material, supplies, training and any other items or requirements necessary to complete the work as described herein, shall not exceed a grand total amount of [amount in word] DOLLARS and [XX/100] (\$) consisting of [a fixed fee amount of] [amount in word] DOLLARS and [XX/100] (\$) for consulting services and a [fixed fee or not to exceed] amount of [amount in word] DOLLARS and [XX/100] (\$) for reimbursable expenses payable at the rates attached hereto as Exhibit "A" or "B." At no time shall work fees exceed said amount of compensation herein without a written and executed amendment.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Piggyback Volusia County Agreement with Lucity, Inc. to Purchase Public Works Asset Management Software

DEPARTMENT: Public Works

RECOMMENDED MOTION: Move to approve the purchase of asset management software for a maximum cost of \$59,350 through piggyback of County of Volusia's Agreement with Lucity, Inc., and authorize the Mayor and City Clerk to execute all required contract documents, subject to the city attorneys approval of contract documents.

SUMMARY: Public Works is requesting purchase of asset management software for a maximum cost of \$59,350, through piggybacking on Volusia County's Agreement (RFP No. 07-P-77DW/FL, Amendment 5) with Lucity, Inc. (formerly GBA Master Series, Inc.). The cost of the software includes support services, licenses, and onsite user training. Funding will be shared equally by Stormwater, Building Maintenance and Public Works (Gas Tax).

When fully implemented, the asset management system will provide the following: (1) Storage and updated data on various infrastructure (stormwater pipes, swales, canals and retention ponds; sidewalks, traffic signs, etc.) inventory and condition assessment, (2) use of the data to proactively plan, schedule, and carry out timely preventative maintenance, (3) transparency and accounting for resource use and allocation, (4) cost accounting for budgetary requirements, (5) efficient management of service requests and work orders, and (6) efficient and improved service delivery and customer service.

To be effectively useful, an asset management system must be fully implemented including installation of the software and modules, collection and entering of infrastructure data into the sytem database, regular updating of the data, developement and use of operational and management reports, and user training.

Project No.: DIP064

DIP064

DIP064

Funding Account No.: 412-1800-541-6415

506-4200-539-6415

301-4300-541-6415

ATTACHMENTS:

1.	Lucity, Inc. Quotation	Lucity, Inc Quotation.pdf
2.	Lucity, Inc./Volusia County Agreement	Lucity Inc. - Volusia County.pdf

3.	Lucity, Inc. /Volusia County Agreement - Amendment 5	Lucity, Inc. - Volusia County (Amendment 5).pdf
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Cockcroft, Kynah
Adumuah, Branford
Riehm, Tracey
Roberts, Margaret
Harden, David

Created/Initiated - 07/23/2015
Approved - 07/23/2015
Approved - 07/30/2015
Approved - 07/30/2015
Final Approval - 07/30/2015



Lucity, Inc.
10561 Barkley St, Suite 100
Overland Park, KS 66212
Phone # 913-341-3105

Quotation

Prepared For
City of Port Orange Branford Adumuah Port Orange, FL 32123 adumuah@port-orange.org

Date	6/9/2015
Quote #	86627

Project			
Description	Qty	Rate	Total
SOFTWARE			
Work Administrator	3	3,000.00	9,000.00
Streets & Roads Bundle (includes Street, Road, Bridge & ROW)	1	4,000.00	4,000.00
Traffic Control Bundle (includes Sign, Signal & Street Light)	1	4,000.00	4,000.00
Storm	1	3,000.00	3,000.00
Mobile Tablet for Android	10	1,500.00	15,000.00
Constant Connection Program (Annual Support & Maintenance)	0	7,000.00	0.00
OPTIONAL SOFTWARE			
GIS Desktop	0	3,000.00	0.00
GIS Web	0	10,000.00	0.00
Constant Connection Program (Annual Support & Maintenance)	0	2,600.00	0.00
SERVICES			
System Configuration: Remote (per hour)	60	100.00	6,000.00
System Configuration: Onsite (per day)	2	1,500.00	3,000.00
Administrative Training: Onsite (per day)	3	1,500.00	4,500.00
End User Training: Onsite (per day)	3	1,500.00	4,500.00
Project Management	1	2,700.00	2,700.00
OPTIONAL SERVICES			
Linking of geodatabase for use with Lucity GIS Products	0	3,000.00	0.00
Project Management	0	450.00	0.00
DIRECTS			
Air Travel (per trip)	3	550.00	1,650.00
Onsite Expenses (per day)	8	250.00	2,000.00
NOTES:			
- Directs are estimated costs only and will be billed at actual cost.			
- Does not include data conversion.			
- Work Administrator training requires additional days if training multiple departments.			
- Work Administrator training requires at least 2 separate trips.			
- Project Management is a percentage of training and services costs to cover administration fees associated with project management and will fluctuate with changes in the services contracted for.			

Total



Lucity, Inc.
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Overland Park, KS 66212
Phone # 913-341-3105

Quotation

Prepared For
City of Port Orange Branford Adumuah Port Orange, FL 32123 adumuah@port-orange.org

Date	6/9/2015
Quote #	86627

Project			
Description	Qty	Rate	Total
- Constant Connection Program * Year 1 begins twelve (12) months after software installation * Year 1 fee is twenty percent (20%) of total amount of software license fees for products covered under the Program * Fees in subsequent years subject to annual increase of two and one-half percent (2.5%) PURCHASE TERMS: 1. Above quoted prices are good for sixty (60) days from date of quote. 2. Above prices are in U.S. dollars. Sales tax is an estimate only at the time. 3. License fees for any Lucity GIS solutions do not include Esri software. 4. Invoice terms are net due upon receipt. Finance charges at the maximum allowable rate will be incurred 30 days from invoice date. 5. Shipping and handling is included. 6. Solutions that are priced "per install" do not include the cost of the device or any further software that may be required to run the Lucity program. Total sales tax calculated by AvaTax		0.00	0.00
Total			\$59,350.00

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

ARTICLES OF AGREEMENT

This Agreement, as amended by the Addendum to Professional Software License and Service Agreement (hereinafter "Addendum"), is entered into between **VOLUSIA COUNTY, FLORIDA**, a body corporate and politic and a subdivision of the State of Florida (hereinafter "CLIENT") with a business address at 123 West Indiana Avenue, DeLand, Florida 32720, and **GBA MASTER SERIES, INC.**, (hereinafter "CONTRACTOR"), a Kansas corporation with its principal office at 10561 Barkley, Suite 500, Overland Park, Kansas 66212. Wherever ambiguities, discrepancies, or conflicting provisions appear between the Addendum and this Agreement, the provisions of the Addendum shall be controlling.

WITNESSETH:

Whereas, the CONTRACTOR owns certain software programs that are licensed as individual program titles which are known collectively as the "*GBA Master Series®*";

Whereas, the CLIENT would like to use, and the CONTRACTOR would like to grant the CLIENT the right to use, those software programs accessing databases residing at the CLIENT's site, while protecting the copyrights, trade secrets, confidential information, and other valuable intellectual property they contain;

Whereas, the CLIENT is authorized and empowered to contract with the CONTRACTOR to provide professional services as hereinafter described; and,

Whereas, the CONTRACTOR is registered in accordance with the laws of the State of Kansas, and is qualified to provide the professional services desired by the CLIENT.

NOW THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference and other consideration set forth in this Agreement, the receipt and sufficiency of which is acknowledged by the CONTRACTOR and CLIENT, the parties agree and stipulate as follows:

SECTION I – SOFTWARE LICENSE

The CONTRACTOR agrees to furnish the most current versions of various *GBA Master Series* software programs, and grant the CLIENT a perpetual license to use these programs, in consideration of the mutual covenants and obligations expressed in the Software License Agreement attached as Exhibit "A". These programs shall consist of the items listed in Exhibit "B".

SECTION II – SCOPE OF SERVICES

The basic Scope of Services for the supply and installation of a **COMPUTERIZED MAINTENANCE MANAGEMENT SYSTEM SOLUTION** for the Public Works Department, herein referred to as "PROJECT" or "CMMS Solution", is as follows:

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

1. The CONTRACTOR agrees to furnish and perform various professional services related to on-going software technical support and maintenance items outlined in Exhibit "C" in a competent and workmanlike manner.
2. The CONTRACTOR agrees to furnish and perform various professional services related to the items outlined in Exhibit "D" in a competent and workmanlike manner.
3. This Agreement incorporates by reference County's RFP No. 07-P-77DW/FL; gbaMS' proposal to RFP No. 07-P-77DW/FL dated April 25, 2007, and its Phase 2 Additional Information dated June 25, 2007, and the scope of services identified in the Scope of Services and Submittal Requirements sections of RFP No. 07-P-77DW/FL, which shall at a minimum constitute the basic Scope of Services.
 - A. Any items beyond the basic Scope of Services shall be considered as Additional Services. If authorized in writing by CLIENT, CONTRACTOR shall furnish, or obtain from others, services resulting from significant changes in the basic Scope of Services.
 - B. The cost to perform additional services shall be based on the Schedule of Costs which is attached hereto as Exhibit "E".

SECTION III – ROLES AND RESPONSIBILITIES OF THE CLIENT

A. Project Organizational Structure:

1. COUNTY RESOURCES

County shall allocate the following project resources in order to achieve a successful project implementation:

Project Manager (the "Key Project Team Member for the County") – John Gamble/Arden Fontaine

IT Project Manager (the "Key Project Team Member for gbaMS") – Albert Hill

2. INFRASTRUCTURE STAFF

Acting Network Manager – Mike Pugh

Personal Computers Manager – Lou Martino

Systems & DB Manager – Scott Bowen

Email Specialist – as assigned by Systems & DB Manager

Server Specialist – as assigned by Systems & DB Manager

Database Administrator Systems & DB – as assigned by Systems & DB Manager

Database Administrator Applications (GIS) – Darren Eddlemon

3. TECHNICAL SPECIALISTS

Interfaces Experts (By Interface)

GIS Manager – Al Hill

Financials – John Nogueria

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

Liberty EDMS – Jim Edwards
Property Appraiser – Mike Williams

4. SYSTEM ADMINISTRATOR

gbaMasters Series Administrator – Arden Fontaine/John Gamble

5. GBA MASTER SERIES, INC., (GBAMS) RESOURCES:

gbaMS shall allocate the following project resources in order to achieve a successful project implementation:

Project Manager – Steve Schultz

Account Manager – Allison Tuttle, P.E.

Relationship Manager – Joel Knight, P.E.

Principal-in-Charge – Jim Graham, P.E.

IT/Network Advisor – Brian Treff

GIS & Database Conversion Support – Ryan Sullivan

On-site Training Support – Ryan Sullivan

Report Writer/Help desk – Noel Nuessle

Documentation/Technical writer – Stacy Gerson

6. The CLIENT shall provide information and assistance as follows:

- A. Assist CONTRACTOR by placing at their disposal all available information pertinent to the PROJECT including previous reports and any other data relative to the CONTRACTOR'S services.
- B. Give prompt written notice to CONTRACTOR whenever CLIENT observes or otherwise becomes aware of any development that affects the Scope or timing of CONTRACTOR'S Services.
- C. Bear all costs incident to compliance with the requirements of this Section III.

B. Roles and Responsibilities:

1. COUNTY RESOURCES:

- A. General Responsibilities for the County during implementation shall be:
 - Providing one or two staff members to assist with software installation and testing of approximately 90 desktops over the course

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

of the 1 year implementation cycle. Vendor shall provide timely schedules regarding installation requirements.

- Completing timely reviews of all deliverables within 5 working days.
- Scheduling staff time and preparing location(s) for workshops, meetings, and training sessions based on availability of venues. gbaMS shall provide proposed dates for training in advance. The advance notice of training dates should be mutually agreed and allow for 5 – 10 business days to set up facility.
- Providing a video projector (minimum of 1024x768 resolution) for use during training sessions.
- Facilitating the coordination of work between gbaMS and the County's PW System Administrator to effect the transition of the accepted CMMS from the test environment to the production environment.

B. General on-going system administration efforts shall be:

- Accomplishing Windows Server OS and security patches as released.
- Backing-up files and database (daily).
- Ensuring installation of gbaMS software upgrades and service packs (as released) within the test environment, and as approved/accepted (and utilizing automated distribution capabilities) see them disseminated to production servers and workstations.
- Conducting periodic (quarterly) monitoring under the auspices of the PW System Administrator of gbaMS application to ensure efficient performance and shall conduct in-house SW training as needed.

C. Project Manager

The County Project Manager shall be responsible for the Project deliverables for the County and is responsible for day-to-day Project management in order to ensure successful Project implementation. The County Project Manager acts as the primary liaison with County Management, as well as for the Project Teams. The County Project Manager and the gbaMS Project Manager shall work together to meet the Project objectives, to identify Project issues, and to facilitate resolution of objectives or issues. The Project Manager is the person designated by the County who shall be responsible for ensuring the execution of the County's tasks.

The Project Manager shall:

- Manage the project (overall budget, scope, progress, and deliverables).
- Communicate project status to County Management and the Project Teams.
- Assist in the logistics and communication on the project.
- Coordinate with gbaMS in developing and maintaining the Project Plan and Project Standards.

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

- Manage and refine the Project, Training, Quality, Scope, Risk, Issue and Cutover Plans related to the County deliverables & tasks.
- Acquire, assign and provide ongoing management of project resources and facilities.
- Develop and facilitate the Project Kickoff meeting.
- Streamline the issue resolution process.
- Anticipate work proactively with project deviations and be responsible for taking immediate corrective action.
- Understand the overall business process integration for the County.
- Participate in the Change, Quality, Budget and Risk Management efforts.
- Ensure and be responsible for cross-functional communications.
- Meet regularly with County Management.
- Ensure timely resolution or escalation of key issues and requests for change.
- Review and accept key project milestones.
- Provide timely sign off on all deliverables.
- Provide timely decisions.
- Provide the work environment for gbaMS on-site staff.
- Coordinate activities with the IT Project Manager.
- Acquire knowledge from the gbaMS team throughout the project implementation phase.
- Coordinate project activities with the gbaMS Project Team
- Participate in setup where required.
- Participate actively in the Project Team.
- Work with the Project Team to provide support during implementation.
- Establish and maintain gbaMS application security.
- Participate in the initial installation of the application.
- Configure, monitor, tune and troubleshoot the gbaMS application at the administrator level.
- Assist in cut-over plan preparation.
- Provide status updates to the County Project Manager.
- Understand the architecture of the application and how it relates to the County's needs.
- Engage in data collection and database population, as well as participating in making policy decisions.
- Identify and be responsible for the impacts and requirements for the business processes.
- Verify that the Project Teams are meeting the business objectives.
- Attend Project Team training sessions.
- Attend Project Team meetings.
- Attend Project Kick-off & Planning meeting.

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

- Demonstrate in-depth knowledge about the business processes as they exist today and future potential business processes and improvements.
- Possess sufficient experience as a current system user with specialized knowledge of the County's business processes in its respective functional areas.
- Participate fully in the implementation of business rules and workflow.
- Configure the system in conjunction with gbaMS personnel and validate that it meets Public Works' ("PW") business needs.
- Provide post implementation production support to County users.
- Possess detailed knowledge of the existing systems or other external systems.
- Possess an in-depth knowledge of existing data sources and systems.
- Serve as the on-going System Administrator.

D. Infrastructure Staff

These resources shall be involved in setting up the network environment (VPN, Firewalls, etc) along with testing the infrastructure environment prior to Going Live. As outlined in the Project schedule, these individuals shall also be involved in Project tasks as required.

(1) Infrastructure Staff shall have the following responsibilities:

- Network Manager: Responsible for the physical networks protocols including network security for this implementation. Provide network environment (VPN, Firewalls, etc.) access.
- Server Specialist: Responsible for base-lining servers & OS and responsible for maintaining the physical server hardware.
- Personal Computers Manager: Responsible for workstations and PCs (Fixed & Mobile) for the implementation. Shall work with the gbaMS Project Team to acquire the knowledge to perform Desktop installations. Perform software installations on workstations and PCs (Fixed & Mobile) utilizing step by step installation and setup documentation provided by the vendor. If installation problems arise the vendor shall resolve the issue, update and redistribute current documentation. Apply the latest Windows service packs and security patches.
- E-Mail Specialist: Responsible for assisting with the integration and interface of gbaMS software with the County's E-Mail system as needed.

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

- Network Infrastructure Specialist: Assist in the responsibility of the physical networks protocols including network security for this implementation.
- Database & Server Support Manager: Responsible for the operational support of the infrastructure for the implementation and supplying Systems and Database(s) as part of the task to "install Software onto the server"(s) by logging the PW system administrator and gbaMS team into the administrator accounts for the appropriate servers and shall be available to assist with Windows Server issues.

(2) The above staff shall:

- Work with the Project Team to provide support during the implementation per project schedule.
- Work with Project Team to create Go Live preparation checklists.
- Work with Project Team to create Go Live testing checklists and services with input to final checklists and services.

F. Database Administrator ("DBA")

1. The Database Administrator Systems & Database shall:

- Perform SQL installation per gbaMS staff directions or provided documentation.
- Participate in the initial installation and setup tasks of the gbaMS.
- Provide for operational tasks like booting servers, performing backups, and monitoring the servers.
- Work with gbaMS staff when requested to diagnose SQL errors. gbaMS shall typically lead in these efforts as gbaMS is to provide primary DBA skills for deployment of the GBA Master Series.
- Possess backup and recovery management skills.
- Possess sufficient database growth management skills.

2. The Database Administrator Applications (GIS) shall:

- Participate in the initial installation and setup tasks of the gbaMS.
- Acquire knowledge from gbaMS staff to perform the SQL and GBA Master Series database installation.
- Work with the gbaMS Project Team DBA in providing DBA support during the implementation per project schedule.
- Perform, record, and review changes made to the database by gbaMS staff and shall work with the System Administrator for knowledge transfer to include checks, tests, and tuning within the gbaMS applications.

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

- Possess significant database growth management skills.

G. GIS Manager

The GIS Manager shall be responsible for assisting GBA Master with access to the existing GIS system. The GIS Manager shall:

- Prepare profile needs and layers information.
- Possess in-depth knowledge of the existing GIS environment.
- Provide a GIS database administrator to be made available during the software installs and function in a limited capacity as a backup to the PW System Administrator.

6. GBA MASTER SERIES, INC. (GBAMS) GENERAL RESPONSIBILITIES AND RESOURCES:

gbaMS has assembled a team of highly skilled staff members to deliver the Services for this Project and shall:

- Execute its primary responsibility of successfully implementing and providing the deliverables of this Project as stated in the Implementation Agreement Appendices and provide a Project Manager as a Primary Point of Contact.
- Provide a Project Implementation Team to implement the County's CMMS Solution as per the project schedule.
- Prepare and maintain Project Progress and Status Reports.
- Schedule the "Go-Live" in agreement with the County.
- Coordinate and schedule the activities of all gbaMS participants in this project.
- Work with the County's Project Manager in the resolution of project issues.
- Maintain the overall project schedule including both gbaMS and County responsibilities/activities as related to the project.
- Provide other specific tasks or services as determined by the County for successfully delivering this project.

A. Project Manager/CMMS Specialist

The Project Manager ("PM"), provided by gbaMS, shall have overall project management responsibility for the Project. The PM shall create and maintain Project plans as well as develop, implement and maintain key processes (e.g. Change, Quality, Issue, and Risk Management) and track and report on Project progress. The Project Manager shall interact with the County Project Manager and the Project committees as appropriate.

1. The Project Manager shall:

- Understand business and project objectives, constraints, and overall vision.

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

- Serve as the County's primary contact person throughout the gbaMS CMMS implementation Project.
- Maintain Project plans, tracking and reporting on the Project's progress as well as notifying parties of upcoming tasks or issues.
- Oversee the successful and timely completion of all Project tasks.
- Coordinate all work with the County's Project Manager System Administrator, and the County's management consultant, to ensure all work is coordinated jointly by all parties.
- Monitor the completion status of Project tasks, prepare invoices, and distribute Project deliverables.
- Determine best practices and CMMS standards jointly with the County during the preliminary implementation / configuration phase.
- Install, configure, and launch the gbaMS Solutions and Deliverables with County IT assistance and approval.
- Ensure integration of the County's GIS system with gbaMS, including integration configuration, data-mapping between the systems and initial population of gbaMS asset data from the GIS feature classes.
- Consult and train County GIS staff on best practices for maintaining asset data integrity between systems.
- Perform data conversion tasks, including data population of the preliminary Work Flow Setup information and sourcing additional information at the County.
- Train core and end-users, providing training outlines as appropriate and additional end-user documentation as necessary.
- Secure and manage resources as necessary to ensure Project objectives are met in a timely manner, prepare contingency plans and manage contingency release.

B. Account Manager

The Account Manager, provided by gbaMS shall serve as the County's secondary contact throughout the CMMS implementation project.

The Account Manager shall:

- Ensure the Project Manager has ready access to gbaMS Client Services personnel resources (including Implementation Specialists and Support Specialists) for satisfying project demands.
- Facilitate any necessary assistance from gbaMS Technology and Administration personnel resources.
- Assist the Project Manager with preparing and distributing invoices.
- Serve as the County's primary contact concerning any requests for additional *GBA Master Series®* software licensing and gbaMS services following Project completion.
- Assume responsibility for managing the gbaMS Help Desk personnel, and assist the County to efficiently resolve any technical support and software maintenance issues.

C. Relationship Manager

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

The Relationship Manager shall:

- Assume responsibility for the continuation of growth of the County regarding utilization of the *GBA Master Series* products.
- Make periodic post implementation 'wellness check' visits to the County to identify any issues that gbaMS can address; ensure that the *GBA Master Series* products remain applicable to the County's evolving needs; and facilitate *GBA Master Series* user events in which the County can participate.

D. Principal-in-Charge

The Principal-in-Charge shall be:

- Responsible for working with the County in preparing and executing contract documents for *GBA Master Series* software licensing and gbaMS project services.
- Responsible for ensuring the gbaMS Client Services Manager has necessary resources to successfully fulfill their respective responsibilities.

E. gbaMS Help Desk

The gbaMS Help Desk shall:

- Address any issues with the *GBA Master Series* products encountered by the County.
- Supply the County the "Clients Only" Web site to submit issue reports and track resolution progress.
- Supply the County technical support knowledge bases, FAQs, software downloads, and user discussion forums.

F. Other GBA Master Series Supporting Resources

Other gbaMS supporting resources shall:

- Make available to the Project on an as-needed basis resources according to project demands.
- Supply hardware, software, general IT and Networking advisory needs as needed for the successful and timely completion of all project tasks.
- Supply as needed Data Services (GIS & Database Conversion Support).
- Supply as needed additional end-user training.
- Assume responsibility for creating customized Crystal reports.
- Assume responsibility for report development.
- Manage the gbaMS Help Desk.
- Supply specialized documentation needs (training materials developed).
- Provide DBA services for the project related to database creation, database definitions, tuning, performance, diagnosis, resolution of problems, and creation of the *GBA Master Series* environment.

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

SECTION IV – SCHEDULE OF SERVICES

It is anticipated that the work items as described in Section II shall be completed and submitted to the CLIENT in accordance with the estimated schedule for major work activities as shown in Exhibit "D".

Subject to the Addendum, all work described herein shall be carried out as expeditiously as possible by the parties. The CONTRACTOR shall not be liable to the CLIENT, if delayed in, or prevented from performing the work as specified herein through any cause beyond the control of the CONTRACTOR, and not caused by Contractor's fault or negligence including acts of nature or the public enemy, inclement weather conditions, regulations, fires, floods, epidemics, strikes, jurisdictional disputes, lockouts, freight embargoes and/or decisions of the Government or regulatory authorities that would cause termination of the Contract based on statutory law after the effective date of this Agreement.

SECTION V – FEES AND PAYMENTS

The CLIENT shall compensate the CONTRACTOR for services rendered as described in Section II of this Agreement an amount not exceeding the total cost as shown in Exhibit "E" and Addendum. The maximum not-to-exceed compensation shall not be exceeded except as stated in the Addendum.

After completion of each respective task(s) designated for payment in the Schedule of Costs and Payments attached hereto and incorporated herein as Exhibit "E", and written confirmation of that acceptance by the CLIENT, *gbaMS* shall prepare and submit invoices for payment by the CLIENT under this Agreement. Invoices for payments hereunder shall be submitted to the following address:

COUNTY OF VOLUSIA

ATTENTION: Office of Purchasing Director
123 West Indiana Avenue
DeLand, Florida 32720
PH: 386-736-5935 FAX: 386-736-5972

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and shall comply with all requirements of the Volusia County Code of Ordinances and the Purchasing Procedures Manual.

CLIENT shall withhold a certain portion of the entire payment of a Completion Schedule Milestone as indicated in the Schedule of Costs and Payments attached hereto and incorporated herein as Exhibit "E", of the SLPA as retainage. The CLIENT shall not be obligated to pay a Completion Schedule Milestone to *gbaMS* until all work to be performed as set forth in the Scope of Work in this Agreement is completed and all outstanding issues arising under or relating to the Scope of Work or this Agreement have been resolved to the satisfaction of CLIENT. In addition, payment by Client of retainage to *gbaMS* is also contingent upon final Project acceptance by the CLIENT of the entire CMMS Solution at the conclusion of the "Final Go Live" period.

Final Project acceptance shall take place after all work to be performed in the Scope of Work in the SLPA is completed; all defects have been resolved to the satisfaction of the County; the entire

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

CMMS Solution has been accepted by the CLIENT; all deliverables, including those identified in Table 2 of Exhibit "D" (Implementation Services) of the SLPA; Software deliverables associated with each task in the Schedule of Costs and Payments identified in Exhibit "E" of the SLPA have been accepted and approved by the CLIENT; and, all outstanding issues have been resolved and their resolutions approved by CLIENT.

Subject to the terms and conditions of this Agreement, payment to the CONTRACTOR shall be made in accordance with the estimated schedule of billings for major work activities as shown on Exhibit "E". Invoices shall be due and payable to the CONTRACTOR within thirty (30) days of each billing and subject to Florida's Prompt Payment Statute.

When this Agreement expires, or final payment has been requested and made, the CONTRACTOR shall have no more than thirty (30) days to present or file claims against the CLIENT concerning this Agreement. After that period, the CLIENT shall consider the CONTRACTOR to have waived any right to claims against the CLIENT concerning this Agreement.

SECTION VI – TERMINATION

- A. The obligation to provide further services under this Agreement may be terminated by either party upon thirty (30) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- B. In the event of termination by the CLIENT, the CONTRACTOR shall be paid for all services rendered up to and including the date of termination.
- C. In the event that the CLIENT, for any reason, decides not to proceed with the work, this Agreement shall then be considered terminated; the CONTRACTOR shall be entitled to payment as described herein for all services provided under this Agreement subject to the Addendum. In such event, the CLIENT shall promptly notify the CONTRACTOR in writing of its decision not to proceed with the PROJECT so that the CONTRACTOR can reassign his personnel and revise work schedules as may be required.

SECTION VII – INDEMNIFICATION

The CONTRACTOR shall indemnify and hold the CLIENT harmless from any and all liability, loss or damage the CLIENT may suffer as a result of claims, demands, costs or judgments against it arising out of the CONTRACTOR'S negligence in the performance of this Agreement.

SECTION VIII – GENERAL CONSIDERATIONS

The parties further stipulate and agree that:

- A. All services shall be under the direction of qualified personnel.
- B. The Scope of Work covered by this Agreement shall be subject to modification and supplementation upon the written agreement of the duly authorized representatives of the contracting parties. Subject to the Addendum, modification of the terms of this Agreement may be made that would modify the maximum fees stated in the Agreement when mutually

SOFTWARE LICENSE AND PROFESSIONAL SERVICES AGREEMENT

agreed by and between the CONTRACTOR and the CLIENT, and shall be incorporated in written amendments to this Agreement. The CONTRACTOR shall have no obligation to perform services in connection with a change in the Scope of Work unless the cost thereof shall be agreed to pursuant to the terms of this Agreement and the Addendum.

C. The following Exhibits are attached to and made a part of this Agreement:

- Exhibit "A" - Software License Agreement
 - Exhibit "B" - Schedule of Software
 - Exhibit "C" - Software Support and Maintenance Provisions
 - Exhibit "D" - Implementation Services
 - Exhibit "E" - Schedule of Costs and Payments
- RFP No. 07-P-77DW/FL

gbAMS Proposals in response to RFP No 07-P-77 DW/FL dated April 25, 2007, May 25, 2007, and June 25, 2007, including all attachments and exhibits.

IN WITNESS WHEREOF, the CLIENT and CONTRACTOR, by their authorized representatives, have hereunto subscribed their names this 23rd day of August, 2007.

Executed in duplicate with copies to the CLIENT and CONTRACTOR.

GBA MASTER SERIES, INC.

By: Donald E. Pinkston, Jr.
Donald E. Pinkston, Jr., P.E.

Title: President & Chief Executive Officer

Attest:

By: Aden Backues

Title: CFO

COUNTY OF VOLUSIA

By: Frank T. Bruno, Jr.
Frank T. Bruno, Jr.

Title: County Chair

Attest:

By: James T. Dinneen
James T. Dinneen

Title: County Manager

8/23/07

EXHIBIT "A"
GBA Master Series® Software License Agreement

IMPORTANT – READ CAREFULLY BEFORE INSTALLATION

This software is subject to acceptance of the GBA Master Series, Inc. (gbaMS) license agreement. gbaMS is willing to license the enclosed software to you only upon the condition that you accept all of the terms and conditions contained in the gbaMS license agreement as amended by the Addendum to the Professional Software License and Service Agreement. If you do not agree with the terms and conditions as stated, please return the unopened media package, the disks, and all accompanying printed materials to gbaMS, its distributor, or reseller for a full refund of the license fees.

THIS AGREEMENT ("**Agreement**"), as amended by the Addendum to the Professional Software License and Service Agreement (hereinafter "**Addendum**"), is entered into between **Volusia County, Florida**, a body corporate and politic and a subdivision of the State of Florida (hereinafter "**Licensee**") with a business address at 123 W. Indiana Avenue, Deland, Florida 32720, and with its software programs accessing databases residing at **Licensed Site**, and **GBA Master Series, Inc.** (hereinafter "**gbaMS**"), a Kansas corporation with its principal office at 0561 Barkley, Suite 500, Overland Park, KS 66212. Wherever ambiguities, discrepancies, or conflicting provisions appear between the Addendum and this Agreement, the provisions of the Addendum are controlling. Otherwise, this Agreement shall be subject to the terms and conditions of gbaMS's Software License and Service Agreement (hereinafter "**SLPA**").

RECITALS

WHEREAS, gbaMS owns certain software programs that are licensed as individual program titles which are known collectively as the "**GBA Master Series**";

WHEREAS, Licensee would like to use, and gbaMS would like to grant Licensee the right to use, those software programs, while protecting the copyrights, trade secrets, confidential information, and other valuable intellectual property they contain.

Now, THEREFORE, gbaMS and Licensee agree as follows:

1. DEFINITIONS.

"**Program(s)**" means the object code versions of the computer software programs, databases, and related documentation.

"**Seats**" means the number of concurrent users (i.e., the number of persons using a Program at one time) permitted to use a Program.

"**Clients**" means the number of individual database setups that can be accessed by a Program.

"**Licensed Site**" means the location at which the Licensee will be permitted to store the databases used by the Program(s).

2. LICENSE GRANT.

(a) **License.** Subject to the terms and conditions of this Agreement, gbaMS grants Licensee a fee-bearing nonexclusive and perpetual license to use the object code versions of the Program(s) for its internal purposes during the term of this Agreement; provided, however, that (i) the number of concurrent users of each Program, including all users authorized to use any Program(s) pursuant to Section 2(b) below, shall not exceed the number of Seats for each such Program, (ii) the number of individual database setups that can be accessed by each Program shall not exceed the number of Clients for each such Program, and (iii) the location at which the databases accessed by the Program(s) reside shall be the Licensed Site designated herein.

(b) **Sublicense.** For information on granting sublicense rights, please contact gbaMS.

(c) **Limited Transfer.** For information on transferring the location of the Licensed Site, please contact gbaMS.

(d) **Copying.** Licensee may make only as many copies of each Program as are necessary for Licensee to utilize the total Seats for each such Program.

(e) **Future Licenses.** gbaMS and Licensee may, by mutual agreement, include future licenses of the Program(s) under this Agreement by exchanging documents (i.e., a purchase order from Licensee and acknowledgment from gbaMS) referencing this Agreement and the Program(s) to be licensed. Such future Program(s) shall be included as Program(s) under this Agreement. The parties agree that such purchase orders and acknowledgments shall have no effect on the terms and conditions of this Agreement, under which such Program(s) are licensed.

(f) To the extent gbaMS has the legal right to do so, gbaMS agrees to assign or pass through to County or otherwise make available for the benefit of County, any manufacturer's or supplier's warranty applicable to any third-party software provided by gbaMS under this Agreement. gbaMS does not itself give or make any warranty of any kind with respect to third-party software.

(e) In lieu of an escrow agreement between the parties, gbaMS agrees to provide the Licensee with the application source code for all licensed Software or Programs under the following conditions within 15 days of issuing each upgrade and new release of the licensed Software or Programs; provided a valid GBA maintenance and support agreement exists:

1. gbaMS agrees that it will provide an updated copy of the source code for all licensed Software or Programs on a sealed CD after each release of the licensed Software or Programs provided the licensee returns the previous release of the source code, as long as a valid gbaMS maintenance and support agreement is in effect.
2. Licensee agrees that it will not use the source code for any of the licensed Software or Programs unless gbaMS ceases doing business; a receiver or trustee in bankruptcy is appointed for gbaMS; gbaMS fails to respond to Licensee's request for software support and/or fails to render such software or Program support to the Licensee by 5:00 p.m. on the tenth (10th) calendar day following a written notice from the Licensee's designated support contact under which the Licensee has proposed a timeline for such support in a disaster recovery mode. Licensee will only have absolute right to access the source code for the licensed Software or Programs under the foregoing conditions and the absolute right to possession and use of the source code for the licensed Software or Programs for the exclusive use of the Licensee.

(g) **Limited Grant.** Except as expressly provided in this Section 2, gbaMS grants and Licensee receives no right, title or interest in or to the Programs or any other deliverables provided by gbaMS in connection with this Agreement and gbaMS reserves and retains all such right, title, and interest.

3. LICENSE RESTRICTIONS.

(a) **No Reverse Engineering.** Licensee agrees not to disassemble, decompile, reverse analyze, or reverse engineer the Program(s).

(b) **No Modification.** Licensee agrees not to modify the Program(s).

(c) **No Copying.** Licensee agrees not to copy the Program(s), in whole or in part, except for a reasonable number of back-up copies, and as may be necessary to utilize the total Seats for a given Program.

(d) **No Third Party Use.** Licensee will not use the Program(s) in any manner to provide computer services to third parties, except as may be necessary to implement a sublicense (please call us for details).

(e) **Training.** Licensee will not use the Program(s) until its personnel have received sufficient training in the use of the Program(s) to generate accurate data from the operation of the Program(s).

4. PROPRIETARY RIGHTS.

(a) **gbaMS's Property.** The Program(s), in whole and in part and all copies thereof, are and will remain the sole and exclusive property of gbaMS.

(b) **Licensee's Property.** Any and all information provided by Licensee, as well as any and all information generated by Licensee's use of the Programs (specifically excluding Program code), shall remain the sole and exclusive property of Licensee.

(c) **Proprietary Notices.** Licensee will not delete or alter any copyright, trademark, and other proprietary rights notices of gbaMS and its licensors appearing on the Program(s). Licensee agrees to reproduce such notices on all copies it makes of the Program(s).

5. DELIVERY.

gbaMS will deliver the Program(s) to Licensee, or Licensee's designated representative, within a reasonable time of execution of this Agreement by both parties.

6. FEES AND TAXES.

(a) **License Fee.** As consideration for the rights granted to Licensee under the Agreement set forth in Section 2 of this Agreement, Licensee shall remit payment to gbaMS, or gbaMS's designated representative, the License Fee within thirty (30) days of the Shipping Date. Late payments will be subject to a late fee of one and one-half percent (1-1/2%) per month or the maximum rate permitted by applicable law, whichever is less. gbaMS may publish revised fee schedules from time to time, and any fees for future licenses for the Program(s) included under this Agreement shall be determined by gbaMS's then-current fee schedule.

(b) **Taxes.** Fees due under this Agreement do not include any taxes. Licensee will be responsible for, and will promptly pay, all taxes of whatever

EXHIBIT "A"
GBA Master Series™ Software License Agreement

nature (including but not limited to sales and use taxes) resulting from or otherwise associated with this Agreement or Licensee's receipt or use of the Program(s), except income taxes based on gbaMS's income. In lieu of payment of such taxes, Licensee shall provide gbaMS, or gbaMS's designated representative, with proof of Licensee's tax exempt status.

7. WARRANTIES.

(a) Warranty. gbaMS warrants that any hardware and Software (including bundled software) or Programs provided by gbaMS or its subcontractors and the hardware specified by gbaMS and provided by the Licensee as part of the CMMS Solution, shall perform in accordance with all system and application specifications in the Scope of Work for a period of five (5) years from Licensee's final acceptance of the entire CMMS Solution as articulated in the SLPA and its exhibits and appendices:

- (i) the Program(s) or Software (which includes bundled software products) will be capable of performing within the functional and operational specifications of the integrated CMMS Solution in the manner described in all the documentation in all material respects; and
- (ii) the storage media containing the Program(s) will be free from defects in materials and workmanship.

(c) Exclusive Remedy. In the event that the Program(s) or storage media fail to conform to such warranty, as Licensee's sole and exclusive remedy for such failure gbaMS will, at its option and without charge to Licensee, repair or replace the Program(s) or storage media or refund to Licensee the License Fee paid, provided that the nonconforming item is returned to gbaMS within the 90-day warranty period.

(d) Disclaimer. The Warranties provided in this Section are in lieu of all other warranties, express and implied, including but not limited to any implied warranties of Merchantability, and Fitness for a Particular Purpose.

(e) Year 2000 Compliance. "Year 2000 Compliant" means that the Program(s), when used in accordance with its associated documentation, will (a) initiate and operate, (b) correctly store, represent, and process dates, and (c) not cause or result in abnormal termination or ending, when processing data containing dates in the year 2000 and in any preceding and following years, provided that all third party applications that exchange date data with the program do so properly and accurately in a form and format compatible with the program. The Program(s) provided by gbaMS under this agreement process dates only to the extent that the Program(s) use date data provided by the host or target operating system for date representations used in internal processes, such as file modifications. Any Year 2000 Compliance issues resulting from the operation of the Program(s) are therefore necessarily subject to the Year 2000 Compliance of the relevant host or target operating system. The preceding does not apply, however, and gbaMS does not assume any liability for, the performance of any applications that authorized licensees may create through use of the Program(s), nor for any Year 2000 Compliance issues that may arise from the use of the Program(s) with any third party products, including hardware, software or firmware. Except as expressly provided in this Section, gbaMS makes no Year 2000 related representations or warranties for the Program(s), and any such warranties, including any implied warranties, are hereby disclaimed.

8. INDEMNITY.

(a) Duty to Indemnify and Defend.

- (i) gbaMS will defend or settle at gbaMS's own expense, any action or other proceeding brought against Licensee to the extent that it is based on a claim that the use of the Program(s) as licensed in this Agreement infringes any U.S. copyright or that the Program(s) incorporates any misappropriated trade secrets.
- (ii) gbaMS will pay any and all costs, damages, and expenses (including but not limited to reasonable attorneys' fees) Licensee becomes obligated to pay in any such action or proceeding attributable to any such claim.
- (iii) gbaMS will have no obligation under this Section as to any action, proceeding, or claim unless: (A) gbaMS is notified of it promptly; (B) gbaMS has sole control of its defense and settlement; and (C) Licensee provides gbaMS with reasonable assistance in its defense and settlement.

(b) Injunctions. If Licensee's use of any Program(s) under the terms of this Agreement is, or in gbaMS's opinion is likely to be, enjoined due to the type of infringement or misappropriation specified in Section 8(a)(i), then gbaMS may, at its sole option and expense, either:

- (i) procure for Licensee the right to continue using such Program(s) under the terms of this Agreement;
- (ii) replace or modify such Program(s) so that it is noninfringing and substantially equivalent in function to the enjoined Program(s); or
- (iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of gbaMS, then gbaMS may both:

(A) terminate Licensee's rights and gbaMS's obligations under this Agreement with respect to such Program(s); and

(B) refund to Licensee the unamortized portion of the License Fee paid based upon a 5 year straight-line depreciation, such depreciation to be deemed to have commenced on the effective date of this Agreement.

(c) Exclusive Remedy. The foregoing are gbaMS's sole and exclusive obligations, and Licensee's sole and exclusive remedies, with respect to infringement or misappropriation of intellectual property rights. gbaMS makes no separate warranty of noninfringement under or in connection with this agreement.

(d) Exceptions. gbaMS will have no obligations under this Section 8 with respect to infringement or misappropriation arising from: (i) modifications to the Program(s) that were not made by gbaMS (whether or not authorized by gbaMS); (ii) Program(s) specifications or modifications requested by Licensee; or (iii) the use of Program(s) with products (including but not limited to software) not provided by gbaMS.

9. CONFIDENTIAL INFORMATION.

(a) Definition. "Confidential Information" refers to: (i) the Program(s), including but not limited to their software source code, and any related documentation or technical or design information related to the Program(s); (ii) the business or technical information of gbaMS, including but not limited to any information relating to gbaMS's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; (iii) any information designated by gbaMS as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential; and (iv) the terms and conditions and existence of this Agreement.

(b) "Confidential Information" will not include information that:

- (i) is in or enters the public domain without Licensee's breach of this Agreement;
- (ii) Licensee receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or
- (iii) Licensee party develops independently, which it can prove with clear and convincing written evidence.

(c) Confidentiality Obligations. Licensee agrees to take all measures reasonably required in order to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures Licensee uses to maintain the confidentiality of its own information of equal importance.

(d) Employee Confidentiality Procedures. Licensee agrees to inform its employees of their confidentiality obligations regarding the Program(s) and other gbaMS Confidential Information. Licensee further agrees to ensure that contract employees (including temporary employees) of Licensee agree to confidentiality obligations similar to those of this Agreement.

10. MAINTENANCE AND SUPPORT.

gbaMS and Licensee may, by mutual agreement, include the maintenance and support services described in the software's online help for the Program(s) under this Agreement by exchanging documents (i.e., a purchase order from Licensee and acknowledgment from gbaMS) referencing this Agreement and the Program(s) to be included under such services. The parties agree that such purchase orders and acknowledgments shall have no effect on the terms and conditions of this Agreement, under which such Program(s) are licensed. Maintenance and support services are provided at a rate and for a term as mutually determined by gbaMS and Licensee for the scope of services to be provided by gbaMS for the Program(s) to be included under such services.

11. LIMITATIONS OF LIABILITY.

gbaMS's total liability under this Agreement will be limited to the License Fee. Licensee agrees that, as part of the material consideration for gbaMS licensing the Programs to Licensee hereunder, in no event will gbaMS be liable to Licensee or any third party under this Agreement for any Special, Incidental, or Consequential Damages, whether based on breach of contract, tort (including negligence), product liability, or otherwise, and whether or not gbaMS has been advised of the possibility of such damage. Input and/or edits of data by means other than the gbaMS standard Program(s) interface may result in loss of data, and/or improper operation of the Program(s). The Licensee agrees that in no event will gbaMS be liable to Licensee or any third party under this Agreement for costs necessary to recover data and/or restore proper operation of the Program(s) resulting from said actions.

The County's maximum total liability to gbaMS under this Agreement, including for profits, damages for breach of any nature other than for breaches of the County's obligations addressed in the Addendum of this Agreement, and pre-judgment interest and costs shall be an amount equal to

EXHIBIT "A"
GBA Master Series™ Software License Agreement

license fee paid for the applicable licensed software of gbaMS by the County in the year gbaMS's claim accrued specified in Exhibit A to this Agreement. In addition and unless otherwise further limited by state or federal law, the cap on the amount and liability of the County for damages for third party claims or indemnification claims related to this Agreement regardless of the number or nature of claims or whether such claim sounds in tort, equity or contract shall not exceed the dollar amount set by the Florida legislature for tort damages. Further, nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County of Volusia which would otherwise be barred under the doctrine of sovereign immunity or by operation of state or federal law.

The total maximum liability of the County to gbaMS for specifically breaching the confidentiality obligations of the County set forth in Section 3 (Nondisclosure) of this Agreement by wrongfully disclosing gbaMS's Confidential Information is (i) in the case of an unintentional breach, TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00). This limitation of liability will not apply to breaches related to information that is otherwise protected by applicable privacy laws. In the event of a breach under this Agreement related to Confidential Information or to prevent such a breach, whether such a breach is unintentional or intentional, gbaMS may seek injunctive relief against the County.

Infringement. gbaMS warrants that the Software and Documentation will not infringe any third party copyrights, trademarks, patents, or trade secrets that exist on the Effective Date and that arise or are enforceable under the laws of the United States of America.

- A. If a third party brings an action against County making allegations that, if true, would constitute a breach of this warranty, then gbaMS will, at its own expense and subject to the provisions of Section 4.A, defend, indemnify and hold County harmless in such proceeding, and gbaMS will pay all settlements, costs, damages and legal fees finally awarded. The County Council, pursuant to Florida law, will have the right to consider all settlements before they are accepted by gbaMS on behalf of the County.
- B. If such a proceeding is brought or appears to gbaMS to be likely to be brought, gbaMS may, at its expense: (i) obtain the right or license for County to continue using the allegedly infringing items; or (ii) replace or modify the allegedly infringing items with noninfringing items that meet the functional and performance specifications of the item being replaced and function within the CMMS Solution, subject to County's approval, such approval not to be unreasonably withheld. If gbaMS finds that neither of these alternatives is available to it on commercially reasonable terms, gbaMS may require County to return the allegedly infringing item(s), in which case County will receive a refund of the amounts paid by it for the returned item(s) or Application(s), and, in the event the removal of the infringing item(s) results in a degradation of the operation of the CMMS Solution, will be entitled to recover its actual damages as a result of such degradations.

12. TERM AND TERMINATION.

- (a) Term. This Agreement will continue in full force and effect perpetually, except as follows:
- (b) Termination. gbaMS will have the right to terminate this Agreement if Licensee breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days of written notice from gbaMS;
- (c) Effect of Termination. If this Agreement is terminated, Licensee will immediately terminate any sublicenses then in effect, retrieve from sublicensees all copies of the Program(s) in sublicensees' possession, and then return to gbaMS, or gbaMS's designated representative, or (at gbaMS's request) destroy all copies of the Program(s) in its possession or control, and an officer of Licensee will certify to gbaMS in writing that it has done so.
- (d) Survival. The provisions of Sections 4 (Proprietary Rights), 6(b) (Taxes), 7(b) and (c) (Warranties Exclusive Remedy and Disclaimer), 8(c) and (d) (Infringement Exclusive Remedy and Exceptions), 9 (Confidential Information), and 11 (Limitations of Liability) will survive termination of this Agreement for any reason.
- (e) Nonexclusive Remedy. The exercise by gbaMS of any remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

13. GENERAL PROVISIONS.

- (a) Audit Rights. Licensee agrees to allow gbaMS, or gbaMS's designated representative, at gbaMS's sole expense, upon reasonable written notice, and during Licensee's ordinary business hours, to visit the facilities in which

Licensee uses the Program(s) and review Licensee's practices with regard to the Program(s).

- (b) Assignment. This Agreement will bind and inure to the benefit of each party's successors and assigns, provided that Licensee may not assign this Agreement, in whole or in part, without gbaMS's written consent.

- (c) Modifications. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

- (d) Conflicting Terms. Purchase orders or similar documents relating to the Program(s) issued by Licensee will have no effect on the terms of this Agreement.

- (e) Notices. All notices under this Agreement will be deemed given when delivered personally or sent by U.S. certified mail, return receipt requested, to the address shown below or as may otherwise be specified by either party to the other in accordance with this Section.

- (f) Severability. If any provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected.

- (g) Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.

- (h) Entire Agreement. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. No purchase orders, acknowledgments, invoices, or other documents exchanged in the ordinary course of business shall modify or add to the terms and conditions of this Agreement.

- (i) Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of Florida.

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EXHIBIT "B"
Schedule of Software

Under this Agreement gbaMS will grant the CLIENT a license to use the *GBA Master Series®* programs listed below.

Program ¹	Licensed Seats ²	Software License Fees		
		Server ³	Additional Seats	Total
<i>GBA Work Master®</i>	site	\$60,000.00 for site		\$60,000.00
Web Interface for <i>GBA Work Master</i>	site	\$11,500 for site		\$11,500.00
<i>GBA Warehouse Master™</i>	site	\$12,500 for site		\$12,500.00
<i>GBA Equipment Master™</i>	3	\$3,000.00	\$2,400.00	\$7,800.00
<i>GBA GIS Viewer™</i> for ArcIMS	site	\$11,500 for site		\$11,500.00
<i>GBA Facility Master™</i>	6	\$3,000.00	\$2,400.00	\$15,000.00
<i>GBA Street Master®</i>	3	\$2,000.00	\$1,600.00	\$5,200.00
<i>GBA Sign Master™</i>	2	\$3,000.00	\$2,400.00	\$5,400.00
<i>GBA Signal Master™</i>	3	\$3,000.00	\$2,400.00	\$7,800.00
<i>GBA Right-of-Way Master™</i>	3	\$4,000.00	\$3,200.00	\$10,400.00
<i>GBA Water Master®</i>	3	\$4,000.00	\$3,200.00	\$10,400.00
<i>GBA Sewer Master®</i>	3	\$4,500.00	\$3,600.00	\$11,700.00
<i>GBA Storm Master®</i>	3	\$3,000.00	\$2,400.00	\$7,800.00
<i>GBA GIS Manager™</i>	2	\$4,000.00	\$3,200.00	\$7,200.00
<i>GBA GIS Analyst™</i>	3	\$2,000.00	\$1,600.00	\$5,200.00
Subtotal				\$189,400.00
DISCOUNT				(\$47,350.00)
Total – Software License Fees				\$142,050.00

¹ All programs shall be Version 6.73 Enterprise Edition for Microsoft® SQL Server

² A "site" license provides for an unlimited number of seat licenses. "Seats" refers to the number of concurrent users licensed for a given program.

³ Server fee provides for a server install, and one seat.

⁴ Program is licensed for each named workstation/device onto which the program is installed.

Pricing for other products not included within the initial scope of the CMMS implementation project is provided in the table on the following page. gbaMS will extend to the County a discount on software license fees of twenty-five percent (25%) to any/all of these other products. ASM Program fees would be based on twenty percent (20%) of the non-discounted software license fees.

EXHIBIT "B"
Schedule of Software

Product	Base¹	Additional Seat² (each)
MAINTENANCE MANAGEMENT		
<i>GBA Mobile Work Manager™</i> for PDA ^{3,4}	\$500.00	
ASSET MANAGEMENT		
<i>GBA Sewer Master®</i>		
External TV Import Program ³	\$1,500.00	
<i>GBA Storm Master®</i>		
External TV Import Program ³	\$500.00	
<i>GBA Street Master®</i>		
<i>GBA Pavement Manager™</i>	\$2,000.00	\$1,600.00
<i>GBA Accident Manager™</i>	\$4,000.00	\$3,200.00
<i>GBA Traffic Volume Manager™</i>	\$2,000.00	\$1,600.00
<i>GBA Bridge Master™</i>	\$3,000.00	\$2,400.00
<i>GBA Street Light Master™</i>	\$2,000.00	\$1,600.00
<i>GBA Parks Master™</i>	\$4,000.00	\$3,200.00
<i>GBA Tree Master®</i>	\$2,000.00	\$1,600.00
<i>GBA Equipment Master™</i>		
External Fueling Import Program ³	\$1,500.00	
SCADA Import Program ³	\$1,500.00	
MOBILE		
<i>GBA Mobile Manager™</i> for PC ^{3,5}	\$1,000.00	
<i>GBA GIS Analyst</i> for Field ^{3,6}	\$1,000.00	
GIS		
<i>GBA GIS Viewer</i>		
For Desktop (sold in packs of 5)	\$2,500.00	

¹"Base" fee provides for server installation and one (1) seat license.

²The number of "Seat" licenses governs the number of concurrent users.

³This product is licensed on a per workstation/device basis.

⁴*GBA Mobile Work Manager* includes field data collection capabilities for *GBA Work Master®*.

⁵*GBA Mobile Manager* includes field data collection capabilities for *GBA Work Master* and all asset management products.

⁶License fee for this product does not include license fees for ESRI® ArcGIS 9.x software.

EXHIBIT “B”

Schedule of Software

Licensed module description

GBA Work Master

Service Request Management, Work Order Management, Preventative Maintenance (PM) Scheduling, Annual Work Planning & Budgeting.

Manages all aspects of infrastructure assets, equipment, fleet, and facilities maintenance management including services requests, work orders, PMs, and work planning and budgeting. This product is integrated with those products that provide the materials inventory management, asset inventory and asset condition assessment functions as well as GIS.

Web Interface for GBA Work Master

Service Request Management

This Web interface provides citizens the capability to submit service requests to the Department via a public Web page.

GBA Warehouse Master

Materials Inventory Management

GBA Warehouse Master manages all aspects of inventories of parts and materials used in completion of work orders and PMs. This product is integrated with GBA Work Master so that locations and on-hand quantities of these parts and materials can be viewed and adjusted and appropriate costs can be applied to work order costs.

Asset Inventory and Asset Condition Assessment Products

These products manage all aspects of infrastructure assets, equipment, fleet assets, and facility inventories (physical data such as material, size, age, type, etc.; and spatial data such street address, coordinates, etc.) and documentation of inspection and testing results. These products integrate with GBA Work Master so that histories of service requests and work orders can be associated to individual assets and GIS so that asset locations can be mapped.

The assets managed by each of these products are listed below.

GBA Equipment Master

Equipment (any type), Vehicles

GBA Facility Master

Sites, Buildings, Roofs, Floors, Rooms, Furnishings

GBA Street Master

Streets and roads, Intersections

GBA Sign Master

Traffic signs, Posts/poles

GBA Signal Master

Traffic signal heads, Controllers

EXHIBIT “B”
Schedule of Software

GBA Right-of-Way Master

Pavement markings, Sidewalks, Curb and gutter, Medians, Guard rails, Parking, Railroad crossings, Fences, Walls, Steps, Bus Stops

GBA Water Master

Water distribution appurtenances

GBA Sewer Master

Wastewater collection appurtenances

GBA Storm Master

Storm water drainage appurtenances

ESRI GIS Integration Products

These products include specific applications and user tools to extend the functionality of ESRI ArcGIS products to effectively provide a synchronized real-time GIS-based interface to the other GBA Master Series products.

EXHIBIT “C”
Software Support and Maintenance Provisions

Under this Agreement gbaMS will provide technical support and software maintenance services, at the level described below, for a period of one (1) year following installation of the programs.

Program	Licensed Seats	Non-discounted Software License Fees	Annual Fee ¹
<i>GBA Work Master®</i>	site	\$60,000.00	\$12,000.00
Web Interface for <i>GBA Work Master</i>	site	\$11,500.00	\$2,300.00
<i>GBA Warehouse Master™</i>	site	\$12,500.00	\$2,500.00
<i>GBA Equipment Master™</i>	3	\$7,800.00	\$1,560.00
<i>GBA GIS Viewer™</i> for ArcIMS	site	\$11,500.00	\$2,300.00
<i>GBA Facility Master™</i>	6	\$15,000.00	\$3,000.00
<i>GBA Street Master®</i>	3	\$5,200.00	\$1,040.00
<i>GBA Sign Master™</i>	2	\$5,400.00	\$1,080.00
<i>GBA Signal Master™</i>	3	\$7,800.00	\$1,560.00
<i>GBA Right-of-Way Master™</i>	3	\$10,400.00	\$2,080.00
<i>GBA Water Master®</i>	3	\$10,400.00	\$2,080.00
<i>GBA Sewer Master®</i>	3	\$11,700.00	\$2,340.00
<i>GBA Storm Master®</i>	3	\$7,800.00	\$1,560.00
<i>GBA GIS Manager™</i>	2	\$7,200.00	\$1,440.00
<i>GBA GIS Analyst™</i>	3	\$5,200.00	\$1,040.00
Total – Support & Maintenance Fees			\$37,880.00

¹The annual fee for a given program is twenty percent (20%) of the software license fee.

Support and maintenance services are renewable annually by mutual agreement.

The CLIENT shall remit payments to gbaMS for technical support and software maintenance services as per the following schedule:

- Initial year Annual Support & Maintenance Package Cost will be invoiced upon completion of Scope of Work and payment will be subject to standard gbaMS invoice terms.
- The Annual Support & Maintenance Package Cost will subsequently be invoiced annually, approximately sixty (60) days prior to the Support Package's expiration date.
- The “Total – Support & Maintenance Fees” amount given above is guaranteed by gbaMS for a period of five (5) years (Years 1-5) following completion of Scope of Work. An annual cap on Annual Support & Maintenance Package Cost increases will be 0.0% for Years 6-10).

EXHIBIT “C”
Software Support and Maintenance Provisions

- Maintenance Warranty. *gbaMS* warrants that after the five (5) years following final acceptance of the entire CMMS Solution by CLIENT that all *gbaMS* upgrades or updates or Software replacements or substitutions, provided or recommended by *gbaMS*’ maintenance service program, will perform within the functional and operational specifications of the CMMS Solution and those required for deliverables.

The support and maintenance services to be provided for the products summarized in the attached exhibit titled “TECHNICAL SUPPORT AND SERVICES”.

EXHIBIT "C"

Software Support and Maintenance Provisions

TECHNICAL SUPPORT AND SERVICES



Technical Support and Software Maintenance Services

Clients Only Web site

Users have 24/7/365 access to our Help Desk support resources through the "Clients Only" section of our Web site (www.gbaMS.com). In addition to serving as a portal by which clients can submit requests and track their resolution status, the Clients Only Web site provides a knowledge base, software downloads, discussion boards, FAQs, user group information and more.

Toll-free Telephone Support

gbaMS support staff is available to respond to inquiries Monday through Friday (i.e., business days) from 8:00 a.m. to 5:00 p.m., Central Standard Time.

Web Support Technology

We are able to provide the highest level of software support via the Web. This technology (WebEx) enables us to "see" your computer, allowing us to troubleshoot the problem in your environment and easily deliver a solution. In addition, this technology provides additional training capabilities for new users, refresher courses, etc.

User Conferences

Subscribers to our Annual Support & Maintenance (ASM) Program receive discounted fees to our Annual Conference & Training (ACT) event. The ACT provides you with an ideal place to complete training courses, network with co-users, work with our staff and explore additional resources we may have to offer.

Software Patches

We continually refine our applications - from problem resolution to minor enhancements, we always strive to strengthen the software. As an ASM subscriber, you will be provided with these patches for the supported program(s) as they become available.

Software Upgrades / New Releases

We are constantly improving all of our products. We incorporate new functionality and new tools to help you get the most out of the *GBA Master Series*® software. This Program provides you with upgrades (new releases) of the support program(s) as they become available.

Documentation and Help Tutorials

Electronic Help Manuals

Users can access a database of help through the Electronic Help Manuals within *GBA Master Series* applications. These how-to guides give users an overview of applications, modules, functions and features. Users can search for information by table of contents, index or search.

Release Notes

With every new software release, gbaMS provides a list of new additions. Release notes explain how the software has changed, including added functions and features or corrected software issues.

Tutorial Videos

To illustrate the software functionality in a visual format, the Clients Only Web site has a tutorial library of downloadable Webex videos. The tutorial videos can be used to train new personnel how the software works or teach seasoned users new tricks.

inVision e-Newsletter

Our newsletter is distributed via e-mail in an online format, allowing us to provide a wealth of information in a timely manner. The inVision newsletter is distributed to keep users up-to-date on software news (new releases, software patches, etc.), industry happenings and additional resources.

EXHIBIT “D”
Implementation Services

Project Deliverables Summary:

The GBA Master Series Software (“Software”) will generate as a Deliverable, annual performance work plans by activity, using person days as the labor unit, that are simple to create and can be developed in monthly time periods. The Software will process all work anticipated for the entire year including preventative, predictable, and response efforts. The Software will have the ability to process Public Works inventory of infrastructure assets and encompass the scope of work for each activity, estimated level of service, and anticipated workload. The Software’s capabilities will include crew composition and equipment needs by activity. The Software will also provide estimates of resource needs to match desired service levels and allow “what if” analysis to address financial constraints. Once a work plan is finalized, the Software will be capable of generating output for labor, equipment, and material requirements by activity. The Software will be capable of generating output that will allow these requirements to be compared against current available resources and any surplus or shortfall in resources that are identified. The Software will be capable of allowing for adjustment of quantity, cost, and productivity of personnel, rented/leased/purchased equipment, and/or the use of contractor services to balance current equipment and worker levels with those required for accomplishing a work plan. The Software listed by module and described in Exhibit “B” will be capable of, but not limited to, performing the following functions listed below for each Division as applicable. Additionally, the Software modules will function in accordance with the requirements of RFP No. 07-P-77DW/FL.

1. Estimating future workloads and budgets based on inventories, level of effort, and resource costs.
2. Organizing resources (labor, equipment, material) throughout the year to match the plan.
3. Scheduling work that is both preventative (pre-planned) and reactive (modifiable) and maintain a work backlog.
4. Control work by tracking resources used (cost, hours, units), work accomplished, and location worked.
5. Perform planned versus actual comparison of work done.
6. Perform cost accounting of maintenance activities.
7. Perform monthly workload distribution by balancing work with resources (i.e., labor, equipment) available.

EXHIBIT “D”
Implementation Services

Project Approach:

The CMMS for the County’s Public Works Department will be implemented following the project approach outlined below. It is understood that asset inventories are currently being developed, and the full capabilities of the CMMS will not be realized until such time appropriate asset data can be incorporated.

D.1 System Configuration

The County will actively participate in the implementation effort by assisting gbaMS as outlined below.

- County will develop the specific user-defined codes, unique CMMS configuration settings, and resource listings for all Divisions and provide the appropriate information to gbaMS in Microsoft® Excel format
- County will define CMMS access privileges by role (e.g., Manager, Customer Service Representative, Maintenance Supervisor, Field Worker, etc.) for all Divisions
- County will outline the business processes and operational workflows for all Divisions; this information will also be used to define customized *GBA Master Series* ‘Dashboard’ content for CMMS End-Users by role
- County will define any customized reporting needs and outline required report parameters

At the onset of project gbaMS will perform a review of the information provided by the County, optimize the information as necessary to take full advantage of the capabilities of the *GBA Master Series* products, and present recommendations in an on-site meeting (i.e., Overview Workshop – see Section D.7).

The gbaMS level of effort associated with the System Configuration task is summarized below.

Sub-task	Effort
Review and optimize County provided information listed in the above bullets.	24 hours remote time
Present recommendations to County	Accomplished with Overview Workshop task (see Section D.7)
Incorporate approved information into CMMS	16 hours remote time

EXHIBIT “D”
Implementation Services

D.2 Software Delivery

At the onset of project gbaMS will install all *GBA Master Series* products into a ‘test environment’.

Upon completion of end-user training milestones (i.e., go-lives), gbaMS and the County’s designated System Administrator will work together to effect the transition of the updated CMMS from the test environment to the production environment.

The gbaMS level of effort associated with the Software Delivery task is summarized in Table 1.

TABLE 1

Sub-task	Effort
Software delivery	One (1) trip, three (3) days duration
System administration training (see Section D.3)	

D.3 System Administration Training

Training of the System Administrator will be accomplished in conjunction with the Software Delivery task. On-site activities involving gbaMS and the System Administrator will occur to accomplish the following:

- Transfer knowledge regarding the system’s file structure, Security Program, and installation routines.
- Establish security rights for End-Users.
- Install the software onto the server and workstations. gbaMS anticipates providing software installation training on 10% of the client workstations. It’s assumed that the County will be responsible for the remaining installations, with gbaMS available in a support role.
- Test the software in the end-user environments to assure adequate system response times are provided pursuant to the County’s networking and bandwidth standards and response time ranges between one (1) second to three (3) seconds per transaction. The response times will be mutually agreed to by gbaMS and the System Administrator.

As reference material for the System Administration Training, and documentation for post-implementation support and maintenance, gbaMS will provide the System Administrator with the following information:

- All necessary technical support tools (including a digital Help file) and software maintenance procedures descriptions to ‘recreate’ the installation and configuration process.
- Detailed system documentation, including database diagrams illustrating relationships between tables.
- Specifications for each field in every database table.

EXHIBIT “D”
Implementation Services

D.4 GIS Data Synchronization and Integration

gbaMS will work directly with the County to determine what asset data managed in the County’s GIS is available and appropriate for migration to the CMMS. Once determined, gbaMS will synchronize the GIS data into the CMMS databases. The County will continue to maintain the GIS data in their existing SDE environment and data model. gbaMS may ask the County to make limited design changes to the existing SDE geodatabase model in order to accommodate the synchronization process as mutually agreed upon by the parties Project Managers. This will include adding two fields to each feature class that is required to interface with the gbaMS databases. These fields will be maintained by gbaMS, and do not require end user input or modification during GIS editing sessions. Other recommended changes may be made as gbaMS and the County deem necessary.

The gbaMS level of effort associated with the GIS Data Synchronization and Integration task for gbaMS is summarized below and based on testing in a live production environment.

Sub-task	Effort
GIS data migration	One (1) trip, two (2) days duration 40 hours remote time
Integration	

EXHIBIT “D”
Implementation Services

D.5 Custom Report Development

gbaMS will generate up to a maximum of 20 custom reports for the County using Crystal Reports software.

The County will provide summary definitions of customized reporting needs to gbaMS for review and optimization. gbaMS will present drafts reports (developed with Crystal Reports software) to the County for review and approval prior to incorporation of the reports into the CMMS. The final custom designed reports will be supported baseline software under gbaMS' maintenance program as upgrades and updates or software substitutions occur in the future. The gbaMS level of effort associated with the GIS Custom Report Development task for gbaMS is summarized below.

Sub-task	Effort
Custom report development	Assumptions • Five (5) reports – complex • Five (5) reports – moderate • Ten (10) reports – standard Based on these assumptions, 40 remote hours are considered appropriate.

D.6 End-User Training

Training will include an on-site Overview Workshop for the County's Managers and CMMS 'Power Users', and Focus Sessions for Power Users and End-Users. Beyond enabling users to gain proficiency with the CMMS functionality, a goal for the training is to transfer sufficient knowledge to Powers Users so they in turn can provide the County with in-house capabilities to bring new CMMS users 'up to speed', and enhance the proficiencies of experienced CMMS users as new enhancements are provided through future *GBA Master Series* software upgrades.

The initial training undertaken will consist of the classroom-style Overview Workshop for Managers and Power Users from all Divisions. This Workshop will include demonstration of the capabilities of the *GBA Master Series* products to be implemented and interactive discussions to produce a collective understanding of defined CMMS workflows and data requirements.

As indicated in the following table several trips will be made to complete on-site, hands-on training of End-Users in Focus Sessions that will emphasize the following.

- Entry of data and performance of quality assurance processes
- Facilitating internal notifications and external communications of system information
- Dispatching work crews in response to service requests and emergencies
- Using the Web-based tools
- Scheduling preventive maintenance activities
- Querying the system databases using the *GBA Master Series* Filter feature to produce select data sets

EXHIBIT “D”
Implementation Services

- Generating ad-hoc reports from those data sets using the *GBA Master Series* Browse feature
- Using Browse to export those data sets to GIS and other applications
- Generating reports from the system’s on-line libraries of pre-defined report templates
- Using GIS for displaying problems areas and work locations, routing work crews, and locating assets

Training	Participants	Divisions	Level of Effort
Overview Workshop	Managers Power Users	All	One (1) trip, four (4) days duration
Focus Sessions	Power Users End-Users	Road & Bridge; Traffic Engineering	Four (4) trips, total of thirteen (13) days duration
		Water Resources & Utilities; Solid Waste Services; Mosquito Control	Four (4) trips, total of thirteen (13) days duration

gbaMS assumes that each Division will have 25 individuals participating in the training provided in the Focus Sessions.

D.7 Cost Summary

Based on the stated levels of efforts and gbaMS standard rates for labor and direct expenses, a summary of implementation project services costs is provided as Table 1.

D.8 Completion Schedule

A completion schedule for the implementation project is provided as Figure 1.

EXHIBIT “D”
Implementation Services

TABLE 2 – Summary of Implementation Project Services Costs

Tasks	Quantities, Units and Unit Rates	Total Cost
D.1 System Configuration	40 remote hours @ \$115.00/hr	\$4,600.00
D.2 Software Delivery	3 on-site days @ \$1,500.00/day	\$4,500.00
D.3 System Administration Training	1 trip @ \$450.00/trip 3 days @ \$250.00/trip	\$1,200.00
D.4 GIS Data Synchronization and Integration	2 on-site days @ \$1,500.00/day 40 remote hours @ \$115.00/hr	\$7,600.00
	1 trip @ \$450.00/trip 2 days @ \$250.00/trip	\$950.00
D.5 Custom Report Development	40 remote hours @ \$75.00/hr	\$3,000.00
D.6 End-User Training	30 on-site days @ \$1,500.00/day	\$45,000.00
	9 trips @ \$450.00/trip 30 days @ \$250.00/trip	\$11,550.00
TOTAL		\$78,400.00

A summary of the CMMS deliverables to the County are as follows (the details of which are outlined above):

Task D.1 – gbaMS will configure their software offsite using County provided data.

Task D.2 – gbaMS software installed on test and production environments.

Task D.3 – System Administer to be trained. gbaMS will install software on 10% of the end-user workstations as selected by the County, with workstations being tested for response times at each physical building.

Task D.4 – GIS asset data stored in the County’s SDE geodatabase will be synchronized with the gbaMS software.

Task D.5 – A maximum of 20 custom reports will be developed and incorporated into the CMMS.

Task D.6 – End-user training will be conducted.

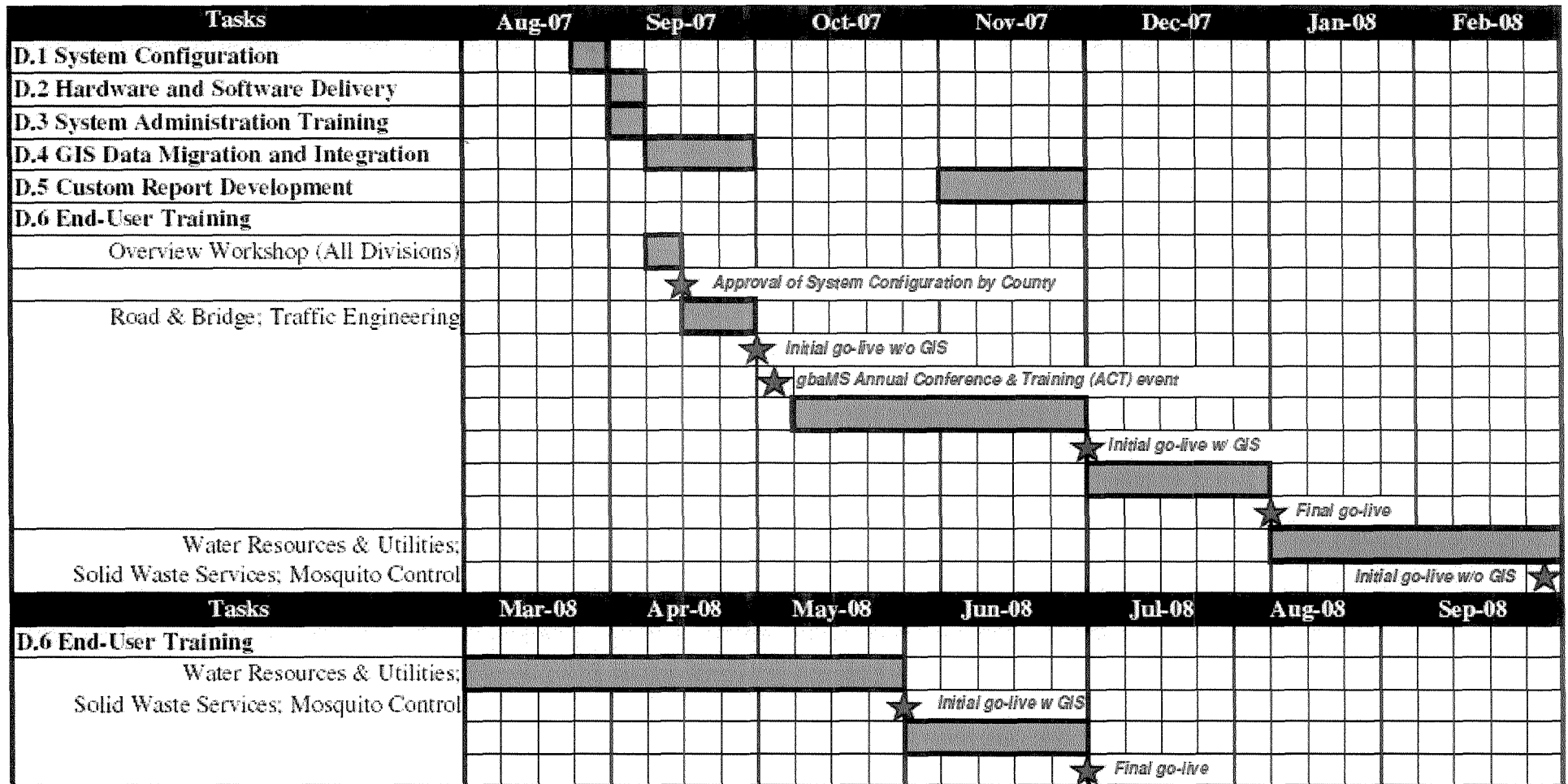
The gbaMS Software or Programs for each Public Works department will generate a work plan based on current and actual data.

Each Public Works department will have a comparison work plan based on historical data that will generate work plan output for comparison with the work plan.

Each Public Works department will be able to generate the same or homogenous work order template.

Implementation Services

FIGURE 1 – Completion Schedule



Westlaw Attached Printing Summary Report for STATEN,RICHARD 5083073

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Morin v. Florida Power Light Co.
 Fla.App. 3 Dist., 2007.

NOTICE: THIS OPINION HAS NOT BEEN
 RELEASED FOR PUBLICATION IN THE
 PERMANENT LAW REPORTS. UNTIL
 RELEASED, IT IS SUBJECT TO REVISION OR
 WITHDRAWAL.

District Court of Appeal of Florida, Third District.
 Gary D. MORIN, Appellant,

v.

FLORIDA POWER LIGHT COMPANY, Appellee.
 No. 3D06-2224.

July 18, 2007.

Background: Employee of independent contractor hired by owner of nuclear power plant brought action against contractor and owner for violation of Whistleblower Act. Action against contractor was removed to federal court. After the Circuit Court, Miami-Dade County, Gerald D. Hubbard, J., granted owner's **motion to dismiss** for failure to state cause of action, employee appealed.

Holding: The District Court of Appeal, Rothenberg, J., held that Whistleblower Act's exclusion of independent contractors from definition of "employee" was not subject to exception for independent contractors who undertake ultra-hazardous activities on behalf of their employers.

Affirmed.

[1] Appeal and Error 30 ⚡893(1)

30 Appeal and Error
 30XVI Review
 30XVI(F) Trial De Novo

30k892 Trial De Novo

30k893 Cases Triable in Appellate Court

30k893(1) k. In General. Most Cited Cases

In reviewing an order granting a **motion to dismiss** for failure to state a cause of action, the standard of review is de novo.

[2] Pretrial Procedure 307A ⚡679

307A Pretrial Procedure

307AIII Dismissal

307AIII(B) Involuntary Dismissal

307AIII(B)6 Proceedings and Effect

307Ak679 k. Construction of Pleadings. Most Cited Cases

Pretrial Procedure 307A ⚡681

307A Pretrial Procedure

307AIII Dismissal

307AIII(B) Involuntary Dismissal

307AIII(B)6 Proceedings and Effect

307Ak681 k. Matters Considered in General. Most Cited Cases

When ruling on a **motion to dismiss** for failure to state a cause of action, the trial court must treat as true all of the complaint's well-pleaded allegations, including those that incorporate attachments, and to look no further than the complaint and its attachments.

[3] Appeal and Error 30 ⚡919

30 Appeal and Error

30XVI Review

30XVI(G) Presumptions

30k915 Pleading

30k919 k. Striking Out or Dismissal. Most Cited Cases

On review of a **motion to dismiss** for failure to state a cause of action, the reviewing court must treat as true all well-pleaded allegations in the complaint,

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including those that incorporate amendments, and look no further than the complaint and its attachments.

[4] Labor and Employment 231H ↪777

231H Labor and Employment

231HVIII Adverse Employment Action

231HVIII(A) In General

231Hk775 Reporting or Opposing Wrongdoing; Criticism and "Whistleblowing"

231Hk777 k. Particular Cases in General. Most Cited Cases

Whistleblower Act's exclusion of independent contractors from definition of "employee" was not subject to exception for independent contractors who undertake ultra-hazardous activities on behalf of their employers, and thus, exclusion barred action brought by employee of independent contractor hired by owner of nuclear power plant, who was allegedly harassed, intimidated, and demoted by independent contractor for refusing to perform what he claimed to be an ultra-hazardous activity undertaken by the independent contractor on behalf of the owner, against owner for violation of Act's anti-retaliation provision. West's F.S.A. §§ 448.101(2), 448.102(3).

An Appeal from the Circuit Court for Miami-Dade County, Gerald D. Hubbart, Judge.

David G. Hutchison and Vincent J. Tubiana, for appellant.

Akerman Senterfitt and James S. Bramnick, Nancy A. Copperthwaite, and Jennifer M. Taylor, for appellee.

Before GERSTEN, C.J., and SUAREZ and ROTHENBERG, JJ.

ROTHENBERG, Judge.

*1 The plaintiff, Gary D. Morin ("Morin"), appeals an order granting Florida Power & Light's ("FPL") **motion to dismiss** for failure to state a cause of action under Florida's Private Sector Whistleblower Act ("Whistleblower Act" or "Act"), section 448.101, *et seq.*, Florida Statutes (2005). We affirm.

Morin filed an amended complaint against Day &

Zimmerman, DPS, Inc. ("DZNPS") and FPL, seeking damages under the Whistleblower Act. In the amended complaint, Morin alleges that while he and his crew were in the process of unloading a C-container at Turkey Point Nuclear Power Plant ("Turkey Point"), which is considered a "critical lift," an employee and/or agent of DZNPS, Cush Revette ("Revette"), ordered Morin to go with him to perform a different job. Morin explained to Revette that safely moving the C-container requires three men, and that he could not leave until the C-container was stabilized. Otherwise, a highly dangerous situation would exist. Revette, however, informed Morin that if he did not immediately go with him, he would be fired. When Morin refused to leave until the task was performed, he was suspended for three days for insubordination and for refusing his next assignment.

Morin filed a grievance with the Bull Steward of DZNPS and a complaint with an in-house safety concerns program. Morin claimed that he was subjected to a pattern of harassment and intimidation, he was demoted for objecting to Revette's work order, and the harassment and intimidation were designed to force him to quit.

The amended complaint alleges that there is an "independent contractor relationship" between FPL and DZNPS. Additionally, the amended complaint alleges that Turkey Point is owned by FPL; both FPL and DZNPS are "responsible for maintaining safe procedures of operation at Turkey Point;" FPL's Turkey Point Nuclear Plant Rigging Operations Manual indicates that the supervisor/leader must be present during all critical lifts; DZNPS has a policy of providing a safe work environment and encourages employees to report safety concerns without fearing retaliation; and this policy was "promulgated pursuant to a grant of authority from the NRC and pursuant to 10 C.F.R. § 50-5 and 10 C.F.R. § 50-7."

FPL and DZNPS moved to dismiss the amended complaint, and in the alternative, FPL moved for summary judgment, attaching the affidavits of Mark Waronicki, FPL's Manager of Nuclear Testing, and George Downing, DZNPS' Site Manager at Turkey Point. Waronicki averred, in part, that DZNPS

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provides independent contractor services to FPL; FPL and DZNPS are not interrelated in any manner; and FPL plays no role in DZNPS' personnel practices. Downing averred that DZNPS contracts with FPL to perform maintenance at Turkey Point; FPL is not involved in the hiring or firing decisions of DZNPS craft employees, including Morin; FPL does not pay salaries or benefits to DZNPS craft employees; FPL is not authorized to assign work to DZNPS craft employees; FPL does not have access to personnel files of DZNPS craft employees; and that he made the decision to demote Morin without consulting with FPL.

*2 After conducting a hearing, the trial court granted the **motion to dismiss** with **prejudice** as to FPL but denied it as to DZNPS, finding that the amended complaint states a cause of action as to DZNPS, but not as to FPL. ^{FN1} Morin contends in this appeal that the trial court erred by granting FPL's **motion to dismiss**.

[1][2][3] In reviewing an order granting a **motion to dismiss** for failure to state a cause of action, the standard of review is *de novo*. See *BellSouth Telecomms., Inc. v. Meeks*, 863 So.2d 287, 289 (Fla.2003); *Rivera v. Torfino Enters., Inc.*, 914 So.2d 1087, 1088 (Fla. 4th DCA 2005); *Roos v. Morrison*, 913 So.2d 59, 63 (Fla. 1st DCA 2005), *review dismissed*, 944 So.2d 341 (Fla.2006); *Susan Fixel, Inc. v. Rosenthal & Rosenthal, Inc.*, 842 So.2d 204, 206 (Fla. 3d DCA 2003). When ruling on a **motion to dismiss** for failure to state a cause of action, the trial court must "treat as true all of the ... complaint's well-pleaded allegations, including those that incorporate attachments, and to look no further than the ... complaint and its attachments." ^{FN2} *City of Gainesville v. Fla. Dep't of Transp.*, 778 So.2d 519, 522 (Fla. 1st DCA 2001). Moreover, the "reviewing court operates under the same constraints." *Id.* (quoting *Andrews v. Fla. Parole Comm'n*, 768 So.2d 1257, 1260 (Fla. 1st DCA 2000) (citations omitted)).

Morin's amended complaint seeks damages for a violation of section 448.102(3), Florida Statutes, of the Whistleblower Act. Section 448.102(3), Florida Statutes (2005), provides:

Prohibition.-An employer may not take any

retaliatory personnel action against an employee because the employee has:

(3) Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.

Section 448.101(2) of the Whistleblower Act defines "employee" as "a person who performs services for and under the control and direction of an employer for wages or other remuneration. **The term does not include an independent contractor.**" (emphasis added).

Morin asserts that although the amended complaint alleges that there is an "independent contractor relationship" between FPL and DZNPS, FPL, as the owner of Turkey Point, cannot insulate itself from liability for the actions of its independent contractor, DZNPS, and/or its independent contractor's employee, Revette, as the independent contractor has undertaken an ultra-hazardous activity on behalf of the owner and the owner fails to supervise the independent contractor. He, therefore, asks this court to carve out an exception to the Whistleblower Act's exclusion of independent contractors from its definition of "employee," where the independent contractor has undertaken an ultra-hazardous activity on behalf of the owner.

In support of this argument, Morin relies on *Florida Power & Light Co. v. Price*, 170 So.2d 293 (Fla.1964). In *Price*, the plaintiff, an employee of an independent contractor hired by FPL to install an electrical distribution system, was injured by another employee of that same independent contractor while installing the electrical distribution system. On certiorari review, the Florida Supreme Court stated:

*3 We hold that liability flowing from operation of the doctrines of dangerous instrumentalities and inherently dangerous work is subject to the exception that where the defendant owner contracts with an independent contractor for the performance of inherently dangerous work and the latter's employee is injured by a dangerous instrumentality owned by the defendant which is negligently applied or operated by another employee of the independent contractor but wholly without any negligence on the part of the defendant owner, the

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latter will not be held liable. The incidence of the independent contractor and injury to his employee in the course of the performance of the inherently dangerous work absent any negligence on the part of the contracting owner absolves the latter from liability.

Morin v. Florida Power Light Co.

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Id. at 298.

[4] *Price* involved a negligence claim where the doctrines of dangerous instrumentality and inherently dangerous work apply, as opposed to a statutory claim under the Whistleblower Act. Morin has candidly conceded that he could not find a case where these doctrines have been applied to a claim under the Whistleblower Act, and asks this court to extend these doctrines to the Act. We decline to do so and note with approval the Fourth District Court of Appeal's holding in *Tracey-Meddoff v. J. Altman Hair & Beauty Centre, Inc.*, 899 So.2d 1167 (Fla. 4th DCA 2005). The Fourth District Court of Appeal held that because the definition of "employer" in section 448.101(3) of the private sector whistleblower act is unambiguous, appellate courts do not have the "power to 'construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications.'" *Id.* at 1168 (quoting *Holly v. Auld*, 450 So.2d 217, 219 (Fla.1984) (emphasis omitted) (citations omitted)).

Affirmed.

FN1. The action against DZNPS was later removed to federal court based on diversity jurisdiction.

FN2. Although FPL moved in the alternative for summary judgment, the transcript of the hearing indicates that the trial court's ruling was based solely on the **motion to dismiss**. Thus, as our review is limited to whether the trial court erred by granting FPL's **motion to dismiss**, we do not take into consideration FPL's **motion** for summary judgment or the affidavits attached thereto.

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EXHIBIT "E"
Schedule of Costs and Payments

Under this Agreement the CLIENT will compensate gbaMS for software programs and professional services as outlined below.

	Completion Schedule Milestone	Payment	Percentage of Total Contract
1	<i>Road & Bridge and Traffic Engineering – Initial Go-live without GIS</i>		
1.1	System Configuration	\$4,600.00	1.8%
1.2	Software Delivery	\$5,700.00	2.2%
1.3	System Administration Training		
1.4	GIS Data Synchronization and Integration	\$8,550.00	3.3%
1.5	End-User Training – Overview Workshop (all Divisions)	\$7,450.00	2.9%
1.6	End-User Training – Focus Sessions	\$13,150.00	5.1%
1.7	Software License Fees (45% of total)	\$63,922.50	24.7%
	<i>Sub-Total</i>	<i>\$103,372.50</i>	<i>40.0%</i>
2	<i>Road & Bridge and Traffic Engineering – Initial Go-live with GIS</i>		
2.1	Custom Report Development	\$3,000.00	1.2%
2.2	End-User Training – Focus Sessions	\$5,700.00	2.2%
	<i>Sub-Total</i>	<i>\$8,700.00</i>	<i>3.4%</i>
3	<i>Road & Bridge and Traffic Engineering – Final Go-live</i>		
3.1	End-User Training – Focus Sessions	\$5,700.00	2.2%
3.2	Software License Fees (45% of total)	\$63,922.50	24.7%
	<i>Sub-Total</i>	<i>\$69,622.50</i>	<i>26.9%</i>
4	<i>Water Resources & Utilities, Solid Waste Services, and Mosquito Control – Initial Go-live without GIS</i>		
4.1	End-User Training – Focus Sessions	\$13,150.00	5.1%
5	<i>Water Resources & Utilities, Solid Waste Services, and Mosquito Control – Initial Go-live with GIS</i>		
5.1	End-User Training – Focus Sessions	\$5,700.00	2.2%
6	<i>Water Resources & Utilities, Solid Waste Services, and Mosquito Control – Final Go-live</i>		
6.1	End-User Training – Focus Sessions	\$5,700.00	2.2%
6.2	Software License Fees (10% of total)	\$14,205.00	5.5%
6.3	Support & Maintenance Fees – Year 1	\$37,880.00	14.7%
	<i>Sub-Total</i>	<i>\$57,785.00</i>	<i>22.4%</i>
TOTAL		\$258,330.00	100.0%
Support & Maintenance Fees		\$37,880.00 annually for Years 2-5	

The "TOTAL" amount is considered the maximum not-to-exceed amount for this Agreement.

EXHIBIT “E”
Schedule of Costs and Payments

The effective warranty period extends from completion of the “Software Delivery” task, to completion of the “Water Resources & Utilities, Solid Waste Services, and Mosquito Control – Final Go-live” milestone (i.e., project completion).

The effective period associated with “Support & Maintenance Fees – Year 1” is twelve (12) months following completion of the “Water Resources & Utilities, Solid Waste Services, and Mosquito Control – Final Go-live” milestone.

ADDENDUM TO
PROFESSIONAL SOFTWARE LICENSE AND
SERVICE AGREEMENT AND ITS EXHIBITS

This Addendum to *gbaMS*'s Software License and Service Agreement (hereinafter "SLPA"), GBA Master Series ®Software License Agreement, the Software Support and Maintenance Provisions, and all other exhibits attached thereto, is entered by and between County of Volusia, a body corporate and politic, and a political subdivision of the State of Florida (hereinafter "Client"), and *gbaMS* Series, Inc., a Kansas corporation, with principal offices at 10561 Barkley, Suite 500, Overland Park, Kansas 66212 (hereinafter "*gbaMS*"), and supplements and amends the SLPA.

Article 1. Definitions

1.01 The definitions of the SLPA shall be incorporated herein by reference as if set forth fully herein.

1.02 "*Acceptance*" means a determination that a Written Deliverable or Software Deliverable performs in conformance with the procedures and principles constituting acceptance as specified in the Scope of Services of the SLPA and any exhibits attached thereto.

1.03 "*Acceptance Period*" or "*Acceptance Test Period*" means that period of time as specified in the Scope of Services in the SLPA or in any applicable Scope of Services during which the County conducts testing of a Software Deliverable.

1.04 "*Acceptance Test*" means the County's test of any Software Deliverable to determine that such Software Deliverable performs as required by the Acceptance provisions of the SLPA and any applicable Scope of Services.

1.05 "*Change Control Process*" means a systematic procedure whereby potential or proposed changes to the scope or level of service of any Scope of Services is reviewed and analyzed to determine whether or not such changes will require a Change Order.

1.06 "*Change Order*" means any change to the terms and conditions of a Scope of Services agreed upon by the parties in any applicable Scope of Services.

1.07 "*CMMS Solution*" means the Computerized Maintenance Management System Solution that includes the most current version(s) of a complete suite of GBA Master Series ® Software products, as implemented and integrated by *gbaMS* for the Public Works Department of the County, to satisfy the functional specifications and requirements of the Scope of Services in the SLPA. The CMMS system shall allow the County to manage maintenance and operations work and the County's infrastructure assets, including Road & Bridges, Stormwater, Solid Waste, Mosquito Control, Traffic Engineering, Water Resources and Utilities, and Construction Engineering while allowing the County to continue with its

current uses (such as budgeting, service requests, utility billing, work tracking, and other management needs).

1.08 “*Confidential Information*” shall have the meaning ascribed to it in Article 4 of this Agreement.

1.09 “*Contract Documents*” means this Agreement, the Software License and Professional Services Agreement (“SLPA”) and its exhibits and any amendment to this Agreement and License and Professional Services Agreement and its exhibits, Scope of Services, RFP No. 07-P-77DW/FL and gbaMS’ responses or proposals in response to RFP No. 07-P-77DW/FL and any amendment thereto.

1.10 “*County*” means County of Volusia, Florida.

1.11 “*County Fiscal Year*” means the fiscal year beginning October 1 and ending September 30.

1.12 “*CPI Index*” means the Consumer Price Index as computed by the U. S. Department of Labor, Bureau of Labor Statistics: CPI-U (all urban consumers) using the U. S. City average, series title of “all items” with indexed period base period of 1982-84=100, unadjusted (for seasonal adjustments).

1.13 “*Critical Defects*” are Defects that prevent the Software Deliverable from operating or are of a severity that prevent the Software Deliverable from being used in a production environment and for which no workarounds, viable solutions, or remedies exist which would enable the Software Deliverable to be used in a production environment until corrections can be made.

1.14 “*Day*” means a calendar day, unless otherwise expressly specified in this Agreement or a Scope of Services.

1.15 “*Defect*” means a reproducible failure of a Software Deliverable to perform the functions specified in its specifications according to the following classifications:

(a) “*Serious Defects*” are Defects that do not prevent the Software Deliverable from operating but which nonetheless affect essential functions of the Software Deliverable such that the Software Deliverable is unable to be used without significant disruption to the County’s business operations unless a Workaround has been implemented. A Serious Defect will be considered a Disabling Serious Defect if it has not been addressed through implementation of a Workaround.

(b) “*Moderate Defects*” are Defects that do not prevent the Software Deliverable from being used in the County’s business operations because a practical Workaround exists

which enables the Software Deliverable to be used in a production environment without significant disruption to the County's business operations.

(c) "Minor Defects" are Defects that do not affect any functions of the Software Deliverable (e.g., incorrect screen background color or font style).

1.16 "gbaMS" means GBA Master Series, Inc.

1.17 "'GBA Master Series™ Software License Agreement" means the proprietary software license agreement entered into between gbaMS and the County dated August 29, 2007.

1.18 "Deliverable" means any material to be developed by gbaMS that is designated in a Scope of Services as being subject to Acceptance upon delivery to County. A Deliverable may be either a Written Deliverable or a Software Deliverable.

1.19 "Dispute Notice" means a notice issued by either County or gbaMS to initiate Dispute Resolution in accordance with Section 5 of this Agreement.

1.20 "Dispute Resolution" means the procedures set forth in Section 5 of this Agreement and as further specified in an applicable Scope of Services for resolution of disputes between the parties.

1.21 "Effective Date" shall be the date this Agreement and the SLPA are executed by all parties.

1.22 "Equitable Adjustment" means a mutually agreed upon increase or decrease or abatement of a cost or set-off, credit or debit against the Contract Price for a Scope of Services or Change Order as applicable.

1.23 "Key Project Team Member" means any member of either the County's or gbaMS's project team under the Scope of Services designated as a "Key Project Team Member" pursuant to the SLPA.

1.24 "Live Production" means the state of software and hardware when implementation is complete and the system is ready for users to enter data and employ the system for day-to-day production operations.

1.25 "Major Upgrade" means an upgrade of the Licensed GBS Master Software application from N to (N+1), as in the case of an upgrade from a 3.x to 4.x.

1.26 "Maximum Not-To-Exceed Compensation" shall have the meaning ascribed to it in Section 11.07 of this Agreement.

1.27 "Milestone" means a set of Services and/or Deliverables specified in a Scope of Services or a Project Plan, the accomplishment of which triggers the issuance by gbaMS of an invoice for payment to County.

1.28 “*Minor Upgrade*” means an upgrade of a licensed baseline gbaMS Software module or application from N.x to N.(x+1), as in an upgrade.

1.29 “*Moral Turpitude*” means a breach of the duties owed by persons to society as well as acts contrary to justice, honesty, principle or good morals. This includes, but is not limited to, theft, extortion, use of the mail to obtain property under false pretenses, tax evasion, unlawful sale of (or intent to sell) or possession of controlled substances, unlawful acts involving obscene material or conduct, uttering bad checks, misappropriation of funds, theft of personal property, harassment, unlawful discrimination, or any other crime or offense defined or enumerated in Sections 435.04 and 520.994 (5) and Chapters 775 and 847 of the Florida Statutes.

1.30 “*Pre-Existing gbaMS and Third Party Materials*” means proprietary gbaMS or third party software licensed to County pursuant to the GBA Master Series TM Software License Agreement or other license agreement for inclusion in or in connection with the CMMS Solution.

1.31 “*Project Plan*” means a document that states in detail the responsibilities of and tasks for each party under the Scope of Services. A Project Plan may be amended in writing by mutual agreement of the parties. The amended Project Plan, once effective, will supersede all prior Project Plans for the applicable Scope of Service(s).

1.32 “*Proposal*” means the responses by gbaMS dated April 25, 2007, June 25, 2007, and June 27, 2007, in response to RPF# 07-P-77DW/FL.

1.33 “*Software License and Professional Services Agreement*” means the Software License and Professional Services Agreement entered into between gbaMS and the County dated August 29, 2007 and the GBA Master Series ®Software License Agreement attached as Exhibit “A”, the Schedule of Software attached as Exhibit “B”, the Software Support and Maintenance Provisions attached as Exhibit “C”, the Implementation Services attached as Exhibit “D”, and Schedule of Costs and Payments attached as Exhibit “E” of the GBA Master Series ®Software License Agreement, including any amendments thereto.

1.34 “*Retainage*” means an amount withheld from payment of an invoice for gbaMS Services or Deliverables by County to be released by the County upon final Acceptance of the Services or Deliverables or such other criteria as the parties shall agree upon in the applicable Scope of Services.

1.35 “*RFP*” means Request for Proposal 07-P-77DW/FL dated March 23, 2007, published by County and any amendments thereto.

1.36 “*Security*” means the obligatory techniques according to industry standard for ensuring that data stored in a computer cannot be read or compromised by any individuals without authorization.

1.37 “*Services*” means the consulting, training, custom report development, software development and other professional services provided by *gbaMS* and its subcontractors pursuant to this Agreement and the Scope of Services issued hereunder.

1.38 “*Software Deliverable*” means a Deliverable specified in a Scope of Services that includes operational software.

1.39 “*Specifications*” means a mutually agreed upon document that describes with particularity the functions to be performed by a Software Deliverable and that is designated in a Scope of Services, which includes functional requirements matrices and general technical requirements matrices, under which the Software Deliverable is being developed as the specifications for that Software Deliverable.

1.40 “*Scope of Services*” means the Scope of Services under the SPLA and this Agreement specifying the services that *gbaMS* agrees to perform and the Deliverables *gbaMS* agrees to provide for County, the terms of payment for such services and Deliverables, the respective roles and responsibilities of the parties with respect to such services and Deliverables, and such other terms as the parties may agree to with respect to such services and Deliverables and signed by authorized representatives of both parties.

1.41 “*Key Team Project Manager*” means the individual required to be specified by a party in the Scope of Services as that party’s project manager and primary contact person with respect to that Scope of Services. Each party shall be required to identify a single Scope of Services Manager for the Scope of Services.

1.42 “*Term*” means that the term of this Agreement shall remain in effect from the Effective Date until terminated by the parties, but shall not in any event be terminated while a Scope of Services is still in effect. “Effective Date” means the date on which this Agreement and all license, escrow, and maintenance agreements of *gbaMS* and its subcontractors have been fully executed by their duly authorized representatives and the County. As a condition precedent to execution by the County, *gbaMS* and its subcontractors shall provide the County with duplicate executed originals of this Agreement, *gbaMS*’s corporate authorization documentation to show authority of the *gbaMS* representative to sign this Agreement and its certificate of insurance. Prior to beginning the performance of any work or services under this Agreement, *gbaMS* must receive a written Purchase Order and a written Notice To Proceed from the County’s Purchasing Director. The Notice to Proceed is considered an operation

notice. County shall issue the Notice To Proceed after (i) this Agreement, Software License and Professional Services Agreement and its exhibits (as required) are fully executed, (ii) the County has received proofs of insurance required pursuant to this Agreement from *gbaMS*, and (iii) the County has received certified copies of corporate certificates of good standing from *gbaMS* and its subcontractors.

1.43 “*Workaround*” means a mutually agreed upon solution to a defect or non-conformity, that may or may not be a permanent resolution accepted by the County.

1.44 “*Written Deliverable*” means a Deliverable specified in a Scope of Services that consists of a document, such as a status report, system design or other such documentation.

Article 2. Consideration and Order of Precedence

2.01 Consideration. *gbaMS* covenants and agrees that it has received good and valuable consideration for entering into the SLPA and this Addendum, either directly from Client or as part of the SLPA, for which *gbaMS* acknowledges receipt.

Order of Precedence. *gbaMS* agrees that in the event of a conflict between provisions of the various documents of the SLPA and this Agreement contained herein, the documents shall be governed and be controlled in the following order of precedence, with the first being the highest controlling document:

- First: The Code of Ordinances of the County of Volusia.
- Second: The body of this Agreement, including exhibits.
- Third: County's Request For Proposal No. #07-P-77DW/FL.
- Fourth: The SLPA.
- Fifth: Exhibit “D” (*gbaMS*' Implementation Services) of the SLPA.
- Sixth: Exhibit “A” (*gbaMS*' GBA Master Series® Software License Agreement) of the SLPA.
- Seventh: Exhibit “C” (*gbaMS*' Software Support and Maintenance Provisions) of the SLPA.
- Eighth: Exhibit “E” (Schedule of Costs and Payments) of the SLPA.
- Ninth: *gbaMS*' Responses or Proposals Submitted in response to Public Works CMMS RFP #07-P-77DW/FL.

Article 3. *gbaMS* Personnel

3.01 The "Volusia County Scope of Services Manager" and "*gbaMS*' Scope of Services Manager" are the individuals designated by the County and *gbaMS* respectively, from the implementation of and up to and including Final Acceptance of the CMMS Solution by Client, who shall be responsible for their respective day-to-day project operations as described in the Scope of Services #1 of the CMMS Solution. *gbaMS* shall designate a Scope of Services Manager.

3.02 The Client shall throughout the term of this Agreement have the right to request in good faith removal or replacement of any *gbaMS* personnel if said personnel, in Client's reasonable judgment, pose a threat or causes harm to the health, welfare, safety, or morale of Client's personnel or property or who fails any drug test, or who has been convicted of a felony or a misdemeanor involving "Moral Turpitude" or has been released or dishonorably discharged or discharged under other than honorable conditions from any of the Armed Forces of the United States. *gbaMS*'s compliance with such requests shall not be unreasonably withheld and *gbaMS* shall timely provide a replacement who meets the requirements set forth in this Article 3 at no additional cost to the Client within ten (10) business days or as otherwise mutually agreed by the parties in the SLPA.

3.03 *gbaMS* shall direct and supervise competent and qualified personnel and shall devote time and attention to the direction of the operation to insure performance of obligations and duties as set forth herein. *gbaMS* represents that all persons delivering the services required by the Agreement on behalf of *gbaMS* including without limitation *gbaMS*'s personnel and *gbaMS*'s subcontractors have the knowledge and skills, either by training, experience, education, or a combination thereof, to perform the duties, obligations, and services set forth in the Agreement. *gbaMS* shall perform the Services and provide the Software in accordance with the requirements of the Agreement and in a manner similar to that of others providing like Services and Software in the industry.

3.04 *gbaMS* shall keep fully informed of all federal and state laws, all local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner impact the Agreement including but not limited to the provision of Services and production of Software. *gbaMS* shall be responsible for ensuring that its employees, agents, and subcontractors comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment. *gbaMS* shall

always observe and comply with all such laws, ordinances, rules, regulations, orders, and decrees. *gbaMS* shall protect and indemnify Client and all its officers, agents, servants, or employees against any claim or liability arising from or based on the violation of any such law, ordinance, rule, regulation, order, or decree caused or committed by *gbaMS*, its representatives, subcontractors, sub-consultants, professional associates, agents, servants, or employees. Additionally, *gbaMS* shall obtain and maintain at its own expense all licenses and permits to conduct business pursuant to the Agreement from the federal government, State of Florida, County of Volusia, or municipalities when legally required and maintain same in full force and effect during the term of the Agreement. *gbaMS*'s obligations under this Article shall be limited to those laws, ordinances, rules, regulations, orders and decrees which are published and reasonably available to the legal counsel for *gbaMS* and/or the general public.

3.05 *gbaMS* certifies that it does not and shall not during the performance of the Agreement employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.

3.06 *gbaMS* shall not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by the Agreement. *gbaMS* agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded by Client, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under the Agreement, *gbaMS* agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under the Agreement because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

3.07 *gbaMS* certifies that *gbaMS* and its subcontractors shall pay all personnel working under the Agreement, as applicable, not less than the then-current minimum wage specified in the Fair Labor Standards Act as amended and that *gbaMS* is an Equal Opportunity Employer.

3.08 *gbaMS* shall provide the Services and produce Deliverables required herein strictly under a contractual relationship with the Client and is not, nor shall be, construed to be an agent or employee of the Client. As an independent contractor *gbaMS* shall pay any and all applicable taxes required by law; shall comply with all pertinent federal, state, and local statutes including, but not limited to, the Fair Labor Standards Act, The Americans with Disabilities Act, the Federal Civil Rights Act, and any and all relevant employment laws. *gbaMS* shall be responsible for all income tax, Social Security and Medicare taxes, Federal unemployment taxes, and any other withholdings from its employees' or subcontractors' wages or salaries. Benefits, if any, shall be the responsibility of *gbaMS*, including but not limited to, health and life insurance, retirement, liability/risk coverage, and Workers' and Unemployment Compensation.

3.09 *gbaMS* shall hire, compensate, supervise, and terminate members of its work force; shall direct and control the manner in which work is performed including conditions under which individuals shall be assigned duties, how individuals shall report, and the hours individuals shall perform.

3.10 *gbaMS* shall not be exclusively bound to the Client and may provide service to other private and public entities as long as the service is not in direct conflict and does not provide a conflict of interest with the Service to be performed for the Client.

3.11 While onsite/premises of Client, *gbaMS* agrees that its personnel and the personnel of each of its subcontractors shall comply with all lawful requests, rules, and regulations of the Client or *gbaMS*, as applicable, regarding personal and professional conduct (including wearing identification badge or personal protective equipment and adhering to security regulations and general safety practices or procedures) and (b) otherwise shall conduct themselves in a businesslike manner. The Client maintains drug-free and smoke-free workplaces. *gbaMS* agrees that its personnel and the personnel of each of its subcontractors shall adhere to the Client's policies on drug-free and smoke-free work places during the term of the Agreement.

3.12 It is acknowledged by *gbaMS* that to fulfill obligations under the Agreement, *gbaMS* personnel and personnel of *gbaMS*'s subcontractors shall come in contact with sensitive and privileged information including but not limited to ongoing investigative information, and

"juvenile" information, medical information, social security numbers, tax identification numbers for vendors, and public protection personnel, and law enforcement personnel personal information. *gbaMS* shall not divulge, disclose or provide any such information or access to such data to any entity or individual not authorized in writing by Client. *gbaMS* agrees at its expense or that of its subcontractors to use onsite or for remote access only those *gbaMS*'s personnel and *gbaMS*'s subcontractor(s)' personnel who shall comply upon Client's request with submitting to background checks, fingerprinting, and drug testing in areas where personnel of the Client have to submit to these requirements for employment. The Client reserves the right to reject any personnel of *gbaMS* or *gbaMS*'s agents or subcontractors who fails to comply with the foregoing, who fails any drug test, or who has been convicted of a felony or a misdemeanor involving "moral turpitude" or has been released or dishonorably discharged or discharged under other than honorable conditions from any of the Armed Forces of the United States.

Article 4. Confidential Information

4.01 *gbaMS* and Client recognize that during the performance of Services and production of Deliverables under the Agreement, personnel provided by *gbaMS*, *gbaMS*'s subcontractors, Client may be involved in analyzing automated systems, computer Software applications and programs. During the performance of such Services and use of the Software, personnel of *gbaMS* and Client may be required to review and/or use Software programs and applications licensed to or by each other or by third parties and such Software programs and applications may be subject to confidentiality agreements and disclosure restrictions or may have access to the one another's or a third parties' data, confidential or proprietary information, memorandum, documents, trade secrets and ideas which also may be subject to confidentiality agreements and that may be exempted from disclosure or prevented from being disclosed by reason of law.

4.02 *gbaMS* acknowledges that *gbaMS* and *gbaMS*'s personnel shall be exposed to information which is privileged, confidential and not public information under state and/or federal law and shall not be disclosed by *gbaMS* or *gbaMS*'s subcontractors without a court order or the express written authorization of the appropriate Client official.

4.03 "*Confidential Information*" means information belonging to or in the possession of a party which is confidential or a trade secret and is furnished or disclosed to the other party

under this Agreement (including information exchanged in contemplation of entering into this Agreement): (i) in tangible form and marked or designated in writing in a manner to indicate it is confidential or a trade secret; or (ii) in intangible form and that either is of a nature that a reasonable person would understand to be confidential or a trade secret or is identified as confidential or a trade secret in a writing provided to the receiving party within thirty (30) business days after disclosure. County's Confidential Information specifically includes, but is not limited to ongoing investigative information, medical information, social security numbers, tax identification numbers of venders, and law enforcement personnel and public protection personnel personal information. *gbaMS* acknowledges that all of the foregoing shall be treated as privileged confidential information and restricted as described in this Section subject to all other provisions of this Article.

4.04 Any confidential information and/or trade secret information disclosed by *gbaMS*, *gbaMS*'s subcontractors to Client must be expressly identified in writing by *gbaMS* and *gbaMS*'s subcontractors. Client acknowledges that licensed software and all software source code, as well as licensed software manuals and written documentation does not have to be expressly identified in writing as confidential information subject to all other provisions of this Article.

4.05 Confidential Information will remain the property of the furnishing party, and the receiving party will not be deemed by virtue of this Agreement or any access to the furnishing party's Confidential Information to have acquired any right, title or interest in or to the Confidential Information. Subject to the limitations of the Florida Public Records Act, Section 119, Florida Statutes, the receiving party agrees: (i) to hold the furnishing party's Confidential Information in strict confidence affording the furnishing party's Confidential Information at least the same level of protection against unauthorized disclosure or use as the receiving party normally uses to protect its own information of a similar character, but in no event less than reasonable care; (ii) to limit disclosure of the furnishing party's Confidential Information to personnel furnished by the receiving party to perform Services under this Agreement or otherwise having a need to know the information for the purposes of this Agreement; (iii) not to disclose any such Confidential Information to any third party; (iv) to use the furnishing party's Confidential Information solely and exclusively in accordance with the terms of this Agreement in order to carry out its obligations and exercise its rights under this Agreement; and (v) to notify the furnishing party promptly of any unauthorized use or disclosure of the furnishing

party's Confidential Information and cooperate with and assist the furnishing party in every reasonable way to stop or minimize such unauthorized use or disclosure.

4.06 The terms "confidential information" and "trade secret" shall be that which is exempt from disclosure pursuant to the laws of the State of Florida or the United States if the same preempts Florida law.

4.07 Confidential information and/or trade secret do not include the following:

- (a) Information already known or independently developed by the party in possession,
- (b) Information in the public domain through no wrongful act of the party in possession,
- (c) Information received by the party in possession from a third party who was free to disclose it,
- (d) Information regularly disclosed to third parties without restriction on disclosure, or
- (e) Information required to be disclosed by law or an order of court.

4.08 Each party agrees:

- (a) To treat the other party's confidential information as defined in this Article as it treats its own Confidential Information;
- (b) To not knowingly disclose any confidential information belonging to the other party to any person or entity not a party to the Agreement, other than to its employees, consultants, agents, and subcontractors, but only if such consultants, agents, and subcontractors agree in writing to be bound by the same provisions;
- (c) To inform its employees, consultants, agents, and subcontractors who shall be exposed to the other party's Confidential Information of the confidential nature and of the requirement of nondisclosure.

4.09 In the event either party has actual knowledge of a breach of the nondisclosure requirements, the party acquiring such knowledge shall promptly inform the other party and assist that party in curing the disclosure, where possible, and preventing future disclosures.

4.10 Where Client receives a request for disclosure of information that Client believes to be confidential information and/or a trade secret, Client shall give notice to *gbaMS* and *gbaMS* shall take immediate action to notify Client whether *gbaMS* agrees to the disclosure or whether *gbaMS* opposes disclosure and shall take legal action to prevent such disclosure.

4.11 Where *gbaMS* receives a request for disclosure of information that *gbaMS* believes to be confidential information and/or a trade secret, *gbaMS* shall give notice to Client and Client shall take immediate action to notify *gbaMS* whether Client agrees to the disclosure or whether Client opposes disclosure and shall take legal action to prevent such disclosure.

4.12 In the event a third party makes a public records request to the Client for any item which has been marked by *gbaMS* as confidential or a trade secret, the Client has refused disclosure and the third party files suit to require disclosure, *gbaMS* recognizes the Client is required to submit any requested item to the court for inspection in camera as set forth in Section 119.07(1) (e), Florida Statutes (2005). *gbaMS* further acknowledges that Section 119.12, Florida Statutes (2005) states:

If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

Should a court, based upon Section 119.12, Florida Statutes (2005), or its successor, assess and award costs of enforcement against the Client arising from any obligation of the Client under this Article, *gbaMS* agrees at its expense to indemnify, and hold harmless the Client and its elected officials, appointed officials, officers, agents and employees.

4.13 *gbaMS* acknowledges and agrees that the Client is the owner and custodian of information and data (including reports existing prior to the execution of this Agreement and

any derivative works thereof regarding the Scope of Work which, if developed by *gbaMS* shall constitute "works made for hire"), whether or not such is electronically retained and regardless of the retention media and that the use of any software in relation to such information or data does not in any way restrict the rights or obligations of Client regarding disclosure of their data and information.

4.14 Should *gbaMS* and Client agree, subsequent to the execution of the SLPA and the Addendum, to joint ownership of one or more work products without obligation of accounting, then such agreement shall be reduced to writing, and include a provision that states in effect that should *gbaMS* decide at any time to include any of the jointly owned materials in *gbaMS*'s baseline software, Client shall have the same rights to support and maintenance of that baselined work product as it has to other baseline *gbaMS* software under the SLPA without additional cost.

4.15 Except to the extent authorized in the Agreement, both parties hereby agree that during the term of the Agreement and at all times thereafter, neither shall use, commercialize or disclose such confidential information and/or trade secret obtained from the other to any person or entity, except to such other parties as the party claiming confidentiality may approve in writing and under such conditions as such claiming party may impose in writing.

4.16 Notwithstanding the foregoing provisions, disclosure of a purported trade secret or confidential information shall not be precluded if:

- (a) such disclosure is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; and/or
- (b) such disclosure is necessary to establish rights or enforce obligations under the Agreement and the Agreement, but only to the extent that any such disclosure is necessary for such purpose; and/or
- (c) the Client received the prior written consent to such disclosure from *gbaMS*, but only to the extent permitted in such consent; and/or

(d) disclosure is required by Florida law including but not limited to Chapter 119, Florida Statutes; and/or

(e) disclosure is not exempted by Florida law including but not limited to Chapter 119, Florida Statute; and/or

(f) disclosure is required by Federal law which is preemptive of Florida law.

4.17 The total maximum liability of the Client to *gbaMS* for breach under this Article shall be governed by the limitation of liabilities provisions of ARTICLE 11 of this Agreement.

4.18 The Client shall not be enjoined from use of the Software which is the subject of the Agreement if such breach of confidentiality is proximately caused by an intentional tort or criminal act on the part of an employee of the Client through no fault of the Client or such breach does not cause irreparable harm to *gbaMS*.

4.19 This article shall survive the expiration or termination of this Agreement.

Article 5. Dispute Resolution

5.01 The parties to this Agreement shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Agreement in accordance with the provisions set forth in this Section. The *gbaMS* Project team and County Project team shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of the SLPA and this Agreement and any applicable Scope of Services. Issues shall be escalated to successive management levels as needed.

5.02 If a dispute develops between the parties concerning any provision of the SLPA or this Agreement, or the interpretation thereof, or any conduct by the other party under these agreements, and the parties are unable to resolve such dispute within five (5) days, that party, known as the Invoking Party, through its applicable Project Manager from the implementation of the CMMS Solution and up to and including the Final Acceptance of said System by Licensee, shall promptly bring the disputed matter to the attention of the Scope of Services Manager or designated representative, as the case may be, of the other party in writing

("Dispute Notice") in order to resolve such dispute.

5.03 Upon issuance of a Dispute Notice, the Project Managers or designated representative shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative within five (5) business days, the Project Managers shall escalate the dispute as indicated below.

I. During the Implementation of the CMMS Solution and Prior to Licensee's Final Acceptance of the CMMS Solution.

Business Days	Representative	Client Representative
5	<i>gbaMS</i> Project Manager	Project Manager
10	<i>gbaMS</i> Engagement Manager	Chief Financial Officer
10	<i>gbaMS</i> Business Unit Manager or Designee	County Manager or Designee

II. After Licensee Issues A Notice of Final Acceptance the CMMS Solution.

Business Days	<i>gbaMS</i> Representative	Client Representative
5	<i>gbaMS</i> Project Manager	Project Manager
10	<i>gbaMS</i> Engagement Manager	Chief Financial Officer
10	<i>gbaMS</i> Business Unit Manager or Designee	County Manager or Designee

5.04 **Formal Dispute Resolution** At any point after issuance of a Dispute Notice under this section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation, in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. The parties agree that neither party shall have the right to decline to participate once the other party has initiated mediation under this Section. The parties further agree that neither party may (a) terminate this Agreement under this Agreement or the SLPA or (b) suspend or delay the use of Services or Software, or (c) except as expressly otherwise

provided in Section 9 of the SLPA filing suit in a court of law without first engaging in formal mediation as set forth in this Section 5. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize such termination remedies and commence litigation in a court of competent jurisdiction as set forth in this Agreement in connection with the dispute noticed in the applicable Dispute Notice.

Article 6. Insurance

6.01 *gbaMS* shall, as a minimum, provide, pay for, and maintain in force at all times during the Term of the Agreement, the insurance coverages set forth in this Article.

6.02 *gbaMS* shall maintain at its sole cost and expense Commercial General Liability Insurance in the minimum amount of TWO MILLION (\$2,000,000.00) DOLLARS. *gbaMS* shall also maintain at its sole cost, Products Liability Insurance in the minimum amount of ONE MILLION (\$1,000,000.00) DOLLARS per occurrence. *gbaMS* shall also maintain at its sole cost and expense Business Automobile Liability Insurance in the minimum amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS per person / THREE HUNDRED THOUSAND (\$300,000.00) DOLLARS per occurrence, bodily injury and property damage liability. *gbaMS* shall maintain at its sole cost and expense Business Professional Liability Insurance in the minimum amount of TEN MILLION (\$10,000,000.00) DOLLARS. *gbaMS* shall also maintain at its sole cost, Workers' Compensation Insurance as required by Florida law. The liability policy or policies shall state that the policy or policies cannot be canceled or materially changed without first giving thirty (30) days prior notice thereof in writing to the Client.

6.03 *gbaMS* shall require each of its subcontractors to obtain a policy or policies with coverages that conform to the requirements of this Article and to provide *gbaMS* with a copy of a current certificate of insurance that provides coverages in conformance with the requirements of this Article. *gbaMS* shall provide a copy to the Client of each certificate of insurance provided to *gbaMS* by a *gbaMS*'s subcontractor.

6.04 The *gbaMS*'s certificate of insurance required by the Agreement shall be furnished by *gbaMS* to the Client at the following address 123 West Indiana Avenue, Room 302, DeLand, Florida 32721-4613 attention: Director of Purchasing and Contracts.

6.05 Each certificate shall be dated and show:

(a) The name of the insured, the specified job by name and job number, the name of insurer, the number of the policy, its effective date, and its termination date.

(b) The County of Volusia, Florida as additional named insured to the extent of the liabilities and indemnification obligations *gbaMS* has accepted under the terms of the Agreement.

6.06 The Client shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of *gbaMS* and/or subcontractor providing such insurance.

6.07 If any policy as required is written on a claims-made basis, *gbaMS* warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Agreement; and that continuous coverage shall be maintained during the Term of the SLPA and for a period of two (2) years thereafter beginning from the time that work under the last Scope of Services of the SLPA is completed.

6.08 No work may be commenced or material ordered unless and until each certificate of insurance is filed with the Client. No payments shall be made by Client pursuant to the terms of the Agreement until all certificates of insurance for *gbaMS* have been provided.

6.09 Failure of *gbaMS* to procure or maintain the insurance coverages described in this Article, and keep on file with the Client at all times a current certificate of insurance for each policy required hereunder shall be a material breach of the Agreement.

6.10 *gbaMS* shall give prompt written notice to the Client of all known losses, damages, or injuries to any person or to property of the Client or third persons that may be in any way related to the Services and Software being provided hereunder or for which a claim might be made against the Client. *gbaMS* shall promptly report to the Client all such claims that *gbaMS* has noticed, whether related to matters insured or uninsured. No settlement or payment for any claim for loss, injury or damage or other matter as to which the Client may be charged with an obligation to make any payment or reimbursement shall be made by *gbaMS* without the prior written approval of the Client.

6.11 This Article shall survive the expiration or termination of this Agreement.

Article 7. Additional Warranties

7.01 In addition to other warranties, *gbaMS* warrants that the Software meets the following criteria:

- (a) All dates receivable by the Software, as well as its calculations, output, and results, shall include a consistent-length century indicator of at least two base ten digits, and have date elements in interfaces and data storage that shall permit specifying the century to eliminate date ambiguity;
- (b) When any date data is represented without a century, either in an interface or in data storage, the correct century shall be unambiguous for all manipulations involving that data;
- (c) Data calculations involving either a single century or multiple centuries shall neither cause an abnormal ending or operation nor generate incorrect results or results inconsistent with output or results from any other century;
- (d) When the Software sorts data by date, all data shall be sorted in accurate chronological sequence; and when the date is used as a key, data shall be read and written in accurate chronological sequence; and
- (e) Leap years shall be correctly calculated through 2035.

7.02 The Software, replacement software, or maintenance modifications, enhancements, upgrades, updates, or error corrections to the Software have not been knowingly engineered to and shall not:

- (a) Contain hidden files, back door, time bomb, drop dead device or other Software or program routine which may or is designed to disable the covered Software either automatically, with the passage of time or under the control of any person; nor does it contain any virus, Trojan horse, worm or other routine which may or is designed to permit access by any person, or on its own, to disable, erase or otherwise harm or modify the Software or any Client data;
- (b) Replicate, transmit, activate or deactivate itself without control of a person operating computing equipment on which it resides; or

(c) Alter, damage or erase any data or computer programs without control of a person operating the computing equipment on which it resides.

(d) Contain at the time of installation on Client equipment any virus or other harmful programming code that may replicate, transmit or activate itself without control of a person operating the platform system on which the software reside that can be detected by the commercially available virus detection software utilized by *gbaMS* and maintained at the most current level of that software.

7.03 If any of the before mentioned conditions detailed in 7.02 occur or are found and result in the system being inoperable, the Client, pursuant to Section 12.08 of this Agreement, shall provide *gbaMS* with written notice and such notice shall identify and describe with specificity the condition. Within fifteen (15) days of receipt of notice *gbaMS* shall either:

(a) Cure the noticed condition evidenced by written confirmation of the cure delivered by Client by either repairing or replacing the applicable Software at no additional cost to the Client with an Software that is functionally equivalent; or

(b) Submit to the Client a plan reasonably satisfactory to the Client to cure the noticed condition and cures the condition to the reasonable satisfaction of the Client within the time period agreed upon in the plan as evidenced by written confirmation of the cure delivered by the Client.

7.04 In the event that *gbaMS* fails to cure the noticed condition as hereinbefore set forth, Client shall have the right, at its option, to give notice of default and proceed under all contract provisions related to termination set forth in this Agreement.

7.05 *gbaMS* hereby warrants and represents that:

(a) *gbaMS* is the sole owner of all right, title, and interest in and to the Software, user manuals and related documentation, including all patents, copyrights, copyright rights, trade secrets, trademarks, trade names and all proprietary and intellectual rights and confidential information contained therein.

(b) No portion of any Software violates or is protected by right, title, interest or similar right of any third person or entity, however organized.

7.06 The software provided by *gbaMS* including any *gbaMS* subcontractors and the hardware specified by *gbaMS* and provided by the Client in reliance upon such specifications for use with CMMS, shall function and perform in accordance with all software and hardware specifications and standards set forth in the Scope of Services of the SLPA and its exhibits and any amendments thereto.

7.07 In addition to the warranties set forth in the *GBA Master Series®* Software License Agreement, *gbaMS* warrants that the services will be performed in a competent and workmanlike manner, and that the Deliverables, provided with the Client's obligations under this SLPA and its exhibits and any amendments thereto, will meet the minimum functional criteria set forth in the Scope of Work. The County's first recourse of remedy for any breach of this warranty will be the right to require *gbaMS* to repair or replace any Software and/or to re-perform the services, without any additional cost to the County.

7.08 The Software shall be free from material or known defects.

7.09 During the warranty or maintenance period for the Software identified in the SLPA, its exhibits and any amendments thereto, *gbaMS* shall, at a minimum:

- (a) Maintain a contact number, at which *gbaMS* shall accept emergency calls, and phone and e-mail points of contact so that Client can report problems with the Software.
- (b) Initiate corrective action to resolve all problems within the time period set forth herein; all problems include but are not limited to material and/or frequent errors or defects as hereinbefore described.
- (c) Initiate a response by telephone to the Client within 2 hours of the time recorded on the initial request for service by Client of a Critical Problem.
- (d) Initiate a response by telephone or e-mail to the Client within 4 business hours of the time recorded on the initial request for service by Client of a Non-Critical Problem.
- (e) Correct a Critical Problem within two (2) days of initial request for service or if correction cannot be made within two (2) days, *gbaMS* prior to the expiration of the 2 day period, shall submit to the Client a satisfactory plan satisfactory to the Client to correct the Critical Problem at no cost to the Client and correct the Critical Problem at no cost to the Client to the satisfaction of the Client within the time period agreed upon in the plan as

evidenced by written confirmation of the correction delivered by the Client. If *gbaMS* fails to correct the Critical Problem under any option described in this Article, Client shall have the right, at its option, to give notice of default to *gbaMS* and proceed under all provisions related to termination for default.

(f) Upon request of *gbaMS* Client shall provide *gbaMS* a detailed description of the problem and, if requested, a listing of any computer output and all other data which *gbaMS* may reasonably require in order to reproduce operating conditions similar to those present when a problem with an Software is encountered by Client.

7.10 *gbaMS* warrants that the software, programs, and documentation identified in Exhibits "A" and "B" of the SLPA and any amendments thereto, shall not infringe any third party copyrights, trademarks, patents, or trade secrets that exist on the Effective Date and that arise or are enforceable under the laws of the United States of America.

7.11 If a third party brings an action against County making allegations that, if true, would constitute a breach of the warranty stated in this Section, then *gbaMS* will, at its own expense and subject to the provisions of this Section, defend, indemnify and hold County harmless in such proceeding, and *gbaMS* will pay all settlements, costs, damages and legal fees finally awarded. The County Council, pursuant to Florida law, will have the right to consider all settlements before they are accepted by *gbaMS* on behalf of the County.

(a) If such a proceeding is brought or appears to *gbaMS* to be likely to be brought, *gbaMS* may, at its expense: (i) obtain the right or license for County to continue using the allegedly infringing items; or (ii) replace or modify the allegedly infringing items with noninfringing items that meet the functional and performance specifications of the item being replace and function within the CMMS Solution, subject to County's approval, such approval not to be unreasonably withheld. If *gbaMS* finds that neither of these alternatives is available to it on commercially reasonable terms, *gbaMS* may require County to return the allegedly infringing item(s), in which case County will receive a refund of the amounts paid by it for the returned item(s) or Application(s), and, in the event the removal of the infringing item(s) results in a degradation of the operation of the CMMS Solution, will be entitled to recover its actual damages as a result of such degradations.

7.12 *gbaMS* warrants that the maintenance services will be performed in a competent and workmanlike manner consistent with industry standards reasonably applicable to the

performance of such maintenance services on the CMMS software, after Final Acceptance of the CMMS Solution by the County. If County believes there has been a breach of this warranty with respect to applicable modules, or application(s) and so notifies *gbaMS* in writing stating in reasonable detail the nature of the claimed breach within thirty (30) days after the maintenance services are delivered to County by *gbaMS*, then *gbaMS* will promptly investigate the matter within thirty (30) days. If it is determined that there has been a breach of this warranty, then the County's exclusive remedy, will be for *gbaMS* to correct or re-perform any affected maintenance services and replace or repair any software that is affected to cause it to comply with this warranty. There will be no additional charge to County for the investigation and correction efforts performed by *gbaMS*. If *gbaMS* is unable to correct a breach of this warranty after repeated efforts, County will be entitled to recover its actual damages.

7.13 *gbaMS* warrants that the CMMS Software (which includes the Bundled Software Products) and any updates or upgrades thereto will meet the functional and operational specifications of the CMMS Solution.

7.14 Except as otherwise provided in this Article, in the event the Software are down for two consecutive days during the term of the warranty or maintenance, the warranty period shall be suspended from the time at which the Software were reported to *gbaMS* as being down. After installation of the appropriate corrections, the warranty period shall restart at the point at which it was suspended.

Article 8. Maintenance and Support

8.01 After acceptance of the Software, *gbaMS* shall provide maintenance and support services for the version of the Software installed and accepted by the Client. The annual fee for such agreement shall include all maintenance and support of the Software including but not limited to implementation of all releases, versions and upgrades and that such annual fee shall not increase for the first ten (10) years and thereafter by no more than whichever is the lesser three (3%) or the CPI Index.

Article 9. Public Entity Crimes Act

9.01 *gbaMS* represents that the execution of this Agreement shall not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person

or affiliate who is a contractor, consultant or other provider and who has been placed on the convicted *gbaMS* list following a conviction for a Public Entity Crime (as defined in the Statutes) may not submit a bid on a contract to provide any goods or services to Client, may not submit a bid on a contract with Client for the construction or repair of a public building or public work, may not submit bids on leases of real property to Client, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with Client, and may not transact any business with Client in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two purchases for a period of thirty six (36) months from the date of being placed on the convicted *gbaMS* list. Violation of this Article shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from Client's competitive procurement activities.

9.02 In addition to the foregoing, *gbaMS* further represents that there has been no determination, based on an audit, that it committed a Public Entity Crime and that it has not been formally charged with committing a Public Entity Crime regardless of the amount of money involved or whether *gbaMS* has been placed on the convicted *gbaMS* list.

Article 10. Backup of Software and Disaster Recovery

10.01 *gbaMS* agrees that the Client is authorized as part of the CMMS Solution to copy Software or documentation in support of backups for disaster recovery, Client standard backups, archival, and other conventional backups of the data and Software. Client's standard for backups includes daily, weekly, monthly, and annual backups at a minimum.

10.02 *gbaMS* agrees that the Client is licensed to conduct testing and operate all software annually for ten days at a disaster recovery site. In the event of an actual disaster that causes the activation of the Volusia County Disaster Recovery site the *gbaMS* provides that the Client is licensed to operate production services from the Disaster Recovery site until services are restored at the production site. There is no additional charge for use of licensed software during a disaster.

10.03 *gbaMS* agrees to abide by the Volusia County Computing Security Policy which is incorporated herein by reference.

10.04 Client agrees to support VPN access as provided in the County Computing Security Policy. *gbaMS* is responsible for the *gbaMS* costs and support in accessing the County VPN

connection. Dial up remote access shall not be provided for the *gbaMS* to access the Client network or equipment unless provided for in the Scope of Services.

10.05 Security for Remote Access:

(a) *gbaMS* may provide products and services specified under this Agreement by Remote Access only in accordance with the terms of this Section and the Volusia County Security Policy. In addition, the manner, including any security restrictions, method, equipment, software, and other considerations for Remote Access shall be provided on a request-by-request basis subject to County's internal security requirements and policies, attached hereto as Exhibit "A" of this Agreement.

(b) The County's Remote Access solution is via VPN equipment and software at its location that is already in place and supported. The County will provide no performance, usability, or reliability guarantees for Remote Access. County will provide escorted physical access for *gbaMS* personnel to the County's system, as necessary during performance of the services.

(c) *gbaMS* agrees that it will not transmit or cause to be transmitted any type of undocumented software routines or other elements designed to or capable of permitting, allowing or causing unauthorized access to or intrusion upon, disabling of, erasure of, or interference with any hardware, software, data or peripheral equipment whether directly or by transference. *gbaMS* further agrees that it shall provide, at its expense, the equipment, Internet access, and software at its location to permit use of the County VPN Remote Access solution, and shall:

- (1) Maintain a commercially available enterprise version of anti-virus software at current update levels on all of its equipment connected locally or remotely to the County;
- (2) Follow reasonable security settings and practices when connecting to the County locally or remotely;
- (3) Use commercially reasonable methods to prevent transmission of any type of undocumented software routines or other elements designed to or capable of

permitting, allowing or causing corruption or disruption of data, services, network, servers, or application; and,

- (4) Only connect equipment to the County network with prior approval, including without limitation workstations, laptops, printers, hubs, and wireless appliances.

Article 11. Limitation of Liability

11.01 Notwithstanding anything set forth in the SLPA or this Agreement to the contrary, nothing in the SLPA or this Agreement shall be deemed as a waiver of immunity or limits of liability of the Client beyond any statutory limited waiver of immunity or limits of liability (Section 768.28, Florida Statutes), which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature for liability in tort. Any liability of the Client for damages for claims which sound in tort or equity shall not exceed the statutory limits of liability, regardless of the number or nature of such claim. Nothing in the Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County and/or its agents, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

11.02 Unless otherwise further limited by state or federal law, the cap on the amount and liability of the Client for damages for third party claims or indemnification claims related to this Agreement regardless of the number or nature of claims or whether such claim sounds in tort, equity or contract shall not exceed the dollar amount set by the Florida legislature for tort damages. Further, nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County of Volusia which would otherwise be barred under the doctrine of sovereign immunity or by operation of state or federal law except as provided in this Section.

11.03 In no event shall Client be liable to *gbaMS* for any incidental, indirect, special, punitive or consequential damages even if the Client knew or should have known about the possibility of such damages for any provision of this Agreement.

11.04 *gbaMS* shall, at its own expense, defend, indemnify and hold Client, its agents, officials, including elected officials and employees of Client, harmless from and against all liabilities, claims, demands, actions, causes of action, losses, damages, costs and expenses

(including reasonable attorneys' fees) which may arise on account of personal injury, including death, and damage to tangible property to the extent proximately caused by *gbaMS*'s negligence or intentional tortious conduct in the performance of the SLPA and/or this Agreement.

11.05 *gbaMS* shall save and hold the Client harmless from any and all claims and actions from *gbaMS*'s Subcontractors for payment for Services and Software provided by Subcontractors for *gbaMS* under this Agreement.

11.06 The total maximum liability of the County to *gbaMS* for specifically breaching the confidentiality obligations of the County set forth in Section 3 (Nondisclosure) of this Agreement by wrongfully disclosing *gbaMS*'s Confidential Information is TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00). This limitation of liability will not apply to breaches related to information that is otherwise protected by applicable privacy laws. In the event of a breach under this Agreement related to Confidential Information or to prevent such a breach, whether such a breach is unintentional or intentional, *gbaMS* may seek injunctive relief against the County.

11.07 As of the Effective Date, the Maximum Not-to-Exceed Compensation to *gbaMS* totals TWO HUNDRED FIFTY EIGHT THOUSAND THREE HUNDRED THIRTY-THREE AND 00/100 Dollars (\$258,330.00) which includes software license fees; implementation service fees; profit; travel expenses; costs associated with subcontract work; costs associated with training; bonding costs; direct expenses (such as printing, meter rental, travel expenses, storage, telephone, commercial computer software); and, annual support and maintenance program fees for a one (1) -year period. The Maximum Not-to-Exceed Compensation shall only be amended or modified by amendment of this Agreement pursuant to the issuance of a Change Order under the SLPA and this Agreement.

Article 12. Miscellaneous

12.01 The Agreement shall be governed by the laws of the State of Florida and the Code of Ordinances of the County of Volusia, Florida.

12.02 *gbaMS* acknowledges the Client's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes (commonly known as the Florida Public Records Act), to release public records to members of the public upon request. *gbaMS* acknowledges that the Client is required to comply with Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes, in the handling of the materials created under the Agreement and said statute controls over the provisions of the Agreement. *gbaMS* agrees to comply with these laws and any other laws related to provision of public records and to assist Client in complying with the same as it relates to all aspects of the Agreement.

12.03 *gbaMS* acknowledges the Client's obligations under Article 1, Section 24, Florida Constitution and Chapter 286, Florida Statutes (commonly known as the Florida Government in the Sunshine Law), *gbaMS* acknowledges that the Client is required to comply with Article 1, Section 24, Florida Constitution and Chapter 286, Florida Statutes. *gbaMS* agrees to comply with these laws and any other laws related to complying with the Sunshine Law and to assist Client in complying with the same as it relates to all aspects of the Agreement.

12.04 *gbaMS* agrees to maintain such financial records and other records as may be prescribed by the Client or by applicable federal and state laws, rules, and regulations. Client shall have the right to audit the books, records, and accounts of *gbaMS* that are directly related to the Agreement. *gbaMS* shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement. *gbaMS* shall preserve and make available, at reasonable times for examination and audit by Client, all financial records, supporting documents, statistical records, and any other documents pertinent to the Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of the Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by Client to be applicable to *gbaMS*'s records, *gbaMS* shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by *gbaMS*. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for Client's disallowance and recovery of any payment upon such entry.

12.05 Notwithstanding any other term or provision of the Agreement or this Addendum, the continuation of any of them beyond a single fiscal year of Client is subject to the appropriation and availability of funds in accordance with Chapter 129, Florida Statutes, and the Agreement shall terminate at the end of the then current Client fiscal year if the County Council of Volusia County fails to appropriate funds to pay the compensation required herein. Nothing in the Agreement or this Addendum shall be construed to constitute a pledge of ad valorem taxes and, in the event of non-appropriation, *gbaMS* shall have no right to compel Client to appropriate funds to pay the compensation required herein. The parties agree to review the remaining work to be performed in advance of each new fiscal year for the Client to compare the funding allocated for the next fiscal year to the remaining payments to *gbaMS*, to determine whether or not the allocated funding shall be adequate to cover all work to be performed in the next fiscal year.

12.06 All change orders and any amendments to the Agreement shall be made in accordance with the provisions of the Volusia County Code of Ordinances and the Client's Purchasing Procedures Manual. Client's Purchasing & Contracts Director or such other proper authority shall have the authority to approve, award and execute all documents or other instruments required to effectuate change orders to modify a Deliverable(s) or Service(s) contemplated by the Agreement, so long as the then cumulative financial obligation of Client for any additional Deliverable(s) or Service(s) do not exceed TWENTY FIVE THOUSAND (\$25,000) DOLLARS. Any change order to modify a Deliverable(s) or Service(s) to exceed TWENTY FIVE THOUSAND (\$25,000) DOLLARS shall be presented to the Volusia County Council for its approval.

12.07 All equipment, goods and materials shipped by or on behalf of *gbaMS* under this Agreement shall be F.O.B. Destination and shall be sent to 119 West Indiana Avenue, DeLand, Florida 32720 unless the County designates a different address in a written notice delivered to *gbaMS*. *gbaMS* acknowledges that all provided equipment, goods and materials that are shipped or provided to *gbaMS* by or on behalf of the County under this Agreement will be new and will have been purchased by the County specifically for implementing this Agreement. *gbaMS* acknowledges that any loss or damage during shipping to the equipment, goods, and materials requires that County be made whole with new equipment, goods, and

materials of the same type, brand, and quality unless otherwise agreed upon in writing by the County. The valuation of the equipment, goods and materials will be as "new" and not "used."

12.08 Any legal notice or other communication required or permitted to be made or given by either party pursuant to this Document will be in writing, in English, and will be deemed to have been duly given: (i) five (5) business days after the date of mailing if sent by registered or certified U.S. mail, postage prepaid, with return receipt requested; (ii) when transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine and a copy of the notice is promptly sent by another means specified in this section; or (iii) when delivered if delivered personally or sent by express courier service. All notices will be sent to the other party at its address as set forth below or at such other address as the party may specify in a notice given in accordance with this section.

In the case of County:	with a copies of legal notices to:
County of Volusia Attn: Gamble, John Special Project Coordinator Public Works- Administration & Stormwater Address: 123 W. Indiana Ave., Room 301 DeLand, Florida 32720 Phone: (386) _____ Fax: (386) _____ Email: JGamble@co.volusia.fl.us	County of Volusia Attn: County Attorney Address: 123 W. Indiana Ave. Room 301 DeLand, Florida 32720 Phone: (386) 736-5950 Fax: (386) 736-5990
In the case of <i>gbaMS</i> :	with a copy of legal notices to:
GBA Master Series, Inc. Attn: James C. Graham, P.E. Vice President & Chief Operating Officer Address: 10561 Barkley, Suite 500 Overland Park, KS 66212 Phone: (800) 492-2468 ext. 320	. Attn: Address: Phone: () Fax: ()

Fax:	(913) 341-3128	
Email:	jgraham@gbams.com	

12.09 Each party will act in good faith in the performance of its respective responsibilities under this Agreement and will not unreasonably delay, condition or withhold the giving of any consent, decision or approval that is either requested or reasonably required by the other party in order to perform its responsibilities under this Agreement.

12.10 All legal proceedings brought in connection with the Agreement may only be brought in a state court located in the State of Florida unless the cause of action is only cognizable in federal court. Venue in state court shall be exclusively in Volusia County, Florida. Venue in federal court shall be exclusively in the United States District Court, Middle District of Florida, Orlando Division. Each party hereby agrees to submit to the personal jurisdiction of those courts for any lawsuits filed there against such party arising under or in connection with the Agreement.

12.11 By entering into the Agreement, *gbaMS* and Client hereby expressly waive any rights either may have to a trial by jury of any civil litigation related to the Agreement for any litigation limited solely to the parties of the Agreement.

12.12 If any provision of the Agreement shall for any reason be held to be invalid, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over the Agreement, such provision shall be construed so as to make it enforceable to the greatest extent permitted, such provision shall remain in effect to the greatest extent permitted and the remaining provisions of the Agreement shall remain in full force and effect unless Client or *gbaMS* elect to terminate the Agreement. An election to terminate the Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final. Prior to terminating the Agreement, the parties may agree to substitute an enforceable provision that, to the maximum extent possible under applicable law, preserves the original intentions and economic positions of the parties.

12.13 Failure by either party or both parties to enforce any provision of the Agreement shall not be deemed a waiver of such provision or modification of the Agreement. A waiver of any breach of a provision of the Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of the Agreement.

12.14 Neither this Agreement or any exhibit to it, nor any interest herein shall be assigned, transferred, or encumbered by *gbaMS* unless authorized by the County in writing as a modification to this Agreement. In the event of a merger or acquisition of *gbaMS* and/or *gbaMS*' corporate assets including this Agreement, *gbaMS* shall provide notice to the County pursuant to Article 12 of this Agreement of the notice of said merger or acquisition no later than thirty (30) days from the closing date of such merger or acquisition.

12.15 Each and every covenant, term, and provision contained in this Agreement shall be binding upon and inure to the benefit of the parties' permitted successors, executors, representatives, administrators and assigns.

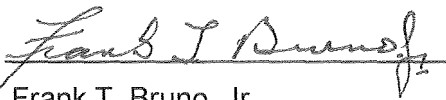
12.16 No modification, amendment, change order, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same formality as the Agreement and executed by a duly authorized official of each party.

12.17 Any paragraph and/or section headings used in the Agreement are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of the Agreement.

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IN WITNESS WHEREOF, the parties hereto have made and executed this Addendum on the respective dates under each signature:

County of Volusia

By: 
Frank T. Bruno, Jr.
County Chair

GBA Master Series, Inc.

By: 
Donald E. Pinkston, Jr., P.E.

Title: President & Chief Executive Officer

Date: 8/21/07

ATTEST:

By: 
James T. Dinneen
County Manager

Date: 8/23/07

ACORD™ CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
5/04/2010

PRODUCER Holmes Murphy-Kansas 6300 W. 143rd Street, Suite 200 PC/Prof. Liability-Kansas City Overland Park, KS 66223	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED GBA Master Series, Inc. 10561 Barkley, Suite 500 Overland Park, KS 66212	INSURER A: St Paul Fire & Marine Insurance	24767
	INSURER B: Travelers Indemnity Company	25658
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	VP06300864	10/01/09	10/01/10	EACH OCCURRENCE	\$1,000,000
		☒ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$250,000
		☐ CLAIMS MADE ☒ OCCUR				MED EXP (Any one person)	\$10,000
						PERSONAL & ADV INJURY	\$1,000,000
						GENERAL AGGREGATE	\$2,000,000
						PRODUCTS - COMP/OP AGG	\$2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:					
		☐ POLICY ☐ PRO-JECT ☐ LOC					
A		AUTOMOBILE LIABILITY	VP06300864	10/01/09	10/01/10	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
		☐ ANY AUTO				BODILY INJURY (Per person)	\$
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		☒ HIRED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		☒ NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		☐ ANY AUTO				OTHER THAN EA ACC	\$
		☐				AUTO ONLY: AGG	\$
A		EXCESS/UMBRELLA LIABILITY	VP06300864	10/01/09	10/01/10	EACH OCCURRENCE	\$1,000,000
		☒ OCCUR ☐ CLAIMS MADE				AGGREGATE	\$1,000,000
		☐ DEDUCTIBLE					\$
		☒ RETENTION \$ 10000					\$
							\$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	UB7413M983	10/01/09	10/01/10	☒ WC STATUTORY LIMITS ☐ OTHER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	\$1,000,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$1,000,000
						E.L. DISEASE - POLICY LIMIT	\$1,000,000
A		OTHER Professional Liability	VP06305624	10/01/09	10/01/10	\$1,000,000 per claim \$1,000,000 annl aggr	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

County of Volusia is listed as Additional Insured under the General Liability where required by written contract.

CERTIFICATE HOLDER**CANCELLATION****10 Days for Non-Payment**

County of Volusia
123 W. Indiana Avenue, Room 304
DeLand, FL 32720

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Karen Boyer

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

ACORD™ CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
10/09/07

PRODUCER Holmes Murphy-Kansas PC/Prof. Liability-Kansas City 55 Corporate Woods 9300 W 110th St Overland Park, KS 66210	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED GBA Master Series, Inc. 10561 Barkley, Suite 500 Overland Park, KS 66212	INSURERS AFFORDING COVERAGE INSURER A: St. Paul Fire & Marine INSURER B: Travelers Indemn Co INSURER C: INSURER D: INSURER E:	NAIC #

COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR ☒ Broad Form ☐ Contractual GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	VP06300864	10/01/07	10/01/08	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	\$1,000,000 \$250,000 \$10,000 \$1,000,000 \$2,000,000 \$2,000,000
A		AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ☒ NON-OWNED AUTOS	VP06300864	10/01/07	10/01/08	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$1,000,000 \$ \$ \$
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	\$ \$ \$
A		EXCESS/UMBRELLA LIABILITY ☒ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☒ RETENTION \$ 10000	VP06300864	10/01/07	10/01/08	EACH OCCURRENCE AGGREGATE	\$1,000,000 \$1,000,000 \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	HEUB6924C58106	10/01/07	10/01/08	☒ WC STATU-TORY LIMITS ☐ OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	\$1,000,000 \$1,000,000 \$1,000,000
A		OTHER Professional Liability	VP06300864	10/01/07	10/01/08	\$1,000,000 per claim \$1,000,000 annl aggr	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RE: Project- Computerized Maintenance Management System for the Volusia County, FL Publihc Workds Department
 The County of Volusia, Florida is listed as an additional insured with respects to the commercial general liability and commercial auto liability.

CERTIFICATE HOLDER**CANCELLATION**

The County of Volusia, Florida
 Attn: Director of Purch & Ctrcts
 123 West Indiana Ave., Room 302
 Deland, FL 32721-4613

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Nicholas Henderson

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

AMENDMENT NO. 5
TO
ARTICLES OF AGREEMENT BETWEEN
COUNTY OF VOLUSIA, FLORIDA
AND
LUCITY, INC.
FOR
PUBLIC WORKS COMPUTERIZED MAINTENANCE MANAGEMENT SOFTWARE
SOLUTION AND IMPLEMENTATION SERVICES WITH ANNUAL SUPPORT AND
MAINTENANCE FOR UP TO TEN (10) YEARS

THIS AMENDMENT No. 5, made and entered into by and between the COUNTY OF VOLUSIA, a body corporate and politic and a political subdivision of the State of Florida, with administrative offices at 123 W. Indiana Avenue, DeLand, FL, 32720, after this called "County," and LUCITY, INC., a Kansas Corporation authorized to do business in the State of Florida, with corporate address of 10561 Barkley, Suite 500, Overland Park, Kansas 66212, after this called "Contractor".

RECITALS

WHEREAS, as a result of solicitation 07-P-77DW/FL the County and Contractor entered into an agreement for a public works computerized maintenance management software solution and implementation services under which GBA Master Series, Inc. agreed to provide services with an effective date of August 23, 2007, for an initial implementation period and annual support and maintenance up to 10 years (hereinafter "Agreement"); and,

WHEREAS, County and Contractor on July 21, 2010, executed Amendment No. 1 to the Contract which amended the Contractor's compensation in SECTION II – SCOPE OF SERVICES of the Contract to the fixed sum of TWENTY-SIX THOUSAND TWO HUNDRED NINE DOLLARS and TWENTY-ONE CENTS (\$26,209.21); and Exhibit "C", Software Support and Maintenance Provisions of the Contract to expand the scope of services to include upgrading the existing ArcIMS application to the Silverlight and ArcSaver web server technology services for the fixed sum of THIRTY-SEVEN THOUSAND THREE HUNDRED SIXTY DOLLARS and ZERO CENTS (\$37,360.00); and,

WHEREAS, the County and Contractor on September 16, 2010, executed Amendment No. 2 to the Contract modifying Exhibits "A" and "B" of the Contract by amending SECTION II – SCOPE OF SERVICES of the Contract to include Parks, Coastal and Central Services Divisions' Computerized Maintenance Management System ("CMMS") services in Exhibits "A" and "B" and amending the maximum not-to-exceed compensation in SECTION V – FEES AND PAYMENTS of Amendment No. 2 to the Contract to the fixed sum of EIGHTY THOUSAND DOLLARS and ZERO CENTS

(\$80,000.00); which caused Exhibit "C" Software Support and Maintenance to be amended to expand its scope of services to include Parks, Coastal and CMMS services for the fixed sum of FORTY-SEVEN THOUSAND NINE HUNDRED FORTY DOLLARS and ZERO CENTS (\$47,940.00) which is attached hereto and incorporated herein as Exhibit "C Revision 2"; and,

WHEREAS, the County and Contractor on March 14, 2011, executed Amendment No. 3 to the Contract modifying SECTION II - SCOPE OF SERVICES of the Contract, by adding Task Assignments to the Contract, to incorporate future scope of services and modifying Exhibit "B" of Amendment No. 2 (hereinafter referred to as First Amended Exhibit "B") of Amendment No. 3 expanding the Scope of Services of the Contract to include Parks, Coastal, & Central Services Divisions Computerized Maintenance Management System (CMMS) services, for the fixed sum of EIGHTY SIX THOUSAND DOLLARS and ZERO CENTS (\$86,000.00) more particularly described in First Amended Exhibit "B", attached and incorporated herein; and,

WHEREAS, the County and Contractor on June 27, 2011, executed Amendment No.4 to the Contract modifying the Contractor name from GBA MASTER SERIES, INC. to LUCITY, INC.; and,

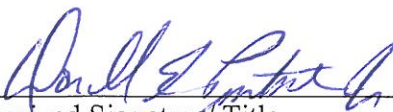
WHEREAS, the County and Contractor desire to further modify Exhibit "C" of the Contract, Software Support and Maintenance Provisions, revising product names and reducing the annual fee by TWO HUNDRED FORTY DOLLARS and ZERO CENTS (\$240.00) for the fixed sum of FORTY-SEVEN THOUSAND, SEVEN HUNDRED DOLLARS and ZERO CENTS (\$47,700.00) as outlined in Exhibit "C" Revision 3 and invoice # 84129-1R, attached and incorporated herein by this reference.

NOW THEREFORE, in consideration of the foregoing recitals which are incorporated herein by reference, and other specific consideration set forth in this Contract, the receipt and sufficiency of which is acknowledged by Contractor and County, the parties agree to renew and to amend the afore-described Contract as follows:

1. The parties agree that the foregoing recitals are true, correct and material to this Contract.
2. The parties agree to amend the Contract by revising Exhibit "C" to read as shown in the attached Third Amended Exhibit "C", labeled Exhibit "C" Revision 3.
3. This Amendment No. 5 is incorporated by reference into the Contract as if fully set forth therein. Except as provided above, all other terms and conditions of the Contract shall remain unchanged and in full force and effect and are hereby ratified and reaffirmed by the parties hereto. In the event of any conflict or inconsistency between the provisions set forth in this Amendment No. 5 and the Contract, this Amendment No. 5 shall govern and control.

IN WITNESS WHEREOF, the parties have made and executed this Amendment No. 5 to the Articles of Agreement between County of Volusia and Lucity, Inc. for public works computerized maintenance management software solution and implementation services with annual support and maintenance for up to ten (10) years on the respective dates under each signature.

LUCITY, INC.

By: 
Authorized Signature/ Title

Print Name: DONALD E. PINKSTON JR.

Title: PRESIDENT

Date: 8/18/11

ATTEST:

By: 
Authorized Signature/ Title

Print Name: Allison Tuttle

Title: Client Services Mgr.

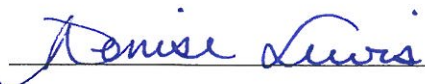
Date: 8/18/11

COUNTY OF VOLUSIA, FL

By: 
Jeaniene Jennings, CPPB
Director of Purchasing and Contracts

Date: 8/22/11

ATTEST:

By: 
Name: Denise Lewis
Title: Purchasing Specialist

Date: 8/22/11

Amendment No. 5
EXHIBIT "C" Revision 3
Software Support and Maintenance Provisions

Under this Agreement Lucity, Inc. shall provide technical support and software maintenance services, at the level described below, for a period of one (1) year following installation of the programs.

Program	Licensed Seats	Non-discounted Software License Fees	Annual Fee*
GBA Work Master	site	\$60,000.00	\$12,000.00
Web Interface for GBA Work Master	site	\$11,500.00	\$2,300.00
GBA Warehouse Master™	site	\$12,500.00	\$2,500.00
GBA Equipment Master™	3	\$7,800.00	\$1,560.00
GBA GIS Viewer for ArcIMS	site	\$11,500.00	\$2,300.00
GBA Facility Master™	6	\$15,000.00	\$3,000.00
GBA Street Master	3	\$5,200.00	\$1,040.00
GBA Sign Master™	2	\$5,400.00	\$1,080.00
GBA Signal Master™	3	\$7,800.00	\$1,560.00
GBA Right-of-Way Master™	3	\$10,400.00	\$2,080.00
GBA Water Master	3	\$10,400.00	\$2,080.00
GBA Sewer Master	3	\$11,700.00	\$2,340.00
GBA Storm Master	3	\$7,800.00	\$1,560.00
GBA GIS Manager™	2	\$7,200.00	\$1,440.00
GBA GIS Analyst™	3	\$5,200.00	\$1,040.00
		Total - Support & Maintenance Fees	\$37,880.00

Amendment 1 Revisions			
Program	Licensed Seats	Non-discounted Software License Fees	Annual Fee*
GBA Signal Master™	-3	\$7,800.00	-\$1,560.00
GBA Pavement Master™	3	\$5,200.00	\$1,040.00
		Amendment 1 Sub-Total - Support & Maintenance Fees	-\$520.00

		Amendment 1 Total - Support & Maintenance Fees	\$37,360.00
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Amendment No. 5
EXHIBIT "C" Revision 3
Software Support and Maintenance Provisions

Amendment 2 Revisions			
Program	Licensed Seats	Non-discounted Software License Fees	Annual Fee*
GBA Parks Master™	6	\$20,000.00	\$4,000.00
GBA Equipment Master™	5	\$12,000.00	\$2,400.00
GBA Facility Master™	3	\$7,200.00	\$1,440.00
GBA GIS Manager	1	\$3,200.00	\$640.00
EMS-GBAMS Web GIS	site	\$10,000.00	\$2,000.00
gbaMS Additional Client	1	\$500.00	\$100.00
		Amendment 2 Sub-Total - Support & Maintenance Fees	\$10,580.00

	Amendment 2 Total - Support & Maintenance Fees	\$47,940.00
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Amendment 5 Product Name Revisions	
Product Name Crosswalk from GBA MasterSeries to Lucity, Inc.	
GBA Master Series Product(s)	Lucity, Inc. Product(s)
<i>GBA Work Master</i>	Work Administrator
<i>GBA Work Order Manager</i>	Work Orders
<i>GBA Request Manager</i>	Requests
<i>gbaMS Web Citizen</i>	Citizen Portal
<i>GBA GIS Manager</i> <i>GBA GIS Analyst</i>	GIS Desktop
<i>gbaMS GIS Server</i>	GIS Web
<i>GBA Water Master</i>	Water
<i>GBA Sewer Master</i>	Sewer
<i>GBA Sewer Rehabilitation Manager</i>	Sewer Analysis
<i>GBA Storm Master</i>	Storm
<i>GBA Electric Master</i>	Electric
<i>GBA Street Master</i> <i>GBA Road Master</i>	Streets & Roads
<i>GBA Bridge Master</i>	Bridges
<i>GBA Right-of-Way Master</i>	Rights-of-Way
<i>GBA Pavement Manager</i>	Pavement Analysis
<i>GBA Sign Master</i>	Traffic Signs
<i>GBA Signal Master</i>	Traffic Signals

Amendment No. 5
EXHIBIT "C" Revision 3
Software Support and Maintenance Provisions

<i>GBA Street Light Master</i>	Street Lights
<i>GBA Accident Manager</i> <i>GBA Traffic Volumes Manager</i>	Traffic Analysis
<i>GBA Parks Master</i>	Parks
<i>GBA Tree Master</i>	Trees
<i>GBA Solid Waste Master</i>	Refuse & Recycling
<i>GBA Facilities Master</i>	Facilities
<i>GBA Equipment Master</i>	Equipment
<i>GBA Fleet Master</i>	Fleet
<i>GBA Warehouse Master</i>	Inventory Control
<i>GBA Mobile Manager</i>	Mobile Desktop
<i>GBA Mobile Work Manager</i>	Mobile PDA
Bar Code Import	Bar Coding PDA
CCTV Import for Sewer	Sewer CCTV Interface
CCTV Import for Storm	Storm CCTV Interface
SCADA Import	Equipment SCADA Interface
Fueling Import	Fleet Fueling Interface
<i>gbaMS API</i>	Integration API

Amendment 5 Revisions			
Program	Licensed Seats	Non-discounted Software License Fees	Annual Fee*
Lucity Equipment Master™	-1	\$2,400.00	-\$480.00
Lucity Facility Master™	-4	\$9,100.00	-\$1,920.00
Lucity Sign Master™	-1	\$2,400.00	-\$480.00
Lucity Signal Master™	2	\$5,400.00	\$1,080.00
Lucity Sewer Master	-1	\$3,600.00	-\$720.00
Lucity Storm Master	-1	\$2,400.00	-\$480.00
Lucity Pavement Master™	-2	\$3,200.00	-\$640.00
Lucity Street Light Master™	1	\$2,000.00	\$400.00
Lucity GIS Manager	site	\$20,200.00	\$4,040.00
Lucity GIS Analyst	-3	\$5,200.00	-\$1,040.00

	Amendment 5 Sub-Total - Support & Maintenance Fees	-\$240.00
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	Exhibit C Revision 3 Total - Support & Maintenance Fees	\$47,700.00
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Amendment No. 5
EXHIBIT "C" Revision 3
Software Support and Maintenance Provisions

Support and maintenance services are renewable annually by mutual agreement.

The CLIENT shall remit payments to Lucy for technical support and software maintenance services as per the following schedule:

- Initial year Annual Support & Maintenance Package Cost will be invoiced upon completion of Scope of Work and payment will be subject to standard Lucy invoice terms.
- The Annual Support & Maintenance Package Cost will subsequently be invoiced annually, approximately sixty (60) days prior to the Support Package's expiration date.
- The "Total – Support & Maintenance Fees" amount given above is guaranteed by Lucy for a period of five (5) years (Years 1-5) following completion of Scope of Work. Annual cap on Annual Support & Maintenance Package Cost increases will be 0.0% for Years 6-10.
- Maintenance Warranty, Lucy warrants that after the five (5) years following final acceptance of the entire CMMS Solution by CLIENT that all Lucy upgrades or updates, or Software replacements or substitutions, provided or recommended by Lucy' maintenance service program, will perform within the functional and operational specifications of the CMMS Solution and those required for deliverables.

The support and maintenance services to be provided for the products summarized in the attached exhibit titled "TECHNICAL SUPPORT AND SERVICES".

Software Support and Maintenance Provisions

TECHNICAL SUPPORT AND SERVICES

Technical Support and Software Maintenance Services

Clients Only Web site

Users have 24/7/365 access to our Help Desk support resources through the "Clients Only" section of our Web site (www.gbams.com). In addition to serving as a portal by which clients can submit requests and track their resolution status, the Clients Only Web site provides a knowledge base, software downloads, discussion boards, FAQs, user group information and more.

Toll-free Telephone Support

gbams support staff is available to respond to inquiries Monday through Friday (i.e., business days) from 8:00 a.m. to 5:00 p.m., Central Standard Time.

Web Support Technology

We are able to provide the highest level of software support via the Web. This technology (WebEx) enables us to "see" your computer, allowing us to troubleshoot the problem in your environment and easily deliver a solution. In addition, this technology provides additional training capabilities for new users, refresher courses, etc.

User Conferences

Subscribers to our Annual Support & Maintenance (ASM) Program receive discounted fees to our Annual Conference & Training (ACT) event. The ACT provides you with an ideal place to complete training courses, network with co-users, work with our staff and explore additional resources we may have to offer.

Software Patches

We continually refine our applications - from problem resolution to minor enhancements, we always strive to strengthen the software. As an ASM subscriber, you will be provided with these patches for the supported program(s) as they become available.

Software Upgrades / New Releases

We are constantly improving all of our products. We incorporate new functionality and new tools to help you get the most out of the GBA Master Series[®] software. This Program provides you with upgrades (new releases) of the support program(s) as they become available.

Documentation and Help Tutorials

Electronic Help Manuals

Users can access a database of help through the Electronic Help Manuals within GBA Master Series applications. These how-to guides give users an overview of applications, modules, functions and features. Users can search for information by table of contents, index or search.

Release Notes

With every new software release, gbams provides a list of new additions. Release notes explain how the software has changed, including added functions and features or corrected software issues.

Tutorial Videos

To illustrate the software functionality in a visual format, the Clients Only Web site has a tutorial library of downloadable Webex videos. The tutorial videos can be used to train new personnel how the software works or teach seasoned users new tricks.

InVision e-Newsletter

Our newsletter is distributed via e-mail in an online format, allowing us to provide a wealth of information in a timely manner. The InVision newsletter is distributed to keep users up-to-date on software news (new releases, software patches, etc.), industry happenings and additional resources.



Lucity, Inc.
10561 Barkley Street, Suite 500
Overland Park, KS 66212
Phone # 913-341-3105

Invoice

Date	Invoice #
5/31/2011	84129-1R

Bill To
Volusia County 123 West Indiana Ave, Rm 402 Deland, FL 32720

Ship To
Volusia County Arden Fontaine 123 W Indiana Ave Rm 402 Deland, FL 32720-4615 US afontaine@co.volusia.fl.us

			P.O. No.
Description	Qty	Rate	Amount
Annual Support and Maintenance	1	47,700.00	47,700.00
Annual Support & Maintenance Renewal on the following Lucity software solutions (SQL Server database platform):			0.00
- 2 seats Sewer			
- 3 seats Street			
- 1 seat Pavement Analysis			
- 1 seat Traffic Signs			
- 2 seats Traffic Signals			
- 3 seats Rights-of-Way			
- 3 seats Water			
- 2 seats Storm			
- 6 seats Parks			
- 1 site license Work Administrator			
- 1 site license Inventory Control			
- 7 seats Equipment			
- 5 seats Facility			
- 1 site license GIS Desktop			
- 1 site license of EMS/Lucity GIS Web - Public Works			
- 1 site license of Web Interface for Work Administrator			
- 1 seat Street Lights			
- 1 Additional Client			
- 1 site license of EMS/Lucity GIS Web - Parks/ Coastal/ Facilities			
for the period of 07/01/2011 through 06/30/2012.			
Total sales tax calculated by AvaTax		0.00	0.00
Total			\$47,700.00



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Modification of Johnson Contract with City for Sale and Purchase of 5126 Ridgewood Avenue

DEPARTMENT: City Attorney

RECOMMENDED MOTION: Move to approve the Second Modification to the Contract and the immediate expenditure of up to \$10,000 relating to the purchase of 5126 Ridgewood Avenue, and to authorize the execution by the City Manager, the Mayor and City Clerk.

SUMMARY: The City has contracted with Sandra Johnson for the purchase of property located at 5126 Ridgewood Avenue. By the terms of the contract Ms. Johnson is required at the time of transfer to satisfy any outstanding taxes, liens or assessments, except the specified code enforcement liens. The city recently received notice of a tax sale on August 18, 2015. If a tax sale occurs, Ms. Johnson will be in breach of the contract and the city will have to change its approach to secure the property. A purchaser at a tax sale is acquiring the property subject to the code enforcement liens. To facilitate the transfer of this property to the city, the Seller is willing for the city to pay the taxes and to deduct the costs from the closing proceeds payable to the Seller. The Seller's attorney has advised that the Seller currently does not have the resources to pay the delinquent taxes. The modification agreement has been reviewed and approved by the City Attorney. Based on the current information available the quiet title suit and the closing is expected to be concluded this year.

Funds are available for this expenditure and a budget resolution will be brought to Council on August 18 to realign the funding for this acquisition.

Project No.: TBD Funding Account No.: 317-1000-519-61-00

ATTACHMENTS:

1.	Second Modification to Option to Purchase Johnson Property	Second Modification to Option to Purchase Johnson Property.pdf
----	--	--

London, Tracy
Roberts, Margaret
Riehm, Tracey
Harden, David

Created/Initiated - 07/21/2015
Approved - 07/27/2015
Approved - 07/30/2015
Final Approval - 07/30/2015



**SECOND MODIFICATION TO OPTION TO PURCHASE
CONTRACT AND CONTRACT FOR SALE AND
PURCHASE OF REAL PROPERTY**

THIS SECOND MODIFICATION TO OPTION TO PURCHASE CONTRACT AND CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY, hereinafter, the "Second Modification" is made and entered into this _____ day of _____, 2015, between: SANDRA JOHNSON ("Seller") and the CITY OF PORT ORANGE, FLORIDA, a municipal corporation ("Purchaser"), collectively referred to hereafter as the "Parties."

WITNESSETH:

WHEREAS, the Parties hereto entered into an Option to Purchase Contract and Contract for Sale and Purchase of Real Property dated February 4, 2014 (the "Contract"), attached hereto as Exhibit A; and

WHEREAS the Parties hereto entered into a Modification to Option to Purchase Contract and Contract for Sale and Purchase of Real Property dated November 11, 2014 (the "Modification") attached hereto as Exhibit B; and

WHEREAS the Parties hereto desire to modify and amend the provisions of such Contract and Modification as described below:

1. Paragraph 4 of the Contract shall be deleted and in its place shall be inserted the following provisions:

- a. Taxes and assessments. Seller agrees to pay before delinquency all taxes, assessments and utility charges, if any, which may be due currently or may hereafter become due on the premises until and including the day of closing. In the event Seller fails to pay delinquent taxes, assessments and utility charges, if any, and the property is noticed for a tax sale by the County of Volusia, Purchaser shall have the right to make such payments, and such payment amounts shall be deducted from the proceeds due Seller at the time of closing.
- b. Purchaser's Right to Redeem Tax Deed Certificate. Purchaser shall have the right to redeem Tax Deed Certificate No. 14827-12, for Parcel No. 6310-07-12-0060, for the property located at 5126 Ridgewood Avenue, Port Orange, Volusia County, State of Florida ("Certificate"). A Notice of Application for Tax Deed was issued by the Volusia County Clerk of Court on June 26, 2015. The current redemption amount is \$8,888.93; however, this amount is subject to change without notice. Purchaser intends to redeem the Certificate prior to the Tax Deed Sale scheduled for August 18, 2015, at 9:00 a.m., which shall require a payment based on

the actual cost of the redemption. The Parties agree that the amount paid by Purchaser to redeem the Certificate shall be deducted from the proceeds due Seller at the time of closing.

Except where modified herein, the terms and conditions of the Contract and Modification shall remain in full force and effect, and the dates of such Contract and Modification shall be modified to include the dates required to give effect to the agreement contained herein.

This Second Modification of Option to Purchase Contract and Contract for Sale and Purchase of Real Property is executed by the Parties as of the respective dates shown below.

FOR THE SECOND MODIFICATION TO OPTION
TO PURCHASE CONTRACT AND CONTRACT
FOR SALE AND PURCHASE OF REAL
PROPERTY

WITNESSES:

SELLER:

First Witness Signature Above, Printed Name Below:

By: _____
SANDRA JOHNSON

Date: _____, 2015

Second Witness Signature Above, Printed Name Below:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Second Modification to Option to Purchase Contract and Contract for Sale and Purchase of Real Property was sworn to and acknowledged before me this _____ day of _____, 2015, by SANDRA JOHNSON, the Seller named in the foregoing Second Modification, and who ☐ is personally known to me or ☐ has produced _____ as identification.

Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

SECOND MODIFICATION FOR THE OPTION TO
PURCHASE CONTRACT:

WITNESSES:

CITY OF PORT ORANGE, FLORIDA,
a chartered municipal corporation

First Witness Signature Above, Printed Name Below:

By: _____
DAVID HARDEN, Interim City Manager

Date: _____, 2015

Second Witness Signature Above Printed Name Below:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Second Modification to Option to Purchase Contract was sworn to and acknowledged before me this _____ day of _____, 2015, by David Harden, the Interim City Manager for the City of Port Orange, Florida, and who ☐ is personally known to me or ☐ has produced _____ as identification.

Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

SECOND MODIFICATION TO CONTRACT FOR
SALE AND PURCHASE OF REAL PROPERTY

PURCHASER:

CITY OF PORT ORANGE, FLORIDA,
a chartered municipal corporation

WITNESSES:

First Witness Signature Above, Printed Name Below:

Second Witness Signature Above, Printed Name Below:

First Witness Signature Above, Printed Name Below:

Second Witness Signature Above, Printed Name Below:

By: _____
Allen Green, Mayor

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

Date: _____, 2015

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Second Modification to Contract for Sale and Purchase of Real Property was acknowledged before me this ____ day of _____, 2015, by Allen Green, as Mayor of the **City of Port Orange, Florida**, a chartered 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 Second Modification to Contract for Sale and Purchase of Real Property was acknowledged before me this ____ day of _____, 2015, by Robin L. Fenwick, as City Clerk of the **City of Port Orange, Florida**, a chartered 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



**OPTION TO PURCHASE CONTRACT AND
CONTRACT FOR SALE AND PURCHASE
OF REAL PROPERTY**

THIS OPTION TO PURCHASE CONTRACT AND CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY, hereinafter, the "Contract" is made and entered into this 4th day of February, 2013, between: SANDRA JOHNSON, mailing address 330 South Nova Road, Lot 30, Port Orange, FL 32129 hereinafter referred to as "Seller"; and CITY OF PORT ORANGE, FLORIDA, a municipal corporation, mailing address: c/o City Manager, 1000 City Center Circle, Port Orange FL 32129-4144, hereinafter referred to as "Purchaser."

For good and valuable consideration in the amount of \$100.00 receipt whereof is hereby acknowledged, the parties agree as follows:

1. Subject to the exercise of the Option to Purchase Contract, hereinafter "Option" and approval by the City Council as set forth in paragraph 15, Seller agrees to sell and Purchaser agrees to purchase the following described real estate, with its appurtenances, located at 5126 Ridgewood Avenue, in Port Orange, County of Volusia, State of Florida:

LOTS 6, 7, 8, AND 9, EXCEPT THE ROAD RIGHT-OF-WAY, BLOCK 12, ALLANDALE, ACCORDING TO MAP IN MAP BOOK 4, PAGE 146, (RE-RECORDED AT MAP BOOK 17, PAGE 166) PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

Also being identified by Parcel Number: 6310-07-12-0060; the subject real estate being hereinafter referred to as the "Property".

General Description and Vicinity of Property: Single-family residential structure located within an area of mixed commercial properties; located south of Dunlawton Avenue, north of and adjacent to Howes Street, and having 100 feet +/- frontage on Ridgewood Avenue.

Improvements Located on the Site: Unoccupied, 2-story single-family residential structure constructed in approximately 1939 and accessory improvements constructed in 1976. The City of Port Orange Building Official has posted this property as unsafe for habitation.

Tangible Personal Property and Fixtures: Prior to the date of closing, Seller shall remove all personal property, furnishings, fixtures, appliances, and miscellaneous debris; and shall secure all exterior openings of the structure.

Conveyance by the Seller and Purchase by the Purchaser of the above-described Property is subject to the Standards for Real Estate Transactions set forth on the form contract approved by The Florida Bar and The Florida Association of Realtors, Inc., attached hereto as Exhibit "A." In the event of a conflict between the terms of the contract for sale and purchase

and the terms contained in **Exhibit "A,"** the contract for sale and purchase shall control.

2. Purchase Price and Method of Payment. The purchase price payable to Seller is as follows:

- (a) The Purchase Price for the Property is: Sixty-six Thousand and 00/100 Dollars (\$66,000.00); and
- (b) The total Purchase Price, less the Purchaser's good faith deposit of One Hundred and No/100 Dollars (\$100.00), and less expenses and prorations as provided in Standard K and Standard L, by check payable to the order of Seller, to be delivered at the time of closing.
- (c) Upon execution of the Option by the Seller and the City Manager, Purchaser's good faith deposit shall be paid to and held in trust by Columbia Title Research Corporation Trust Account, 200 Forest Lake Boulevard, Daytona Beach, FL 32119; referred to as "Escrow Agent," pending the approval by City Council and the closing of this transaction and to be delivered to Seller at the time of closing.

3. Title Insurance. Seller agrees to obtain from the Escrow Agent named above, at Sellers' expense, an owner's title insurance policy insuring Purchaser for the full amount of the purchase price against loss or damage by reason of defect in the title of Seller in the above-described Property. Such policy shall be delivered to Purchaser at the time of closing. Not later than ten (10) days prior to the closing date, Seller shall cause to be delivered to and receipted by the City Attorney on behalf of the Purchaser a title insurance commitment in accordance with Standard A, together with copies of all items noted in Schedule B - Section 1, as prepared for execution and with copies of all items noted in Schedule B - Section 2, as evidenced in the public records or otherwise. The items, if any, listed on **Exhibit "B,"** shall not be deemed title defects.

4. Taxes and assessments. Seller agrees to pay before delinquency all taxes, assessments and utility charges, if any, which may be due currently or may hereafter become due on the premises until and including the day of closing.

5. Risk of loss. Risk of loss or damage to the Property by fire or other casualty between the date of this Contract and Closing shall be and is assumed by Seller.

6. Rental Agreements. Seller warrants that no other persons have any right to possession of the Property and the Seller shall not enter into any Lease or other instrument granting possessory rights subsequent to the execution of this Contract.

7. Deed. Seller agrees, on full payment of the purchase price in the manner herein specified, to make, execute and deliver to Purchaser a good and sufficient warranty deed to the Property, subject to the items listed in **Exhibit "B,"** if any.

8. Closing. Closing shall take place in Volusia County, Florida at the office of the Escrow Agent on or before One Hundred Twenty (120) days following the approval of this Contract for Sale and Purchase by the Port Orange City Council. The date of closing may be

extended upon mutual agreement of the parties. At the closing, Seller shall provide Purchaser with the deed to the Property and other documents in accordance with Standard J. Following the closing, Purchaser shall have the right to exclusive possession of the Property.

9. Closing Costs. Seller shall pay closing costs including, but not limited to, title insurance premium, Florida documentary tax stamps, instruments to cure title defects and document preparation costs attributable to Seller. Costs of environmental audits, surveys, and other inspections shall be paid by the Purchaser.

10. Fees. Purchaser has not utilized the services of a Florida Real Estate Broker for the sale and purchase of the Property. Both parties acknowledge that the Seller shall be responsible for the payment of any brokerage fee incurred for the transfer of the Property. Purchaser shall be responsible for appraisal report prepared at its request, and Seller shall be responsible for fees incurred for Seller's independent review of this proposal by attorneys and engineer/professionals, if any.

11. Environmental Audit. Up to Fifteen (15) days before the date of closing, hereinafter referred to as the "Inspection Period", Purchaser shall have the right to conduct an environmental audit of the Property which audit shall be certified to Purchaser. In the event the environmental audit detects the presence of any hazardous materials, unique prehistoric or historic artifacts, relics, or structures of archaeological value, or of the remains of deceased persons interred therein on the Property, Purchaser, at its sole option, may elect to terminate this Contract prior to the expiration of the Inspection Period and neither party shall have any further obligations under this Contract. For purposes of this Contract, "hazardous materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any federal, state or local environmental laws, statutes, ordinances, rules, regulations, restrictions or orders relating to liability or standards of conduct.

12. Purchaser's Intended Use of the Property. The restrictions, easements, leases, if any, and limitations of record shall not prevent the Purchaser from exercising its rights for its intended use of the Property including all lawful purposes consistent with the local zoning regulations and the elimination and prevention of the development or spread of slums and urban blight. In the event that Purchaser determines that the Property cannot be used for its intended purposes, then the Purchaser shall be entitled to terminate this Contract prior to the expiration of the Inspection Period.

13. Default by Seller. If Seller is unable to convey marketable title to the Property in accordance with the terms of this Contract, or otherwise fails to perform this Contract within the time specified for closing or any extension thereof, the costs of examining the title, surveying the Property, and inspecting and auditing the Property shall, at the option of Purchaser, be paid by Seller to Purchaser on demand. Service of such demand shall be made by certified mail, return receipt requested to Seller as identified and at their respective mailing address shown above, with a copy to Seller's agent or other authorized representative as Seller may indicate in writing to Purchaser. Purchaser shall have the right of specific performance and all other remedies at law or equity. Election of any options by Purchaser or failure of Purchaser to exercise any rights granted by this Contract shall not be construed as a waiver of any action for damages resulting from Seller's default.

14. Access to Property. Seller agrees to allow Purchaser and Purchaser's employees, consultants, agents and representatives access to the Property upon execution of this Contract by Seller and extending to the time of closing for the purpose of conducting surveys, environmental audits and inspections of the premises.

15. Option to Purchase and Approval of Contract for Sale and Purchase of Real Property. Upon execution of this Option by the Seller and the City Manager, the City of Port Orange shall have the option for ninety (90) days to purchase the property described herein and in accordance with the terms described herein. The City Manager's signature on this Option shall not bind the City of Port Orange for the purchase of the Property until approved by the City Council. The City Council of the City of Port Orange may exercise the Option in a public meeting after 30 days' public notice, by casting a majority vote of the City Council in favor of exercising the option and by the Mayor and City Clerk duly executing this Contract. If this Contract is not approved by the City Council on or before the 90th day after execution of the Option by the City Manager, then the City shall provide written notice to Seller and the Escrow Agent authorizing the release of the Escrow Deposit to the Seller and thereafter the City shall not be responsible for any other cost, expense, damage or liability and the parties shall both be discharged and released from any further responsibility under this Contract.

16. Effective Date. The Effective Date of this Contract shall be the date of approval by the City Council for the City of Port Orange, Florida; such approval shall be evidenced by the signing by all parties to this Contract.

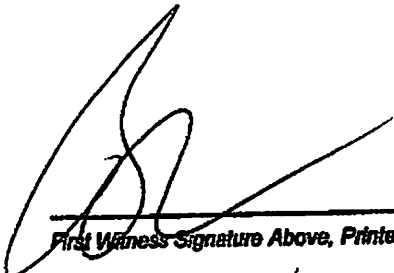
17. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic transmittal of an executed copy of this Contract shall be deemed valid as if an original signature was delivered.

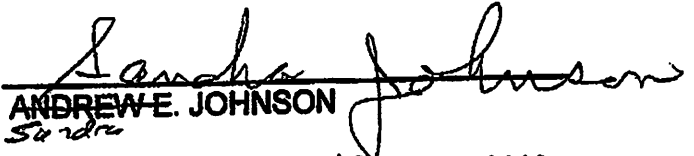
This Option to Purchase Contract and Contract for Sale and Purchase of Real Property is executed by the parties as of the respective dates shown below.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

WITNESSES:

FOR THE OPTION TO PURCHASE CONTRACT
AND CONTRACT FOR SALE AND PURCHASE OF
REAL PROPERTY
SELLER:

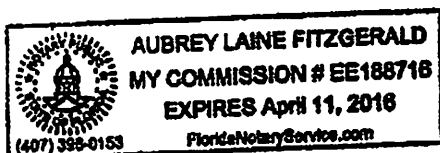

First Witness Signature Above, Printed Name Below:
Barry E. May Jr.

By: 
ANDREW E. JOHNSON
Sandra
Date: November 19, 2013


Second Witness Signature Above, Printed Name Below:
Aubrey Fitzgerald

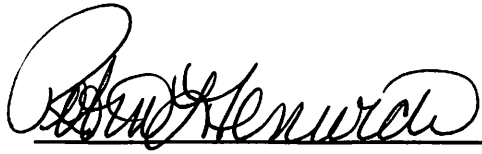
STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract and Contract for Sale and Purchase of Real Property was sworn to and acknowledged before me this 19th day of November, 2013, by ANDREW E. JOHNSON, the Seller named in the foregoing Contract, who (Notary, Sandra please check as applicable): ☒ took an oath or ☐ did not take an oath; and who is ☐ personally known to me or ☒ who has produced FL DL J555487-4172170 as identification.




Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date 4/11/16

WITNESSES:


First Witness Signature Above, Printed Name Below:

Robin Fenwick


Second Witness Signature Above Printed Name Below:

Barbara J. Abbate

FOR THE OPTION TO PURCHASE CONTRACT:
City of Port Orange

By: 

Gregory A. Kisela, City Manager

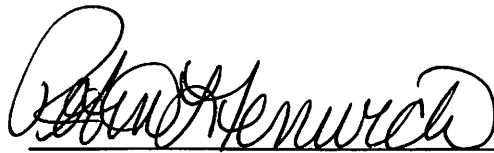
Date: December 30, 2013

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract was sworn to and acknowledged before me this 30 day of December, 2013, by Gregory A. Kisela, the City Manager for the City of Port Orange, Florida, who (Notary, please check as applicable): ☐ took an oath or ☒ did not take an oath; and who is ☒ personally known to me or ☐ who has produced _____ as identification.



ROBIN L. FENWICK
MY COMMISSION # EE 115007
EXPIRES: August 26, 2015
Bonded Thru Budget Notary Services



Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

WITNESSES:

CONTRACT FOR SALE AND PURCHASE OF
REAL PROPERTY

PURCHASER:

CITY OF PORT ORANGE, FLORIDA,
a chartered municipal corporation

Drew J. Bastian

Printed Name:

Drew J. Bastian

Margaret T. Roberts

Printed Name:

Margaret T. Roberts

Witnesses as to Both

By:

Allen Green

Allen Green, Mayor

Attest:

Robin L. Fenwick

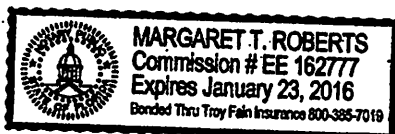
Robin L. Fenwick, CMC, City Clerk

Date:

February 4, 201⁴₈

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Contract was acknowledged before me this 5th day of February, 201⁴₈, by Allen Green and Robin L. Fenwick, as Mayor and City Clerk, respectively, of the City of Port Orange, Florida, a chartered municipal corporation, on behalf of the city. They are personally known to me.



Margaret T. Roberts

Notary Public, State of Florida at Large

Printed Name, Commission Seal and Term Expiration Date

Exhibit A
Page 1 of 4

THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.

Contract for Sale and Purchase
FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR



- 1* PARTIES: _____ ("Seller"),
2* and _____ ("Buyer"),
3 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property")
4 pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract").
- 5 I. DESCRIPTION:
6* (a) Legal description of the Real Property located in _____ County, Florida: _____
7* _____
8* _____
9* (b) Street address, city, zip, of the Property: _____
10 (c) Personal Property includes existing range, refrigerator, dishwasher, ceiling fans, light fixtures, and window treatments unless
11 specifically excluded below.
12* Other items included are: _____
13* _____
14* Items of Personal Property (and leased items, if any) excluded are: _____
15* _____
- 16* II. PURCHASE PRICE (U.S. currency): \$ _____
17 PAYMENT:
18* (a) Deposit held in escrow by _____ (Escrow Agent) in the amount of \$ _____
19* (b) Additional escrow deposit to be made to Escrow Agent within _____ days after Effective Date
20* [see Paragraph III] in the amount of \$ _____
21 (c) Assumption of existing mortgage in good standing (see Paragraph IV(c)) having an approximate
22* present principal balance of \$ _____
23* (d) New mortgage financing with a Lender (see Paragraph IV(b)) in the amount of \$ _____
24* (e) Purchase money mortgage and note to Seller (See Paragraph IV(d)) in the amount of \$ _____
25* (f) Other: _____
26 (g) Balance to close by cash or LOCALLY DRAWN cashier's or official bank check(s), subject
27* to adjustments or prorations \$ _____
- 28 III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:
29 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or
30* before _____ the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. UNLESS OTH-
31 ERWISE STATED, THE TIME FOR ACCEPTANCE OF ANY COUNTEROFFERS SHALL BE 2 DAYS FROM THE DATE THE COUN-
32 TEROFFER IS DELIVERED.
33 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the
34 final counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for
35 acceptance of this offer or, if applicable, the final counteroffer.
- 36 IV. FINANCING:
37* ☐ (a) This is a cash transaction with no contingencies for financing;
38* ☐ (b) This Contract is contingent on Buyer obtaining approval of a loan ("Loan Approval") within _____ days after Effective Date for (CHECK
39* ONLY ONE): ☐ a fixed; ☐ an adjustable; or ☐ a fixed or adjustable rate loan, in the principal amount of \$ _____, at an initial inter-
40* est rate not to exceed _____%, discount and origination fees not to exceed _____% of principal amount, and for a term of _____
41* years. Buyer will make application within _____ days (if blank, then 5 days) after Effective Date and use reasonable diligence to obtain Loan
42 Approval and, thereafter, to satisfy terms and conditions of the Loan Approval and close the loan. Buyer shall pay all loan expenses. If Buyer
43 fails to obtain a Loan Approval or fails to waive Buyer's rights under this subparagraph within the time for obtaining Loan Approval or, after
44 diligent, good faith effort, fails to meet the terms and conditions of the Loan Approval by Closing, then either party thereafter, by written notice
45 to the other, may cancel this Contract and Buyer shall be refunded the deposit(s);
46* ☐ (c) Assumption of existing mortgage (see rider for terms); or
47* ☐ (d) Seller financing (see Standard B and riders, addenda, or special clauses for terms).
- 48* V. TITLE EVIDENCE: At least _____ days (if blank, then 5 days) before Closing:
49* ☐ (a) Title insurance commitment with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after
50* Closing, an owner's policy of title insurance (see Standard A for terms); or ☐ (b) Abstract of title or other evidence of title (see rider for terms),
51* shall be obtained by (CHECK ONLY ONE): ☐ (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or
52* ☐ (2) Buyer at Buyer's expense.
- 53* VI. CLOSING DATE: This transaction shall be closed and the closing documents delivered on _____ ("Closing"), unless
54 modified by other provisions of this Contract. If Buyer is unable to obtain Hazard, Wind, Flood, or Homeowners' insurance at a reasonable rate
55 due to extreme weather conditions, Buyer may delay Closing for up to 5 days after such coverage becomes available.
- 56 VII. RESTRICTIONS; EASEMENTS; LIMITATIONS: Seller shall convey marketable title subject to: comprehensive land use plans, zoning,
57 restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise
58 common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record
59 (located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side

Exhibit A
Page 2 of 4

60 lines; taxes for year of Closing and subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see
61 addendum); provided, that there exists at Closing no violation of the foregoing and none prevent use of the Property for
62 purposes).

63 VIII. OCCUPANCY: Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended
64 to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard F.
65 If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy, shall be responsible and liable
66 for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

67 IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions, riders and addenda shall control all printed pro-
68 visions of this Contract in conflict with them.

69 X. ASSIGNABILITY: (CHECK ONLY ONE): Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may
70 assign but not be released from liability under this Contract; or ☐ may not assign this Contract.

71 XI. DISCLOSURES:

72 (a) ☐ CHECK HERE: If the Property is subject to a special assessment lien imposed by a public body payable in installments which
73 continue beyond Closing and, if so, specify who shall pay amounts due after Closing: ☐ Seller ☐ Buyer ☐ Other (see addendum).

74 (b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to per-
75 sons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida.
76 Additional information regarding radon or radon testing may be obtained from your County Public Health unit.

77 (c) Buyer acknowledges receipt of the Florida Building Energy-Efficiency Rating System Brochure.

78 (d) If the real property includes pre-1978 residential housing then a lead-based paint rider is mandatory.

79 (e) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.

80 (f) If Buyer will be obligated to be a member of a homeowners' association, BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL
81 BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION DISCLOSURE.

82 XII. MAXIMUM REPAIR COSTS: Seller shall not be responsible for payments in excess of:

83 (a) \$_____ for treatment and repair under Standard D (if blank, then 2% of the Purchase Price).

84 (b) \$_____ for repair and replacement under Standard N not caused by Wood Destroying Organisms (if blank, then 3% of
85 the Purchase Price).

86 XIII. RIDERS; ADDENDA; SPECIAL CLAUSES:

87 CHECK those riders which are applicable AND are attached to this Contract:

88 ☐ CONDOMINIUM ☐ VAWF-A ☐ HOMEOWNERS' ASSN. ☐ LEAD-BASED PAINT

89 ☐ COASTAL CONSTRUCTION CONTROL LINE ☐ INSULATION ☐ "AS IS" ☐ Other Comprehensive Rider Provisions

90 ☐ Addenda

91 Special Clause(s): _____

92 _____
93 _____
94 _____
95 _____
96 _____

97 XIV. STANDARDS FOR REAL ESTATE TRANSACTIONS ("Standards"): Buyer and Seller acknowledge receipt of a copy of Standards A
98 through W on the reverse side or attached, which are incorporated as part of this Contract.

99 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF
100 AN ATTORNEY PRIOR TO SIGNING.

101 THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.

102 Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a
103 particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining
104 positions of all interested persons.

105 AN ASTERISK(*) FOLLOWING A LINE NUMBER IN THE THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.

106 _____ (DATE) _____ (SELLER) _____ (DATE)
107 (BUYER)

108 _____ (DATE) _____ (SELLER) _____ (DATE)
109 (BUYER)

110 Buyers' address for purposes of notice _____ Sellers' address for purposes of notice _____

111 _____ Phone _____ Phone

112 Deposit under Paragraph II (a) received (Checks are subject to clearance): _____ (Escrow Agent)

113 BROKERS: The brokers named below, including listing and cooperating brokers, are the only brokers entitled to compensation in connection
114 with this Contract:

115 Name: _____

Exhibit A
Page 3 of 4

STANDARDS FOR REAL ESTATE TRANSACTIONS

A. TITLE INSURANCE: The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this Standard.

B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER: A purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgage clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsement" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national banks located in the county wherein the Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement endorsed by recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments thereon.

C. SURVEY: Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on adjacent lines, easements, lands of others or violate any restrictions, covenants or applicable governmental regulations, the same shall constitute a title defect.

D. WOOD DESTROYING ORGANISMS: Buyer, at Buyer's expense, may have the Property inspected by a Florida Certified Pest Control Operator ("Operator") at least 10 days prior to Closing to determine if there is any visible active Wood Destroying Organism infestation or visible damage from Wood Destroying Organism infestation, excluding fungi. If either or both are found, Buyer may, within 5 days from date of written notice thereof, have cost of treatment of active infestation estimated by the Operator and all damage inspected and estimated by an appropriately licensed contractor. Seller shall pay costs of treatment and repair of all damage up to the amount provided in Paragraph XIII(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract within 5 days after receipt of contractor's repair estimate by giving written notice to Seller, or Buyer may elect to proceed with the transaction and receive a credit at Closing on the amount provided in Paragraph XII(a). "Wood Destroying Organisms" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act, as amended.

E. INGRESS AND EGRESS: Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in Paragraph VII hereof, and title to the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

F. LEASES: Seller shall, at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

G. CONSTRUCTION: Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential liens known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

H. PLACE OF CLOSING: Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

I. TIME: In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5 p.m. of the next business day. Time is of the essence in this Contract.

J. CLOSING DOCUMENTS: Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgage estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

K. EXPENSES: Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. Documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed, mortgage title insurance commitment with related fees, and recording of purchase money mortgage to Seller, deed and financing statements shall be paid by Buyer. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title evidence, title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

L. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgage will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill on condition that a statement to that effect is signed at Closing.

M. SPECIAL ASSESSMENT LIENS: Except as set forth in Paragraph XI(e), certified, confirmed and notified special assessment liens imposed by public bodies as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of

Exhibit A
Page 4 of 4

STANDARDS FOR REAL ESTATE TRANSACTIONS (CONTINUED)

Effective Date, any pending lien shall be considered certified, confirmed or settled and Seller shall, at Closing, be charged an amount equal to the best estimate or assessment for the improvement by the public body.

N. INSPECTION, REPAIR AND MAINTENANCE: Seller warrants that the ceiling, roof (including the fascia and soffit) and exterior and interior walls, foundation, stairwells (or equivalent) and dockage of the property do not have any visible evidence of leaks, water damage or structural damage and that the septic tank, pool, all appliances, mechanical items, heating, cooling, electrical, plumbing systems and machinery are in Working Condition. The foregoing warranty shall be limited to the items specified unless otherwise provided in an addendum. Buyer may inspect, or, at Buyer's expense, have a firm or individual specializing in home inspections and holding an occupational license for such purpose (if required) or an appropriately licensed Florida contractor make inspections of, these items within 20 days after the Effective Date. Buyer shall, prior to Buyer's occupancy but not more than 20 days after Effective Date, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacements are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph XII(b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused by a defect Seller is responsible to repair or replace. If the cost for such repair or replacement exceeds the amount provided in Paragraph XII(b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to Closing, the cost thereof shall be paid into escrow at Closing. Seller shall, upon reasonable notice, provide utilities service and access to the Property for inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made and that the Property, including, but not limited to, lawn, shrubbery and pool, if any, has been maintained in the condition existing as of Effective Date, ordinary wear and tear excepted. For purposes of this Contract: (1) "Working Condition" means operating in the manner in which the item was designed to operate; (2) "Cosmetic Condition" means aesthetic imperfections that do not affect the Working Condition of the item, including, but not limited to: galled marbles or other pool finishes; missing or torn screens; fogged windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, chips or cracking in ceilings, walls, flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks; and (3) cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks or leakage or structural damage, but missing tiles will be Seller's responsibility to replace or repair.

Q. RISK OF LOSS: If the Property is damaged by fire or other casualty before Closing and cost of restoration does not exceed 3% of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract with restoration costs removed at Closing. If the cost of restoration exceeds 3% of the assessed valuation of the Property so damaged, Buyer shall either take the Property as is, together with either the 3% or any insurance proceeds payable by virtue of such loss or damage, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract.

P. CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7641, F.S., as amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

Q. ESCROW: Any Closing Agent or escrow agent ("Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and who acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

R. ATTORNEY'S FEES; COSTS: In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

S. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and realized by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to resolve the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

U. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

V. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

W. WARRANTY: Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

EXHIBIT "B"

**Option to Purchase Contract and Contract for Sale and Purchase
Parcel Number 6310-07-12-0060**

1. City of Port Orange, Florida, Code Enforcement Lien No. 11-156, recorded in Official Records Book 6604, Page 369, of the Public Records of Volusia County, Florida.
2. City of Port Orange, Florida, Code Enforcement Lien No. 10-1729, recorded in Official Records Book 6604, Page 392, of the Public Records of Volusia County, Florida.
3. City of Port Orange, Florida, Claim of Lien for Utility Account No. 77533-25293, recorded in Official Records Book 6626, Page 3191, of the Public Records of Volusia County, Florida.
4. City of Port Orange, Florida, Code Enforcement Lien No. 11-1266, recorded in Official Records Book 6649, Page 2457, of the Public Records of Volusia County, Florida.

Option to Purchase Contract and Contract for Sale and Purchase — Parcel Number 6310-07-12-0060

EXHIBIT "B"

**MODIFICATION TO OPTION TO
PURCHASE CONTRACT AND
CONTRACT FOR SALE AND PURCHASE
OF REAL PROPERTY**

This contract modification agreement is entered into with an effective date of the 11th day of November, 2014, by and between Sandra Johnson ("Johnson") and the City of Port Orange, Florida ("City")

WITNESSETH:

WHEREAS, the Parties hereto have executed an Option to Purchase Contract and Contract for Sale and Purchase of Real Property dated February 4, 2014 (the "Contract") attached hereto as Exhibit A, and desire to modify and amend the provisions of such Contract as described below:

1. The purchase price described in paragraph 2(a) shall be reduced by \$10,000.00 to \$56,000.00.
2. Paragraph 8 of the Contract shall be deleted and in its place shall be inserted the following provisions:
 - a. Closing. Closing shall take place in Volusia County, Florida at the office of the Escrow Agent on or before 30 days following completion of a quiet title suit described in subparagraph (b) below. The date of Closing may be extended upon mutual agreement of the parties. At the Closing, Seller shall provide Purchaser with the deed to the Property and other documents in accordance with Standard J. Following the Closing, Purchaser shall have the right to exclusive possession of the Property.
 - b. Purchaser's Right to Maintain Quiet Title Suit. Purchaser shall have the right to maintain a Quiet Title suit (the "Suit") to clear the title to the property at Purchaser's expense. Seller shall sign whatever documentation is reasonably required by Purchaser's attorneys to prosecute such action, including a petition to Quiet Title, and Motion for Summary Judgment or other pleadings.
 - c. Purchaser's Obligation to Maintain Quiet Title Suit. Purchaser shall maintain at Purchaser's expense a Quiet Title Suit to clear title to the Property into Seller's name, and shall commence and prosecute such action diligently to its conclusion.

- d. **Seller Payments.** Seller agrees to make any payments to any person or entity which the Court determines to be required to clear title into Purchaser's name after notice and opportunity to object. If Purchaser is unable to quiet title to the property in Seller's name without the payment of sums less than the Purchase Price described above, then either Party shall have the right to terminate the Contract upon written notice within 15 days of notice to the other Party of such intent to terminate.

Except where modified herein, the terms and conditions of the Contract shall be agreed to be full force and effect, and the dates of such Contract shall be modified to include the dates required to give effect to the agreements contained herein.

(THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK)

This Option to Purchase Contract and Contract for Sale and Purchase of Real Property is executed by the parties as of the respective dates shown below.

FOR THE MODIFICATION TO OPTION TO
PURCHASE CONTRACT AND CONTRACT
FOR SALE AND PURCHASE OF REAL
PROPERTY

WITNESSES:

[Signature]
(Signature)

Name: [Signature]
(Printed)

(Signature)

Name: _____
(Printed)

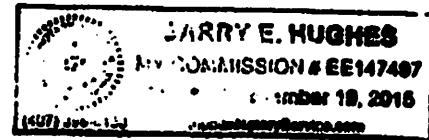
SELLER: SANDRA JOHNSON

DATE: [Signature]

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Modification to Option to Purchase Contract and Contract for Sale and Purchase of Real Property was sworn to and acknowledged before me this 16 day of October, 2014, by Sandra Johnson, the Seller named in the foregoing Contract, who is personally known to me or ☐ has produced _____ as identification. ☒

[Signature]
Notary Public, State of Florida at Large



FOR THE MODIFICATION TO OPTION TO
PURCHASE CONTRACT AND CONTRACT
FOR SALE AND PURCHASE OF REAL
PROPERTY

WITNESSES:

[Signature]
(Signature)

Name: Allen Green
(Printed)

[Signature]
(Signature)

Name: Margaret T. Roberts
(Printed)

CITY OF PORT ORANGE
A chartered municipal corporation

By: [Signature]
David Harden, City Manager

Date: November 11, 2014

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract and Contract for Sale and Purchase of Real Property was sworn to and acknowledged before me this 11th day of November, 2014, by David Harden, the City Manager of the City of Port Orange, Florida, who is named in the foregoing Contract, who ☒ is personally known to me or ☐ has produced _____ as identification.



[Signature]
Notary Public, State of Florida at Large

FOR THE MODIFICATION TO OPTION TO
PURCHASE CONTRACT AND CONTRACT
FOR SALE AND PURCHASE OF REAL
PROPERTY

WITNESSES:

William Irby
(Signature)

Name: William Irby
(Printed)

Margaret T. Roberts
(Signature)

Name: Margaret T. Roberts
(Printed)

CITY OF PORT ORANGE
a chartered municipal corporation

By: Allen Green
Allen Green, Mayor

Date: November 18, 2014

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract and Contract for Sale and Purchase of Real Property was sworn to and acknowledged before me this 18th day of November, 2014, by Allen Green, the Mayor of the City of Port Orange, Florida, who is named in the foregoing Contract, who ☒ is personally known to me or ☐ has produced _____ as identification.



Margaret T. Roberts
Notary Public, State of Florida at Large

FOR THE MODIFICATION TO OPTION TO
PURCHASE CONTRACT AND CONTRACT
FOR SALE AND PURCHASE OF REAL
PROPERTY

WITNESSES:

Barbara J. Abbate
(Signature)

Name: Barbara J. Abbate
(Printed)

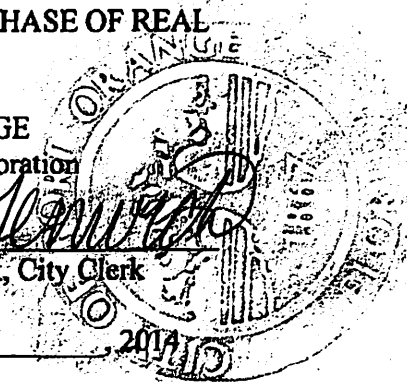
Kimberly A. LeVan
(Signature)

Name: Kimberly A. LeVan
(Printed)

CITY OF PORT ORANGE
a chartered municipal corporation

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

Date: 11/18



STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract and Contract for Sale and Purchase of Real Property was sworn to and acknowledged before me this 18th day of November, 2014, by Robin L. Fenwick, the City Clerk of the City of Port Orange, Florida, who is named in the foregoing Contract, who ☒ is personally known to me or ☐ has produced _____ as identification.

Molly Siebrecht

Notary Public, State of Florida at Large





**OPTION TO PURCHASE CONTRACT AND
CONTRACT FOR SALE AND PURCHASE
OF REAL PROPERTY**

THIS OPTION TO PURCHASE CONTRACT AND CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY, hereinafter, the "Contract" is made and entered into this 4th day of February, 2018, between: SANDRA JOHNSON, mailing address 330 South Nova Road, Lot 30, Port Orange, FL 32129 hereinafter referred to as "Seller"; and CITY OF PORT ORANGE, FLORIDA, a municipal corporation, mailing address: c/o City Manager, 1000 City Center Circle, Port Orange FL 32129-4144, hereinafter referred to as "Purchaser."

For good and valuable consideration in the amount of \$100.00 receipt whereof is hereby acknowledged, the parties agree as follows:

1. Subject to the exercise of the Option to Purchase Contract, hereinafter "Option" and approval by the City Council as set forth in paragraph 15, Seller agrees to sell and Purchaser agrees to purchase the following described real estate, with its appurtenances, located at 5126 Ridgewood Avenue, in Port Orange, County of Volusia, State of Florida:

LOTS 6, 7, 8, AND 9, EXCEPT THE ROAD RIGHT-OF-WAY, BLOCK 12, ALLANDALE, ACCORDING TO MAP IN MAP BOOK 4, PAGE 146, (RE-RECORDED AT MAP BOOK 17, PAGE 166) PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

Also being identified by Parcel Number: 6310-07-12-0060; the subject real estate being hereinafter referred to as the "Property".

General Description and Vicinity of Property: Single-family residential structure located within an area of mixed commercial properties; located south of Dunlawton Avenue, north of and adjacent to Howes Street, and having 100 feet +/- frontage on Ridgewood Avenue.

Improvements Located on the Site: Unoccupied, 2-story single-family residential structure constructed in approximately 1939 and accessory improvements constructed in 1976. The City of Port Orange Building Official has posted this property as unsafe for habitation.

Tangible Personal Property and Fixtures: Prior to the date of closing, Seller shall remove all personal property, furnishings, fixtures, appliances, and miscellaneous debris; and shall secure all exterior openings of the structure.

Conveyance by the Seller and Purchase by the Purchaser of the above-described Property is subject to the Standards for Real Estate Transactions set forth on the form contract approved by The Florida Bar and The Florida Association of Realtors, Inc., attached hereto as Exhibit "A." In the event of a conflict between the terms of the contract for sale and purchase

and the terms contained in Exhibit "A," the contract for sale and purchase shall control.

2. Purchase Price and Method of Payment. The purchase price payable to Seller is as follows:

- (a) The Purchase Price for the Property is: Sixty-six Thousand and 00/100 Dollars (\$66,000.00); and
- (b) The total Purchase Price, less the Purchaser's good faith deposit of One Hundred and No/100 Dollars (\$100.00), and less expenses and prorations as provided in Standard K and Standard L, by check payable to the order of Seller, to be delivered at the time of closing.
- (c) Upon execution of the Option by the Seller and the City Manager, Purchaser's good faith deposit shall be paid to and held in trust by Columbia Title Research Corporation Trust Account, 200 Forest Lake Boulevard, Daytona Beach, FL 32119; referred to as "Escrow Agent," pending the approval by City Council and the closing of this transaction and to be delivered to Seller at the time of closing.

3. Title Insurance. Seller agrees to obtain from the Escrow Agent named above, at Sellers' expense, an owner's title insurance policy insuring Purchaser for the full amount of the purchase price against loss or damage by reason of defect in the title of Seller in the above-described Property. Such policy shall be delivered to Purchaser at the time of closing. Not later than ten (10) days prior to the closing date, Seller shall cause to be delivered to and receipted by the City Attorney on behalf of the Purchaser a title insurance commitment in accordance with Standard A, together with copies of all items noted in Schedule B - Section 1, as prepared for execution and with copies of all items noted in Schedule B - Section 2, as evidenced in the public records or otherwise. The items, if any, listed on Exhibit "B," shall not be deemed title defects.

4. Taxes and assessments. Seller agrees to pay before delinquency all taxes, assessments and utility charges, if any, which may be due currently or may hereafter become due on the premises until and including the day of closing.

5. Risk of loss. Risk of loss or damage to the Property by fire or other casualty between the date of this Contract and Closing shall be and is assumed by Seller.

6. Rental Agreements. Seller warrants that no other persons have any right to possession of the Property and the Seller shall not enter into any Lease or other instrument granting possessory rights subsequent to the execution of this Contract.

7. Deed. Seller agrees, on full payment of the purchase price in the manner herein specified, to make, execute and deliver to Purchaser a good and sufficient warranty deed to the Property, subject to the items listed in Exhibit "B," if any.

8. Closing. Closing shall take place in Volusia County, Florida at the office of the Escrow Agent on or before One Hundred Twenty (120) days following the approval of this Contract for Sale and Purchase by the Port Orange City Council. The date of closing may be

Page 2 of 7

Option to Purchase Contract and Contract for Sale and Purchase — Parcel Number 6310-07-12-0060

CPO/djrw D-1/20-Mar-2013 mtr 5.7.13.MTR 8.21.2013.MTR 11.13.2013

extended upon mutual agreement of the parties. At the closing, Seller shall provide Purchaser with the deed to the Property and other documents in accordance with Standard J. Following the closing, Purchaser shall have the right to exclusive possession of the Property.

9. Closing Costs. Seller shall pay closing costs including, but not limited to, title insurance premium, Florida documentary tax stamps, instruments to cure title defects and document preparation costs attributable to Seller. Costs of environmental audits, surveys, and other inspections shall be paid by the Purchaser.

10. Fees. Purchaser has not utilized the services of a Florida Real Estate Broker for the sale and purchase of the Property. Both parties acknowledge that the Seller shall be responsible for the payment of any brokerage fee incurred for the transfer of the Property. Purchaser shall be responsible for appraisal report prepared at its request, and Seller shall be responsible for fees incurred for Seller's independent review of this proposal by attorneys and engineer/professionals, if any.

11. Environmental Audit. Up to Fifteen (15) days before the date of closing, hereinafter referred to as the "Inspection Period", Purchaser shall have the right to conduct an environmental audit of the Property which audit shall be certified to Purchaser. In the event the environmental audit detects the presence of any hazardous materials, unique prehistoric or historic artifacts, relics, or structures of archaeological value, or of the remains of deceased persons interred therein on the Property, Purchaser, at its sole option, may elect to terminate this Contract prior to the expiration of the Inspection Period and neither party shall have any further obligations under this Contract. For purposes of this Contract, "hazardous materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any federal, state or local environmental laws, statutes, ordinances, rules, regulations, restrictions or orders relating to liability or standards of conduct.

12. Purchaser's Intended Use of the Property. The restrictions, easements, leases, if any, and limitations of record shall not prevent the Purchaser from exercising its rights for its intended use of the Property including all lawful purposes consistent with the local zoning regulations and the elimination and prevention of the development or spread of slums and urban blight. In the event that Purchaser determines that the Property cannot be used for its intended purposes, then the Purchaser shall be entitled to terminate this Contract prior to the expiration of the Inspection Period.

13. Default by Seller. If Seller is unable to convey marketable title to the Property in accordance with the terms of this Contract, or otherwise fails to perform this Contract within the time specified for closing or any extension thereof, the costs of examining the title, surveying the Property, and inspecting and auditing the Property shall, at the option of Purchaser, be paid by Seller to Purchaser on demand. Service of such demand shall be made by certified mail, return receipt requested to Seller as identified and at their respective mailing address shown above, with a copy to Seller's agent or other authorized representative as Seller may indicate in writing to Purchaser. Purchaser shall have the right of specific performance and all other remedies at law or equity. Election of any options by Purchaser or failure of Purchaser to exercise any rights granted by this Contract shall not be construed as a waiver of any action for damages resulting from Seller's default.

14. Access to Property. Seller agrees to allow Purchaser and Purchaser's employees, consultants, agents and representatives access to the Property upon execution of this Contract by Seller and extending to the time of closing for the purpose of conducting surveys, environmental audits and inspections of the premises.

15. Option to Purchase and Approval of Contract for Sale and Purchase of Real Property. Upon execution of this Option by the Seller and the City Manager, the City of Port Orange shall have the option for ninety (90) days to purchase the property described herein and in accordance with the terms described herein. The City Manager's signature on this Option shall not bind the City of Port Orange for the purchase of the Property until approved by the City Council. The City Council of the City of Port Orange may exercise the Option in a public meeting after 30 days' public notice, by casting a majority vote of the City Council in favor of exercising the option and by the Mayor and City Clerk duly executing this Contract. If this Contract is not approved by the City Council on or before the 90th day after execution of the Option by the City Manager, then the City shall provide written notice to Seller and the Escrow Agent authorizing the release of the Escrow Deposit to the Seller and thereafter the City shall not be responsible for any other cost, expense, damage or liability and the parties shall both be discharged and released from any further responsibility under this Contract.

16. Effective Date. The Effective Date of this Contract shall be the date of approval by the City Council for the City of Port Orange, Florida; such approval shall be evidenced by the signing by all parties to this Contract.

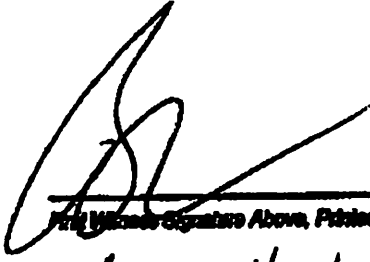
17. Counterparts. This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic transmittal of an executed copy of this Contract shall be deemed valid as if an original signature was delivered.

This Option to Purchase Contract and Contract for Sale and Purchase of Real Property is executed by the parties as of the respective dates shown below.

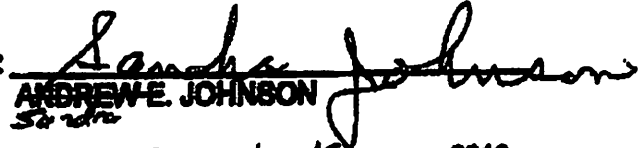
THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

WITNESSES:

FOR THE OPTION TO PURCHASE CONTRACT
AND CONTRACT FOR SALE AND PURCHASE OF
REAL PROPERTY
SELLER:



First Witness Signature Above, Printed Name Below:
Harry E. May Jr.

By: 

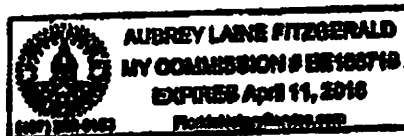
ANDREW E. JOHNSON
Date: November 19, 2013

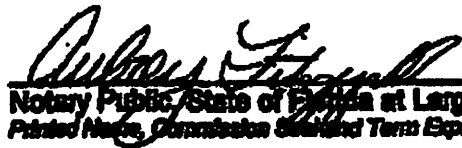


Second Witness Signature Above, Printed Name Below:
Aubrey Fitzgerald

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract and Contract for Sale and Purchase of Real Property was sworn to and acknowledged before me this 19th day of November, 2013, by ANDREW E. JOHNSON, the Seller named in the foregoing Contract, who (Notary, Sandra please check as applicable): ☒ took an oath or ☐ did not take an oath; and who is ☐ personally known to me or ☒ who has produced FL DL J555-487-41791-0 as identification.





Notary Public, State of Florida at Large
Printed Name, Commission Number and Term Expiration Date 4/11/16

WITNESSES:

[Signature]
First Witness Signature Above, Printed Name Below.

Robin Fenwick

[Signature]
Second Witness Signature Above Printed Name Below:

Barbara J. Abbate

FOR THE OPTION TO PURCHASE CONTRACT:
City of Port Orange

By: [Signature]
Gregory A. Kisela, City Manager

Date: December 30, 2013

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract was sworn to and acknowledged before me this 30 day of December, 2013, by Gregory A. Kisela, the City Manager for the City of Port Orange, Florida, who (Notary, please check as applicable): ☐ took an oath or ☒ did not take an oath; and who is ☒ personally known to me or ☐ who has produced _____ as identification.



ROBIN L. FENWICK
MY COMMISSION # EE 115007
EXPIRES: August 26, 2015
Boasted True Budget Notary Services

[Signature]
Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

WITNESSES:

CONTRACT FOR SALE AND PURCHASE OF
REAL PROPERTY

PURCHASER:

CITY OF PORT ORANGE, FLORIDA,
a chartered municipal corporation

Drew J. Bastian
Printed Name:
[Signature]

[Signature]
Printed Name:

Margaret T. Roberts
Witnesses as to Both

By:

[Signature]
Allen Green, Mayor

Attest:

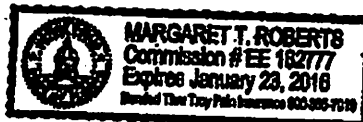
[Signature]
Robin L. Fenwick, CMC, City Clerk

Date:

February 4, 201~~8~~⁴

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Contract was acknowledged before me this 5th day of February, 201~~8~~⁴, by Allen Green and Robin L. Fenwick, as Mayor and City Clerk, respectively, of the City of Port Orange, Florida, a chartered municipal corporation, on behalf of the city. They are personally known to me.



[Signature]
Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.

Contract for Sale and Purchase

FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR



1* **PARTIES:** _____ ("Seller"),
2* and _____ ("Buyer"),
3 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property")
4 pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract"):

5 **I. DESCRIPTION:**

6* (a) Legal description of the Real Property located in _____ County, Florida: _____
7* _____
8* _____
9* (b) Street address, city, zip, of the Property: _____
10 (c) Personal Property includes existing range, refrigerator, dishwasher, ceiling fans, light fixtures, and window treatments unless
11 specifically excluded below.
12* Other items included are: _____
13* _____
14* Items of Personal Property (and leased items, if any) excluded are: _____
15* _____

16* **II. PURCHASE PRICE** (U.S. currency): _____ \$ _____
17 **PAYMENT:**
18* (a) Deposit held in escrow by _____ (Escrow Agent) in the amount of _____ \$ _____
19* (b) Additional escrow deposit to be made to Escrow Agent within _____ days after Effective Date
20* (see Paragraph III) in the amount of _____ \$ _____
21 (c) Assumption of existing mortgage in good standing (see Paragraph IV(c)) having an approximate
22* present principal balance of _____ \$ _____
23* (d) New mortgage financing with a Lender (see Paragraph IV(b)) in the amount of _____ \$ _____
24* (e) Purchase money mortgage and note to Seller (See Paragraph IV(d)) in the amount of _____ \$ _____
25* (f) Other: _____ \$ _____
26 (g) Balance to close by cash or LOCALLY DRAWN cashier's or official bank check(s), subject
27* to adjustments or prorations _____ \$ _____

28 **III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:**

29 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or
30* before _____, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. **UNLESS OTH-**
31 **ERWISE STATED, THE TIME FOR ACCEPTANCE OF ANY COUNTEROFFERS SHALL BE 2 DAYS FROM THE DATE THE COUN-**
32 **TEROFFER IS DELIVERED.**

33 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the
34 final counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for
35 acceptance of this offer or, if applicable, the final counteroffer.

36 **IV. FINANCING:**

37* ☐ (a) This is a cash transaction with no contingencies for financing;
38* ☐ (b) This Contract is contingent on Buyer obtaining approval of a loan ("Loan Approval") within _____ days after Effective Date for (CHECK
39* ONLY ONE): ☐ a fixed; ☐ an adjustable; or ☐ a fixed or adjustable rate loan, in the principal amount of \$ _____ at an initial interest
40* rate not to exceed _____ %, discount and origination fees not to exceed _____ % of principal amount, and for a term of _____
41* years. Buyer will make application within _____ days (if blank, then 5 days) after Effective Date and use reasonable diligence to obtain Loan
42 Approval and, thereafter, to satisfy terms and conditions of the Loan Approval and close the loan. Buyer shall pay all loan expenses. If Buyer
43 fails to obtain a Loan Approval or fails to waive Buyer's rights under this subparagraph within the time for obtaining Loan Approval or, after
44 diligent, good faith effort, fails to meet the terms and conditions of the Loan Approval by Closing, then either party thereafter, by written notice
45 to the other, may cancel this Contract and Buyer shall be refunded the deposit(s);
46* ☐ (c) Assumption of existing mortgage (see rider for terms); or
47* ☐ (d) Seller financing (see Standard B and riders; addenda; or special clauses for terms).

48* **V. TITLE EVIDENCE:** At least _____ days (if blank, then 5 days) before Closing:

49* ☐ (a) Title insurance commitment with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after
50* Closing, an owner's policy of title insurance (see Standard A for terms); or ☐ (b) Abstract of title or other evidence of title (see rider for terms),
51* shall be obtained by (CHECK ONLY ONE): ☐ (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or
52* ☐ (2) Buyer at Buyer's expense.

53* **VI. CLOSING DATE:** This transaction shall be closed and the closing documents delivered on _____ ("Closing"), unless
54 modified by other provisions of this Contract. If Buyer is unable to obtain Hazard, Wind, Flood, or Homeowners' Insurance at a reasonable rate
55 due to extreme weather conditions, Buyer may delay Closing for up to 5 days after such coverage becomes available.

56 **VII. RESTRICTIONS; EASEMENTS; LIMITATIONS:** Seller shall convey marketable title subject to: comprehensive land use plans, zoning,
57 restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise
58 common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unpatented public utility easements of record
59 (located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side

Exhibit A
Page 2 of 4

60 (taxes) taxes for year of Closing and subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see
61 addendum), provided that there exists at Closing no violation of the foregoing and none prevent use of the Property for
62 purposes(s).

63 **VIII. OCCUPANCY:** Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended
64 to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to Standard F.
65 If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy; shall be responsible and liable
66 for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

67 **IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS:** Typewritten or handwritten provisions, riders and addenda shall control all printed pro-
68 visions of this Contract in conflict with them.

69 **X. ASSIGNABILITY: (CHECK ONLY ONE):** Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may
70 assign but not be released from liability under this Contract; or ☐ may not assign this Contract.

71 **XI. DISCLOSURES:**

72* (a) ☐ CHECK HERE if the Property is subject to a special assessment lien imposed by a public body payable in installments which
73 continue beyond Closing and, if so, specify who shall pay amounts due after Closing: ☐ Seller ☐ Buyer ☐ Other (see addendum).

74 (b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to per-
75 sons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida.
76 Additional information regarding radon or radon testing may be obtained from your County Public Health unit.

77 (c) Buyer acknowledges receipt of the Florida Building Energy-Efficiency Rating System Brochure.

78 (d) If the real property includes pre-1978 residential housing then a lead-based paint rider is mandatory.

79 (e) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.

80 (f) If Buyer will be obligated to be a member of a homeowners' association, **BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL**
81 **BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION DISCLOSURE.**

82 **XII. MAXIMUM REPAIR COSTS:** Seller shall not be responsible for payments in excess of:
83* (a) \$_____ for treatment and repair under Standard D (if blank, then 2% of the Purchase Price).
84* (b) \$_____ for repair and replacement under Standard N not caused by Wood Destroying Organisms (if blank, then 3% of
85 the Purchase Price).

86 **XIII. RIDERS; ADDENDA; SPECIAL CLAUSES:**

87 CHECK those riders which are applicable AND are attached to this Contract:
88* ☐ CONDOMINIUM ☐ VAFHA ☐ HOMEOWNERS' ASSN. ☐ LEAD-BASED PAINT
89* ☐ COASTAL CONSTRUCTION CONTROL LINE ☐ INSULATION ☐ "AS IS" ☐ Other Comprehensive Rider Provisions
90* ☐ Addenda
91* Special Clauses(s): _____
92* _____
93* _____
94* _____
95* _____

96 **XIV. STANDARDS FOR REAL ESTATE TRANSACTIONS ("Standards"):** Buyer and Seller acknowledge receipt of a copy of Standards A
97 through W on the reverse side or attached, which are incorporated as part of this Contract.

98 **THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE ADVICE OF**
99 **AN ATTORNEY PRIOR TO SIGNING.**

100 **THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR**
101 Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a
102 particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining
103 positions of all interested persons.

104 **AN ASTERISK(*) FOLLOWING A LINE NUMBER IN THE THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED.**

105* _____

106* (BUYER) _____ (DATE) _____ (SELLER) _____ (DATE) _____

107* _____

108* (BUYER) _____ (DATE) _____ (SELLER) _____ (DATE) _____

109* Buyers' address for purposes of notice _____ Sellers' address for purposes of notice _____

110* _____

111* _____ Phone _____ Phone _____

112* Deposit under Paragraph II (a) received (Checks are subject to clearance); _____ (Escrow Agent)

113 **BROKERS:** The brokers named below, including listing and cooperating brokers, are the only brokers entitled to compensation in connection
114 with this Contract:

115* Name: _____

STANDARDS FOR REAL ESTATE TRANSACTIONS

A. TITLE INSURANCE: The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective, notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within the time provided. If Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this Standard.

B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER: A purchase money mortgage and mortgage note to Seller shall provide for a 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a standard mortgage clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, note and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mortgages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national banks located in the county wherein the Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement evidenced by recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments thereon.

C. SURVEY: Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute a title defect.

D. WOOD DESTROYING ORGANISMS: Buyer, at Buyer's expense, may have the Property inspected by a Florida Certified Pest Control Operator ("Operator") at least 10 days prior to Closing to determine if there is any visible active Wood Destroying Organism infestation or visible damage from Wood Destroying Organism infestation, excluding fences. If either or both are found, Buyer may, within 5 days from date of written notice thereof, have cost of treatment of active infestation estimated by the Operator and all damage inspected and estimated by an appropriately licensed contractor. Seller shall pay costs of treatment and repair of all damage up to the amount provided in Paragraph XII(a). If estimated costs exceed that amount, Buyer shall have the option of canceling this Contract within 5 days after receipt of contractor's repair estimate by giving written notice to Seller, or Buyer may elect to proceed with the transaction and receive a credit at Closing on the amount provided in Paragraph XII(a). "Wood Destroying Organisms" shall be deemed to include all wood destroying organisms required to be reported under the Florida Pest Control Act, as amended.

E. INGRESS AND EGRESS: Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described in Paragraph VII hereof, and title to the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

F. LEASES: Seller shall, at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each tenant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact tenant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

G. LIENS: Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement, claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days immediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

H. PLACE OF CLOSING: Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

I. TIME: In computing time periods of less than six (6) days, Saturdays, Sundays and state or national legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5 p.m. of the next business day. Time is of the essence in this Contract.

J. CLOSING DOCUMENTS: Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases, tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

K. EXPENSES: Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. Documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed, mortgagee title insurance commitment with related fees, and recording of purchase money mortgage to Seller, deed and financing statements shall be paid by Buyer. Unless otherwise provided by law or rider to this Contract, charges for the following related title services, namely title evidence, title examination, and closing fee (including preparation of closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

L. PRORATIONS; CREDITS: Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing. Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of tax bill on condition that a statement to that effect is signed at Closing.

M. SPECIAL ASSESSMENT LIENS: Except as set forth in Paragraph XI(a), certified, confirmed and ratified special assessment liens imposed by public bodies as of Closing are to be paid by Seller. Pending liens as of Closing shall be assumed by Buyer. If the improvement has been substantially completed as of

Exhibit A
Page 4 of 4

STANDARDS FOR REAL ESTATE TRANSACTIONS (CONTINUED)

Effective Date, any pending lien shall be considered certified, confirmed or ratified and Seller shall, at Closing, be charged an amount equal to the last estimate or assessment for the improvement by the public body.

N. INSPECTION, REPAIR AND MAINTENANCE: Seller warrants that the ceiling, roof (including the fascia and soffits) and exterior and interior walls, foundation, seawalls (or equivalent) and dockage of the property do not have any visible evidence of leaks, water damage or structural damage and that the septic tank, pool, all appliances, mechanical items, heating, cooling, electrical, plumbing systems and machinery are in Working Condition. The foregoing warranty shall be limited to the items specified unless otherwise provided in an addendum. Buyer may inspect, or, at Buyer's expense, have a firm or individual specializing in home inspections and holding an occupational license for such purpose (if required) or an appropriately licensed Florida contractor make inspections of, those items within 20 days after the Effective Date. Buyer shall, prior to Buyer's occupancy but not more than 20 days after Effective Date, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacements are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph XII(b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused by a defect Seller is responsible to repair or replace. If the cost for such repair or replacement exceeds the amount provided in Paragraph XII(b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to Closing, the cost thereof shall be paid into escrow at Closing. Seller shall, upon reasonable notice, provide utilities service and access to the Property for inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made and that the Property, including, but not limited to, lawn, shrubbery and pool, if any, has been maintained in the condition existing as of Effective Date, ordinary wear and tear excepted. For purposes of this Contract: (1) "Working Condition" means operating in the manner in which the item was designed to operate; (2) "Cosmetic Condition" means aesthetic imperfections that do not affect the Working Condition of the item, including, but not limited to: pitted marcite or other pool finishes; missing or torn screens; fogged windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, chips or caulking in ceilings, walls, flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks; and (3) cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks or leakage or structural damage, but missing tiles will be Seller's responsibility to replace or repair.

O. RISK OF LOSS: If the Property is damaged by fire or other casualty before Closing and cost of restoration does not exceed 3% of the assessed valuation of the Property so damaged, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract with restoration costs escrowed at Closing. If the cost of restoration exceeds 3% of the assessed valuation of the Property so damaged, Buyer shall either take the Property as is, together with either the 3% or any insurance proceeds payable by virtue of such loss or damage, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract.

P. CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

Q. ESCROW: Any Closing Agent or escrow agent ("Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

R. ATTORNEY'S FEES; COSTS: In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

S. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; FACSIMILE: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

U. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

V. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

W. WARRANTY: Seller warrants that there are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

EXHIBIT "B"

Option to Purchase Contract and Contract for Sale and Purchase Parcel Number 6310-07-12-0060

1. City of Port Orange, Florida, Code Enforcement Lien No. 11-156, recorded in Official Records Book 6604, Page 369, of the Public Records of Volusia County, Florida.
2. City of Port Orange, Florida, Code Enforcement Lien No. 10-1729, recorded in Official Records Book 6604, Page 392, of the Public Records of Volusia County, Florida.
3. City of Port Orange, Florida, Claim of Lien for Utility Account No. 77533-25293, recorded in Official Records Book 6626, Page 3191, of the Public Records of Volusia County, Florida.
4. City of Port Orange, Florida, Code Enforcement Lien No. 11-1266, recorded in Official Records Book 6649, Page 2457, of the Public Records of Volusia County, Florida.

Option to Purchase Contract and Contract for Sale and Purchase — Parcel Number 6310-07-12-0060

EXHIBIT "B"



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Extension of the Piggyback Agreement and Task Authorization No. 2 with RJH Technical Services, Inc.

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: Move to approve a one year Extension of the Piggyback Agreement with RJH Technical Services, Inc. and approve Change Order No 1 extending Task Authorization No 2 until September 30, 2015; and authorize the Mayor and City Clerk to execute all required contract documents.

SUMMARY: On October 28, 2014, the City entered into a Piggyback Agreement with RJH Technical Service, Inc. to supply equipment, materials, labor and other services relating to general repair and maintenance at the City's Garnsey Water Plant and Wastewater Plant as set forth in periodic written quotes.

The current contract expired on May 31, 2015. The terms of this agreement allow for two (2) optional one-year extensions. Both parties wish to exercise the first renewal option for the period of June 1, 2015 until May 31, 2016.

Task Authorization No. 2 under this contract expired on July 20, 2015. Additional time is required for completion of this Task due to the delivery time for the new high service pump. We are requesting that this Task Authorization to be extended until September 30, 2015.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	RJH Authorization Letter	City of Port Orange Annual contract approval 7-21-15.pdf
2.	Extension Agreement	Extension of Agreement.pdf
3.	Change Order No 1 to Task Auth No 2	Change Order No 1 to Task Autz No 2 - RJH.pdf

Wiggins, Julia
Wilson, Rick
Neff, Andrew
Riehm, Tracey

Created/Initiated - 07/21/2015
Approved - 07/21/2015
Approved - 07/21/2015
Approved - 07/30/2015

Roberts, Margaret
Harden, David

Approved - 07/30/2015
Final Approval - 07/30/2015

RJH TECHNICAL SERVICES, INC.

Sales • Service • Integration • Controls • VFD's • Pumps

July 21, 2015

To: Julia Wiggins
The City of Port Orange

Subject: Variable Speed Drive Repairs

This letter is to confirm that RJH Technical Services, Inc. will honor the terms and conditions set forth in our current contract # 160763 with the City of St. Petersburg for (1) year including any renewal(s). This renewal period is for June 1st, 2015 through May 31st, 2016.

Sincerely,



Lee Hinderliter
President
RJH Technical Services, Inc.
P.O. Box 3658
Brandon, Florida 33509
(813)655-7947

EXTENSION AGREEMENT

THIS EXTENSION OF AGREEMENT ("Extension") is made and entered into the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located at 1000 City Center Circle, Port Orange, Volusia County, Florida 32129-4144 (the "City"), and **RJH Technical Services, Inc.**, a Florida corporation whose principal address is 517 Gornto Lake Road, Brandon, Florida 33510 (the "Contractor"). (The City and the Contractor are hereinafter collectively referred to as the "Parties.")

WHEREAS, on October 28, 2014, the Parties entered into an Agreement for Services for equipment inspection, services/parts, and the purchase of variable speed controls, piggybacking the terms of the Contractor's Agreement with the City of St. Petersburg (the "2014 Agreement") and

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

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

1. Term. The term of the Contract is hereby extended. Notwithstanding the date of execution, this Contract shall be effective commencing June 1, 2015 at midnight and expiring at midnight on May 31, 2016, unless terminated earlier by the City by providing a 10-day notice of termination to the Contractor.

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

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

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

Witnesses:

RJH TECHNICAL SERVICES, INC.

Printed Name: _____ By: _____
Dorothy L. Hinderliter, President

Printed Name: _____ Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Dorothy Lee Hinderliter, as President of RJH Technical Services, Inc., a Florida corporation, and who:

[Notary: Please select one]

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

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Allen Green, Mayor

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Allen Green, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the City, and who is personally known to me.

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

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, 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:

CHANGE ORDER NO. 1
 To Task Authorization No 2 dated January 20, 2015
 To the Piggyback Agreement dated October 28, 2014
 RJH Technical Services, Inc., Contractor

Project: Services relating to the VFD Control panel build & installation of the 350HP High Service Pump

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$44,555	Original Contract Times Substantial Completion: N/A days Final Completion 180 days
Net changes from previous Change Order: \$0	Changes in contract time from previous Change Orders: No. __: ____ days 0 days
Contract Price prior to this Change Order: \$44,555	Contract Completion Date prior to this Change Order: Final Completion: July 20, 2015
Net Increase (decrease) of this Change Order No. : \$0	Changes in contract time requested this Change Order No. 1 : (Requires Council Approval) 72 days
Contract Price with all approved Change Orders: \$44,555	Contract Times with all approved Change Orders: Final Completion: September 30, 2015

CHANGES ORDERED:

- I. GENERAL: This Change Order is necessary to cover changes to the Final Completion date under Task Authorization No 2 entered into by and between parties on January 20, 2015 to the Piggyback Agreement entered into by and between the parties on October 28, 2014.
- II. REQUIRED CHANGES: To provide for an additional 72 days for a new Task Authorization No 2 Final Completion date of September 30, 2015. Due to the delay in the delivery of the 350HP Service Pump by another vendor, the installation has not been completed. This time will allow for installation and start up. No goods shall be delivered nor services commenced hereunder until this Change Order has been fully executed by all parties.
- III. JUSTIFICATION: Change Order No 1 to Task Authorization No 2 is needed to change the Final Completion date from July 20, 2015 to September 30, 2015. There will be no additional cost associated with this request.
- IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the Agreement for Construction subject to a limit up to but not to exceed **Forty-four Thousand Five Hundred and Fifty-five dollars no cents (\$44,555.00)**. 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.

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:
STEVE MILLER
Department Project Manager

ACCEPTED BY:
RJH TECHNICAL SERVICES, INC.
Contractor

By: _____
Printed Name: Steve Miller
Title: Chief Operator

By: _____
Printed Name: Dorothy L. Hinderliter
Title: President

Date Signed: _____

Date Signed: _____

RECOMMENDED BY:

City's Representative

RECOMMENDED BY:

Engineer of Record

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Printed Name: Andrew Neff
Title: Public Utilities Director

Date Signed: _____

City Manager

By: _____
Printed Name: David Harden
Title: Interim City Manager

Date Signed: _____

If Council approval is required:

Affirmed:

By: _____
Printed Name: Allen Green
Title: Mayor

Robin L. Fenwick, CMC, City Clerk

Date Signed: _____

Date Signed: _____



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Change Order No. 2 to the Contract for Services with Odyssey Manufacturing Company

DEPARTMENT: Public Utilities

RECOMMENDED MOTION: Move to approve Change Order No 2 to the Standard Contract for Services with Odyssey Manufacturing Company; and to authorize the Mayor and City Clerk to execute all required contract documents.

SUMMARY: On March 18, 2015, the City entered into a Standard Contract for Services with Odyssey Manufacturing Company for the Garnsey Water Plant Sodium Hypochlorite Chemical Feed System Replacement and Upgrades, including approval of Change Order No 1 for the performance and payment bond.

According to the contract the Final Completion date was July 18, 2015. Due to the delay in delivery of the specified pumps and the fabrication of the pump skid, the contractor is requesting and staff recommends an additional 31 days for a revised final completion date of August 18, 2015.

The change in date will not require any additional funding.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	Change Order No 1 - Support letter	Change Order No - 2 support doc.pdf
2.	Change Order No 2	Change Order No 2- Contract extension.pdf

Wiggins, Julia
Wilson, Rick
Neff, Andrew
Roberts, Margaret
Harden, David

Created/Initiated - 07/22/2015
Approved - 07/22/2015
Approved - 07/23/2015
Approved - 07/28/2015
Final Approval - 07/28/2015



July 20, 2015

Mr. Steve Miller
City of Port Orange
Water Treatment Plant
4400 Wellfield Road
Port Orange, FL 32119

Re: CITY OF PORT ORANGE GARNSEY WATER TREATMENT PLANT SODIUM HYPOCHLORITE
SYSTEM UPGRADE (BID/CONTRACT NO.: 15-12)

Dear Steve,

As you know, the subject Project has 120 days to be completed from the Contract Start Date of March 18, 2015 and thus needs to be completed by July 18, 2015. Unfortunately, the specified Prominent pumps did not arrive until the second week of June (our Schedule had them arriving May 15th). This delayed fabrication of the pump skids by Blue Planet Environmental which were not ready until July 13th. This delay was beyond our control and caused by a supply chain issue. As we discussed, we did not want to start the on-site work until the skids were actually on-site to minimize the amount of time the plant would be operating on a temporary system.

Based on these unexpected delays, Odyssey hereby requests a 31-day time extension to August 18, 2015 to complete the work. Thanks for your consideration.

Sincerely,

Patrick H. Allman
General Manager

CHANGE ORDER NO. 2
To the Standard Contract for Services dated March 17, 2015
Odyssey Manufacturing Company, Contractor

Project: Bid 15-12 Garnsey Water Plant Sodium Hypochlorite Chemical Feed System Replacement and Upgrades

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$99,950	Original Contract Times Substantial Completion: ____ days Final Completion 120 days
Net changes from previous Change Order: No. 1 \$ 1,000	Changes in contract time from previous Change Orders: No. __: ____ days 0 days
Contract Price prior to this Change Order: \$100,950	Contract Completion Date prior to this Change Order: Final Completion: July 18, 2015
Net Increase (decrease) of this Change Order No. : \$0	Changes in contract time requested this Change Order No. 2 : (Requires Council Approval) 31 days
Contract Price with all approved Change Orders: \$100,950	Contract Times with all approved Change Orders: Final Completion: August 18, 2015

CHANGES ORDERED:

- I. **GENERAL:** This Change Order is necessary to cover changes in the Final Completion date under the Standard contract for Services entered into by and between the parties on March 18, 2015.
- II. **REQUIRED CHANGES:** To extend the Final Complete date 31 days. This will move the Final Complete date from July 18, 2015 to August 18, 2015. No goods shall be delivered nor services commenced hereunder until this Change Order has been fully executed by all parties.
- III. **JUSTIFICATION:** Change Order No 2 is needed to change the Final Completion date from July 18, 2015 to August 18, 2015. This extension is due to the delay in of delivery for the specified Prominent pumps and the delay in fabrication of the pump skids by Blue Planet Environmental. This delay was beyond our control. This is no additional cost increase with this request.
- IV. **PAYMENT:** Payment for this Change Order shall be made in accordance with the terms of the Standard Contract for Services subject to a limit up to but not to exceed **One Hundred Thousand Nine Hundred and Fifty Dollars and no cents (\$100,950.00)**. 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.

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:

STEVE MILLER

Department Project Manager

ACCEPTED BY:

ODYSSEY MANUFACTURING COMPANY

Contractor

By: Steven Miller

Printed Name: Steve Miller

Title: Chief Operator

Date Signed: 7/28/15

By: [Signature]

Printed Name: Marvin T. Rakes

Title: President

Date Signed: 7/22/15

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: Andrew Neff
Printed Name: Andrew Neff
Title: Public Utilities Director

Date Signed: 7/22/2015

City Manager

By: David T. Harden
Printed Name: David Harden
Title: Interim City Manager

Date Signed: 7/28/15

If Council approval is required:

Affirmed:

By: _____
Printed Name: Allen Green
Title: Mayor

Robin L. Fenwick, CMC, City Clerk

Date Signed: _____

Date Signed: _____



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Revised Employment Agreement for Michael H. "Jake" Johansson

DEPARTMENT: City Attorney

RECOMMENDED MOTION: Move to approve the Revised Employment Agreement for Michael H. "Jake" Johansson.

SUMMARY: A revised Employment Agreement for Michael H. "Jake" Johansson has been prepared by the City Attorney. The agreement provides for a partial work week for the pay period of August 10 through August 16, 2015, inclusive, with work commencing on August 13, 2015 to compensate the Employee for attending the Florida League of Cities Conference in Orlando, Florida.

Project Funding Account
No.: No.:

ATTACHMENTS:

1.	Amendment No. 1 to Employment Agreement	Amendment No. 1 to Employment.pdf
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Roberts, Margaret
Roberts, Margaret
Harden, David

Created/Initiated - 07/21/2015
Approved - 07/30/2015
Final Approval - 07/30/2015

AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT

This Amendment No. 1 to Employment Agreement dated July 14, 2015 is made and entered into the day and year set forth hereafter, by and between the City of Port Orange, Florida, a chartered municipal corporation (hereinafter the "Employer" or the "City") and Michael H. Johansson (hereinafter the "Employee"), both of whom shall constitute the Parties and who agree as follows:

Whereas, the Parties desire to amend the Employment Agreement as set forth hereafter.

1. Section 1 of the Employment Agreement is hereby amended to read as follows:

This Agreement shall remain in full force and effect for the employment commencing on August 13, 2015 until terminated by the Employer or Employee as provided in Section 11 of this Agreement subject to a voluntary resignation as provided in Section 13.

2. Section 3 of the Employment Agreement is hereby amended to read as follows:

Base Salary: Employer agrees to pay Employee weekly in the amount of Two Thousand Six Hundred Ninety-Two and 31/100 Dollars (\$2,692.31), subject to withholding and payroll tax deductions. The first partial week of employment shall be prorated in the amount of (\$1,615.39). Employee has agreed to attend the Florida League of Cities Conference commencing on August 13-15, 2015 in Orlando, Florida and the three (3) days of conference attendance shall be treated as workdays.

3. All other terms and provisions of the Employment Agreement shall remain in full force and effect, except as modified herein.

In Witness hereof the Parties have executed this Amendment No. 1 to Employment Agreement.

Employee

Michael H. Johansson

Date: _____

Employer
City of Port Orange

By: _____
Allen Green, Mayor

Date: _____

Attest:

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

Roberts, Margaret	Created/Initiated - 07/21/2015
Roberts, Margaret	Approved - 07/30/2015
Riehm, Tracey	Approved - 07/30/2015
Harden, David	Final Approval - 07/30/2015

AMENDMENT NO. 1 TO EMPLOYMENT AGREEMENT

David T. Harden

This Amendment No. 1 to Employment Agreement (hereafter the "Amendment"), is made and entered into on the date set forth hereafter, between the City of Port Orange, Florida, a chartered municipal corporation (hereinafter the "City") and David T. Harden, (hereinafter the "Employee"), both of whom shall constitute the Parties and who agree as follows:

Whereas, to facilitate the work of the newly hired City Manager, the Parties desire to amend the Employment Agreement dated August 19, 2014 for Interim City Manager, David T. Harden as set forth hereafter.

1. Section 2: Duties and Authority, is hereby amended to read as follows:

City agrees to engage David T. Harden as Interim Assistant City Manager to the newly hired city manager to provide assistance in the FY 2016 Budget adoption and such other matters as requested by the new city manager. ~~Employer agrees to employ David T. Harden as the Interim City manager to perform the functions and duties specified for the City Manager in the Charter of the City and its Code of Ordinances; and to perform other legally permissible and proper duties and functions as directed by the City Council.~~

2. To the extent of any conflict between the terms of the Employment Agreement and this Amendment No. 1, this Amendment shall control. This Amendment shall become effective on August 13, 2015.

In Witness hereof the Parties have executed this Amendment.

Employee

Date: _____

David T. Harden

City of Port Orange

Date: _____

By: _____

Allen Green, Mayor

Attest:

By: _____

Robin L. Fenwick, CMC, City Clerk



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Resolution No. 15-42 - Contract for Sale and Purchase of Real Property

DEPARTMENT: City Attorney

RECOMMENDED MOTION: Move to approve Resolution No. 15-42, approving the attached option contract to acquire the Penna Court Motel and real property located at 4750 South Ridgewood Avenue, Port Orange for the contract purchase price of \$155,000 plus closing costs; and to authorize the Mayor and City Clerk to execute the contract and all additional documents necessary to close the transaction.

SUMMARY: The 1950's-era motor court known as the Penna Court Motel, is a single-story, 12-unit motel with office and owner's quarters located on the west side of U.S Hwy. #1 at 4750 Ridgewood Avenue. The site has approximately 87 feet of frontage on U.S.#1 and is approximately 320 feet deep (Parcel ID# 6303-13-03-0080). The owner has offered this property to the City at the MAI appraised fair market value of \$155,000. To assist City Staff with the acquisition of this property, the attached appraisal report has been prepared by Southern Appraisal Corporation. If acquired, the site will be cleared for public open space and drainage uses. Closing costs, including boundary land survey, Phase 1 Environmental Assessment, and Asbestos Survey are estimated to not exceed \$6,000. Proposed demolition costs are estimated to be \$17,000. Seller has agreed to pay 50% of any asbestos remediation, if needed, up to a total amount of \$2,000 toward the actual cost of removal and disposal.

On July 4, 2015 the Daytona Beach News-Journal published a Public Notice pursuant to Section 166.045, Florida Statutes providing for a 30-day review period of this contract and the appraisal report prior to consideration on August 4, 2015 by City Council.

This motel is located in the Town Center CRA. Funds can be made available by having the General Fund advance funds to the CRA to fund the acquisition. The loan from the General Fund would ultimately be repaid by the TIF from the CRA.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	Reso. No. 15-42	Reso. No. 15-42.pdf
2.	MAI Appraisal	Penna Court Appraisal_2015_May_26_SouthernAppraisalCorp.pdf
3.	Penna Court Motel - Letter 7/30/2015	Penna Court Motel Ltr.pdf

Johnson, Linda
Neff, Andrew
Riehm, Tracey
Roberts, Margaret
Harden, David

Created/Initiated - 07/14/2015
Approved - 07/15/2015
Approved - 07/17/2015
Approved - 07/28/2015
Final Approval - 07/28/2015

RESOLUTION NO. 15-42

A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROVING A
CONTRACT FOR SALE AND PURCHASE OF REAL
PROPERTY AT 4750 SOUTH RIDGEWOOD AVENUE;
AUTHORIZING EXECUTION OF SAID CONTRACT;
AUTHORIZING THE MAYOR AND CITY CLERK TO
EXECUTE CLOSING DOCUMENTS; AND PROVIDING AN
EFFECTIVE DATE.

WHEREAS, Charles Ray Snyder, referred to as "Owner" desires to sell and the City of Port Orange desires to purchase the real property located at 4750 South Ridgewood Avenue and more particularly described in the Option to Purchase Contract and Contract for Sale and Purchase of Real Property, attached hereto as Exhibit "1" and incorporated herein by reference; and

WHEREAS, the City intends to exercise its rights for intended use of the real property including all lawful purposes consistent with local zoning regulations and the elimination and prevention of the development or spread of slums and urban blight; and

WHEREAS, funding is available for acquisition of the property; and

WHEREAS, the City Council has reviewed the attached Option to Purchase Contract and Contract for Sale and Purchase and has determined that it is fair and equitable and that it is in the best interest of the City of Port Orange and the citizens thereof to enter into the Contract.

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

SECTION 1. The Contract for Sale and Purchase attached hereto as Exhibit "1" is approved and execution of the aforesaid Contract by the Mayor and City Clerk on behalf of the City of Port Orange is hereby authorized by the City Council.

SECTION 2. The Mayor and City Clerk are authorized to execute such additional documents as may be necessary to effectuate the intent of this Resolution and to otherwise proceed to and close the transaction to acquire title to the property on behalf of the City of Port Orange.

SECTION 3. This Resolution shall become effective immediately upon adoption by the City Council.

MAYOR ALLEN GREEN

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the _____ day of _____, 2015

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

EXHIBIT "1"



OPTION TO PURCHASE CONTRACT AND CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY

THIS OPTION TO PURCHASE CONTRACT AND CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY, hereinafter, the "Contract" is made and entered into this _____ day of _____, 2015, between: **Charles Ray Snyder**, whose mailing address 405 Lafayette Street, Port Orange, FL 32127, hereinafter referred to as "Seller"; and CITY OF PORT ORANGE, FLORIDA, a municipal corporation, mailing address: c/o City Manager, 1000 City Center Circle, Port Orange FL 32129-4144, hereinafter referred to as "Purchaser."

For good and valuable consideration in the amount of \$100.00 receipt whereof is hereby acknowledged by the Seller upon execution of the Option to Purchase Contract by Purchaser and City Manager, the parties agree as follows:

1. Subject to the exercise of the Option to Purchase Contract, hereinafter "Option" and approval by the City Council as set forth in paragraph 15, Seller agrees to sell and Purchaser agrees to purchase the following described real estate, with its appurtenances, located at **4750 S. Ridgewood Avenue**, in Port Orange, County of Volusia, State of Florida:

Lot 8, Block 3, Allen's Subdivision (also known as Allen's Additions to Port Orange), as per map recorded in Deed Book "T", Page 415, of the Public Records of Volusia County, Florida

Also being identified by Parcel Number: 6303-13-03-0080; the subject real estate being hereinafter referred to as the "Property."

General Description and Vicinity of Property: Single-story, 12-unit motel with office and owners quarters previously operated as the Penna Court Motel. Originally, a 1-building motor court constructed in 1952 along the west side of U.S. Highway 1, south of Fox Place and approximately 120 feet north of White Place. The second building added three units in 1971. The site is a slightly irregular-shaped parcel with 87 ft. frontage on Ridgewood Avenue/U.S. Highway 1, with a lot depth of 320 ft.; containing approximately 27,840 sq. ft. or 0.65 acre, more or less (subject to current boundary survey).

Tangible Personal Property and Furnishings: Prior to the date of Closing, Seller shall remove all personal property and furnishings, and shall secure all exterior openings of the structure.

Conveyance by the Seller and Purchase by the Purchaser of the above-described Property is subject to the Standards for Real Estate Transactions set forth on the form contract approved by The Florida Bar and The Florida Association of Realtors, Inc., attached hereto as **Exhibit "A."** In the event of a conflict between the terms of the contract for sale and purchase and the terms contained in **Exhibit "A,"** the contract for sale and purchase shall control.

2. Purchase Price and Method of Payment. The purchase price payable to Seller is as follows:

- (a) The Purchase Price for the Property is: One Hundred Fifty-Five Thousand and 00/100 Dollars (\$155,000.00); and
- (b) A deposit/down payment of Five Thousand and No/100 Dollars (\$5,000.00) shall be submitted upon acceptance of this offer by the City Council and the balance shall be paid at closing. Upon execution of the Contract for Purchase by the Mayor and City Clerk, Purchaser's good faith deposit shall be delivered to Matthew Welch, Esq., as "Escrow Agent," located at 149 S. Ridgewood Avenue, Suite 700, Daytona Beach, FL 32114, pending the closing of this transaction and to be delivered to Seller at the time of closing, if any.
- (c) The total Purchase Price, less the Purchaser's good faith deposit of Five Thousand and No/100 Dollars (\$5,000.00), and less expenses and prorations as provided in Standard K, Standard L and as otherwise set forth in **Exhibit "A"**, by wire transfer or check payable to the order of Seller, to be delivered at the time of closing.

3. Title Insurance. Seller agrees to obtain from the Escrow Agent named above at Seller's expense, an owner's title insurance policy insuring Purchaser for the full amount of the purchase price against loss or damage by reason of defect in the title of Seller in the above-described Property. Such policy shall be delivered to Purchaser at the time of closing. Not later than ten (10) days prior to the closing date, Seller shall cause to be delivered to and receipted by the City Attorney on behalf of the Purchaser a title insurance commitment in accordance with Standard A, together with copies of all items noted in Schedule B - Section 1, as prepared for execution and with copies of all items noted in Schedule B - Section 2, as evidenced in the public records or otherwise. The items, if any, listed on **Exhibit "B,"** shall not be deemed title defects.

4. Taxes and assessments. Seller agrees to pay before delinquency all taxes, assessments and utility charges, if any, which may be due currently or may hereafter become due on the premises until and including the day of closing.

5. Risk of loss. Risk of loss or damage to the Property by fire or other casualty between the date of this Contract and Closing shall be and is assumed by Seller.

6. Rental Agreements. Seller warrants that no other persons have any right to possession of the Property and the Seller shall not enter into any Lease or other instrument granting possessory rights subsequent to the execution of this Contract. Seller warrants that the Purchaser may inspect the property ten (10) days prior to closing to confirm that no persons are in possession of the Property. Failure of the Seller to deliver exclusive possession of the premises shall constitute a breach of this contract and Seller shall reimburse the Purchaser for all inspections, environmental audit, surveys and other expenses incurred by the Purchaser.

7. Deed. Seller agrees, on full payment of the purchase price in the manner herein specified, to make, execute and deliver to Purchaser a good and sufficient warranty deed to the Property, subject to the items listed in **Exhibit "B,"** if any.

8. Closing. Closing shall take place in Volusia County, Florida at the office of the Escrow Agent on or before one hundred twenty (120) days following the approval of this Contract for Sale and Purchase by the Port Orange City Council. The date of closing may be extended upon mutual agreement of the parties. At the closing, Seller shall provide Purchaser with the deed to the Property and other documents in accordance with Standard J. Following the closing, Purchaser shall have the right to exclusive possession of the Property.

9. Closing Costs. Seller shall pay typical seller-side closing costs including, but not limited to, owner's title insurance premium, documentary tax stamps on deed and Seller's attorneys' fees. Purchaser shall pay typical buyer-side closing costs, including costs of environmental audits, surveys, and other inspections, except as otherwise provided herein.

10. Fees. Purchaser has not utilized the services of a Florida Real Estate Broker for the sale and purchase of the Property. Both parties acknowledge that the Seller shall be responsible for the payment of any brokerage fee incurred for the transfer of the Property. Purchaser shall be responsible for appraisal report, if any, prepared at Purchaser's request, and Seller shall be responsible for fees incurred for Seller's independent review of this proposal by attorneys and engineer/professionals, if any.

11. Environmental Audit. Up to Five (5) days before the date of closing, hereinafter referred to as the "Inspection Period", Purchaser shall have the right to conduct an environmental audit of the Property which audit shall be certified to Purchaser. In the event the environmental audit detects the presence of any hazardous materials, unique prehistoric or historic artifacts, relics, or structures of archaeological value, or of the remains of deceased persons interred therein on the Property, Purchaser, at its sole option, may elect to terminate this Contract prior to the expiration of the Inspection Period and neither party shall have any further obligations under this Contract. However, if Purchaser elects to remediate and remove existing hazardous material rather than terminate this Contract, Seller agrees to pay 50% of the actual cost of remediation up to Two Thousand and 00/100 Dollars (\$2,000.00) including costs of environmentally acceptable removal and disposal. For purposes of this Contract, "hazardous materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any federal, state or local environmental laws, statutes, ordinances, rules, regulations, restrictions or orders relating to liability or standards of conduct.

12. Purchaser's Intended Use of the Property. The restrictions, easements, if any, and limitations of record shall not prevent the Purchaser from exercising its rights for its intended use of the Property including all lawful purposes consistent with the local zoning regulations and the elimination and prevention of the development or spread of slums and urban blight. In the event that Purchaser determines that the Property cannot be used for its intended purposes, then the Purchaser shall be entitled to terminate this Contract prior to the expiration of the Inspection Period.

13. Default by Seller. If Seller is unable to convey marketable title to the Property in accordance with the terms of this Contract, or otherwise fails to perform this Contract within the time specified for closing or any extension thereof, the costs of examining the title, surveying the Property, and inspecting and auditing the Property shall, at the option of Purchaser, be paid by Seller to Purchaser on demand. Service of such demand shall be made by certified mail, return receipt requested to Seller as identified and at his/her respective mailing address shown above, with a copy to Seller's agent or other authorized representative as Seller may indicate in writing to Purchaser. Purchaser shall have the right of specific performance and all other remedies at law or equity. Election of any options by Purchaser or failure of Purchaser to exercise any rights granted by this Contract shall not be construed as a waiver of any action for damages resulting from Seller's default.

14. Access to Property. Seller agrees to allow Purchaser and Purchaser's employees, consultants, agents and representatives access to the Property upon execution of this Contract by Seller and extending to the time of closing for the purpose of conducting surveys, environmental audits and inspections of the premises.

15. Option to Purchase and Approval of Contract for Sale and Purchase of Real Property. Upon execution of this Option by the Seller and the City Manager, the City of Port Orange shall have the option for sixty (60) days to exercise the election to purchase the property described herein and in accordance with the terms described herein. The City Manager's signature on this Option shall not bind the City of Port Orange for the purchase of the Property until approved by the City Council. The City Council of the City of Port Orange may exercise the Option in a public meeting after 30 days' public notice, by casting a majority vote of the City Council in favor of exercising the option and by the Mayor and City Clerk duly executing this Contract. If this Contract is not approved by the City Council on or before the sixtieth (60th) day after execution of the Option by the City Manager, then the City shall provide written notice to Seller and the Escrow Agent authorizing the release of the Escrow Deposit to the Seller and thereafter the City shall not be responsible for any other cost, expense, damage or liability and the parties shall both be discharged and released from any further responsibility under this Contract.

16. Effective Date. The Effective Date of this Contract shall be the date of execution by Snyder and the City Manager, whichever signs last. If the Option to Purchase is exercised by the City Council, the Mayor and City Clerk shall join in the execution of this Contract and the same shall serve as the Contract for Sale and Purchase of the Property.

17. Counterparts. This Contract 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 electronic transmittal of an executed copy of this Contract shall be deemed valid as if an original signature was delivered.

[REMAINDER OF PAGE LEFT BLANK]

This Option to Purchase Contract and Contract for Sale and Purchase of Real Property is executed by the parties as of the respective dates shown below.

FOR THE OPTION TO PURCHASE CONTRACT
AND CONTRACT FOR SALE AND PURCHASE OF
REAL PROPERTY

WITNESSES:

SELLER: CHARLES RAY SNYDER

Deborah L. Clark
First Witness Printed Name Below:

Charles R. Snyder
Charles Ray Snyder

Date: 6-24-2015, 2015

Deborah L. Clark

Laurie E. LaFavor
Second Witness Printed Name Below:

LAURIE E. LAFAVOR

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract and Contract for Sale and Purchase of Real Property was sworn to and acknowledged before me this 24th day of JUNE, 2015, by _____, Charles Ray Snyder, as the Seller named in the foregoing Contract, who (Notary, please check as applicable): ☐ took an oath or ☒ did not take an oath; and who ☒ is personally known to me or ☐ has produced _____ as identification.

Laurie E. LaFavor

Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date



Page 5 of 7

Option to Purchase Contract and Contract for Sale and Purchase — Parcel Number 6303-13-03-0080

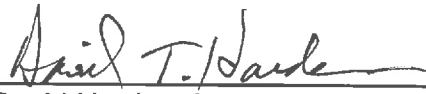
FOR THE OPTION TO PURCHASE CONTRACT:

WITNESSES:

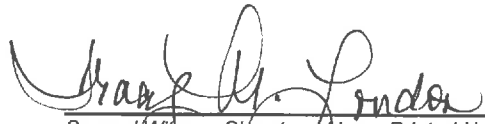
CITY OF PORT ORANGE


First Witness (Signature Above, Printed Name Below):

Matthew J. Jones.

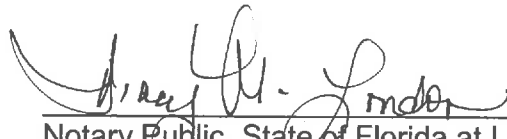
By: 
David Harden, Interim City Manager

Date: 6/22, 2015


Second (Witness Signature Above, Printed Name Below):
Tracy M. London

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Option to Purchase Contract was sworn to and acknowledged before me this 22nd day of June, 2014, by David Harden, the Interim City Manager for the City of Port Orange, Florida, who (Notary, please check as applicable): ☐ took an oath or ☐ did not take an oath; and who ☒ is personally known to me or ☐ has produced _____ as identification.


Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date



WITNESSES:

FOR CONTRACT FOR SALE AND PURCHASE OF
REAL PROPERTY

PURCHASER:

CITY OF PORT ORANGE, FLORIDA,
a chartered municipal corporation

Printed Name:

By: _____
Allen Green, Mayor

Printed Name:

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

Witnesses as to Both

Date: _____, 2015

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing Contract was acknowledged before me this _____ day of _____, 2015, by Allen Green and Robin L. Fenwick, as Mayor and City Clerk, respectively, of the **City of Port Orange, Florida**, a chartered municipal corporation, on behalf of the city. They are personally known to me.

Notary Public, State of Florida at Large
Printed Name, Commission Seal and Term Expiration Date

EXHIBIT "A"

Residential Contract For Sale And Purchase

THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR



1* **PARTIES:** _____ ("Seller"),
 2* and _____ ("Buyer"),
 3 agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property
 4 (collectively "Property") pursuant to the terms and conditions of this Residential Contract For Sale And Purchase and
 5 any riders and addenda ("Contract");

6 **1. PROPERTY DESCRIPTION:**

7* (a) Street address, city, zip: _____
 8* (b) Property is located in: _____ County, Florida. Real Property Tax ID No: _____
 9* (c) Real Property: The legal description is _____
 10 _____
 11 _____

12 together with all existing improvements and fixtures, including built-in appliances, built-in furnishings and
 13 attached wall-to-wall carpeting and flooring ("Real Property") unless specifically excluded in Paragraph 1(e) or
 14 by other terms of this Contract.

15 (d) Personal Property: Unless excluded in Paragraph 1(e) or by other terms of this Contract, the following items
 16 which are owned by Seller and existing on the Property as of the date of the initial offer are included in the
 17 purchase: range(s)/oven(s), refrigerator(s), dishwasher(s), disposal, ceiling fan(s), intercom, light fixture(s),
 18 drapery rods and draperies, blinds, window treatments, smoke detectors(s), garage door opener(s),
 19 security gate and other access devices; and storm shutters/panels ("Personal Property").
 20 Other Personal Property items included in this purchase are:
 21* _____
 22 _____

23 Personal Property is included in the Purchase Price, has no contributory value, and shall be left for the Buyer.
 24* (e) The following items are excluded from the purchase: _____
 25 _____

PURCHASE PRICE AND CLOSING

26 **2. PURCHASE PRICE (U.S. currency):** \$ _____

28* (a) Initial deposit to be held in escrow in the amount of (checks subject to COLLECTION) \$ _____

29 The initial deposit made payable and delivered to "Escrow Agent" named below
 30* (CHECK ONE): (i) ☐ accompanies offer or (ii) ☐ is to be made within _____ (if left blank,
 31 then 3) days after Effective Date. IF NEITHER BOX IS CHECKED, THEN OPTION (ii)
 32 SHALL BE DEEMED SELECTED.

33* Escrow Agent Information: Name: _____

34* Address: _____ Phone: _____

35* E-mail: _____ Fax: _____

36* (b) Additional deposit to be delivered to Escrow Agent within _____ (if left blank, then 10)
 37* days after Effective Date \$ _____

38* (All deposits paid or agreed to be paid, are collectively referred to as the "Deposit")

39 (c) Financing: Express as a dollar amount or percentage ("Loan Amount") see Paragraph 8

40* (d) Other: _____ \$ _____

41* (e) Balance to close (not including Buyer's closing costs, prepaids and prorations) by wire
 42 transfer or other COLLECTED funds \$ _____

43* **NOTE: For the definition of "COLLECTION" or "COLLECTED" see STANDARD S.**
 44 **TIME FOR ACCEPTANCE OF OFFER AND COUNTER-OFFERS; EFFECTIVE DATE:**

45 **3. (a)** If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before _____
 46* _____, this offer shall be deemed withdrawn and the Deposit, if any, will be returned to Buyer.
 47* Unless otherwise stated, time for acceptance of any counter-offers shall be within 2 days after the day the
 48 counter-offer is delivered.

49 (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed or
 50 initialed and delivered this offer or final counter-offer ("Effective Date").

51 **4. CLOSING DATE:** Unless modified by other provisions of this Contract, the closing of this transaction shall occur
 52 and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered
 53 ("Closing") on _____ ("Closing Date"), at the time established by the Closing Agent.
 54*

55 **5. EXTENSION OF CLOSING DATE:**

56 (a) If Closing funds from Buyer's lender(s) are not available at time of Closing due to Truth In Lending Act (TILA)
 57 notice requirements, Closing shall be extended for such period necessary to satisfy TILA notice requirements, not
 58 to exceed 7 days.

Buyer's Initials _____

Page 1 of 12

Seller's Initials _____

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(b) If extreme weather or other condition or event constituting "Force Majeure" (see STANDARD G) causes: (i) disruption of utilities or other services essential for Closing or (ii) Hazard, Wind, Flood or Homeowners' insurance, to become unavailable prior to Closing, Closing shall be extended a reasonable time up to 3 days after restoration of utilities and other services essential to Closing and availability of applicable Hazard, Wind, Flood or Homeowners' insurance. If restoration of such utilities or services and availability of insurance has not occurred within ____ (if left blank, then 14) days after Closing Date, then either party may terminate this Contract by delivering written notice to the other party, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

6. OCCUPANCY AND POSSESSION:

(a) Unless the box in Paragraph 6(b) is checked, Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, as applicable, to Buyer. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to the Property from date of occupancy, shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted the Property in its existing condition as of time of taking occupancy, except with respect to any items identified by Buyer pursuant to Paragraph 12, prior to taking occupancy, which require repair, replacement, treatment or remedy.

(b) ☐ **CHECK IF PROPERTY IS SUBJECT TO LEASE(S) OR OCCUPANCY AFTER CLOSING.** If Property is subject to a lease(s) after Closing or is intended to be rented or occupied by third parties beyond Closing, the facts and terms thereof shall be disclosed in writing by Seller to Buyer and copies of the written lease(s) shall be delivered to Buyer, all within 5 days after Effective Date. If Buyer determines, in Buyer's sole discretion, that the lease(s) or terms of occupancy are not acceptable to Buyer, Buyer may terminate this Contract by delivery of written notice of such election to Seller within 5 days after receipt of the above items from Seller, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. Estoppel Letter(s) and Seller's affidavit shall be provided pursuant to STANDARD D. If Property is intended to be occupied by Seller after Closing, see Rider U. POST-CLOSING OCCUPANCY BY SELLER.

7. ASSIGNABILITY: (CHECK ONE): Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☐ may assign but not be released from liability under this Contract; or ☐ may not assign this Contract.

8. FINANCING:

FINANCING

- ☐ (a) Buyer will pay cash or may obtain a loan for the purchase of the Property. There is no financing contingency to Buyer's obligation to close.
- ☐ (b) This Contract is contingent upon Buyer obtaining a written loan commitment for a ☐ conventional ☐ FHA ☐ VA or ☐ other _____ (describe) loan on the following terms within ____ (if left blank, then 30) days after Effective Date ("Loan Commitment Date") for: **(CHECK ONE):** ☐ fixed, ☐ adjustable, ☐ fixed or adjustable rate loan in the Loan Amount (See Paragraph 2(c)), at an initial interest rate not to exceed ____ % (if left blank, then prevailing rate based upon Buyer's creditworthiness), and for a term of ____ (if left blank, then 30) years ("Financing").

Buyer shall make mortgage loan application for the Financing within ____ (if left blank, then 5) days after Effective Date and use good faith and diligent effort to obtain a written loan commitment for the Financing ("Loan Commitment") and thereafter to close this Contract. Buyer shall keep Seller and Broker fully informed about the status of mortgage loan application and Loan Commitment and authorizes Buyer's mortgage broker and Buyer's lender to disclose such status and progress to Seller and Broker.

Upon Buyer's receipt of Loan Commitment, Buyer shall provide written notice of same to Seller. If Buyer does not receive Loan Commitment by Loan Commitment Date, then thereafter either party may cancel this Contract up to the earlier of:

- i. Buyer's delivery of written notice to Seller that Buyer has either received Loan Commitment or elected to waive the financing contingency of this Contract; or
- ii. 7 days prior to Closing Date.

If either party timely cancels this Contract pursuant to this Paragraph 8 and Buyer is not in default under the terms of this Contract, Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract. If neither party has timely canceled this Contract pursuant to this Paragraph 8, then this financing contingency shall be deemed waived by Buyer.

If Buyer delivers written notice of receipt of Loan Commitment to Seller and this Contract does not thereafter close, the Deposit shall be paid to Seller unless failure to close is due to: (1) Seller's default; (2) Property related conditions of the Loan Commitment have not been met (except when such conditions are waived by other provisions of this Contract); (3) appraisal of the Property obtained by Buyer's lender is insufficient to meet terms of the Loan Commitment; or (4) the loan is not funded due to financial failure of Buyer's lender, in which event(s) the Deposit shall be returned to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

- 117* ☐ (c) Assumption of existing mortgage (see rider for terms).
118* ☐ (d) Purchase money note and mortgage to Seller (see riders; addenda; or special clauses for terms).

119 **CLOSING COSTS, FEES AND CHARGES**

120 **9. CLOSING COSTS; TITLE INSURANCE; SURVEY; HOME WARRANTY; SPECIAL ASSESSMENTS:**

121 **(a) COSTS TO BE PAID BY SELLER:**

- 122 • Documentary stamp taxes and surtax on deed, if any • HOA/Condominium Association estoppel fees
123 • Owner's Policy and Charges (if Paragraph 9(c)(i) is checked) • Recording and other fees needed to cure title
124 • Title search charges (if Paragraph 9(c)(iii) is checked) • Seller's attorneys' fees
125* • Other: _____

126 Seller will pay the following amounts/percentages of the Purchase Price for the following costs and expenses:
127* (i) up to \$ _____ or _____ % (1.5% if left blank) for General Repair Items ("General Repair
128 Limit"); and

129* (ii) up to \$ _____ or _____ % (1.5% if left blank) for WDO treatment and repairs ("WDO
130 Repair Limit"); and

131* (iii) up to \$ _____ or _____ % (1.5% if left blank) for costs associated with closing out open
132 or expired building permits and obtaining required building permits for any existing improvement for which a
133 permit was not obtained ("Permit Limit").

134 If, prior to Closing, Seller is unable to meet the Maintenance Requirement as required by Paragraph 11 or the
135 repairs, replacements, treatments or permitting as required by Paragraph 12, then, sums equal to 125% of
136 estimated costs to complete the applicable item(s) (but, not in excess of applicable General Repair, WDO Repair,
137 and Permit Limits set forth above, if any) shall be escrowed at Closing. If actual costs of required repairs,
138 replacements, treatment or permitting exceed applicable escrowed amounts, Seller shall pay such actual costs
139 (but, not in excess of applicable General Repair, WDO Repair, and Permit Limits set forth above). Any unused
140 portion of escrowed amount(s) shall be returned to Seller.

141 **(b) COSTS TO BE PAID BY BUYER:**

- 142 • Taxes and recording fees on notes and mortgages • Loan expenses
143 • Recording fees for deed and financing statements • Appraisal fees
144 • Owner's Policy and Charges (if Paragraph 9(c)(ii) is checked) • Buyer's Inspections
145 • Survey (and elevation certification, if required) • Buyer's attorneys' fees
146 • Lender's title policy and endorsements • All property related insurance
147 • HOA/Condominium Association application/transfer fees • Owner's Policy Premium (If Paragraph
148 9(c)(iii) is checked.)
149* • Other: _____

150* **(c) TITLE EVIDENCE AND INSURANCE:** At least _____ (if left blank, then 5) days prior to Closing Date, a title
151 insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as
152 exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance (see
153 STANDARD A for terms) shall be obtained and delivered to Buyer. If Seller has an owner's policy of title insurance
154 covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.
155 The owner's title policy premium, title search, municipal lien search and closing services (collectively, "Owner's
156 Policy and Charges") shall be paid, as set forth below

157 **(CHECK ONE):**

- 158* ☐ (i) Seller shall designate Closing Agent and pay for Owner's Policy and Charges (but not including charges for
159 closing services related to Buyer's lender's policy and endorsements and loan closing, which amounts shall be paid
160 by Buyer to Closing Agent or such other provider(s) as Buyer may select); or
161* ☐ (ii) Buyer shall designate Closing Agent and pay for Owner's Policy and Charges and charges for closing
162 services related to Buyer's lender's policy, endorsements, and loan closing; or
163* ☐ (iii) **[MIAMI-DADE/BROWARD REGIONAL PROVISION]:** Seller shall furnish a copy of a prior owner's
164 policy of title insurance or other evidence of title and pay fees for: (A) a continuation or update of such title evidence,
165 which is acceptable to Buyer's title insurance underwriter for reissue of coverage; (B) tax search; and (C) municipal
166 lien search. Buyer shall obtain and pay for post-Closing continuation and premium for Buyer's
167 owner's policy, and if applicable, Buyer's lender's policy. Seller shall not be obligated to pay more than
168* \$ _____ (if left blank, then \$200.00) for abstract continuation or title search ordered or performed by
169 Closing Agent.

170 **(d) SURVEY:** At least 5 days prior to Closing, Buyer may, at Buyer's expense, have the Real Property surveyed and
171 certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy
172 shall be furnished to Buyer and Closing Agent within 5 days after Effective Date.

173* **(e) HOME WARRANTY:** At Closing, ☐ Buyer ☐ Seller ☐ N/A shall pay for a home warranty plan issued by
174* _____ at a cost not to exceed \$ _____. A home

warranty plan provides for repair or replacement of many of a home's mechanical systems and major built-in appliances in the event of breakdown due to normal wear and tear during the agreement's warranty period.

- (f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body ("public body" does not include a Condominium or Homeowner's Association) that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments **(CHECK ONE):**

☐ (a) Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

☐ (b) Seller shall pay the assessment(s) in full prior to or at the time of Closing.

IF NEITHER BOX IS CHECKED, THEN OPTION (a) SHALL BE DEEMED SELECTED.

This Paragraph 9(f) shall not apply to a special benefit tax lien imposed by a community development district (CDD) pursuant to Chapter 190, F.S., which lien shall be prorated pursuant to STANDARD K.

DISCLOSURES

10. DISCLOSURES:

- (a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.
- (b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed.
- (c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.
- (d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and/or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance through the National Flood Insurance Program, Buyer may terminate this Contract by delivering written notice to Seller within ____ (if left blank, then 20) days after Effective Date, and Buyer shall be refunded the Deposit thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Reform Act of 2012 (referred to as Biggert-Waters 2012) may phase in actuarial rating of pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 80% of the year) and an elevation certificate may be required for actuarial rating.
- (e) **ENERGY BROCHURE:** Buyer acknowledges receipt of Florida Energy-Efficiency Rating Information Brochure required by Section 553.996, F.S.
- (f) **LEAD-BASED PAINT:** If Property includes pre-1978 residential housing, a lead-based paint disclosure is mandatory.
- (g) **HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE:** BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE, IF APPLICABLE.
- (h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.
- (i) **FIRPTA TAX WITHHOLDING:** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

233 (j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are
234 not readily observable and which have not been disclosed to Buyer.

235 **PROPERTY MAINTENANCE, CONDITION, INSPECTIONS AND EXAMINATIONS**

236 11. **PROPERTY MAINTENANCE:** Except for ordinary wear and tear and Casualty Loss, and those repairs,
237 replacements or treatments required to be made by this Contract, Seller shall maintain the Property, including, but not
238 limited to, lawn, shrubbery, and pool, in the condition existing as of Effective Date ("Maintenance Requirement").

239 12. **PROPERTY INSPECTION AND REPAIR:**

240 (a) **INSPECTION PERIOD:** By the earlier of 15 days after Effective Date or 5 days prior to Closing Date
241 ("Inspection Period"), Buyer may, at Buyer's expense, conduct "General", "WDO", and "Permit" Inspections
242 described below. If Buyer fails to timely deliver to Seller a written notice or report required by (b), (c), or (d)
243 below, then, except for Seller's continuing Maintenance Requirement, Buyer shall have waived Seller's
244 obligation(s) to repair, replace, treat or remedy the matters not inspected and timely reported. If this Contract
245 does not close, Buyer shall repair all damage to Property resulting from Buyer's inspections, return Property to
246 its pre-inspection condition and provide Seller with paid receipts for all work done on Property upon its
247 completion.

248 (b) **GENERAL PROPERTY INSPECTION AND REPAIR:**

249 (i) **General Inspection:** Those items specified in Paragraph 12(b) (ii) below, which Seller is obligated to repair
250 or replace ("General Repair Items") may be inspected ("General Inspection") by a person who specializes in and
251 holds an occupational license (if required by law) to conduct home inspections or who holds a Florida license to
252 repair and maintain the items inspected ("Professional Inspector"). Buyer shall, within the Inspection Period,
253 inform Seller of any General Repair Items that are not in the condition required by (b)(ii) below by delivering to
254 Seller a written notice and upon written request by Seller a copy of the portion of Professional Inspector's
255 written report dealing with such items.

256 (ii) **Property Condition:** The following items shall be free of leaks, water damage or structural damage: ceiling,
257 roof (including fascia and soffits), exterior and interior walls, doors, windows, and foundation. The above items
258 together with pool, pool equipment, non-leased major appliances, heating, cooling, mechanical, electrical,
259 security, sprinkler, septic and plumbing systems and machinery, seawalls, and dockage, are, and shall be
260 maintained until Closing, in "Working Condition" (defined below). Torn screens (including pool and patio
261 screens), fogged windows, and missing roof tiles or shingles shall be repaired or replaced by Seller prior to
262 Closing. Seller is not required to repair or replace "Cosmetic Conditions" (defined below), unless the Cosmetic
263 Conditions resulted from a defect in an item Seller is obligated to repair or replace. "Working Condition" means
264 operating in the manner in which the item was designed to operate. "Cosmetic Conditions" means aesthetic
265 imperfections that do not affect Working Condition of the item, including, but not limited to: pitted marcite;
266 tears, worn spots and discoloration of floor coverings, wallpapers, or window treatments; nail holes, scrapes,
267 scratches, dents, chips or caulking in ceilings, walls, flooring, tile, fixtures, or mirrors; and minor cracks in walls,
268 floor tiles, windows, driveways, sidewalks, pool decks, and garage and patio floors. Cracked roof tiles, curling or
269 worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is
270 no evidence of actual leaks, leakage or structural damage.

271 (iii) **General Property Repairs:** Seller is only obligated to make such general repairs as are necessary to bring
272 items into the condition specified in Paragraph 12(b) (ii) above. Seller shall within 10 days after receipt of
273 Buyer's written notice or General Inspection report, either have the reported repairs to General Repair Items
274 estimated by an appropriately licensed person and a copy delivered to Buyer, or have a second inspection made
275 by a Professional Inspector and provide a copy of such report and estimates of repairs to Buyer. If Buyer's and
276 Seller's inspection reports differ and the parties cannot resolve the differences, Buyer and Seller together shall
277 choose, and equally split the cost of, a third Professional Inspector, whose written report shall be binding on the
278 parties. If cost to repair General Repair Items equals or is less than the General Repair Limit, Seller shall have
279 repairs made in accordance with Paragraph 12(f). If cost to repair General Repair Items exceeds the General
280 Repair Limit, then within 5 days after a party's receipt of the last estimate: (A) Seller may elect to pay the excess
281 by delivering written notice to Buyer, or (B) Buyer may deliver written notice to Seller designating which repairs
282 of General Repair Items Seller shall make (at a total cost to Seller not exceeding the General Repair Limit) and
283 agreeing to accept the balance of General Repair Items in their "as is" condition, subject to Seller's continuing
284 Maintenance Requirement. If neither party delivers such written notice to the other, then either party may
285 terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all
286 further obligations under this Contract.

287 (c) **WOOD DESTROYING ORGANISM ("WDO") INSPECTION AND REPAIR:**

288 (i) **WDO Inspection:** The Property may be inspected by a Florida-licensed pest control business ("WDO
289 Inspector") to determine the existence of past or present WDO infestation and damage caused by infestation
290 ("WDO Inspection"). Buyer shall, within the Inspection Period, deliver a copy of the WDO Inspector's written
291 report to Seller if any evidence of WDO infestation or damage is found. "Wood Destroying Organism" ("WDO")
292 means arthropod or plant life, including termites, powder-post beetles, oldhouse borers and wood-decaying fungi,
293 that damages or infests seasoned wood in a structure, excluding fences.

(ii) **WDO Repairs:** If Seller previously treated the Property for the type of WDO found by Buyer's WDO Inspection, Seller does not have to retreat the Property if there is no visible live infestation, and Seller, at Seller's cost, transfers to Buyer at Closing a current full treatment warranty for the type of WDO found. Seller shall within 10 days after receipt of Buyer's WDO Inspector's report, have reported WDO damage estimated by an appropriately licensed person, necessary corrective treatment, if any, estimated by a WDO Inspector, and a copy delivered to Buyer. Seller shall have treatments and repairs made in accordance with Paragraph 12(f) below up to the WDO Repair Limit. If cost to treat and repair the WDO infestations and damage to Property exceeds the WDO Repair Limit, then within 5 days after receipt of Seller's estimate, Buyer may deliver written notice to Seller agreeing to pay the excess, or designating which WDO repairs Seller shall make (at a total cost to Seller not exceeding the WDO Repair Limit), and accepting the balance of the Property in its "as is" condition with regard to WDO infestation and damage, subject to Seller's continuing Maintenance Requirement. If Buyer does not deliver such written notice to Seller, then either party may terminate this Contract by written notice to the other, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(d) **INSPECTION AND CLOSE-OUT OF BUILDING PERMITS:**

(i) **Permit Inspection:** Buyer may have an inspection and examination of records and documents made to determine whether there exist any open or expired building permits or unpermitted improvements to the Property ("Permit Inspection"). Buyer shall, within the Inspection Period, deliver written notice to Seller of the existence of any open or expired building permits or unpermitted improvements to the Property.

(ii) **Close-Out of Building Permits:** Seller shall, within 10 days after receipt of Buyer's Permit Inspection notice, have an estimate of costs to remedy Permit Inspection items prepared by an appropriately licensed person and a copy delivered to Buyer. No later than 5 days prior to Closing Date, Seller shall, up to the Permit Limit, have open and expired building permits identified by Buyer or known to Seller closed by the applicable governmental entity, and obtain and close any required building permits for improvements to the Property. Prior to Closing Date, Seller will provide Buyer with any written documentation that all open and expired building permits identified by Buyer or known to Seller have been closed out and that Seller has obtained required building permits for improvements to the Property. If final permit inspections cannot be performed due to delays by the governmental entity, Closing Date shall be extended for up to 10 days to complete such final inspections, failing which, either party may terminate this Contract, and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

If cost to close open or expired building permits or to remedy any permit violation of any governmental entity exceeds Permit Limit, then within 5 days after a party's receipt of estimates of cost to remedy: (A) Seller may elect to pay the excess by delivering written notice to Buyer; or (B) Buyer may deliver written notice to Seller accepting the Property in its "as is" condition with regard to building permit status and agreeing to receive credit from Seller at Closing in the amount of Permit Limit. If neither party delivers such written notice to the other, then either party may terminate this Contract and Buyer shall be refunded the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract.

(e) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through (and follow-up walk-through, if necessary) inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the Maintenance Requirement, has made repairs and replacements required by this Contract, and has met all other contractual obligations.

(f) **REPAIR STANDARDS; ASSIGNMENT OF REPAIR AND TREATMENT CONTRACTS AND WARRANTIES:** All repairs and replacements shall be completed in a good and workmanlike manner by an appropriately licensed person, in accordance with all requirements of law, and shall consist of materials or items of quality, value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Except as provided in Paragraph 12(c)(ii), at Buyer's option and cost, Seller will, at Closing, assign all assignable repair, treatment and maintenance contracts and warranties to Buyer.

ESCROW AGENT AND BROKER

13. **ESCROW AGENT:** Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Deposit are received, or Agent has a good faith doubt as to entitlement to the Deposit, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of

accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

14. PROFESSIONAL ADVICE; BROKER LIABILITY: Broker advises Buyer and Seller to verify Property condition, square footage, and all other facts and representations made pursuant to this Contract and to consult appropriate professionals for legal, tax, environmental, and other specialized advice concerning matters affecting the Property and the transaction contemplated by this Contract. Broker represents to Buyer that Broker does not reside on the Property and that all representations (oral, written or otherwise) by Broker are based on Seller representations or public records. **BUYER AGREES TO RELY SOLELY ON SELLER, PROFESSIONAL INSPECTORS AND GOVERNMENTAL AGENCIES FOR VERIFICATION OF PROPERTY CONDITION, SQUARE FOOTAGE AND FACTS THAT MATERIALLY AFFECT PROPERTY VALUE AND NOT ON THE REPRESENTATIONS (ORAL, WRITTEN OR OTHERWISE) OF BROKER.** Buyer and Seller (individually, the "Indemnifying Party") each individually indemnifies, holds harmless, and releases Broker and Broker's officers, directors, agents and employees from all liability for loss or damage, including all costs and expenses, and reasonable attorney's fees at all levels, suffered or incurred by Broker and Broker's officers, directors, agents and employees in connection with or arising from claims, demands or causes of action instituted by Buyer or Seller based on: (i) inaccuracy of information provided by the Indemnifying Party or from public records; (ii) Indemnifying Party's misstatement(s) or failure to perform contractual obligations; (iii) Broker's performance, at Indemnifying Party's request, of any task beyond the scope of services regulated by Chapter 475, F.S., as amended, including Broker's referral, recommendation or retention of any vendor for, or on behalf of, Indemnifying Party; (iv) products or services provided by any such vendor for, or on behalf of, Indemnifying Party; and (v) expenses incurred by any such vendor. Buyer and Seller each assumes full responsibility for selecting and compensating their respective vendors and paying their other costs under this Contract whether or not this transaction closes. This Paragraph 14 will not relieve Broker of statutory obligations under Chapter 475, F.S., as amended. For purposes of this Paragraph 14, Broker will be treated as a party to this Contract. This Paragraph 14 shall survive Closing or termination of this Contract.

DEFAULT AND DISPUTE RESOLUTION

15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Deposit, within the time(s) specified, Seller may elect to recover and retain the Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract. The portion of the Deposit, if any, paid to Listing Broker upon default by Buyer, shall be split equally between Listing Broker and Cooperating Broker; provided however, Cooperating Broker's share shall not be greater than the commission amount Listing Broker had agreed to pay to Cooperating Broker.

(b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Deposit without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Buyer and Seller will have 10 days after the date conflicting demands for the Deposit are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter.

This Paragraph 16 shall survive Closing or termination of this Contract.

17. ATTORNEY'S FEES; COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract, and each party will pay their own costs, expenses and fees, including attorney's fees, incurred in conducting the mediation. In any litigation permitted by this Contract, the prevailing party shall be entitled to recover

419 from the non-prevailing party costs and fees, including reasonable attorney's fees, incurred in conducting the litigation.
420 This Paragraph 17 shall survive Closing or termination of this Contract.

421 **STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS")**

422 **18. STANDARDS:**

423 **A. TITLE:**

424 (i) **TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS:** Within the time period provided in
425 Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be
426 issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before
427 Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of
428 the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the
429 following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements
430 imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the
431 subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility
432 easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines
433 and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and
434 purchase money mortgages, if any (if additional items, attach addendum); provided, that, unless waived by Paragraph 12
435 (a), there exists at Closing no violation of the foregoing and none prevent use of the Property for **RESIDENTIAL**
436 **PURPOSES**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a
437 title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The
438 Florida Bar and in accordance with law.

439 (ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify
440 Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it
441 is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after
442 date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period")
443 after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller,
444 Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will
445 deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will
446 close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's
447 notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of
448 Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days
449 within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure
450 Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date
451 has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or
452 (c) electing to terminate this Contract and receive a refund of the Deposit, thereby releasing Buyer and Seller from
453 all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects,
454 and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Deposit,
455 thereby releasing Buyer and Seller from all further obligations under this Contract.

456 **B. SURVEY:** If Survey discloses encroachments on the Real Property or that improvements located thereon
457 encroach on setback lines, easements, or lands of others; or violate any restrictions, covenants, or applicable
458 governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such
459 matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than
460 Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey
461 shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior
462 survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the
463 preparation of such prior survey, to the extent the affirmations therein are true and correct.

464 **C. INGRESS AND EGRESS:** Seller represents that there is ingress and egress to the Real Property and title to
465 the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

466 **D. LEASE INFORMATION:** Seller shall, at least 10 days prior to Closing, furnish to Buyer estoppel letters from
467 tenant(s)/occupant(s) specifying nature and duration of occupancy, rental rates, advanced rent and security deposits paid by
468 tenant(s) or occupant(s) ("Estoppel Letter(s)"). If Seller is unable to obtain such Estoppel Letter(s), the same information
469 shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter
470 contact tenant(s) or occupant(s) to confirm such information. If Estoppel Letter(s) or Seller's affidavit, if any, differ
471 materially from Seller's representations and lease(s) provided pursuant to Paragraph 6, or if tenant(s)/occupant(s) fail or
472 refuse to confirm Seller's affidavit, Buyer may deliver written notice to Seller within 5 days after receipt of such
473 information, but no later than 5 days prior to Closing Date, terminating this Contract and receive a refund of the Deposit,
474 thereby releasing Buyer and Seller from all further obligations under this Contract. Seller shall, at Closing, deliver and
475 assign all leases to Buyer who shall assume Seller's obligations thereunder.

476 **E. LIENS:** Seller shall furnish to Buyer at Closing an affidavit attesting; (i) to the absence of any financing
477 statement, claims of lien or potential lienors known to Seller, and (ii) that there have been no improvements or repairs to the Real

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

478 Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or
479 repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general
480 contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all
481 such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for
482 improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid
483 or will be paid at Closing.

484 **F. TIME:** Calendar days shall be used in computing time periods. Time is of the essence in this Contract. Other
485 than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in
486 this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday,
487 Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the
488 next business day.

489 **G. FORCE MAJEURE:** Buyer or Seller shall not be required to perform any obligation under this Contract or be
490 liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or
491 prevented by Force Majeure. "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual
492 transportation delays, wars, insurrections, acts of terrorism, and any other cause not reasonably within control of
493 Buyer or Seller, and which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to
494 prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure
495 prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance
496 under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering
497 written notice to the other and the Deposit shall be refunded to Buyer, thereby releasing Buyer and Seller from all further
498 obligations under this Contract.

499 **H. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's,
500 personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described
501 in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by
502 absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

503 **I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE:**

504 (i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the
505 attorney or other closing agent ("Closing Agent") designated by the party paying for the owner's policy of title
506 insurance, or, if no title insurance, designated by Seller. Closing may be conducted by mail or electronic means.

507 (ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale,
508 certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's
509 possession and no lien affidavit(s), and assignment(s) of leases. Seller shall provide Buyer with paid receipts for all work
510 done on the Property pursuant to this Contract. Buyer shall furnish and pay for, as applicable, the survey, flood elevation
511 certification, and documents required by Buyer's lender.

512 (iii) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title
513 Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the
514 escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, subject to
515 **COLLECTION of all closing funds**, disburse at Closing the brokerage fees to Broker and the net sale proceeds to
516 Seller.

517 **J. ESCROW CLOSING PROCEDURE:** If Title Commitment issued pursuant to Paragraph 9(c) does not provide
518 for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow
519 and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period
520 of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer
521 shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt
522 of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Deposit and all Closing funds
523 paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with
524 such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to
525 Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the
526 Deposit, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be
527 available to Buyer by virtue of warranties contained in the deed or bill of sale.

528 **K. PRORATIONS; CREDITS:** The following recurring items will be made current (if applicable) and prorated as of
529 the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes
530 (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents
531 and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in
532 which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by
533 prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to
534 Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current
535 year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing
536 occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be
537 prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then
538 taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of
539 year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated

STANDARDS FOR REAL ESTATE TRANSACTIONS ("STANDARDS") CONTINUED

based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

M. RISK OF LOSS: If, after Effective Date, but before Closing, Property is damaged by fire or other casualty ("Casualty Loss") and cost of restoration (which shall include cost of pruning or removing damaged trees) does not exceed 1.5% of Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to terms of this Contract. If restoration is not completed as of Closing, a sum equal to 125% of estimated cost to complete restoration (not to exceed 1.5% of Purchase Price), will be escrowed at Closing. If actual cost of restoration exceeds escrowed amount, Seller shall pay such actual costs (but, not in excess of 1.5% of Purchase Price). Any unused portion of escrowed amount shall be returned to Seller. If cost of restoration exceeds 1.5% of Purchase Price, Buyer shall elect to either take Property "as is" together with the 1.5%, or receive a refund of the Deposit, thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be cost of pruning or removal.

N. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneously with Closing or deferred) under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including execution of documents; provided, however, cooperating party shall incur no liability or expense related to the Exchange, and Closing shall not be contingent upon, nor extended or delayed by, such Exchange.

O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

P. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

Q. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

S. COLLECTION or COLLECTED: "COLLECTION" or "COLLECTED" means any checks tendered or received, including Deposits, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

T. LOAN COMMITMENT: "Loan Commitment" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower. Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Commitment for purposes of this Contract.

U. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county in which the Real Property is located.

V. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"): If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires the buyer of the real property to withhold 10% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding. Due to the complexity and potential risks of FIRPTA, Buyer and Seller should seek legal and tax advice regarding compliance, particularly if an "exemption" is claimed on the sale of residential property for \$300,000 or less.

(i) No withholding is required under Section 1445 if the Seller is not a "foreign person," provided Buyer accepts proof of same from Seller, which may include Buyer's receipt of certification of non-foreign status from Seller, signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification

658 THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF NOT FULLY UNDERSTOOD, SEEK THE
659 ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

660 THIS FORM HAS BEEN APPROVED BY THE FLORIDA REALTORS AND THE FLORIDA BAR.

661 *Approval of this form by the Florida Realtors and The Florida Bar does not constitute an opinion that any of the terms*
662 *and conditions in this Contract should be accepted by the parties in a particular transaction. Terms and conditions*
663 *should be negotiated based upon the respective interests, objectives and bargaining positions of all interested*
664 *persons.*

665 AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK
666 TO BE COMPLETED.

667

668

669* Buyer: _____ Date: _____

670

671

672

673

674* Buyer: _____ Date: _____

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677

678

679* Seller: _____ Date: _____

680

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682

683

684* Seller: _____ Date: _____

685

686

687 Buyer's address for purposes of notice

Seller's address for purposes of notice

688* _____

689* _____

690* _____

691

692 **BROKER:** Listing and Cooperating Brokers, if any, named below (collectively, "Broker"), are the only Brokers entitled
693 to compensation in connection with this Contract. Instruction to Closing Agent: Seller and Buyer direct Closing Agent
694 to disburse at Closing the full amount of the brokerage fees as specified in separate brokerage
695 agreements with the parties and cooperative agreements between the Brokers, except to the extent Broker has
696 retained such fees from the escrowed funds. This Contract shall not modify any MLS or other offer of compensation
697 made by Seller or Listing Broker to Cooperating Brokers.

698

699*

700 Cooperating Sales Associate, if any

Listing Sales Associate

701

702*

703*

704 Cooperating Broker, if any

Listing Broker

EXHIBIT “B”

None

APPRAISAL REPORT

of

Penna Court Motel
4750 Ridgewood Avenue
Port Orange, Florida 32127
prepared for
Ms. Linda Johnson
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Date of Value: May 6, 2015

Date of Inspection: May 6, 2015 (*most recent inspection*)

Date of Report: May 26, 2015

Prepared By: Southern Appraisal Corporation
800 South Nova Road, Suite M
Ormond Beach, Florida 32174

800 S. Nova Road, Suite M
Ormond Beach, Florida 32174
Email: southernappraisal@cfl.rr.com

Phone (386) 672-4533
FAX (386) 672-9214

May 26, 2015

Ms. Linda Johnson
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

Re: Appraisal of the Penna Court Motel property located at 4750 Ridgewood Avenue in the City of Port Orange, Volusia County, Florida 32127.

Dear Ms. Johnson:

In accordance with your request, we have appraised the above referenced property for the purpose of estimating the market value of the fee simple interest of the subject property as of May 6, 2015. This appraisal is intended to comply with the reporting requirements set forth under Standard Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice for an Appraisal Report. We have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three year period immediately preceding acceptance of this assignment. The function of the appraisal is to assist in acquisition and possible Community Development Block Grant funding. The intended user is City of Port Orange or assigns.

It is our opinion that the Market Value of the Fee Simple Interest of the subject property, under the assumptions and limiting conditions of this assignment, as of May 6, 2015, was:

ONE HUNDRED FIFTY-FIVE THOUSAND DOLLARS
(\$155,000)

This transmittal letter precedes the Appraisal Report of 45 pages plus 13 page addenda/ exhibits further describing the subject property and containing the reasoning and pertinent data leading to the opinion of value. This letter must remain attached to the report in order for the value opinion set forth to be considered valid. Your attention is directed to the "Underlying Assumptions and Limiting Conditions" which are considered usual for this type of assignment and which have been included at the beginning of the report.

The marketing period for the subject is estimated at about nine to twelve months assuming a competent marketing program, proper exposure and a market supported price; this assumes the retention of qualified marketing personnel familiar with the marketing of commercial/ investment properties. The exposure time for the subject is estimated at about 150 days

Ms. Linda Johnson
Page 2
May 26, 2015

retention of qualified marketing personnel familiar with the marketing of commercial/investment properties.

In addition to the underlying assumptions and limiting conditions attached, this appraisal report is made under the following extraordinary assumptions and/or hypothetical conditions which could have an impact on the value estimates or conclusions presented herein:

1. We do not have the required expertise for determining the presence of or absence of hazardous substances, defined as all hazardous or toxic materials, wastes, pollutants or contaminants (including, but not limited to, asbestos, PCB, UFFI, petroleum products of other raw materials or chemicals) used in construction, or otherwise present on the property. We assume no responsibility for the studies or analyses which would be required to determine the presence or absence of such substances. We do not assume responsibility for loss as a result of the presence of such substances. The value estimate presented herein is based on the assumption that the subject property is not adversely affected by environmental contaminants.
2. That the subject property is as described herein. A current boundary survey was not provided and would be required to determine the precise size and dimensional characteristics of the subject. We reserve the right to adjust the value indication estimated herein based upon review of a current boundary survey should such survey indicate a site different from that as described herein.

We certify that we have the competency and expertise to complete this assignment based upon our education, experience and familiarity with similar properties.

We trust that this appraisal report is sufficient for your purposes. If we can furnish additional information, please contact us.

Yours very truly,



Charles D. Spano, Jr., MAI
State-Certified General Real Estate Appraiser RZ1159



Peter A. Gagne
State-Certified General Real Estate Appraiser RZ1041

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SUMMARY OF SALIENT FACTS AND IMPORTANT CONCLUSIONS

<u>Date of Value:</u>	May 6, 2015
<u>Date of Report:</u>	May 26, 2015
<u>Apparent Owners:</u>	Charles Ray Snyder 405 Layette Street Port Orange, FL 32127
<u>Appraisal Prepared For:</u>	Ms. Linda Johnson City of Port Orange 1000 City Center Circle Port Orange, FL 32129
<u>Census Tract:</u>	825.11 (2010 Census)
<u>Location of Property:</u>	4750 Ridgewood Avenue, Port Orange, 32127
<u>Zoning & Permitted Uses:</u>	RD, Ridgewood Development District, by the City of Port Orange permitting a mixture of office, commercial, warehouse/storage, and limited industrial uses.
<u>Present Use:</u>	Closed 12 unit motel with owner's apartment and office
<u>Highest and Best Use:</u>	General commercial development
<u>Site:</u>	Slightly irregular shaped parcel containing about 28,100 square feet or 0.65 acre more or less (subject to survey)
<u>Major Improvements:</u>	A closed 12-unit motel facility with office and owners quarters identified as the Penna Court Motel. The improvements were built in 1952/1971 and are in poor overall condition.
<u>Indicated Value by Cost Approach:</u>	N/A
<u>Indicated Value by Income Approach:</u>	N/A
<u>Indicated Value by Sales Comparison Approach:</u>	\$155,000

FINAL ESTIMATE OF DEFINED VALUE

This certification cannot be separated from the attached appraisal report.

We hereby certify that, in our opinion, the Market Value of the Fee Simple Interest of the subject property, under the assumptions and limiting conditions of this assignment, as of May 6, 2015, was:

**ONE HUNDRED FIFTY-FIVE THOUSAND DOLLARS
(\$155,000)**

In addition to the underlying assumptions and limiting conditions attached, this appraisal report is made under the following extraordinary assumptions and/or hypothetical conditions which could have an impact on the value estimates or conclusions presented herein:

1. We do not have the required expertise for determining the presence of or absence of hazardous substances, defined as all hazardous or toxic materials, wastes, pollutants or contaminants (including, but not limited to, asbestos, PCB, UFFI, petroleum products or other raw materials or chemicals) used in construction, or otherwise present on the property. We assume no responsibility for the studies or analyses which would be required to determine the presence or absence of such substances. We do not assume responsibility for loss as a result of the presence of such substances. The value estimate presented herein is based on the assumption that the subject property is not adversely affected by environmental contaminants.
2. That the subject property is as described herein. A current boundary survey was not provided and would be required to determine the precise size and dimensional characteristics of the subject. We reserve the right to adjust the value indication estimated herein based upon review of a current boundary survey should such survey indicate a site different from that as described herein.



Charles D. Spano, Jr., MAI
State-Certified General Real Estate
Appraiser RZ1159



Peter A. Gagne
State-Certified General Real Estate
Appraiser RZ1041

CERTIFICATION

We certify that, to the best of our knowledge and belief, the statements of fact contained in this report, upon which the analyses, opinions and conclusions expressed herein are based, are true and correct, subject to the assumptions and limiting conditions explained in this report. This appraisal report sets forth all of the limiting conditions (imposed by the terms of this assignment or by the undersigned) affecting the analyses, opinions, and conclusions contained in this report and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.

Employment in and compensation for making this appraisal are in no way contingent upon the value estimate reported, and we certify that, unless otherwise noted in this appraisal report, we have no present or contemplated future interest in the real estate that is the subject of this appraisal report. We have no personal interest or bias with respect to the subject matter of this appraisal report or the parties involved. Our compensation was not contingent upon the reporting of a value estimate or direction in value estimate that favors the cause of the client or any other party nor is it contingent on the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of the appraisal.

This appraisal assignment and/or any estimate of value or references thereto was not based on a requested minimum valuation, a specific valuation, or the approval of a loan or other such encumbrances.

The analysis, opinions, and conclusions are limited only by the assumptions and limiting conditions reported herein, and are our personal and unbiased professional analyses, opinions, and conclusions; this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice.

This appraisal report, including all analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with and is subject to the requirements of the Code of Professional Ethics of the Appraisal Institute and the Uniform Standards of Professional Appraisal Practice (USPAP.) We have performed within the context of the competency provision of the Uniform Standards of Professional Appraisal Practice.

The use of this report is subject to the requirements of the Appraisal Institute relating to review by duly authorized representatives of the above named organization.

The Appraisal Institute conducts a voluntary program of continuing professional education. By completing prescribed minimum requirements, designated members of the Appraisal Institute are awarded periodic educational certificates/recertification. Charles D. Spano, Jr. is presently certified under the continuing education program.

We do not authorize the out-of-context quoting from or partial reprinting of this appraisal report. Further, neither all nor any part of this appraisal report shall be disseminated to the general public by the use of media for public communication without prior written consent of the appraiser signing this appraisal report. Any disclosure of the contents of this report is governed by by-laws and regulations of the Appraisal Institute.

The effective date of the value estimate reported in this assignment was: **May 6, 2015.**

The final value estimate for the subject real property, under the assumptions and conditions of this assignment and as of the valuation date, was: **\$155,000.**

We have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three year period immediately preceding acceptance of this assignment.

In addition to the underlying assumptions and limiting conditions attached, this appraisal report is made under the following extraordinary assumptions and/or hypothetical conditions which could have an impact on the value estimates or conclusions presented herein:

1. We do not have the required expertise for determining the presence of or absence of hazardous substances, defined as all hazardous or toxic materials, wastes, pollutants or contaminants (including, but not limited to, asbestos, PCB, UFFI, petroleum products or other raw materials or chemicals) used in construction, or otherwise present on the property. We assume no responsibility for the studies or analyses which would be required to determine the presence or absence of such substances. We do not assume responsibility for loss as a result of the presence of such substances. The value estimate presented herein is based on the assumption that the subject property is not adversely affected by environmental contaminants.
2. That the subject property is as described herein. A current boundary survey was not provided and would be required to determine the precise size and dimensional characteristics of the subject. We reserve the right to adjust the value indication estimated herein based upon review of a current boundary survey should such survey indicate a site different from that as described herein.

Unless indicated otherwise in this report, no one other than the undersigned has rendered significant professional assistance in the preparation of this report or in the value estimate or other estimates reported.

We certify that we have the competency and expertise to complete this assignment based upon our education, experience and familiarity with similar properties.

This Certificate is in accordance with the Code of Professional Ethics of the Appraisal Institute effective January 1, 2003, and the Uniform Standards of Professional Appraisal Practice. It is not a certification under Florida Real Estate License Law Chapter 475 effective October 1, 1988. The Florida Real Estate Commission has implemented its criteria for the State Voluntary Certification Program for real estate appraisers; the signatory (ies) to this report are currently certified under Florida requirements.



Charles D. Spano, Jr., MAI
State-Certified General Real Estate
Appraiser RZ1159
did X did not
interior exterior X
inspect the property.



Peter A. Gagne
State-Certified General Real Estate
Appraiser RZ1041
did X did not
interior X exterior X
inspect the property.

ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is intended to comply with the reporting requirements set forth under Standard Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice for an Appraisal Report.

The various value indications developed in this appraisal report are only indications. They were developed through the various approaches to value to give weight to those factors which, when properly analyzed, enable the appraisers to reach a value conclusion. These indications of value are not to be used in making a summation appraisal by combination of values created by another appraiser, and such values are invalid if so used. The current purchasing power of the dollar is the basis for value reported unless otherwise indicated.

The distribution of the total valuation as between land and improvements applies (if applicable) only under the existing program of utilization. The separate estimates for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used.

The soil of the subject appears to be firm and solid unless otherwise noted; subsidence in the area is unknown or uncommon. The appraisers assume that there are no hidden conditions of the property, subsoil, or structures which would render it more or less valuable than otherwise apparently comparable property. The appraisers assume no responsibility for such conditions or for engineering which might be required to discover them; we are not qualified structural engineers and a study by a qualified engineer/architect would be required in order to determine any structural deficiencies or code non-compliance.

No responsibility is assumed by the appraisers for matters which are legal in nature, nor is any opinion of title rendered herewith. This appraisal assumes good title, and the legal description used herein is assumed to be correct.

We have assumed that unless otherwise indicated, the property and any/all improvements thereon is/are in compliance with all required building and fire codes, etc., in effect as of the date of valuation; various governmental and other regulatory agencies continually update and change building code and similar requirements, and it is recommended that a building or other code compliance inspection be obtained to point out any items and costs which may be required to achieve compliance.

Unless otherwise noted in the attached report, we have assumed that the subject property is not encumbered by a disproportionate amount of environmental jurisdictional land (typically exceeding 25 percent of gross size); an environmental survey is normally required to ascertain the amount of potentially unusable land or land subject to environmental constraints which would prohibit conventional development.

Any liens or encumbrances, except those noted in this appraisal report, are disregarded, and the property has been appraised as though free and clear of such limitations.

Responsible ownership and competent management are assumed in the appraisal of this property, where appropriate.

The plot plans, site plans, and related sketches included in this report are included merely to assist the reader in visualizing the property and are not to be construed as being actual surveys. This data is included for informational purposes only, and should not be relied on in lieu of survey or similar data.

Any proposed improvements are assumed to be in a good workmanlike manner in accordance with the submitted plans and specifications.

Certain data used in compiling this report was furnished from sources considered reliable; however, no guarantee is made for the correctness of such data, although the data has been reasonably checked and is believed to be correct.

Possession of this report, or any copy thereof, does not carry with it the right of publication, in whole or in part, without the express consent of the appraiser.

The appraisers herein, by reason of this appraisal, shall not be required to give testimony or attendance in court or at any governmental hearing with reference to the property in question, unless previous arrangements have been made therefore.

Disclosure of the contents of this estimate is governed by Regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser or the firm with which he is connected, or any reference to the Appraisal Institute, or to the MAI designation) shall be disseminated to the public through advertising media, public relations media, news media, sales media, or any other public means of communication without prior written consent and approval of the undersigned.

Unless otherwise stated in this report, the existence of hazardous substances, including without limitation asbestos, polychlorinated biphenyls, petroleum leakage, or agricultural chemicals, which may or may not be present on the property, or other environmental conditions, were not called to the attention of nor did the appraiser become aware of such during the appraiser's inspection. The appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated. The appraiser, however, is not qualified to test or recognize such substances or conditions. If the presence of such substances, such as asbestos, urea formaldehyde foam insulation, or other hazardous substances or environmental conditions, may affect the value of the property, the value estimated is predicated on the assumption that there is no such condition on or in the property or in such proximity thereto that it would cause a loss in value. No responsibility is assumed for any such conditions, nor for any expertise or engineering knowledge required to discover them.



Charles D. Spano, Jr., MAI
State-Certified General Real Estate
Appraiser RZ1159



Peter A. Gagne
State-Certified General Real Estate
Appraiser RZ1041



Aerial view of subject
(Volusia County Property Appraiser Photo)



View of subject looking westerly from
Ridgewood Avenue



View of the northerly subject building
looking southwesterly



Rear view of the southerly subject building
looking northeasterly



Rear view of the northerly subject building
looking southeasterly



View of subject looking easterly from western
property boundary



Typical interior view of subject Unit #1



Typical interior view of subject Unit #4 bathroom



Typical interior view of subject Unit #7



Typical interior view of subject Unit #8



Typical interior view of subject Unit #9



Typical interior view of subject Unit #10 bathroom Typical interior view of subject Unit #11



View looking southerly along Ridgewood Avenue

View looking northerly along Ridgewood Avenue

INTRODUCTION TO APPRAISAL

This introduction to the appraisal will set forth the basic parameters of this assignment. It will also provide basic information relevant to the property being appraised.

PURPOSE OF THE APPRAISAL

The purpose of this appraisal is to estimate the market value of the fee simple interest of the subject property under various parameters. This appraisal is intended to comply with the reporting requirements set forth under Standard Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice for an Appraisal Report. The objective of this report is to present certain aspects of the data and reasoning that have been used to reach the opinions of value. The appraiser is not responsible for unauthorized use of this report.

FUNCTION/INTENDED USE OF APPRAISAL

The function/intended use of this appraisal report is to assist in acquisition and possible Community Development Block Grant funding.

PRIOR APPRAISAL

We have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three year period immediately preceding acceptance of this assignment.

PROPERTY RIGHTS APPRAISED

The market value of the fee simple interest subject to the assumptions and limiting conditions of this assignment.

DATE OF VALUE ESTIMATE

May 6, 2015

IDENTIFICATION OF THE PROPERTY

The subject consists of the former Penna Court Motel located at 4750 Ridgewood Avenue in the City of Port Orange, Volusia County, Florida. The subject site is a slightly irregular shaped parcel containing about 28,100 square feet or 0.65 acre more or less (subject to survey). Improvements consist of two one-story masonry motel structures built in 1952 and 1971 containing 12 guest units, an office, a 2-bedroom owner's apartment, and a laundry/storage/maintenance room.

SCOPE OF WORK

The scope of the appraisal requires compliance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation and the Appraisal Institute. The standards contain rules that must be followed and specific guidelines that deal with the procedures to be followed in developing an appraisal, analysis, or opinion. These uniform standards set the requirements to communicate the appraisers' analyses, opinions, and conclusions in a manner that will be meaningful and not misleading in the marketplace. The scope of the assignment further requires compliance with the client's requirements.

An appraisal on the subject property has been prepared. The subject property data such as size, location, quality, and zoning are considered. Market data within the Greater Volusia County Area including vacant land sales and supply and demand are among the items researched, analyzed, and presented. Data from 2013 to the current date has been investigated and researched with heaviest reliance normally placed on the most recent data due to volatility of the local market economy over the past several years. The data is used to consider the highest and best use of the subject property and to conclude an opinion of the market value. Data sources include the Multiple Listing Service of the Daytona Beach Area Association of Realtors, LoopNet, MicroDecisions (a paid subscription based data service), local Realtors and builders/developers, discussion with other appraisers, bankers, and data within office files.

The appraisers lack the knowledge and experience with respect to the detection and measurement of hazardous substances. Therefore, this assignment does not cover the presence or absence of such substances as discussed in the Assumptions/Limiting Conditions section. However, any visual or obviously known hazardous substances affecting the property will be reported and an indication of its impact on value will be discussed.

The approaches typically considered in estimating value are the Cost Approach, the Direct Sales Comparison Approach, and the Income Approach. The subject improvements appear to have reached the end of their economic lives, are a non-conforming use, and their use as a motel appears to have been abandoned. Therefore, the Cost and Income Approaches are not applicable in this instance. The Sales Comparison Approach for the subject as if vacant has been prepared.

The documentation necessary to arrive at the value is considered in this appraisal report. A view of the exterior and interior is done to describe the property. Market data has been collected, confirmed, and analyzed. Comparable sales were chosen for their similar highest and best uses as outlined within the report. All sales and other pertinent data were analyzed and compared to the subject property based on their similarities and dissimilarities. The applicable approaches were considered and reconciled in reaching a final estimate of value.

The appraisers have previously certified (Letter of Transmittal and Certification page) that they have complied with the Competency Provision of the Uniform Standards of Professional Appraisal Practice. Competency applies to a variety of factors including familiarity with the specific property type, the market, the geographic area, and the analytical methods employed.

DEFINITION OF MARKET VALUE

1. Market value is defined in the Uniform Standards of Professional Appraisal Practice (USPAP) as follows:

A type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser as applicable in an appraisal. (USPAP, 2014-2015 Edition)

2. The following definition of market value is used by agencies that regulate federally insured financial institutions in the United States:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- o Buyer and seller are typically motivated;*
- o Both parties are well informed or well advised, and acting in what they consider their best interests;*
- o A reasonable time is allowed for exposure in the open market;*
- o Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
- o The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.*

Source: Federal Register, Volume 75, Number 237, December 10, 2010.

DEFINITION OF EXPOSURE TIME

The Dictionary of Real Estate Appraisal, 5th Edition, defines *Exposure Time* as:

1. The time a property remains on the market.
2. The estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based on an analysis of past events assuming a competitive and open market. See also marketing time.

Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed., s.v. "exposure time." (Chicago: Appraisal Institute, 2010).

DEFINITION OF MARKETING TIME

The Dictionary of Real Estate Appraisal, 5th Edition, defines *Marketing Time* as:

An opinion of the amount of time it might take to sell a real or personal interest at the concluded market value level during the period immediately after the effective date of an appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal. (Advisory Opinion 7 of the Appraisal Standards Board of The Appraisal Foundation and Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions" address the determination of reasonable exposure and marketing time.) See also exposure time.

Source: *Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed., s.v. "marketing time."*
(Chicago: Appraisal Institute, 2010).

TAX AND ASSESSMENT DATA

Assessed Value for Year 2014 Millage Rate 21.15960

<u>Tax Parcel Number</u>	<u>Land</u>	<u>Bldg.</u>	<u>Misc.</u>	<u>Just/ Assessed</u>	<u>Exempt</u>	<u>Taxable</u>	<u>Taxes</u>
6303-13-03-0080	\$90,480	\$151,799	\$7,056	\$249,335	\$0	\$249,335	\$5,275.82

Ad Valorem Taxes and assessments are due by March 31st and become delinquent if not paid by April 1st of each year. A 1% discount is applied if paid in February, a 2% discount is applied if paid in January, a 3% discount is applied if paid in December, and a 4% discount is applied if paid in November.

In addition to the ad valorem taxes, the subject is also assessed \$594.00 annually for Port Orange Storm Water. According to the Volusia County Tax Collector, the 2014 taxes and assessments have been paid; there are no delinquent taxes.

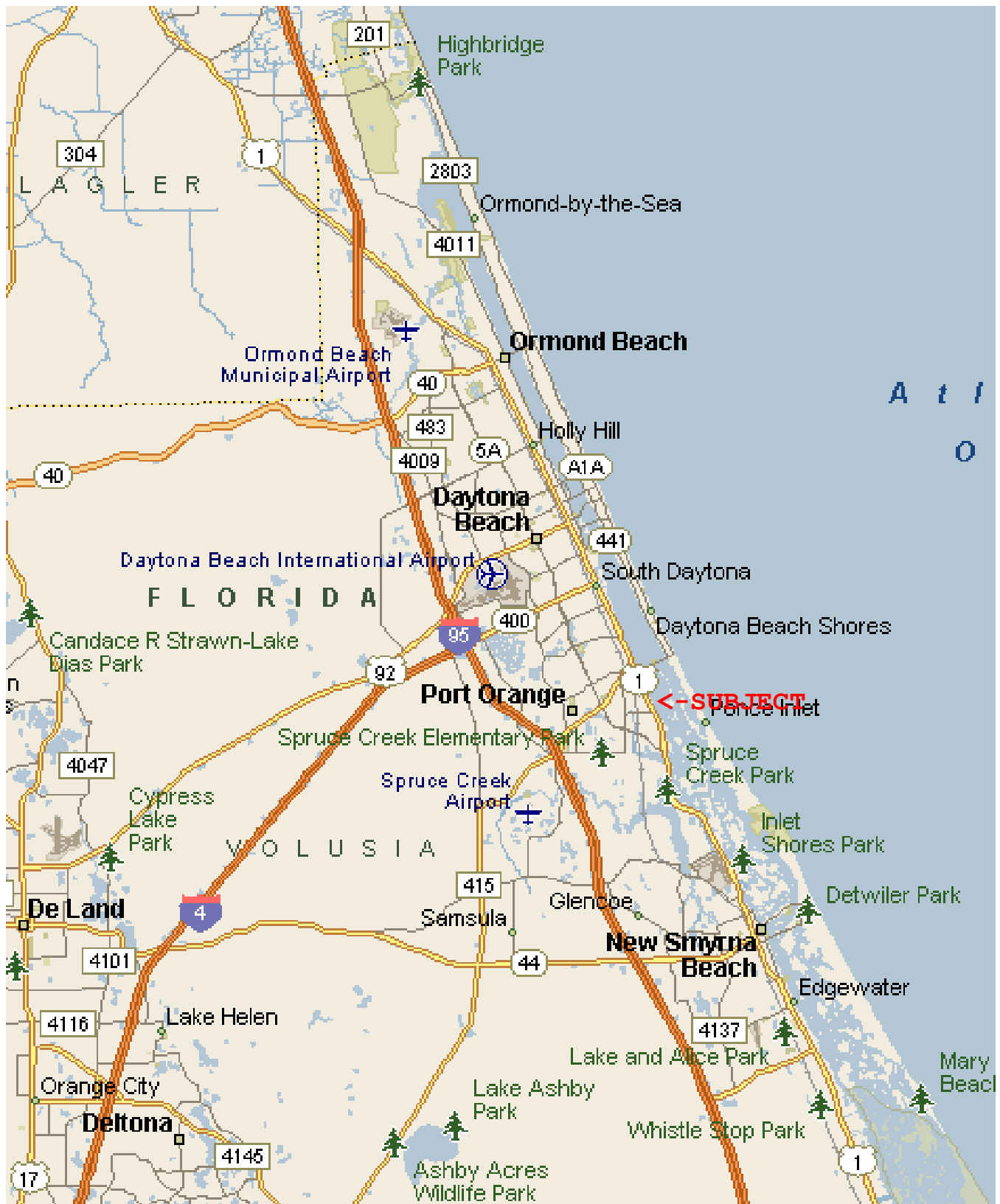
OWNERSHIP AND TITLE HISTORY

An Abstract was not furnished. Ownership and title information for the subject is based on review of tax roll/property appraiser data. Review of available data indicated the following transfers: A Quit Claim Deed dated January 29, 2011 and recorded in Official Records Book 6579 at pages 4156-4157, Public Records of Volusia County, Florida, transferred the subject from Steven E. Lambert (Seller) to Ross E. Lambert (Buyer) for an indicated nominal consideration. A Death Certificate dated November 8, 2013 and recorded in Official Records Book 6927 at page 2323, Public Records of Volusia County, Florida, transferred the subject to Ross Edward Lambert for an indicated nominal consideration. A Certificate of Title dated March 10, 2015 and recorded in Official Records Book 7093 at pages 572-573, Public Records of Volusia County, Florida, transferred the subject from Steven E. Lambert et al (Defendants) to Charles Ray Snyder (Plaintiff) for an indicated nominal consideration. Review of available data indicated no other transfers over the past five years. Current title appears to be held by Charles Ray Snyder. This information has been considered reasonably correct for the purposes of this report but is not guaranteed. A current title search is recommended.

SPECIAL ENCUMBRANCES

No special encroachments, easements, or similar encumbrances other than normal utility and related easements were noted based on review of available data. This data is considered reasonably correct for the purposes of this report but cannot be guaranteed. However, a current survey and title commitment are recommended.

GENERAL AREA MAP



GENERAL AREA DATA

Volusia County is a large geographical area on the east coast of Florida. The county contains a total area of approximately 1,113 square miles. The Greater Daytona Beach Area in the eastern portion of the county is the largest population center. DeLand, which is the seat of county government, is on the west side of the county. The other major population centers are the New Smyrna Beach-Edgewater area in the southeast portion of the county, and the City of Deltona in the southwest part of the county.

According to the State of Florida Office of Economic and Demographic Research, Volusia County had a 2010 census population of 494,593 persons, an 11.56% increase over the 2000 census population of 443,343 persons; the estimated April 1, 2012, population was 497,145 persons, a 0.52 percent increase over 2010 levels. The City of Oak Hill is the smallest city in Volusia County with a 2012 estimated population of 1,788 persons (down by 4 persons from 2010), a decrease of 0.22% from 2010. The City of Deltona is the largest city in Volusia County with a 2010 census population of 85,281 persons, an increase of 22.63% over the 2000 census population of 69,543 persons; the estimated 2012 population was 85,182 persons, a 0.12% decrease from 2010. The largest single segment of the population still lives in unincorporated portions of the county with an estimated 115,757 persons in 2012, down from the 116,615 persons of 2010 living outside incorporated city boundaries.

In addition to its location on the Florida East Coast with over 25 miles of white, sandy beaches, the area is only minutes away from various Florida tourist attractions including Walt Disney World, the John F. Kennedy Space Center, Sea World, Silver Springs, Cypress Gardens, historic St. Augustine, etc. All of these areas are within 100 miles of Volusia County, with excellent access by either the interstate highway or state roadway system. The Daytona International Speedway and Daytona USA, an interactive theme attraction, are located on US-92 and draw visitors from central Florida and around the world.

The county is divided in two sections by Rima Ridge, a largely undeveloped swath of land that extends from Flagler County on the north to Brevard County on the south. This area contains predominately low topography with minimal development and is largely a water recharge area and includes the Tiger Bay State Forest, the Farnton Wildlife Management Area, the Tomoka Wildlife Management Area, the South Tomoka Wildlife Management Area, etc. Developed areas to the east are generally referred to as the Greater Daytona Beach and New Smyrna Beach areas, while the area to the west is generally referred to as the Greater DeLand Area which includes the City of Deltona, Volusia County's newest city.

The Greater Daytona Beach Area is one of the principal metropolitan areas on the central east coast of Florida, and includes the eastern portion of Volusia County. General boundaries can be defined as Flagler County on the north, the Atlantic Ocean on the east, New Smyrna Beach on the south, and the undeveloped area along Rima Ridge to the west. This area is 60 miles northeast of Orlando and 260 miles north of Miami. The north-south distance of the Greater Daytona Beach Area measures approximately 25 miles; the east-west distance is approximately five miles. The area is comprised of seven incorporated cities: Daytona Beach, Ormond Beach, Port Orange, Holly Hill, South Daytona, Daytona Beach Shores, and Ponce Inlet. There are also several unincorporated areas including Wilbur-by-the-Sea, Ormond-by-the-Sea, etc.

The Greater DeLand area comprises the western portion of Volusia County. General boundaries can be defined as State Road 40 on the north, the St. Johns River on the west, State Road 415 on the south, and the undeveloped area along Rima Ridge to the east. The Greater DeLand area contains a variety of residential, commercial and institutional development with rural residential and agricultural uses located outside of the developed cities and towns. The City of DeLand is the county seat of Volusia County and includes a relatively new county courthouse, a municipal airport, Stetson College, etc.

The northwestern portion of the county is predominately rural in nature and contains several small towns including Pierson, Seville, Emporia, DeLeon Springs, Barberville, etc. This portion of the county consists of rural agricultural land and is typically used for growing fern and citrus. According to the DeLand Area Chamber of Commerce, agribusiness is a \$200 million industry in Volusia County with more than 80% of the county's agricultural interests located in West Volusia County. The cut fern and foliage industries reportedly represent the world's largest crops of leatherleaf and asparagus fern and other foliage and generate \$100 million in annual sales. Over the past century, citrus has also been a major crop in the northwestern portion of the county. However, the citrus crop was severely damaged by freezes in the mid-1980's. The area is known for its excellent citrus soil and a number of the growers have re-planted citrus trees in hopes of revitalizing this industry. However, they face numerous challenges including the lack of packing houses, the lack of unskilled workers, and the uncertainty of future freeze damage.

Transportation: Volusia County is served by all major forms of transportation, including an excellent local, state and federal highway system. The major roadways include Interstate 95, Interstate 4, US Highway 1, US Highways 17 and 92, State Road A1A, State Road 40, State Road 44, State Road 415, State Road 11, etc.

Education: Volusia County has an adequate number of public schools at all levels (elementary, junior, and senior high schools). These schools are conveniently located throughout the area. Many older school buildings have been recently upgraded, renovated, or replaced. New facilities have been added where needed. In addition to the public facilities, there are several parochial and private schools throughout the area. College level educational facilities in the City of Daytona Beach include Bethune Cookman University, Embry-Riddle Aeronautical University, and Daytona State College. Daytona State College also has satellite campuses in other areas including DeLand, New Smyrna Beach, and Palm Coast. The University of Central Florida operates a resident center in the area and Stetson University is located in the City of DeLand.

Hospital and Medical Services: The availability of health care facilities is excellent throughout Volusia County. There are a number of modern hospitals scattered throughout the area. Major hospital facilities are located in the Cities of Ormond Beach, Daytona Beach, New Smyrna Beach, Port Orange and DeLand. Additional medical facilities are planned for developing areas such as Deltona. In addition to the hospital facilities, there are numerous nursing homes and convalescent centers, along with several private health care facilities. Ambulance service is available throughout Volusia County with strategically located ambulance stations.

Religion: There are numerous churches and houses of worship of various denominations within Volusia County. Several of the churches offer ancillary programs such as nursery schools, kindergarten, child care, etc.

Recreational and Cultural Facilities: The County of Volusia and many of the cities have diversified recreation programs. Each of the cities within Volusia County typically has its own city-sponsored recreational program and facilities. In most cases, these programs and facilities are open to all area residents. In cases of limited space, etc., primary consideration is given to city residents.

The various cities, as well as the county, have library and museum facilities as well as parks, playgrounds, social halls, community meeting halls, etc. The Greater Daytona Beach Area, being a resort community, relies heavily on its excellent recreational facilities in order to continue attracting the tourists who are responsible for the bulk of the area economy. The various city governments work closely with the Volusia County School Board to create various special programs for both children and adults. One of the area's greatest attractions is its 25 miles of white sandy beaches, most of which are open to passenger vehicles. Several small areas of the beach have been closed to vehicular access, but are still open for pedestrian use. A civic center (Ocean Center) is located on the peninsula between Main Street and Seabreeze Boulevard in Daytona Beach. The county fairgrounds are located on SR-44 just east of I-4 near Deland.

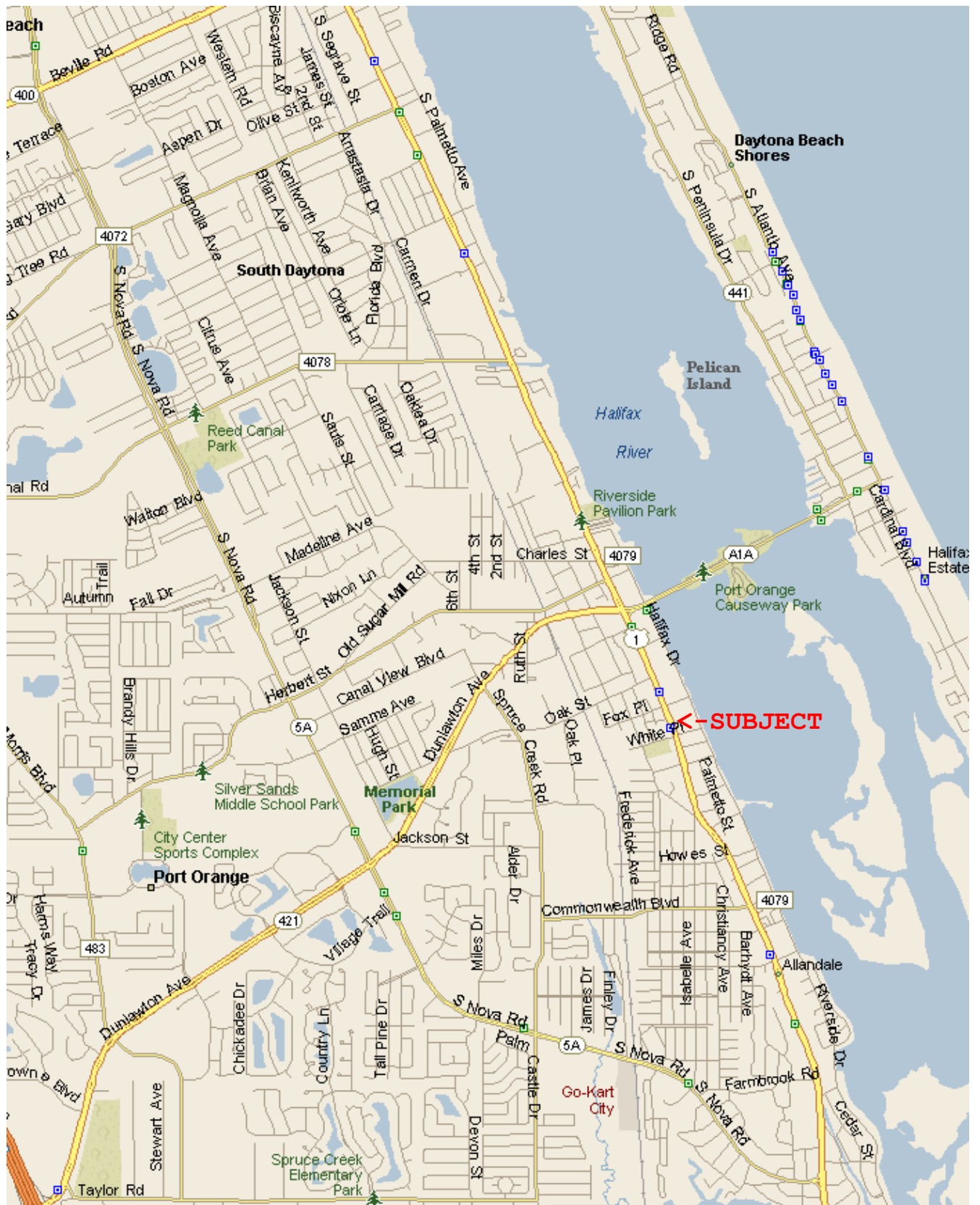
Numerous public and private golf courses are located throughout Volusia County. Most of these golf courses have a variety of residential development surrounding them. One of the areas' newest courses is the LPGA course located west of I-95, southeast of LPGA Boulevard (formerly 11th Street) and north of US-92 in Daytona Beach. This is the new world headquarters of the Ladies Professional Golf Association.

Economy: Volusia County appears to be prosperous and economically sound with a steadily increasing population. The relatively high growth rate is expected to continue for the foreseeable future, and the demand thus created will protect real estate values in established areas and will provide the basis for continued expansion in new areas.

The real estate tax structure in Volusia County also appears to be sound. The property appraiser's office conducts an ongoing reassessment of the county tax roll. The assessments are utilized by the incorporated communities and various special districts for their tax purposes.

Volusia County and the various incorporated areas have various planning, zoning, and similar regulatory boards. These agencies work closely to coordinate efforts in this field. The Volusia Council of Governments provides technical assistance to the communities when requested.

SUBJECT LOCATION MAP



NEIGHBORHOOD DISCUSSION

The neighborhood surrounding the subject can be described as the area lying west of the Halifax River, east of the Florida East Coast railroad tracks, south of Dunlawton Avenue, and north of Nova Road. This neighborhood encompasses the southeastern portion of the City of Port Orange and includes small pockets of unincorporated Volusia County. The neighborhood is in the southeast portion of the Greater Daytona Beach Area mainland.

The neighborhood contains a mixture of commercial, industrial and residential uses. Commercial development is located primarily along the major traffic arteries such as Ridgewood Avenue (US-1) and Dunlawton Avenue. The commercial development includes a variety of retail sales and services, personal services, restaurants, offices, etc. Industrial development including light manufacturing, assembly and warehouses are primarily located along the Florida East Coast Railroad tracks and along Oak Street. Residential development occurs generally outside of the commercial or industrial influence with some older residential improvements interspersed around the newer commercial and industrial development. Residential development in the area includes single- and multi-family residential development and mobile home parks. The City of Port Orange is currently planning to redevelop the area north of Dunlawton Avenue between the Halifax River and US-1 with a mixed use commercial development.

The neighborhood has a varying topography ranging from areas of lower elevation to properties well above street grade. Police and fire protection are provided to the neighborhood by the City of Port Orange or Volusia County.

The major roadways serving the neighborhood on an east/west basis are Dunlawton Avenue on the northerly boundary, Oak Street and Commonwealth Boulevard in the central portion of the neighborhood, and Nova Road on the southerly boundary. The major north/south roadway throughout the neighborhood is Ridgewood Avenue (US-1).

Public transportation within the neighborhood is provided by the VoTran Bus System which has regular routes throughout the neighborhood. There are a variety of public and private schools within or in close proximity to the subject neighborhood. Churches of various denominations are scattered throughout the neighborhood and in the surrounding vicinity. Shopping is available within the subject neighborhood and in areas immediately adjacent. Medical facilities are located in the City of Port Orange on Dunlawton Avenue west of the subject neighborhood and in the City of Daytona Beach to the north.

APPARENT OWNER

Charles Ray Snyder
405 Layette Street
Port Orange, FL 32127

LOCATION OF PROPERTY

4750 Ridgewood Avenue in the City of Port Orange,
Volusia County, Florida

APPRAISAL MADE FOR

Ms. Linda Johnson
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

DATE SUBJECT INSPECTED

May 6, 2015 (most recent)

**PERSONS WHO ASSISTED IN
THE ANALYSES, CONCLUSIONS,
AND OPINIONS SET FORTH
IN THIS REPORT**

None except signees

ZONING

The subject is zoned RD, Ridgewood Development District, by the City of Port Orange. The RD district is intended to accommodate a mixture of office, commercial, warehousing/storage, and limited industrial uses. Permitted uses include retail sales and services, restaurants, offices, business and personal services, hotels, manufacturing, etc.

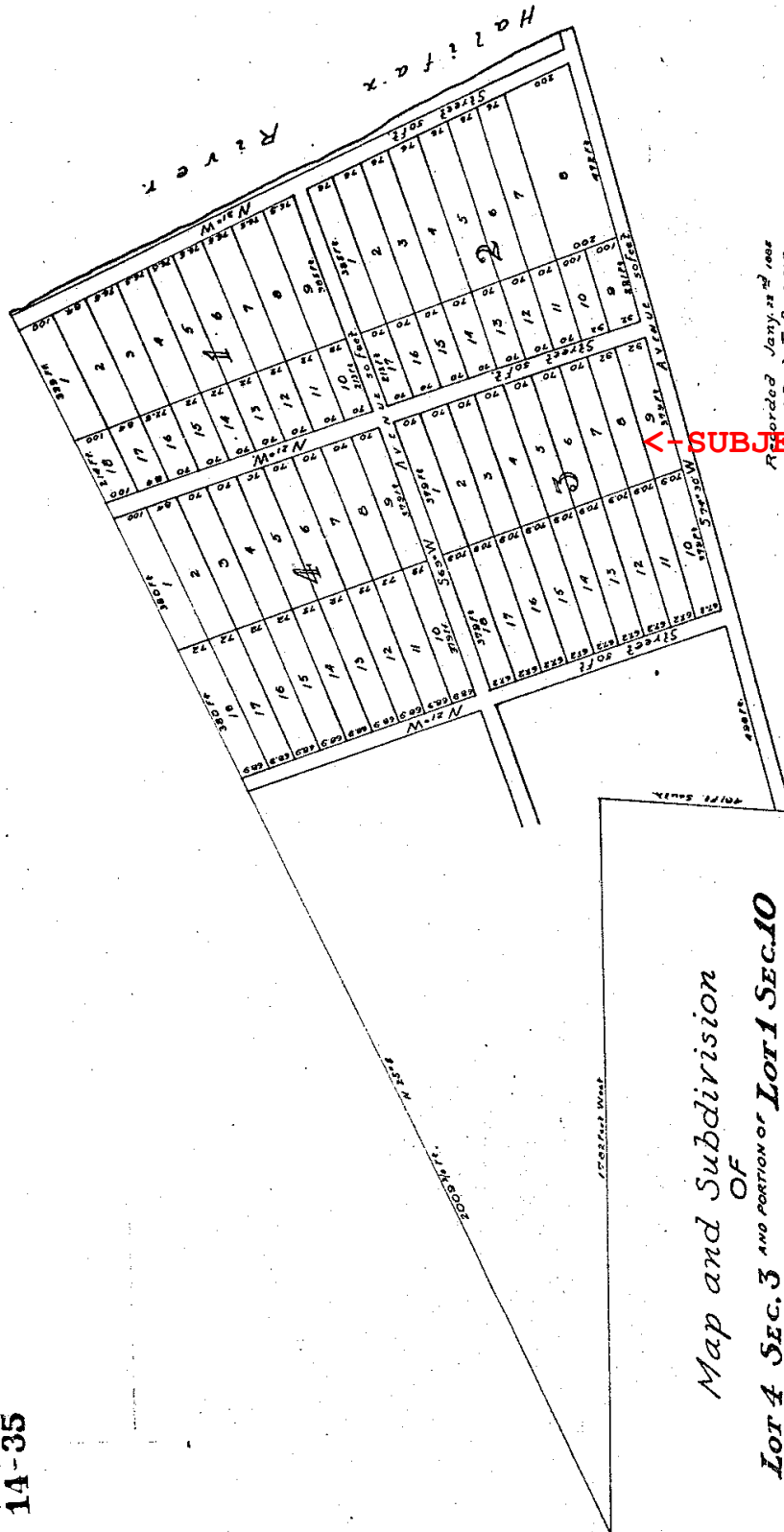
LEGAL DESCRIPTION

Lot 8, Block 3, Allen's Subdivision (also known as Allen's Additions to Port Orange) except right-of-way, as per map recorded in Deed Book "T", Page 415 and Plat Book 14, Page 35, of the Public Records of Volusia County, Florida.

SUBDIVISION PLAT

14-35

14-35



← SUBJECT

Map and Subdivision
OF
Lot 4 Sec. 3 AND PORTION OF Lot 1 Sec. 10
Township 16 South Range 33 East.
Volusia Co. Fla.

THOMAS T. ALLEN.

J.W. Douglas
C.E.

Scale 1/4" CA to 1 inch

A TRUE COPY OF MAP
Deed Book T Page 415
Walter Hawkins
Clerk of Circuit Court
Volusia Co. Fla.

1387

DESCRIPTION OF THE PROPERTY

Site Data:

The subject property is physically located on the west side of Ridgewood Avenue (US-1) between White Place and Fox Place in the City of Port Orange, Volusia County, Florida; the physical address is 4750 Ridgewood Avenue. The size, shape, and area of the subject were based upon review of the legal description contained within a Warranty Deed recorded in Official Records Book 7093 at pages 572-573 of the Public Records of Volusia County, Florida, a plat recorded in Map Book 14 at page 35 of the Public Records of Volusia County, Florida, Volusia County Property Appraiser data, and a visual inspection. The information and description contained herein is considered reasonably correct for the purposes of this report, but cannot be guaranteed; a current survey is recommended.

The subject appears to be slightly irregular in shape and appears to contain about 28,100± square feet or 0.65± acre more or less. Dimensions include about 92± feet of frontage on the west side of Ridgewood Avenue and a depth of about 345± feet; the westerly boundary appears to measure 70.9 feet.

The topography of the property is typically level and at grade with surrounding properties and roadways. According to FEMA Flood Insurance Rate Map Number 12127C0388H revised February 19, 2014, the subject appears to be located within Flood Zone AE, a special flood hazard area subject to inundation by the 1% annual chance flood; base flood elevations (6-7 feet) determined. Although no soil survey was provided, inspection of the property revealed no other apparent adverse conditions. This topography is typical of the area and the subject is similar to surrounding properties with respect to topography.

Reference is made to the preceding subdivision plat for the orientation and dimensional characteristics of the subject (prior to US-1 widening). Dimensional and similar characteristics indicated are based on a review of information obtained from the above mentioned sources. This information is considered reasonably correct for the purposes of this report, but cannot be guaranteed; a current survey is recommended.

Access:

Access to the subject is via the frontage on Ridgewood Avenue (US-1). Ridgewood Avenue is a four-lane median-divided concrete paved roadway with an undetermined right-of-way in the vicinity of the subject. There are sidewalks, curbs/gutters, and streetlights in the immediate vicinity of the subject

Utilities Available:

Utilities available to the area surrounding the subject include municipal water and sanitary sewer service provided to the area by the City of Port Orange, electricity provided by Florida Power and Light, and telephone service provided by AT & T and others.

Description of Improvements:

The subject is identified as the Penna Court Motel. The subject is improved with two 1-story masonry motel buildings that were built in 1952 and 1971 according to Volusia County Property Appraiser data containing 12 guest units including 5 efficiency units and 7 one-bedroom apartment units, a rental office, a 2-bedroom owner's apartment, and a laundry/ storage area. The southerly subject building contains 3,950 square feet and is apportioned with 7 one-bedroom units, 2 efficiency units, and the laundry/storage area. The northerly building contains 2,310 square feet and is apportioned with 3 efficiency units, the 2-bedroom owner's apartment, and the office. The subject improvements contain a total gross building area of about 6,260 square feet.

Basic construction details include: painted masonry exterior walls; a concrete foundation; and a composition shingle roof with aluminum soffits, gutters and downspouts. Windows are jalousie or fixed glass; doors are wood or metal. All rooms contain individual exterior access with covered entrances.

Interior finish includes tile floors, painted plaster/drywall or paneled walls, and painted plaster/drywall or suspended acoustical tile ceilings. Each unit is designed for a through-wall HVAC unit, although most HVAC units have been removed. Each unit includes a private tiled three-fixture bath including a bathtub and/or shower, sink, and toilet; two of the toilets and four of the sinks have been removed. All units contain small kitchenettes with sinks, range/oven combinations, and are designed to contain a refrigerator. However, some of the range/ovens and all of the refrigerators have been removed, along with some of the cabinetry. The units have been largely gutted, and the buildings are in generally poor overall condition.

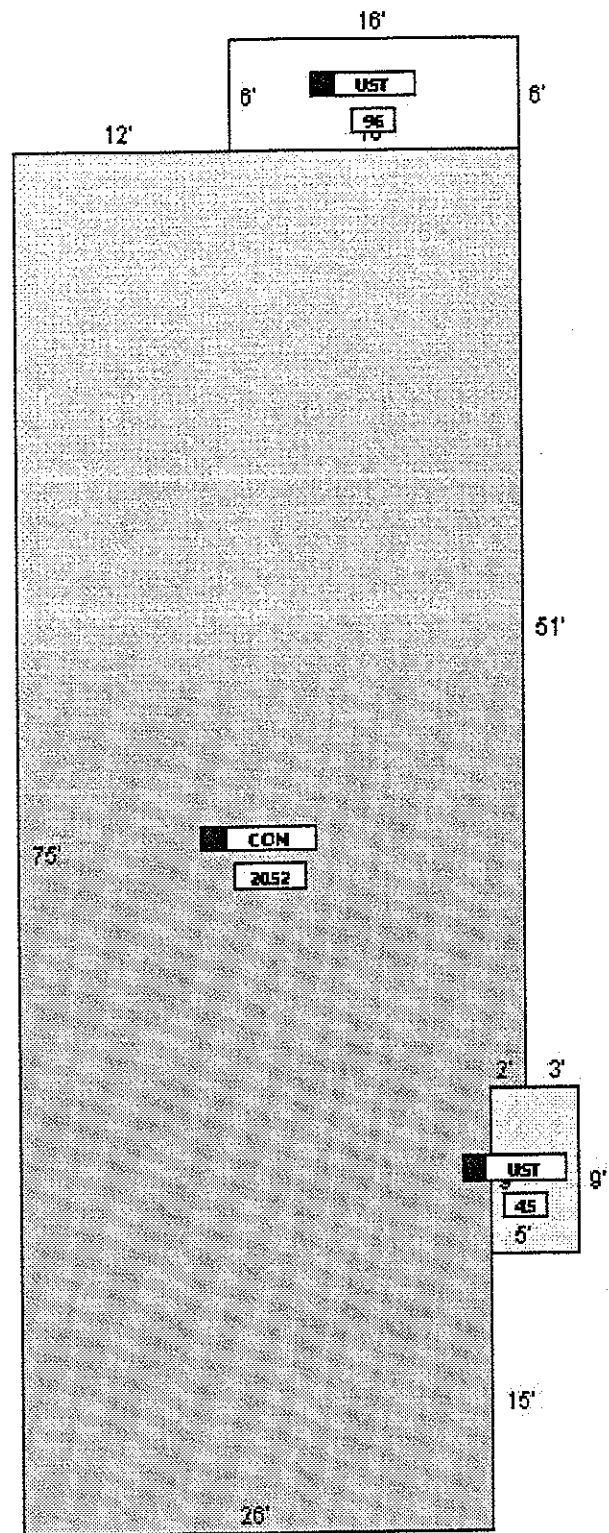
The office area consists of a single room adjacent to the owner's apartment with painted plaster walls/ceiling and tiled floors. This room also contains a provision for a window-unit HVAC unit (removed). The owner's apartment consists of a two-bedroom, one-bath apartment. Interior finish includes tiled floors, painted drywall walls, and popcorn ceilings. Windows are jalousie or fixed glass; doors are wood. Extra features include ceiling fans and provisions for through-wall HVAC units (removed). The laundry/storage area consists of a single room with painted plaster walls/ceiling and concrete floors. This room also contains two hot water heaters.

According to the City of Port Orange Community Development Department, the subject improvements became a non-conforming use on May 21, 2013 with the adoption of Ordinance 2013-5, which removed motel as a permitted use in the Ridgewood Development (RD) zoning district. According to the Land Development Code, an abandoned non-conforming use cannot be re-established. On January 12, 2015, the building/site was determined to be abandoned based on the criteria in the Land Development Code. Future use of the property will need to comply with the Land Development Code and Florida Building Code.

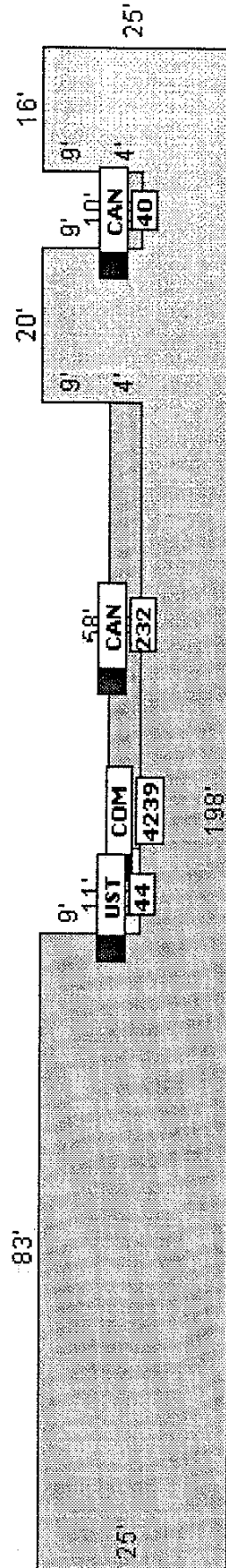
In addition to the primary building improvements, the subject also contains a concrete/asphalt paved parking area. Perimeter chain-link fencing is located along the northerly, easterly and southerly boundaries. Landscaping consists of shrubs, trees and grass.

The estimate of value contained in this report is for real property only. No items of personal property such as signs, light illumination fixtures, office/trade fixtures and equipment, etc., have been included except as indicated herein.

BUILDING SKETCH – Northerly Building



BUILDING SKETCH – Southerly Building



THE VALUATION PROCESS

Preparation of an appraisal is essentially a question-solving process and should follow a systematic procedure. The process generally begins when a client engages the appraiser to provide a specific valuation service, and generally concludes with delivery of the assignment results. The valuation process contains the appropriate steps for the assignment depending upon the intended use, nature of the property, agreed upon scope of work, and availability of data. The components of the valuation process are as follows.

Identification of the Problem The first step is to identify the problem to be solved. This involves identifying the client and intended users, the intended use of the appraisal, the purpose of the assignment (type and definition of value), the effective date of the opinion of value, the relevant characteristics of the property, and the assignment conditions.

Scope of Work Determination This is a critical decision that guides the remainder of the assignment. The scope of work encompasses all aspects of the valuation process including selection of the applicable approaches to value, the type and quantity of data gathered, sources of the data, geographic region of data, time period investigated, extent of data verification process, and extent of the property inspection.

Data Collection and Property Description General and specific data is collected on the market area, the subject property, and the comparable properties analyzed. General data involves the characteristics and trends of the region, city and neighborhood including social, economic, governmental, and environmental forces. Specific data involves characteristics of the subject and comparable properties analyzed such as the legal, physical, and locational attributes of the properties. Other data in addition to comparable sales is collected including listings, offerings, vacancies, cost and depreciation, income and expense, capitalization rates, etc. The amount and type of data collected is dependent upon the scope of work determination.

Data Analysis The two components of data analysis are market analysis and highest and best use analysis. Market analysis is a study of market conditions including demand, supply and marketability. This information is utilized during application of the applicable approaches to value. Highest and best use analysis considers the four fundamental factors of legally permissible, physically possible, financially feasible, and maximally productive to determine the use or uses upon which the valuation process is based. For an improved property, this begins with an analysis of the highest and best use as though vacant. An analysis of the ideal improvement is compared to the existing improvements to determine future use of the improvements including maintaining the improvements as is, curing items of deferred maintenance, modifying the improvements, or demolishing the improvements. The highest and best use specifies the optimal use, the timing for this use, and the most likely user.

Land Value Opinion The value of the land is a major component of property value, and can change independently of the value of improvements due to depreciation. Land value is typically developed in the cost approach and forms the basis of the highest and best use analysis. There are several techniques to estimate land value including sales comparison, extraction, allocation, subdivision development, land residual, and ground rent capitalization. The sales comparison technique is the most common and reliable and has been utilized herein.

Application of the Approaches to Value The three approaches to value are the cost approach, the sales comparison approach, and the income capitalization approach. One or more of the approaches to value are utilized depending upon the type of property, intended use of the appraisal, scope of the assignment, and quality and quantity of available data.

The cost approach is particularly useful for new or nearly new properties and properties that are not frequently exchanged in the market. The value of the land is added to the reproduction or replacement cost of the improvements, less the amount of depreciation from all causes, plus entrepreneurial incentive or profit. Current costs can be obtained from cost estimators, cost manuals, builders, and contractors. Depreciation is extracted from market data and application of specific procedures. This approach recognizes that market participants typically relate value to cost.

The sales comparison approach is most useful when there are a quantity of recent sales of similar properties in the market. Selected sales are compared to the subject for various elements of comparison including real property rights conveyed, financing terms, conditions of sale, expenditures made immediately after purchase, market conditions, location, physical characteristics, economic characteristics, legal characteristics, and non-realty components of value. Dollar or percentage adjustments are applied to the comparable sales based upon the degree of similarity or difference to the subject. Qualitative analysis is utilized to determine the adjustments when limited data precludes quantitative analysis. The adjusted sales are reconciled to produce a value indication.

The income capitalization approach is the present value of the anticipated future benefits of property ownership. The gross income expectancy is reduced by projected vacancy and collection losses and anticipated annual operating expenses. There are two methods of income capitalization: direct capitalization in which one year's income is converted into value by a capitalization rate or an income multiplier; and yield capitalization where several years' forecast income and a reversionary value at the end of a specified period are converted to present value by a yield rate.

Reconciliation of Value Indications and Final Opinion of Value Reconciliation is the final analytical step in each of the approaches to value, and is utilized to reach the final conclusion of the assignment. This can be expressed as a single number, a range of numbers, or as a number greater or less than a specified amount. The applicable approaches are analyzed for dependability and applicability, and variations among the indications of value are explained.

Report of Defined Value This is the completed appraisal report which may be transmitted to the client in writing or orally. The report addresses the data analyzed, the methods applied, and the reasoning behind the value conclusion.

HIGHEST AND BEST USE

One of the most critical and important aspects in appraising a property is the estimation of highest and best use, or most probable/profitable use. Estimation of a highest and best use is a fundamental part of the appraisal process and is the premise upon which the valuation is based. The term "Highest and Best Use" is defined by the Appraisal Institute as follows:

“The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity. Alternatively, the probable use of land or improved property – specific with respect to the user and timing of the use – that is adequately supported and results in the highest present value.”

Source: Appraisal Institute, The Dictionary of Real Estate Appraisal, 5th ed., s.v. “Highest and Best Use” (Chicago: Appraisal Institute, 2010).

Present Use of Subject:

The subject consists of the former Penna Court Motel located at 4750 Ridgewood Avenue in the City of Port Orange, Volusia County, Florida. Improvements consist of a 12-unit motel facility that was built in 1952/1971. The subject also includes an office, laundry/storage area, and 2-bedroom owner’s apartment.

Zoning:

The subject is zoned RD, Ridgewood Development District, by the City of Port Orange which permits a mixture of office, commercial, warehouse/storage, and limited industrial uses. Permitted uses include retail sales and services, restaurants, offices, business services, hotels, manufacturing, etc. The Future Land Use designation is Urban Medium Density Residential (4-8 units per acre).

Estimate of Highest and Best Use:

The appraiser must decide the highest and best use of the property under appraisal as either the existing use, or a use which varies from the existing use. In estimating highest and best use of a site or improved property, the appraiser must consider four key factors. These are as follows:

1. Legal Permissibility: What uses are permitted by zoning and deed restrictions on the site in question? This can also be referred to as "availability". Various factors which can restrict use include, but are not limited to, zoning regulations, building codes, environmental regulations, private restrictions, etc.
2. Physical Possibility: What uses of the site in question are physically possible? This can also be referred to as "adaptability." Some of the factors affecting possible uses include property size, frontage, physical location, topography, soil conditions, etc.

3. Financial Feasibility: Which possible permissible uses will produce a net return to the owner of the site? The site should only be developed with uses that are economically sound in order to estimate the economic feasibility of site development. The appraiser must make a realistic assessment of the market demand and existing supply.
4. Maximum Profitability: Among the feasible uses, which use will produce the highest net return or the highest present worth? The test of the most profitable use seeks the most profitable use among the variety of uses that have met the other three tests.

In the appraisal of a vacant property, all of the possible uses within the limits set forth above must be considered, and that use which yields the highest return to the land or the highest land value is the highest and best use.

In the appraisal of an improved parcel, the improvements must be considered and a determination made as to whether they make a contribution to the overall value of the property. If so, the highest and best use is either the present use, or the conversion of the improvements for another use. If the value of the land as though vacant (reduced by the costs, if any, required to make it vacant) is in excess of the value improved, the highest and best use is estimated as though the land were vacant.

In order to estimate highest and best use for the subject, two separate analyses are required. The site must first be analyzed as if vacant; the second step involves an analysis of the site and existing improvements. The discussion which follows considers Items 3 and 4 (Financial Feasibility/Maximum Profitability) together. These two items are often thought of in concert as "demand" for economic influences.

SITE ANALYSIS AS IF VACANT:

Legal Permissibility:

The current zoning and other land use regulations are the primary constraint to development of the subject. As indicated the subject is zoned RD, Ridgewood Development District, by the City of Port Orange which permits a mixture of office, commercial, warehouse/storage, and limited industrial uses. Permitted uses include retail sales and services, restaurants, offices, business and personal services, hotels, manufacturing, etc. Motels were removed as a permitted use on May 21, 2013. The Future Land Use designation is Urban Medium Density Residential (4-8 units per acre). Redevelopment of the subject with commercial improvements would necessitate a small scale land use amendment, a reasonable occurrence according to city staff based upon surrounding Ridgewood Avenue corridor development.

There was no indication that any private restrictions or other governmental considerations would adversely affect the subject.

Physical Possibility:

The physical aspects of the site are the initial constraint. A larger site often offers greater development flexibility than a smaller but otherwise equivalent site. The subject site is an irregular shaped parcel containing about 28,100 square feet or about 0.65 acre more or less. The subject appears to have adequate size for development with a variety of commercial uses in accordance with the RD zoning designation. Other factors which are considered under this heading include adequacy of utilities, soil conditions, topography, ingress/egress considerations, and similar items. These items have been discussed in the property description. No adverse physical characteristics were noted; a current survey is recommended.

Financial Feasibility/Maximum Profitability:

In estimating a highest and best use for the land as if vacant, existing and projected neighborhood trends must be considered. The immediate area of the subject is presently developed with a variety of commercial development including retail sales and services, personal services, restaurants, offices, etc. Overall, the subject neighborhood is stable and desirability in this area is good; this trend can be expected to continue. Because of these factors, demand will most probably continue to increase for the foreseeable future.

Therefore, development of the subject with commercial development would in all probability provide a greater net return to an investor than any other possible or feasible use. The demand for additional commercial development sites is expected to increase, and the use for this purpose is not speculative.

HIGHEST AND BEST USE AS IMPROVED:

The highest and best use of the site as improved may vary from the highest and best use of the site as if it were vacant. If an existing improvement in its present use produces a higher value than the value of the site as if vacant, then the current use is the highest and best use; however, an appraiser must analyze the existing improvements to determine if any renovation/remodeling or other changes would produce a greater profit.

The subject is currently improved with the Penna Court Motel which has reportedly been closed since April, 2014. Improvements consist of two one-story masonry motel buildings built in 1952 and 1971. The improvements are apportioned with 12 guest units, a registration office, a laundry/storage room, and a 2-bedroom owner's apartment. The improvements are currently closed, have been largely gutted, and are in generally poor overall condition. The electrical wiring in the older building apparently malfunctioned resulting in a fire. Most of the motel furniture, fixtures and equipment has been removed, and some of the kitchen and bath fixtures have been removed. According to the Marshal Valuation Service, the typical useful life for improvements similar to the subject is about 40 years; the subject improvements range in age from 44-63 years and appear to be at or near the end of their economic lives.

According to the City of Port Orange Community Development Department, the subject improvements became a non-conforming use on May 21, 2013 with the adoption of Ordinance 2013-5, which removed motel as a permitted use in the Ridgewood Development (RD) zoning

district. According to the Land Development Code, an abandoned non-conforming use cannot be re-established. On January 12, 2015, the building/site was determined to be abandoned based on the criteria in the Land Development Code. Future use of the property will need to comply with the Land Development Code and Florida Building Code.

The subject improvements have been gutted, contain various forms of depreciation, and have been cited for a variety of code violations. Although the buildings could be renovated for office, retail or similar alternate use, it is our opinion that conversion of the existing improvements would not be economically feasible due to the condition, layout and design of the structures. Alternatively, the structures could be demolished and the site redeveloped with modern commercial improvements which could be configured to maximally utilize the site. Demolition costs are estimated at approximately \$20,000 based upon analysis of other demolition projects in the area including the Dusk to Dawn Motel located at 4545 Ridgewood Avenue in Port Orange. Impact fee credits for transportation, fire and water/sewer have been calculated to be at least \$20,000 and would therefore offset demolition costs.

The average days on the market (closed sales) for vacant properties in the Greater Volusia County Area in 2014 was approximately 227 days according to the Daytona Beach Area Association of Realtors. The average days on the market for improved commercial/industrial properties was approximately 247 days in 2014. Residential properties indicated 101 days for improved residential parcels and about 106 days for improved multi-family residential properties in 2014. Conversations with real estate agents and published news accounts indicate that the real estate market for commercial and industrial properties at market supported prices has fluctuated over the past several years and currently appears to be increasing; this trend is expected to continue for the near term. However, due to the volatility of the economic and political landscape, this forecast cannot be accurately corroborated. Therefore, we have estimated exposure time for the subject of approximately 150 days; the estimated marketing time for the subject is estimated at about 9-12 months.

Summary:

It is our opinion that the highest and best use of the subject site, as if vacant, would be for commercial development. Further, it is our opinion that the existing improvements, having been determined to be a non-conforming use and abandoned, do not constitute the highest and best use of the subject site. The subject site is competitive with similar properties in the neighborhood and, in our opinion, the highest and best use of the subject site is for redevelopment with new commercial improvements.

COST APPROACH

The Cost Approach to value is a technique in which the value estimate is based on a summation of the physical components. That is, the land as if vacant and the depreciated cost of all improvements. This approach is premised on the economic principle of "substitution". Like other approaches, the Cost Approach is market oriented and should reflect market behavior of typical purchasers in order to arrive at a valid indication of value.

Under the principle of substitution, the informed buyer would, as an alternative to acquiring the subject property, consider all of the costs involved in constructing an improvement of similar utility on a site comparable to the subject. The informed buyer would generally not pay more than the cost of reproducing a facility of similar utility.

The Cost Approach can be separated into three separate sections. The first step is to estimate site value as if vacant. The second step involves an estimating of reproduction or replacement cost new for the subject improvements; the third step involves depreciation analysis and application of this analysis to the subject property.

The subject improvements appear to have reached the end of their economic lives, are a non-conforming use, and their use as a motel appears to have been abandoned. Therefore, the Cost Approach is not applicable in this instance.

INCOME APPROACH

The Income Approach to value is based on the principle that value equals the present worth of future rights to income. The Income Approach is widely used in the appraisal of income-producing properties and significant weight is normally given to this approach. The present value of an anticipated income stream is discounted to a present worth figure via the capitalization process.

The first step in the Income Approach is the estimate of potential income and expenses based on market derived data. A potential gross income for the subject property is first estimated. From this amount should be deducted appropriate amounts for vacancy/collection losses to arrive at an estimate of effective gross income. Various expenses including fixed expenses, variable or operating expenses, and a reserve for replacement are then subtracted from the effective gross income to arrive at an indication of net operating income.

The next step is to estimate a capitalization rate appropriate for the type of property being appraised. The capitalization rate may be market derived or obtained from several recognized appraisal methods. The final step is to process the net income stream into an indication of value by application of an appropriate capitalization rate. Capitalization of the net income stream results in an indication of value by the Income Approach.

As indicated, the subject improvements appear to have reached the end of their economic lives, are a non-conforming use, and their use as a motel appears to have been abandoned. Therefore, the Income Approach is not applicable in this instance.

SALES COMPARISON APPROACH DISCUSSION

The Sales Comparison Approach is often referred to as the Market Data Approach. Utilization of this approach requires comparisons between the comparable sales and the subject on an item by item basis. Factors to be considered include, but are not limited to, time, location, terms and conditions of sale, and various physical characteristics such as size, topography, and shape. Zoning and permitted uses, availability of utilities, and other factors must also be considered. The comparable sales are adjusted to the subject for the various pertinent characteristics affecting the value of the subject. The subject is considered the "base" property and all sales data must be adjusted to this base. That is, the sales are adjusted to an estimated price at which the sale property would probably have sold if it possessed characteristics identical to the subject. After adjustments, the sales are correlated to an indication of market value for the subject via the Sales Comparison Approach.

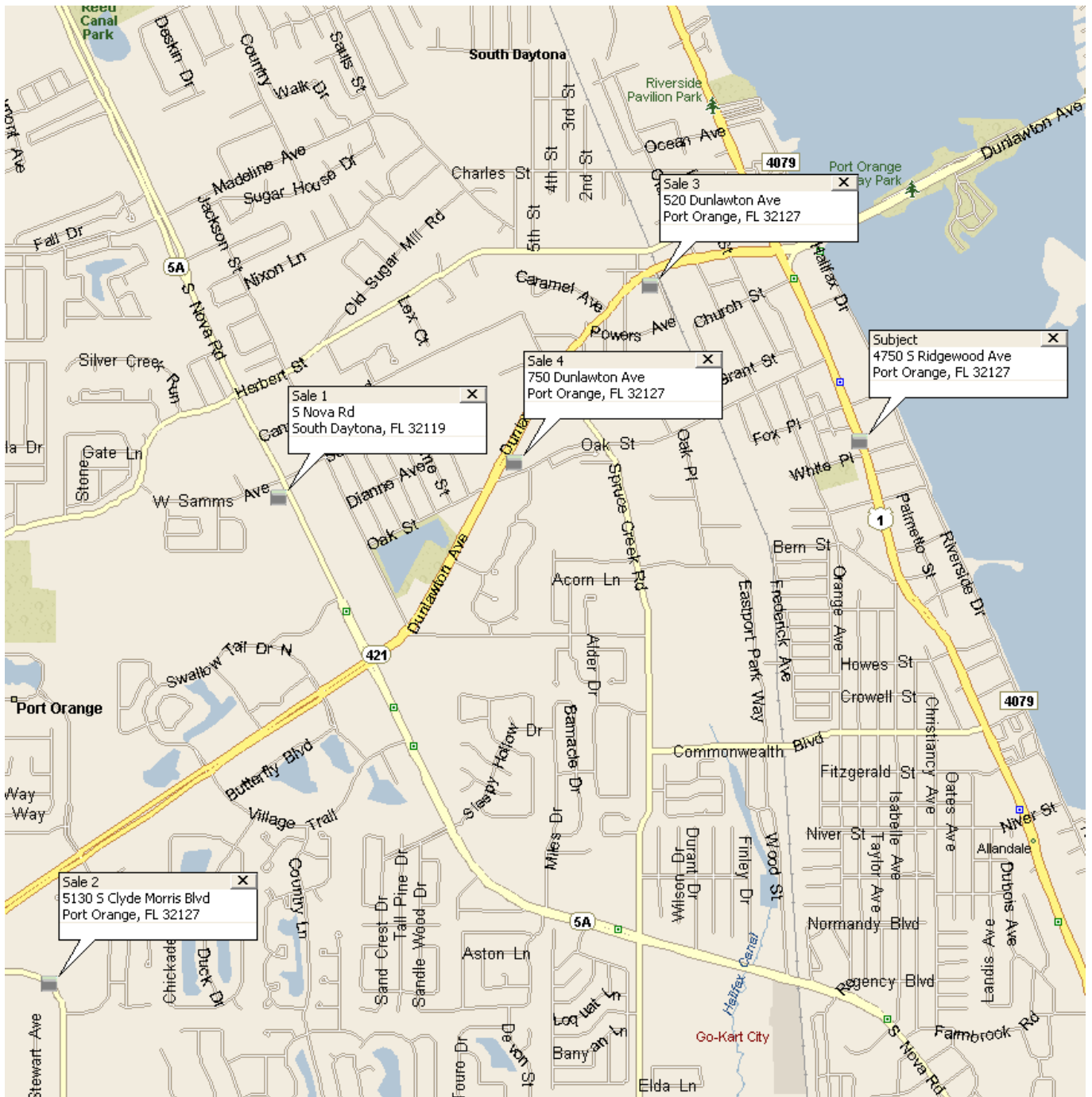
The Sales Comparison Approach was investigated to estimate the value for the subject property as if vacant. A diligent search was made of the subject area to find sales of comparable land. The following sales were found and, though they require some adjustments, are considered the most comparable and the most indicative of value for the subject.

The relatively steady demand for vacant commercial development sites indicates that the most recent sales are the best indicators of value. The following chart contains the sales which are considered most comparable for cash equivalency, market conditions (time of sale), size, location, and similar characteristics. The similarities/dissimilarities will be discussed later.

Vacant Land Sales Survey						
Sale	Date	Location	Zoning	SF Size	Sale Price	Price/ Net SF
1	11/13	3720 South Nova Road, Port Orange	PCD	159,369	\$645,000	\$4.05
2	12/13	5130 Clyde Morris Blvd, Port Orange	PCD	44,867	\$229,000	\$5.10
3	4/14	520 Dunlawton Avenue, Port Orange	CI/PO/NP	108,542	\$595,800	\$5.49
4	1/15	750 Dunlawton Avenue, Port Orange	PO	104,544	\$900,000	\$8.61
Sub	5/15	4750 Ridgewood Avenue, Port Orange	RD	28,100		

Some of the sales in the preceding chart are considered more useful for comparative purposes than others. All of the sales are relatively recent and have varying degrees of comparability to the subject. Sales analysis sheets have been prepared for each of the sales.

VACANT SALES LOCATION MAP



<u>VACANT SALE:</u>	1
<u>DATE OF SALE:</u>	November 21, 2013
<u>RECORDING DATA:</u>	Official Records Book 6933, pages 148-149, Public Records of Volusia County, Florida
<u>GRANTOR:</u>	All Aboard Storage, LLC
<u>GRANTEE:</u>	Nova Port Orange, LLC
<u>LEGAL DESCRIPTION:</u>	The easterly one-half of Lot 1, Block 25, Map of Dunlawton, except part in Nova Road, Deed Book M, Page 187, PRVC, FL.
<u>PROPERTY LOCATION:</u>	3720 South Nova Road Avenue, Port Orange
<u>SIZE:</u>	159,369 square feet; 3.66 acres more or less
<u>PRICE:</u>	\$645,000 and/or \$4.05 per square foot
<u>TERMS OF SALE:</u>	Cash to Seller; no effect on sale price
<u>CONDITIONS:</u>	Normal
<u>CONFIRMED BY:</u>	Andy Clark, Grantor, by Randy Von Holten
<u>HIGHEST AND BEST USE:</u>	Commercial Development
<u>ZONING/PERMITTED USES:</u>	PCD, Planned Commercial District, by Port Orange
<u>DESCRIPTION/COMMENTS:</u>	This was the sale of a vacant commercial parcel purchased for development with an O'Reilly Auto Parts store; the remainder of the parcel will be sold for additional commercial development. Typical municipal utilities are available from the City of Port Orange.

<u>VACANT SALE:</u>	2
<u>DATE OF SALE:</u>	December 18, 2013
<u>RECORDING DATA:</u>	Official Records Book 6947, page 4666, Public Records of Volusia County, Florida
<u>GRANTORS:</u>	John Costa and Patricia A. Costa
<u>GRANTEE:</u>	Gaffka & Scott Enterprises, LLC
<u>LEGAL DESCRIPTION:</u>	Lots 8, 9, 10 and 11, Pines Replat, per Map Book 47, Pages 124-126, PRVC, FL.
<u>PROPERTY LOCATION:</u>	5130 Clyde Morris Boulevard, Port Orange
<u>SIZE:</u>	44,867 square feet; 1.03 acre more or less
<u>PRICE:</u>	\$229,000 and/or \$5.10 per square foot
<u>TERMS OF SALE:</u>	Cash to Seller; no effect on sale price
<u>CONDITIONS:</u>	Normal
<u>CONFIRMED BY:</u>	Buddy Budiansky, Broker, by Randy Von Holten
<u>HIGHEST AND BEST USE:</u>	Commercial Development
<u>ZONING/PERMITTED USES:</u>	PCD, Planned Commercial District, by Port Orange
<u>DESCRIPTION/COMMENTS:</u>	This was the sale of a vacant commercial parcel purchased for development with a commercial building for Gaff's Meat market and an additional unspecified tenant. Typical municipal utilities are available from the City of Port Orange.

<u>VACANT SALE:</u>	3
<u>DATE OF SALE:</u>	April 28, 2014
<u>RECORDING DATA:</u>	Official Records Book 6983, pages 3849-3854, Public Records of Volusia County, Florida
<u>GRANTORS:</u>	Linda Marie Davis and Virginia D. Hodkoski
<u>GRANTEE:</u>	B.D.W. Land Holdings, LLC
<u>LEGAL DESCRIPTION:</u>	A lengthy description describing a portion of Lots 4 & 5, Block O, S.B. Wilson's Survey and Plat of Port Orange, Plat Book 1, page 154, PRVD, FL, and Lots 29, 30 and 31, West Park, Plat Book 6, page 89, PRVC, FL.
<u>PROPERTY LOCATION:</u>	520 Dunlawton Avenue, Port Orange
<u>SIZE:</u>	108,542 square feet; 2.49 acre more or less
<u>PRICE:</u>	\$595,800 and/or \$5.49 per square foot
<u>TERMS OF SALE:</u>	Cash to Seller; no effect on sale price
<u>CONDITIONS:</u>	Normal
<u>CONFIRMED BY:</u>	Review of Contract and Public Records
<u>HIGHEST AND BEST USE:</u>	Commercial Development
<u>ZONING/PERMITTED USES:</u>	CI/PO/NP by the City of Port Orange
<u>DESCRIPTION/COMMENTS:</u>	This was the sale of a vacant commercial parcel purchased for development with a boat sales and service facility. Typical municipal utilities are available from the City of Port Orange.

<u>VACANT SALE:</u>	4
<u>DATE OF SALE:</u>	January 9, 2015
<u>RECORDING DATA:</u>	Official Records Book 7072, pages 3714-3716, Public Records of Volusia County, Florida
<u>GRANTORS:</u>	Gateway Financial Holdings of Florida, Inc.
<u>GRANTEE:</u>	Vystar Credit Union
<u>LEGAL DESCRIPTION:</u>	Lot 3, Block 27 and a portion of vacated Sauls Street, Dunlawton Subdivision, per Deed Book M, Page 187, PRVC, FL.
<u>PROPERTY LOCATION:</u>	750 Dunlawton Avenue, Port Orange
<u>SIZE:</u>	104,544 square feet; 2.40 acres more or less
<u>PRICE:</u>	\$900,000 and/or \$8.61 per square foot
<u>TERMS OF SALE:</u>	Cash to Seller; no effect on sale price
<u>CONDITIONS:</u>	Normal
<u>CONFIRMED BY:</u>	Ted Lightman, Broker, by Randy Von Holten
<u>HIGHEST AND BEST USE:</u>	Commercial Development
<u>ZONING/PERMITTED USES:</u>	PO, Professional Office District, by Port Orange
<u>DESCRIPTION/COMMENTS:</u>	This was the sale of a vacant commercial parcel located at the southeast corner of Dunlawton Avenue and Oak Street in the City of Port Orange. This property was vacant, densely wooded, typically level and at grade with typical municipal utilities available to the general area.

In addition to recorded sales, we have also investigated various listings in the area. While not indicative of value, listings are useful in establishing an upper value range. An 11,220 square foot parcel zoned RD located at 5141 Ridgewood Avenue in Port Orange is currently listed for \$50,000 or \$4.46 per square foot. A 22,400 square foot parcel zoned B-4 located at 5865 Ridgewood Avenue in Port Orange is currently listed for \$149,000 or \$6.65 per square foot. Two parcels containing 39,600 square foot parcel located at 5006-5008 Ridgewood Avenue in Port Orange are currently listed for \$333,000 or \$8.41 per square foot; the parcels can be purchased separately or together. A 21,860 square foot parcel located at 5090 Ridgewood Avenue in Port Orange is currently listed for \$295,000 or \$13.49 per square foot. A 80,586 square foot parcel located at 424 South Ridgewood Avenue in Daytona Beach is currently listed for \$450,000 or \$5.58 per square foot.

The sales required adjustments for a variety of factors in comparison to the subject. All of the sales are considered similar to the subject for cash equivalency and market conditions considerations.

Property Rights The property rights appraised herein are those of the fee simple estate which include the entire bundle of rights. All of the sales are considered similar to the subject for this characteristic.

Financing Terms Financing can have an impact on the sale price of a property. Adjustments are required for atypical above- or below-market financing terms. All of the comparable sales involved cash or financing terms equivalent to cash; therefore, no adjustments were indicated for financing terms.

Conditions of Sale The motivations of either the buyer or seller in a transaction can affect the sale price. All of the comparable sales involved arms-length transactions by willing market participants acting prudently, knowledgeably, for self-interest, and unaffected by undue stress. Therefore, no adjustments were considered warranted for conditions of sale considerations.

Expenditures after Sale None of the sales reported significant expenditures after the sale so that no adjustments were indicated for this characteristic.

Market Conditions Comparable properties are adjusted for differences in market conditions that occur over time. This is not technically a time adjustment; this adjustment accounts for changes in market conditions that occur over a time interval. All of the comparable sales are considered similar to the subject for changing market conditions so that no adjustments were indicated.

Physical Characteristics The sales used for comparison range from about 44,867 square feet to 159,369 square feet; the subject contains 28,100 square feet more or less. It is axiomatic in the real estate business that small parcels typically sell for a greater unit price than a larger parcel, all other conditions being equal. That is, smaller parcels generally reflect a greater unit selling price. This is not necessarily true for certain types of commercial property and/or other high demand property such as oceanfront condominium sites. In areas of intense activity, there may be little adjustment for size characteristics. Review of information in the chart, as well as other sales throughout the area, indicates an erratic pattern with respect to the size differential. In some instances, investors may prefer a larger site for greater development flexibility. However, Sales 1,

3 and 4 are significantly larger than the subject and are therefore considered inferior. In our opinion, an adjustment of +10% for size characteristics appears reasonable as applied to Sales 1, 3 and 4. Sale 2 is considered similar to the subject for overall size characteristics so that no adjustment was indicated for this sale.

The subject is located on the west side of Ridgewood Avenue in the City of Port Orange. This is an established commercial area along a major arterial roadway. All of the sales are located along major commercial thoroughfares in the area; however, Sales 3 and 4 are further located along Dunlawton Avenue, the gateway to the peninsula via the Dunlawton bridge and causeway. This roadway also serves as the evacuation route for the beachfront area; this location is considered superior to that of the subject. Furthermore, these two sales contain a disproportionate amount of road frontage compared to their depth providing excellent exposure. Intra-comparisons of Sales 1 and 2 with Sales 3 and 4 indicated price differentials ranging from 16% to 53% after application of appropriate adjustments for size considerations. In our opinion, -10% adjustments for shape and locational characteristics appears reasonable as applied to Sales 3 and 4.

The subject is typically level and at grade with surrounding properties and roadways, is zoned for general commercial development, and has typical municipal utilities available; all of the sales are considered similar to the subject for these characteristics so that no further adjustments were considered warranted.

The chart on the following page indicates the adjustments applied to the chart entries for the various factors of comparability.

Vacant Land Sales Adjustment Grid				
	Sale 1	Sale 2	Sale 3	Sale 4
Sale Date	11/13	12/13	4/14	1/15
Sale Price/Sq Ft	\$4.05	\$5.10	\$5.49	\$8.61
Property Rights Conveyed				
<i>Intermediate price (fee simple)</i>	\$4.05	\$5.10	\$5.49	\$8.61
Financing Terms				
<i>Intermediate price</i>	\$4.05	\$5.10	\$5.49	\$8.61
Conditions of Sale				
<i>Intermediate price</i>	\$4.05	\$5.10	\$5.49	\$8.61
Expenditures after Sale				
<i>Intermediate price</i>	\$4.05	\$5.10	\$5.49	\$8.61
Market Conditions				
<i>Intermediate price</i>	\$4.05	\$5.10	\$5.49	\$8.61
Physical Characteristics				
Size	1.10	1.00	1.10	1.10
Location	1.00	1.00	0.90	0.90
Zoning	1.00	1.00	1.00	1.00
Shape	1.00	1.00	0.90	0.90
Topography	1.00	1.00	1.00	1.00
Utilities	1.00	1.00	1.00	1.00
Final adjusted price/SF	\$4.45	\$5.10	\$4.94	\$7.75
Market Value Indication	\$5.50			

After consideration of the above analysis and the factors affecting the subject and sales, it is our opinion that a reasonable indication of value for the subject as if vacant would be \$5.50 per square foot. Applying the figure of \$5.50 per square foot to the size of the subject (28,100 square feet) indicates a value for the subject of \$154,550, rounded to \$155,000. Demolition costs are estimated at approximately \$20,000 based upon analysis of other demolition projects in the area including the Dusk to Dawn Motel located at 4545 Ridgewood Avenue in Port Orange. Impact fee credits for transportation, fire and water/sewer have been calculated to be at least \$20,000 and would therefore offset demolition costs.

Therefore, it is our opinion that the market value of the fee simple interest of the subject property, under the assumptions and limiting conditions of this assignment, as of May 6, 2015, was:

ONE HUNDRED FIFTY-FIVE THOUSAND DOLLARS
(\$155,000)

RECONCILIATION

The purpose of this appraisal is to estimate the market value of the fee simple interest of the subject property under various parameters as of the date of value. The indications of value derived from the applicable approaches to value are as follows:

Indicated Value by

Cost Approach: N/A

Indicated Value by

Income Approach: N/A

Indicated Value by Sales

Comparison Approach: \$155,000

Reconciliation is the process of weighing the indications of value into a final estimate of value for the property being appraised. The essence of reconciliation is to develop a rational conclusion which approximates and can defend a single value as defined by the assignment. In reconciling the estimates of value, the appraiser must consider the significance of each approach under the following guidelines:

1. In a typical market situation which of the approaches are most important to the typical investor/purchaser?
2. Which approach and value can best be supported by the available data?

Theoretically, the estimates of value from each approach could indicate the same value. This would rely on a tremendous amount of excellent data and would carry the appraisal profession into the realm of an exacting science.

Normally, the approaches to value will indicate slightly different results, but they would normally fall within a reasonable range. The quantity and quality of the market data, in our opinion, was adequate in this case. The results indicated above are based on interpretation of the data available.

The Cost Approach to value utilizes the estimated replacement cost new of the improvements, less depreciation, added to the value of the land. The replacement cost is generally used as a cost to replace the utility of the improvements. In some instances, the replacement cost and the reproduction cost are the same. On older improvements, a reproduction of the building with the original materials and techniques is impossible because they are no longer available. The Cost Approach is most accurate when improvements are new and develop the land to its highest and best use. The subject improvements appear to have reached the end of their economic lives, are a non-conforming use, and their use as a motel appears to have been abandoned. Therefore, the Cost Approach is not applicable in this instance.

The Income Approach to value is based on the principle that value equals the present worth of future rights to income. The Income Approach is widely used in the appraisal of income-producing properties and significant weight is normally given to this approach. The present value

of an anticipated income stream is discounted to a present worth figure via the capitalization process. The subject improvements appear to have reached the end of their economic lives, are a non-conforming use, and their use as a motel appears to have been abandoned. Therefore, the Income Approach is not applicable in this instance.

The Sales Comparison Approach is often referred to as the Market Data Approach. Utilization of this approach requires comparisons between the comparable sales and the subject on an item by item basis. Factors to be considered include, but are not limited to, time, location, terms and conditions of sale, and various physical characteristics such as size, topography, and shape. Zoning and permitted uses, availability of utilities, and other factors must also be considered. The comparable sales are adjusted to the subject for the various pertinent characteristics affecting the value of the subject. The subject is considered the "base" property and all sales data must be adjusted to this base. That is, the sales are adjusted to an estimated price at which the sale property would probably have sold if it possessed characteristics identical to the subject. After adjustments, the sales are correlated to an indication of market value for the subject via the Sales Comparison Approach. As indicated, the subject improvements appear to have reached the end of their economic lives, are a non-conforming use, and their use as a motel appears to have been abandoned. Therefore, the Sales Comparison Approach for the subject property as improved is not considered applicable in this instance. However, the Sales Comparison Approach as applied to the subject ownership as if vacant is considered reasonable in this instance. Impact fee credits would be used to offset demolition expense. The Sales Comparison Approach produces a credible valuation in this instance.

It is our opinion that the Market Value of the Fee Simple Interest of the subject property, under the assumptions and limiting conditions of this assignment, as of May 6, 2015, was:

ONE HUNDRED FIFTY-FIVE THOUSAND DOLLARS
(\$155,000)

In addition to the underlying assumptions and limiting conditions attached, this appraisal report is made under the following extraordinary assumptions and/or hypothetical conditions which could have an impact on the value estimates or conclusions presented herein:

1. We do not have the required expertise for determining the presence of or absence of hazardous substances, defined as all hazardous or toxic materials, wastes, pollutants or contaminants (including, but not limited to, asbestos, PCB, UFFI, petroleum products or other raw materials or chemicals) used in construction, or otherwise present on the property. We assume no responsibility for the studies or analyses which would be required to determine the presence or absence of such substances. We do not assume responsibility for loss as a result of the presence of such substances. The value estimate presented herein is based on the assumption that the subject property is not adversely affected by environmental contaminants.
2. That the subject property is as described herein. A current boundary survey was not provided and would be required to determine the precise size and dimensional characteristics of the subject. We reserve the right to adjust the value indication estimated herein based upon review of a current boundary survey should such survey indicate a site different from that as described herein.

Purchase Order



CITY OF PORT ORANGE PURCHASE ORDER

PAGE 1

P.O. NUMBER

070241

PLEASE SEND INVOICE IN DUPLICATE TO:
ACCOUNTS PAYABLE
P.O. BOX 291759
PORT ORANGE, FL 32129-1759
TELEPHONE 386-506-5500
FAX 386-506-5711

THIS NUMBER MUST APPEAR ON ALL
PACKING LISTS, LABELS, BILL OF LADING
CORRESPONDENCE.

DATE:	5/11/15
STATE TAX EXEMPT #85-8012621673C-3	
FED. EXCISE TAX #59-80-0185K	
REQUISITION #	0000134932

VENDOR:
SOUTHERN APPRAISAL CORPORATION
800 SOUTH NOVA ROAD
SUITE M
ORMOND BEACH FL 32174

(904) 672-4533 FAX: (904) 672-9214

SHIP TO:
CITY OF PORT ORANGE
PUBLIC UTILITIES
ADMINISTRATION
1000 CITY CENTER CIR
PORT ORANGE FL 32129

VENDOR#: 250652		DATE NEEDED: 5/31/15		FOB:		
#	QTY	UOM	COMMODITY # / DESCRIPTION	ACCOUNT #	UNIT PRICE	TOTAL COST
1	1	JOB	***** The Purchase Order shall constitute a binding contract upon delivery of and invoice for the goods and services stated herein. ***** REAL PROPERTY APPRAISAL REPORT FOR PARCEL ID#6303-13-03- 0080 PENNA COURT MOTEL 4750 RIDGEWOOD AVENUE -PER THE REQUEST OF THE C ITY MANAGER'S OFFICE	0110005193113	2400.00	2400.00
REMARKS MAI APPRAISAL REPORT					TOTAL	2400.00

CONDITIONS:

1. The right is reserved to cancel this order if not filled within the contract time.
2. The conditions of this order are not to be modified by any verbal understanding.
3. Acceptance of this order includes acceptance of all terms, prices, delivery instructions, specifications and conditions as stated.
4. The purchase order number must appear on ALL packages, invoices, and correspondence.
5. The CITY ASSUMES NO RESPONSIBILITY FOR GOODS DELIVERED WITHOUT THE AUTHORITY OF A PROPERLY EXECUTED PURCHASE ORDER.
6. Please forward all invoices to Accounts Payable at the above listed address.
7. As per additional terms and conditions on vendor application.

PURCHASING

X

DATE

5/11/15

IMPORTANT - TO RECEIVE PAYMENT ALL INVOICES AND SHIPPING LABELS MUST SHOW PURCHASE ORDER NUMBER & DATE

COPOR

Property Owner Contact Letter

SOUTHERN APPRAISAL CORPORATION

Appraisers - Consultants - Realtors⁷

Charles D. Spano, Jr., MAI
PRESIDENT

Cert Gen RZ 1059

800 S. Nova Road, Suite M
Ormond Beach, Florida 32174
Email: southernappraisal@cfl.rr.com

Phone (386) 672-4533
FAX (386) 672-9214

May 5, 2015

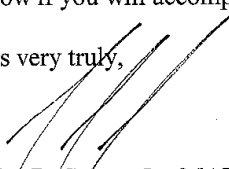
Mr. Charles Ray Snyder
405 Layette Street
Port Orange, FL 32127

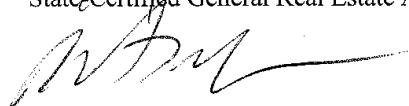
Re: Appraisal of the Penna Court Motel located at 4750 Ridgewood Avenue in the City of
Port Orange, Volusia County, Florida.

Dear Mr. Snyder:

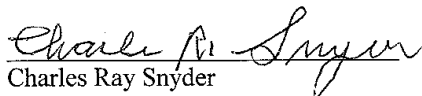
We have scheduled an inspection of the above referenced property for Wednesday, May
6, 2015 at 11:00 AM. Please indicate below if you will accompany us on our inspection.

Yours very truly,


Charles D. Spano, Jr., MAI, SRA
State-Certified General Real Estate Appraiser RZ1159


Peter A. Gagne
State-Certified General Real Estate Appraiser RZ1041

I ☒ will or ☐ will not accompany the appraisers on their inspection.


Charles Ray Snyder

Property Appraiser Data



The Volusia County Property Appraiser makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The values shown in the Total Values section at the end of the Property Record Card are "Working Tax Roll" values, as our valuations proceed during the year. These Working Values are subject to change until the Notice of Proposed Taxes (TRIM) are mailed in mid-August. For Official Tax Roll Values, see the [History of Values](#) section within the property record card below.

Last Updated: 05-05-2015 Today's Date: 5-5-2015		Volusia County Property Appraiser's Office <u>Property Record Card (PRC)</u> <u>Morgan B. Gilreath Jr., M.A., A.S.A., C.F.A.</u> Property Appraiser			
Full Parcel ID	03-16-33-13-03-0080	Mill Group	402 Port Orange		
Short Parcel ID	6303-13-03-0080				
Alternate Key	3579399	2014 Final Millage Rate	21.15960		
Parcel Status	Active Parcel	PC Code	39		
Date Created	30 DEC 1981				
Owner Name	SNYDER CHARLES RAY		GO TO ADD'L OWNERS		
Owner Name/Address 1					
Owner Address 2	405 LAYETTE ST				
Owner Address 3	PORT ORANGE FL				
Owner Zip Code	32127				
Owner Percentage	100	Ownership Type	Fee Simple		
Location Address	4750 RIDGEWOOD AV PORT ORANGE 32127				

LEGAL DESCRIPTION	GO TO ADD'L LEGAL
LOT 8 BLK 3 ALLENS PORT ORANGE EXC R/W DB T PG 415 MB 14 PG	
35 PER OR 4594 PG 2000 PER OR 5967 PG 0704 PER OR 6579 PGS 4	

SALES HISTORY							GO TO ADD'L SALES
#	BOOK	PAGE	DATE	INSTRUMENT	QUALIFICATION	IMPROVED?	SALE PRICE
1	7093	0572	3/2015	Quit Claim Deed	Unqualified Sale	Yes	100
2	6927	2323	6/2012	Death Certificate	Multi parcel sale	Yes	100
3	6579	4156	1/2011	Quit Claim Deed	Unqualified Sale	Yes	100

HISTORY OF VALUES										GO TO ADD'L HISTORY		
YEAR	LAND	BLDG(S)	MISC	JUST	ASD	SCH ASD	NS ASD	EXEMPT	TXBL	SCH TXBL	ADD'L EX	NS TXBL
2014	90,480	151,799	7,056	249,335	249,335	249,335	249,335	0	249,335	249,335	0	249,335
2013	90,480	136,679	7,056	234,215	234,215	234,215	234,215	0	234,215	234,215	0	234,215

LAND DATA												
CODE	TYPE OF LAND USE	FRONTAGE	DEPTH	# OF UNITS	UNIT TYPE	RATE	DPH	LOC	SHP	PHY	JUST VAL	
3900	HOTELMOTEL	87.0	320.0	27840.00	SQUARE FEET	3.25	100	100	100	100	90,480	
C5508		PORT ORANGE- US HWY 1										

NEIGHBORHOOD CODE		
TOTAL LAND CLASSIFIED		0
TOTAL LAND JUST		90,480

BUILDING CHARACTERISTICS

BUILDING 1 OF 2

[GO TO BLDG SKETCH](#)

Physical Depreciation %	60	Next Review	2999	Obsolescence	Functional	0%
		Year Built	1952		Locational	0%
Quality Grade	300				Base Perimeter	482

BUILDING CHARACTERISTICS

PROPERTY TYPE	Hotel or Motel	EXTERIOR WALL TYPE	%
STRUCTURE TYPE	Concrete / Masonry Walls	CONCRETE BLOCK, PAINTED	100

BUILDING REFINEMENTS

Description	# of Units	Unit Type
Baths, 3-Fixture	9	UB
Extra Fixture	2	UB
RES. UNIT	9	UB

Section #	Wall Height	# Of Stories	Year Built	Bsmt %	Ground Floor Area	Interior Finish(es)	%	Sprinkler	AC?
1	9.00	1	1952	0.00	4239	Motel	100.00	No	No
2	9.00	1	1952	0.00	44	Unfinished Utility (UST)	1.00	No	No
3	9.00	1	1952	0.00	232	Canopy (CAN)	1.00	No	No
4	9.00	1	1952	0.00	40	Canopy (CAN)	1.00	No	No

BUILDING 2 OF 2

[GO TO BLDG SKETCH](#)

Physical Depreciation %	50	Next Review	2999	Obsolescence	Functional	0%
		Year Built	1971		Locational	0%
Quality Grade	300				Base Perimeter	206

BUILDING CHARACTERISTICS

PROPERTY TYPE	Hotel or Motel	EXTERIOR WALL TYPE	%
STRUCTURE TYPE	Wood /Open Steel	CONCRETE BLOCK, PAINTED	100

BUILDING REFINEMENTS

Description	# of Units	Unit Type
Baths, 3-Fixture	4	UB
Extra Fixture	1	UB
RES. UNIT	3	UB

Section #	Wall Height	# Of Stories	Year Built	Bsmt %	Ground Floor Area	Interior Finish(es)	%	Sprinkler	AC?
5	9.00	1	1971	0.00	2052	Motel	67.00	No	Yes
						Res. part commercial bldg average	33.00	No	Yes
6	9.00	1	1971	0.00	96	Unfinished Utility (UST)	1.00	No	No

7	8.00	1	1995	0.00	45	Unfinished Utility (UST)	1.00	No	No
---	------	---	------	------	----	--------------------------	------	----	----

MISCELLANEOUS IMPROVEMENTS									
TYPE	NUMBER UNITS	UNIT TYPE	LIFE	YEAR IN	GRADE	LENGTH	WIDTH	DEPR. VALUE	
PAVING CONCRET	3000	SF	15	1952	5	0	0	5,340	

PLANNING AND BUILDING						
PERMIT NUMBER	PERMIT AMOUNT	DATE ISSUED	DATE COMPLETED	DESCRIPTION	OCCUPANCY NBR	OCCUPANCY BLDG
13-3818	9,300.00	10-18-2013	Unknown	RE ROOF		0

TOTAL VALUES	The values shown in the Total Values section at the end of the Property Record Card are "Working Tax Roll" values, as our valuations proceed during the year. These Working Values are subject to change until the Notice of Proposed Taxes (TRIM) are mailed in mid-August. For Official Tax Roll Values, see the History of Values section above.
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The Volusia County Property Appraiser makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation.

Land Value	90,480	New Construction Value	0
Building Value	163,734	City Econ Dev/Historic Taxable	0
Miscellaneous	5,340		
Total Just Value	259,554	Previous Total Just Value	249,335
School Assessed Value	259,554	Previous School Assessed	249,335
Non-School Assessed Value	259,554	Previous Non-School Assessed	249,335
Exemption Value	0	Previous Exemption Value	0
Additional Exemption Value	0	Previous Add'l Exempt Value	0
School Taxable Value	259,554	Previous School Taxable	249,335
Non-School Taxable Value	259,554	Previous Non-School Taxable	249,335

MapIT	PALMS	Parcel Notes
Map Kiosk		

MapIT: Your basic parcel record search including sales. PALMS: Basic parcel record searches with enhanced features. Map Kiosk: More advanced tools for custom searches on several layers including parcels.	
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Acquiring Deed

03/13/2015 07:11 AM
Instrument# 2015-044477 # 1
Book : 7093
Page : 572

**In The Circuit Court, Seventh Judicial Circuit
In And For Volusia County, Florida**

CHARLES RAY SNYDER
Plaintiff(s)

Case No. 2013 30364 CCI
Div.

VS.

STEVEN E LAMBERT ; DEBORAH M LAMBERT N/K/A DEBORAH M
BRINKMAN ; ESTATE OF ROSS E LAMBERT ; CITY OF PORT
ORANGE ; MISTY S PHILLIPS AS THE PARENT AND NATURAL
GUARDIAN OF DAYLEONNA RAYLINN LAMBERTM A MINOR AND
HEIR OF ROSS E LAMBERT, DECEASED ; DAYLEONNA RAYLINN
LAMBERT A MINOR AND HEIR OF ROSS E LAMBERT, DECEASED ;
AMANDA JO MIXON AS THE PARENT AND NATURAL GUARDIAN OF
JAYDEN TAYLOR LAMBERT A MINOR AND HEIR OF ROSS E
LAMBERT, DECEASED ; JAYDEN TAYLOR LAMBERT A MINOR AND
HEIR OF ROSS E LAMBERT, DECEASED
Defendant(s)

CERTIFICATE OF TITLE

The undersigned Clerk of the Circuit Court certifies that a Certificate of Sale has been filed in this action and on the 10th day of March, 2015 for the property described herein and that no objections to the sale have been filed within the time allowed for filing objections. The following property in Volusia County, Florida:

- SEE ATTACHMENT -

was sold to and the Certificate of Title is hereby issued to:
CHARLES RAY SNYDER
whose address is: 405 Layette Street Port Orange, FL, 32127

Witness my hand and seal on 10th day of March, 2015 in Volusia County, Florida.



Diane M. Matousek, Clerk of the Circuit Court
Volusia County, Florida

By:

Deputy Clerk

/s/ Jennifer Vazquez

Sale Amt. \$100.00 D/S \$0.70 Parcel ID #

CLERK OF THE CIRCUIT
& CITY COURT VOLUSIA CO., FL
CC 65

MAR 10 2015

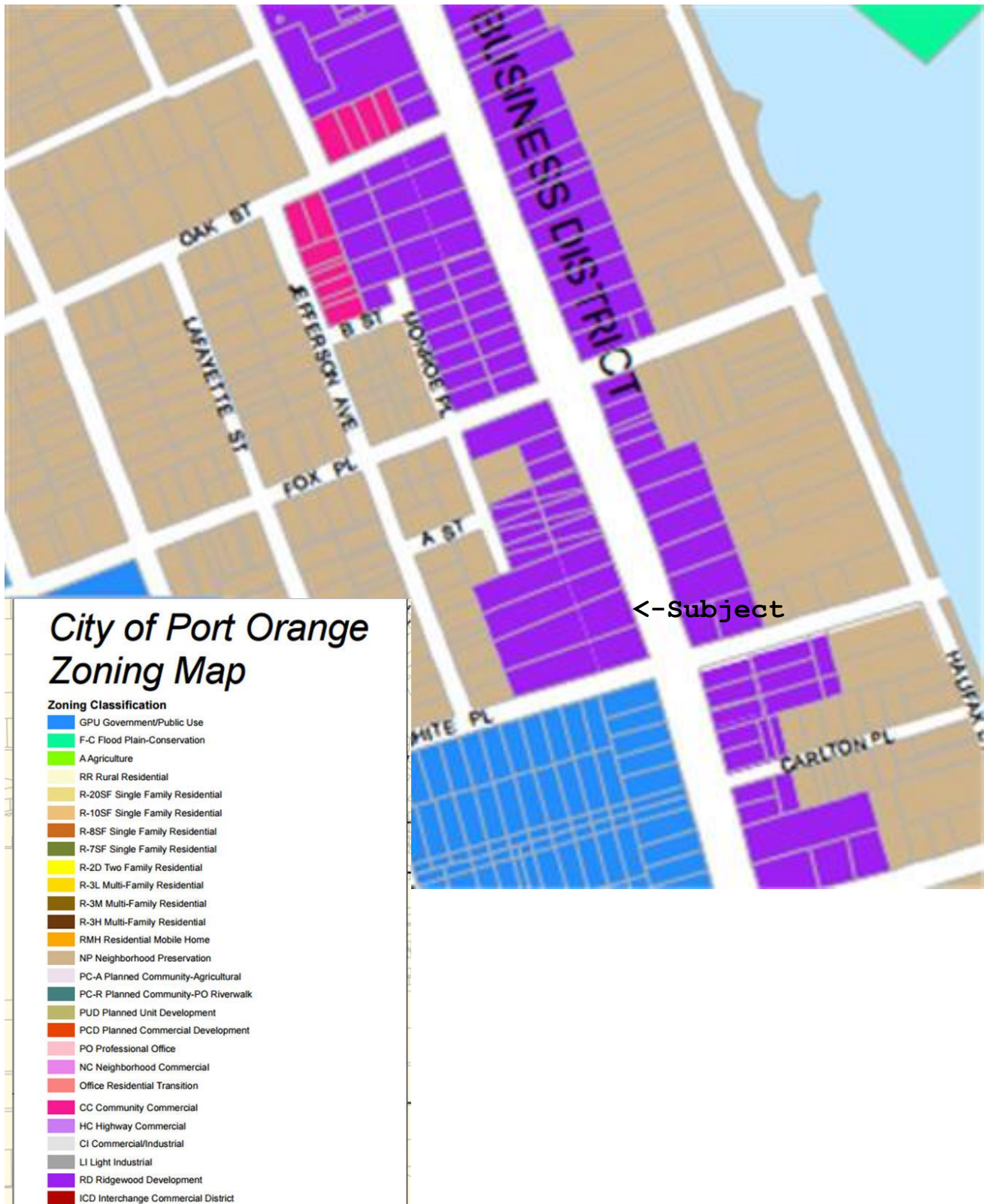
FILED

Instrument# 2015-044477 # 2
Book: 7093
Page: 573
Diane M. Matousek
Volusia County, Clerk of Court

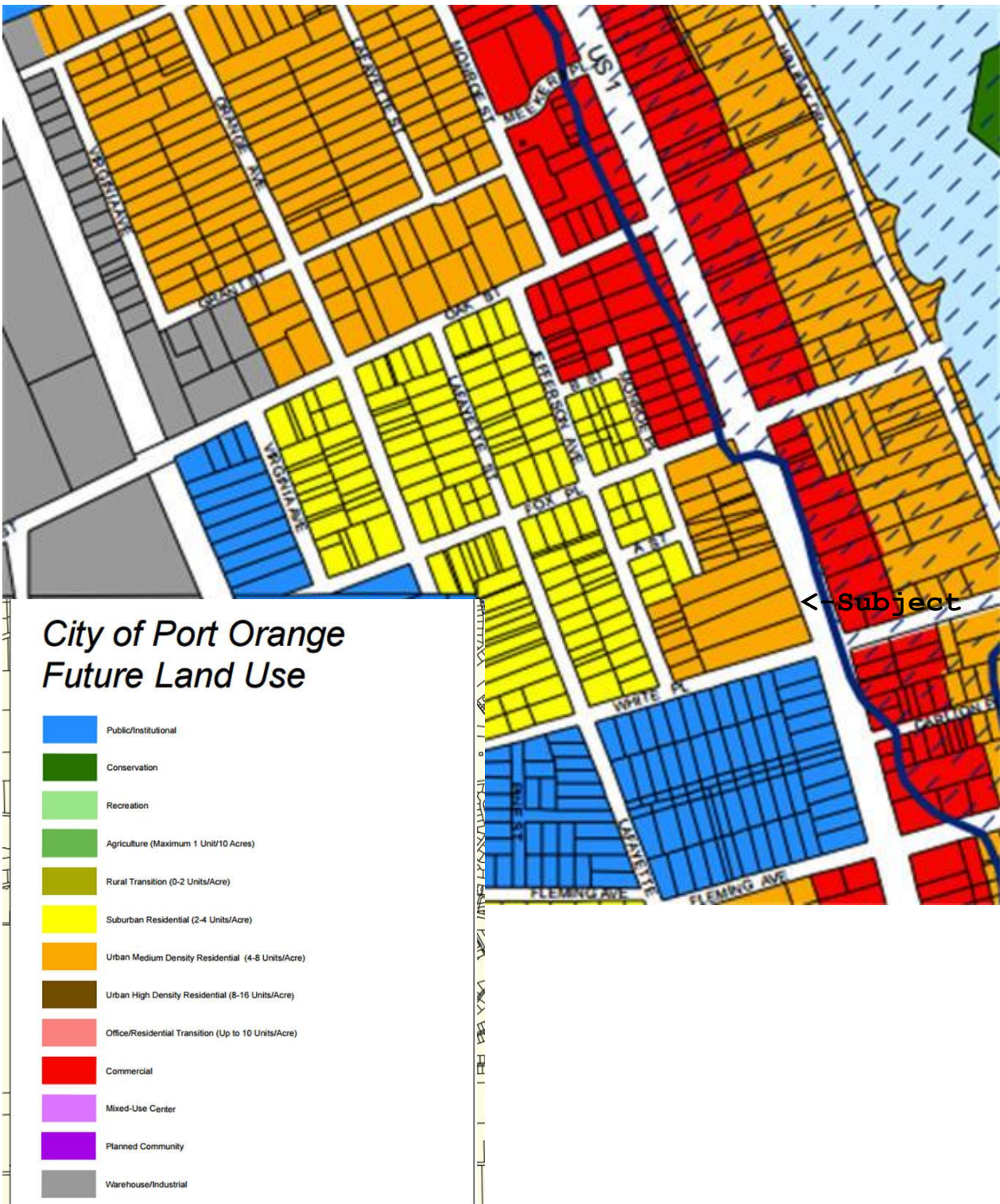
**LOT 8, BLOCK 3, ALLEN'S SUBDIVISION (ALSO KNOWN AS
ALLEN'S ADDITIONS TO PORT ORANGE), AS PER MAP
RECORDED IN DEED BOOK "T", PAGE 415, OF THE PUBLIC
RECORDS OF VOLUSIA COUNTY, FLORIDA.**

The property is more commonly known as 4750 S. Ridgewood Avenue, Port Orange, Volusia
County, Florida.

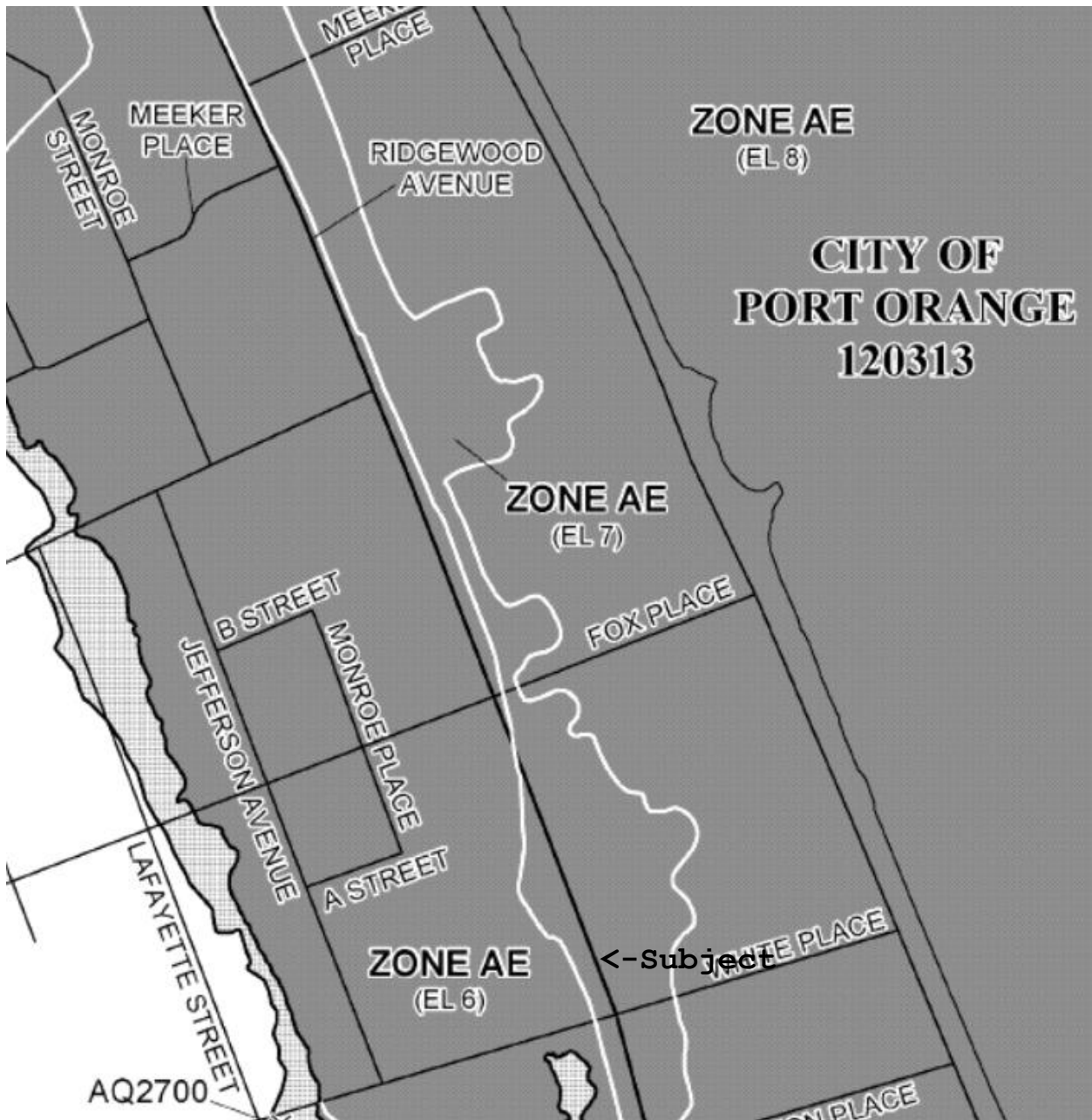
Zoning Map



Future Land Use Map



Flood Zone Map



Flood Zone Data

NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0388H

FIRM

FLOOD INSURANCE RATE MAP

VOLUSIA COUNTY, FLORIDA AND INCORPORATED AREAS

PANEL 388 OF 930
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
DAYTONA BEACH SHORES, CITY OF	125100	0388	H
PORT ORANGE, CITY OF	120313	0388	H
SOUTH DAYTONA, CITY OF	120314	0388	H
VOLUSIA COUNTY	125155	0388	H

Notice to User: The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.

MAP NUMBER
12127C0388H

MAP REVISED
FEBRUARY 19, 2014

Federal Emergency Management Agency

LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

ZONE A No Base Flood Elevations determined.

ZONE AE Base Flood Elevations determined.

ZONE AH Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.

ZONE AO Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.

ZONE AR Special Flood Hazard Areas formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.

ZONE A99 Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.

ZONE V Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.

ZONE VE Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE

The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS

ZONE X Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

OTHER AREAS

ZONE X Areas determined to be outside the 0.2% annual chance floodplain.

ZONE D Areas in which flood hazards are undetermined, but possible.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

— Floodplain Boundary

— Floodway Boundary

— Zone D Boundary

..... CBRS and OPA boundary

— Boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths or flood velocities.

Limit of Moderate Wave Action

513 Base Flood Elevation line and value; elevation in feet*

(EL 987) Base Flood Elevation value where uniform within zone; elevation in feet*

*Referenced to the North American Vertical Datum of 1988

QUALIFICATIONS OF THE APPRAISER

Peter A. Gagne
686 Breckenridge Drive
Port Orange, Florida 32127

PROFESSIONAL AFFILIATIONS:

Candidate for Designation, Appraisal Institute
State-Certified General Real Estate Appraiser, Certificate No. RZ1041
Licensed Real Estate Broker, State of Florida

PROFESSIONAL EDUCATION:

Bachelor of Science Degree in Marketing, North Adams State College, North Adams, Massachusetts, 1983

Successful completion of the following Appraisal Institute courses and/or examinations:

Real Estate Appraisal Principles, June, 1986	Case Studies in Real Estate Valuation, March, 1989
Basic Valuation Procedures, June, 1986	Residential Valuation, March, 1989
Capitalization Theory & Tech Part A, May, 1987	Report Writing & Valuation Analysis, Nov., 1991
Capitalization Theory & Tech Part B, October, 1987	Standards of Professional Practice, November, 1994
Standards of Professional Practice, September, 1988	Advanced Income Capitalization, April, 2013
Advanced Market Analysis & Highest & Best Use, October, 2013	General Appraiser Report Writing, January, 2014
Advanced Concepts & Case Studies, March, 2014	

Attendance at various seminars including:

Rates, Ratios, and Reasonableness, March, 1988	FHA Appraising, April, 1996
Easement Valuation, October, 1988	Appraising 1-4 Family Res. Rentals, March, 1998
Developments in Income Property Valuation, Dec., 1988	Appraising Wetlands, October, 2000
Accrued Depreciation Seminar, February, 1994	Environmental Hazards Impact on Real Estate Value, October, 2000
Appraisal Standards & Ethics, March, 1994	Appraising Conservation Easements and Other Less than Fee Interests, October, 2000
In The Wake of Natural Disasters, April, 1996	Appraising Distressed Commercial Real Estate, August, 2009
USPAP Update, 2012 (most recent)	
How to Appraise a Business, June 2002	
Business Practices & Ethics, August 2009	

EXPERIENCE:

Independent Fee Appraiser, August, 1991 to Present
Southern Appraisal Corporation, September, 1986, to July, 1991
Adams, Cameron & Company, September, 1984, to August, 1986

PARTIAL LIST OF CLIENTS:

RBC Bank USA	Hancock Bank	BB & T
Gateway Bank of Florida	BankFirst	Floridian Bank
Florida Community Bank	Adel Banking Co.	Intracoastal Bank
First Green Bank	Fifth Third Bank	Intervest National Bank
SunTrust Bank of Volusia County	Space Coast Credit Union	Reunion Bank of Florida
Fidelity Bank of Florida	Consolidated Tomoka Land Co.	Intervest Construction, Inc.
Palm Coast Holdings	Florida Power and Light Company	Clark Properties
McKinnon & McKinnon, PA	Storchs & Harris, LLC	Paul Holub
Florida Department of Natural Resources	Zev Cohen & Associates, Inc.	Random Burnett
Department of Environmental Protection	Volusia County School Board	Volusia County
Flagler County	Flagler County School Board	City of Port Orange
Daytona Beach Regional Airport	City of Ormond Beach	City of Daytona Beach
The Trust for Public Land	NASCAR	

SOUTHERN APPRAISAL CORPORATION
Charles D. Spano, Jr., MAI, SRA
800 South Nova Road, Suite M, Ormond Beach, Florida 32174
Email: southernappraisal@cfl.rr.com

MEMBERSHIP:

- Member, Appraisal Institute
- Designation: MAI with Appraisal Institute, Certificate No. 7210
- Past President of Chapter 168, Society of Real Estate Appraisers 1990
- Local, State, and National Realtor Organizations

EDUCATION:

- B.S. Degree in Biological Sciences, Florida State University, 1969
- Head of Science Department and Instructor in Physics, Chemistry, and Biology, Chattahoochee, Florida, High School, 1969-70.
- Mathematics Instructor, Seabreeze Senior High School, 1970-71.
- Successful completion of the following AIREA/SREA courses:

- Course I-A	Basic Appraisal Principles, Methods, Techniques	1973
- Course I-B	Capitalization Theory & Techniques	1975
- Course VIII	Single Family Residential Appraisal	1975
- Course 2-1	Case Studies	1984
- Course 2-2	Valuation Analysis and Report Writing	1984
- Course 2-3	Professional Standards	1987
- Course 2-3	Professional Standards	1987
- Course 400	National USPAP update	2012
- Course 420	Business Practices & Ethics	2003
- Course 430	Standards Part C	2000
- USPAP/Law	Core Law/Standards Update	2014
- Disasters	Appraising After Natural Disasters	1996
- Completion of various Institute, Society, and other professional association sponsored educational seminars - 2014 most recent
- Currently certified under both Appraisal Institute and State of Florida Continuing Education Guidelines

LICENSE:

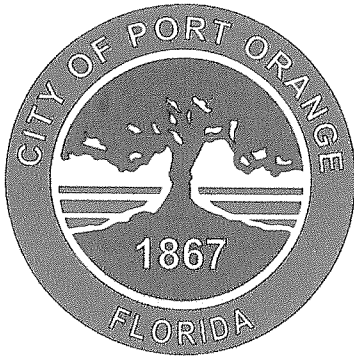
- State-Certified General Real Estate Appraiser, Cert.# RZ 1159
- Licensed Real Estate Broker - State of Florida

EXPERIENCE:

- Independent Fee Appraiser, Daytona Beach, Florida, since June, 1972

PARTIAL LIST OF CLIENTS:

U.S. Department of Interior	First Florida	Sacks-Martin Realty	RBC/Centura Bank
County of Brevard	Florida National Bank	Security First S & L	Daytona Beach Regional Airport
County of Volusia	Manufacturer's Hanover Trust	FNMA	Southern Community Bank
City of Daytona Beach	Empire Federal	BankFirst	Floridian bank
Federal Savings & Loan	Duval Federal Savings & Loan	Falcon Development	Prudential Mortgage, LLC
City of Holly Hill	Coast Federal Savings & Loan	Republic Funding Corp.	Prosperity Bank
City of Port Orange	American Pioneer Savings & Loan	Security First Federal	Sunshine State Community Bank
City of Ormond Beach	Harbor Federal Savings & Loan	County of Flagler	US Appraisal
City of South Daytona	ITTCDC/Palm Coast	U.S. Postal Service	Nations Bank
City of Bunnell	Southeast Mortgage Company	Resolution Trust Corp.	Fifth-Third Bank
Florida Power & Light	McCaughan Mortgage Company	Dept. Of Environmental Rg	NASCAR
Southern Bell Telephone & Telegraph		PMI Mortgage Company	Federal Aviation Admin.
City of Flagler Beach	Bellemead Development Corporation	Rotaler Corporation	Nature Conservancy
Everbank	Continental Mortgage Insurance Co.	Phipps-Harrington Corp.	Florida Dept. Of Law Enforcement
Trust For Public Lands	St. Johns River Water Mgt. Dist.	FDIC	Securities Fraud Unit
Various condemnees	Sun Bank of Volusia County	Various estates	Colonial Bank
Consolidated-Tomoka Land Company		Mondex Realty	Florida Dept. Of Transportation
Charles Wayne Group, Ltd.	Florida Communities Trust	May-Zima and Associates	Cypress Bank
People's First Bank	Florida Inland Navigation District	Palm Coast Utilities Corp.	First Union Corporation
East Coast Community Bank	Volusia County School Board	Flagler County School Board	SunTrust Banks
Coquina Bank	Various Commercial Properties	Florida Dept. of Natural Resources	Barnett Banks
Peninsula Bank	Intracoastal Bank		Space Coast Credit Union



CITY OF PORT ORANGE

4545 S. Clyde Morris Blvd.
Port Orange, FL 32129
TELEPHONE 386-506-5800
www.port-orange.org

TO: David T. Harden, Interim City Manager

FROM: Gerald M. Monahan Jr., Chief of Police 

DATE: July 30, 2015

SUBJECT: Penna Court Motel

It has come to my attention that the City is considering the purchase of the Penna Court Motel at 4750 S. Ridgewood Avenue. I would like to express my enthusiastic support for the acquisition of this property as a very positive step toward redevelopment of the Ridgewood Corridor. I would even go a step further and advocate for procurement of similar properties in the corridor in the future.

Such action is congruent with the City's Strategic Plan, specifically Goal Three: Economic Development, Objective 3: Continued Land Acquisition along US 1. This motel, and others like it, are a source of blight and significant police activity in the area. I believe that this is a viable methodology to change the face of this most important area of the City by providing the first step in facilitating positive future residential and commercial growth paralleling the intended outcome of the Riverwalk development for the entire Ridgewood Corridor.

GMM:ckr



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Resolution No. 15-46 - Budget Appropriations to Fund Acquisition of the Penna Court Motel located at 4750 Ridgewood Avenue

DEPARTMENT: Finance

RECOMMENDED MOTION: Move to approve Resolution No. 15-46.

SUMMARY: Budget Resolution No. 15-46

*Fund the Acquisition of the Penna Court Motel located at 4750 Ridgewood Avenue - Total Cost is \$180,500 (This amount includes estimated demolition costs of \$17,000 and estimated asbestos abatement costs of \$3,000)

Note: This property is within the Town Center CRA District

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	Reso. No. 15-46	SKM_C454e15072810510.pdf
----	-----------------	--------------------------

Donahue, Kent
Riehm, Tracey
Roberts, Margaret
Harden, David

Created/Initiated - 07/27/2015
Approved - 07/27/2015
Approved - 07/28/2015
Final Approval - 07/28/2015

RESOLUTION NO. 15 – 46

A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROPRIATING
OPERATING FUNDS FOR THE ACQUISITION OF
THE PENNA COURT MOTEL; SETTING FORTH
REVENUES AND EXPENDITURES; AND PROVIDING
AN EFFECTIVE DATE.

WHEREAS, the City has approved the purchase of the Penna Court Motel located at 4750 Ridgewood Avenue which is located within the Town Center CRA; and

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

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

Section 1. The funds for the City operating 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, 2014 through September 30, 2015.

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

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

MAYOR ALLEN GREEN

ATTEST:

Robin L. Fenwick, CMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
City Attorney

FY 2015 **General Fund 001**
PREPARED: **7/27/15**
FINANCE: **Lisa A. Pallante**

APPROVED BUDGET

REVENUES:

Appropriated Equity	180,500
TOTAL REVENUES:	180,500

EXPENDITURES:

Non-Departmental - Transfer to 103 Town Center Fund	180,500
TOTAL EXPENDITURES:	180,500

To transfer funds to the 103 Town Center Fund for the purchase of the Penna Court Motel property located at 4750 Ridgewood Avenue which is within the Town Center CRA.

FY 2015 **Town Center Fund 103**
PREPARED: **7/27/15**
FINANCE: **Lisa A. Pallante**

APPROVED BUDGET

REVENUES:

Transfer from General Fund 001	180,500
TOTAL REVENUES:	180,500

EXPENDITURES:

Non-Departmental - Land	180,500
TOTAL EXPENDITURES:	180,500

To budget for funds transferred from the General Fund for the purchase of the Penna Court Motel property located at 4750 Ridgewood Avenue which is located within the Town Center CRA.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: First Reading - Ordinance No. 2015-27 - Amending City Code Sec 2-262, Purchase and sales procedures

DEPARTMENT: Finance

RECOMMENDED MOTION:

Move to approve on first reading Ordinance No. 2015-27, amending City Code Section 2-262 Purchase and Sales Procedures, clarifying spending authority for multiple purchases from the same vendor by different departments

SUMMARY: At the City council workshop on June 30, 2015, a discussion was held on purchase processes, specifically spending authority. Council requested that a reporting requirement be included with the initial proposed draft amendment to City Code Section 2-262-- Purchase and Sales Procedure. Additionally, two new ordinances were presented to Council dealing with bid protests, and suspension and debarment of vendors. This agenda item requests the approval on first reading of Ordinance 2015-27 amending Section 2-262 of the City of Port Orange Code of Ordinances.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	Ord. No. 2015-27	Ord. No. 2015-27.pdf
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Gomez, Joseph
Riehm, Tracey
Rosen, Alan
Roberts, Margaret
Harden, David

Created/Initiated - 07/07/2015
Approved - 07/09/2015
Approved - 07/10/2015
Approved - 07/30/2015
Final Approval - 07/30/2015

ORDINANCE NO. 2015-27

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE VI, DIVISION 2, SECTION 2-262 OF THE CODE OF ORDINANCES REGARDING PURCHASE AND SALES PROCEDURES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the city annually spends significant dollars on purchasing goods and services, and accounts for expenditures pursuant to the requirements of law; and

WHEREAS, the city council has determined that the process of purchasing requires efficiency and legally sufficiency for enforcement; and

WHEREAS, the city council has determined that it is in the best interest of the city to amend the procedures as set forth in this Ordinance; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

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

SECTION 1: The City Council of the City of Port Orange hereby amends Chapter 2, Article VI, Division 2, Section 2-262 of the Code of Ordinances, to read as follows:

Chapter 2 – ADMINISTRATION

ARTICLE VI. - FINANCE

DIVISION 2. – PURCHASE AND SALE PROCEDURE

Sec. 2-262. - Purchase and sales procedures.

(a) *[Remain Unchanged]*

(b) No contract or purchase shall be subdivided to avoid the requirements of this article. Separate purchases from the same vendor by different departments for different purposes shall not be considered subdivided purchases. Such purchases will be reported to the city council on a quarterly basis or as soon as practicable, and will follow the bidding guidelines outlined in the City of Port Orange Purchasing Manual Policies and Procedures, to ensure cost efficiency and maximize competition.

(c) – (f) *[Remain Unchanged]*

SECTION 2: CONFLICTING ORDINANCES.

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

SECTION 3: CODIFICATION

The provisions of this Ordinance shall become and be made a part of the 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 4: SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 5: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption.

MAYOR ALLEN GREEN

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: _____
City Attorney



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: First Reading - Ordinance No. 2015-29 - Adopting City Code Section 2-277
Bid protest

DEPARTMENT: Finance

RECOMMENDED MOTION: Move to approve on first reading Ordinance No. 2015-27, Bid Protests, adding City Code Section 2-277

SUMMARY: At the City council workshop on June 30, 2015, a discussion was held on our purchase process. Two new ordinances were presented to council dealing with Bid protests, and Suspension and Debarment of vendors. This agenda item requests the approval on first reading of Ordinance 2015-29 enacting a new Sec. 2-277 -- Bid Protest of the City of Port Orange Code of Ordinances.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	Ord. No. 2015-29	Ord. No. 2015-29 .pdf
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Gomez, Joseph	Created/Initiated - 07/16/2015
Riehm, Tracey	Approved - 07/16/2015
Rosen, Alan	Approved - 07/16/2015
Roberts, Margaret	Approved - 07/30/2015
Harden, David	Final Approval - 07/30/2015

ORDINANCE NO. 2015-29

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE VI, DIVISION 2, OF THE CODE OF ORDINANCES TO ESTABLISH SECTION 2-277 REGARDING BID PROTEST; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the city council has determined that it is in the best interest of the city to establish procedures for bid protest as set forth in this Ordinance; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

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

SECTION 1: The City Council of the City of Port Orange hereby amends Chapter 2, Article VI, Division 2, Section 2-277 of the Code of Ordinances, to read as follows:

Chapter 2 – ADMINISTRATION

ARTICLE VI. - FINANCE

DIVISION 2. – PURCHASE AND SALE PROCEDURE

Sec. 2-277. – Bid protest.

1. 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 as set forth on a city council agenda item or other routinely used on-line government procurement service. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, bids, 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 city holidays shall be excluded in the computation of the 72-hour time period established herein.

2. The formal written protest shall be filed with the Purchasing Manager, in writing within 10 calendar 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.
3. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings.
4. 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 in the following manner:
 - a) As soon as possible after receipt, the Purchasing Manager shall provide written bid protest to the City Manager, City Attorney, Department Head involved and Supervisor directly involved in the acquisition.
 - b) The Purchasing Manager shall schedule within 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 administrative decision to the Circuit Court in Volusia County, Florida within 30 days of the City Council's final decision. Decisions at all levels shall be in writing to the protestor.

SECTION 2: CONFLICTING ORDINANCES.

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

SECTION 3: CODIFICATION

The provisions of this Ordinance shall become and be made a part of the 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 4: SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 5: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption.

MAYOR ALLEN GREEN

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: _____
City Attorney



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: First Reading - Ordinance No. 2015-30 - Amending City Code Section 2-272 Alterations or modifications of contracts

DEPARTMENT: Finance

RECOMMENDED MOTION: Move to approve Ordinance No. 2015-30 on first reading, revising City Code Section 2-272 - **Alterations or modifications of contracts.**

SUMMARY: At the City Council Workshop on June 30, 2015; a presentation was made and discussion was held regarding change order process improvement. Based on that discussion staff has drafted the attached Ordinance amending the City Code to include the following:

- Provision for an Unforeseen Conditions Allowance
- Approval of changes within this allowance by staff
- If the allowance is exceeded, cost increases to be brought to Council
- Scope changes to be brought to Council
- Time changes to be brought to Council

The City Manager is empowered to approve changes resulting from emergency events. Such changes exceeding normal authority will be brought back to Council at the next meeting.

If no unforeseen condition allowance is established and approved for a project, then the City Manager retains authority up to \$25,000 for change orders.

The second reading of this Ordinance, if approved, will be on August 18, 2015.

Project Funding Account
No.: No.:

ATTACHMENTS:

1.	Ord. No. 2015-30	Ord. No. 2015-30.pdf
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Wiggins, Julia
Wilson, Rick
Neff, Andrew

Created/Initiated - 07/01/2015
Approved - 07/06/2015
Approved - 07/06/2015

Gomez, Joseph
Roberts, Margaret
Harden, David

Approved - 07/13/2015
Approved - 07/30/2015
Final Approval - 07/30/2015

ORDINANCE NO. 2015-30

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE VI, DIVISION 2, SECTION 2-272 OF THE CODE OF ORDINANCES REGARDING ALTERATIONS OR MODIFICATIONS OF CONTRACTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the city council has determined that it is in the best interest of the city to amend the procedure for alterations or modifications of contracts as set forth in this Ordinance; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

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

SECTION 1: The City Council of the City of Port Orange hereby amends Chapter 2, Article VI, Division 2, Section 2-272 of the Code of Ordinances, to read as follows:

Chapter 2 – ADMINISTRATION

ARTICLE VI. - FINANCE

DIVISION 2. – PURCHASE AND SALE PROCEDURE

Sec. 2-272. - Alterations or modifications of contracts.

(a) Where in the opinion of the department head it becomes necessary for the prosecution of any work or improvement under contract to make alterations or modifications in such contract, such alterations or modifications may only be effected as follows:

(1) *Unforeseen conditions allowance.* The city manager, or his or her designee as set forth in writing, shall have the authority to approve expenditures up to the total amount of the allowance for unforeseen conditions as established upon award of the contract.

- (2) *Change orders by city manager authority.* The city manager, or his or her designee as set forth in writing, shall have the authority to approve change orders up to \$25,000.00 if an allowance is not included in the contract.
 - (3) *Emergency event.* The city manager, or his or her designee as set forth in writing, shall have the authority to approve and execute change orders that increase the contract price beyond the unforeseen conditions allowance only for an emergency event that occurs during the performance of the contract and requires immediate resolution to avoid one or more of the following: additional costs that were not reasonably anticipated; delay to the project that increases costs; or endangerment of the public. Each change order issued as a result of an emergency event shall be brought to city council for ratification at the next available meeting, if the approval authority of the city manager has been exceeded or if the allowance has been exceeded.
 - (4) *Scope and time.* City council approval shall be required for changes in project scope, defined as changes that materially alter or expand the original intent of the project, taking into consideration the details included in the advertisement and previous award approval by council, if applicable. City council approval shall be required for changes in project time.
- (b) Except as expressly modified in a change order, all other terms and conditions of the modified contract shall remain in full force and effect

~~Any modification to any contract which changes the original contract price by more than \$25,000.00 must be authorized by the city council. Modifications to any contract which changes the original contract price by less than \$5,000.00 may be authorized by the respective department head. Modifications to any contract which changes the original contract price by more than \$5,000.00 but less than \$25,000.00 must have prior authorization by the city manager.~~

SECTION 2: CONFLICTING ORDINANCES.

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

SECTION 3: CODIFICATION

The provisions of this Ordinance shall become and be made a part of the 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 4: SEVERABILITY.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 5: EFFECTIVE DATE.

This Ordinance shall take effect immediately upon adoption.

MAYOR ALLEN GREEN

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: _____
City Attorney



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Pie Guy – Targeted Business Program Incentive Contract

DEPARTMENT: Community Development

RECOMMENDED MOTION: Move to approve the contract with Pie Guy for Targeted Business Incentives.

SUMMARY: Pie Guy, a handmade pie company from New England, is interested in relocating to a site located within the Eastport Business Park at 4470 Eastport Parkway. The Eastport Business Park is located within the Eastport Business Center Community Redevelopment Area (CRA). The CRA Plan states that incentives may be provided through the process described in the City's Land Development Code (LDC), Chapter 20 - Economic Development Incentives.

The purpose of the incentives identified in the LDC is to accomplish the following within the city: promote positive forms of new development and redevelopment; reward the creation and retention of value-added jobs; attract targeted businesses; revitalize the Port Orange Town Center and Eastport Business Center redevelopment areas; increase the nonresidential tax-base; and foster a diverse employment base within the city.

In accordance with Chapter 20 of the LDC, John Slafkosky, President of Pie Guy formally requested financial assistance from the City in the amount of \$23,090. The amount of assistance is based on the waiver of the building permit fee which is estimated at \$5,000 and the waiver of water and wastewater impact fees, which have an estimated cost of \$3,090. Pie Guy is also requesting assistance of \$15,000 for architectural services. The architectural services are required for the design of the renovations of the property to meet the production needs for the Pie Guy facility.

The attached request letter indicates that the facility when fully operational will employ 40 individuals at an average wage of \$32,654. According to the analysis from CareerSource Flagler/Volusia, with the creation of 40 jobs at an average annual wage of \$32,654, the economic impact would be a total of 105 direct, indirect and induced jobs with an annual increase in local earnings of \$1,961,519. Additionally, the property will see an increase in taxable valuation of the property with the estimated property improvements and the added manufacturing and office equipment. If approved, Pie Guy is estimated to make a capital investment of approximately \$1,665,000 through the real estate purchase, equipment and improvements to the existing building.

On July 7, the City Council approved the requested incentives subject to the review and approval of a contract outlining the given incentives, their allocation and the conditions applicable thereto in accordance with Chapter 20 of the LDC.

City staff has worked with staff from Team Volusia Economic Development Corporation on this proposed project. The request is consistent with the available incentives that may be awarded through the City's Targeted Business Program.

Project No.: TIF004
To be determined

Funding Account No.: 102-1000-552-63-00
102-1000-552-83-00

ATTACHMENTS:

1.	Economic Development Agreement	Economic Development Agreement.pdf
2.	Request Letter	Port Orange Assistance Request.pdf

Cruz, Penelope	Created/Initiated - 07/14/2015
Clark, Wayne	Approved - 07/14/2015
Riehm, Tracey	Approved - 07/15/2015
Roberts, Margaret	Approved - 07/30/2015
Harden, David	Final Approval - 07/30/2015

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (the "Agreement") is made and entered into this ____ day of August, 2015, by and between the **CITY OF PORT ORANGE**, Florida, a chartered municipal corporation (the "City" or "Grantor"), whose address is 1000 City Center Circle, Port Orange, Florida 32119 and **SOUHEGAN MANAGEMENT CORPORATION d/b/a THE PIE GUY** (the "Grantee"), a New Hampshire Corporation registered to transact business in Florida, whose address is 99 Faltin Drive, Manchester, New Hampshire 03103, and collectively referred to as the Parties.

PROVISIONS:

WHEREAS, pursuant to the Land Development Code, Chapter 20, the City has established a Targeted Business Program ("TBP") to provide financial assistance to businesses; and

WHEREAS, the Grantee has applied for a grant to establish a regional distribution facility at 4470 Eastport Parkway, Port Orange, Florida; and

WHEREAS, the City Council has considered the following factors; the number of jobs, the number of value added jobs, average wage, type of business venture, how the business venture addresses the critical needs within the city, location of business venture, value of construction, significance of improvement, anticipated tax revenue, multiplier implications on the local economic health of the economy, availability of city funds and other factors related to the grant of financial assistance; and

WHEREAS, the Grantee shall establish a regional distribution facility for quality bakery products, and shall create 40 jobs with an average annual wage of \$32,654.00; and

WHEREAS, the CareerSource Flagler/Volusia has determine that the economic impact would be a total of 105 direct, indirect and induced jobs with an annual increase in local earnings of \$1,961,519.00; and

WHEREAS, the capital investment for this new facility is estimated at \$1,665,000 and will increase the taxable valuation resulting from property improvements, manufacturing and office equipment; and

WHEREAS, the City Council has acknowledged that the waiver of impact fees shall require the City to make payment to the impact fee fund in lieu of the Grantee's payment as provided for in this Agreement; and

WHEREAS, the City Council has determined that the Grantee qualifies for the grant; and

WHEREAS, the City Council has recently examined the current financial factors relating to the City's budget preparation and indicating the health of the local economy; and

WHEREAS, the Targeted Business Program grant is expected to foster a diverse employment base within the City; and

WHEREAS, funding is available in the Eastport 102 Fund; and

WHEREAS, the Parties desire to enter into this Agreement as more particularly set forth hereinafter.

NOW, THEREFORE, for good and valuable consideration, receipt hereof is hereby acknowledged, the Parties agree as follows:

1. Above Provisions: The foregoing premises are true and correct and are incorporated herein by reference.
2. Grant: The City hereby awards Grantee a Targeted Business Program grant up to the amount of \$15,000.00 for architectural design services, subject to the terms of this Agreement, for payment upon issuance of the certificate of occupancy in accordance with the plans and/or permits approved for construction.
3. Conditions: Dispersal of the grant shall be made for architectural service costs incurred. The Grantee agrees to provide the City with receipts of the actual costs incurred. Upon Grantee's submittal of the building permit application, the City agrees to waive the City of Port Orange building permit fees up to the amount of \$5,000.00. The City agrees to waive the water and wastewater impact fees up to the amount of \$3090.00.
4. Expiration: The city shall not distribute and is not required to distribute the grant if within 18 months of the date of execution of this Agreement the Grantee has not obtained the building permits. The City shall not be responsible for any costs associated with the Project or this Agreement or any other costs if the grant expires.

The City shall not be held responsible for the inability of the Grantee to obtain the building permits.

5. Audit: The City reserves the right to review, audit and account for any and all financial records pertaining to the creation of jobs as set forth in this Agreement and as required by the Targeted Business Program.

6. 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.

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

If Contractor does not comply with a public records request, the City shall enforce this contract provision.

7. Notice of Termination: Upon the City's determination that Grantee has breached any term of this Agreement, the City shall provide the Grantee written notice by certified mail of said breach, and provide, in the written notice, the corrective action that Grantee must take. If Grantee does not take the above-described corrective action within fifteen (15) days of Grantee's receipt of the written notice, this Agreement shall terminate without further notice. The corrective action must be acceptable to the City in order to avoid termination. The City shall provide Grantee a certified letter confirming termination of this Agreement. Within thirty (30) days of receipt of the termination letter, the City Manager may require the Grantee to submit a cashier's check to the City for the total amount of funds disbursed from the City's match under this Agreement.

8. Applicable Laws: The Grantee must comply with all applicable laws, ordinances and codes and Grantee shall, except where provided herein, secure and pay for all permits and be responsible for all other fees or charges associated with the performance of the Project or any other activities under this Agreement.

9. 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

Grantee: Souhegan Management Corporation d/b/a The Pie Guy
Attention: John Slafkosky, President
99 Faltin Drive
Manchester, New Hampshire 03103
(603) 898-8868 - Business Telephone
merri@pieguy.com

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.

10. Entire Agreement: This Agreement incorporates the entire Agreement, including any attached Exhibits or Amendments, between the parties hereto and no statements, representations, or terms, not included within the written terms of this Agreement, can be considered a part of this Agreement.

11. No Waiver: This Agreement does not constitute a waiver of any applicable Codes or regulations nor does it constitute approval of the Project for development. All applicable Codes and regulations remain in force.

12. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any actions arising out of this Agreement shall be in Volusia County, Florida.

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

CITY OF PORT ORANGE

By: _____
Allen Green, Mayor

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

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Allen Green, Mayor and Robin L. Fenwick, CMC, City Clerk for 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 name, commission and
expiration:*

**SOUHEGAN MANAGEMENT CORPORATION
d/b/a THE PIE GUY**

By: _____
John Slafkosky, President

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by John Slafkosky, as President of Souhegan Management Corporation d/b/a The Pie Guy, a New Hampshire corporation registered to transact business in Florida, and who:

[Notary: Please select one]

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

Notary Public, State of New Hampshire
*Printed name, commission and
expiration:*



John Slafkosky
 President
 99 Faltin Drive
 Manchester, NH 03103
 Phone: 603-898-8868
 FAX: 603-898-7868

June 26, 2015

David Harden
 Interim City Manager
 City of Port Orange, FL
 1000 City Center
 Port Orange, FL 32129

RE: Financial Assistance Request

In accordance with the Port Orange Land Development Code, Chapter 20, John Slafkosky, President of Pie Guy formally requests financial assistance from the City of Port Orange, FL in the amount of \$23,090. The amount of assistance is based on the waiver of the building permit fee from the City of Port Orange which is estimated at \$5,000 and the waiver of water and wastewater impact fees, which have an estimated cost of \$3,090. Pie Guy is also requesting assistance of \$15,000 for architectural services. The architectural services are required for the design of the renovations of the property to meet the production needs for the Pie Guy facility.

Jobs:		Estimated Permit Fee:	\$5,000
	12/31/2106 25		
	12/31/2017 35	Water/Wastewater Impact Fees:	\$3,090
	12/31/2018 40		
Average Annual Wage:	\$32,654	Architectural Fees:	\$15,000
Purchase of Property:	\$700,000	Total Fees:	\$23,090
Construction Renovations:	\$350,000	Economic Impact:	
Manufacturing Equipment:	\$575,000	Total New Jobs:	
RD Equipment:	\$5,000	(Direct, Indirect, and Induced):	105
Other Equipment:	\$10,000	Total Change in Earnings:	\$1,961,519

*CareerSource Flagler/Volusia EMSI Input-Out Scenario

Total Capital Investment:	\$1,665,000
--------------------------------------	--------------------

With the approval of the incentives, Pie Guy will be making a capital investment of \$1,665,000 in the city of Port Orange with the purchase of the property located at 4470 Eastport Park. The facility when fully operational will employ 40 individuals at an average wage of \$32,654. CareerSource Flagler/Volusia provided the economic impact model for this project. With the creation of 40 jobs at an average annual wage of \$32,654, the economic impact would be a total of 105 direct, indirect and induced jobs with an annual increase in local earnings of \$1,961,519. Additionally, the property will see an estimated increase in taxable valuation of the property with the additional construction and renovations, manufacturing equipment and office equipment.

Company Information

The Pie Guy has been making pies by hand in New England since before 2001 and Dallas, TX since 2014. We're family-operated and we taste what we make every day. We believe that good baking is an art, not an industrial process ... our products are handmade by good people with a passion for good food. We believe in using only natural ingredients which are labeled honestly.

Premium, home-style pies

From the beginning, the idea behind The Pie Guy has been to provide the kind of fresh, simple product you'd make yourself at home, delivered to the bakery section of neighborhood food retailers. We started off making pies by hand with simple, all-natural ingredients ... and after 15 years we're still making pies by hand, with simple all-natural ingredients. Here in our backyard, The Pie Guy has been named "Best of New Hampshire" by New Hampshire magazine for the past ten years. The word is out, and today you can find our products in the bakery section of food retailers across New England and an increasingly wide area of the greater east coast.

Different ingredients

You can find a lot of "pies" on the market these days, but you will not find one made with better ingredients.

We are committed to using totally natural, home-style ingredients ... the kind simple ingredients you might use at home ... like fresh fruit, pure cane sugar, unbleached flour and pure vanilla. We never use pie filling, high fructose corn syrup, hydrogenated oils, fillers, artificial flavorings, colorings, preservatives or the unpronounceable industrial stuff you'll find on some "pie" labels.

We're not scientists but we think that our natural ingredients probably make for a healthier, more wholesome product. What we know for certain is that our natural ingredients make for a better-tasting product ... something you'll enjoy eating yourself and feel good about serving to family and friends.

Compare ingredient labels, compare taste.

Made differently

We make our products by hand, in small batches. If they look a little irregular it's because they're made by people, not machines. We don't use factory-scale pie machines or tunnel ovens ... we hand-mix fruit with sugar and spices, pack the fruit into crusts one-by-one and apply a topping or top crust by hand. Our cream pies taste the way they do because they're made the old-fashioned way, thickened with milk and egg yolks in a hot kettle, not with modified food starch in a cold industrial process.

I would like to thank Team Volusia EDC and John Wanamaker of Coldwell Banker Commercial AI Group for assisting our company in this relocation project and for demonstrating the benefits of selecting Port Orange as the location for our new facility.

I thank you for your consideration of our incentive request.

Sincerely,



John Slafkosky

President

Pie Guy



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Fund Balance and Working Capital Policy

DEPARTMENT: Finance

RECOMMENDED MOTION: Move to approve the fund balance and working capital policy for the City of Port Orange.

SUMMARY: On June 30th, 2015, staff presented recommendations to the City Council regarding best practices in fund balance policy. Based on that discussion and Council's direction, staff has prepared a draft policy regarding fund balance (General Fund) and working capital (enterprise funds).

The proposed policy covers the following funds:

- General Fund
- Water and Sewer Operating Fund
- Solid Waste Fund, and
- Stormwater Operating Fund

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	Proposed Fund Balance Policy	Proposed Fund Balance Policy.docx
2.	Fund Balance Presentation 6-30-15	Fund Balance Presentation.pdf

Rosen, Alan
Riehm, Tracey
Harden, David

Created/Initiated - 07/17/2015
Approved - 07/30/2015
Final Approval - 07/30/2015



**PORT ORANGE FINANCE DEPARTMENT
PORT ORANGE, FLORIDA**

POLICY AND PROCEDURE DIRECTIVE

TITLE: Fund Balance and Working Capital Policy
NUMBER: 1-29
EFFECTIVE: Upon Adoption by the City Council (TBD)
SUPERSEDES: 1-29 (Cash and Investment Equity Reserves)
REVISED: 7/17/15

PURPOSE

The purpose is to establish a fund balance policy consistent with the Governmental Accounting Standards Board (GASB) Statement Number 54, to set appropriate levels of fund balance, to establish a mechanism for increasing fund balance to minimum levels should they not be sufficient and to limit the use of excess fund balance.

DISCUSSION

GASB Statement Number 54 (issued in February 2009) identified five categories of fund balance for governmental funds. The categories and definitions are:

- Restricted Fund Balance
 - Non-Spendable Fund Balance
 - Amounts that cannot be spent because of form or because it must remain intact (such as inventories).
 - Restricted Fund Balance
 - Amounts that can be spent only for the specific purposes stipulated by constitution, external resource providers, or through enabling legislation.
- Unrestricted Fund Balance
 - Committed Fund Balance
 - Amounts that can be used only for the specific purposes determined by a formal action of the government's highest level of decision-making authority.
 - Assigned Fund Balance
 - Amounts that are intended to be used by the government for specific purposes but do not meet the criteria to be classified as restricted or committed.
 - Unassigned Fund Balance
 - The residual classification for the government's general fund and includes all spendable amounts not contained in the other classifications.

The Government Finance Officers Association (GFOA) recommends a minimum unrestricted fund balance in governmental funds equal to two months of operating expenditures (or 16.7%). Other coastal cities in North Carolina and Florida have determined that a desired minimum unrestricted fund balance level should be around 25%-30% of expenditures due to the potential for significant hurricane damage.

For proprietary funds, GFOA recommends the target for working capital in most instances be between 45 and 90 days' worth of annual operating expenses (or between 12.3% and 24.7% of annual operating expenses). Working capital is defined as current assets minus current liabilities. In practice other local governments retain about 15% working capital in most enterprise funds excluding smaller enterprise funds such as those accounting for golf course operations.

POLICY

Purpose of Fund Balance and Working Capital

The purpose of fund balance and working capital is to mitigate current and future risks such as revenue shortfalls and unanticipated expenditures including, but not limited to natural, man-made and technical disasters.

Unassigned Fund Balance and Working Capital Range

The City will maintain an unassigned fund balance in the General Fund of between 30% and 35% of operating expenditures (less transfers). The City will maintain working capital in the enterprise funds of between 25% and 30%, excluding the Golf Course Fund.

Replenishing Fund Balance and Working Capital

If the General Fund unassigned ending fund balance falls below 30% of operating expenditures (less transfers), the City shall work to replenish this account to at least the minimum level (30% of operating expenditures, less transfers) within 3 fiscal years.

If working capital in the enterprise funds covered under this policy fall below 25% of annual operating expenses (less transfers) the City shall work to replenish these accounts to at least the minimum level (25% of annual operating expenses, less transfers) within 3 fiscal years.

Utilization of Fund Balance or Working Capital Beyond the Normal Range

Should the General Fund unassigned fund balance end any fiscal year in excess of 35% of operating expenditures (less transfers); or

Should the working capital of any proprietary fund covered in this policy end the fiscal year in excess of 30% of the annual operating expense in that fund (less transfers), then,

The City Council may approve the use of those funds as long as:

1. The funds are not used for recurring expenditures/expenses, and
2. The use of funds does not reduce the forecasted unassigned fund balance or working capital of any fund to below 30% of operating expenditures or 25% of annual operating expenses (less transfers) respectively.

RESPONSIBILITIES

1. City Manager or Designee
 - a. Has the responsibility to notify the City Council in a timely manner should a forecast arise that indicates the general fund unassigned fund balance and/or any working capital for funds covered under this policy will fall below minimum levels by the end of the fiscal year.
 - b. Has the responsibility to prepare (and present to City Council) a plan to replenish the general fund unassigned fund balance and/or working capital of funds covered under this policy, should they fall below minimum levels.

Approved: _____
David T. Harden, Interim City Manager

Date

Adopted by City Council _____
Date

General Fund Fund Balance Policy

June 30, 2015



Discussion Agenda

1. What is a “Fund Balance”
2. How Much is Enough?
3. Policy Review
4. Policy Recommendation
 1. How much?
 2. What if you exceed your target?
 3. What if you don't have enough?
5. Discussion



What is “Fund Balance”?

“Most simply, fund balance is the difference between assets and liabilities”

– Governmental Accounting Standards Board (GASB)

Year	2013	2014	2015
Beginning Balance	\$100	\$100	\$105
Revenue	+\$5	+\$10	+\$0
Expenditures	-\$5	-\$5	-\$5
Ending Balance	=\$100	=\$105	=\$100



What is “Fund Balance”?

- What is Fund Balance Used For?
- “Governments use fund balance to mitigate current and future risks (e.g., revenue shortfalls and unanticipated expenditures)...” – GFOA
- “Credit rating agencies monitor levels of fund balance and unrestricted fund balance in a government’s general fund to evaluate a government’s continued creditworthiness.” – GFOA



What is “Fund Balance”?

Best Practice

- Use **Ongoing** Revenues for **Ongoing** Expenditures
- Use **One-time** Revenues for **One-time** Expenditures



What is “Fund Balance”?

GASB 54 (Issued in 2009).

Created mandatory reporting requirements for Fund Balance definitions



What is “Fund Balance”?

Examples

- Non-spendable
 - Inventories, prepaid items, City loans to others
- Restricted (by State, Feds, granting agencies)
 - Restricted grant money
 - Debt covenant money
 - Restricted due to laws or legislation (gas tax)



What is “Fund Balance”?

Examples

- Committed (by Council)
 - Committed by formal action
 - For Emergencies or any purpose deemed necessary
- Assigned (by staff, committee, etc.)
 - No formal action needed to be “assigned”
 - Encumbrances for contracts, projects, etc.
- Unassigned
 - Total Fund Balance – all other categories = Unassigned Fund Balance



How Much Is Enough?

- “GFOA recommends, at a minimum, that general-purpose governments... maintain unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures.”
 - 2 Months/12 Months = 16.7%



How Much Is Enough?

- Florida League of Cities (FLC) surveyed coastal cities in North Carolina that were impacted by several consecutive years of hurricanes.
- City Manager's there expressed a desire to have an unrestricted fund balance of between 25% and 30%.



Policy Review

Port Orange Fund Balance Policy

“The City will maintain an **unreserved-undesignated** fund equity of approximately **15%** of Annual Budget requirements or a net equity reserve equal to at **least 54 consecutive days**. The net equity retention policy applies to four main operating funds of the City: general, water/sewer, solid waste and drainage. The Primary purpose of this retention is to fund unforeseen occurrences.”



Adopted 7-24-2012

Policy Review

City	Overall Fund Balance Policy	Additional Emergency Reserve Policy
Boca Raton	Yes, 10% of expenditures	Yes, no amount mentioned
Daytona Beach	Yes, 10% of expenditures	No
Deland	Yes, 2 months of exp.	Yes, no amount mentioned
Deltona	Yes, 2 months of exp.	Yes, \$6 Million
Fort Walton Beach	No	Yes, 30% of expenditures
Melbourne	Yes, 25% of expenditures	No
New Smyrna Beach	Yes, 25% of expenditures	No
Ormond Beach	Yes, 15% of expenditures	No
Palm Coast	Yes, 10%-20% of exp.	Yes, at least .02% of Just Value
Port Orange	Yes, 15% of expenditures	No
Sanford	Yes, 25% of expenditures	Yes, approximately \$3 Million



Note: Information gathered from budget books and direct contact where one was made

Policy Review

Policy Constructs for Fund Balance Amounts

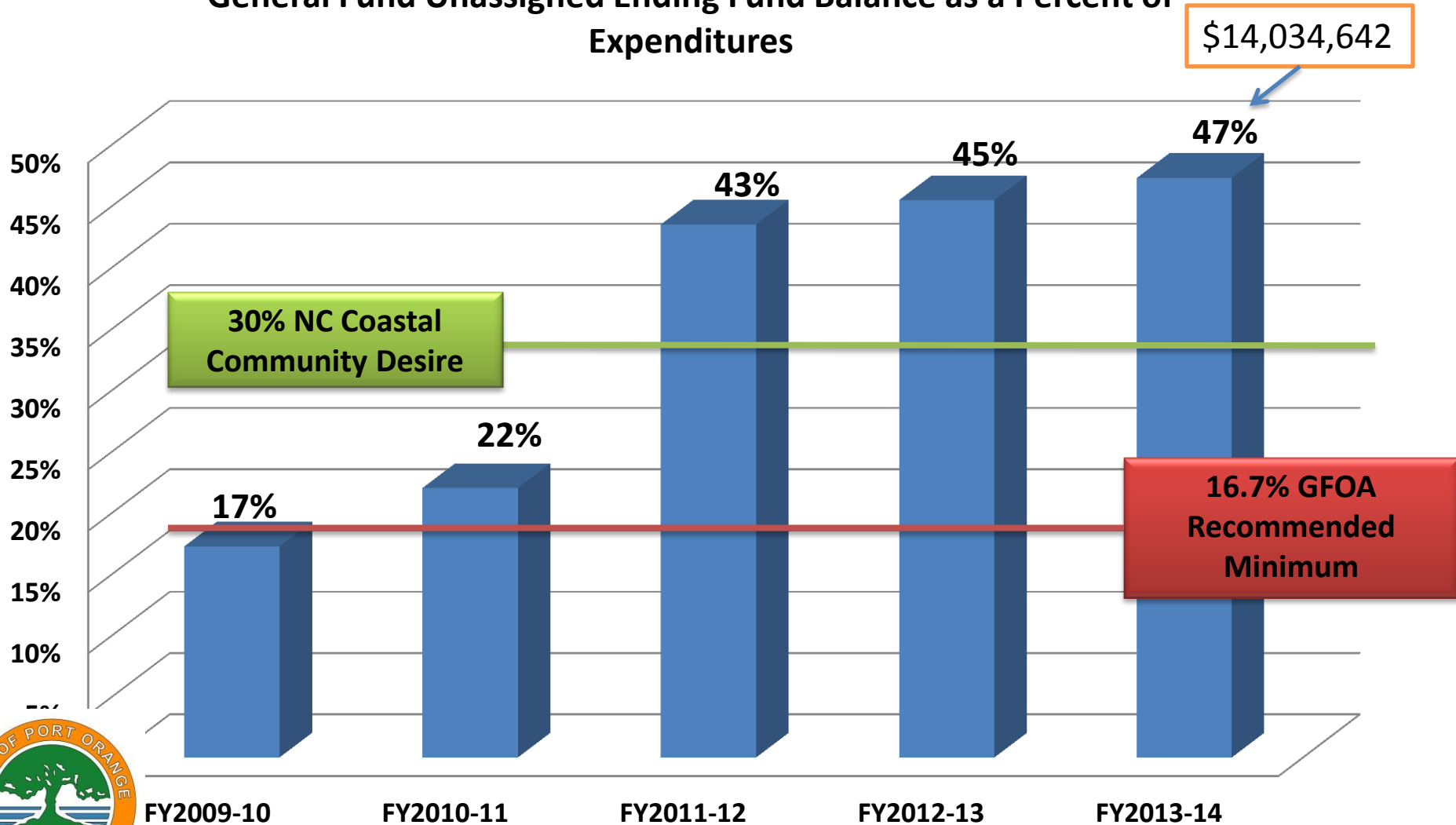
Overall Fund Balance		Emergency Reserve
% of Expenditures or # of Months of Operating	+	Random Amount
% of Expenditures or # of Months of Operating	+	Nothing
% of Expenditures or # of Months of Operating	+	% of Just Value
Nothing	+	30% of Expenditures

“Nothing” indicates that the overall fund balance policy takes into account emergency reserve and all other needs



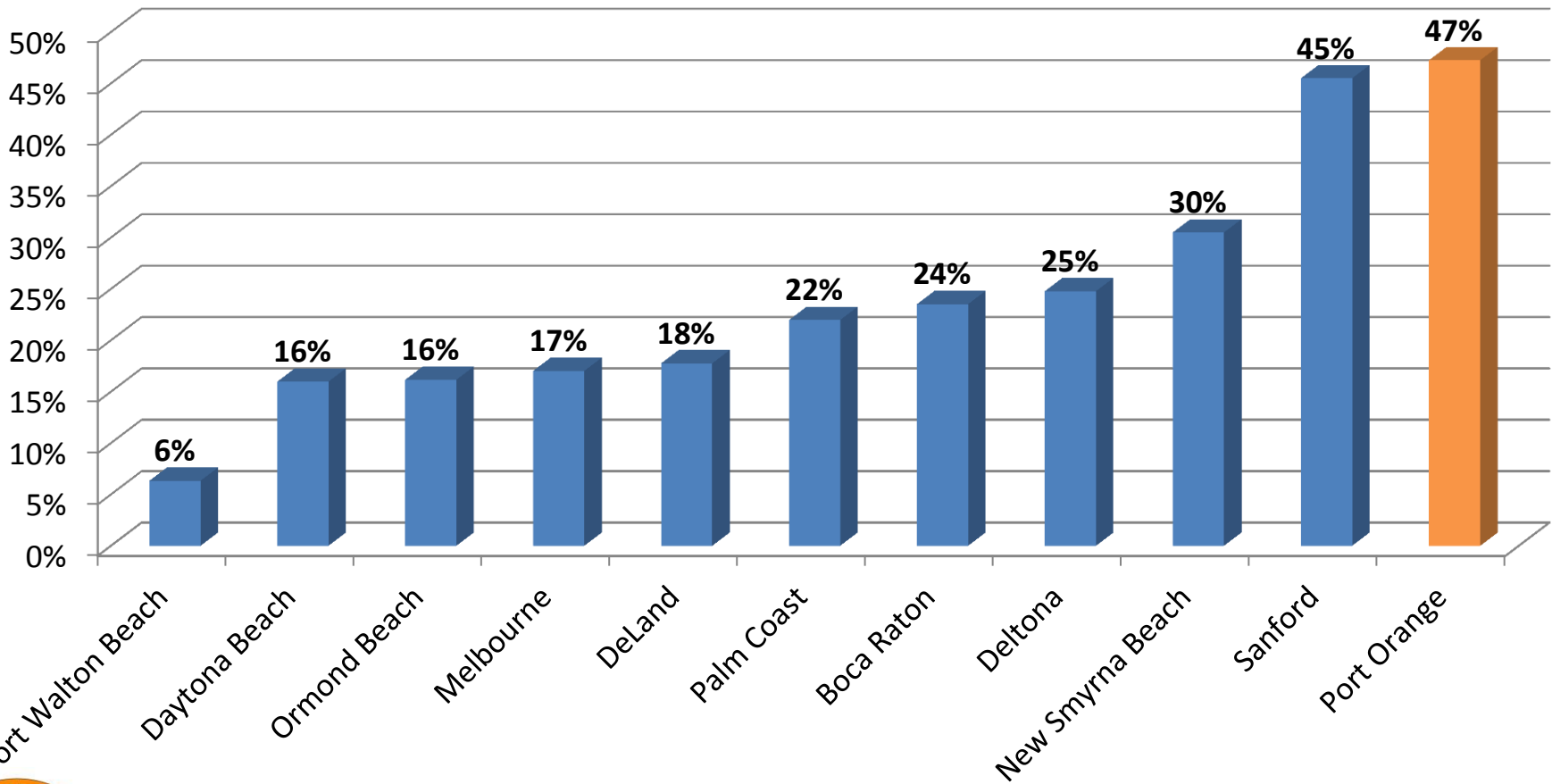
Policy Review

General Fund Unassigned Ending Fund Balance as a Percent of Expenditures



Policy Review

FY 2013-14 General Fund Unassigned Fund Balance as a % of Expenditures



Policy Recommendation

- Based on 30% of Expenditures
 - \$8.9 Million
- Based on Historical Actuals
 - 2004 GF Hurricane Expenditures = \$6.9 Million
 - \$8.8 Million in today's dollars
- Based on 0.02% of Just Value
 - \$810,527

Note 1: FY 2014 Ending Unassigned Fund Balance = \$14 Million (General Fund)

Note 2: Storm costs are only estimates. There are many other variables to consider including: What will other jurisdictions provide? How severe is the storm and how many emergencies will there be in one year?



Policy Recommendation

Unassigned Fund Balance of at least 30% of Expenditures (Approximately \$8.9 Million)

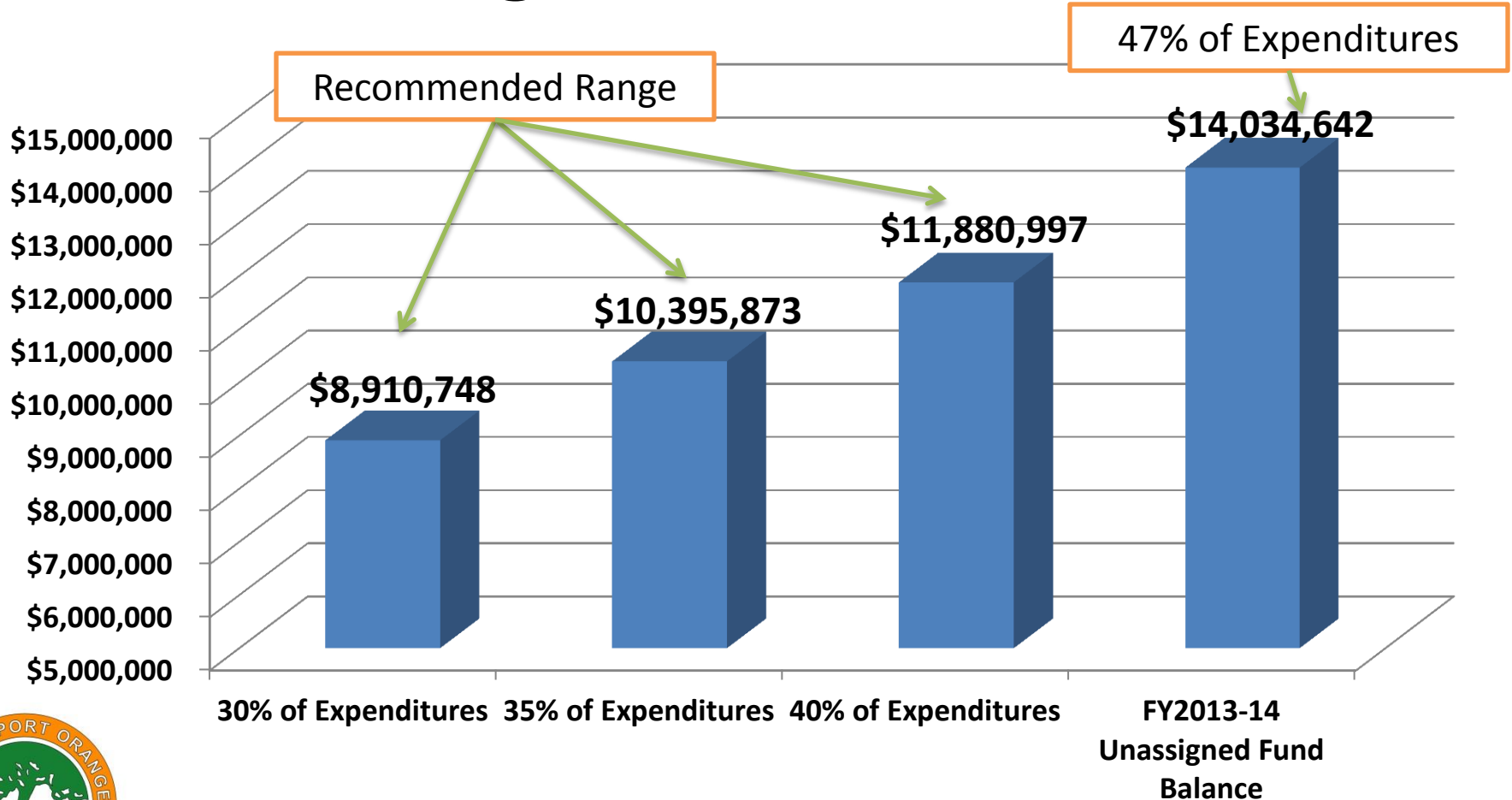
- Since historical emergency expenditures are the same as 30% of expenditures (in today's dollars), recommendation is to set unrestricted fund balance at 30% of expenditures minimum.
- This will set the amount at the cost of historical emergency expenditures as well as (in general) keep this amount in-line with the increasing costs of CPI.



Another Option: Unrestricted Fund Balance Range

Policy Recommendation

Unassigned Fund Balance



Policy Recommendation

Approximate money available for one-time expenditures if fund balance levels are reduced...

- To 40% of Expenditures
 - \$2.15 Million
- To 35% of Expenditures
 - \$3.64 Million
- To 30% of Expenditures
 - \$5.12 Million

Staff recommends between 30% and 40% of expenditures as an appropriate level for Unassigned General Fund Fund Balance



Policy Recommendation

Recommended Uses for Unassigned Fund Balance Over Approved Levels

- **One-time** Expenditures only
 - Capital projects
 - Unusual one-time operating expenditures
 - Reduce liabilities
 - Other?

Note: Fund Balance is not a budgeted item and cannot be spent without approval of Council through a budget resolution to transfer funds.



Policy Recommendation

Recommended Policies for Replenishing Fund Balance Levels

- Over a 2 year period
- Over a 5 year period
- All excess funds, every year until the fund balance reaches minimal levels
- City Manager will advise if levels fall below minimum levels so Council can take necessary action



Discussion

Council Recommendations...

- Unassigned Fund Balance Policy Amount
- Policy on Spending balances Over Required Levels
- Policy on Replenishing Fund Balance to Desired Levels



Discussion





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Monthly Financial Report through June 2015

DEPARTMENT: Finance

RECOMMENDED MOTION:

SUMMARY: The Financial Report for the period ended May 31, 2015 is attached.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	Financial Report June 2015	Monthly Financial Report JUNE-15 - Final.pdf
2.	Pooleed Cash Report 6-30-15	Cash 06 30 2015 final tr.pdf

Riehm, Tracey
Riehm, Tracey
Harden, David

Created/Initiated - 07/30/2015
Approved - 07/30/2015
Final Approval - 07/30/2015



**The City of Port Orange
Finance Department**

MEMORANDUM

TO: David Harden, Interim City Manager
FROM: Tracey Riehm, Finance Director
DATE: July 23, 2015
SUBJECT: **Highlights of the June 2015 Financial Report**

Attached are interim financial reports and highlights of activity for the City's five major funds for the period ending June 30, 2015, which represents 75% of the fiscal year. Also attached are the financial reports from Cypress Head Golf Course and the YMCA. Detailed reports for all funds are available on the City's website at: http://www.port-orange.org/finance/?p=budget_and_financial_reports. Highlights of these funds are as follows:

GENERAL FUND (Fund 001)

Revenues: During the first nine months of the current fiscal year, the General Fund received a total of \$24,101,358 in revenues, which is 73% of general fund revenues for the year. \$22,803,014 was operating revenue and \$1,298,344 accounted for inter-fund transfers and contributions from the enterprise funds. These revenues include \$10,361,157 or 99% of the annual estimated ad valorem tax revenue. The majority of ad valorem taxes are collected in the first quarter of the fiscal year. General fund revenues are 73% of the budget compared with 75% at this point last year, however after allowing for the budgeted use of appropriated equity, the percent collected increases to 78%. Charges for services account for 41% of the overall increase in revenue of \$523,373 compared with this time last year.

Expenditures: The first nine months operating expenditures amounted to \$22,258,293 or 68% of the estimated expenditures for the year, with an additional encumbered amount of \$1,101,398. Actual expenditures are \$2,206,236 more than at this time last year.

Projected Fund Balance: The General Fund currently has a projected unassigned fund balance at fiscal year-end of \$13.9 million, which includes \$4.8 million of emergency reserve.

Please also see the attached financial statement for additional detail.

BUILDING SPECIAL REVENUE FUND (Fund 109)

Revenues: During the first nine months of the current fiscal year, the Building Special Revenue Fund received \$887,923 in operating and non-operating revenues, inclusive of transfers. This equates to 90% of the annual budget, and is \$41,735 (4.9%) more than last year. Revenues in this fund are typically received in a sporadic nature.

Last month the Building Special Revenue fund was behind the prior year by \$10,797 or 1.4%.

Expenditures: Year-to-date expenditures in the Building Special Revenue fund are \$702,190 or 72% of estimated expenditure for the year. On a percent of budget basis, year-to-date expenditures are in line with this time last year; with actual expenditures at \$77,104 more than at this time last year.

Year to date, the Building Special Revenue Fund's net position has increased by \$185,733.

Please also see the attached financial statement for additional detail.

WATER & SEWER FUND (Fund 401)

Revenues: The Water and Sewer Fund collected \$17,346,229 in operating revenues during the first nine months, which is 69% of projected revenues for the year. This is \$247,858 more than last year, but \$460,128 more than in 2013.

Expenses: The first nine month's operating expenses excluding depreciation amounted to \$9,624,090 or 65% of estimated expenses for the year, with an additional \$1,175,006 encumbered. Non-operating activity reports a net loss of \$28,053 compared to a net loss of \$127,726 at this time last year. Currently, the water and sewer fund is reporting an income of \$7,694,085, but after transfers the fund is posting a gain of \$196,238 which is \$576,965 less than at this time last year.

The attached financial statement provides additional detail.

SOLID WASTE FUND (Fund 410)

Revenues: The Solid Waste Fund's total operating revenues for the first nine months were \$ 4,852,348, which is 72% of the annual budget and \$21,949 more than last year.

Expenses: The Solid Waste Fund's first nine month's operating expenses excluding depreciation total \$4,443,924 or 67% of estimated expenses for the year, with an additional encumbered amount of \$2,026,292. The Solid Waste fund currently is reporting an income before transfers of \$427,424 and a change in net position of \$282,905 after allowing for transfers. The increase in net position is \$107,246 lower than at this time last year.

The attached financial statement provides additional detail.

DRAINAGE UTILITY FUND (Fund 412)

Revenues: The Drainage Utility Fund's operating revenues for nine months amount to \$3,747,150, or 99% of the annual budget and \$15,916 more than at this time

last year. Increased revenue in the first months of the year represents the collection of Drainage fees by the non-advalorem method.

Expenses: For the first nine months operating expenses totaled \$1,125,647 which is 65% of the annual budget and \$39,016 more than last year. An additional \$852,170 is encumbered. After allowing for non-operating expenses, transfers in lieu of taxes and debt service payment transfers, the Drainage fund reported an increase in net position of \$1,812,544 which is \$1,923,491 more than at this time last year.

The attached financial statement provides additional detail.

YMCA REPORT

The financial reports for the period ending June 30, 2015 for the YMCA are attached.

GOLF COURSE REPORT

The financial report for the period ending June 30, 2015 for the Cypress Head Golf Course is attached. Detailed statements are available in the Finance Department.

IN SUMMARY:

As appropriations lapse at the end of each year, City Council re-appropriates funding for open purchase orders and existing funded projects. Total budget projections as they are presented in the attached reports incorporate current year appropriations plus prior year carryover pertaining to open and in process projects. Available liquid equity has been evaluated and is adequate to meet or exceed revenue policies as established by City Council.

Should you have any questions as they relate to this report or its attachments, please feel free to contact me.

Thank you,

Tracey Riehm
Finance Director

City of Port Orange Revenue Comparison - General Fund (001) Period Ending: June 30 (75% of the Fiscal Year)									
Sub Activity	2013			2014			2015		FYTD15
	FYTD Actual	Audited Annual Receipts	FYTD13 % of Total	FYTD Actual	Audited Annual Receipts	FYTD14 % of Total	FYTD Actual	Total Current Budget	
ADVALOREM TAXES	10,301,464	10,314,613	100%	10,351,281	10,360,132	100%	10,361,157	10,482,626	99%
SALES & USE TAXES	0	678,287	0%	0	717,597	0%	0	676,307	0%
UTILITY SERVICE TAXES	2,963,375	4,599,253	64%	3,193,071	5,002,091	64%	3,263,044	4,741,600	69%
COMMUNICATIONS SERVICE TX	1,229,620	2,075,119	59%	1,174,138	1,972,034	60%	1,113,155	1,919,331	58%
LOCAL BUSINESS TAX	56,404	145,390	39%	40,559	122,860	33%	39,069	145,390	27%
FEES & PERMITS	1,586,488	2,985,926	53%	1,671,720	3,200,700	52%	1,781,964	3,001,600	59%
INTER GOVT	2,814,151	4,545,322	62%	2,979,283	4,784,473	62%	3,182,904	4,715,508	67%
CHARGES FOR SERVICE	1,886,455	2,370,853	80%	1,820,155	2,273,583	80%	2,034,011	2,328,501	87%
FINES & FORFEITS	101,537	144,421	70%	111,494	165,185	67%	121,425	123,700	98%
MISC REVENUE	453,011	626,226	72%	993,941	1,208,274	82%	906,285	1,029,017	88%
INTERFUND TRANSFER	86,095	150,082	57%	65	65	100%	63,649	63,649	100%
CONTRB FROM ENTERPRISE FD	1,292,013	1,722,684	75%	1,242,279	1,656,372	75%	1,234,695	1,646,259	75%
APPROPRIATED EQUITY	0	0	0%	0	0	0%	0	1,984,541	0%
INTERNAL SERVICES	0	0	0%	0	0	0%	0	0	0%
INTRA. GOV. SERVICES	0	0	0%	0	0	0%	0	0	0%
GENERAL FUND REVENUE:	\$22,770,614	\$30,358,176	75%	\$23,577,985	\$31,463,366	75%	\$24,101,358	\$32,858,029	73%

City of Port Orange Expense Comparison - General Fund (001) Period Ending: June 30 (75% of the Fiscal Year)									
Department Description	2013			2014			2015		FYTD15
	FYTD Actual	Audited Annual Expenditures	FYTD13 % of Total	FYTD Actual	Audited Annual Expenditures	FYTD14 % of Total	FYTD Actual	Total Current Budget	
NON DEPARTMENTAL	1,533,145	2,061,306	74%	975,073	2,264,450	43%	2,999,482	3,818,884	79%
MAYOR & COUNCIL	148,865	191,560	78%	153,738	198,686	77%	147,302	202,322	73%
CITY MANAGER	393,475	516,348	76%	338,373	476,171	71%	290,897	475,424	61%
LEGAL SERVICES	305,081	469,526	65%	340,417	515,978	66%	350,553	616,986	57%
CITY CLERK	175,582	248,094	71%	174,351	255,705	68%	197,844	287,393	69%
FINANCE	477,416	686,937	69%	530,473	740,966	72%	606,499	962,251	63%
PERSONNEL	264,893	358,191	74%	196,181	276,184	71%	234,517	331,506	71%
COMMUNITY DEVELOPMENT	909,914	1,292,172	70%	927,491	1,298,459	71%	891,379	1,397,089	64%
FIRE SERVICES	5,348,108	7,617,193	70%	5,498,591	8,268,579	66%	5,310,701	8,076,840	66%
POLICE	7,346,213	10,868,012	68%	7,648,278	11,095,306	69%	7,977,698	11,677,153	68%
PUBLIC WORKS	1,320,376	1,874,039	70%	1,341,841	1,875,210	72%	1,383,843	2,118,947	65%
PARKS MAINTENANCE	1,137,378	1,659,830	69%	1,300,131	1,830,748	71%	1,198,850	1,937,071	62%
RECREATION	375,029	629,992	60%	407,787	684,616	60%	437,091	773,283	57%
ATHLETICS	238,621	335,950	71%	215,145	287,958	75%	229,204	278,285	82%
POGTV	7,695	9,501	81%	4,187	6,313	66%	2,434	18,595	13%
GENERAL FUND EXPENSES:	\$19,981,791	\$28,818,651	69%	\$20,052,057	\$30,075,329	67%	\$22,258,293	\$32,972,029	68%
Excess of Revenue over(under) Expenditures	\$2,788,824	\$1,539,525		\$3,525,928	\$1,388,037		\$1,843,065	-\$114,000	

Note: minor variances in totals may exist due to rounding

City of Port Orange
General Fund Summary Balance Sheet
as of June 30, 2015

Assets

Cash & Investments	17,609,404.48	
Accounts Receivable (net)	197,901.76	
Due from other governments	307,089.90	
Inventory, Prepaid & Other Assets	19,777.46	
Total Assets	18,134,173.60	18,134,173.60

Liabilities

Accounts Payable and Accrued Liabilities	152,953.73
Deposits and Unearned	106,362.56
Total Liabilities	259,316.29

Fund Equity

Total Fund Equity	17,874,857.31
Total Fund Equity	17,874,857.31

Total Liabilities and Fund Equity	18,134,173.60
--	----------------------

CITY OF PORT ORANGE									
STATEMENT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCE									
BUDGET AND ACTUAL - BUILDING SPECIAL REVENUE FUND (109)									
Period Ending: June 30 (75 % of the Fiscal Year)									
	FY2013			FY2014			FY2015		
	FYTD Actual	Audited Annual	%	FYTD Actual	Audited Annual	%	FYTD Actual	Budgeted Annual	%
Revenues									
Permits and fees	1,006,462	1,598,360	63%	838,368	1,176,045	71%	872,326	936,200	93%
Miscellaneous			0%	83	83	100%			0%
Total operating revenues	1,006,462	1,598,360	63%	838,451	1,176,128	71%	872,326	936,200	93%
Expenditures									
General government:									
Planning and community development	611,951	827,244	74%	625,086	863,069	72%	702,190	978,943	72%
Total operating expenses - w/o depreciation	611,951	827,244	74%	625,086	863,069	72%	702,190	978,943	72%
Operating income (loss)	394,511	771,116	51%	213,364	313,059	68%	170,136	(42,743)	-398%
Non-operating revenues (expenses)									
Interest earnings	(1,193)	3,929		7,738	3,180		12,984	7,000	
Other income (expense)									
Interest and amortization expense									
Total nonoperating revenue (expenses)	(1,193)	3,929	0%	7,738	3,180	0%	12,984	7,000	0%
Income (loss) before contributions and transfers	393,319	775,045	51%	221,102	316,239	70%	183,120	(35,743)	-512%
Appropriated Fund Balance								44,095	
Transfers									
Transfers in							2,613	2,613	
Transfers (out) - In Lieu of Tax									
Transfers (out) - Debt Service									
Change in net position	393,319	775,045		221,102	316,239		185,733	10,965	

Note: minor variances in totals may exist due to rounding

City of Port Orange
Building Special Revenue Fund Summary Balance Sheet
as of June 30, 2015

Assets

Cash & Investments	1,973,442.59	
Total Assets	1,973,442.59	1,973,442.59

Liabilities

Accounts Payable and Accrued Liabilities	-	
Deposits and Unearned	60.00	
Total Liabilities	60.00	

Fund Equity

Total Fund Equity	1,973,382.59	
Total Fund Equity	1,973,382.59	
Total Liabilities and Fund Equity		1,973,442.59

CITY OF PORT ORANGE									
STATEMENT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCE									
BUDGET AND ACTUAL - UTILITIES OPERATING FUND (401)									
Period Ending: June 30 (75 % of the Fiscal Year)									
	FY2013			FY2014			FY2015		
	FYTD Actual	Audited Annual	%	FYTD Actual	Audited Annual	%	FYTD Actual	Budgeted Annual	%
Operating revenues									
Charges for services:									
Water sales	7,544,952	10,834,898	70%	7,495,479	10,957,095	68%	7,539,100	11,165,689	68%
Hydrant rentals	31,947	35,095	91%	48,194	35,235	137%	32,194	38,800	83%
Sewer charges	8,778,225	12,197,415	72%	8,788,129	12,893,433	68%	9,182,224	12,945,185	71%
Connections service, and cut-off charges	484,551	692,830	70%	675,850	937,684	72%	550,295	891,308	62%
Other revenues	46,426	47,161	98%	90,719	309,840	29%	42,416	16,253	261%
Total operating revenues	16,886,101	23,807,399	71%	17,098,371	25,133,286	68%	17,346,229	25,057,235	69%
Operating expenses									
Personal services	3,987,462	5,410,793	74%	4,146,279	5,696,318	73%	4,051,427	6,180,072	66%
Contractual services (Professional & Other) ¹	352,571	2,197,427	16%	341,549	2,230,218	15%	676,039	1,228,696	55%
Utilities	842,761	1,107,419	76%	951,990	1,349,753	71%	989,059	1,217,200	81%
Maintenance and repairs	283,423	1,316,685	22%	205,637	1,933,414	11%	235,897	742,161	32%
Other supplies and expenses	3,000,728	3,022,657	99%	3,201,670	2,906,828	110%	3,671,669	5,487,574	67%
Total operating expenses - w/o depreciation	8,466,945	13,054,981	65%	8,847,125	14,116,531	63%	9,624,090	14,855,703	65%
Operating income (loss)	8,419,156	10,752,418	78%	8,251,246	11,016,755	75%	7,722,139	10,201,532	76%
Non-operating revenues (expenses)									
Interest earnings	(22,092)	60,624		46,295	53,444		82,138	54,500	
Other income (expense)	(521,504)	165,670		(166,565)	445,747		(102,662)	(399,584)	
Interest and amortization expense	(14,768)	(1,463,932)		(7,456)	(1,361,091)		(7,529)	(259,793)	
Total nonoperating revenue (expenses)	(558,364)	(1,237,638)	45%	(127,726)	(861,900)	15%	(28,053)	(604,877)	5%
Income (loss) before contributions and transfers	7,860,792	9,514,780	83%	8,123,520	10,154,855	80%	7,694,085	9,596,655	80%
Appropriated Fund Balance								403,667	
Transfers									
Transfers in	133,497			-			9,579	9,579	
Transfers (out) - In lieu of tax	(972,459)	(1,296,611)		(850,745)	(1,276,118)		(945,407)	(1,260,543)	
Transfers (out) - debt service ²	(7,396,523)	-		(6,499,572)	-		(6,562,019)	(8,749,358)	
Change in net position	(374,693)	8,218,169		773,203	8,878,738		196,238	-	

¹ Contractual Services for FY14 Audited and FY15 amounts include both Professional Services and Other Contractual Services. FY13 and FYTD14 Actual amounts include only Other Contractual Services.

² Proprietary Debt Service transfers zero out as part of the year-end funds consolidation process.

Note: minor variances in totals may exist due to rounding

City of Port Orange
Utility Operating Summary Balance Sheet
as of June 30, 2015

Assets

Cash & Investments	12,042,213.42	
Accounts Receivable, net	1,415,259.83	
Due from other governments	1,559,060.86	
Inventory, Prepaid & Other Assets	1,562,233.07	
Capital Assets, Net of depreciation	192,088,039.54	
Total Assets	208,666,806.72	208,666,806.72

Liabilities

Accounts Payable and Accrued Liabilities	18,309,265.33
Deposits and Unearned	3,475,169.87
Long term debt and liabilities	34,773,317.01
Total Liabilities	56,557,752.21

Fund Equity

Total Fund Equity	152,109,054.51
Total Fund Equity	152,109,054.51

Total Liabilities and Fund Equity	208,666,806.72
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CITY OF PORT ORANGE									
STATEMENT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCE									
BUDGET AND ACTUAL - SOLID WASTE OPERATING FUND (410)									
Period Ending: June 30 (75 % of the Fiscal Year)									
	FY2013			FY2014			FY2015		
	FYTD Actual	Audited Annual	%	FYTD Actual	Unaudited Annual	%	FYTD Actual	Budgeted Annual	%
Operating revenues									
Charges for services:									
Waste Disposal Fees	4,714,368	6,660,470	71%	4,801,582	6,943,255	69%	4,839,647	6,676,695	72%
Other revenues	34,346	63,193	54%	28,817	41,749	69%	12,701	67,100	19%
Total operating revenues	4,748,714	6,723,663	71%	4,830,399	6,985,004	69%	4,852,348	6,743,795	72%
Operating expenses									
Personal services	163,485	203,426	80%	149,271	226,705	66%	154,449	224,102	69%
Contractual services (Professional & Other) ¹	3,749,979	5,963,238	63%	3,818,422	4,805,927	79%	3,882,324	5,876,413	66%
Utilities	139	982	14%	179	1,014	18%	643	720	89%
Maintenance and repairs	2,493	10,331	24%	735	6,843	11%	1,743	2,250	77%
Other supplies and expenses	308,418	56,421	547%	337,666	1,414,561	24%	404,765	567,361	71%
Total operating expenses (w/o depreciation)	4,224,514	6,234,398	68%	4,306,273	6,455,050	67%	4,443,924	6,670,846	67%
Operating income (loss)	524,200	489,265	107%	524,126	529,954	99%	408,424	72,949	560%
Non-operating revenues (expenses)									
Interest earnings	(3,295)	5,848		11,509	6,580		19,000	14,000	
Other income (expense)									
Interest and amortization expense									
Total nonoperating revenue (expenses)	(3,295)	5,848	-56%	11,509	6,580	175%	19,000	14,000	136%
Income (loss) before contributions and transfers	520,905	495,113	105%	535,635	536,534	100%	427,424	86,949	492%
Appropriated Fund Balance								106,038	
Transfers									
Transfers in							888	888	
Transfers (out) - In lieu of taxes	(177,183)	(236,242)		(145,484)	(193,978)		(145,407)	(193,875)	
Transfers (out) - debt service									
Change in net position	343,722	258,871		390,151	342,556		282,905	-	

¹ Contractual Services for FY14 Audited and FY15 amounts include both Professional Services and Other Contractual Services. FY13 and FYTD14 Actual amounts include only Other Contractual Services.

Note: minor variances in totals may exist due to rounding

City of Port Orange
Solid Waste Summary Balance Sheet
as of June 30, 2015

Assets

Cash & Investments	2,710,272.98	
Accounts Receivable, net	430,659.18	
Due from other governments	-	
Inventory, Prepaid & Other Assets	9,701.31	
Capital Assets, net of depreciation	66,860.31	
Total Assets	3,217,493.78	3,217,493.78

Liabilities

Accounts Payable and Accrued Liabilities	5,437.79	
Deposits and Unearned	-	
Long term debt and liabilities	36,410.42	
Total Liabilities	41,848.21	

Fund Equity

Total Fund Equity	3,175,645.57	
Total Fund Equity	3,175,645.57	

Total Liabilities and Fund Equity		3,217,493.78
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CITY OF PORT ORANGE									
STATEMENT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCE									
BUDGET AND ACTUAL - STORMWATER OPERATING FUND (412)									
Period Ending: June 30 (75% of the Fiscal Year)									
	FY2013			FY2014			FY2015		
	FYTD Actual	Audited Annual	%	FYTD Actual	Annual	%	FYTD Actual	Budgeted Annual	%
Operating revenues									
Charges for services:									
Drainage Fees	3,725,841	3,801,857	98%	3,731,107	3,805,631	98%	3,747,150	3,799,800	99%
Other revenues			0%	127	127	100%			0%
Total operating revenues	3,725,841	3,801,857	98%	3,731,234	3,805,758	98%	3,747,150	3,799,800	99%
Operating expenses									
Personal services	513,914	707,798	73%	514,836	721,017	71%	512,697	847,280	61%
Contractual services (Professional & Other) ¹	39,873	580,320	7%	44,513	613,143	7%	72,518	198,698	36%
Utilities	-	6,195	0%	-	-	0%	-	-	0%
Maintenance and repairs	73,959	103,569	71%	60,072	93,595	64%	110,366	119,691	92%
Other supplies and expenses	438,967	69,362	633%	467,210	65,509	713%	430,067	567,501	76%
Total operating expenses (w/o depreciation)	1,066,713	1,467,244	73%	1,086,631	1,493,264	73%	1,125,647	1,733,170	65%
Operating income (loss)	2,659,128	2,334,613	114%	2,644,603	2,312,494	114%	2,621,502	2,066,630	127%
Non-operating revenues (expenses)									
Interest earnings	(5,187)	17,005		17,947	20,586		25,232	26,700	
Other income (expense)	(151,408)			(1,524,148)	500,000		(94,216)	(1,873,006)	
Interest and amortization expense	(21,153)	(485,994)			(460,404)			(142,456)	
Total nonoperating revenue (expenses)	(177,748)	(468,989)	38%	(1,506,201)	60,182	-2503%	(68,984)	(1,988,762)	3%
Income (loss) before contributions and transfers	2,481,380	1,865,624	133%	1,138,402	2,372,676	48%	2,552,518	77,868	3278%
Appropriated Fund Balance								1,167,548	
Transfers									
Transfers in					-		847,500	850,000	
Transfers (out) - General Fund							(63,649)	(63,649)	
Transfers (out) - In Lieu of Tax	(142,371)	(189,828)		(139,708)	(186,277)		(143,881)	(191,841)	
Transfers (out) - Debt Service	(1,107,195)	(83,454)		(1,109,642)	(83,520)		(1,379,945)	(1,839,926)	
Change in net position	1,231,814	1,592,342		(110,947)	2,102,879		1,812,544	-	

¹ Contractual Services for FY14 Audited and FY15 amounts include both Professional Services and Other Contractual Services. FY13 and FYTD14 Actual amounts include only Other Contractual Services.

² Proprietary Debt Service transfers zero out as part of the year-end funds consolidation process. The remaining balance of Transfer (Out) - Debt Service represents governmental debt.

Note: minor variances in totals may exist due to rounding

City of Port Orange
Drainage Summary Balance Sheet
as of June 30, 2015

Assets

Cash & Investments	3,582,864.59	
Accounts Receivable, net	10,523.51	
Due from other governments	-	
Inventory, Prepaid & Other Assets	110,250.78	
Capital Assets, net of depreciation	44,991,511.28	
Total Assets	48,695,150.16	48,695,150.16

Liabilities

Accounts Payable and Accrued Liabilities	5,536,102.28
Deposits and Unearned	-
Long term debt and liabilities	8,907,508.86
Total Liabilities	14,443,611.14

Fund Equity

Total Fund Equity	34,251,539.02
Total Fund Equity	34,251,539.02

Total Liabilities and Fund Equity	48,695,150.16
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Financial Reports
for period ending
June 30, 2015
Provided by
YMCA

Volusia Flager YMCA
Statement of Operating Revenue and Expenses
June 30, 2015
Port Orange

	MONTH ACTUAL	MONTH BUDGET	MONTH VARIANCE	MONTH LAST YEAR	YTD ACTUAL	YTD BUDGET	YTD VARIANCE	% YTD VARIANCE	YTD LAST YEAR	ANNUAL BUDGET
01 CONTRIBUTIONS	1,005	-	1,005	1,043	69,672	57,300	12,372	21.59%	56,880	75,800
03 SPECIAL EVENTS	405	-	405	1,020	6,408	5,650	758	13.42%	6,820	27,900
08 UNITED WAY	3,466	3,466	-	3,411	20,797	20,797	-	0.00%	20,466	41,263
10 GRANTS	795	970	(175)	3,227	12,543	13,420	(877)	-6.53%	15,355	30,495
11 MEMBERSHIP	110,382	132,095	(21,713)	126,897	692,092	769,687	(77,595)	-10.08%	772,101	1,530,045
13 PROGRAM FEES	85,867	84,915	952	82,097	331,714	316,751	14,963	4.72%	313,141	616,215
14 SALE OF SUPPLIES	599	625	(26)	256	10,604	6,200	4,404	71.03%	6,068	22,000
16 LATE FEES & MISC IN	665	-	665	-	1,702	-	1,702	0.00%	-	-
19 TO/FROM RESERVE FUN	(420)	-	(420)	-	(3,398)	-	(3,398)	0.00%	-	-
TOTAL REVENUE	202,764	222,071	(19,307)	217,950	1,142,134	1,189,805	(47,671)	-4.01%	1,190,831	2,343,718
21 SALARIES AND WAGES	73,992	73,695	(297)	75,090	437,913	467,162	29,248	6.26%	424,899	919,778
22 EMPLOYEE BENEFITS	4,513	4,352	(161)	3,798	26,695	30,124	3,429	11.38%	23,816	59,332
23 PAYROLL TAXES & WC	3,714	7,737	4,023	7,436	39,071	49,072	10,001	20.38%	40,185	96,652
24 CONTRACT SERVICES	5,143	7,074	1,930	5,972	27,943	26,741	(1,203)	-4.50%	24,759	55,811
25 SUPPLIES	4,085	3,192	(894)	5,198	26,551	19,650	(6,901)	-35.12%	24,953	38,800
26 TELEPHONE	892	1,278	386	869	6,445	6,624	179	2.70%	5,744	13,248
27 POSTAGE & SHIPPING	-	83	83	409	25	500	475	95.08%	709	1,000
28 FACILITY COSTS	42,146	46,031	3,885	44,261	240,115	255,600	15,485	6.06%	252,814	503,165
29 EQUIPMENT COSTS	5,793	5,748	(45)	6,647	30,541	36,965	6,424	17.38%	39,767	71,425
30 PROGRAM EXPENSES	11,130	8,304	(2,825)	12,659	32,460	43,538	11,079	25.45%	46,352	73,381
31 MARKETING/PROMOTION	66	-	(66)	71	223	550	327	59.52%	462	1,250
32 TRAVEL AND MILEAGE	-	219	219	14	153	938	785	83.72%	503	1,825
33 CONFERENCE/TRAINING	197	75	(122)	188	890	595	(295)	-49.51%	2,607	1,115
34 FUNDRAISING EXPENSE	187	-	(187)	236	511	-	(511)	0.00%	236	1,000
35 NAT'L & OTHER DUES	2,374	2,725	351	2,202	14,901	15,472	571	3.69%	13,645	31,095
37 FINANCING COSTS	-	33	33	-	-	198	198	100.00%	-	396
38 INSURANCE	2,244	2,244	-	3,814	13,466	13,466	-	0.00%	22,880	27,111
39 MISC EXPENSE	-	-	-	7	-	-	-	0.00%	739	3,879
40 DEPRECIATION/AMORT	2,068	2,372	303	2,978	13,548	14,230	682	4.79%	16,566	28,460
48 METRO SERVICES	32,311	32,311	-	32,399	173,117	173,117	-	0.00%	174,178	341,011
TOTAL EXPENSES	190,856	197,473	6,617	204,246	1,084,565	1,154,541	69,975	6.06%	1,115,813	2,269,734
NET FROM OPERATIONS	11,908	24,598	(12,690)	13,704	57,569	35,264	22,304	63.25%	75,018	73,984

Financial Report
for period ending
June 30, 2015
provided by
Golf Course

The Golf Club at Cypress Head
Comparative Income Statement
For the Nine Months Ending June 30, 2015

	MTD	YTD	Audited	Percent	MTD	YTD	Annual	Percent
	Prior Year	Prior Year	Prior Year	of Total	Actual	Actual	Budget	of Total
REVENUES								
Green Fees & Cart Fees	70,434	853,005	1,051,059	81%	0	713,705	782,295	91%
Merchandise	4,729	55,993	72,272	77%	5,659	53,271	48,222	110%
Other Pro Shop	369	7,665	8,445	91%	0	6,655	7,112	94%
Range	2,885	28,908	35,287	82%	0	16,885	38,615	44%
Food and Beverage	23,100	231,493	287,748	80%	0	182,967	192,398	95%
Membership Initiation Fees	0	0	250		0	0	0	
Other Operating Revenues	2,566	30,304	38,076	80%	0	24,901	28,192	88%
TOTAL REVENUE	104,083	1,207,369	1,493,137	81%	5,659	998,384	1,096,834	91%
COST OF SALES								
Merchandise	2,721	39,677	49,275	81%	8,399	43,764	33,711	130%
Food & Beverage	8,055	87,113	112,519	77%	(410)	72,593	69,374	105%
TOTAL COGS	10,776	126,790	161,794	78%	7,989	116,357	103,085	113%
COGS - Merchandise %	57.5%	70.9%	68.2%	103.9%	148.4%	82.2%	69.9%	117.5%
COGS - Food %	34.9%	37.8%	39.3%	96.3%		39.8%	36.1%	110.4%
PAYROLL								
Course and Grounds	22,329	203,942	271,543	75%	27,317	217,516	290,141	75%
Carts, Range, Starters, Etc.	4,201	50,974	65,268	78%	0	39,741	41,564	96%
Pro Shop	4,748	39,642	53,393	74%	0	33,566	29,218	115%
Food and Beverage	13,470	112,667	142,814	79%	(266)	94,245	114,321	82%
General and Administrative	9,756	91,988	120,964	76%	10,896	96,817	125,375	77%
Marketing	4,354	36,118	47,276	76%	3,044	35,636	47,684	75%
TOTAL PAYROLL	58,859	535,331	701,259	76%	40,991	517,520	648,303	80%

The Golf Club at Cypress Head
Comparative Income Statement
For the Nine Months Ending June 30, 2015

	MTD	YTD	Audited	Percent	MTD	YTD	Annual	Percent
	Prior Year	Prior Year	Prior Year	of Total	Actual	Actual	Budget	of Total
OPERATING EXPENSES								
Course and Grounds	14,462	145,867	192,508	76%	25,344	144,012	193,815	74%
Carts, Range, Starters, Etc.	7,353	68,886	91,506	75%	6,473	93,512	84,536	111%
Pro Shop	0	8,852	9,935	89%	176	7,193	8,797	82%
Food and Beverage	1,401	28,943	36,098	80%	514	29,136	19,941	146%
General and Administrative	15,557	159,470	201,262	79%	6,297	148,842	171,762	87%
Marketing	3,088	18,654	21,090	88%	3,979	19,997	35,150	57%
TOTAL OPERATING EXPENSES	41,861	430,674	552,399	78%	42,783	442,692	514,001	86%
TOTAL EXPENSES	111,496	1,092,796	1,415,452	77%	91,763	1,076,569	1,265,389	85%
OTHER INCOME (EXPENSE)								
MANAGEMENT FEES	(7,225)	(65,025)	(86,700)	75%	(3,685)	(58,856)	(88,440)	67%
Depreciation & Amortization	(535)	(4,815)	(3,147)	153%	(535)	(4,815)	(6,540)	74%
TOTAL OTHER INCOME (EXPENSE)	(7,760)	(69,840)	(89,847)	78%	(4,220)	(63,671)	(94,980)	67%
NET INCOME	(15,172)	44,733	(12,162)	-368%	(90,324)	(141,856)	(263,535)	54%
Paid Rounds	2,888	30,891	39,557	13%	0	25,909	27,380	95%
Annual Pass Rounds	331	3,987	4,902	9%	0	2,970	3,233	92%
Other Rounds	232	2,469	3,210	11%	0	1,772	2,007	88%
Total Rounds	3,451	37,347	47,669	12%	0	30,651	32,620	94%
Revenue/Paid Rounds	36	39	38	645%	0	39	40	96%
Revenue/Total Rounds	30	32	31	680%	0	33	34	97%

		Pooled Cash and Investments Quarter Ending June 30, 2015												
								Classification ^a						
		Fund	Fund Description	Description	Cash & Investments ⁹	Projected Revenue	Projected Expenses (unencumbered balance)	Projected Balance	Bond Covenants	Deposits	Donations/ Contributions	Encumbrances	15% Operating Reserve Policy	Available for Permitted use
Governmental Funds	Special Revenue rolls to Gen Fund1	001	GENERAL FUND ¹	CASH & TAX RECEIVABLE / CASH	17,584,404.08	6,772,129.97	(9,612,338.03)	14,744,196.02		22,276.24	10,666.03	1,101,397.72	4,806,445.20	8,803,410.83
		606	POLICE BENEFIT TRST FUND	CASH & TAX RECEIVABLE / CASH	18,891.46	-	1,053.95	19,945.41				-		19,945.41
		607	POLICE FORFEITURE TRUST	CASH & TAX RECEIVABLE / CASH	195,266.02	-	(25,066.77)	170,199.25				4,091.00		166,108.25
		608	POLICE PROP & EVIDENCE	CASH & TAX RECEIVABLE / CASH	114,146.42	-	(4,011.00)	110,135.42				-		110,135.42
		609	FIRE PROGRAM FUND	CASH & TAX RECEIVABLE / CASH	55,868.19	-	(26,581.29)	29,286.90				29,211.88		75.02
		615	POLICE EDUCATION TRUST	CASH & TAX RECEIVABLE / CASH	5,760.84	983.42	(4,707.63)	2,036.63				-		2,036.63
		621	RECREATION SCHOLARSHIP	CASH & TAX RECEIVABLE / CASH	82,693.45	537.70	(17,727.22)	65,503.93				11,051.79		54,452.14
		625	FEDERAL POLICE FORFEITURE	CASH & TAX RECEIVABLE / CASH	258,475.43	-	(8,345.00)	250,130.43				-		250,130.43
	Special Revenue Funds2	102	TAX INCREMENT EASTPORT	CASH & TAX RECEIVABLE / CASH	373,541.78	14,491.89	(87,791.42)	300,242.25				-		300,242.25
		103	TAX INCREMENT TOWN CENTER	CASH & TAX RECEIVABLE / CASH	368,168.53	305,695.58	(358,526.23)	315,337.88		740.00		234,628.00		79,969.88
		106	RECREATION FACILITIES	CASH & TAX RECEIVABLE / CASH	956,223.18	19,764.22	(174,142.35)	801,845.05				57,907.80		743,937.25
		108	EMERGENCY RELIEF	CASH & TAX RECEIVABLE / CASH	211,015.18	-	-	211,015.18				-		211,015.18
		109	BUILDING SPECIAL REV FUND	CASH & TAX RECEIVABLE / CASH	1,973,442.59	57,889.62	(285,152.60)	1,746,179.61		60.00		2,565.07		1,743,554.54
		110	CDBG SPECIAL REVENUE FUND	CASH & TAX RECEIVABLE / CASH	204,541.28	122,673.04	(29,353.45)	297,860.87				88,524.81		209,336.06
	Debt Service Funds ³	626	BUSINESS DEVELOPMENT FUND	CASH & TAX RECEIVABLE / CASH	116,793.37	-	-	116,793.37				-		116,793.37
		201	CAP. IMP. SINKING FUND	CASH & TAX RECEIVABLE / CASH	843.91	281.25	(1,125.00)	0.16	0.16			-		-
		203	GENERAL OB. SINKING	CASH & TAX RECEIVABLE / CASH	3,847.58	-	-	3,847.58	3,847.58			-		-
		214	2006 GO BOND DEBT SERVICE	CASH & TAX RECEIVABLE / CASH	414,755.41	-	(0.50)	414,754.91	414,754.91			-		-
		217	EASTPORT TAX INC NOTE	CASH & TAX RECEIVABLE / CASH	94,761.22	44,570.38	-	139,331.60	139,331.60			-		-
		218	2007 TWN CTR BOND DEBT SV	CASH & TAX RECEIVABLE / CASH	125,169.95	86,019.39	(2,750.72)	208,438.62	208,438.62			-		-
	Capital Project Funds ⁴	220	2014 CAPITAL IMPV BOND	CASH & TAX RECEIVABLE / CASH	2,047,702.64	170,534.18	(549,610.69)	1,668,626.13	1,668,626.13			-		-
		301	CAPITAL PROJECTS FUND	CASH & TAX RECEIVABLE / CASH	3,648,475.51	488,493.24	(1,933,359.76)	2,203,608.99				748,060.80		1,455,548.19
306		TRANS CAPITAL PROJECTS	CASH & TAX RECEIVABLE / CASH	1,345,403.17	-	(230,584.04)	1,114,819.13		696,020.61		1,825.69		416,972.83	
307		2004 CAPITAL IMPV BD PROJ	CASH & TAX RECEIVABLE / CASH	482.13	-	-	482.13	482.13			-		-	
311		FIRE IMPACT FEE FUND	CASH & TAX RECEIVABLE / CASH	367,352.96	11,554.08	(49,927.03)	328,980.01				-		328,980.01	
312		TRANSPORTATION IMPACT FEE	CASH & TAX RECEIVABLE / CASH	1,775,910.61	542,935.65	(807,647.09)	1,511,199.17				610,882.35		900,316.82	
314		2006 GO BOND CONSTRUCTION	CASH & TAX RECEIVABLE / CASH	1,105,991.39	-	(1,064,900.00)	41,091.39	10,041.39			31,050.00		-	
315		PARKS & REC CAPITAL PROJ	CASH & TAX RECEIVABLE / CASH	72,480.28	-	(63,000.00)	9,480.28				16,609.00		(7,128.72)	
316		2006 ECO DEV BOND CONSTR	CASH & TAX RECEIVABLE / CASH	19,926.34	-	(19,038.00)	888.34	888.34			-		-	
317		GENERAL CAPITAL REPL FUND	CASH & TAX RECEIVABLE / CASH	1,388,674.45	289,880.37	(1,214,043.15)	464,511.67				311,106.74		153,404.93	
318		2007 TOWN CTR BOND CONSTR	INVESTMENTS / SUNTRUST TOWN C	335.52	-	-	335.52	335.52		335.52	-		-	
320		2014 CAP IMPV BOND CONSTR	CASH & TAX RECEIVABLE / CASH	3,022,782.24	-	(2,182,462.80)	840,319.44	13,000.24			827,319.20		-	
611		RECREATION IMPACT FUND	CASH & TAX RECEIVABLE / CASH	490,750.41	2,964.48	(268,193.03)	225,521.86				1,092.00		224,429.86	

		Pooled Cash and Investments Quarter Ending June 30, 2015													
								Classification ^a							
		Fund	Fund Description	Description	Cash & Investments ⁹	Projected Revenue	Projected Expenses (unencumbered balance)	Projected Balance	Bond Covenants	Deposits	Donations/ Contributions	Encumbrances	15% Operating Reserve Policy	Available for Permitted use	
Proprietary Funds	Enterprise Funds ⁵	401	W&S O&M REVENUE FUND	CASH & TAX RECEIVABLE / CASH	12,040,163.24	7,683,367.91	(7,108,266.71)	12,615,264.44		3,463,047.41		1,175,005.87	3,789,881.55	4,187,329.61	
		402	WS BOND DEBT SERVICE FUND	CASH & TAX RECEIVABLE / CASH	2,235,082.47	763,609.74	(9,915.50)	2,988,776.71	2,988,776.71			-		-	
		403	W/S R&R FUND (A)	CASH & TAX RECEIVABLE / CASH	2,610,436.26	589,252.97	(1,510,094.45)	1,689,594.78		197,413.53			1,492,181.25		-
		405	IMPACT FEE	CASH & TAX RECEIVABLE / CASH	4,672,290.89	-	(1,261,795.35)	3,410,495.54					2,514,550.44		895,945.10
		410	SOLID WASTE	CASH & TAX RECEIVABLE / CASH	2,710,272.98	1,886,447.32	(249,099.03)	4,347,621.27					2,026,291.68	1,029,574.95	1,291,754.64
		412	DRAINAGE CONST OPERATING	CASH & TAX RECEIVABLE / CASH	3,582,864.59	1,354,118.01	(3,482,040.37)	1,454,942.23					852,169.62	701,475.00	(98,702.39)
		414	DRAINAGE BOND SINKING	CASH & TAX RECEIVABLE / CASH	2,313,027.47	429,227.09	(293,593.98)	2,448,660.58	2,448,660.58				-		-
		416	WETLAND MITIGATION CREDIT	CASH & TAX RECEIVABLE / CASH	1,255,043.47	-	(99,375.53)	1,155,667.94					28,918.75		1,126,749.19
		417	2003 W/S BOND DEBT SRV FD	CASH & TAX RECEIVABLE / CASH	2,089,214.47	795,384.00	(1,000.00)	2,883,598.47	2,883,598.47				-		-
		418	ST REV LOAN FUND DEBT SER	CASH & TAX RECEIVABLE / CASH	769,752.09	390,118.70	(902,623.87)	257,246.92		257,246.92			-		-
		420	FORESTRY MANAGEMENT	CASH & TAX RECEIVABLE / CASH	1,157,463.48	-	(68,286.20)	1,089,177.28					53,300.00		1,035,877.28
		421	DEFERRED CONST RESERVE	CASH & TAX RECEIVABLE / CASH	534,886.65	-	(303,096.16)	231,790.49					136,633.49		95,157.00
		450	GOLF COURSE OPERATING	CASH & TAX RECEIVABLE / CASH	298,664.07	1,131,910.46	(1,500,799.91)	(70,225.38)					94.40		(70,319.78)
		451	GOLF CRSE CAPITAL RESERVE	CASH & TAX RECEIVABLE / CASH	915,365.04	28,001.50	(483,473.00)	459,893.54					466,794.00		(6,900.46)
	Internal Service Funds ⁶	501	DATA PROCESSING FUND	CASH & TAX RECEIVABLE / CASH	629,244.27	416,836.57	(612,510.68)	433,570.16					63,121.89		370,448.27
		503	VEHICLE MAINTENANCE SER.	CASH & TAX RECEIVABLE / CASH	283,194.29	329,542.19	(284,012.53)	328,723.95					67,294.45		261,429.50
		504	W/C SELF INSURED FUND	CASH & TAX RECEIVABLE / CASH	1,721,114.30	316,141.21	(299,920.23)	1,737,335.28					302,657.43		1,434,677.85
		505	LEASE & REPLACEMENT FUND	CASH & TAX RECEIVABLE / CASH	3,735,594.28	411,777.33	(1,431,959.92)	2,715,411.69					1,525,467.33		1,189,944.36
		506	BUILDING MAINTENANCE	CASH & TAX RECEIVABLE / CASH	928,989.17	513,725.15	(725,644.38)	717,069.94					124,990.08		592,079.86
		508	LOAN POOL	CASH & TAX RECEIVABLE / CASH	2,728,442.06	46,938.48	(33,509.00)	2,741,871.54					-		2,741,871.54
Fid Funds ⁷		632	CONSOLIDATED DISPATCH	CASH & TAX RECEIVABLE / CASH	307,585.79	-	-	307,585.79		296,768.19		-		10,817.60	
		634	PO BUSINESS PK PROP OWNER	CASH & TAX RECEIVABLE / CASH	213.52	-	1,403.57	1,617.09				5,353.10		(3,736.01)	
		Grand Total				85,963,782.37	26,017,797.09	(39,678,944.08)	72,302,635.38	11,235,442.83	4,478,912.45	10,666.03	14,912,147.63	31,338,089.74	

¹ General Fund (001) accounts for all financial resources not accounted for and reported in another fund

² Special Revenue Funds account for the proceeds of specific revenue sources that are restricted or committed to expenditure for specified purposes other than debt service or capital projects

³ Debt Service Funds account for financial resources that are restricted, committed, or assigned to expenditure for principal and interest (001, 401, 410, 412)

⁴ Capital Project Funds account for financial resources that are restricted, committed, or assigned to expenditure for capital outlays

⁵ Enterprise Funds account for operations (a) that are financed and operated in a manner similar to private business enterprises--where the intent of the governing body is that the costs (expenses, including depreciation) of providing goods or services to the general public on a continuing basis be financed or recovered primarily through user charges; or (b) where the governing body has decided that periodic determination of revenues earned, expenses incurred and/or net income is appropriate for capital maintenance, public policy, management control, accountability or other purposes

⁶ Internal Service Funds account for the financing of goods or services provided by one department or agency to other departments or agencies of the governmental unit, or to other governmental units, on a cost-reimbursement basis

⁷ Fiduciary Funds account for assets held by a government in a purely custodial capacity

⁸ Under GASB 54, bond covenants, deposits and donations are classified as a component of restricted fund balance, encumbrances are a component of assigned fund balance, and the operating reserve and available for permitted use are components of unassigned fund balance

⁹ Cash and Investments is limited to items available to spend, and excludes equivalents such as petty cash, FSA contributions, and police evidence that are included on the balance sheet as cash



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: Yes

SUBJECT: Contract award for Cypress Head Clubhouse Renovation

DEPARTMENT: Parks & Recreation

RECOMMENDED MOTION: Move to approve the bid award to Hall Construction for renovations to the Cypress Head Clubhouse for \$118,880 with 10% for an unforeseen conditions allowance, for a total of \$130,768, and authorize the Mayor and City Clerk to execute the appropriate document subject to the City Attorney's approval of all contract documents.

SUMMARY: Bid #15-28 for the renovation of the Cypress Head Clubhouse was recently opened. The scope included roof work, storefront windows, paint and carpet. Alternate one of the bid was for a CMU knee wall with storefront above, alternate two was for metal stud knee wall with storefront above. Three bids were received, (Hall Construction, A.G. Pifer and MCG Construction) and Hall Construction was the apparent low bidder with a base bid of \$109,880.

The architect and staff are recommending awarding the base bid and alternate one for a total cost of \$118,880 to Hall Construction. Since this project is on a tight timeline staff is also requesting an additional 10% for an unforeseen conditions allowance be added to the project which would make the total allocation \$130,768. Funding is available in project # AIO025.

Project No.: AIO025 Funding Account No.: 451--0300-579-62-00

ATTACHMENTS:

1.	Bid Tab	clubhouse15-28 Bid Tabulation.pdf
2.	DJ Design Recommendation	DJdesignrecommendationclubhouse15.pdf

Lovallo, Susan
Lovallo, Susan
Gomez, Joseph
Riehm, Tracey
Roberts, Margaret
Harden, David

Created/Initiated - 07/20/2015
Approved - 07/20/2015
Approved - 07/30/2015
Approved - 07/30/2015
Approved - 07/30/2015
Final Approval - 07/30/2015



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

BID Opening Tabulation Total

Bid Opening, Friday July 17, 2015 at 2:30 p.m.
Council Chambers

BID # 15-28: CYPRESS HEAD CLUBHOUSE RENOVATIONS

Bid Release Date: June 19, 2015

Mandatory Pre-Bid Meeting Date & Time: July 2, 2015 at 8:30 a.m.

Last Day for Questions: July 9, 2015 by 5:00 p.m.

Bid Due Date & Time Envelope: July 17, 2015 at 2:30 p.m.

Bid packages shall be submitted using a one (1) envelope system. The envelope shall contain all required, technical, and price forms. The envelope will be opened and evaluated by the City's Purchasing Manager on the bid due date and time.

ADDENDA ISSUED: 1

Bidder's Submittal Checklist:

Envelope: (1) original, (2) copies and (1) CD or flash drive version of the bid tabbed, indexed, and placed in the following order:

Forms:

1. Bidder Acknowledgement Form: (Section 00030)
2. Insurance certificates: Submit a copy (Section 00080)
3. Statement of Bidder's Qualifications (Section 00130)
4. Listing of Previous Experience: (Section 00140)
5. Listing of Subcontractors (Section 00150)
6. Bid Bond (Section 00160)
7. Public Entity Crime Statement: (Section 00170)
8. Anti-Collusion Statement (Section 00180)
9. Drug Free/Tie Preference Statement (Section 00190)
10. General Contractor's License (Section 00080)
11. Total Base Bid: (Section 00120)
12. Local Business Affidavit (Section 00125 -optional)

BID # 15-28: CYPRESS HEAD CLUBHOUSE RENOVATIONS

Bid/Proposal Receipt List

15-28 Requirements 1 Original, 2 Copies, 1 CD or Flash		Hall Construction	A.G. Pifer Construction	MCG Construction
1	Bidder Acknowledgement Form	X	X	X
2	Insurance certificates	X	X	X
3	Statement of Bidder's Qualifications	X	X	X
4	Listing of Previous Experience	X	X	X
5	Listing of Subcontractors	X	X	X
6	Bid Bond	X	X	X
7	Public Entity Crime Statement	X	X	X
8	Anti-Collusion Statement	X	X	X
9	Drug Free/Tie Preference Statement	X	X	X
10	General Contractor's License	X	X	X
11	Total Base Bid	\$109,880	\$134,740	\$159,987
	Alternate 1	Add \$9,000	Add \$6,470	Deduct \$5,000
	Alternate 2	Add \$6,500	Add \$6,000	Deduct \$7,500
12	Local Business Affidavit (optional)	Not Completed	Volusia	Port Orange

The following information is a record of the submitters as received at the time of opening. All proposals are subject to review by the City and award requires a formal contract and approval by City Council.

Opened & Tabulated By: Joseph A. Gomez, Purchasing Manager





913 N. Nova Road
Holly Hill, Florida 32117
(386) 255-6987 (386) 255-6989 FAX
AA26000567

ARCHITECTS • PLANNERS

July 20, 2015

Susan L. Lovallo, CPRP
Parks & Recreation Director
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

VIA E-mail

RE: Cypress Head Club House Remodeling Architectural Design Proposal – Bid #15-28 Project No. 02343

Susan,

Following the opening of bids on Friday, July 17th, the tabulated results indicate that **Hall Construction Co., Inc.** was the lowest responsive bidder.

It is our recommendation that **Hall Construction** be awarded the contract for construction and further recommend that Additive Alternate #1 be included as well. The addition of a CMU base below the storefront system and along the glazed perimeter will result in a superior finished product overall.

I have every confidence in **Hall's** abilities and professionalism and look forward to working closely with you and them as we move forward.

Yours truly,
DJdesign Services, Inc.

Dana M. Smith, Architect
Principal



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 08/04/2015

Consent item: No

SUBJECT: Cypress Head Clubhouse HVAC System

DEPARTMENT: Parks & Recreation

RECOMMENDED MOTION: Discussion item

SUMMARY: The renovations of the clubhouse will soon begin and staff would like to have further direction from Council on HVAC work needed in the clubhouse. The current system will not be able to cool the banquet room as well as one would like. Even though the storefront windows will help seal the room, it will still be inadequate.

The City's Facility Manager provided an estimate in his memo dated 7/2/14 of \$55,000 to install a fully adequate HVAC system for the banquet room. In addition, we estimate \$5500 for design and 10% for permits and unforeseen conditions. This would bring the total estimated cost to \$66,000. Since the construction bid come in so much lower than what was previously estimated and budgeted, Parks and Recreation staff is recommending that we go ahead and upgrade the HVAC system now by adding it to the building renovation contract. By the time of the Council meeting on Tuesday we hope to have an actual quote for this work.

Project	Funding Account
No.:	No.:

ATTACHMENTS:

1.	Facility Manager estimate	Flaggcostestimateclubhouse14.pdf
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Lovallo, Susan
Lovallo, Susan
Harden, David

Created/Initiated - 07/21/2015
Approved - 07/21/2015
Final Approval - 07/30/2015

Barnes, Chris

From: Lovallo, Susan
Sent: Tuesday, July 21, 2015 4:20 PM
To: Flagg, Frank
Cc: Barnes, Chris; Ferguson, Bruce
Subject: Ac work at clubhouse

Frank can you contact hall and get an estimate on the av work for the clubhouse. I know Dana is working on engineers estimates and you might need that first but anything we can get would be helpful.

Thanks

Sent from my iPad

TOTAL OF SIX(6) PAGES

→ July 22, 2015 7:05 AM

SUSAN:

SEE ATTACHED QUOTATION FROM D.G. MEYER DATED 6/30/14.

I MET W/ STEVE JONES & D.G. MEYER AND LOOKED AT ALL POSSIBLE ALTERNATIVES, MEANS, METHODS, ETC.

THE SPIRAL DUCT SYSTEM SEEMED TO US TO MAKE SENSE AT THE TIME, BECAUSE THIS DESIGN WOULD HAVE NO EFFECT ON THE EXISTING CEILING / WALL FINISHES (I.E. NO PATCHING, PAINT, ETC.)

WE HEARD NEGATIVE COMMENT - SOME PERSONS OF MANAGEMENT WERE OPPOSED TO HOW THIS WOULD LOOK. (??).

THE SPIRAL DUCT SYSTEM IS MORE EXPENSIVE THAN REGULAR DUCT-BOARD, BUT DUCT WOULD HAVE TO BE "BOXED-IN" W/ FRAMING, DRYWALL & FINISHING OF DRYWALL - - - WE HAVE PAINTING INCLUDED, BUT NEW SOFFIT(S) WOULD NEED AN ADDITIONAL COAT OF PRIMER.

YOU WILL NEED TO ADD COST FOR MECHANICAL DESIGNER AND ELECTRICAL DESIGNER. HALL CONST WILL ADD COST FOR THEIR OVERHEAD, PROFIT & SUPERVISION.

REFER TO MY 7/2/14 ESTIMATE FOR "GREG", PAGE # 2, item # 3, "A" to "D", AND item # 4 "A".

QUESTIONS / CALL - THX! 7.

ATTACHMENTS: D.G. MEYER QUOTE OF 6/30/14.
"GREG" - FLAGG ESTIMATE OF 7/2/14

CC/TO: D.J. DESIGNS c/o DANA SMITH

TO: GREG KISELA

FROM: FRANK FLAGG

DATE: 7/2/14

RE: COST ESTIMATES FOR CYPRESS HEAD BANQUET ROOM

Greg,

The attached cost estimate is based on the initial meeting that was held on May 5, 2014 attended by Frank Flagg, Chris Barnes, Kemper Sports, Mayor Alan Green and Brendan Galbreath.

Rob Harrell provided **minimum requirements** as outlined in his letter of June 20, 2014, a copy of which is attached.

Additional site meetings were held with mechanical, electrical, glass, framing and flooring contractors:

The General Scope of Work; based on the above meeting is as follows: Refer to the attached floor plan for additional notes/comments.

Item #1: Existing "open" patios as north and south elevations:

- A) Remove existing palm trees, mulch, gutters, downspouts and underground drains.
- B) Construct new floor slabs to match elevation of existing floor slabs.
- C) Frame new roof(s) over patio areas. Remove existing shingles on existing clubhouse from the peak of the existing roof and all existing shingles at the existing banquet room. Install new shingles to match existing shingle roof.
- D) Insulate new roof cavity(s) and install a cement stucco ceiling to match existing ceilings in the existing banquet room.
- E) Add additional sidewalks per plan.

448 Square Feet at \$135.00 per Square Foot: \$60,480.00

Note: The "Open Patios" are not a part of the proposed renovations to the Banquet Room.

Item #2: Existing "Plastic" windows, kick panels and "screen" doors:

- A) Remove the existing "Plastic Windows", Kick panels and doors.

- B) Replace with storefront type windows, floor to ceiling, using 1-3/4" x 4-1/2", Vista-Wall series #2000 storefront systems. Each opening to have four (4) equal sections, using 1" overall, tinted, tempered, insulated glass.
- C) Doors: Provide a pair of 3'-0" wide x 7'-0" high doors on the east elevation from the Banquet Room to the exterior, with panic hardware. Provide a 3'-0" wide x 7'-0" high door at the south end of the Banquet room (at the original "storage room"), which will now contain the new bathrooms. Provide a 3'-0" wide x 7'-0" high door at the north end of the Banquet Room. These doors will also have 5/8" overall, tinted, tempered glass, and panic hardware. \$31,800.00

Item #3: Mechanical

- A) Remove existing A/C units at the north and south sides of the Banquet room.
- B) Install two (2), new, 15 ton package units on concrete pads.
- C) Install new duct from the package units up the wall and turn 90 degrees into the exterior walls.
- D) Install an insulated, exposed, spiral duct system across the Banquet Room. \$46,000.00

Item #4: Electrical:

- A) Increase the size of the electrical service to accommodate new A/C, with new panel box wire to A/C unit(s). \$9,000.00
- B) Remove eight (8) existing ceiling lights in the existing banquet room and replace with "modern" light fixtures allowance of \$400.00 per light x 8 required. \$3,200.00
Electrical labor at \$150 per light x 8 required \$1,200.00
- C) Remove five (5) existing ceiling fans with lights.
Fan allowance of \$300.00 per
Fan/Light combination x 5 required. \$1,500.00
Electrical Labor @ \$150.00 per
Fan x 5 required \$ 750.00

Item #5: Provide Two (2) New Bathrooms

Per the attached letter from Rob Herrell, to include the new exterior masonry walls, demolition of existing slab, plumbing, electrical, accessories, etc. \$39,500.00

Item #6: Repair existing columns and headers

Where "Plastic Windows" are to be removed
(and replaced with storefront system). \$ 4,800.00

Item #7: Carpet and Vinyl Base:

Remove existing carpet and vinyl base. Install new carpet and new vinyl base in the
(renovated) Banquet Room. \$ 6,000.00

Item #8: Interior Painting:

Refinish all existing walls and ceiling of the (renovated) Banquet Room and north
storage room to include the ceilings, columns and beams and the new spiral duct
system. \$ 5,200.00

Subtotal ITEMS #1 -8 \$209,430.00

General Contractor site supervision based on an estimated
Three (3) month project duration.

13 weeks x 8 hr. per day (65 days x 8 x \$40. hr.) \$ 20,800.00

Subtotal \$230,230.00

12% Estimated General Contractor Overhead & Profit \$ 27,628.00

Subtotal \$257,858.00

2% Contractor Bonding Cost, not to include contingency \$ 5,157.00

Subtotal \$263,015.00

10% Contingency \$ 26,301.00

Estimated Construction Costs \$289,316.00

Architectural/Design Costs:

Estimated Architectural fees to include mechanical, electrical and structural engineering, based
on 10% of Construction Costs \$28,932.00

Permits and fees based on 2% of Estimated

Construction Costs (2% of \$289,316.00) \$ 5,786.00

Estimated Total Cost for

Construction, Architectural and Permit Fees

\$ 324,034.00

Possible Alternative #1

Delete item #1, (roof over open patios), by adding new, commercial gutter system(s) at both patios. Rain would still fall into the mulched (existing) areas, and water could "build up" and possibly enter under storefront walls at the north and south patio.

Item #1 Original Value	< \$ 60,480.00>
Partial Supervision	<\$ 4,800.00>
Subtotal	<\$ 65,280.00>
12% OH/P	<\$ 7,834.00>
Subtotal	<\$ 73,114.00>
ADD: New Gutter Systems	\$ 3,500.00
New Sidewalls per plan	\$ 1,800.00
Estimated Total	\$ 5,300.00
12% OH/P	\$ 636.00
Subtotal	\$ 5,936.00
Possible Savings	<\$67,178.00>



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June 30, 2014

This agreement, between D.G. Meyer, Inc. 345 Madison Ave., Daytona Beach, Florida, hereinafter called the Seller and Cypress Head Golf Club, located at 6231 Palm Vista St., Port Orange, FL 32128, hereinafter called the Purchaser, provides for the following equipment and materials to be furnished and installed by the Seller, in premises owned by the Purchaser.

NOTES/CLARIFICATIONS:

- A) Install two 15 ton package units on ground; run duct up wall through top of wall; run spiral duct across ceiling with supply grill in spiral return through wall.

Budget Price..... \$45,995.00

- B) Run electric for A/C system.

Budget Price..... \$8,900.00

If you have any questions feel free to call at 386.253.7774 or e-mail at sjones@dgmeyer.com

Respectfully,
Steven K. Jones
CM C057027
EC 13005098