



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

NOVEMBER 16, 2021

AGENDA

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

A. OPENING

1. Invocation by Chaplain Sam Mercado of Florida Memorial Medical Center
2. Pledge of Allegiance
3. Roll Call

B. CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only
5. Agenda Approval
6. Approval of Minutes
 - a. November 2, 2021 - Regular City Council Meeting
7. Bid Awards and Contract Items
 - a. Intent to Award - RFP #21-06 Incident Response Management System to Daupler Inc.
 - b. Intent to Award - ITB #21-21 for Fence Services to Fence Service, Inc. d/b/a AAA Fence and Sterling Enterprises, LLC
8. Resolution No. 21-63 - Acceptance of Deed of Dedication for public purposes along the west side of Bruner Road, east of Clyde Morris Boulevard
9. Resolution No. 21-65 - Appropriation for FY22 Operating and Capital Budget
10. Resolution No. 21-66 - Budget Appropriation - FY21 Budget Execution Review - Final Year End True-Up
11. Release of Drainage Easement at 3835 Clyde Morris Boulevard

12. Approval of Memorandum of Understanding for Volusia Clandestine Laboratory Cleanup Task Force
13. Approval and Ratification of the International Association of Firefighters (IAFF) 2021-2023 Collective Bargaining Agreement
14. Approval of the negotiated re-openers of the International Union of Police Associations (IUPA) Collective Bargaining Agreement regarding Article 16 - Holidays, Article 28 - Wages, and Article 32 Duration of Agreement for fiscal years 2022 and 2023

C. CITIZEN PARTICIPATION (Non-Agenda – 20 minutes)

D. COUNCIL COMMENTS

15. Comments/Concerns from Council Members

E. BOARD APPOINTMENTS, INTERVIEWS, REPORTS

16. Citizen Advisory Committee for TPO

F. PUBLIC HEARING

17. Second Reading - Ordinance No. 2021-24 - 21-1 Large-Scale Comprehensive Plan Amendment/Property Rights Element (Case No. 21-20000001)

G. REGULAR AGENDA

18. Update on the REC Project

H. ADDITIONAL ITEMS

19. City Attorney
20. City Manager

I. COUNCIL COMMITTEE REPORTS

21. City Council Committee Reports
 - a. ArtHaus
 - b. First Step Shelter
 - c. Port Orange/South Daytona Chamber of Commerce
 - d. Roundtable of Elected Officials

J. ADJOURNMENT

NOTICES – PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE.



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

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

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

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
NOVEMBER 2, 2021

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

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

Pledge of Allegiance

Roll Call	Present:	Council Member Jonathan Foley Council Member Chase Tramont Council Member Scott Stiltner Vice Mayor Drew Bastian Mayor Donald Burnette
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	Also Present:	City Manager Wayne Clark City Attorney Matthew Jones City Clerk Robin Fenwick
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SPECIAL AWARDS, REPORTS, RECOGNITION AND PROCLAMATIONS

4. Police Chief Introduction

Wayne Clark, City Manager, introduced the City's new Police Chief, Manual "Manny" Marino, who provided his background information and appreciation for the opportunity to serve Port Orange. Council Members welcomed him.

CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only

There were none.

6. Agenda Approval

There were no changes requested by Council.

Motion to approve the agenda as presented was made by Vice Mayor Drew Bastian and Seconded by Council Member Chase Tramont. Motion carried unanimously by voice vote.

7. Approval of Minutes

a. October 19, 2021 - Regular City Council Meeting

Regular City Council Meeting

November 2, 2021

Page 2 of 4

8. Resolution No. 21-55 - Partial Easement Vacation on Parcel J of Town Park - Phase 2 Subdivision

9. Resolution No. 21-61 - Request to Transfer \$40,000 from the Fund Balance in Fund 401 Water and Sewer to the Operating Budget in Fund 401 Water and Sewer to purchase the Incident Response Management System (IRMS) as specified in RFP# 21-06.

10. Resolution No. 21-62 - Accepting \$95,122 for 2021-2022 Victims of Crime Act (VOCA) Grant

11. Bid Awards and Contract Items

a. Change Order No. 1 - AIA Contract with APM Construction Corporation - ITB 21-06 Ponce Inlet Lift Station Building Remodel

b. Intent to Award - ITB #20-12 Water Reclamation Facility Building Expansion

12. Approval of License Agreement for 3 Cedar Street

13. Approval of a Minor Special Event – Christmas Tree Sales at Dunlawton Square Shopping Center located at 3813 Nova Road

14. Approval of a Minor Special Event - Showtime Fireworks, Sparklers Sale at 4020 S. Nova Road

15. Approval of the HUD CDBG 5-Year Consolidated Plan 2021-2025, including the Plan Year 2021 Annual Action Plan and authorizing transmittal to the U.S. Department of Housing and Urban Development (HUD).

Motion to approve the Consent Agenda as presented was made by Vice Mayor Drew Bastian and Seconded by Council Member Scott Stiltner. Motion carried unanimously by roll call vote.

CITIZEN PARTICIPATION (Non-Agenda – 20 minutes)

There were none.

COUNCIL COMMENTS

16. Comments/Concerns from Council Members

Council Member Jonathan Foley advised he will be meeting with IT staff this week to discuss his ideas and suggestions for the upcoming website update.

Mayor Don Burnette thanked Staff for a wonderful Halloween Fest event. He also spoke regarding the First Amendment and profane language being used in protests around the City. He doesn't believe it is appropriate in a family-friendly city, but he also understands it is legal as protected free speech.

17. Parks & Recreation Board Report

Mark Bowling, Chairman, was unable to attend. The City Clerk will reschedule.

18. Environmental Advisory Board Report

Kristine Cunningham, Chair, provided details from their recent meeting and requested a workshop with Council. She stated the board is working to become more visible and available to Council and citizens for education and to help resolve issues when possible.

PUBLIC HEARING

19. Second Reading - Ordinance No. 2021-27 - Solid Waste Collection and Disposal Services

Mayor Don Burnette read Ordinance No. 2021-27.

ORDINANCE NO. 2021-27

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE, CHAPTER 56, SOLID WASTE, ARTICLE II, COLLECTION AND DISPOSAL SERVICE, UPDATING REQUIREMENTS FOR GARBAGE, RECYCLING AND YARD WASTE SERVICE, REMOVING THE ENERGY FEE, PROVIDING FOR AN AUTOMATIC CPI ADJUSTMENT FOR CHARGES AND RATES; AMENDING BILLING REQUIREMENTS; DELETING OBSOLETE BILLING PROVISIONS; PROVIDING FOR ENFORCEMENT; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2021-27
was made by Vice Mayor Drew Bastian
and Seconded by Council Member Scott
Stiltner.

Matt Jones, City Attorney, asked Council to amend the Ordinance title to reflect this is a Code of Ordinance change rather than a Land Development Code change.

Motion to amend the Ordinance to
reflect it is a Code of Ordinance change
and not a LDC change was made by

Vice Mayor Drew Bastian and Seconded
by Council Member Scott Stiltner.

Lynn Stevens, Public Works/Utilities Director, answered questions from Council member Jonathan Foley regarding the automatic annual increase included in the Ordinance.

Motion to amend the Ordinance carried
unanimously by roll call vote.

Motion to adopt Ordinance No. 2021-27
as amended to reflect a Code of
Ordinance change rather than a Land
Development Code change carried
unanimously by roll call vote.

ADDITIONAL ITEMS

20. City Attorney

There was nothing further from the City Attorney.

21. City Manager

There was nothing further from the City Manager.

COUNCIL COMMITTEE REPORTS

22. City Council Committee Reports

a. River to Sea TPO - Tim Burman, Community Development Director,
provided an update on the Pioneer Trail/I-95 interchange.

ADJOURNMENT - 7:14 p.m.

Attest:

Mayor Donald O. Burnette

Robin Fenwick, MMC
City Clerk



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: Yes

SUBJECT: (B7a) Intent to Award - RFP #21-06 Incident Response Management System to Daupler Inc.

DEPARTMENT: Public Utilities

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve award of RFP No. 21-06, Incident Response Management System, to Daupler Inc., with the highest overall ranking score; subject to City Attorney and City Manager review and approval of final contract documents; and authorizing the Mayor and City Clerk to execute all contract documents.

SUMMARY: In June 2021, RFP 21-06 was published to solicit proposals for a web-based software system to handle after-hour customer calls and manage work orders for the Public Utilities Department. Currently, after-hours calls for water, sewer, or reclaimed water issues are routed to the water treatment plant. These calls create a major burden on plant operators and frustration for customers when the calls are not answered promptly. During major events such as major water line breaks, the water plant phone system and staff cannot handle the volume of calls. This system will enable the customer to call or log onto the internet to report an issue. The person taking the call or web complaint will ask specific questions and then dispatch the correct on-call person. The system will then follow the on-call person via vehicle GPS to ensure a timely response. The system will also offer the customer the opportunity to upload photographs and view the expected arrival time of the employee and the status of service. The system will also provide a "heat map" showing areas where multiple calls to a geographical location might indicate a bigger problem.

The City received two proposals related to this RFP. On September 20, 2021, the Selection Committee recommended Daupler Inc. with the highest overall ranking score.

Project	Funding Account No.:	Cost Center:	Water and Sewer Program:	Public
No.: <u>NONE</u>	Utilities Program:	Utilities Administration	Spend Category:	Computer
	Software - capital			

Presenter: Lynn Stevens

ATTACHMENTS:

1.	Daupler, Inc. Standard Contract for Services	Daupler, Inc. RFP 21-06 Incident Response Management System.pdf
2.	RFP 21-06 Notice of Intent to Award FINAL (9.29.2021) JP	RFP 21-06 Notice of Intent to Award FINAL (9.29.2021) JP.pdf
3.	RFP 21-06 Incident Mgmt Evaluation Ranking Summary FINAL (9 29 2021) JP	RFP 21-06 Incident Mgmt Evaluation Ranking Summary FINAL (9 29 2021) JP.xlsx
4.	RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM ADDENDUM NO.2 of 2 FINAL (7.13.2021)	RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM ADDENDUM NO.2 of 2 FINAL (7.13.2021).pdf
5.	RFP 21-06 INCIDENT RESPONSE MANAGMENT SYSTEM ADDENDUM NO.1 of 2 FINAL (6.29.2021)	RFP 21-06 INCIDENT RESPONSE MANAGMENT SYSTEM ADDENDUM NO.1 of 2 FINAL (6.29.2021).pdf
6.	RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM BID PKG FINAL (6.10.2021)	RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM BID PKG FINAL (6.10.2021).pdf

Kynah Cockcroft	Created/Initiated - 10/5/2021
Julia Wiggins	Approved - 10/5/2021
Junos Reed	Approved - 10/5/2021
Steve Parnell	Approved - 10/5/2021
Lynn Stevens	Approved - 10/11/2021
Lupe Reyna-Coffin	Approved - 10/11/2021
Robin Hayes	Approved - 10/13/2021
Matthew Jones	Approved - 11/3/2021
Wayne Clark	Approved - 11/4/2021
Robin Fenwick	Final Approval - 11/4/2021



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this ____ day of _____, 2021, 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 **DAUPLER, INC.**, a Missouri corporation whose principal address is 1828 Walnut Street, Floor #3, Kansas City, Missouri ("Contractor"). The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

(a) The Contractor hereby agrees to furnish an Incident Response Management System ("IRMS"), pursuant to Request for Proposal 21-06 ("RFP 21-06"). This Contract together with RFP 21-06, Addendum No. 1, Addendum No. 2, and Contractor's proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference, shall constitute the formal written contract between the City and Contractor. For convenience, Section 3, Scope of Services, from RFP 21-06, Addendum No. 1, Addendum No. 2, and the Contractor's Fee Proposal, are attached hereto as **Exhibit "1"**. A complete copy of RFP 21-06, Addenda, and Contractor's Fee Proposal are available in the Office of the City Clerk. Contractor represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall become effective on the last date the Contract is signed by the Parties ("Effective Date"). Upon issuance of a written Notice to Proceed, implementation of the Incident Response Management System as more particularly described in Section 3, Scope of Work and Contractor's Proposal shall be substantially completed within 180 days, with final completion 30 days thereafter. Upon completion of the implementation process and City's acceptance thereof, a one-year subscription service shall commence. For purposes of clarification, the one-year subscription does not begin until implementation has been completed and accepted by the City ("Term").

Renewals: Upon completion of the initial one-year subscription period, a second one-year subscription service shall automatically renew, unless otherwise terminated in writing by the Parties with a sixty (60) day notice.

Manner and Place: The work shall be performed in accordance with 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.

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

Authorization for Services: This Contract standing alone does not authorize the purchase of any goods or services or require the City to place any orders for goods or service. Authorization for the purchase of goods or services from Contractor under this Contract shall be upon issuance of a Notice

to Proceed and a written Purchase Order issued by the City and executed by the City Manager. The City reserves the right to contract with other parties for the goods and services contemplated by this Contract, as determined in the City's sole and absolute discretion.

2. City Obligations. In return for the services identified above, the City agrees to compensate the Contractor at the pricing set forth in Exhibit "1," attached hereto, in an amount not to exceed Thirty-Eight Thousand Seven Hundred and 00/100 Dollars (\$38,700.00) for year one (1), and in an amount not to exceed Twenty-Nine Thousand Five Hundred and 00/100 Dollars (\$29,500.00) for year two (2) of this Contract. 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 Works and Utilities Director, Lynn Stevens, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

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

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 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 23 of this contract concerning disputes.

6. 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.

7. 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. In the event of default by the contractor, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result. City Council may elect to refrain from doing business with the bidder as stipulated in City Code 2-276 Suspension and Disbarment.

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 required by the City to perform the service.

(b) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the City.

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

If Contractor does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Contractor may be subject to penalties under Section 119.0701, Florida Statutes.

CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129; TELEPHONE: (386) 506-5563; E-MAIL: CITYCLERK@PORT-ORANGE.ORG.

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, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

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. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing

the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

Contractor shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Contractor is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Contractor to ensure the subcontractors maintain the required coverage, shall not relieve the Contractor of any contractual responsibility, obligation or liability.

The City reserves the right to increase insurance coverage as determined for higher risk contracts.

The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with this Contract and does not waive the insurance required by this Contract.

Should at any time the Contractor or subcontractors not maintain the insurance coverages required herein, the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

Standard Insurance Requirements				
	Insurance	Standards		Additional Requirements
☒	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit Form Exhibit.	<u>Contract Amount</u> Up to \$10 million \$10 - \$20 million Contracts over \$20 million To Be Determined by the City.	<u>Limits</u> Statutory/\$500,000 Statutory/\$1,000,000	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.

☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is 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 owned, hired and non-owned automobiles.	<u>Limits:</u> Auto Liability Body Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	<u>Limits:</u> Coverage - \$1,000,000	
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000	
☐	Errors and Omissions	<u>Limits:</u> Coverage - \$1,000,000	
☐	Umbrella Policy	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Payment and Performance Bond Required	<u>Limits:</u> Coverage - Equal to amount of Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$100,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.		

12. 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.

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

14. Modifications or Changes to this Contract

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

(b) If any change under this clause causes an increase or decrease in Contractor's cost of, or time required for the performance of the work hereunder, Contractor shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the Contractor, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change.

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

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

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

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

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

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

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

19. Inspection

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

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

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

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

20. Liability for Loss or Damage.

(a) 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.

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

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 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 Agreement. 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, MMC. 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.

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

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

25. Additional Provisions. This Contract includes all additional provisions as may have been outlined in 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. In the event of a conflict between any attachments or exhibits to this Contract, and this Contract, the language of this Contract 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: Lynn Stevens, Public Works and Utilities Director 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5750
Contractor:	Daupler, Inc. Attention: John Bertrand, President 1828 Walnut Street Floor #3 Kansas City, Missouri 64108 (816) 896-1163 – 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.

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]

DAUPLER, INC.

Witnesses:

By: _____

John Bertrand, 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: _____

Printed Name: _____

Date: _____

STATE OF MISSOURI

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by John Bertrand, as President of Daupler, Inc., a Missouri corporation. He is ____ personally known or ____ produced _____ as identification.

Notary Public, State of Missouri

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Printed Name:_____

By: _____
Wayne Clark, City Manager

Printed Name:_____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Wayne Clark, as City Manager of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ____ personally known or ____ produced _____ as identification.

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

Witnesses:

ATTEST:

Printed Name:_____

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

Printed Name:_____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ____ personally known or ____ produced _____ as identification.

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

EXHIBIT “1”

Contractor's Quote

Consisting of 7 Pages

Incident Response Management System Cost/Fee Proposal

Item Number	Description	Unit of Measure	Unit Price
1	Cost of Software	-	Included
2	Cost of Implementation	One-time	\$9,200
3	Reoccurring Subscription Costs (includes software and call answering)	Annual	\$29,500
4	Cost of Integrations	-	Included
5	Cost of Support	-	Included
		Total Cost	\$38,700 year 1
			\$29,500 year 2

Proposal Submitted by: Daupler, Inc.

Authorized Signature:



Printed Name of Authorized Signer: Chad Feather

Email of Authorized Contact: chad@daupler.com

SECTION 3 – SCOPE OF WORK

PROJECT DESCRIPTION

The City of Port Orange is soliciting sealed Proposals to obtain a web-based software system to handle customer grievances, after hours callouts, and work order management for the Public Utilities department.

INCIDENT RESPONSE MANAGEMENT SYSTEM SPECIFICATIONS:

1. After hours call support services for Port Orange Utilities calls, gather information, and use an algorithm to triage all calls appropriately to designated and assigned City staff. After hours are 4:00pm to 8:00am.
2. Citizen engagement portal with the ability to provide a link to a citizen who calls in, giving them the opportunity to confirm reported information, provide additional information, submit photographs, provide customer feedback scoring and track the response process.
3. An interface where an external stakeholder, such as a citizen, can submit information regarding their incident, such as photos and a description.
 - a. The description should be analyzed automatically by algorithm to determine the type of and severity of incident being reported.
4. Provides objective documentation of response activities, including:
 - a. Crew arrival and departure timestamps
 - b. Crew arrival and departure location validation
 - c. Crew communication with customers including text and phone call
 - d. Team formation with internal response team
5. Provides access to detailed customer information for each incident response, including:
 - a. Responding crew members
 - b. Location validation
 - i. Arrival and departure timestamps gathered automatically through the use of GPS either via smart phone or through an integration with a fleet management system.
 - c. Response timeline
 - d. Resident information
 - e. Citizen Direct Communication
 - i. Including photographs and notes of communication from the citizen
6. Provides response data analytics, including:
 - a. Baseline overall response performance
 - b. User specific response performance
 - c. Call responsiveness during team formation
 - d. Daily incident distribution for resource allocation
 - e. Heatmap by incident
7. Provides a tool that can automatically determine if multiple incident reports are associated and if so, identify related incidents as an “event”, giving city employees access to communicate with citizens to provide response timeline, estimated time of arrival, and estimated time that service will be restored.
 - a. Engagement with citizen should be through both IVR (interactive voice response), and opt-in text messages.

8. Integration with existing customer information systems and work order management systems, including Workday and Lucity and EsriArcGis.
9. Provides easy to use software that follows existing procedures and empower Port Orange staff regardless of experience level.
10. Provides incident creation interface for use by Managers, Customer Service, or Admin staff.
11. Easily photograph on-scene conditions within mobile interface.
12. Easily review, search, and query all incidents via customized dashboard.
13. Export standard incident reports, to Port Orange guidelines, for sending to internal and external Stakeholders. Reports should be in a standard, non-proprietary, file format, such as a PDF, TIF, XLS, or CSV format.
14. Cloud based hosted solution is preferred.
15. Single sign on (SSO) using Microsoft ADFS or Microsoft Azure Active Directory.
16. Installation and integration services must be included.

[END OF SPECIFICATIONS]

[Remainder of page left intentionally blank]



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5717
purchdiv@port-orange.org

ADDENDUM NO. # 1

June 29, 2021

RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM

To All Bidders:

The following changes, clarifications and additions are hereby made part of the proposal and specifications for the above referenced project dated June 17, 2021 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting proposal and acknowledge such in the proposal documents.

The City of Port Orange is providing a Zoom teleconference option (audio only).

Topic: **RFP 21-06 Incident Response Management System Pre-Proposal Meeting**

Time: **Jul 1, 2021 10:00 AM Eastern Time** (US and Canada)

Meeting ID: 834 0641 1265

Passcode: 918722

Non-U.S. participants: U.S. Country Code +001

One tap mobile

+19292056099,,83406411265#,,,,*918722# US (New York)

+13017158592,,83406411265#,,,,*918722# US (Washington DC)

Dial by your location

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

In all other respects, except as specifically stated herein, the subject RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM remain the same.

END OF ADDENDUM NO. #1

Joseph Castro

Buyer

jcastro@port-orange.org



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5717
purchdiv@port-orange.org

ADDENDUM NO. # 2

July 13, 2021

RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM

To All Proposers:

The following changes, clarifications and additions are hereby made part of the proposal and specifications for the above referenced project dated June 17, 2021 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of proposer to confirm that all addenda have been received prior to submitting proposal and acknowledge such in the proposal documents.

A. CLARIFICATIONS:

1. Section 5, Item 30, E-Verify, pages 19-20 currently reads as:

"Proposers shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Proposer during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract. Proposers shall complete Form 9.10 E-Verify Affidavit and include it in the returned Response package. Failure to include the affidavit may result in rejection of the Response".

Section 5, Item 30, E-Verify, pages 19-20 **shall now read as:**

"Proposers shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired on or after January 1, 2021 by the Proposer and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract. Proposers shall complete Form 9.10 E-Verify Affidavit and include it in the returned Response package. Failure to include the affidavit may result in rejection of the Response".

2. Section 7, Tab A Company Experience and Qualifications, item D, page 36 currently reads as:

"Provide a copy of your current State of Florida business license; pending licenses will not be accepted. If applicable, provide a copy of the county business license of primary business operations. If not applicable, please provide a statement that a business license is not required and provide the city, county, and state of your primary business operations".

Section 7, Tab A Company Experience and Qualifications, item D, page 36 **shall now read as :**

"Provide a copy of your current State of Florida business license; pending licenses will not be accepted. If applicable, provide a copy of the state business license of your primary business operations. If not applicable, please provide a statement that a business license is not required and provide the city, county, and state of your primary business operations".

B. CHANGES TO SPECIFICATIONS:

None

C. ADDITIONS:

The following form is hereby added to RFP #21-06 and is posted as a separate document on Demandstar and the City of Port Orange Purchasing Web page @ <https://www.port-orange.org/bids.aspx>

Non-Disclosure Agreement for Confidential Materials

D. QUESTIONS AND ANSWERS:

Question No.1: Re: Tab A – Company Experience and Qualifications, Question D:

“Provide a copy of your current State of Florida business license; pending licenses will not be accepted. If applicable, provide a copy of the county business license of primary business operations. If not applicable, please provide a statement that a business license is not required and provide the city, county, and state of your primary business operations.”

Our company is headquarters in Georgia and has no office locations in Florida. We are a US corporation and have an employer identification number (EIN) under which we file federal taxes. Is providing this number sufficient to show we can conduct business with Port Orange or are we required to obtain other county business licenses for this bid?

ANSWER: Proposers who do not hold a current State of Florida business license to conduct business in Florida are required to provide a state business license of your primary business operations. (See Clarification #2.)

Question No.2: regarding page 37, Tab B is: is this section meant to capture features that are above and beyond the Incident Response Management System Specifications on page 10, or other features that would be an extra charge above our core solution, or both, or something else?

ANSWER: It's in addition to. Page 10 is basically the minimum requirements. Page 37 Tab B asks for more details above and beyond the requirements. For instance, page 10 is what we know we want. Page 37 Tab B is an addition to that, what else can your application do that the City may be interested in.

Question No.3: if Tab B, item H is meant to cover requirements from City Staff only during implementation, or post implementation as well?

ANSWER: Requirements from city staff are during implementation only.

Question No.4: In the Financial History section, are you looking for a full P&L? We have not typically shared financials in the past.

ANSWER: For Tab D – Financial History, Proposers should provide their most recent financial statement, preferably their certified, audited statement for their most recently ended fiscal year. A third party prepared financial statement and the latest Dun & Bradstreet report will be accepted in lieu thereof. Please refer to the added Non-Disclosure Agreement for Confidential Material submitted and if the information you provide is considered exempt from public record based on the Florida Statutes cited in the Non-Disclosure Agreement, please list the material in Exhibit A Description of Confidential Material and include with your submittal.

Question No.5: On Form 9.7, bullet F, we also do not typically disclose our contracts for competitive reasons. Is failing to disclose those means for disqualification?

ANSWER: This information is necessary to properly evaluate your workload. The omission of this information will not disqualify a Proposer; however, it may adversely affect your score for this section.

Question No.6: On the same form, items N & O, same question. We do not typically disclose this information and would like to understand if failing to disclose those items reason for disqualification?

ANSWER: This information is necessary to properly evaluate your financial strength. The omission of this information will not disqualify a Proposer; however, it may adversely affect your score for this section.

Question No. 7: On Form 9.8, we are very happy to provide references, but do not typically disclose contract amounts. Are we able to put 'undisclosed' in the Contract Amount field?

ANSWER: The reference information on Form 9.8 should be completed in its entirety so the Proposer's experience can be properly evaluated and scored. Should any part of this information be omitted, it may adversely affect the Proposer's score for the Experience and Qualifications section of the RFP.

In all other respects, except as specifically stated herein, the subject RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM remains the same.

END OF ADDENDUM NO. #2

Joseph Castro

Buyer

jcastro@port-orange.org



NOTICE OF INTENT TO AWARD

RFP #21-06

INCIDENT RESPONSE MANAGEMENT SYSTEM

September 29, 2021

On July 22, 2021, Purchasing received two (2) proposals for RFP 21-06 Incident Response Management System.

After review of the responses, City Staff has made a recommendation to award to the following firm:

DAUPLER, INC.

This recommendation of award will be presented to City Council for approval on or about November 2, 2021. Interested parties may review the City Council agenda at <https://www.port-orange.org/>.

Joseph Castro
Buyer



Request For Proposals Evaluation Ranking Summary

Date: 9/20/2021

RFP #21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM

Incident Response Management System

Firm Name	Total Score
Daupler, Inc.	255
Autocene, Inc.	173

Comments

On September 20, 2021 a Proposal Evaluation Committee scored proposals from the two firms listed above. The committee agreed by consensus to recommend for award Daupler, Inc. as they achieved the highest overall score for the services for which they each submitted proposals.

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes. " The 72 hour posting requirement will elapse on October 4, 2021 at 4:00p.m. E.S.T.



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5717
purchdiv@port-orange.org

ADDENDUM NO. # 2

July 13, 2021

RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM

To All Proposers:

The following changes, clarifications and additions are hereby made part of the proposal and specifications for the above referenced project dated June 17, 2021 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of proposer to confirm that all addenda have been received prior to submitting proposal and acknowledge such in the proposal documents.

A. CLARIFICATIONS:

1. Section 5, Item 30, E-Verify, pages 19-20 currently reads as:

"Proposers shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Proposer during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract. Proposers shall complete Form 9.10 E-Verify Affidavit and include it in the returned Response package. Failure to include the affidavit may result in rejection of the Response".

Section 5, Item 30, E-Verify, pages 19-20 **shall now read as:**

"Proposers shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired on or after January 1, 2021 by the Proposer and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract. Proposers shall complete Form 9.10 E-Verify Affidavit and include it in the returned Response package. Failure to include the affidavit may result in rejection of the Response".

2. Section 7, Tab A Company Experience and Qualifications, item D, page 36 currently reads as:

"Provide a copy of your current State of Florida business license; pending licenses will not be accepted. If applicable, provide a copy of the county business license of primary business operations. If not applicable, please provide a statement that a business license is not required and provide the city, county, and state of your primary business operations".

Section 7, Tab A Company Experience and Qualifications, item D, page 36 **shall now read as :**

"Provide a copy of your current State of Florida business license; pending licenses will not be accepted. If applicable, provide a copy of the state business license of your primary business operations. If not applicable, please provide a statement that a business license is not required and provide the city, county, and state of your primary business operations".

B. CHANGES TO SPECIFICATIONS:

None

C. ADDITIONS:

The following form is hereby added to RFP #21-06 and is posted as a separate document on Demandstar and the City of Port Orange Purchasing Web page @ <https://www.port-orange.org/bids.aspx>

Non-Disclosure Agreement for Confidential Materials

D. QUESTIONS AND ANSWERS:

Question No.1: Re: Tab A – Company Experience and Qualifications, Question D:

“Provide a copy of your current State of Florida business license; pending licenses will not be accepted. If applicable, provide a copy of the county business license of primary business operations. If not applicable, please provide a statement that a business license is not required and provide the city, county, and state of your primary business operations.”

Our company is headquarters in Georgia and has no office locations in Florida. We are a US corporation and have an employer identification number (EIN) under which we file federal taxes. Is providing this number sufficient to show we can conduct business with Port Orange or are we required to obtain other county business licenses for this bid?

ANSWER: Proposers who do not hold a current State of Florida business license to conduct business in Florida are required to provide a state business license of your primary business operations. (See Clarification #2.)

Question No.2: regarding page 37, Tab B is: is this section meant to capture features that are above and beyond the Incident Response Management System Specifications on page 10, or other features that would be an extra charge above our core solution, or both, or something else?

ANSWER: It's in addition to. Page 10 is basically the minimum requirements. Page 37 Tab B asks for more details above and beyond the requirements. For instance, page 10 is what we know we want. Page 37 Tab B is an addition to that, what else can your application do that the City may be interested in.

Question No.3: if Tab B, item H is meant to cover requirements from City Staff only during implementation, or post implementation as well?

ANSWER: Requirements from city staff are during implementation only.

Question No.4: In the Financial History section, are you looking for a full P&L? We have not typically shared financials in the past.

ANSWER: For Tab D – Financial History, Proposers should provide their most recent financial statement, preferably their certified, audited statement for their most recently ended fiscal year. A third party prepared financial statement and the latest Dun & Bradstreet report will be accepted in lieu thereof. Please refer to the added Non-Disclosure Agreement for Confidential Material submitted and if the information you provide is considered exempt from public record based on the Florida Statutes cited in the Non-Disclosure Agreement, please list the material in Exhibit A Description of Confidential Material and include with your submittal.

Question No.5: On Form 9.7, bullet F, we also do not typically disclose our contracts for competitive reasons. Is failing to disclose those means for disqualification?

ANSWER: This information is necessary to properly evaluate your workload. The omission of this information will not disqualify a Proposer; however, it may adversely affect your score for this section.

Question No.6: On the same form, items N & O, same question. We do not typically disclose this information and would like to understand if failing to disclose those items reason for disqualification?

ANSWER: This information is necessary to properly evaluate your financial strength. The omission of this information will not disqualify a Proposer; however, it may adversely affect your score for this section.

Question No. 7: On Form 9.8, we are very happy to provide references, but do not typically disclose contract amounts. Are we able to put 'undisclosed' in the Contract Amount field?

ANSWER: The reference information on Form 9.8 should be completed in its entirety so the Proposer's experience can be properly evaluated and scored. Should any part of this information be omitted, it may adversely affect the Proposer's score for the Experience and Qualifications section of the RFP.

In all other respects, except as specifically stated herein, the subject RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM remains the same.

END OF ADDENDUM NO. #2

Joseph Castro

Buyer

jcastro@port-orange.org



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5717
purchdiv@port-orange.org

ADDENDUM NO. # 1

June 29, 2021

RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM

To All Bidders:

The following changes, clarifications and additions are hereby made part of the proposal and specifications for the above referenced project dated June 17, 2021 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting proposal and acknowledge such in the proposal documents.

The City of Port Orange is providing a Zoom teleconference option (audio only).

Topic: **RFP 21-06 Incident Response Management System Pre-Proposal Meeting**

Time: **Jul 1, 2021 10:00 AM Eastern Time (US and Canada)**

Meeting ID: 834 0641 1265

Passcode: 918722

Non-U.S. participants: U.S. Country Code +001

One tap mobile

+19292056099,,83406411265#,,,,*918722# US (New York)

+13017158592,,83406411265#,,,,*918722# US (Washington DC)

Dial by your location

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 669 900 6833 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

In all other respects, except as specifically stated herein, the subject RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM remain the same.

END OF ADDENDUM NO. #1

Joseph Castro

Buyer

jcastro@port-orange.org

CITY OF PORT ORANGE, FLORIDA

REQUEST FOR PROPOSAL

RFP #21-06

INCIDENT RESPONSE MANAGEMENT SYSTEM



City of Port Orange Purchasing Division

Prepared by Joseph Castro, Buyer

Release Date: June 17, 2021

Proposal Due Date and Time:
July 22, 2021 at 2:30 P.M.

City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129
(386) 506-5740

purchdiv@port-orange.org
www.port-orange.org



Legal Notice to Proposers

RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM

Notice is hereby given that the City of Port Orange is soliciting proposals for RFP 21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM. Proposals will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 P.M. on July 22, 2021**, which may be amended by addendum issued by the City. All untimely proposals will not be considered and will be returned to the Proposer unopened. All proposals will be evaluated to ensure they contain all the required forms in order to deem the Proposer responsive or non-responsive. **Proposals will be opened, and Proposers Names will be read aloud at 2:30 P.M. in the Council Chambers located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida, 32129.**

There will be a Non-Mandatory Pre-Proposal Conference for the project at 10:00 A.M. (local time) on July 1, 2021 at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the Pre-Proposal Conference **MUST** sign in. The representative of each Proposer shall be an authorized employee of the Proposer and shall sign in accordingly. **Proposers are encouraged to attend the Non-Mandatory Pre-Proposal Conference and are urged to obtain RFP documents and familiarize themselves with the documents prior to the Pre-Proposal Conference.**

DESCRIPTION: *The City of Port Orange is soliciting sealed Proposals to obtain a web-based software system to handle customer complaints, after hours callouts, and work order management for the Public Utilities department.*

Proposers must be a commercial entity licensed to do business in the State of Florida and perform the services identified herein. Proposers must be properly registered and licensed to provide the services identified in the scope of work, by all applicable state and local agencies.

All Requests for Proposals are solicited and will be evaluated on the criteria outlined in the RFP. An Evaluation Committee primarily comprised of City staff has been appointed to evaluate and rank the Proposals received in accordance with the Policies and Procedures as set forth in the City's Purchasing Manual.

Copies of the Proposal documents, requirements, scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from the City of Port Orange website at www.port-orange.org/bids.aspx and DemandStar via their website at www.demandstar.com. All questions shall be directed **in writing** to the Buyer, Joseph Castro, jcastro@port-orange.org or purchdiv@port-orange.org and reference **"Questions on RFP 21-06 "INCIDENT RESPONSE MANAGEMENT SYSTEM" in the subject line.** Last day for questions will be **July 8, 2021 at 5:00 P.M.**

[Remainder of this page left intentionally blank]

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



SEALED BID • DO NOT OPEN

SEALED BID NO. RFP 21-06

BID TITLE: INCIDENT RESPONSE MANAGEMENT SYSTEM

DUE DATE/TIME: July 22, 2021 at 2:30 P.M.

SUBMITTED BY: _____
(Name of Company)

ADDRESS: _____

DELIVER City of Port Orange
Attn: Joseph Castro, Buyer
Finance Department
1000 City Center Circle
Port Orange, Florida 32129

DATE/TIME RECEIVED: _____
(To be stamped by Clerk's Office)

Contents

SECTION 1 – PURPOSE AND OVERVIEW	5
SECTION 2 – INSTRUCTIONS TO PROPOSERS.....	6
SECTION 3 – SCOPE OF WORK AND REQUIREMENTS.....	10
SECTION 4 – STANDARD PURCHASE DEFINITIONS.....	12
SECTION 5 – GENERAL TERMS AND CONDITIONS	14
SECTION 6 – SPECIAL CONDITIONS	33
SECTION 7 – PROPOSAL SUBMITTAL & REQUIREMENTS	36
SECTION 8 – EVALUATION OF PROPOSALS.....	39
SECTION 9 – REQUIRED FORMS	45
FORM 9.1 – PROPOSAL CHECKLIST	45
FORM 9.2 – PROPOSER’S ACKNOWLEDGEMENT FORM	46
FORM 9.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT	47
FORM 9.4 – DRUG FREE PREFERENCE STATEMENT	48
FORM 9.5 – SWORN STATEMENT UNDER § 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES.....	49
FORM 9.6 – ANTI-COLLUSION FORM.....	50
FORM 9.7 – STATEMENT OF QUALIFICATIONS	51
FORM 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE	52-53
FORM 9.9 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY	54
FORM 9.10 – E-VERIFY AFFIDAVIT	55
FORM 9.11 – DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS.....	56
COST/FEE PROPOSAL.....	57
AFFIDAVIT REGARDING WORKER’S COMPENSATION (FOR INFORMATIONAL PURPOSES ONLY).....	58
LEASED EMPLOYEE AFFIDAVIT FORM (FOR INFORMATIONAL PURPOSES ONLY)	59
STANDARD CITY OF PORT ORANGE CONTRACT DOCUMENTS (FOR INFORMATIONAL PURPOSES ONLY)	60-71

SECTION 1 – PURPOSE AND OVERVIEW

The purpose for this Request for Proposals (RFP) is to solicit competitive sealed proposals from Certified Firms or Companies (Proposers) to obtain an Incident Response Management System for the Public Utilities department.

It is the intent and purpose of the City of Port Orange (City) that this Request for Proposal promotes competitive selection. It shall be the Proposer's responsibility to advise the Purchasing Division if any language, requirements, etc., or any combination thereof, inadvertently restricts or limits the requirements stated in this RFP to a singlesource.

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO PROPOSERS

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

TIMELINE (Local Time):

The City reserves the right to alter dates as needed.

Date of Distribution..... June 17, 2021
Non-Mandatory Pre-Proposal Conference: July 1, 2021 at 10:00 A.M.
Deadline for Questions: July 8, 2021 by 5:00 P.M.
Final Addendum Posting: July 15, 2021 by 5:00 P.M.
Proposals Due: July 22, 2021 by 2:30 P.M.
Evaluation Period July 23 – July 30, 2021
Evaluation Committee Meeting To Be Determined
City Council Meeting for Approval of Recommendation of Award To Be Determined

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

City of Port Orange City Clerk's Office
Attn: Joseph Castro, Buyer
1000 City Center Circle
Port Orange, FL, 32129

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

Proposals shall be sealed, and Proposers **must** indicate on the outside of their proposal the following:

- a) Request for Proposal (RFP) Number and Title
- b) Date of Opening
- c) Name of Proposer
- d) Address of Proposer

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

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

All proposals will be opened publicly, and the names of all Proposers shall be read aloud. All conferences and meetings regarding this RFP are recorded electronically (audio only). The City of Port Orange reserves the right to reject any or all proposals or parts of proposals, if it is in the best interest of the City.

NON-MANDATORY PRE-PROPOSAL CONFERENCE:

There will be a Non-Mandatory Pre-Proposal Conference for the project at 10:00 A.M. (local time) on July 1, 2021 at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the Pre-Proposal Conference **MUST** sign in. The representative of each Proposer shall be an authorized employee of the Proposer and shall sign in accordingly.

Proposers are encouraged to attend the Non-Mandatory Pre-Proposal Conference and are urged to obtain RFP documents and familiarize themselves with the documents prior to the Pre-Proposal Conference. All prospective Proposers are strongly encouraged to attend because the Pre-Proposal Conference will offer potential Proposers the opportunity to ask questions and discuss the project directly with staff.

QUESTIONS REGARDING THIS RFP:

All questions shall reference **“Questions on RFP #21-06 INCIDENT RESPONSE MANAGEMENT SYSTEM”** in the subject line. All questions concerning this RFP shall be submitted in writing no later than the date and time referenced in the Timeline above to:

Joseph Castro, Buyer
1000 City Center Circle
Port Orange, FL, 32129
jcastro@port-orange.org
or
purchdiv@port-orange.org

ADDENDA REGARDING THE REQUEST FOR PROPOSALS:

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Proposal Due Date. Addenda will be provided via the City website www.port-orange.org/bids.aspx and Demand Star websites. www.demandstar.com. Proposers should not rely on any representations, statements, or explanations other than those made in this RFP or in any addendum to this RFP. Where there appears to be a conflict between the RFP and any addenda issued, the last addendum issued will prevail.

It is the Proposer's responsibility to be sure all correct number of addenda was received. The Proposer should verify with the designated contact persons prior to submitting a proposal that all addenda have been received. Proposers should acknowledge the correct number of addenda received as part of their proposals by completing Form 9.3 contained herein.

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

CLARIFICATIONS:

It is the Proposer's responsibility to become familiar with and fully informed regarding the terms, conditions, and specifications of this RFP. Lack of understanding and/or misinterpretation of any portions of this RFP shall not be cause for withdrawal of your proposal after opening or for subsequent protest of award. Proposers must contact the Purchasing Representative, at the email provided, should clarification be required. Modification or alteration of the documents contained in the solicitation or contract shall only be valid if mutually agreed to in writing by the parties.

MINIMUM QUALIFICATIONS:

Proposers must be commercial entity licensed to do business in the State of Florida or appropriate qualified commercial entity licensed in the area specified in the scope of work and to perform the services identified herein.

Proposers must be properly registered and licensed to engage in the scope of work pertaining to this RFP, by all applicable state and local agencies.

Proposers must provide a minimum of three (3) verifiable references from similar scopes of work as identified in this RFP following the requirements in Section 7. Failure to provide references that verify required experience will cause the Proposer to be deemed non-responsive. The City of Port Orange is not to be used as a reference.

NO LOBBYING:

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

EXCEPTIONS TO SPECIFICATIONS:

If taking exception to any portion of the RFP specifications, the Proposer must indicate those exceptions as stated on the Proposer's Acknowledgement Form 9.2.

PROPOSAL SUBMISSION AND WITHDRAWAL:

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

CORRECTION OF PROPOSALS:

Correction of inadvertently erroneous proposals shall be permitted up to the time of RFP opening. Proposers shall not be allowed to modify their proposals after the opening time and date.

WITHDRAWAL OF PROPOSALS:

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

OPENING OF PROPOSALS:

Proposals will be received until the date and time stated in this RFP and will be publicly opened and read at the place, time and date stated. The Purchasing Division bears no responsibility for the premature opening of a proposal not properly addressed and identified.

REJECTION OF PROPOSALS:

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

PROPOSALS MAY BE REJECTED AND/OR PROPOSER(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

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

OWNERSHIP OF DOCUMENTS:

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

AMERICANS WITH DISABILITIES ACT (ADA):

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

[Remainder of page left intentionally blank]

SECTION 3 – SCOPE OF WORK

PROJECT DESCRIPTION

The City of Port Orange is soliciting sealed Proposals to obtain a web-based software system to handle customer grievances, after hours callouts, and work order management for the Public Utilities department.

INCIDENT RESPONSE MANAGEMENT SYSTEM SPECIFICATIONS:

1. After hours call support services for Port Orange Utilities calls, gather information, and use an algorithm to triage all calls appropriately to designated and assigned City staff. After hours are 4:00pm to 8:00am.
2. Citizen engagement portal with the ability to provide a link to a citizen who calls in, giving them the opportunity to confirm reported information, provide additional information, submit photographs, provide customer feedback scoring and track the response process.
3. An interface where an external stakeholder, such as a citizen, can submit information regarding their incident, such as photos and a description.
 - a. The description should be analyzed automatically by algorithm to determine the type of and severity of incident being reported.
4. Provides objective documentation of response activities, including:
 - a. Crew arrival and departure timestamps
 - b. Crew arrival and departure location validation
 - c. Crew communication with customers including text and phone call
 - d. Team formation with internal response team
5. Provides access to detailed customer information for each incident response, including:
 - a. Responding crew members
 - b. Location validation
 - i. Arrival and departure timestamps gathered automatically through the use of GPS either via smart phone or through an integration with a fleet management system.
 - c. Response timeline
 - d. Resident information
 - e. Citizen Direct Communication
 - i. Including photographs and notes of communication from the citizen
6. Provides response data analytics, including:
 - a. Baseline overall response performance
 - b. User specific response performance
 - c. Call responsiveness during team formation
 - d. Daily incident distribution for resource allocation
 - e. Heatmap by incident
7. Provides a tool that can automatically determine if multiple incident reports are associated and if so, identify related incidents as an “event”, giving city employees access to communicate with citizens to provide response timeline, estimated time of arrival, and estimated time that service will be restored.
 - a. Engagement with citizen should be through both IVR (interactive voice response), and opt-in text messages.

8. Integration with existing customer information systems and work order management systems, including Workday and Lucity and EsriArcGis.
9. Provides easy to use software that follows existing procedures and empower Port Orange staff regardless of experience level.
10. Provides incident creation interface for use by Managers, Customer Service, or Admin staff.
11. Easily photograph on-scene conditions within mobile interface.
12. Easily review, search, and query all incidents via customized dashboard.
13. Export standard incident reports, to Port Orange guidelines, for sending to internal and external Stakeholders. Reports should be in a standard, non-proprietary, file format, such as a PDF, TIF, XLS, or CSV format.
14. Cloud based hosted solution is preferred.
15. Single sign on (SSO) using Microsoft ADFS or Microsoft Azure Active Directory.
16. Installation and integration services must be included.

[END OF SPECIFICATIONS]

[Remainder of page left intentionally blank]

SECTION 4 – STANDARD PURCHASE DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
3. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
4. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
5. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract.
6. **Bidder or Proposer** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
7. **City** means the City of Port Orange.
8. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit Responses through a Request for Proposals, Request for Statements of Qualifications, or Invitation to Negotiate.
9. **Competitive (Formal) Solicitation** is the process of requesting and receiving two or more sealed bids, proposals, statements of qualifications or replies submitted by responsive Proposers in accordance with the terms of a competitive process, regardless of the method of procurement.
10. **Competitive Range** means the responsive submissions that meet the evaluation criteria and are considered to be reasonably susceptible of award.
11. **Construction** means the process of building, repairing, improving, and alterations, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.
12. **Contract** is a written agreement or purchase order issued for the purchase of goods or services.
13. **Contractor** means the person, firm or entity selling goods or services to the City under a Contract.
14. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
15. **DemandStar** is the official online repository for all City competitive solicitations.
16. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
17. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
18. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for the evaluation of proposals as part of a Request for Proposals (RFP) or competitive grant process.
19. **Evaluator** is a member of the evaluation committee/team.
20. **Intent to Award** is a document that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
21. **Issues** means points, matters, or concerns to be addressed during negotiations.
22. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
23. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a Bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
24. **Outlier** is a proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.

25. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Proposers to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
26. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
27. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
28. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
29. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
30. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Proposer to perform the resultant Contract.
31. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Proposer, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.
32. **Request for Proposal (RFP)** means a formal request to prospective Proposers requesting qualifications of the Proposer and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
33. **Respondent** means an entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.
34. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.
35. **Responsible (Proposer)** is a Proposer who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
36. **Responsive (Proposer)** is a Proposer that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
37. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
38. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a Proposer must execute in terms of delivering specific commodities or in performance of contractual services.
39. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
40. **Solicitation** means a formal request, as applicable, for prospective Proposers to submit responses to a Request for Proposal.
41. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to §287.057, Florida Statutes.
42. **Stakeholder** means an individual, who is not likely to become a Proposer, who has an interest in the commodities/contractual services needed.
43. **Subcontractor** means a person, firm or entity providing goods or services to a Proposer to be used in the performance of the Proposer's obligations under the Contract.
44. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.

SECTION 5 – GENERAL TERMS AND CONDITIONS

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

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

1. ADDENDUM

When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Proposers should acknowledge all addenda by completing Form 9.3 contained herein. Failure to acknowledge the correct number of addenda issued may result in rejection of the Response. It is the responsibility of the Proposer to ensure all addenda have been received prior to submitting a proposal. All Addenda shall be posted by the City on on www.demandstar.com and City of Port Orange Website, www.port-orange.org/bids.aspx . The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Solicitation Response Due Date. Proposers should not rely on any representations, statements, or explanations other than those made in this Solicitation or in any addendum to the Solicitation. Where there appears to be a conflict between the Solicitation and any addenda issued, the last addendum issued shall prevail.

2. ANTI-COLLUSION STATEMENT

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

3. APPLICABLE LAWS

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

4. ASSIGNMENT

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

5. AUTHORITY TO CONDUCT BUSINESS IN FLORIDA

A Florida corporation or partnership is required to provide evidence with its response that the Proposer is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with the response from the successful Proposer, such evidence must

be submitted to the City no later than five (5) business days from request of the Purchasing Manager. A foreign (out-of-state) corporation or partnership is required to provide evidence with its response that the Proposer is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with the response from the successful Proposer, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. A joint venture is required to provide evidence with its response that the joint venture, or at least one of the joint venture partners, is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. However, the joint venture is required to provide evidence prior to contract execution that the joint venture is authorized to transact business in Florida and provide the City with a copy of the joint venture Agreement. A joint venture is also required to provide with its response a Statement of Authority indicating that the individual submitting the joint venture's proposal has the legal authority to bind the joint venture. If not with its response, such evidence must be submitted to the City no later than five (5) business days from the request of the Purchasing Manager.

6. **AWARDS**

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

7. **AWARD AND EXECUTION OF CONTRACT**

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

8. **PROPOSAL RETURNS**

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

9. **PROTEST**

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

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

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

10. PROPOSAL EVALUATION

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

11. BONDS

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

12. CERTIFICATE OF INSURANCE

If required upon notice of intent to award contract resulting from this solicitation, the selected Proposer will be required to submit a Certificate of Insurance showing proof of adequate coverage for professional general liability, errors and omissions and workers' compensation as identified under the insurance requirements of this solicitation and listing the City of Port Orange as a Certificate Holder prior to execution of the contract.

13. CHANGE ORDERS

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change order requests shall be made in

writing by the Contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

14. CHANGE ORDER REQUEST NOTIFICATION

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

15. CLEAN UP

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

16. CONDUCT OF PROPOSERS

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

17. CONE OF SILENCE

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

Exceptions to the Cone of Silence:

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

18. CONFLICT OF INTEREST

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

19. CONFLICT OF INSTRUCTIONS

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

20. CONTRACT

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

21. CONTRACT OBLIGATION

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

22. CONTRACT RENEWALS

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

23. COOPERATIVE PURCHASING

The City Manager may elect to purchase through or join with other governmental units in cooperative purchasing ventures when the best interest of the City would be served thereby, provided the same is in accordance with all applicable laws. In the event the City Manager should elect to purchase through or join with other governmental agencies in cooperative purchasing ventures, all purchases in excess of twenty-five thousand dollars (\$25,000.00) shall require council approval before the purchasing contracts are entered into. (Code 1981, § 8-33, Ord. 1997-22, § 5.6-1997; Ord. No. 2004-15, § 4, 7-20-2004)

24. COPYRIGHT AND PATENT RIGHTS

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

25. COST INCURRED BY PROPOSER

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

26. DEBARMENT HISTORY

The City will consider a Proposer's debarment history information in its review and determination of responsibility. All Proposers are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Proposer, any parent or subsidiary of the Proposer or any predecessor organization. If the Proposer is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Proposer's debarment history is an issue of responsibility, the failure to provide debarment history on Form 9.11 as required in the RFP may result in a recommendation of non-responsive by the Purchasing Manager.

27. DEFAULT PROVISIONS

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

28. DISCLOSURE OF CONFLICTS

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

29. EXCEPTIONS TO REQUIREMENTS

For purposes of evaluation, the Proposer must indicate any exception to the requirements, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the Proposer that are required to be signed by the City. If exceptions are not stated by the Proposer, in his/her proposal, it will be understood that the item(s)/services fully comply with the requirements, terms and/or conditions stated by the City. Exceptions are to be listed by the Proposer on Form 9.2 contained herein and if necessary, listing exceptions on an attachment included with the proposal. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

30. E-VERIFY

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

employment eligibility of all new employees hired by the subcontractor during the term of contract. Proposers shall complete Form 9.10 E-Verify Affidavit and include it in the returned Response package. Failure to include the affidavit may result in rejection of the Response.

31. FACILITIES

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

32. FAILURE TO RESPOND

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

33. FINANCIAL STABILITY

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

34. 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.

35. GOVERNING FORMS

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

36. GOVERNING LAW

Proposers shall comply with all applicable federal, state and local laws and regulations. All Responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all Responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com. The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers, and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services, and other professional services.

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

37. GRANT FUNDING

Any contract entered into by the City that is to be paid from grant funds shall be limited to payment from the grant funding and the Proposer/provider understands that the City has not set aside any City funds for the payment of obligations under a grant contract. If grant funding

should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the sole recourse of the provider shall be to terminate any further services under the contract and the contract shall be null and void.

38. HIPAA COMPLIANCE

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

39. INDEMNIFICATION/HOLD HARMLESS

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

40. INDEPENDENT CONTRACTOR

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

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

41. INSPECTIONS AND TESTING

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

42. INSURANCE

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

43. INSURANCE CANCELLATION

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

44. INSURANCE REQUIREMENTS

Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation.

IMPORTANT: The City does not accept Workers' Compensation Exemptions. Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

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. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

Contractor shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Contractor is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Contractor to ensure the subcontractors maintain the required coverage, shall not relieve the Contractor of any contractual responsibility, obligation or liability.

The City reserves the right to increase insurance coverage as determined for higher risk contracts. The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with and does not waive the insurance required by this.

Should at any time the Contractor or subcontractors not maintain the insurance coverages required herein, the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

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Standard Insurance Requirements

	Insurance	Standards	Additional Requirements
☐ Required	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<u>Contract Amount Limits</u> Up to \$10 million Statutory/\$500,000 \$10 - \$20 million Statutory/\$1,000,000 Contracts over \$20 million to be determined by the City.	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.
☐ Required	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is 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 owned, hired, and non-owned automobiles.	<u>Limits:</u> Auto Liability Body Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	Limits: Buildings - Completed value of Contract. "All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	Limits: Coverage - \$1,000,000	
	Installation Floater (IT)	Limits: Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	Limits: Coverage - \$1,000,000	
☐	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage - \$ <u>To be determined.</u>	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to amount of Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$25,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.		

45. INVOICES AND PAYMENTS

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

46. IRREVOCABILITY OF RESPONSES

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

47. LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS

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

48. LEGAL REQUIREMENTS

Applicable provision of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all Responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a Solicitation hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Proposer shall not constitute a cognizable defense against the legal effect thereof. Upon execution of a contract, the successful Proposer shall hold harmless, indemnify and defend the City of Port Orange, its members, officials, officers and employees against any claim, action, loss, damage, injury, liability, cost and expense of whatsoever kind or nature (including, but not by way of limitation, attorneys' fees and court costs) arising out of or incidental to the performance of the Contract, whether or not due to or caused by negligence of the City of Port Orange, its members, officials, officers or employees. This Contract requirement shall be reflected in the insurance coverage certificate.

49. LICENSES, PERMITS AND TAXES

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

50. LITERATURE (if applicable)

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

51. **LOCAL PREFERENCE**

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

- A. Request for proposals, qualifications, or other qualitative submittal(s). In any ranking conducted pursuant to a request for proposals, qualifications, or other qualitative submittal(s) where the Proposers are rated by a point system, local businesses shall be granted the following preference:
 - 1. Port Orange business shall be granted up to eight (8) percent of the available points.
 - 2. Volusia County business shall be granted up to five (5) percent of the available points.
 - 3. Florida business shall be granted up to three (3) percent of the available points.
 - 4. Tied bid preference. In case of a tie between a local business and a non-local business, the local business shall prevail. In case of a tie between two or more local businesses, the following order of preference shall control: first priority to Port Orange business, second priority to Volusia County business, and third priority to Florida business.
- B. Misrepresentation penalty. Any business that misrepresents the local preference status of its firm in a proposal or bid submitted to the city shall lose the privilege to claim preference status and shall lose eligibility to claim local preference status for a period of one year.
- C. Local preference not required. This section shall not be deemed to require the granting of a local preference, and nothing herein prohibits the award of a contract to a non-local business where such award is in the public interest.
- D. Definitions. The following words, terms, and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

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

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

52. NON-DISCRIMINATION

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

53. NON-EXCLUSIVITY OF CONTRACT

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

54. NON-PERFORMANCE

Failure to meet the expected quality of workmanship, schedule, or other criteria agreed upon, shall be considered a default. In case of default, the City may procure the required services from other sources and hold the Consultant responsible for any excess costs occasioned thereby and may immediately cancel the contract.

55. NOTICE TO CONTRACTOR

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

56. OPTIONAL CONTRACT USAGE

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

57. PRE-PROPOSAL CONFERENCE

The Purchasing Manager shall determine if a pre-proposal conference is required and details of the conference shall appear in the Solicitation legal advertisement and Solicitation requirements. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow unless stated in the advertisement or this solicitation as mandatory, attendance to the pre-proposal conference is not mandatory. The representative of each Proposer shall be an authorized employee of the Proposer and shall sign in accordingly.

58. POSTPONEMENT/CANCELLATION /WAIVER OF IRREGULARITIES

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

59. PROPRIETY INFORMATION

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

from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution.

60. PROTECTION

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

61. PUBLIC ENTITY CRIMES

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

62. PUBLIC RECORDS COMPLIANCE

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

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

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

63. PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT

Section 119.071(1)(c), Florida Statutes: **Any financial statement that an agency requires a prospective Proposer to submit in order to prequalify for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law.** This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain

exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Proposers will not be able to procure a copy of their competitor's proposals until an intended decision is reached, or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a Proposer, or where a Proposer answers questions. In other words, neither Proposers, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Proposers, but the new law limits public attendance to portions of such meetings.

64. QUESTIONS, INTERPRETATIONS

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

65. RECORDS/AUDIT

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

66. REQUEST FOR ADDITIONAL INFORMATION

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

67. REVIEW OF RESPONSES/SUBMISSIONS

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

68. RIGHT OF NEGOTIATION RFP

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

69. RIGHT OF WITHDRAWAL

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

70. RIGHTS TO SOLICITATION SUBMITTED MATERIAL

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

71. RULES, REGULATIONS AND LICENSING REQUIREMENT

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

72. SEPARATION AND DISTRIBUTION

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

73. SEVERABILITY

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

74. SIGNATURE REQUIRED

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

75. SIGNED RESPONSE CONSIDERED AN OFFER

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

76. SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES

Unless otherwise specified, Proposer shall use the Solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Proposer's authorized representative. Responses containing erasures or corrections must be initialed by the Proposer in ink. Responses shall be submitted by mail or hand delivery only. No Response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: JOSEPH CASTRO, Buyer, Purchasing Office, a division of the Finance Department, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be

accepted until 2:30 P.M. on the date indicated in the Solicitation documents or as addenda issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. Proposals (Envelope/Package) shall contain one (1) original and one (1) digital (CD or flash drive) PDF version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/package shall be clearly marked on the outside to include the project name, proposal number, name and address of the Proposer.

77. STATE LICENSING REQUIREMENTS

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

78. SUBCONTRACTING

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

79. TAXES

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

80. TERMINATION

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

81. TERMINATION NOTICE

Either party may cancel the contract at any time after award, unless otherwise specified. The City shall be required to give the Proposer notice thirty (30) days prior to the date of cancellation of the contract. The Proposer shall be required to give the City written notice sixty (60) days prior to the date of cancellation of the contract. The City of Port Orange may terminate the contract

without cause upon thirty (30) days written notice.

82. USE OF SOLICITATION FORMS

The Proposer shall complete the appropriate Solicitation Form(s) included in the Solicitation. All blanks on the Solicitation Forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A." Supplemental information may be attached to the Solicitation Forms. Failure to fully complete the appropriate Solicitation Forms may result in disqualification of the Response. If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional Solicitation Form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated. The signature of the Authorized Person or Entity must be that of an officer, partner or a sole proprietor of the entity making the Response. The original Response, and each copy submitted shall contain an original signature on the Proposer's Acknowledgement Form contained in each Solicitation.

83. VARIANCES

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

84. WAIVER OF IRREGULARITIES

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

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SECTION 6 – SPECIAL CONDITIONS

PERIOD OF OFFER VALIDITY

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

CONTRACT TERM

The awarded proposer will be required to enter into a contract for a period of 210 days: 180 days for substantial completion and an additional 30 days for final completion from the date of award. The City of Port Orange reserves the right to extend this agreement or enter into a competitive proposal process at the end of each term. Either party may terminate this agreement by giving 60-days written notice, however, notice by the proposer shall not be given or accepted within 180 days prior to policy renewal.

ELIGIBILITY OF PROPOSER

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

NOTICE

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

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Vendor Access Security Policy

Overview

Vendors play an important role in the support of hardware and software management and operations for staff. Vendors may, if granted access, remotely view, copy, and modify data and logs, correct software and operating systems problems, monitor and fine tune system performance, monitor hardware performance and errors, modify environmental systems and thresholds, and other implementation and support roles as required by the City of Port Orange. Setting limits and controls on what can be seen, copied, modified, and controlled by vendors will eliminate or reduce the risk of revenue, liability, loss of trust, and embarrassment to the City of Port Orange.

Statement of Policy

This policy establishes the rules for vendor access to the City of Port Orange's information resources and support services, vendor responsibilities, and protection of the City's information.

Applicability

This policy applies to all vendor personnel that administers, configures, monitors, or maintains onsite or remotely uses the City of Port Orange's Information Systems.

General Provisions

Approved vendors must only use the City of Port Orange's information and information resources for the purpose of the contractual agreement. Any other City of Port Orange information acquired by the vendor in the course of the contract cannot be used for the vendor's own purposes or divulged to others.

The City of Port Orange will provide a point of contact, or in some cases, a project manager, for the vendor. The point of contact /or project manager will work with the vendor to make certain the vendor is in compliance with the City of Port Orange's policies.

Vendor personnel working on-site must present credentials that can be verified by City staff upon arrival to City of Port Orange premises. Vendor personnel must wear an identification badge that will be displayed at all times while on City of Port Orange premises that easily identifies the name of the vendor personnel as well as the name of the vendor providing the contracted services.

Vendor personnel requiring on-site access to either of the City of Port Orange data centers, located at 1000 City Center Circle and 4545 S. Clyde Morris Blvd., will be required to sign-in prior to entering the data center. Sign-out will be required when exiting the data center.

Vendor personnel requiring on-site access to the City of Port Orange's data center located at 4545 S. Clyde Morris Blvd. will be required to be escorted at all times by a City of Port Orange staff member.

Vendor personnel must report all security incidents directly to the City of Port Orange's point of contact assigned to the vendor contract.

All vendor maintenance equipment on the City of Port Orange's network that connects to the outside world via the internet, telephone line, or leased line, and all City of Port Orange vendor accounts will remain disabled except when in use for authorized maintenance.

The City of Port Orange may, but is not under the obligation to, require the vendor to enter major work activities into a service provider log form and make available to the City of Port Orange management upon request.

All software used by the vendor in providing service to the City of Port Orange must be properly inventoried and licensed.

All computers used to connect remotely to the City of Port Orange's information resources must be fully patched with all available software updates applied and a functioning anti-virus software installed.

Information Security Policy: Vendors should document their Information Security Policies and follow Information Security programs that are based on at least one of the following frameworks:

- International Organization for Standardization (ISO) 27002,
- Information Security Forum (ISF) Standards of Good Practice (SoFP)
- ISACA Control Objectives for Information and Related Technologies (COBIT), or
- National Institute of Standards and Technology (NIST) Special Security Publications.

System Security: Vendors should have a process for applying and managing security updates, patches, fixes upgrades, (collectively referred to as "Patches") on all provider IT systems.

Vendor should ensure Malware, Virus, Trojan and Spyware protection is deployed on all IT systems that access City's assets and data.

Vendor should ensure Malware, Virus, Trojan and Spyware protection technology have the latest and up-to-date manufacture's signatures, definition files, software and patches.

Vendor should deploy methods to identify malicious activity, log information such activity, attempt to block/stop the activity, and to report such activity.

- Security methods should have the latest and up-to-date manufacture's signatures, definition files, software patches.
- If requested by City's, provider should supply logging information of all unauthorized activity going back a minimum of one year.

Vendors should ensure all unused or unnecessary software, applications, sample/default files and folders are disabled on all IT systems that access City's assets and data.

Upon termination of contract or at the request of the City of Port Orange, the vendor must surrender any city issued identification badges, proximity access cards, equipment and supplies immediately. Equipment and/or supplies to be retained by the vendor must be documented and authorized by the City of Port Orange.



Date 5/05/2021

James Hicks
Information Technology Manager

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SECTION 7 – PROPOSAL SUBMITTAL & REQUIREMENTS

Proposals shall include all of the information solicited in this RFP, and any additional data that the respondent deems pertinent to the understanding and evaluation of the proposal. The respondent should not withhold any information from the written response in anticipation of presenting the information orally or in a demonstration, since oral presentations or demonstrations may not be solicited.

Submittal of a proposal shall constitute the Proposer's agreement and intent to follow and adhere to all statements, offerings and monetary incentives contained within this proposal.

The sections of the submitted Proposals that will be scored during the evaluation process are identified with the maximum attainable points. Additional areas used for awarding evaluation points are addressed in "Section 8 – Evaluation of Proposals."

In conjunction with other material and information requested in the RFP, all Proposers responding to this solicitation shall provide one (1) original, and one (1) identical digital version in PDF format on CD or USB flash/thumb drive. The digital version **must** be an identical copy of the fully signed original submission. All required attachments are to be in 8 ½" by 11" format, clearly legible, tabbed and bound in the following order:

TABLE OF CONTENTS

The Table of Contents should outline in sequential order the areas of submittal. All pages, including enclosures, must be clearly and consecutively labeled and/or numbered and correspond to the Table of Contents.

STATEMENT OF INTEREST

The responding firm will provide a letter, on letterhead, not exceeding two (2) pages, which serves as a statement of interest and introduction to the submittal. The Statement of Interest shall show the RFP number and title. This letter must be signed by the person authorized to bind the firm, company, or corporate entity. The Statement of Interest should also include the name and contact information of a customer contract manager who will serve as the main point of contact for all issues related to the services performed under the scope of this RFP.

TAB A – COMPANY EXPERIENCE AND QUALIFICATIONS

- A. Provide a brief company biography, two (2) pages maximum. Include general information on the company, number of years the company has been in business, the location of corporate headquarters, and the number of branch offices.
- B. Provide a general overview of the software application being proposed and how it meets the needs of the City.
- C. Provide the address(es) of the company's office from which support services are provided. State the average number of support personnel staffing the office. State the hours that the office is available for support calls and the time zone(s).
- D. Provide a copy of your current State of Florida business license; pending licenses will not be accepted. If applicable, provide a copy of the county business license of primary business operations. If not applicable, please provide a statement that a business license is not required and provide the city, county, and state of your primary business operations.
- E. Complete the Reference Form located on page 52 of this document. Provide a list of professional references (other than the City of Port Orange) in which you have provided similar services proposed in this RFP within the last five (5) years. References must be from at least

three (3) different entities. The Reference Form must be signed in order to be awarded any points.

TAB B – SCOPE OF SERVICES

- A. Software Functionality: Describe in detail the core functionality available in the proposed software application in relation to the requirements set forth in the RFP.
- B. Software Addons: Describe any additional addons or modules that are available as part of the software application.
- C. Implementation: Describe in detail the implementation plan, timeline, deliverables, milestones, knowledge transfer, and post implementation handoff.
- D. Integrations: Describe integrations that the software has with other 3rd party software applications, specifically ones in use currently by the City. Describe the technical detail of how the integration process works (API, REST services, flat file exchange, etc.)
- E. Upgrades: Describe the intervals of new releases or upgrades to the existing application.
- F. Maintenance: Describe how often the software application is unavailable due to schedule maintenance windows. Include days/times including time zone of scheduled maintenance windows.
- G. Hosting: Explain where the software is hosted (private cloud or public cloud) and the terms of the service level agreement. Describe the average uptime of the service and any credits available to the city should the software not be available for a duration of time.
- H. Requirement from City Staff: Describe in detail the level of effort required from City staff as part of the overall project.
- I. Support: Describe the level of support provided and methods in which staff can contact support for assistance.

TAB C – COST OF SERVICES

- A. Cost of Software: Value of the cost of the software in relation to the functionality provided.
- B. Cost of Implementation: Value of the cost of the implementation in relation to overall implementation plan, timeline, deliverables, and requirements from city staff.
- C. Reoccurring Subscription Costs: Annual reoccurring subscriptions costs after the first year of service.
- D. Cost of Integrations: Is there a cost related to integrations now or in the future for Workday, Esri ArcGIS, Lucity? Value of any integration costs must be provided.
- E. Cost of Support: Is there a charge for technical support? If so, value of the cost of ongoing support.

TAB D – FINANCIAL HISTORY

- A. All Respondents shall provide a financial statement with their proposal, preferably a certified audit of the last available fiscal year. A third party prepared financial statement and the latest Dunn & Bradstreet report will be accepted in lieu thereof.

TAB E – REQUIRED DOCUMENTS

Include all required City of Port Orange forms. **FAILURE TO PROVIDE ALL INFORMATION** listed on each form may result in the rejection of your proposal, or a reduction in evaluation points. Required forms include:

- Form 9.1 Proposal Submittal Checklist
- Form 9.2 Proposer's Acknowledgement Form
- Form 9.3 Addendum & Change Order Procedure Acknowledgement Form
- Form 9.4 Drug Free Preference Statement
- Form 9.5 Sworn Statement on Public Entity Crimes
- Form 9.6 Anti-Collusion Form
- Form 9.7 Statement of Qualifications
- Form 9.8 Professional References for Previous Experience
- Form 9.9 Local Business Affidavit of Eligibility
- Form 9.10 E-VERIFY Affidavit
- Form 9.11 Debarment, Suspension, and Other Responsibility Matters

[Remainder of Page left intentionally blank]

SECTION 8 – EVALUATION OF PROPOSALS

RFP EVALUATION SCHEDULE

Refer to the Timeline in Section 2 of the RFP document regarding proposed evaluation date(s) and time(s).
The City reserves the right to alter dates as needed.

EVALUATION PROCEDURE OF WRITTEN PROPOSALS

The Evaluation Committee is comprised of City staff and may include City Council Members who will evaluate, and rank proposals based on a weighted score point formula.

All interested professionals are hereby cautioned **not** to contact any staff or Council member of the City of Port Orange, or any member of the Evaluation Committee. Any and all questions should be made through the Buyer noted in this RFP and any attempts to lobby or persuade through any other channels may result in disqualification.

All proposals will be subject to a review and evaluation process. It is the intent of the City that all Proposers responding to this RFP, who meet the requirements, will be ranked in accordance with the criteria established in these documents. The City will consider all responsive and responsible proposals received in its evaluation and award process. The committee may choose to conduct an oral interview with each finalist.

The City's evaluation criteria, for written proposals will include consideration of, but will not be limited to the following:

1. Responsiveness of the proposal related to the Scope of Services.
2. The ability, capability, and skill of the Proposer to perform the contract, including the range of services offered.
3. Whether the provider can perform the contract within the time specified without delay or interference.
4. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
5. The character, integrity, reputation, judgment, experience, and efficiency of the Proposer.
6. Professional licensure required when service of a skilled nature is required by law to perform such service and/or skill.
7. The quality of performance of previous contracts.
8. The number and scope of conditions attached to the bid or proposal.
9. Responsiveness of client references.
10. Net costs; and
11. Local preference policy (if applicable)

FORMAL ORAL INTERVIEWS/PRESENTATIONS In Person (If Required)

Upon completion of the technical criteria evaluation of written proposals, rating and ranking, the City of Port Orange may conduct oral interviews and/or presentations with short listed firms. Evaluation criteria and scoring for the oral interviews and/or presentations are to be determined. Please note that bonus points for local preference will only be awarded once during the written evaluation phase.

If the City chooses to allow oral interviews and/or presentations, such interviews and/or presentations will not be open to the public pursuant to the conditions set forth in Florida Statute § 286.0113. If oral presentations or interviews are held the following guidelines will be used:

The City's Purchasing Division will establish the schedule and Proposers will be notified via www.demandstar.com and the City of Port Orange website at www.port-orange.org/bids.aspx at least five (5) calendar days in advance of the date, time and place of the oral interviews and/or presentations. The specific interview/presentation format will be provided to Proposers with the notifications.

The City will allot equal time for each Proposer and may be divided into two sequential parts: formal presentations and questions and answers. The times allotted are maximums and no Proposer will be penalized for using less than the allotted time.

FINAL RANKING AND RECOMMENDATION FOR AWARD

After oral presentations are completed, the Evaluation Committee will score the oral interviews and or/presentations. A final ranking is determined of the short-listed Proposers considered to be most capable of performing the required project in the best interest of the City.

The Evaluation Committee's final ranking will be provided to the Purchasing Manager to read aloud. The City's Project Manager will provide a Notice of Intent to Award to the Purchasing Manager. The Intent to Award will be posted on www.demandstar.com and the City of Port Orange website at www.port-orange.org/bids.aspx. The City project manager will create an agenda item recommending award to the City Council. City Council's decision will be final.

[Remainder of this page left intentionally blank]

WRITTEN PROPOSALS EVALUATION CRITERIA

Written proposals will be evaluated and scored based upon the following criteria:

EVALUATION CRITERIA for WRITTEN PROPOSALS

CATEGORY SCORE

I. EXPERIENCE AND QUALIFICATIONS (Max 25 points as outlined below)

A. Company biography, general information, years of experience, location, branches... (5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

B. Proposed software application and how it meets the needs of the City..... (5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

C. Location, Size and, Accessibility of Staff (5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

D. Florida Business License(5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

E. References..... (5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

II. SCOPE OF SERVICES (Max 45 points as outlined below)

A. Software Functionality.....(5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

B. Software addons:(5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

C. Implementation:(5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

D. Integrations.....(5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

E. Upgrades.....(5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

F. Maintenance.....(5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

G. Hosting.....(5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

H. City Staff Requirement.....(5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

I. Support:(5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

III. COST OF SERVICES (Max 25 points as outlined below)

Provide a fee proposal in accordance with "Section 3 – Scope of Services". See page 57 of "Section 9 – Required Forms" for the Cost/Fee Proposal Form that must submitted with proposal.

A. Cost of Software (5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

B. Cost of Implementation..... (5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

C. Reoccurring Subscription Cost..... (5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

D. Cost if Integration (5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

E. Cost of Support (5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

IV. FINANCIAL HISTORY (Max 5 points as outlined below)

A. Financial Statement (5 points)

- Outstanding - 5 points
- Adequate to Good - 3-4 points
- Marginally Acceptable - 1-2 points
- Unacceptable - 0 points

Total Maximum Points (100 points)

BONUS POINTS: Local Preference per Ordinance Sec. 2-275

- Port Orange Business eight percent of available points (8 points)
- Volusia County Business five percent of available points (5 points)
- Florida Business three percent of available points (3 points)

Please note that prices may be negotiated in the best interest of the City after the scoring is completed.

[Remainder of page left intentionally blank]

ORAL INTERVIEWS AND/OR PRESENTATION EVALUATION CRITERIA (if required)

If conducted by the City, oral Interviews and/or presentations criteria and scoring will be determined and provided to the short-listed proposers at least five (5) calendar days prior to the interview/and or presentation date. After oral interviews and/or presentations are completed, the Evaluation Committee will score the presentations for different elements to determine a final ranking of the short-listed Proposers considered to be most capable of performing the required project in the best interest of the City.

The Evaluation Committee's final ranking will be provided to the Purchasing Manager to read aloud. The City's Project Manager will provide a notice of intent to award to the Purchasing Manager. The intent to award will be posted on www.demandstar.com and the City of Port Orange website www.port-orange.org/bids.aspx. The City project manager will create an agenda item recommending award to the City Council. City Council's decision will be final.

[Remainder of page intentionally left blank]

SECTION 9 – REQUIRED FORMS

FORM 9.1 – PROPOSAL SUBMITTAL CHECKLIST

- _____ Form 9.2 – Proposer’s Acknowledgement
- _____ Form 9.3 – Addendum and Change Order Procedure Acknowledgement
- _____ Form 9.4 – Drug Free Preference Statement
- _____ Form 9.5 – Public Entity Crimes Statement
- _____ Form 9.6 – Affidavit of Anti-Collusion
- _____ Form 9.7 – Statement of Qualifications
- _____ Form 9.8 – Professional References for Previous Experience
- _____ Form 9.9 – Local Business Affidavit of Eligibility
- _____ Form 9.10 – E-Verify Affidavit
- _____ Form 9.11 – Debarment, Suspension and Other Responsibility Matters
- _____ Cost Fee/Proposal Form
- _____ Copy of License (Contractor, Sunbiz, etc.)
- _____ Submission of one (1) original marked “ORIGINAL” and one (1) digital (CD or flash drive) version in PDF format.

BY:

Name of Business

Authorized Signature

Date

This document must be completed and returned with your Submittal

FORM 9.2 – PROPOSER’S ACKNOWLEDGEMENT FORM

I have carefully examined the Request for Proposals (RFP), Instructions to Proposers, General and/ or Special Conditions, Specifications, and any other documents accompanying or made a part of this invitation.

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE PROPOSAL IS SUBMITTED:

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

NAME OF BUSINESS

MAILING ADDRESS

AUTHORIZED SIGNATURE

CITY, STATE & ZIP CODE

NAME, TITLE, TYPED

TELEPHONE NUMBER / FAXNUMBER

FEDERAL IDENTIFICATION #

E-MAIL ADDRESS

STATE OF _____ COUNTY OF _____

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

My Commission Expires:

Notary Public

This document must be completed and returned with your Submittal

FORM 9.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Request for Proposals (RFP), Instructions to Proposers, General and/ or Special Conditions, Specifications, and any other documents accompanying or made a part of this Request for Statement of Qualifications.

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

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

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

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

Name of Business

By: _____
Printed Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 20__, by
_____, as _____ of
(NAME) (TITLE)
_____ and who:
(NAME OF ORGANIZATION)

[Notary: Please select one]

is personally known to me; or

has produced _____ as identification.

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

This document must be completed and returned with your Submittal

FORM 9.4 – DRUG-FREE PREFERENCE STATEMENT

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

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

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

Name of Business

By: _____
Printed Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

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

_____ and who:
(NAME OF ORGANIZATION)

[Notary: Please select one]

is personally known to me; or

has produced _____ as identification.

Notary Public, State of _____

Printed, typed, or stamped name, commission, and expiration:

This document must be completed and returned with your Submittal

FORM 9.5 – SWORN STATEMENT UNDER SECTION 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

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

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

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

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

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

[Notary: Please select one]

is personally known to me; or

has produced _____ as identification.

Notary Public, State of _____

Printed, typed, or stamped name, commission, and expiration:

This document must be completed and returned with your Submittal

FORM 9.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT PROPOSAL FORM:

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

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

IT IS AGREED BY THE UNDERSIGNED PROPOSER THAT THE SIGNING AND DELIVERY OF THE PROPOSAL REPRESENTS THE PROPOSER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FOREGOING SPECIFICATIONS, CONTRACT AND PROVISIONS, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE PROPOSERS AND THE CITY OF PORT ORANGE.

NAME OF FIRM: _____

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

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____ FAX: _____

COMPLETION TIME: _____

F.E.I.N. NUMBER: _____

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

NO PROPOSAL (REASON): _____

This document must be completed and returned with your Submittal

FORM 9.7 – STATEMENT OF QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 9.7 is complete, true, and correct to the best of their knowledge and belief. If necessary, questions may be answered on separate paper and attached, with any additional information that may be pertinent.

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

Name of Business
By: _____
Printed Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

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

[Notary: Please select one]
is personally known to me or
has produced as identification.

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

This document must be completed and returned with your Submittal

FORM 9.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

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

(Do not include the City of Port Orange)

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

This document must be completed and returned with your Submittal.

LISTING OF PREVIOUS EXPERIENCE

Commercial Client List

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

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

	Contact Name	Phone	Current Client? Y or N	Number of years service provided	Descript ion of service
1					
2					
3					

This document must be completed and returned with your Submittal.

FORM 9.9 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

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

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

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

BUSINESS NAME: _____ CONTACT PERSON/TITLE: _____ MAILING ADDRESS: _____

CITY-STATE-ZIP: _____ Length of Time at Address Provided: _____

Physical Presence of Business: ☐ Headquarters and/or ☐ Principal Place of Business

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

FEIN (Federal Employer Identification Number): _____

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

☐ Other (Specify): _____

PHONE NUMBER: _____ FAX: _____

EMAIL: _____

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

ATTESTATION – I understand that:

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

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

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of _____ physical presence or _____ online notarization, this _____ day of _____, 20____, by _____, as _____ of _____, a _____. He or she is _____ personally known or _____ produced _____ as identification.

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

This document must be completed and returned with your Submittal

FORM 9.10 E-VERIFY AFFIDAVIT

CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT

IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: _____

Solicitation Number: _____

I, the undersigned, hereby certify that _____ [insert contractor company name] does not employ, contract with, or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

Further, I certify all employees hired on or after January 1, 2021 have had their work authorization status verified through the E-Verify system. I acknowledge that it is my responsibility to insure full compliance with Section 448.095, Florida Statutes. I am aware enrollment in the E-Verify system for employers can be done at www.e-verify.gov.

A true and correct copy of _____ [insert contractor company name] proof of registration in the E-Verify system is attached to this Affidavit.

By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

(Print or Type Name, Title)

(Signature of Affiant)

(Federal Employer ID Number – FEIN)

(E-Verify Number)

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____ as _____ of _____ on behalf of the company. He/she is personally known to me or has produced _____ (TYPE OF ID) as identification.

Notary Public, State of Florida at Large

Printed, typed or stamped name, commission and expiration of commission term

This document must be completed and returned with your Submittal

FORM 9.11 CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

**PRIMARY COVERED TRANSACTIONS
(TO BE COMPLETED BY PRIME CONTRACTOR)**

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

Organization Name

Bid Number or Project Name

Name(s) and Title(s) of Authorized Representatives

Signature

Date

This document must be completed and returned with your Submittal

SERVICES COST/FEE PROPOSAL

INCIDENT RESPONSE MANAGEMENT SYSTEM COST/FEE PROPOSAL			
Item Number	Description	Unit Of Measure	UNIT PRICE
1	Cost of Software	Annual	\$0.00
2	Cost of Implementation	Lump	\$0.00
3	Reoccurring Subscription Costs	Annual	\$0.00
4	Cost of Integrations	Lump	\$0.00
5	Cost of Support	Annual	\$0.00
		Total Cost	\$0.00

(Complete, sign and date, and insert this document under Tab C in proposal)

Proposal Submitted by _____
(Name of Company/Entity)

Authorized Signature: _____

Printed Name of Authorized Signer: _____

E-Mail of Authorized Contact: _____

[Remainder of page intentionally left blank]

AFFIDAVIT REGARDING WORKERS' COMPENSATION

IMPORTANT

This certificate must be completed and returned by the Awarded Proposer, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange. Please note, the City of Port Orange does not accept exemptions for Workers' Compensation coverage.

State of _____ County of _____

I, _____, being duly sworn according to law, deposes and says (it, he, she, they) have accepted the Workers' Compensation laws of the State of Florida, with its supplements and amendments and has insured (its, his, her, their) liability there under accordance with the terms of said Laws with the _____ Company, under the terms of Policy Number _____ for a period from _____, 20__ to _____, 20__.

WITNESS:

CONTRACTOR:

By: _____ Name: _____

Company: _____ By: _____

Name/Title: _____

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me by means of _____ physical presence or _____ online notarization, this _____ day of _____, 20__, by _____, as _____ of _____, a _____.

He or she is _____ personally known or _____ produced _____ as identification.

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

This certificate must be completed and returned by the Awarded Proposer, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange. Please note, the City of Port Orange does not accept exemptions for Workers' Compensation coverage.

LEASED EMPLOYEE AFFIDAVIT
EXHIBIT CONTRACT # _____

☐ I hereby certify that I do not utilize an employee leasing company or employee leased employees. I further agree to notify the City in the event these circumstances change.

OR

☐ I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured sub-contractors, or casual laborexposure.

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing arrangement. I agree to notify the City in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the City with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any Cityjobsite.

I further agree to notify the City if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

I further agree to notify the City in the event that I switch employee-leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the City that documents the change of carrier.

I hereby attest that the information provided in this affidavit is accurate. In addition, I certify that I have read and understand the above statements regarding my responsibility under the Workers' Compensation coverage.

Name of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this ____ day of _____, 2021, 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 _____, a _____ corporation whose principal address is _____ ("Contractor"). The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

- (a) The Contractor hereby agrees to furnish an Incident Response Management System ("IRMS"), pursuant to Request for Proposal 21-06 ("RFP 21-06"). This Contract together with RFP 21-06, Addenda, and Contractor's proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference, shall constitute the formal written contract between the City and Contractor. For convenience, Section 3, Scope of Services, from RFP 21-06, and the Bid Tabulation as submitted by Contractor in Contractor's Proposal are attached hereto as **Exhibit "1"**. A complete copy of RFP 21-06, Addenda, and Contractor's Proposal are available in the Office of the City Clerk. Contractor represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall become effective on the last date the Contract is signed by the Parties ("Effective Date"). Upon issuance of a written Notice to Proceed, work shall be substantially completed within 150 days, with final completion 30 days thereafter ("Term").

Manner and Place: The work shall be performed in accordance with 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.

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

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

2. City Obligations. In return for the services identified above, the City agrees to compensate the Contractor at the pricing set forth in Exhibit "1," attached hereto, in an amount not to exceed _____ and ___/100 Dollars (\$____). 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 Works and Utilities Director, Lynn Stevens, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

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

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 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 23 of this contract concerning disputes.

6. 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.

7. 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. In the event of default by the contractor, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result. City Council may elect to refrain from doing business with the bidder as stipulated in City Code 2-276 Suspension and Disbarment.

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 of this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services or 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 required by the City to perform the service.

(b) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the City.

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

If Contractor does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Contractor may be subject to penalties under Section 119.0701, Florida Statutes.

CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129; TELEPHONE: (386) 506-5563; E-MAIL: CITYCLERK@PORT-ORANGE.ORG.

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, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions. Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

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. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

Contractor shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other

insurance or self-insurance available to the City. The Contractor is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Contractor to ensure the subcontractors maintain the required coverage, shall not relieve the Contractor of any contractual responsibility, obligation or liability.

The City reserves the right to increase insurance coverage as determined for higher risk contracts.

The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with this Contract and does not waive the insurance required by this Contract.

Should at any time the Contractor or subcontractors not maintain the insurance coverages required herein, the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

Standard Insurance Requirements											
	Insurance	Standards	Additional Requirements								
☒	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit Form Exhibit.	<table><tr><td><u>Contract Amount</u></td><td><u>Limits</u></td></tr><tr><td>Up to \$10 million</td><td>Statutory/\$500,000</td></tr><tr><td>\$10 - \$20 million</td><td>Statutory/\$1,000,000</td></tr><tr><td colspan="2">Contracts over \$20 million To Be Determined by the City.</td></tr></table>	<u>Contract Amount</u>	<u>Limits</u>	Up to \$10 million	Statutory/\$500,000	\$10 - \$20 million	Statutory/\$1,000,000	Contracts over \$20 million To Be Determined by the City.		☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.
<u>Contract Amount</u>	<u>Limits</u>										
Up to \$10 million	Statutory/\$500,000										
\$10 - \$20 million	Statutory/\$1,000,000										
Contracts over \$20 million To Be Determined by the City.											
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is 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 owned, hired and non-owned automobiles.	<u>Limits:</u> Auto Liability Bodily Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate									
Additional Insurance Requirements											

☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	Limits: Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	Limits: Coverage - \$1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	Limits: Coverage - \$1,000,000	
☐	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage - \$ <u>To be determined.</u>	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to amount of Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$100,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.		

12. 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.

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

14. Modifications or Changes to this Contract

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

(b) If any change under this clause causes an increase or decrease in Contractor's cost of, or time required for the performance of the work hereunder, Contractor shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the Contractor, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change.

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

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

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

for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

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

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

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

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

19. Inspection

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

(b) In the event any supplies or lots of supplies are defective in material or workmanship, or otherwise not in conformity with the requirements of this Contract, the City shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Finance Director, corrected in place by and at the expense of Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the City may either (i) by contract or otherwise replace or correct such supplies and charge Contractor the cost for such replacement or correction; or (ii) may terminate this Contract for default as provided in the clause of this Contract entitled "Termination for Default." Unless Contractor corrects or replaces such supplies within the delivery schedule, the Finance Director may require the delivery of such supplies at a reduction in price, which is equitable under the circumstances. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract. Failure to inspect and accept or reject supplies shall neither relieve Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the City therefor.

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

20. Liability for Loss or Damage.

(a) 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.

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

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 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 Agreement. 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, MMC. 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.

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

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

25. Additional Provisions. This Contract includes all additional provisions as may have been outlined in 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. In the event of a conflict between any attachments or exhibits to this Contract, and this Contract, the language of this Contract 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: Lynn Stevens, Public Works and Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5750

Contractor: _____
Attention: _____

() - - - Telephone
@ .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]

FOR INFORMATIONAL PURPOSES ONLY

Witnesses:

By: _____

Printed Name: _____

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

Printed Name: _____

Date: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of _____ physical presence or _____ online notarization, this _____ day of _____, 2021, by _____ of _____, a _____ corporation. He/She is _____ personally known or _____ produced _____ as identification.

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

FOR INFORMATIONAL PURPOSES ONLY

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Jamie L. Miller, Interim City Manager

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Jamie L. Miller, as Interim City Manager of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ____ personally known or ____ produced _____ as identification.

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

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ____ personally known or ____ produced _____ as identification.

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



End of Solicitation Documents



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: Yes

SUBJECT: (B7b) Intent to Award - ITB #21-21 for Fence Services to Fence Service, Inc. d/b/a AAA Fence and Sterling Enterprises, LLC

DEPARTMENT: Parks & Recreation

GOAL: Organizational excellence

RECOMMENDED MOTION: Move to approve contract award to AAA Fence as primary and Sterling Enterprises as an alternate and authorize the Mayor and City Clerk to execute the associated documents.

SUMMARY: On October 12, 2021, ITB 21-21 for fencing services was opened and two bids were received. After review by the purchasing division, we are asking to award both companies continuing service contracts in the following order. Fence Service Inc.; DBA AAA Fence as the primary and Sterling Enterprises, LLC as the alternate. These contracts will be available for departments to use for new fence projects, as well as repair and replacement projects within their budget. The term of the contracts is for two years with two one-year renewals. The purchasing division will be the contract manager.

Project No.: n/a

Funding Account No.: n/a

Presenter: Susan Lovallo

ATTACHMENTS:

1.	Fence Service, Inc. dba AAA Fence Standard Contract for Services - ITB 21-21 Fencing Services	Fence Service Inc. dba AAA Fence Standard Contract for Services - ITB 21-21 Fencing Services.pdf
2.	Sterling Enterprises, LLC Standard Contract for Services - ITB 21-21 Fencing Services	Sterling Enterprises LLC Standard Contract for Services - ITB 21-21 Fencing Services.pdf
3.	ITB 21-21 NOTICE OF INTENT TO AWARD	ITB 21-21 NOTICE OF INTENT TO AWARD.pdf
4.	ITB 21-21 Fencing Services Bid Tabulation	ITB 21-21 Fencing Services Bid Tabulation.pdf
5.	ITB 21-21 FENCING SERVICES FINAL (9.7.2021)	ITB 18-07 DRY CLEANING SERVICE FINAL.pdf

Susan Lovallo	Created/Initiated - 10/26/2021
Susan Lovallo	Approved - 10/26/2021
Lupe Reyna-Coffin	Approved - 10/26/2021
Robin Hayes	Approved - 11/1/2021
Jill Poolman	Approved - 11/3/2021
Matthew Jones	Approved - 11/3/2021
Wayne Clark	Approved - 11/4/2021
Robin Fenwick	Final Approval - 11/4/2021



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this ____ day of _____, 2021, 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 **FENCE SERVICE, INC. d/b/a AAA FENCE**, a Florida corporation whose principal address is 801 Orange Avenue, Daytona Beach, Florida 32114 ("Contractor"). The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

- (a) The Contractor hereby agrees to provide Fencing Services to include repairs, replacement fence, and new fence on an as-needed basis throughout the City, and as more specifically described in and pursuant to Intent to Bid ("ITB 21-21"). This Contract together with ITB 21-21, Addendum No. 1, Addendum No. 2, and Contractor's proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference, shall constitute the formal written contract between the City and Contractor. For convenience, Section 3, Scope of Services, Addendum No. 1, Addendum No. 2, and the Contractor's Schedule of Unit Pricing, as submitted by Contractor in Contractor's Proposal, are attached hereto as **Exhibit "1"**. A complete copy of ITB 21-21, Addendum No. 1, Addendum No. 2, and Contractor's Proposal are available in the Office of the City Clerk. Contractor represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall become effective on the last date the Contract is signed by the Parties ("Effective Date"). This Contract shall be for a term of two (2) years ("Initial Term").

Renewals. Upon written agreement of the Parties, this Contract may be renewed for two (2) one-year periods, subject to the review and approval of the City Manager and budget appropriation.

Manner and Place: The work shall be in accordance with 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.

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

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

2. City Obligations. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1" attached hereto, subject to a limit not to exceed the appropriated budget per fiscal year, and City Manager approval for each Purchase Order rendered under this Contract. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. Contract Documents. The following forms, attached as Exhibit "2," are an integral part of this Contract and must be completed, signed, witnessed and notarized as indicated and returned with the City Manager approved and signed written Purchase Order(s), for projects requiring a Payment and Performance Bond, as determined by the Department:

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

4. Contract Administration. The Department Head requesting service ("Purchase Order Administrator"), shall perform contract administration of their respective purchase order(s). The Purchasing Manager, Jill Poolman, shall preform contract administration for the master contract ("Contract Administrator") The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

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

6. Termination for Convenience of the City

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

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

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

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

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

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

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

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

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

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

8. Termination for Default. Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the contractor, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result. City Council may elect to refrain from doing business with the bidder as stipulated in City Code 2-276 Suspension and Disbarment.

9. Examination of Records

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

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

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

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

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the City.

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

If Contractor does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Contractor may be subject to penalties under Section 119.0701, Florida Statutes.

CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129; TELEPHONE: (386) 506-5563; E-MAIL: CITYCLERK@PORT-ORANGE.ORG.

11. Termination for Non-Appropriation of Funds

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

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

12. Insurance. Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit

Exhibit Form. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

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. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

Contractor shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Contractor is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Contractor to ensure the subcontractors maintain the required coverage, shall not relieve the Contractor of any contractual responsibility, obligation or liability.

The City reserves the right to increase insurance coverage as determined for higher risk contracts.

The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with this Contract and does not waive the insurance required by this Contract.

Should at any time the Contractor or subcontractors not maintain the insurance coverages required herein, the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

[Remainder of page intentionally left blank]

Standard Insurance Requirements									
	Insurance	Standards	Additional Requirements						
☒	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<table border="0"> <tr> <td><u>Contract Amount</u></td> <td><u>Limits</u></td> </tr> <tr> <td>Up to \$10 million</td> <td>Statutory/\$500,000</td> </tr> <tr> <td>\$10 - \$20 million</td> <td>Statutory/\$1,000,000</td> </tr> </table> Contracts over \$20 million To Be Determined by the City.	<u>Contract Amount</u>	<u>Limits</u>	Up to \$10 million	Statutory/\$500,000	\$10 - \$20 million	Statutory/\$1,000,000	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.
<u>Contract Amount</u>	<u>Limits</u>								
Up to \$10 million	Statutory/\$500,000								
\$10 - \$20 million	Statutory/\$1,000,000								
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is 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 owned, hired and non-owned automobiles.	<u>Limits:</u> Auto Liability Body Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate							
Additional Insurance Requirements									
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.						
☐	Professional Liability	<u>Limits:</u> Coverage - \$1,000,000							
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>							
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000							
☐	Errors and Omissions	<u>Limits:</u> Coverage - \$1,000,000							
☐	Umbrella Policy	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>							
☐	Payment and Performance Bond Required	<u>Limits:</u> Coverage - Equal to amount of Contract.							
☐	City Manager waives Payment and Performance Bond for work under \$25,000.00.								
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.								

13. 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.

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.

(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. Additional Bond Security. If any surety bond furnished in connection with this Contract becomes unacceptable to the City, Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the City and a person supplying labor and materials in the prosecution of work contemplated by this Contract. Contractor expressly acknowledges that if the work to be performed hereunder is a

public work, a Payment and Performance Bond, in accordance with Florida Statutes Section 255.05, in a form acceptable to the City, shall be provided and recorded with the Clerk of Volusia County at Contractors expense.

20. 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.

21. Liability for Loss or Damage.

(a) 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.

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

22. 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.

23. 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 Agreement. 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, MMC. 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.

24. 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.

25. 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.**

26. Additional Provisions. This Contract includes all 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. In the event of a conflict between any attachments or exhibits to this Contract, and this Contract, the language of this Contract shall control.

27. 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.

28. 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: Jill Poolman, Purchasing Manager

1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5718

Contractor: Fence Service, Inc. d/b/a AAA Fence
Attention: William Morrison, IV, CEO
801 Orange Avenue
Daytona Beach, Florida 32114
(386) 253-4212 - Telephone
E-Mail: rich@aaafence.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.

29. 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.

30. 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:

FENCE SERVICE, INC. d/b/a AAA FENCE

Printed Name: _____

By: _____

William Morrison, IV, CEO

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 by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by William Morrison, IV, as CEO of Fence Service, Inc. d/b/a AAA Fence, a Florida corporation. He is ____ personally known or ____ produced _____ as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Donald O. Burnette, Mayor

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Donald O. Burnette, as Mayor, of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ____ personally known or ____ produced _____ as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ____ personally known or ____ produced _____ as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

EXHIBIT “1”

Contractor's Quote

Consisting of 10 Pages



REVISED
"ATTACHMENT 1" ITB SCHEDULE OF UNIT PRICING
BID FORM
CITY OF PORT ORANGE
ITB 21-21
FENCING SERVICES

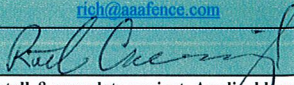
Completed "Attachment 1" Schedule of Unit Pricing Bid form MUST be included with Bid Submission

Instruction to save Attachment from DemandStar website:

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

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

Bidders are required to provide "Attachment 1" in Excel format in electronic format, preferably thumb drive.

NAME OF BUSINESS:	Fence Services, Inc., DBA AAA Fence
CONTACT PERSON:	Rich Crescenzi
EMAIL ADDRESS:	rich@aaafence.com
AUTHORIZED SIGNATURE:	

General notes: Contractor shall be responsible to secure all permits required to install & complete project. Applicable permit fees shall be charged and included. Projects shall be completed as per plans and/or scope of work from the City. Required Inspections, (As Built) Plans, correction notices and completion certificates shall be the responsibility of the contractor. All material and equipment shall meet or exceed design specifications as outlined in Invitation to Bid #21-21 and per project Scope of Work per City instructions.

NOTES

- (1) Line Item Bid Price shall include furnishing of all labor & material to install total fencing project completed, as per Jurisdictional code and shall be gross value, inclusive of all associated costs such as vehicle, fuel, powered post hole diggers/augers, normal hand tools, etc.
- (2) All Fence installations shall comply with and conform to all applicable Building Codes, Jurisdictional authorities, Local and State Jurisdictional Codes, and ASTM F 567 Standard Practices for Installation of Chain Link Fence.
- (3) All Chain Link Fabric to be minimum 9 ga. Without vinyl (.144 dia) & 2" mesh.
- (4) All Fence Installations shall be Colored Vinyl unless specifically specified to be Galvanized. See Bid Specifications
- (5) Fence installations shall include all posts, post caps, components and hardware to be same color as fence fabric.

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
Scope of work: Furnish & Install Chain Link Fencing - includes fabric, line post, post caps, concrete footings, tension wires and fittings. (Notes 1-5). Terminal Post, stretcher bar, Top Rail and hardware not included.					
1	4 ft. high, Galvanized fencing	Lineal Foot	250	\$18.00	\$4500.00
2	4 ft. high, Colored Vinyl fencing	Lineal Foot	100	\$20.00	\$2000.00
3	6 ft. high, Galvanized fencing	Lineal Foot	2700	\$22.00	\$59400.00
4	6 ft. high Colored Vinyl fencing	Lineal Foot	500	\$24.00	\$12000.00
Scope of work: Relocate or remove existing fencing, including fabric, line posts, top rails, tension wires and fittings. Fill all post holes with clean fill, and haul away any and all fence debris, including disposal of fence and posts. (Notes 1-5).					
5	4' High - Black Aluminum Ornamental Fence	Lineal Foot	100	\$27.00	\$2700.00
6	6' High - Black Aluminum Ornamental Fence	Lineal Foot	100	\$30.00	\$3000.00
7	Relocate existing 4 ft. high fencing	Lineal Foot	2700	\$5.56	\$15000.00
8	Relocate existing 6 ft. high fencing	Lineal Foot	500	\$9.00	\$4500.00
9	Relocate existing 8 ft. high fencing	Lineal Foot	200	\$25.00	\$5000.00
10	Remove and dispose of damaged fencing material	Lineal Foot	3400	\$1.25	\$4250.00
Scope of work: Furnish & Install Temporary Galvanized Chain-link Fencing. All materials furnished by the fencing contractor, and remain the property of the fencing contractor. (Notes 1-5). Price shall include installation and removal of fencing.					
11	Temporary - 4 ft. high, Galvanized	Lineal Foot	500	\$3.00	\$1500.00
12	Temporary - 6 ft. high, Galvanized	Lineal Foot	500	\$3.00	\$1500.00
Scope of work: Furnish & Install Hinged Swing Gate, 4 ft. high, complete, with all mounting hardware, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as single or double gate swing.					
13	3 ft. width - Galvanized	Each	5	\$175.00	\$875.00
14	3 ft. width - Black Aluminum Ornamental	Each	5	\$350.00	\$1750.00
15	3 ft. width - Colored Vinyl	Each	5	\$185.00	\$925.00
16	4 ft. width - Galvanized	Each	5	\$185.00	\$925.00

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
17	4 ft. width - Black Aluminum Ornamental	Each	5	\$375.00	\$1875.00
18	4 ft. width - Colored Vinyl	Each	5	\$195.00	\$975.00
19	5 ft. width - Galvanized	Each	5	\$195.00	\$975.00
20	5 ft. width - Colored Vinyl	Each	5	\$205.00	\$1025.00
21	6 ft. width - Galvanized	Each	5	\$205.00	\$1025.00
22	6 ft. width - Colored Vinyl	Each	5	\$215.00	\$1075.00
23	10 ft. width - Galvanized	Each	5	\$390.00	\$1950.00
24	10 ft. width - Colored Vinyl	Each	5	\$410.00	\$2050.00
25	12 ft. width - Galvanized	Each	5	\$410.00	\$2050.00
26	12 ft. width - Colored Vinyl	Each	5	\$430.00	\$2150.00
Scope of work: Furnish & Install Hinged Swing Gate, 6 ft. high, complete, with all mounting hardware, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as Single or Double Gate Swing.					
27	3 ft. width - Galvanized	Each	4	\$200.00	\$800.00
28	3 ft. width - Colored Vinyl	Each	4	\$210.00	\$840.00
29	3 ft. width - Black Aluminum Ornamental	Each	4	\$475.00	\$1900.00
30	4 ft. width - Galvanized	Each	4	\$210.00	\$840.00
31	4 ft. width - Colored Vinyl	Each	4	\$220.00	\$880.00
32	4 ft. width - Black Aluminum Ornamental	Each	4	\$485.00	\$1940.00
33	5 ft. width - Galvanized	Each	4	\$220.00	\$880.00
34	5 ft. width - Colored Vinyl	Each	4	\$240.00	\$960.00
35	6 ft. width - Galvanized	Each	4	\$230.00	\$920.00
36	6 ft. width - Colored Vinyl	Each	4	\$250.00	\$1000.00
37	10 ft. width - Galvanized	Each	4	\$450.00	\$1800.00
38	10 ft. width - Colored Vinyl	Each	4	\$475.00	\$1900.00
39	12 ft. width - Galvanized	Each	4	\$500.00	\$2000.00
40	12 ft. width - Colored Vinyl	Each	4	\$525.00	\$2100.00
Scope of work: Furnish & Install Cantilever Sliding Gate, 4ft.high, complete, with all mounting hardware, rollers, guide rails, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as Single or Double Gate Swing.					
41	Gate opening width of 10 ft. single gate - Galvanized	Each	5	\$3000.00	\$15000.00
42	Gate opening width of 10 ft. single gate - Colored Vinyl	Each	5	\$3200.00	\$16000.00
43	Gate opening width of 12 ft. single gate - Galvanized	Each	8	\$3100.00	\$24800.00
44	Gate opening width of 12 ft. single gate - Colored Vinyl	Each	5	\$3300.00	\$16500.00
Scope of work: Furnish & Install Cantilever Sliding Gate, 6 ft. high, complete, with all mounting hardware, rollers, guide rails, latching hardware and fabric included. (Notes 1-5). Configured as Single or Double Gate.					
45	Gate opening width of 10 ft. single gate - Galvanized	Each	10	\$3500.00	\$35000.00
46	Gate opening width of 10 ft. single gate - Colored Vinyl	Each	4	\$3700.00	\$14800.00
47	Gate opening width of 12 ft. single gate - Galvanized	Each	4	\$3700.00	\$14800.00
48	Gate opening width of 12 ft. single gate - Colored Vinyl	Each	4	\$3900.00	\$15600.00
49	Gate opening width of 12 ft. double gate(2)- Galvanized	Each	4	\$4500.00	\$18000.00
50	Gate opening width of 12 ft. double gate(2)- Colored Vinyl	Each	4	\$4700.00	\$18800.00
Scope of work: Furnish & Install 4 ft. high fencing, Terminal/Gate Post, including concrete footing, one (1) stretcher bar per post, with all required hardware to complete fencing connections. (Notes 1-5).					
51	Galvanized, 3" round terminal/gate post	Each	10	\$130.00	\$1300.00
52	Colored, 3" round terminal/gate post	Each	10	\$140.00	\$1400.00
53	Galvanized, 4" round terminal/gate post	Each	10	\$150.00	\$1500.00
54	Colored, 4" round terminal/gate post	Each	20	\$160.00	\$3200.00
55	Galvanized, 6-5/8" round terminal/gate post	Each	10	\$350.00	\$3500.00
56	Colored, 6-5/8" round terminal/gate post	Each	10	\$375.00	\$3750.00

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
57	Galvanized, 8-5/8" round terminal/gate post	Each	10	\$525.00	\$5250.00
58	Colored, 8-5/8" round terminal/gate post	Each	10	\$600.00	\$6000.00
Scope of work: Furnish & Install 6 ft. high fencing, Terminal/Gate Post, including concrete footing, one (1) stretcher bar per post, with all required hardware to complete fencing connections. (Notes 1-5).					
59	Galvanized, 3" round terminal/gate post	Each	5	\$205.00	\$1025.00
60	Colored, 3" round terminal/gate post	Each	5	\$215.00	\$1075.00
61	Galvanized, 4" round terminal/gate post	Each	5	\$225.00	\$1125.00
62	Colored, 4" round terminal/gate post	Each	5	\$235.00	\$1175.00
63	Galvanized, 6-5/8" round terminal/gate post	Each	5	\$425.00	\$2125.00
64	Colored, 6-5/8" round terminal/gate post	Each	5	\$450.00	\$2250.00
65	Galvanized, 8-5/8" round terminal/gate post	Each	5	\$675.00	\$3375.00
66	Colored, 8-5/8" round terminal/gate post	Each	5	\$750.00	\$3750.00
Scope of work: Furnish & Install Top Rail with all required hardware to complete fencing connection. (Notes 1-5).					
67	Galvanized Top Rail	Lineal Foot	60	\$3.00	\$180.00
68	Colored Top Rail	Lineal Foot	60	\$3.50	\$210.00
Scope of work: Furnish & Install Fabric with all required hardware to complete fencing connection. (Notes 1-5).					
69	4 ft. high, Galvanized fabric	Lineal Foot	10	\$4.00	\$40.00
70	4 ft. high, Colored fabric	Lineal Foot	10	\$4.50	\$45.00
71	6 ft. high, Galvanized fabric	Lineal Foot	10	\$5.00	\$50.00
72	6 ft. high, Colored fabric	Lineal Foot	10	\$5.50	\$55.00
Scope of work: Furnish & Install Stretcher Bar with all required hardware to complete fencing connection. (Notes 1-5).					
73	4 ft. high, Galvanized stretcher bar	Each	4	\$100.00	\$400.00
74	4 ft. high, Colored stretcher bar	Each	4	\$110.00	\$440.00
75	6 ft. high, Galvanized stretcher bar	Each	4	\$110.00	\$440.00
76	6 ft. high, Colored stretcher bar	Each	4	\$120.00	\$480.00
Additional services and labor may be purchased under this contract at an hourly rate for projects related to the installation, removal, and/or repair of any kind of fencing materials.					
77	Standard hourly labor rate for Foreman for additional fencing work as specified (Monday through Friday).	per hour	300	\$80.00	\$24000.00
78	Standard hourly labor rate for Laborer for additional fencing work as specified (Monday through Friday).	per hour	300	\$45.00	\$13500.00
79	Standard hourly labor rate for Foreman for additional fencing work as specified (Nights, weekends and holidays).	per hour	50	\$120.00	\$6000.00
80	Standard hourly labor rate for Laborer for additional fencing work as specified (Nights, weekends and holidays).	per hour	50	\$67.50	\$3375.00
				TOTAL	\$434050.00

SECTION 3 - SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

The City of Port Orange is soliciting sealed competitive bids for fencing services to include repairs, replacement fence and new fence on an as needed basis throughout the City.

This bid is for the purchase and installation of galvanized chain link, vinyl and ornamental fencing and gates; purchase and installation of other types of fencing; demolition and removal of existing fencing, and repairs of existing fencing. All materials used by the awarded contractor(s) must comply with current ASTM/ANSI standards.

TECHNICAL SPECIFICATIONS

The specifications are listed below and on the Schedule of Unit Pricing (Attachment 1). Bidder will be responsible for meeting all specifications as outlined herein and on the Schedule of Unit Pricing.

1.0 Chain Link Fencing

1.1. System Description

Fence Height: 4 feet and 6 feet

Line Post Spacing: At intervals not exceeding 10 feet

1.2. Material and Components

- 1. Framework Material:** Schedule 40 steel pipe, standard weight; ASTM A 120.
- 2. Fabric:** CLFM1 Standard Industrial Service; ASTM A 392 zinc-coated steel, 2 inch diamond mesh, 9 gauge interwoven; FS RR-F-191, Type 1. Top selvage knuckle end closed, bottom selvage knuckle end closed.
- 3. Tension Wire:** Steel, single strand, 6 gauge thick.
- 4. Finish:** Galvanized, 1.8 oz./sq. ft. coating, ASTM A 123.
- 5. Concrete Anchorage** for posts.
- 6. Line Posts:** 2.50-inch diameter steel pipe, Schedule 40, one piece, without joints.
- 7. Corner and Terminal Posts:** 3.0-inch diameter steel pipe, Schedule 40, one piece, without joints
- 8. Fence Posts:** Schedule 40 in the following sizes: 2" x 8'; 2 ½ x 8'; 3" x 8'; 4" x 10' 6"; 6 5/8" x 10' 6"; 8 5/8" x 10' 6".
- 9. Top and Brace Rail:** 1.66-inch diameter, plain end, sleeve coupled pipe.
- 10. Gate Frame:** 1.66-inch diameter for welded fabrication.
- 11. Caps:** Cast steel galvanized, sized to post diameter, set screw retainer.
- 12. Fittings:** Sleeves, bands, clips, rail ends, tension bars, fasteners, and fittings: steel.
- 13. Gate Hardware:** ASTM A 153; fork latch with gravity drop, center gate stop and drop rod for double gates, three 180-degree gate hinges per lead, and hardware for padlock. Clam shell or Boxed hinged for 90 degree gates.

1.3. Installation

- 1.** Install framework, fabric and accessories in accordance with ASTM F567 and manufacturer's instructions.
- 2.** Set terminal and posts plumb in concrete footings with top of footing 6 inches below finish grade. Embed posts a minimum 2 feet into concrete.
- 3.** Provide top rail through line posts and splice with 7-inch-long rail sleeves.
- 4.** Stretch fabric between terminal posts or at all intervals of 100 feet maximum, whichever is less.
- 5.** Position bottom of fabric one inch above finish grade.
- 6.** Fasten fabric to top rail, line posts, and braces and bottom tension wire on rail with wire ties maximum 15 inches on center.
- 7.** Attach fabric to end and corner posts with tension bars and tension bar clips.

8. Install bottom tension wire stretched taut between terminal posts.
9. Brace each gate and corner posts to adjacent line post with horizontal center brace rail and diagonal truss rods. Install brace rail, one bay from end and post gates.
10. Provide gate posts: 2" x 8'; 2 ½ x 8'; 3" x 8'; 4" x 10'6"; 6 5/8" x 10'6"; 8 5/8" x 10'6" as applicable.
11. Install gate fabric to match fence. Install three hangars, latch, catches, drop hold torsion spring retainer.
12. Provide concrete center drop to footing depth and drop and retainers at center of double gate openings.

1.4. Installation Tolerances

1. Maximum variation from plumb: 1/4 inch
2. Maximum offset from true position: One (1) inch
3. Components shall not infringe on adjacent property lines.

1.5. Fencing Other Than Chain Link

Material specifications and installation requirements for other types of fencing will be determined by the City's Maintenance Department on a per job basis. All materials and installation requirements must adhere to ASTM/ANSI standards as applicable for the particular type of fencing.

1.6. Demolition and Removal of Existing Fencing

1. Demolition and removal of existing fencing includes the removal of fencing and related materials from the work site.
2. The awarded contractor(s) will be required to dispose of all fencing material in accordance with all applicable, rules, regulations, ordinances and laws governing the disposal of fencing material. Material may NOT be disposed of on City property unless approved by the City. The City may ask any unused fencing be dropped off at our warehouse for future projects.

2.0 Ornamental Fencing

2.1. Scope

1. This Section of the Specifications is intended to cover the furnishing of all labor, materials, equipment, and/or incidentals necessary to the completion of all requirements of the drawings, notes, schedules, and these specifications concerning ornamental fencing, gates and grilles including all posts, brackets, and accessories and the installation thereof.

2.2. Shop Drawings and Samples

1. Complete and detailed Shop Drawings indicating profile, locations, size, material, finish, and details of installation of all handrails and accessories shall be submitted for approval. No fabrication shall be done until approval of Shop Drawings is obtained.

2.3. Design Criteria

1. All fencing and gates shall be designed, manufactured and installed to carry 200 pounds per linear foot downward force at top rail, 50 pounds per linear foot horizontal force applied at the top rail and 25 pounds per square foot at center panel sections.

2.4. Fence, Gates and Grilles

1. Furnish and install fence, gates and grilles of sizes as shown on the drawings. As a basis for design, the fence, gates, posts, and fittings are based on those manufactured by Metalco (800) 708-2526, Model # LISTON or equal. Products and grilles by other manufacturers or fabricators meeting these specifications will be acceptable. Fencing, gates, and grilles shall be manufactured from galvanized steel or heavy-duty aluminum, load specifications as per the above specified with a baked on polyester resin coating. Color to be selected by Architect. All connections will be either welded or riveted where appropriate and provide anchoring systems to accommodate the field connection.

Ameristar Fence Products (1-918-835-0898) is an approved equal. Montage Fencing is an approved equal.

2. Components: Fence, gates and grilles shall be Liston model with vertical elements of cold pre-bent tubular steel 3/4" diameter gauge 0.060 inches. Horizontal elements one tubular steel diameter 1-1/8" gauge 0.060 fence panels to be 46-1/2" high.

3. Provide pre-engineered protective cage/grilles over gable end louvers and roof/wall ventilators subject to damage due to high wind projectiles on EHPA building and where identified in the construction documents. Protective units to be painted the same color as the substrate it is anchored to.

4. Steel and Iron Ornamental Metal Work

A. Field verify and measure actual size of depressions in concrete tilt wall and other construction contiguous with ornamental metal prior to fabrication. Coordinate all installation of anchorages for ornamental metal items. Furnish setting drawings, templates, and directions for installing anchorage including sleeves, inserts, anchors, bolts and items with integral anchors that are to be embedded in concrete or masonry.

2.5. Cantilever Gates:

1. **Gate Frame:** The entire frame and support members shall be manufactured with the same aluminum material, alloy and temper 6061-T6 (ASTM 1184). Fabricate chain link cantilever slide gates in accordance with ASTM F-1184, using 2' Schedule 40 galvanized outside vertical members. Members are welded together with a continuous top track and bottom rail to form a rigid one-piece frame. Vertical interior support uprights will be positioned equally throughout the frame structure. There shall be no openings in any frame work. The cantilever overhang will be 40% or greater for any given opening size.

2. **Chain link fabric** 2" x 9 gage Knuckle Fabric shall be installed over the entire gate length (UL-325) which will create a universal design (gate can be used for right or left hand applications). Fabric will be attached securely with tension bars that are attached on either frame end by tension bands. High tensile wire will provide additional fabric support across the top and bottom of the gate structure.

3. **Wheel Assemblies** shall be malleable or ductile Steel housing with Nylon wheels with protective covers. One top and bottom assembly shall be attached to each guide post.

4. **Gate posts** shall be 4" OD schedule 40 pipe with top caps on all post. Two support posts and 1 latch post shall be installed. A 3 foot 3/16" GA30 Galvanized chain shall be welded to the end post to secure the gate.

5. **Gate posts Footing** shall be set in concrete (3000 psi compressive strength). The footing shall be 16" in diameter with depth approximately 6" deeper than the post bottom. Deeper footing may be required in areas with loose or soft soil. Set post bottom at least 36" below the surface. Posts must be plumb. Install gates plumb, level and secure for the full opening size making sure they move free of obstructions. Adjust hardware for smooth operation.

2.6. Installation and Workmanship

1. All work shall be of the finest quality and shall be fabricated in a shop whose principal business is the manufacture of the highest-grade ornamental metal work.
2. Fencing, gates and grilles shall be shipped completely pre-finished with all necessary accessories, ready for installation.
3. The fence, gates and grilles shall be rigidly and securely installed in a first class manner by mechanics experienced in the erection of ornamental metal. All fasteners, screws, and fittings shall be drawn tightly.
4. Joints shall be accurately machined to be sharp and true and free from discolorations, welds to be ground smoother prior to receiving protective coatings.
5. Caulk all joints and gapes of dissimilar materials the metal will penetrate to achieve its intended anchoring surfaces to insure a watertight installation.
6. All work areas will be clean and free of debris, tools and material daily.
7. After the work is completed, the Contractor to clean or repair any damage that can be attributed to the Contractor's workmen.

3.0 VINYL FENCING

3.1. Work Included

1. Fence sections including pickets, rails, posts, and caps
2. Gates and related hardware
3. Excavation and anchorage for posts

4. Spacing between posts should be 6 feet

3.2. Quality Assurance

1. Cell classification - ASTM D1784 - 14344B
2. Tensile Strength - 6,500 psi - ASTM D638
3. Izod impact (ft. lbs./in notch) 23°C - 5.0 O°C - 2.0 - ASTM D256
4. Tensile modulus 425,000 psi - ASTM D638
5. Deflection Temperature 67° C - ASTM D648
6. Thermal expansion 3 x 10.5 in / in F

3.3. Submittals

1. Manufacturer's technical literature with fence and gate installation instructions
2. Shop drawings showing fence design
3. Material samples if requested

3.4. Material

1. The fence is constructed with materials made of rigid Poly Vinyl Chloride (PVC) formulated to resist impact and for Ultra Violet (UV) stabilization
2. The extruded product meets or exceeds ASTM DI 784

3.5. Manufacturer

1. Bufftech or approved Equal

3.6. Components

1. Rails, Pickets, Posts
 - a. Are cut to specific lengths as required for style specified
 - b. Rails are routed to receive pickets
 - c. Posts are routed to receive rails at correct heights
2. Stiffener Channel
 - a. Bottom rails for residential and commercial applications contain steel reinforcing for additional strength. Refer to style channel available upon request.
3. Post Caps
 - a. Caps are PVC molded
 - b. External fit flat for true 4" x 4" and 5" x 5" posts
 - c. Internal flat cap available for standard wall 5" x 5" posts and 4" x 4" posts
4. Gates
 - a. Constructed from rigid PVC with reinforcement
 - b. Gates are designed to match fence section. All hardware and bracing is included
5. Hardware for Commercial Styles
 - a. Self-closing hinge:
 - i. Reinforced nylon structure
 - ii. Unit has self-closing capabilities
 - iii. Hinge is adjustable to relieve sag or misalignment problems
 - iv. Mounts on two sides of post for strength and stability
 - b. Nuts, Bolts, Washers and Screws:
 - i. Stainless steel
 - ii. Screw heads are painted black to match hinge
 - iii. Black acorn nuts and washers are used for safety and aesthetics
 - iv. Screw heads are covered using a UV stabilized, molded two-part snap cap system
 - v. Contact manufacturer for Post & Rail hardware

3.7. Warranty

Manufacturer's Warranty: Lifetime non-prorated limited warranty applies to original owner/consumer, or 30-year non-prorated warranty applies to commercial application.

4.0 BID PRICING

1. The Schedule of Unit Pricing (Attachment 1) must be signed by an individual of the bidding firm that has

the authority to bind the firm.

2. No additional charges will be permitted that are not included on the bid sheet.

4.1. Chain Link, Vinyl and Ornamental Fencing

Bid pricing is requested for installed chain link, vinyl and ornamental fencing on a linear foot basis, based on the scope of services and requirements in sections 1.0, 2.0, 3.0 and the increments as detailed on the bid sheet. Additionally, bid pricing is requested for gates in both 4 and 6 foot heights, and bid pricing is requested for fence gate posts per each as detailed on the bid sheet.

4.2. Fencing Other Than Chain Link

Bid pricing is requested for other types of fencing as follows:

1. Installation – hourly rate
2. Percentage of mark-up over cost for materials

4.3. Demolition of Existing Fence

Bid pricing is requested for demolition of existing fence on a linear foot basis, based on the scope of services in section 1.4.

End of Specifications

[Remainder of page is intentionally left blank]



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5717
purchdiv@port-orange.org

ADDENDUM #1
September 8, 2021
ITB #21-21 FENCING SERVICES

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated September 8, 2021 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

A. **CLARIFICATIONS:**

On the DemandStar posting of this Invitation to Bid, e-bidding was erroneously checked as an option to submit bids. The City of Port Orange will NOT be accepting bids through DemandStar and if any are received through DemandStar, they will be rejected without exception.

B. **CHANGES TO SPECIFICATIONS:**

None

C. **QUESTIONS AND ANSWERS:**

None

In all other respects, except as specifically stated herein, the subject ITB #21-21 Fencing Services remains unchanged.

END OF ADDENDUM #1

Jill Poolman, Purchasing Manager
jpoolman@port-orange.org



CITY OF PORT ORANGE

PURCHASING DIVISION

1000 CITY CENTER CIRCLE

PORT ORANGE, FLORIDA 32129

TELEPHONE 386-506-5704

purchdiv@port-orange.org

ADDENDUM NO. #2

October 5, 2021

ITB #21-21 FENCING SERVICES

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated September 7, 2021 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

A. CLARIFICATIONS:

On (Attachment 1) ITB Schedule of Unit Pricing, General notes currently reads:

General notes: Contractor shall be responsible to secure all permits required to install & complete project. No permit fees shall be charged or included. Projects shall be completed as per plans and/or scope of work from the City. Required Inspections, (As Built) Plans, correction notices and completion certificates shall be the responsibility of the contractor. All material and equipment shall meet or exceed design specifications as outlined in Invitation to Bid #21-21 and per project Scope of Work per City instructions.

This verbiage is hereby changed to read:

General notes: Contractor shall be responsible to secure all permits required to install & complete project. Applicable permit fees shall be charged and included. Projects shall be completed as per plans and/or scope of work from the City. Required Inspections, (As Built) Plans, correction notices and completion certificates shall be the responsibility of the contractor. All material and equipment shall meet or exceed design specifications as outlined in Invitation to Bid #21-21 and per project Scope of Work per City instructions.

B. CHANGES TO SPECIFICATIONS:

1. Pursuant to the change outlined in A. Clarifications above, please see Revised "Attachment 1" ITB Schedule of Unit Pricing posted as a separate document intended to replace the original "Attachment 1" ITB Schedule of Unit Pricing. Please note that Bidders **must** complete and include with their submittal the Revised "Attachment 1" ITB Schedule of Unit Pricing in lieu of the original. **Failure to submit the Revised "Attachment 1" ITB Schedule of Unit Pricing will result in a determination of 'non-responsive' and rejection of the bid.**

2. In Section 6 – Special Conditions/Requirements/Instructions, p. 41, the following language is added to the end of the paragraph titled **PAYMENT & PERFORMANCE BONDS:**

Bidder must submit a current letter from bidder's bonding agent showing proof of bonding capacity. This letter must accompany bid package submitted or bidder will be deemed non-responsive and bid submittal will be rejected.

C. QUESTIONS AND ANSWERS:

N/A

Jill Poolman, CPPO, CPPB
Purchasing Manager
jpoolman@port-orange.org

In all other respects, except as specifically stated herein, the subject ITB #21-21 FENCING SERVICES remains unchanged.

END OF ADDENDUM NO. #2

EXHIBIT "2"

Payment and Performance Bond

Consisting of 3 Pages

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

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

BOND NO. _____

PRINCIPAL:

Developer or Contractor: Fence Service, Inc. d/b/a AAA Fence
Principal Business Address: 801 Orange Avenue
Daytona Beach, Florida 32114
Contact Person: William Morrison, IV, CEO
Phone Number: (386) 253-4212

SURETY:

Address: _____

Contact Person: _____
Phone Number: _____

OWNER:

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

Amount: \$ _____

City Project Number: ITB 21-21 Fencing Services

Description of Work: ITB 21-21 Fencing Services

Project Location: Various locations in and around the City of Port Orange, Volusia County, Florida

Legal Description: Various locations in and around the City of Port Orange, Volusia County, Florida

Front Page

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

Fence Service, Inc. d/b/a AAA Fence

ITB 21-21 Fencing Services

Bond No. _____

COMBINATION PAYMENT AND PERFORMANCE BOND FOR PUBLIC CONSTRUCTION

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

BY THIS BOND, We, **Fence Service, Inc. d/b/a AAA Fence**, as Principal, and _____, a corporation, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of _____ **AND 00/100 DOLLARS** (\$ _____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

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

Notice of Nonpayment and Time Limitations

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.05(2), (8) and (10), Florida Statutes.

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

IN WITNESS WHEREOF, this performance and payment bond is executed and shall be deemed an original, this _____, day of _____, 2021.

Attest:

FENCE SERVICE, INC. d/b/a AAA FENCE
(Principal)

(As to Corporate Principal) Secretary

By: _____
William Morrison, IV, CEO

(Witness to Principal)

(Corporate Seal)

(Surety)

(Witness to Surety)

By: _____
Name: _____
(Attorney-in-Fact)

(Corporate Seal)

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

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



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this ____ day of _____, 2021, 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 **STERLING ENTERPRISES, L.L.C.**, a Florida limited liability corporation whose principal address is 10314 Buena Ventura Drive, Boca Raton, Florida 33498 ("Contractor"). The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

- (a) The Contractor hereby agrees to provide Fencing Services to include repairs, replacement fence, and new fence on an as-needed basis throughout the City, and as more specifically described in and pursuant to Intent to Bid ("ITB 21-21"). This Contract together with ITB 21-21, Addendum No. 1, Addendum No. 2, and Contractor's proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference, shall constitute the formal written contract between the City and Contractor. For convenience, Section 3, Scope of Services and Technical Specifications, Addendum No. 1, Addendum No. 2, and the Contractor's Schedule of Unit Pricing, as submitted by Contractor in Contractor's Proposal, are attached hereto as **Exhibit "1"**. A complete copy of ITB 21-21, Addendum No. 1, Addendum No. 2, and Contractor's Proposal are available in the Office of the City Clerk. Contractor represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.
- (b) The time, manner and place for performance of such services shall be:
- Term: The term of this Contract shall become effective on the last date the Contract is signed by the Parties ("Effective Date"). This Contract shall be for a term of two (2) years ("Initial Term").
- Renewals: Upon written agreement of the Parties, this Contract may be renewed for two (2) one-year periods, subject to the review and approval of the City Manager and budget appropriation.
- Manner and Place: The work shall be in accordance with 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.
- Time and Essence: Contractor acknowledges that time is of the essence for this Contract.
- Authorization for Services: This Contract standing alone does not authorize the purchase of any goods or services or require the City to place any orders for goods or service. Authorization for the purchase of goods or services from Contractor under this Contract shall be upon issuance of a written Purchase Order issued and executed by the City Manager. The City reserves the right to contract with other parties for the goods and services contemplated by this Contract, as determined in the City's sole and absolute discretion.

2. City Obligations. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1" attached hereto, subject to a limit not to exceed the appropriated budget per fiscal year, and City Manager approval for each Purchase Order rendered under this Contract. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. Contract Documents. The following forms, attached as Exhibit "2," are an integral part of this Contract and must be completed, signed, witnessed and notarized as indicated and returned with the City Manager approved and signed written Purchase Order(s), for projects requiring a Payment and Performance Bond, as determined by the Department:

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

4. Contract Administration. The Department Head requesting service ("Purchase Order Administrator"), shall perform contract administration of their respective purchase order(s). The Purchasing Manager, Jill Poolman, shall perform contract administration for the master contract ("Contract Administrator") The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

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

6. Termination for Convenience of the City

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

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

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

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

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

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

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

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

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

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

8. Termination for Default. Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the contractor, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result. City Council may elect to refrain from doing business with the bidder as stipulated in City Code 2-276 Suspension and Disbarment.

9. Examination of Records

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

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

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

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

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the City.

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

If Contractor does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Contractor may be subject to penalties under Section 119.0701, Florida Statutes.

CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129; TELEPHONE: (386) 506-5563; E-MAIL: CITYCLERK@PORT-ORANGE.ORG.

11. Termination for Non-Appropriation of Funds

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

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

12. Insurance. Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit

Exhibit Form. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

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. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

Contractor shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Contractor is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Contractor to ensure the subcontractors maintain the required coverage, shall not relieve the Contractor of any contractual responsibility, obligation or liability.

The City reserves the right to increase insurance coverage as determined for higher risk contracts.

The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with this Contract and does not waive the insurance required by this Contract.

Should at any time the Contractor or subcontractors not maintain the insurance coverages required herein, the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

[Remainder of page intentionally left blank]

Standard Insurance Requirements									
	Insurance	Standards	Additional Requirements						
☒	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<table><tr><td><u>Contract Amount</u></td><td><u>Limits</u></td></tr><tr><td>Up to \$10 million</td><td>Statutory/\$500,000</td></tr><tr><td>\$10 - \$20 million</td><td>Statutory/\$1,000,000</td></tr></table> Contracts over \$20 million To Be Determined by the City.	<u>Contract Amount</u>	<u>Limits</u>	Up to \$10 million	Statutory/\$500,000	\$10 - \$20 million	Statutory/\$1,000,000	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.
<u>Contract Amount</u>	<u>Limits</u>								
Up to \$10 million	Statutory/\$500,000								
\$10 - \$20 million	Statutory/\$1,000,000								
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is 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 owned, hired and non-owned automobiles.	<u>Limits:</u> Auto Liability Body Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate							
Additional Insurance Requirements									
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.						
☐	Professional Liability	<u>Limits:</u> Coverage - \$1,000,000							
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>							
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000							
☐	Errors and Omissions	<u>Limits:</u> Coverage - \$1,000,000							
☐	Umbrella Policy	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>							
☐	Payment and Performance Bond Required	<u>Limits:</u> Coverage - Equal to amount of Contract.							
☐	City Manager waives Payment and Performance Bond for work under \$25,000.00.								
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.								

13. 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.

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.

(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. Additional Bond Security. If any surety bond furnished in connection with this Contract becomes unacceptable to the City, Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the City and a person supplying labor and materials in the prosecution of work contemplated by this Contract. Contractor expressly acknowledges that if the work to be performed hereunder is a

public work, a Payment and Performance Bond, in accordance with Florida Statutes Section 255.05, in a form acceptable to the City, shall be provided and recorded with the Clerk of Volusia County at Contractors expense.

20. 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.

21. Liability for Loss or Damage.

(a) 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.

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

22. 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.

23. 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 Agreement. 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, MMC. 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.

24. 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.

25. 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.**

26. Additional Provisions. This Contract includes all 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. In the event of a conflict between any attachments or exhibits to this Contract, and this Contract, the language of this Contract shall control.

27. 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.

28. 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: Jill Poolman, Purchasing Manager
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5718

Contractor: Sterling Enterprises, L.L.C.
Attention: Ryan Wilkins, President
230 North Summit Avenue
Lake Helen, Florida 327414
(386) 532-2100 - Telephone
(386) 228-2021 - Facsimile
E-Mail: ryan@sterlingenterprisesllc.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.

29. 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.

30. 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:

STERLING ENTERPRISES, L.L.C.

Printed Name: _____

By: _____

Ryan Wilkins, 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 by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Ryan Wilkins, President of Sterling Enterprises, L.L.C., a Florida limited liability corporation. He is ____ personally known or ____ produced _____ as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Donald O. Burnette, Mayor

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Donald O. Burnette, as Mayor, of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ____ personally known or ____ produced _____ as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ____ personally known or ____ produced _____ as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

EXHIBIT “1”

Contractor's Quote

Consisting of 10 Pages



REVISED
"ATTACHMENT 1" ITB SCHEDULE OF UNIT PRICING
BID FORM
CITY OF PORT ORANGE
ITB 21-21
FENCING SERVICES

Completed "Attachment 1" Schedule of Unit Pricing Bid form MUST be included with Bid Submission

Instruction to save Attachment from DemandStar website:

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

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

Bidders are required to provide "Attachment 1" in Excel format in electronic format, preferably thumb drive.

NAME OF BUSINESS:	Sterling Enterprises, L.L.C.				
CONTACT PERSON:	Ryan Wilkins				
EMAIL ADDRESS:	ryan@sterlingenterprisesllc.com				
AUTHORIZED SIGNATURE:					
General notes: Contractor shall be responsible to secure all permits required to install & complete project. Applicable permit fees shall be charged and included. Projects shall be completed as per plans and/or scope of work from the City. Required Inspections, (As Built) Plans, correction notices and completion certificates shall be the responsibility of the contractor. All material and equipment shall meet or exceed design specifications as outlined in Invitation to Bid #21-21 and per project Scope of Work per City instructions.					
NOTES					
(1) Line Item Bid Price shall include furnishing of all labor & material to install total fencing project completed, as per Jurisdictional code and shall be gross value, inclusive of all associated costs such as vehicle, fuel, powered post hole diggers/augers, normal hand tools, etc.					
(2) All Fence installations shall comply with and conform to all applicable Building Codes, Jurisdictional authorities, Local and State Jurisdictional Codes, and ASTM F 567 Standard Practices for Installation of Chain Link Fence.					
(3) All Chain Link Fabric to be minimum 9 ga. Without vinyl (.144 dia) & 2" mesh.					
(4) All Fence Installations shall be Colored Vinyl unless specifically specified to be Galvanized. See Bid Specifications					
(5) Fence installations shall include all posts, post caps, components and hardware to be same color as fence fabric.					
Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
Scope of work: Furnish & Install Chain Link Fencing - includes fabric, line post, post caps, concrete footings, tension wires and fittings. (Notes 1-5). Terminal Post, stretcher bar, Top Rail and hardware not included.					
1	4 ft. high, Galvanized fencing	Lineal Foot	250	\$14.50	\$3625.00
2	4 ft. high, Colored Vinyl fencing	Lineal Foot	100	\$18.50	\$1850.00
3	6 ft. high, Galvanized fencing	Lineal Foot	2700	\$20.50	\$55350.00
4	6 ft. high Colored Vinyl fencing	Lineal Foot	500	\$28.50	\$14250.00
Scope of work: Furnish & Install Black Aluminum Ornamental Fencing - includes line post, post caps, concrete footings. (Notes 1-5). Hardware not included.					
5	4' High - Black Aluminum Ornamental Fence	Lineal Foot	100	\$32.00	\$3200.00
6	6' High - Black Aluminum Ornamental Fence	Lineal Foot	100	\$51.00	\$5100.00
Scope of work: Relocate or remove existing fencing, including fabric, line posts, top rails, tension wires and fittings. Fill all post holes with clean fill, and haul away any and all fence debris, including disposal of fence and posts. (Notes 1-5).					
7	Relocate existing 4 ft. high fencing	Lineal Foot	2700	\$13.50	\$36450.00
8	Relocate existing 6 ft. high fencing	Lineal Foot	500	\$17.50	\$8750.00
9	Relocate existing 8 ft. high fencing	Lineal Foot	200	\$20.50	\$4100.00
10	Remove and dispose of damaged fencing material	Lineal Foot	3400	\$3.00	\$10200.00
Scope of work: Furnish & Install Temporary Galvanized Chain-link Fencing. All materials furnished by the fencing contractor, and remain the property of the fencing contractor. (Notes 1-5). Price shall include installation and removal of fencing.					
11	Temporary - 4 ft. high, Galvanized	Lineal Foot	500	\$6.00	\$3000.00
12	Temporary - 6 ft. high, Galvanized	Lineal Foot	500	\$9.00	\$4500.00
Scope of work: Furnish & Install Hinged Swing Gate, 4 ft. high, complete, with all mounting hardware, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as single or double gate swing.					
13	3 ft. width - Galvanized	Each	5	\$165.00	\$825.00
14	3 ft. width - Black Aluminum Ornamental	Each	5	\$365.00	\$1825.00
15	3 ft. width - Colored Vinyl	Each	5	\$265.00	\$1325.00
16	4 ft. width - Galvanized	Each	5	\$195.00	\$975.00

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
17	4 ft. width - Black Aluminum Ornamental	Each	5	\$415.00	\$2075.00
18	4 ft. width - Colored Vinyl	Each	5	\$285.00	\$1425.00
19	5 ft. width - Galvanized	Each	5	\$215.00	\$1075.00
20	5 ft. width - Colored Vinyl	Each	5	\$299.00	\$1495.00
21	6 ft. width - Galvanized	Each	5	\$225.00	\$1125.00
22	6 ft. width - Colored Vinyl	Each	5	\$315.00	\$1575.00
23	10 ft. width - Galvanized	Each	5	\$550.00	\$2750.00
24	10 ft. width - Colored Vinyl	Each	5	\$675.00	\$3375.00
25	12 ft. width - Galvanized	Each	5	\$650.00	\$3250.00
26	12 ft. width - Colored Vinyl	Each	5	\$715.00	\$3575.00
Scope of work: Furnish & Install Hinged Swing Gate, 6 ft. high, complete, with all mounting hardware, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as Single or Double Gate Swing.					
27	3 ft. width - Galvanized	Each	4	\$185.00	\$740.00
28	3 ft. width - Colored Vinyl	Each	4	\$285.00	\$1140.00
29	3 ft. width - Black Aluminum Ornamental	Each	4	\$425.00	\$1700.00
30	4 ft. width - Galvanized	Each	4	\$225.00	\$900.00
31	4 ft. width - Colored Vinyl	Each	4	\$315.00	\$1260.00
32	4 ft. width - Black Aluminum Ornamental	Each	4	\$450.00	\$1800.00
33	5 ft. width - Galvanized	Each	4	\$235.00	\$940.00
34	5 ft. width - Colored Vinyl	Each	4	\$335.00	\$1340.00
35	6 ft. width - Galvanized	Each	4	\$255.00	\$1020.00
36	6 ft. width - Colored Vinyl	Each	4	\$350.00	\$1400.00
37	10 ft. width - Galvanized	Each	4	\$850.00	\$3400.00
38	10 ft. width - Colored Vinyl	Each	4	\$975.00	\$3900.00
39	12 ft. width - Galvanized	Each	4	\$900.00	\$3600.00
40	12 ft. width - Colored Vinyl	Each	4	\$1025.00	\$4100.00
Scope of work: Furnish & Install Cantilever Sliding Gate, 4ft.high, complete, with all mounting hardware, rollers, guide rails, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as Single or Double Gate Swing.					
41	Gate opening width of 10 ft. single gate - Galvanized	Each	5	\$2150.00	\$10750.00
42	Gate opening width of 10 ft. single gate - Colored Vinyl	Each	5	\$2350.00	\$11750.00
43	Gate opening width of 12 ft. single gate - Galvanized	Each	8	\$2250.00	\$18000.00
44	Gate opening width of 12 ft. single gate - Colored Vinyl	Each	5	\$2500.00	\$12500.00
Scope of work: Furnish & Install Cantilever Sliding Gate, 6 ft. high, complete, with all mounting hardware, rollers, guide rails, latching hardware and fabric included. (Notes 1-5). Configured as Single or Double Gate.					
45	Gate opening width of 10 ft. single gate - Galvanized	Each	10	\$2500.00	\$25000.00
46	Gate opening width of 10 ft. single gate - Colored Vinyl	Each	4	\$2750.00	\$11000.00
47	Gate opening width of 12 ft. single gate - Galvanized	Each	4	\$2700.00	\$10800.00
48	Gate opening width of 12 ft. single gate - Colored Vinyl	Each	4	\$2950.00	\$11800.00
49	Gate opening width of 12 ft. double gate(2)- Galvanized	Each	4	\$5000.00	\$20000.00
50	Gate opening width of 12 ft. double gate(2)- Colored Vinyl	Each	4	\$5300.00	\$21200.00
Scope of work: Furnish & Install 4 ft. high fencing, Terminal/Gate Post, including concrete footing, one (1) stretcher bar per post, with all required hardware to complete fencing connections. (Notes 1-5).					
51	Galvanized, 3" round terminal/gate post	Each	10	\$200.00	\$2000.00
52	Colored, 3" round terminal/gate post	Each	10	\$230.00	\$2300.00
53	Galvanized, 4" round terminal/gate post	Each	10	\$20.00	\$200.00
54	Colored, 4" round terminal/gate post	Each	20	\$200.00	\$4000.00
55	Galvanized, 6-5/8" round terminal/gate post	Each	10	\$300.00	\$3000.00
56	Colored, 6-5/8" round terminal/gate post	Each	10	\$750.00	\$7500.00

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
57	Galvanized, 8-5/8" round terminal/gate post	Each	10	\$800.00	\$8000.00
58	Colored, 8-5/8" round terminal/gate post	Each	10	\$1050.00	\$10500.00
Scope of work: Furnish & Install 6 ft. high fencing, Terminal/Gate Post, including concrete footing, one (1) stretcher bar per post, with all required hardware to complete fencing connections. (Notes 1-5).					
59	Galvanized, 3" round terminal/gate post	Each	5	\$200.00	\$1000.00
60	Colored, 3" round terminal/gate post	Each	5	\$235.00	\$1175.00
61	Galvanized, 4" round terminal/gate post	Each	5	\$205.00	\$1025.00
62	Colored, 4" round terminal/gate post	Each	5	\$250.00	\$1250.00
63	Galvanized, 6-5/8" round terminal/gate post	Each	5	\$400.00	\$2000.00
64	Colored, 6-5/8" round terminal/gate post	Each	5	\$650.00	\$3250.00
65	Galvanized, 8-5/8" round terminal/gate post	Each	5	\$900.00	\$4500.00
66	Colored, 8-5/8" round terminal/gate post	Each	5	\$1150.00	\$5750.00
Scope of work: Furnish & Install Top Rail with all required hardware to complete fencing connection. (Notes 1-5).					
67	Galvanized Top Rail	Lineal Foot	60	\$5.00	\$300.00
68	Colored Top Rail	Lineal Foot	60	\$6.50	\$390.00
Scope of work: Furnish & Install Fabric with all required hardware to complete fencing connection. (Notes 1-5).					
69	4 ft. high, Galvanized fabric	Lineal Foot	10	\$20.00	\$200.00
70	4 ft. high, Colored fabric	Lineal Foot	10	\$30.00	\$300.00
71	6 ft. high, Galvanized fabric	Lineal Foot	10	\$40.00	\$400.00
72	6 ft. high, Colored fabric	Lineal Foot	10	\$60.00	\$600.00
Scope of work: Furnish & Install Stretcher Bar with all required hardware to complete fencing connection. (Notes 1-5).					
73	4 ft. high, Galvanized stretcher bar	Each	4	\$85.00	\$340.00
74	4 ft. high, Colored stretcher bar	Each	4	\$115.00	\$460.00
75	6 ft. high, Galvanized stretcher bar	Each	4	\$135.00	\$540.00
76	6 ft. high, Colored stretcher bar	Each	4	\$200.00	\$800.00
Additional services and labor may be purchased under this contract at an hourly rate for projects related to the installation, removal, and/or repair of any kind of fencing materials.					
77	Standard hourly labor rate for Foreman for additional fencing work as specified (Monday through Friday).	per hour	300	\$95.00	\$28500.00
78	Standard hourly labor rate for Laborer for additional fencing work as specified (Monday through Friday).	per hour	300	\$75.00	\$22500.00
79	Standard hourly labor rate for Foreman for additional fencing work as specified (Nights, weekends and holidays).	per hour	50	\$190.00	\$9500.00
80	Standard hourly labor rate for Laborer for additional fencing work as specified (Nights, weekends and holidays).	per hour	50	\$160.00	\$8000.00
				TOTAL	\$145875.00

SECTION 3 - SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

The City of Port Orange is soliciting sealed competitive bids for fencing services to include repairs, replacement fence and new fence on an as needed basis throughout the City.

This bid is for the purchase and installation of galvanized chain link, vinyl and ornamental fencing and gates; purchase and installation of other types of fencing; demolition and removal of existing fencing, and repairs of existing fencing. All materials used by the awarded contractor(s) must comply with current ASTM/ANSI standards.

TECHNICAL SPECIFICATIONS

The specifications are listed below and on the Schedule of Unit Pricing (Attachment 1). Bidder will be responsible for meeting all specifications as outlined herein and on the Schedule of Unit Pricing.

1.0 Chain Link Fencing

1.1. System Description

Fence Height: 4 feet and 6 feet

Line Post Spacing: At intervals not exceeding 10 feet

1.2. Material and Components

- 1. Framework Material:** Schedule 40 steel pipe, standard weight; ASTM A 120.
- 2. Fabric:** CLFM1 Standard Industrial Service; ASTM A 392 zinc-coated steel, 2 inch diamond mesh, 9 gauge interwoven; FS RR-F-191, Type 1. Top selvage knuckle end closed, bottom selvage knuckle end closed.
- 3. Tension Wire:** Steel, single strand, 6 gauge thick.
- 4. Finish:** Galvanized, 1.8 oz./sq. ft. coating, ASTM A 123.
- 5. Concrete Anchorage** for posts.
- 6. Line Posts:** 2.50-inch diameter steel pipe, Schedule 40, one piece, without joints.
- 7. Corner and Terminal Posts:** 3.0-inch diameter steel pipe, Schedule 40, one piece, without joints
- 8. Fence Posts:** Schedule 40 in the following sizes: 2" x 8'; 2 ½ x 8'; 3" x 8'; 4" x 10' 6"; 6 5/8" x 10' 6"; 8 5/8" x 10' 6".
- 9. Top and Brace Rail:** 1.66-inch diameter, plain end, sleeve coupled pipe.
- 10. Gate Frame:** 1.66-inch diameter for welded fabrication.
- 11. Caps:** Cast steel galvanized, sized to post diameter, set screw retainer.
- 12. Fittings:** Sleeves, bands, clips, rail ends, tension bars, fasteners, and fittings: steel.
- 13. Gate Hardware:** ASTM A 153; fork latch with gravity drop, center gate stop and drop rod for double gates, three 180-degree gate hinges per lead, and hardware for padlock. Clam shell or Boxed hinged for 90 degree gates.

1.3. Installation

- 1.** Install framework, fabric and accessories in accordance with ASTM F567 and manufacturer's instructions.
- 2.** Set terminal and posts plumb in concrete footings with top of footing 6 inches below finish grade. Embed posts a minimum 2 feet into concrete.
- 3.** Provide top rail through line posts and splice with 7-inch-long rail sleeves.
- 4.** Stretch fabric between terminal posts or at all intervals of 100 feet maximum, whichever is less.
- 5.** Position bottom of fabric one inch above finish grade.
- 6.** Fasten fabric to top rail, line posts, and braces and bottom tension wire on rail with wire ties maximum 15 inches on center.
- 7.** Attach fabric to end and corner posts with tension bars and tension bar clips.

8. Install bottom tension wire stretched taut between terminal posts.
9. Brace each gate and corner posts to adjacent line post with horizontal center brace rail and diagonal truss rods. Install brace rail, one bay from end and post gates.
10. Provide gate posts: 2" x 8'; 2 ½ x 8'; 3" x 8'; 4" x 10'6"; 6 5/8" x 10'6"; 8 5/8" x 10'6" as applicable.
11. Install gate fabric to match fence. Install three hangars, latch, catches, drop hold torsion spring retainer.
12. Provide concrete center drop to footing depth and drop and retainers at center of double gate openings.

1.4. Installation Tolerances

1. Maximum variation from plumb: 1/4 inch
2. Maximum offset from true position: One (1) inch
3. Components shall not infringe on adjacent property lines.

1.5. Fencing Other Than Chain Link

Material specifications and installation requirements for other types of fencing will be determined by the City's Maintenance Department on a per job basis. All materials and installation requirements must adhere to ASTM/ANSI standards as applicable for the particular type of fencing.

1.6. Demolition and Removal of Existing Fencing

1. Demolition and removal of existing fencing includes the removal of fencing and related materials from the work site.
2. The awarded contractor(s) will be required to dispose of all fencing material in accordance with all applicable, rules, regulations, ordinances and laws governing the disposal of fencing material. Material may NOT be disposed of on City property unless approved by the City. The City may ask any unused fencing be dropped off at our warehouse for future projects.

2.0 Ornamental Fencing

2.1. Scope

1. This Section of the Specifications is intended to cover the furnishing of all labor, materials, equipment, and/or incidentals necessary to the completion of all requirements of the drawings, notes, schedules, and these specifications concerning ornamental fencing, gates and grilles including all posts, brackets, and accessories and the installation thereof.

2.2. Shop Drawings and Samples

1. Complete and detailed Shop Drawings indicating profile, locations, size, material, finish, and details of installation of all handrails and accessories shall be submitted for approval. No fabrication shall be done until approval of Shop Drawings is obtained.

2.3. Design Criteria

1. All fencing and gates shall be designed, manufactured and installed to carry 200 pounds per linear foot downward force at top rail, 50 pounds per linear foot horizontal force applied at the top rail and 25 pounds per square foot at center panel sections.

2.4. Fence, Gates and Grilles

1. Furnish and install fence, gates and grilles of sizes as shown on the drawings. As a basis for design, the fence, gates, posts, and fittings are based on those manufactured by Metalco (800) 708-2526, Model # LISTON or equal. Products and grilles by other manufacturers or fabricators meeting these specifications will be acceptable. Fencing, gates, and grilles shall be manufactured from galvanized steel or heavy-duty aluminum, load specifications as per the above specified with a baked on polyester resin coating. Color to be selected by Architect. All connections will be either welded or riveted where appropriate and provide anchoring systems to accommodate the field connection.

Ameristar Fence Products (1-918-835-0898) is an approved equal. Montage Fencing is an approved equal.

2. Components: Fence, gates and grilles shall be Liston model with vertical elements of cold pre-bent tubular steel 3/4" diameter gauge 0.060 inches. Horizontal elements one tubular steel diameter 1-1/8" gauge 0.060 fence panels to be 46-1/2" high.

3. Provide pre-engineered protective cage/grilles over gable end louvers and roof/wall ventilators subject to damage due to high wind projectiles on EHPA building and where identified in the construction documents. Protective units to be painted the same color as the substrate it is anchored to.

4. Steel and Iron Ornamental Metal Work

A. Field verify and measure actual size of depressions in concrete tilt wall and other construction contiguous with ornamental metal prior to fabrication. Coordinate all installation of anchorages for ornamental metal items. Furnish setting drawings, templates, and directions for installing anchorage including sleeves, inserts, anchors, bolts and items with integral anchors that are to be embedded in concrete or masonry.

2.5. Cantilever Gates:

1. Gate Frame: The entire frame and support members shall be manufactured with the same aluminum material, alloy and temper 6061-T6 (ASTM 1184). Fabricate chain link cantilever slide gates in accordance with ASTM F-1184, using 2' Schedule 40 galvanized outside vertical members. Members are welded together with a continuous top track and bottom rail to form a rigid one-piece frame. Vertical interior support uprights will be positioned equally throughout the frame structure. There shall be no openings in any frame work. The cantilever overhang will be 40% or greater for any given opening size.

2. Chain link fabric 2" x 9 gage Knuckle Fabric shall be installed over the entire gate length (UL-325) which will create a universal design (gate can be used for right or left hand applications). Fabric will be attached securely with tension bars that are attached on either frame end by tension bands. High tensile wire will provide additional fabric support across the top and bottom of the gate structure.

3. Wheel Assemblies shall be malleable or ductile Steel housing with Nylon wheels with protective covers. One top and bottom assembly shall be attached to each guide post.

4. Gate posts shall be 4" OD schedule 40 pipe with top caps on all post. Two support posts and 1 latch post shall be installed. A 3 foot 3/16" GA30 Galvanized chain shall be welded to the end post to secure the gate.

5. Gate posts Footing shall be set in concrete (3000 psi compressive strength). The footing shall be 16" in diameter with depth approximately 6" deeper than the post bottom. Deeper footing may be required in areas with loose or soft soil. Set post bottom at least 36" below the surface. Posts must be plumb. Install gates plumb, level and secure for the full opening size making sure they move free of obstructions. Adjust hardware for smooth operation.

2.6. Installation and Workmanship

1. All work shall be of the finest quality and shall be fabricated in a shop whose principal business is the manufacture of the highest-grade ornamental metal work.
2. Fencing, gates and grilles shall be shipped completely pre-finished with all necessary accessories, ready for installation.
3. The fence, gates and grilles shall be rigidly and securely installed in a first class manner by mechanics experienced in the erection of ornamental metal. All fasteners, screws, and fittings shall be drawn tightly.
4. Joints shall be accurately machined to be sharp and true and free from discolorations, welds to be ground smoother prior to receiving protective coatings.
5. Caulk all joints and gapes of dissimilar materials the metal will penetrate to achieve its intended anchoring surfaces to insure a watertight installation.
6. All work areas will be clean and free of debris, tools and material daily.
7. After the work is completed, the Contractor to clean or repair any damage that can be attributed to the Contractor's workmen.

3.0 VINYL FENCING

3.1. Work Included

1. Fence sections including pickets, rails, posts, and caps
2. Gates and related hardware
3. Excavation and anchorage for posts

4. Spacing between posts should be 6 feet

3.2. Quality Assurance

1. Cell classification - ASTM D1784 - 14344B
2. Tensile Strength - 6,500 psi - ASTM D638
3. Izod impact (ft. lbs./in notch) 23°C - 5.0 O°C - 2.0 - ASTM D256
4. Tensile modulus 425,000 psi - ASTM D638
5. Deflection Temperature 67° C - ASTM D648
6. Thermal expansion 3 x 10.5 in / in F

3.3. Submittals

1. Manufacturer's technical literature with fence and gate installation instructions
2. Shop drawings showing fence design
3. Material samples if requested

3.4. Material

1. The fence is constructed with materials made of rigid Poly Vinyl Chloride (PVC) formulated to resist impact and for Ultra Violet (UV) stabilization
2. The extruded product meets or exceeds ASTM DI 784

3.5. Manufacturer

1. Bufftech or approved Equal

3.6. Components

1. Rails, Pickets, Posts
 - a. Are cut to specific lengths as required for style specified
 - b. Rails are routed to receive pickets
 - c. Posts are routed to receive rails at correct heights
2. Stiffener Channel
 - a. Bottom rails for residential and commercial applications contain steel reinforcing for additional strength. Refer to style channel available upon request.
3. Post Caps
 - a. Caps are PVC molded
 - b. External fit flat for true 4" x 4" and 5" x 5" posts
 - c. Internal flat cap available for standard wall 5" x 5" posts and 4" x 4" posts
4. Gates
 - a. Constructed from rigid PVC with reinforcement
 - b. Gates are designed to match fence section. All hardware and bracing is included
5. Hardware for Commercial Styles
 - a. Self-closing hinge:
 - i. Reinforced nylon structure
 - ii. Unit has self-closing capabilities
 - iii. Hinge is adjustable to relieve sag or misalignment problems
 - iv. Mounts on two sides of post for strength and stability
 - b. Nuts, Bolts, Washers and Screws:
 - i. Stainless steel
 - ii. Screw heads are painted black to match hinge
 - iii. Black acorn nuts and washers are used for safety and aesthetics
 - iv. Screw heads are covered using a UV stabilized, molded two-part snap cap system
 - v. Contact manufacturer for Post & Rail hardware

3.7. Warranty

Manufacturer's Warranty: Lifetime non-prorated limited warranty applies to original owner/consumer, or 30-year non-prorated warranty applies to commercial application.

4.0 BID PRICING

1. The Schedule of Unit Pricing (Attachment 1) must be signed by an individual of the bidding firm that has

the authority to bind the firm.

2. No additional charges will be permitted that are not included on the bid sheet.

4.1. Chain Link, Vinyl and Ornamental Fencing

Bid pricing is requested for installed chain link, vinyl and ornamental fencing on a linear foot basis, based on the scope of services and requirements in sections 1.0, 2.0, 3.0 and the increments as detailed on the bid sheet. Additionally, bid pricing is requested for gates in both 4 and 6 foot heights, and bid pricing is requested for fence gate posts per each as detailed on the bid sheet.

4.2. Fencing Other Than Chain Link

Bid pricing is requested for other types of fencing as follows:

1. Installation – hourly rate
2. Percentage of mark-up over cost for materials

4.3. Demolition of Existing Fence

Bid pricing is requested for demolition of existing fence on a linear foot basis, based on the scope of services in section 1.4.

End of Specifications

[Remainder of page is intentionally left blank]



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5717
purchdiv@port-orange.org

ADDENDUM #1
September 8, 2021
ITB #21-21 FENCING SERVICES

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated September 8, 2021 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

A. **CLARIFICATIONS:**

On the DemandStar posting of this Invitation to Bid, e-bidding was erroneously checked as an option to submit bids. The City of Port Orange will NOT be accepting bids through DemandStar and if any are received through DemandStar, they will be rejected without exception.

B. **CHANGES TO SPECIFICATIONS:**

None

C. **QUESTIONS AND ANSWERS:**

None

In all other respects, except as specifically stated herein, the subject ITB #21-21 Fencing Services remains unchanged.

END OF ADDENDUM #1

Jill Poolman, Purchasing Manager
jpoolman@port-orange.org



CITY OF PORT ORANGE

PURCHASING DIVISION

1000 CITY CENTER CIRCLE

PORT ORANGE, FLORIDA 32129

TELEPHONE 386-506-5704

purchdiv@port-orange.org

ADDENDUM NO. #2

October 5, 2021

ITB #21-21 FENCING SERVICES

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated September 7, 2021 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

A. CLARIFICATIONS:

On (Attachment 1) ITB Schedule of Unit Pricing, General notes currently reads:

General notes: Contractor shall be responsible to secure all permits required to install & complete project. No permit fees shall be charged or included. Projects shall be completed as per plans and/or scope of work from the City. Required Inspections, (As Built) Plans, correction notices and completion certificates shall be the responsibility of the contractor. All material and equipment shall meet or exceed design specifications as outlined in Invitation to Bid #21-21 and per project Scope of Work per City instructions.

This verbiage is hereby changed to read:

General notes: Contractor shall be responsible to secure all permits required to install & complete project. Applicable permit fees shall be charged and included. Projects shall be completed as per plans and/or scope of work from the City. Required Inspections, (As Built) Plans, correction notices and completion certificates shall be the responsibility of the contractor. All material and equipment shall meet or exceed design specifications as outlined in Invitation to Bid #21-21 and per project Scope of Work per City instructions.

B. CHANGES TO SPECIFICATIONS:

1. Pursuant to the change outlined in A. Clarifications above, please see Revised "Attachment 1" ITB Schedule of Unit Pricing posted as a separate document intended to replace the original "Attachment 1" ITB Schedule of Unit Pricing. Please note that Bidders **must** complete and include with their submittal the Revised "Attachment 1" ITB Schedule of Unit Pricing in lieu of the original. **Failure to submit the Revised "Attachment 1" ITB Schedule of Unit Pricing will result in a determination of 'non-responsive' and rejection of the bid.**

2. In Section 6 – Special Conditions/Requirements/Instructions, p. 41, the following language is added to the end of the paragraph titled **PAYMENT & PERFORMANCE BONDS:**

Bidder must submit a current letter from bidder's bonding agent showing proof of bonding capacity. This letter must accompany bid package submitted or bidder will be deemed non-responsive and bid submittal will be rejected.

C. QUESTIONS AND ANSWERS:

N/A

Jill Poolman, CPPO, CPPB
Purchasing Manager
jpoolman@port-orange.org

In all other respects, except as specifically stated herein, the subject ITB #21-21 FENCING SERVICES remains unchanged.

END OF ADDENDUM NO. #2

EXHIBIT "2"

Payment and Performance Bond

Consisting of 3 Pages

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

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

BOND NO. _____

PRINCIPAL:

Developer or Contractor: Sterling Enterprises, L.L.C.
Principal Business Address: 230 North Summit Avenue
Lake Helen, Florida 32744
Contact Person: Ryan Wilkins, President
Phone Number: (386) 532-2100

SURETY:

Address: _____

Contact Person: _____
Phone Number: _____

OWNER:

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

Amount: \$ _____

City Project Number: ITB 21-21 Fencing Services

Description of Work: ITB 21-21 Fencing Services

Project Location: Various locations in and around the City of Port Orange, Volusia County, Florida

Legal Description: Various locations in and around the City of Port Orange, Volusia County, Florida

Front Page

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

Sterling Enterprises, L.L.C.

ITB 21-21 Fencing Services

Bond No. _____

COMBINATION PAYMENT AND PERFORMANCE BOND FOR PUBLIC CONSTRUCTION

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

BY THIS BOND, We, **Sterling Enterprises, L.L.C.**, as Principal, and _____, a corporation, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of _____ **AND 00/100 DOLLARS** (\$ _____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

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

Notice of Nonpayment and Time Limitations

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.05(2), (8) and (10), Florida Statutes.

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

IN WITNESS WHEREOF, this performance and payment bond is executed and shall be deemed an original, this _____, day of _____, 2021.

Attest:

STERLING ENTERPRISES, L.L.C.
(Principal)

(As to Corporate Principal) Secretary

By: _____
Ryan Wilkins, President

(Witness to Principal)

(Corporate Seal)

(Surety)

(Witness to Surety)

By: _____
Name: _____
(Attorney-in-Fact)

(Corporate Seal)

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

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



NOTICE OF INTENT TO AWARD

ITB #21-21 Fencing Services

October 20, 2021

On October 12, 2021, Purchasing received two (2) bid submittals for ITB #21-21 Fencing Services.

After review of the responses, City Staff has made a recommendation to award to both submitting firms as follows:

Fence Service, Inc., DBA AAA Fence (Primary)
Sterling Enterprises, LLC (Alternate)

Respectfully Submitted,

Jill Poolman, CPPO, CPPB
Purchasing Manager

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes or failure to post the bond or other security required by law within the time allowed, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes." The 72 hour posting requirement will elapse on October 25, 2021 at 12:00 p.m. E.S.T.

BID TABULATION

CITY OF PORT ORANGE

ITB #21-21

FENCING SERVICES



Sterling Enterprises, LLC

Fence Service, Inc., dba AAA Fence

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price	Unit Price	Extended Price
Scope of work: Furnish & Install Chain Link Fencing - includes fabric, line post, post caps, concrete footings, tension wires and fittings. (Notes 1-5). Terminal Post, stretcher bar, Top Rail and hardware not included.							
1	4 ft. high, Galvanized fencing	Lineal Foot	250	\$14.50	\$3625.00	\$18.00	\$4500.00
2	4 ft. high, Colored Vinyl fencing	Lineal Foot	100	\$18.50	\$1850.00	\$20.00	\$2000.00
3	6 ft. high, Galvanized fencing	Lineal Foot	2700	\$20.50	\$55350.00	\$22.00	\$59400.00
4	6 ft. high Colored Vinyl fencing	Lineal Foot	500	\$28.50	\$14250.00	\$24.00	\$12000.00
Scope of work: Furnish & Install Black Aluminum Ornamental Fencing - includes line post, post caps, concrete footings. (Notes 1-5). Hardware not included.							
5	4' High - Black Aluminum Ornamental Fence	Lineal Foot	100	\$32.00	\$3200.00	\$27.00	\$2700.00
6	6' High - Black Aluminum Ornamental Fence	Lineal Foot	100	\$51.00	\$5100.00	\$30.00	\$3000.00
Scope of work: Relocate or remove existing fencing, including fabric, line posts, top rails, tension wires and fittings. Fill all post holes with clean fill, and haul away any and all fence debris, including disposal of fence and posts. (Notes 1-5).							
7	Relocate existing 4 ft. high fencing	Lineal Foot	2700	\$13.50	\$36450.00	\$5.56	\$15012.00
8	Relocate existing 6 ft. high fencing	Lineal Foot	500	\$17.50	\$8750.00	\$9.00	\$4500.00
9	Relocate existing 8 ft. high fencing	Lineal Foot	200	\$20.50	\$4100.00	\$25.00	\$5000.00
10	Remove and dispose of damaged fencing material	Lineal Foot	3400	\$3.00	\$10200.00	\$1.25	\$4250.00
Scope of work: Furnish & Install Temporary Galvanized Chain-link Fencing. All materials furnished by the fencing contractor, and remain the property of the fencing contractor. (Notes 1-5). Price shall include installation and removal of fencing.							
11	Temporary - 4 ft. high, Galvanized	Lineal Foot	500	\$6.00	\$3000.00	\$3.00	\$1500.00
12	Temporary - 6 ft. high, Galvanized	Lineal Foot	500	\$9.00	\$4500.00	\$3.00	\$1500.00
Scope of work: Furnish & Install Hinged Swing Gate, 4 ft. high, complete, with all mounting hardware, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as single or double gate swing.							
13	3 ft. width - Galvanized	Each	5	\$165.00	\$825.00	\$175.00	\$875.00
14	3 ft. width - Black Aluminum Ornamental	Each	5	\$365.00	\$1825.00	\$350.00	\$1750.00
15	3 ft. width - Colored Vinyl	Each	5	\$265.00	\$1325.00	\$185.00	\$925.00
16	4 ft. width - Galvanized	Each	5	\$195.00	\$975.00	\$185.00	\$925.00
17	4 ft. width - Black Aluminum Ornamental	Each	5	\$415.00	\$2075.00	\$375.00	\$1875.00
18	4 ft. width - Colored Vinyl	Each	5	\$285.00	\$1425.00	\$195.00	\$975.00
19	5 ft. width - Galvanized	Each	5	\$215.00	\$1075.00	\$195.00	\$975.00
20	5 ft. width - Colored Vinyl	Each	5	\$299.00	\$1495.00	\$205.00	\$1025.00
21	6 ft. width - Galvanized	Each	5	\$225.00	\$1125.00	\$205.00	\$1025.00
22	6 ft. width - Colored Vinyl	Each	5	\$315.00	\$1575.00	\$215.00	\$1075.00
23	10 ft. width - Galvanized	Each	5	\$550.00	\$2750.00	\$390.00	\$1950.00
24	10 ft. width - Colored Vinyl	Each	5	\$675.00	\$3375.00	\$410.00	\$2050.00
25	12 ft. width - Galvanized	Each	5	\$650.00	\$3250.00	\$410.00	\$2050.00
26	12 ft. width - Colored Vinyl	Each	5	\$715.00	\$3575.00	\$430.00	\$2150.00
Scope of work: Furnish & Install Hinged Swing Gate, 6 ft. high, complete, with all mounting hardware, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as Single or Double Gate Swing.							
27	3 ft. width - Galvanized	Each	4	\$185.00	\$740.00	\$200.00	\$800.00
28	3 ft. width - Colored Vinyl	Each	4	\$285.00	\$1140.00	\$210.00	\$840.00
29	3 ft. width - Black Aluminum Ornamental	Each	4	\$425.00	\$1700.00	\$475.00	\$1900.00
30	4 ft. width - Galvanized	Each	4	\$225.00	\$900.00	\$210.00	\$840.00
31	4 ft. width - Colored Vinyl	Each	4	\$315.00	\$1260.00	\$220.00	\$880.00
32	4 ft. width - Black Aluminum Ornamental	Each	4	\$450.00	\$1800.00	\$485.00	\$1940.00
33	5 ft. width - Galvanized	Each	4	\$235.00	\$940.00	\$220.00	\$880.00
34	5 ft. width - Colored Vinyl	Each	4	\$335.00	\$1340.00	\$240.00	\$960.00
35	6 ft. width - Galvanized	Each	4	\$255.00	\$1020.00	\$230.00	\$920.00
36	6 ft. width - Colored Vinyl	Each	4	\$350.00	\$1400.00	\$250.00	\$1000.00
37	10 ft. width - Galvanized	Each	4	\$850.00	\$3400.00	\$450.00	\$1800.00
38	10 ft. width - Colored Vinyl	Each	4	\$975.00	\$3900.00	\$475.00	\$1900.00
39	12 ft. width - Galvanized	Each	4	\$900.00	\$3600.00	\$500.00	\$2000.00
40	12 ft. width - Colored Vinyl	Each	4	\$1025.00	\$4100.00	\$525.00	\$2100.00
Scope of work: Furnish & Install Cantilever Sliding Gate, 4ft.high, complete, with all mounting hardware, rollers, guide rails, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as Single or Double Gate Swing.							
41	Gate opening width of 10 ft. single gate - Galvanized	Each	5	\$2150.00	\$10750.00	\$3000.00	\$15000.00
42	Gate opening width of 10 ft. single gate - Colored Vinyl	Each	5	\$2350.00	\$11750.00	\$3200.00	\$16000.00
43	Gate opening width of 12 ft. single gate - Galvanized	Each	8	\$2250.00	\$18000.00	\$3100.00	\$24800.00

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price	Unit Price	Extended Price
44	Gate opening width of 12 ft. single gate - Colored Vinyl	Each	5	\$2500.00	\$12500.00	\$3300.00	\$16500.00
Scope of work: Furnish & Install Cantilever Sliding Gate, 6 ft. high, complete, with all mounting hardware, rollers, guide rails, latching hardware and fabric included. (Notes 1-5). Configured as Single or Double Gate.							
45	Gate opening width of 10 ft. single gate - Galvanized	Each	10	\$2500.00	\$25000.00	\$3500.00	\$35000.00
46	Gate opening width of 10 ft. single gate - Colored Vinyl	Each	4	\$2750.00	\$11000.00	\$3700.00	\$14800.00
47	Gate opening width of 12 ft. single gate - Galvanized	Each	4	\$2700.00	\$10800.00	\$3700.00	\$14800.00
48	Gate opening width of 12 ft. single gate - Colored Vinyl	Each	4	\$2950.00	\$11800.00	\$3900.00	\$15600.00
49	Gate opening width of 12 ft. double gate(2)- Galvanized	Each	4	\$5000.00	\$20000.00	\$4500.00	\$18000.00
50	Gate opening width of 12 ft. double gate(2)- Colored Vinyl	Each	4	\$5300.00	\$21200.00	\$4700.00	\$18800.00
Scope of work: Furnish & Install 4 ft. high fencing, Terminal/Gate Post, including concrete footing, one (1) stretcher bar per post, with all required hardware to complete fencing connections. (Notes 1-5).							
51	Galvanized, 3" round terminal/gate post	Each	10	\$200.00	\$2000.00	\$130.00	\$1300.00
52	Colored, 3" round terminal/gate post	Each	10	\$230.00	\$2300.00	\$140.00	\$1400.00
53	Galvanized, 4" round terminal/gate post	Each	10	\$20.00	\$200.00	\$150.00	\$1500.00
54	Colored, 4" round terminal/gate post	Each	20	\$200.00	\$4000.00	\$160.00	\$3200.00
55	Galvanized, 6-5/8" round terminal/gate post	Each	10	\$300.00	\$3000.00	\$350.00	\$3500.00
56	Colored, 6-5/8" round terminal/gate post	Each	10	\$750.00	\$7500.00	\$375.00	\$3750.00
57	Galvanized, 8-5/8" round terminal/gate post	Each	10	\$800.00	\$8000.00	\$525.00	\$5250.00
58	Colored, 8-5/8" round terminal/gate post	Each	10	\$1050.00	\$10500.00	\$600.00	\$6000.00
Scope of work: Furnish & Install 6 ft. high fencing, Terminal/Gate Post, including concrete footing, one (1) stretcher bar per post, with all required hardware to complete fencing connections. (Notes 1-5).							
59	Galvanized, 3" round terminal/gate post	Each	5	\$200.00	\$1000.00	\$205.00	\$1025.00
60	Colored, 3" round terminal/gate post	Each	5	\$235.00	\$1175.00	\$215.00	\$1075.00
61	Galvanized, 4" round terminal/gate post	Each	5	\$205.00	\$1025.00	\$225.00	\$1125.00
62	Colored, 4" round terminal/gate post	Each	5	\$250.00	\$1250.00	\$235.00	\$1175.00
63	Galvanized, 6-5/8" round terminal/gate post	Each	5	\$400.00	\$2000.00	\$425.00	\$2125.00
64	Colored, 6-5/8" round terminal/gate post	Each	5	\$650.00	\$3250.00	\$450.00	\$2250.00
65	Galvanized, 8-5/8" round terminal/gate post	Each	5	\$900.00	\$4500.00	\$675.00	\$3375.00
66	Colored, 8-5/8" round terminal/gate post	Each	5	\$1150.00	\$5750.00	\$750.00	\$3750.00
Scope of work: Furnish & Install Top Rail with all required hardware to complete fencing connection. (Notes 1-5).							
67	Galvanized Top Rail	Lineal Foot	60	\$5.00	\$300.00	\$3.00	\$180.00
68	Colored Top Rail	Lineal Foot	60	\$6.50	\$390.00	\$3.50	\$210.00
Scope of work: Furnish & Install Fabric with all required hardware to complete fencing connection. (Notes 1-5).							
69	4 ft. high, Galvanized fabric	Lineal Foot	10	\$20.00	\$200.00	\$4.00	\$40.00
70	4 ft. high, Colored fabric	Lineal Foot	10	\$30.00	\$300.00	\$4.50	\$45.00
71	6 ft. high, Galvanized fabric	Lineal Foot	10	\$40.00	\$400.00	\$5.00	\$50.00
72	6 ft. high, Colored fabric	Lineal Foot	10	\$60.00	\$600.00	\$5.50	\$55.00
Scope of work: Furnish & Install Stretcher Bar with all required hardware to complete fencing connection. (Notes 1-5).							
73	4 ft. high, Galvanized stretcher bar	Each	4	\$85.00	\$340.00	\$100.00	\$400.00
74	4 ft. high, Colored stretcher bar	Each	4	\$115.00	\$460.00	\$110.00	\$440.00
75	6 ft. high, Galvanized stretcher bar	Each	4	\$135.00	\$540.00	\$110.00	\$440.00
76	6 ft. high, Colored stretcher bar	Each	4	\$200.00	\$800.00	\$120.00	\$480.00
Additional services and labor may be purchased under this contract at an hourly rate for projects related to the installation, removal, and/or repair of any kind of fencing materials.							
77	Standard hourly labor rate for Foreman for additional fencing work as specified (Monday through Friday).	per hour	300	\$95.00	\$28500.00	\$80.00	\$24000.00
78	Standard hourly labor rate for Laborer for additional fencing work as specified (Monday through Friday).	per hour	300	\$75.00	\$22500.00	\$45.00	\$13500.00
79	Standard hourly labor rate for Foreman for additional fencing work as specified (Nights, weekends and holidays).	per hour	50	\$190.00	\$9500.00	\$120.00	\$6000.00
80	Standard hourly labor rate for Laborer for additional fencing work as specified (Nights, weekends and holidays).	per hour	50	\$160.00	\$8000.00	\$67.50	\$3375.00
				TOTAL BID PRICE	\$487,365.00	TOTAL BID PRICE	\$434,062.00

CITY OF PORT ORANGE, FLORIDA

INVITATION TO BID

FENCING SERVICES

ITB #21-21



City of Port Orange Purchasing Division

Prepared by: Jill Poolman, Purchasing Manager

Release Date: September 7, 2021

Bid Due Date & Time: October 12, 2021 at 2:30 P.M.

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



Legal Notice to Proposers

ITB #21-21 FENCING SERVICES

Notice is hereby given that the City of Port Orange is soliciting bids for ITB #21-21 FENCING SERVICES. Bids will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 P.M. on October 12, 2021** which may be amended by addendum issued by the City. All untimely Bids will not be considered and will be returned to the Bidder unopened. All Bids will be evaluated to ensure they contain all required forms to deem the Bidder responsive or non-responsive. Bid will be opened and read aloud at 2:30 P.M. in Council Chambers.

There will be a Non-Mandatory Pre-Bid Conference for the project at 10:00 A.M. (local time) on **September 21, 2021** at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the Pre-Bid Conference must sign in. The representative of each Bidder shall be an authorized employee of the Bidder and shall sign in accordingly. Bidders are urged to obtain Bid documents and familiarize themselves with the documents prior to the Pre-Bid meeting. Although this meeting is not mandatory, all who intend to bid are encouraged to attend.

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

DESCRIPTION: *The City of Port Orange is soliciting sealed bids for fencing services.*

Bidders must be a commercial entity licensed to do business in the State of Florida and perform the services identified herein and properly registered and licensed to provide the goods or services identified in the scope of work, by all applicable state and local agencies.

All Bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all Bids will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129, and at www.municode.com. Local vendors may be given a local preference pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-275.

Copies of the Bid documents, requirements, scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from the City of Port Orange website at www.port-orange.org/bids.aspx and DemandStar via their website at www.demandstar.com.

All questions shall be directed **in writing** to: jpoolman@port-orange.org or purchdiv@port-orange.org and reference **"Questions on ITB #21-21 FENCING SERVICES"** in the subject line. Last day for questions will be **September 28, 2021 at 5:00 P.M.**

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



SEALED BID • DO NOT OPEN	
SEALED BID NO.	<u>ITB #21-21</u>
BID TITLE:	<u>FENCING SERVICES</u>
DUE DATE/TIME:	<u>October 12, 2021 at 2:30 P.M.</u>
SUBMITTED BY:	<u>(Name of Company)</u>
ADDRESS:	<u></u> <u></u>
DELIVER TO: City of Port Orange, City Clerk's Office Attn: Jill Poolman, Purchasing Manager 1000 City Center Circle Port Orange, FL 32129	
DATE/TIME RECEIVED:	<u></u> (To be stamped by Clerk's Office)

Contents

SECTION 1 – PURPOSE AND OVERVIEW	5
SECTION 2 – INSTRUCTIONS TO BIDDERS	6
SECTION 3 – SCOPE OF WORK AND TECHNICAL SPECIFICATIONS.....	10
SECTION 4 – STANDARD PURCHASE DEFINITIONS.....	15
SECTION 5 – GENERAL TERMS AND CONDITIONS.....	18
SECTION 6 – SPECIAL CONDITIONS/REQUIREMENTS/INSTRUCTIONS.....	41
SECTION 7 – REQUIRED FORMS.....	43
FORM 7.1 – BID SUBMITTAL CHECKLIST	43
FORM 7.2 – BIDDER’S ACKNOWLEDGEMENT FORM	44
FORM 7.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT	45
FORM 7.4 – DRUG FREE PREFERENCE STATEMENT	46
FORM 7.5 – SWORN STATEMENT UNDER SECTION 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES	47
FORM 7.6 – ANTI-COLLUSION FORM.	48
FORM 7.7 – STATEMENT OF VENDOR’S QUALIFICATIONS	49
FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE	50
FORM 7.9 – LISTING OF SUBCONTRACTORS	52
FORM 7.10 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY.....	53
FORM 7.11 – E-VERIFY AFFIDAVIT.....	54
FORM 7.12 - DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS.....	55
ATTACHMENT 1 – SCHEDULE OF UNIT PRICING.....	56
BID BOND.....	57
PAYMENT & PERFORMANCE BOND (FOR INFORMATIONAL PURPOSES ONLY).....	58
LEASED EMPLOYEE AFFIDAVIT FORM (FOR INFORMATIONAL PURPOSES ONLY).....	59
AFFIDAVIT REGARDING WORKERS COMPENSATION FORM (FOR INFORMATIONAL PURPOSES ONLY).....	60
STANDARD CITY OF PORT ORANGE CONTRACT DOCUMENTS (FOR INFORMATIONAL PURPOSES ONLY).....	61

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SECTION 1 – PURPOSE AND OVERVIEW

The purpose for this Invitation to Bid (ITB) is to solicit competitive sealed bids from Companies (Bidders) for the provision of contracting fencing services for the City of Port Orange, FL.

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

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

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO BIDDERS

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

TIMELINE (Local Time):

The City reserves the right to alter dates as needed.

Date of DistributionSeptember 7, 2021
Non-Mandatory Pre-Bid Conference.....September 21, 2021 @ 10:00 A.M.
Deadline for Questions:.....September 28, 2021 by 5:00 P.M.
Final Addendum Posting:.....October 5, 2021 by 5:00 P.M.
Bids Due:.....October 12, 2021 by 2:30 P.M.
City Council Meeting for Approval of Recommendation of Award.....To Be Determined

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

City of Port Orange City Clerk's Office
Attn: Jill Poolman, Purchasing Manager
1000 City Center Circle
Port Orange, Florida 32129

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

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

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

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

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

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

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

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

PRE-BID CONFERENCE/SITE VISIT:

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

QUESTIONS REGARDING THIS ITB:

All questions shall reference “**ITB #21-21 FENCING SERVICES**” in the subject line. All questions concerning this ITB shall be submitted in writing no later than the date and time referenced in the Timeline above to:

Jill Poolman, Purchasing Manager
1000 City Center Circle
Port Orange, FL 32129
jpoolman@port-orange.org or
purchdiv@port-orange.org

ADDENDA REGARDING THE INVITATION TO BID:

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Bid Due Date. Addenda will be provided via the City website www.port-orange.org/bids.aspx and DemandStar website www.demandstar.com. Bidders should not rely on any representations, statements or explanations other than those made in this ITB or in any addendum to this ITB. Where there appears to be a conflict between the ITB and any addenda issued, the last addendum issued will prevail. It is the Bidders responsibility to be sure all correct number of addenda were received by completing Form 7.3 Addendum and Change Order Procedure Acknowledgement.

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

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

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

CLARIFICATIONS:

It is the Bidder’s responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this ITB. Lack of understanding and/or misinterpretation of any portions of this ITB shall not be cause for withdrawal of your Bid after opening or for subsequent protest of award.

MINIMUM QUALIFICATIONS:

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

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

NO LOBBYING:

All Bidders are hereby placed on notice that the City of Port Orange Council, City Employees/Staff, nor Members of the Evaluation Committee (with the exception of the City of Port Orange Purchasing Division personnel designated to receive requests for interpretations or corrections) are not to be lobbied, directly or indirectly either individually or collectively, regarding this ITB. During the entire procurement process,

all Bidders and their subcontractors, sub-consultants, or agents are hereby placed on notice that they are not to contact any persons listed above for such purposes as holding meetings of introduction, dinners, etc., if they intend to submit or have submitted Bids for this project. Any Bidder contacting individuals mentioned herein in violation of this warning may automatically be disqualified from further consideration for this ITB.

PRICING SHEETS:

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

EXCEPTIONS TO SPECIFICATIONS:

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

BID SUBMISSION AND WITHDRAWAL:

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

CORRECTION OF BIDS:

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

WITHDRAWAL OF BIDS:

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

OPENING OF BIDS:

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

LITIGATION HISTORY:

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

DEBARMENT HISTORY:

The City will consider a Bidder's debarment history information in its review and determination of responsibility. All Bidders are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the Bidder, any parent or subsidiary of the Bidder, or any predecessor organization. If the Bidder is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a Bidder's debarment history is an issue of responsibility, the failure to provide debarment history on Form 7.12 as required in the ITB may result in a recommendation of non-responsive by the Purchasing Manager.

REJECTION OF BIDS:

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

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

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

OWNERSHIP OF DOCUMENTS:

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

AMERICANS WITH DISABILITIES ACT (ADA):

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

REQUIRED DOCUMENTS FOR AWARDED BIDDER:

The awarded Bidder shall return all of the required post-award documents within 10 days after the issuance of the Notice of Intent to Award in order to execute the contract. Failure to timely provide required post-award documents may result in the rescission of the award .

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SECTION 3 - SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

The City of Port Orange is soliciting sealed competitive bids for fencing services to include repairs, replacement fence and new fence on an as needed basis throughout the City.

This bid is for the purchase and installation of galvanized chain link, vinyl and ornamental fencing and gates; purchase and installation of other types of fencing; demolition and removal of existing fencing, and repairs of existing fencing. All materials used by the awarded contractor(s) must comply with current ASTM/ANSI standards.

TECHNICAL SPECIFICATIONS

The specifications are listed below and on the Schedule of Unit Pricing (Attachment 1). Bidder will be responsible for meeting all specifications as outlined herein and on the Schedule of Unit Pricing.

1.0 Chain Link Fencing

1.1. System Description

Fence Height: 4 feet and 6 feet

Line Post Spacing: At intervals not exceeding 10 feet

1.2. Material and Components

- 1. Framework Material:** Schedule 40 steel pipe, standard weight; ASTM A 120.
- 2. Fabric:** CLFM1 Standard Industrial Service; ASTM A 392 zinc-coated steel, 2 inch diamond mesh, 9 gauge interwoven; FS RR-F-191, Type 1. Top selvage knuckle end closed, bottom selvage knuckle end closed.
- 3. Tension Wire:** Steel, single strand, 6 gauge thick.
- 4. Finish:** Galvanized, 1.8 oz./sq. ft. coating, ASTM A 123.
- 5. Concrete Anchorage** for posts.
- 6. Line Posts:** 2.50-inch diameter steel pipe, Schedule 40, one piece, without joints.
- 7. Corner and Terminal Posts:** 3.0-inch diameter steel pipe, Schedule 40, one piece, without joints
- 8. Fence Posts:** Schedule 40 in the following sizes: 2" x 8'; 2 1/2 x 8'; 3" x 8'; 4" x 10' 6"; 6 5/8" x 10' 6"; 8 5/8" x 10' 6".
- 9. Top and Brace Rail:** 1.66-inch diameter, plain end, sleeve coupled pipe.
- 10. Gate Frame:** 1.66-inch diameter for welded fabrication.
- 11. Caps:** Cast steel galvanized, sized to post diameter, set screw retainer.
- 12. Fittings:** Sleeves, bands, clips, rail ends, tension bars, fasteners, and fittings: steel.
- 13. Gate Hardware:** ASTM A 153; fork latch with gravity drop, center gate stop and drop rod for double gates, three 180-degree gate hinges per lead, and hardware for padlock. Clam shell or Boxed hinged for 90 degree gates.

1.3. Installation

- 1.** Install framework, fabric and accessories in accordance with ASTM F567 and manufacturer's instructions.
- 2.** Set terminal and posts plumb in concrete footings with top of footing 6 inches below finish grade. Embed posts a minimum 2 feet into concrete.
- 3.** Provide top rail through line posts and splice with 7-inch-long rail sleeves.
- 4.** Stretch fabric between terminal posts or at all intervals of 100 feet maximum, whichever is less.
- 5.** Position bottom of fabric one inch above finish grade.
- 6.** Fasten fabric to top rail, line posts, and braces and bottom tension wire on rail with wire ties maximum 15 inches on center.
- 7.** Attach fabric to end and corner posts with tension bars and tension bar clips.

8. Install bottom tension wire stretched taut between terminal posts.
9. Brace each gate and corner posts to adjacent line post with horizontal center brace rail and diagonal truss rods. Install brace rail, one bay from end and post gates.
10. Provide gate posts: 2" x 8'; 2 ½ x 8'; 3" x 8'; 4" x 10'6"; 6 5/8" x 10'6"; 8 5/8" x 10'6" as applicable.
11. Install gate fabric to match fence. Install three hangars, latch, catches, drop hold torsion spring retainer.
12. Provide concrete center drop to footing depth and drop and retainers at center of double gate openings.

1.4. Installation Tolerances

1. Maximum variation from plumb: 1/4 inch
2. Maximum offset from true position: One (1) inch
3. Components shall not infringe on adjacent property lines.

1.5. Fencing Other Than Chain Link

Material specifications and installation requirements for other types of fencing will be determined by the City's Maintenance Department on a per job basis. All materials and installation requirements must adhere to ASTM/ANSI standards as applicable for the particular type of fencing.

1.6. Demolition and Removal of Existing Fencing

1. Demolition and removal of existing fencing includes the removal of fencing and related materials from the work site.
2. The awarded contractor(s) will be required to dispose of all fencing material in accordance with all applicable, rules, regulations, ordinances and laws governing the disposal of fencing material. Material may NOT be disposed of on City property unless approved by the City. The City may ask any unused fencing be dropped off at our warehouse for future projects.

2.0 Ornamental Fencing

2.1. Scope

1. This Section of the Specifications is intended to cover the furnishing of all labor, materials, equipment, and/or incidentals necessary to the completion of all requirements of the drawings, notes, schedules, and these specifications concerning ornamental fencing, gates and grilles including all posts, brackets, and accessories and the installation thereof.

2.2. Shop Drawings and Samples

1. Complete and detailed Shop Drawings indicating profile, locations, size, material, finish, and details of installation of all handrails and accessories shall be submitted for approval. No fabrication shall be done until approval of Shop Drawings is obtained.

2.3. Design Criteria

1. All fencing and gates shall be designed, manufactured and installed to carry 200 pounds per linear foot downward force at top rail, 50 pounds per linear foot horizontal force applied at the top rail and 25 pounds per square foot at center panel sections.

2.4. Fence, Gates and Grilles

1. Furnish and install fence, gates and grilles of sizes as shown on the drawings. As a basis for design, the fence, gates, posts, and fittings are based on those manufactured by Metalco (800) 708-2526, Model # LISTON or equal. Products and grilles by other manufacturers or fabricators meeting these specifications will be acceptable. Fencing, gates, and grilles shall be manufactured from galvanized steel or heavy-duty aluminum, load specifications as per the above specified with a baked on polyester resin coating. Color to be selected by Architect. All connections will be either welded or riveted where appropriate and provide anchoring systems to accommodate the field connection.

Ameristar Fence Products (1-918-835-0898) is an approved equal. Montage Fencing is an approved equal.

2. Components: Fence, gates and grilles shall be Liston model with vertical elements of cold pre-bent tubular steel 3/4" diameter gauge 0.060 inches. Horizontal elements one tubular steel diameter 1-1/8" gauge 0.060 fence panels to be 46-1/2" high.

3. Provide pre-engineered protective cage/grilles over gable end louvers and roof/wall ventilators subject to damage due to high wind projectiles on EHPA building and where identified in the construction documents. Protective units to be painted the same color as the substrate it is anchored to.

4. Steel and Iron Ornamental Metal Work

A. Field verify and measure actual size of depressions in concrete tilt wall and other construction contiguous with ornamental metal prior to fabrication. Coordinate all installation of anchorages for ornamental metal items. Furnish setting drawings, templates, and directions for installing anchorage including sleeves, inserts, anchors, bolts and items with integral anchors that are to be embedded in concrete or masonry.

2.5. Cantilever Gates:

1. **Gate Frame:** The entire frame and support members shall be manufactured with the same aluminum material, alloy and temper 6061-T6 (ASTM 1184). Fabricate chain link cantilever slide gates in accordance with ASTM F-1184, using 2' Schedule 40 galvanized outside vertical members. Members are welded together with a continuous top track and bottom rail to form a rigid one-piece frame. Vertical interior support uprights will be positioned equally throughout the frame structure. There shall be no openings in any frame work. The cantilever overhang will be 40% or greater for any given opening size.

2. **Chain link fabric** 2" x 9 gage Knuckle Fabric shall be installed over the entire gate length (UL-325) which will create a universal design (gate can be used for right or left hand applications). Fabric will be attached securely with tension bars that are attached on either frame end by tension bands. High tensile wire will provide additional fabric support across the top and bottom of the gate structure.

3. **Wheel Assemblies** shall be malleable or ductile Steel housing with Nylon wheels with protective covers. One top and bottom assembly shall be attached to each guide post.

4. **Gate posts** shall be 4" OD schedule 40 pipe with top caps on all post. Two support posts and 1 latch post shall be installed. A 3 foot 3/16" GA30 Galvanized chain shall be welded to the end post to secure the gate.

5. **Gate posts Footing** shall be set in concrete (3000 psi compressive strength). The footing shall be 16" in diameter with depth approximately 6" deeper than the post bottom. Deeper footing may be required in areas with loose or soft soil. Set post bottom at least 36" below the surface. Posts must be plumb. Install gates plumb, level and secure for the full opening size making sure they move free of obstructions. Adjust hardware for smooth operation.

2.6. Installation and Workmanship

1. All work shall be of the finest quality and shall be fabricated in a shop whose principal business is the manufacture of the highest-grade ornamental metal work.
2. Fencing, gates and grilles shall be shipped completely pre-finished with all necessary accessories, ready for installation.
3. The fence, gates and grilles shall be rigidly and securely installed in a first class manner by mechanics experienced in the erection of ornamental metal. All fasteners, screws, and fittings shall be drawn tightly.
4. Joints shall be accurately machined to be sharp and true and free from discolorations, welds to be ground smoother prior to receiving protective coatings.
5. Caulk all joints and gapes of dissimilar materials the metal will penetrate to achieve its intended anchoring surfaces to insure a watertight installation.
6. All work areas will be clean and free of debris, tools and material daily.
7. After the work is completed, the Contractor to clean or repair any damage that can be attributed to the Contractor's workmen.

3.0 VINYL FENCING

3.1. Work Included

1. Fence sections including pickets, rails, posts, and caps
2. Gates and related hardware
3. Excavation and anchorage for posts

4. Spacing between posts should be 6 feet

3.2. Quality Assurance

1. Cell classification - ASTM D1784 - 14344B
2. Tensile Strength - 6,500 psi - ASTM D638
3. Izod impact (ft. lbs./in notch) 23°C - 5.0 O°C - 2.0 - ASTM D256
4. Tensile modulus 425,000 psi - ASTM D638
5. Deflection Temperature 67° C - ASTM D648
6. Thermal expansion 3 x 10.5 in / in F

3.3. Submittals

1. Manufacturer's technical literature with fence and gate installation instructions
2. Shop drawings showing fence design
3. Material samples if requested

3.4. Material

1. The fence is constructed with materials made of rigid Poly Vinyl Chloride (PVC) formulated to resist impact and for Ultra Violet (UV) stabilization
2. The extruded product meets or exceeds ASTM DI 784

3.5. Manufacturer

1. Bufftech or approved Equal

3.6. Components

1. Rails, Pickets, Posts
 - a. Are cut to specific lengths as required for style specified
 - b. Rails are routed to receive pickets
 - c. Posts are routed to receive rails at correct heights
2. Stiffener Channel
 - a. Bottom rails for residential and commercial applications contain steel reinforcing for additional strength. Refer to style channel available upon request.
3. Post Caps
 - a. Caps are PVC molded
 - b. External fit flat for true 4" x 4" and 5" x 5" posts
 - c. Internal flat cap available for standard wall 5" x 5" posts and 4" x 4" posts
4. Gates
 - a. Constructed from rigid PVC with reinforcement
 - b. Gates are designed to match fence section. All hardware and bracing is included
5. Hardware for Commercial Styles
 - a. Self-closing hinge:
 - i. Reinforced nylon structure
 - ii. Unit has self-closing capabilities
 - iii. Hinge is adjustable to relieve sag or misalignment problems
 - iv. Mounts on two sides of post for strength and stability
 - b. Nuts, Bolts, Washers and Screws:
 - i. Stainless steel
 - ii. Screw heads are painted black to match hinge
 - iii. Black acorn nuts and washers are used for safety and aesthetics
 - iv. Screw heads are covered using a UV stabilized, molded two-part snap cap system
 - v. Contact manufacturer for Post & Rail hardware

3.7. Warranty

Manufacturer's Warranty: Lifetime non-prorated limited warranty applies to original owner/consumer, or 30-year non-prorated warranty applies to commercial application.

4.0 BID PRICING

1. The Schedule of Unit Pricing (Attachment 1) must be signed by an individual of the bidding firm that has

the authority to bind the firm.

2. No additional charges will be permitted that are not included on the bid sheet.

4.1. Chain Link, Vinyl and Ornamental Fencing

Bid pricing is requested for installed chain link, vinyl and ornamental fencing on a linear foot basis, based on the scope of services and requirements in sections 1.0, 2.0, 3.0 and the increments as detailed on the bid sheet. Additionally, bid pricing is requested for gates in both 4 and 6 foot heights, and bid pricing is requested for fence gate posts per each as detailed on the bid sheet.

4.2. Fencing Other Than Chain Link

Bid pricing is requested for other types of fencing as follows:

1. Installation – hourly rate
2. Percentage of mark-up over cost for materials

4.3. Demolition of Existing Fence

Bid pricing is requested for demolition of existing fence on a linear foot basis, based on the scope of services in section 1.4.

End of Specifications

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SECTION 4 – STANDARD PURCHASING DEFINITIONS

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

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple Bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the Bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract
8. **Bidder or Proposer** is a person, firm, or entity that that submits a Response to a Solicitation. Any Bidder/Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. (See also "Vendor")
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerors who submit Responses through a Request for Proposals, Request for Statements of Qualifications, or Invitation to Negotiate.
11. **Competitive (Formal) Solicitation** is the process of requesting and receiving two or more sealed bids, proposals, statements of qualifications or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
12. **Competitive Range** means the responsive submissions that meet the evaluation criteria and are considered to be reasonably susceptible of award.
13. **Construction** means the process of building, repairing, improving, and alterations, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.
14. **Contract** is a written agreement or purchase order issued for the purchase of goods or services.
15. **Contractor** means the person, firm or entity selling goods or services to the City under a Contract.
16. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
17. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
18. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
19. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for the evaluation of proposals, statements of qualifications or replies as part of a Request for Proposals (RFP), Request for Submission of Qualifications (RFSQ), or Invitation to Negotiate (ITN), or competitive grant process.
20. **Evaluator** is a member of the evaluation committee/team.
21. **Goods** are supplies, materials, or equipment.

22. **Intent to Award** is a document, published on DemandStar, that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
23. **Invitation to Bid (ITB) or Bid** means a formal request to prospective vendors requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper.
24. **Invitation to Negotiate (ITN)** means a formal request to prospective vendors requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.
25. **Issues** means points, matters, or concerns to be addressed during negotiations.
26. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the "driver of change" and seeks alternatives/options.
27. **Lowest Responsible Bid** means the responsive Bid meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.
28. **Lowest Responsible Bidder** means the Bidder submitting Lowest Responsible Bid.
29. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).
30. **Negotiator** is a member of the negotiation team.
31. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a Bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
33. **DemandStar** is the official online repository for all City competitive solicitations.
34. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
35. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Vendors to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
36. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
37. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
38. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
39. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
40. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Vendor to perform the resultant Contract.
41. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.

42. **Request for Proposal (RFP)** means a formal request to prospective vendors requesting qualifications of the vendor and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
43. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective vendors requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.
44. **Respondent** means an entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.
45. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.
46. **Responsible (Vendor)** is a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
47. **Responsive (Vendor)** is a vendor that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
48. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
49. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a vendor must execute in terms of delivering specific commodities or in performance of contractual services.
50. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
51. **Solicitation** means a formal request, as applicable, for prospective vendors to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.
52. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.
53. **Stakeholder** means an individual, who is not likely to become a vendor, who has an interest in the commodities/contractual services needed.
54. **Subcontractor** means a person, firm or entity providing goods or services to a Vendor to be used in the performance of the Vendor's obligations under the Contract.
55. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.
56. **Unbalanced Bid** means a Bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.
57. **Vendor** is a person, firm, or entity that provides commodities or services and submits a Response to a Solicitation. Any Vendor may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. (Also called "Bidder" or "Proposer".)

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SECTION 5 – GENERAL TERMS AND CONDITIONS

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

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

1. ACCEPTANCE BY CITY

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

2. ADDENDUM

The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Solicitation Response Due Date. When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Bidders shall acknowledge all addenda by completing Form 7.3 Addendum and Change Order Procedure Acknowledgement and include it in the returned Response package. Failure to acknowledge the correct number of addenda issued may result in rejection of the Response. All Addenda shall be posted by the CITY on www.demandstar.com and City of Port Orange website, www.port-orange.org. The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Solicitation Response Due Date. Bidders should not rely on any representations, statements or explanations other than those made in this Solicitation or in any addendum to the Solicitation. Where there appears to be a conflict between the Solicitation and any addenda issued, the last addendum issued shall prevail.

3. ADDITIONAL GOODS

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

4. ANTI-COLLUSION STATEMENT

By submitting this Response to a Formal Solicitation, the Bidder affirms that this Response is without previous understanding, agreement, or connection with any person, business, or corporation submitting a Response for the same materials, supplies, or equipment, and that this response is in all respects fair, and without collusion or fraud. Additionally, Bidder agrees to abide by all conditions of this Solicitation and certifies that they are authorized to sign this Response for the Bidder. In submitting a Response to the City of Port Orange, the Vendor offers and agrees that if the Response is accepted, the Bidder shall convey, sell, assign or transfer to the City of Port

Orange all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Port Orange. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the Vendor.

5. **APPLICABLE LAWS**

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

6. **ASSIGNMENT**

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

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

A Florida corporation or partnership is required to provide evidence with its response that the Bidder is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with the response from the successful bidder, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. A foreign (out-of-state) corporation or partnership is required to provide evidence with its response that the Bidder is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with the response from the successful bidder, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. A joint venture is required to provide evidence with its response that the joint venture, or at least one of the joint venture partners, is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. However, the joint venture is required to provide evidence prior to contract execution that the joint venture is authorized to transact business in Florida and provide the City with a copy of the joint venture Agreement. A joint venture is also required to provide with its response a Statement of Authority indicating that the individual submitting the joint venture's proposal has the legal authority to bind the joint venture. If not with its response, such evidence must be submitted to the City no later than five (5) business days from the request of the Purchasing Manager.

8. **AWARDS**

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

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

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

9. AWARD AND EXECUTION OF CONTRACT:

When a bid received has been determined to be satisfactory, Contract/s will be awarded, or Purchase Order/s issued to the LOWEST Responsible and Responsive Bidder/s within the time designated in the Contract Documents. The Bidder(s) to whom the award is made shall execute the Contract(s) and return, together with the insurance certificates to the office of the Owner, within the time specified.

10. BID RETURNS

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

11. BID PROTEST

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

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

12. BID/PROPOSAL TABULATION

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

13. BONDS

If this Solicitation requires submission of bid guarantee and performance bonds, there will be additional instructions explaining those requirements. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. When the Purchasing Manager deems it necessary, bid bonds/deposits shall be prescribed and are advertised in the public notices inviting bids. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the total bid amount. Payment and Performance Bonds requested for construction projects shall be in an amount equal to one hundred percent (100%) of the total contract amount at the Bidder's sole cost and expense and will be recorded with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirements of Florida law. The City will bill the cost of recording to the contractor. Unsuccessful Bidders are entitled to the return of their surety when the Purchasing Manager has required such. A successful Bidder shall forfeit any surety required by the Purchasing Manager upon failure on the part of the Bidder to enter into a contract within the time specified after the award of bid.

14. CERTIFICATE OF INSURANCE

Upon notice of intent to award contract resulting from this solicitation, the selected Vendor will be required to submit a Certificate of Insurance showing proof of adequate coverage for professional general liability, errors and omissions and workers' compensation as identified under the insurance requirements of this solicitation and listing the City of Port Orange as a Certificate Holder prior to execution of the contract.

15. CHANGE ORDERS

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

16. CHANGE ORDER REQUEST NOTIFICATION

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

17. CLEAN UP

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

18. CONDUCT OF BIDDERS

All Bidders or individuals acting on behalf of a Bidder are hereby prohibited from lobbying or otherwise attempting to persuade or influence any member of the City Council members, or City staff at any time during the course of the solicitation process. The solicitation process shall end upon issuance of the written Notice of Intended Action containing the recommendation of award to the Bidder. All Bidders or individuals acting on behalf of a Bidder are further prohibited from contacting or otherwise attempting to communicate with any member of the staff or City Council

members regarding the pending solicitation or its outcome until after the issuance of the written recommendation of the most qualified Bidder. Until such recommendation is issued in writing, any questions regarding the pending solicitation shall be submitted to the Purchasing Manager. Failure to comply with this procedure shall result in rejection/disqualification of said submittal without exception. Contact with staff, City Council members during a public meeting shall not be considered a violation of this requirement.

19. CONE OF SILENCE

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

Exceptions to the Cone of Silence:

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

20. CONFLICT OF INTEREST

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

21. CONFLICT OF INSTRUCTIONS

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

22. CONTRACT

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

23. CONTRACT OBLIGATION

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

24. CONTRACT RENEWALS

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

25. COOPERATIVE PURCHASING

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

26. COPYRIGHT AND PATENT RIGHTS

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

27. COST INCURRED BY BIDDER

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

28. DAMAGE

The Contractor shall hold sole responsibility for any damages to the City's equipment or property, the workplace and its contents due to work, negligence in work, personnel and equipment. The Contractor shall be responsible and liable for the safety, injury and health of its working personnel while its employees are performing service work.

29. DEFAULT PROVISIONS

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

30. DELIVERY OF GOODS/SERVICES

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

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

31. DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDERS

In determining the lowest and best responsible Bidders, in addition to price, the following will be considered:

- a. The ability, capacity and skill of the Bidder/Proposer to perform the contract.
- b. Whether the Bidder/Proposer can perform the contract within the time specified, without delay or interference.
- c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder/Proposer.
- d. The quality of performance of previous contracts.
- e. The previous and existing compliance by the Bidder/Proposer with laws and ordinances relating to the contract.
- f. The sufficiency of the financial resources and ability of the Bidder/Proposer to perform the contract or provide the service.
- g. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- h. The ability of the Bidder/Proposer to provide further maintenance and service for the use of the subject of the contract.
- i. The number and scope of conditions attached to the bid.
- j. Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

32. DISCLOSURE OF CONFLICTS

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

33. DISQUALIFICATION OF BIDDER/PROPOSER

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

34. EXCEPTIONS TO SPECIFICATIONS

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

35. E-VERIFY

Bidders shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all employees hired on or after January 1, 2021 by the Bidder and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract. Bidders shall complete Form 7.11 E-Verify Affidavit and include it in the returned Response package. Failure to include the affidavit may result in rejection of the Response.

36. FACILITIES

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

37. FAILURE TO RESPOND

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

38. FINANCIAL STABILITY

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

39. 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.

40. GOVERNING FORMS

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

41. GOVERNING LAW

Bidders shall comply with all applicable federal, state and local laws and regulations. All Responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all Responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com. The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services. Every acquisition equal to or greater than \$10,000.00 must have a signed, notarized "Public Entity Crimes Form" to comply with Section 287.133(3)(a), Florida Statutes. Also required is the "Drug- Free Preference Form" to comply with Section 287.087, Florida Statutes. Each form is included in the Solicitation.

42. GRANT FUNDING

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

43. HIPAA COMPLIANCE

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

44. IDENTICAL TIE BIDS

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

45. INDEMNIFICATION/HOLD HARMLESS

(a) 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.

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

46. INDEPENDENT CONTRACTOR

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

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

cannot save and hold harmless and or indemnify the Bidder and/or the Bidder's employees against any liability incurred as arising as a result of any activity of the Bidder/Proposer or any activity of the Bidder's employees performed in connection with the Contract.

47. INSPECTIONS AND TESTING

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

48. INSURANCE CANCELLATION

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

49. INSURANCE REQUIREMENTS

Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation.

IMPORTANT: The City does not accept Workers' Compensation Exemptions. Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. 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. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

Contractor shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Contractor is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Contractor to ensure the subcontractors maintain the required coverage, shall not relieve the Contractor of any contractual responsibility, obligation or liability.

The City reserves the right to increase insurance coverage as determined for higher risk contracts. The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance

policy shown on the Certificate of Insurance is in compliance with and does not waive the insurance required by this.

Should at any time the Contractor or subcontractors not maintain the insurance coverages required herein, the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

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Standard Insurance Requirements

	Insurance	Standards	Additional Requirements
REQUIRED	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit Form Exhibit.	<u>Contract Amount Limits</u> Up to \$10 million Statutory/\$500,000 \$10 - \$20 million Statutory/\$1,000,000 Contracts over \$20 million To Be Determined by the City.	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.
REQUIRED	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is 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.
REQUIRED	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	<u>Limits:</u> Auto Liability Body Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate	
Additional Insurance Requirements			
	Property Insurance Builders Risk. <u>Additional Coverage:</u>	Limits: Buildings - Completed value of Contract. "All Risk" coverage on latest _____ IS O for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	Limits: Coverage - \$1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	Limits: Coverage - \$1,000,000	
☐	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage – \$ <u>To be determined.</u>	
REQUIRED	Payment and Performance Bond Required	Limits: Coverage - Equal to amount of Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$25,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.		

50. INVOICES AND PAYMENTS

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, Port Orange, Florida, 32129. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if contractor offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D.

51. IRREVOCABILITY OF RESPONSES

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

52. LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS

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

53. LEGAL REQUIREMENTS

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

54. LICENSES, PERMITS AND TAXES

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

55. LITERATURE (if applicable):

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

56. LOCAL PREFERENCE

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

(a) Competitive Bids

- (1) Port Orange Business: In any competitive bidding process where a bid submitted by a Port Orange business is within eight percent (8%) of the lowest and best responsible bid submitted by a non-Port-Orange business, then the Port Orange business shall have the opportunity to submit, within five (5) working days of the bid opening, a best and final bid equal to or lower than the amount of the original low bid. The bid shall then be awarded to the lowest and best responsible bidder.

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

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

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

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

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

57. **MAINTENANCE**

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

58. **NAME BRANDS**

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

equality and acceptability of products offered.

59. NON-DISCRIMINATION

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

60. NON-EXCLUSIVITY OF CONTRACT

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

61. NON-PERFORMANCE:

Failure to meet the expected quality of workmanship, schedule, or other criteria agreed upon, shall be considered a default. In case of default, the City may procure the required services from other sources and hold the Contractor responsible for any excess costs occasioned thereby and may immediately cancel the contract.

62. NOTICE TO CONTRACTOR

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

63. OPTIONAL CONTRACT USAGE

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

64. OTHER AGENCIES

- (a) All Bidders awarded contracts from this Bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices, terms, and conditions, if agreed to by both parties.
- (b) It is understood that at no time will any city, municipality, or other agency be obligated for placing an order for any other city, municipality, or agency; nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further, it is understood that each agency will issue its own purchase order to the awarded Bidder(s).

65. PATENTS/COPYRIGHTS

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

66. PRE-BID CONFERENCE OR PRE-PROPOSAL CONFERENCE

The Purchasing Manager shall determine if a pre-bid conference is required and provide the date, time and location in the Solicitation legal advertisement and Solicitation specifications. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida, 32129. A site visit may be included and shall immediately follow. Attendance to the pre-bid and pre-proposal conference is normally non-mandatory. Only Bidders attending a mandatory pre-bid conference will be eligible to submit a Response. The representative of each Bidder shall be an authorized employee of the Bidder and shall sign in accordingly.

67. PREPARATION OF RESPONSES

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

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

68. POSTPONEMENT / CANCELLATION / WAIVER OF IRREGULARITIES

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

69. PRICING

The Bidder certifies that prices, terms and conditions in the Response will be firm for acceptance for a period of ninety (90) days from the date of Response opening unless otherwise stated by the City. Responses may not be withdrawn before the expiration of ninety (90) days. Prices shall be firm, with no escalator clauses unless specified by the City. Responses may be withdrawn after ninety (90) days only upon written notification to the City. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Pricing/Delivery Information form. Prices shall be all inclusive: no price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, the Bidder shall indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid. When submitting Bids/Proposals based on a Lump Sum basis, Bidders shall be required to submit a Schedule of Unit Pricing for each line item listed on the Bid Proposal in order to be considered for award.

70. PRODUCTS/ESTIMATES:

Items included on the Bid Form represent the needs of various departments within the City. This is in no way to be construed as the entire or complete list of products to be purchased from the resulting contract. There is no anticipated dollar volume for this contract and cannot be guaranteed. Items shall be ordered on an as needed, when needed basis. Exact quantities or estimated quantities cannot be predetermined.

71. PROPRIETY INFORMATION

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

financial statement that an agency requires a prospective Bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution.

72. PROTECTION

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

73. PUBLIC ENTITY CRIMES

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

74. PUBLIC RECORDS COMPLIANCE

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

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

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

75. PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT

Section 119.071(1)(c), Florida Statutes: **Any financial statement that an agency requires a prospective Vendor to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law.** This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Vendors will not be able to procure a copy of their competitor's bids until an intended decision is reached or 30 days has elapsed since the time

of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a vendor, or where a vendor answers questions. In other words, neither Vendors, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Vendors, but the new law limits public attendance to portions of such meetings.

76. PURCHASE ORDER AND DELIVERY

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

77. QUALITY

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

78. RECORDS/AUDIT

- (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.

79. RECYCLED MATERIALS

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

80. REJECTING OF RESPONSES, REBIDDING

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

81. REQUEST FOR ADDITIONAL INFORMATION

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

82. REVIEW OF RESPONSES/SUBMISSIONS

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

83. RIGHT OF WITHDRAWAL

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

84. RIGHTS TO SOLICITATION SUBMITTED MATERIAL

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

85. RULES, REGULATIONS AND LICENSING REQUIREMENT

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

86. SAMPLES

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

87. SEPARATION AND DISTRIBUTION

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

88. SEVERABILITY

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

89. SIGNATURE REQUIRED

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

90. SIGNED RESPONSE CONSIDERED AN OFFER

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

91. SILENCE OF SPECIFICATIONS

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

92. SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES

Unless otherwise specified, Bidders shall use the Solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Bidder's authorized representative. Responses containing erasures or corrections must be initialed by the Bidder in ink. Responses shall be submitted by mail or hand delivery only. No Response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: Joseph Castro, Buyer, Purchasing Office, a division of the Finance Department, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 p.m. on the date indicated in the Solicitation documents or as addenda issued by the City.

One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All late responses will be returned to the Bidder and will not be unopened.

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

93. STATE LICENSING REQUIREMENTS

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

94. SUBCONTRACTING

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

95. SUPPLEMENTAL MATERIALS

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

96. TAXES

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

97. TERM CONTRACTS

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

98. TERMINATION CONVENIENCE – NOTICE

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

99. TERMINATION - NOTICE

Either party may cancel the contract at any time after award, unless otherwise specified. The City shall be required to give the Bidder notice of thirty days prior to the date of cancellation of the

contract. The Bidder shall be required to give the City written notice (60) sixty days prior to the date of cancellation of the contract. The City of Port Orange may terminate the contract without cause upon thirty (30) days written notice.

100. TITLE TRANSFER

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

101. UNBALANCED BID

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

102. USE OF SOLICITATION FORMS

The Bidder shall complete the appropriate Solicitation Form(s) included in the Solicitation. All blanks on the Solicitation Forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A." Supplemental information may be attached to the Solicitation Forms. Failure to fully complete the appropriate Solicitation Forms may result in disqualification of the Response. If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional Solicitation Form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated. The signature of the Authorized Person or Entity must be that of an officer, partner or a sole proprietor of the entity making the Response. The original Response, and each copy submitted shall contain an original signature on the Bidder's Acknowledgement Form contained in each Solicitation.

103. VARIANCES

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

104. BIDDER'S PRODUCT OR SERVICES

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

- a. If the Bidder is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.
- b. The Bidder shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Bidder.
- c. In furnishing the service or product to the City, the Bidder shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments.

Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, Contract, proposal or quote.

105. WAIVER OF IRREGULARITIES

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

106. WARRANTIES

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

[Remainder of this page left intentionally blank]

SECTION 6 – SPECIAL CONDITIONS/REQUIREMENTS/INSTRUCTIONS

PERIOD OF OFFER VALIDITY:

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

CONTRACT TERM:

The initial term of the contract is two (2) years upon agreement. Two (2) one (1) year renewals are available upon agreement between both parties.

TIME-LINE FOR AWARD:

Notice of Intent to Award will occur after bid opening and complete review of all submitted bid information.

BID BONDS

A Bid Guarantee in the form of a Bid Bond executed by the Bidder and an acceptable surety or a certified check or bank draft payable to the City of Port Orange, Florida in an amount equal to five percent (5%) of the proposed bid shall be submitted with each submission. If the bidder fails to submit the required bid bond, the bid will be deemed non-responsive and will not be considered for award.

PAYMENT & PERFORMANCE BONDS

The work to be performed under this Invitation to Bid and subsequent agreement between the awarded contractors and the City will be done throughout the City of Port Orange and will vary in size and cost. Based on the value of specific projects, the City may require the awarded contractor to furnish and pay for a one hundred percent (100%) of project value Payment and Performance Bond to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirement of Florida law. The City will bill the cost of recording to the contractor.

TIME IS OF THE ESSENCE: The Contractor acknowledges that time is of the essence to complete the work as required under its contract(s) with the City of Port Orange. The Contractor agrees that all work shall be performed diligently and uninterrupted at such a rate of progress as will ensure full completion thereof within the contractually required time. Should the Contractor neglect, fail, or refuse to complete the work within the time specified by the City representative for each project, then the Contractor shall pay to the City the daily liquidated damage sum of up to \$500.00, not as a penalty but as liquidated damages for breach of Contract as set forth herein.

ELIGIBILITY OF VENDOR:

To be eligible to respond to this ITB, the Bidders must demonstrate proof of prior experience working with the services described in this ITB. Please provide eligibility experience with your submittal.

LICENSES AND PERMITS

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

NOTICE:

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

CONTRACTOR SELECTION & METHODOLOGY:

The City desires to award the lowest responsive and responsible bidder as the "Primary" contractor and can award up to three (3) additional responsive and responsible contractors. Work awarded under this bid will be divided into two categories. The first of which shall include projects valued from zero "0" dollars to twenty-five thousand "\$25,000.00" dollars. Work in this category will be assigned to the "Primary" awarded contractor to provide a quote. If the "Primary" awarded contractor cannot perform a project assigned to them or otherwise declines to provide a quote for the project, the 2nd lowest awarded contractor will be asked to quote the project. Likewise, if the 2nd lowest awarded contractor cannot perform a project assigned to them or otherwise declines to provide a quote for the project, the 3rd lowest awarded contractor will be

asked to quote the project and so on until the project is successfully assigned. The second category will include projects with an estimated value of \$25,001 - \$200,000 and shall be quoted amongst all awarded contractors. Category two projects will require participation from all awarded contractors either by written quote or written declination to quote.

The City reserves the right to amend this methodology for contractor selection and the assignment of work if it determines that such a decision would be in its best interest. Such changes may include but not be limited to emergency situations, performance issues, workload concerns, and increased or decreased work volume.

WARRANTY:

The Contractor will provide all warranties within the specifications and a warranty for materials and workmanship for a minimum period of one year from the time that the CITY issues its final acceptance certificate for the service.

SAFETY:

Contractor will comply with all applicable OSHA, State of Florida Safety Regulations and comply with all construction safety requirements of local authorities having jurisdiction. Contractor shall exercise all due caution to exclude the public from the work area and especially from contact with any hazardous materials.

REPAIR OF DAMAGES:

It is the responsibility of the Contractor to repair any damages incurred in the area that is directly related to the project. When damages occur, the City of Port Orange Representative is to be notified and shall inspect the repairs upon completion.

SITE CLEANLINESS:

The Contractor shall give special attention to keeping the work site clean and free from trash and debris. Trash, debris and waste materials shall not be left at the customer's premises but shall be disposed of at the Contractor's facilities. Site must be maintained free of trash and construction debris and cleared every day.

[Remainder of this page left intentionally blank]

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- _____ Form 7.2 – Bidder’s Acknowledgement Form
- _____ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- _____ Form 7.4 – Drug Free Preference Statement
- _____ Form 7.5 – Public Entity Crimes Statement
- _____ Form 7.6 – Anti-Collusion Form
- _____ Form 7.7– Statement of Bidder’s Qualifications
- _____ Form 7.8 – Professional References for Previous Experience
- _____ Form 7.9 – Listing of Subcontractors
- _____ Form 7.10 – Local Business Affidavit of Eligibility
- _____ Form 7.11 – E-Verify Affidavit
- _____ Form 7.12 - Debarment, Suspension and Other Responsibility Matters
- _____ Attachment 1 – ITB Schedule of Unit Pricing
- _____ Bid Bond
- _____ Current Letter of Bonding Capacity
- _____ Copy of License (Contractor, Sunbiz, etc.)
- _____ Submission of one (1) original marked “ORIGINAL” and one (1) digital (CD or flash drive) version in .pdf format.

BY:

Name of Business: _____

Authorized Signature: _____

Date: _____

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER’S ACKNOWLEDGEMENT FORM

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

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

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

NAME OF BUSINESS	MAILING ADDRESS
AUTHORIZED SIGNATURE	CITY, STATE & ZIP CODE
NAME, TITLE, TYPED	TELEPHONE NUMBER / FAX NUMBER
FEDERAL IDENTIFICATION #	E-MAIL ADDRESS

STATE OF _____ COUNTY OF _____

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

_____ and who:
(NAME OF ORGANIZATION)

[Notary: Please select one]

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

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

This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

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

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

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

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

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

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

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

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

(NAME)

(TITLE)

and who:

(NAME OF ORGANIZATION)

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

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

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

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

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

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

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

(NAME)

(TITLE)

_____ and who:

(NAME OF ORGANIZATION)

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

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

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

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

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

STATE OF _____
COUNTY OF _____

Name of Business
By: _____
Printed Name: _____
Title: _____

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

[Notary: Please select one]

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

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

This document must be completed and returned with your Submittal

FORM 7.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

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

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

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

NAME OF FIRM: _____

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

PRINTED NAME of SIGNATORY ABOVE: _____

TITLE: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____

F.E.I.N. NUMBER: _____

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

NO BID (REASON): _____

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER'S QUALIFICATIONS

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

- A. Name of Bidder _____
- B. Permanent main office address _____
- C. Date organized _____
- D. If a corporation, where incorporated _____
- E. How many years have you been engaged in the contracting business under your present firm or trade name? _____
- F. Contracts on hand: (List these, showing amount of each contract and the appropriate anticipated dates of completion.) **(Use separate paper and attach with submittal.)**
- G. General character of work performed by your company _____
- H. Have you ever failed to complete any work awarded to you? ____yes ____no If yes, where and why? _____
- I. Have you ever defaulted on a contract? ____yes ____no If yes, where and why? _____
- J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed. **(Use separate paper and attach with submittal.)**
- K. List your major equipment currently owned or leased. **(Use separate paper and attach with submittal.)**
- L. Experience in work similar to this type of project. **(Use separate paper and attach with submittal.)**
- M. Background and experience of the principal members of your organization, including the officers. **(Use separate paper and attach with submittal.)**
- N. Credit currently available: \$ _____
- O. Give bank representative name: _____
- P. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ____yes ____no If no, please state the reason. _____

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

By:

Name of Business

Printed Name

Title:

STATE OF _____

COUNTY OF _____

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

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

***This document must be completed
and returned with your Submittal***

Notary Public, State of _____

Printed, typed or stamped name,
commission and expiration:

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Bidder proposes that he/she is qualified to perform the work referenced in this ITB and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein. Please provide three (3) current references with correct contact information for clients that bidder has performed similar services for in the past three (3) years. **(Do not include the City of Port Orange.)**

1.

Company Name:

Contact Person:

City, State:

Telephone Number:

Email Address:

Description of goods or Services provided:

Contract Amount:

Start/End Date ofContract:
2.

Company Name:

Contact Person:

City, State:

Telephone Number:

Email Address:

Description of goods or Services provided:

Contract Amount:

Start/End Date ofContract:
3.

Company Name:

Contact Person:

City, State:

Telephone Number:

Email Address:

Description of goods or Services provided:

Contract Amount:

Start/End Date ofContract:

This document must be completed and returned with your Submittal.

(Form 7.8 – Professional References for Previous Experience Page 2)

LISTING OF CURRENT SUPPLIERS

List below three (3) suppliers that bidder has used in the past three (3) years. The City reserves the right to verify the validity of the information provided herein.

List suppliers that you currently use or have used in the past three (3) years for materials or equipment to perform similar work as outlined in this ITB. Bidder may list additional suppliers they wish to show on a separate page.

	<i>Supplier Name</i>	<i>Phone</i>	<i>Current Supplier? Y or N</i>	<i>Number of years doing business with</i>	<i>Description of supplies or equipment provided</i>
1					
2					
3					

This document must be completed and returned with your Submittal.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful Bidder shall not substitute subcontractors without approval from the City. Bidder shall attach additional sheets as necessary. Please mark N/A for no subcontractors.

Subcontractor No. 1

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 2

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 3

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 4

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

This document must be completed and returned with your Submittal

FORM 7.10 - LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

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

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

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

BUSINESS NAME: _____ CONTACT PERSON/TITLE: _____ MAILING ADDRESS: _____

CITY-STATE-ZIP: _____ Length of Time at Address Provided: _____

Physical Presence of Business: ☐ Headquarters and/or ☐ Principal Place of Business

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

FEIN (Federal Employer Identification Number): _____

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

☐ Other (Specify): _____

PHONE NUMBER: _____ FAX: _____

EMAIL: _____

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

ATTESTATION – I understand that:

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

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

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of _____ physical presence or _____ online notarization, this _____ day of _____, 20____, by _____, as _____ of _____, a _____. He or she is _____ personally known or _____ produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal.



**CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT**

IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: _____

Solicitation Number: _____

I, the undersigned, hereby certify that _____ [insert contractor company name] does not employ, contract with, or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

Further, I certify all employees hired on or after January 1, 2021 have had their work authorization status verified through the E-Verify system. I acknowledge that it is my responsibility to ensure full compliance with Section 448.095, Florida Statutes. I am aware enrollment in the E-Verify system for employers can be done at www.e-verify.gov.

A true and correct copy of _____ [insert contractor company name] proof of registration in the E-Verify system is attached to this Affidavit.

By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

(Print or Type Name, Title)

(Signature of Affiant)

(Federal Employer ID Number – FEIN)

(E-Verify Number)

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 20____, by _____ as _____ of _____ on behalf of the company. He/she is personally known to me or has produced _____ (TYPE OF ID) as identification.

Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and expiration of commission term

This document must be completed and returned with your Submittal

FORM 7.12 – DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

**PRIMARY COVERED TRANSACTIONS
(TO BE COMPLETED BY PRIME CONTRACTOR)**

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

Organization Name

Bid Number or Project Name

Name(s) and Title(s) of Authorized Representatives

Signature

Date

This document must be completed and returned with your Submittal



"ATTACHMENT 1" ITB SCHEDULE OF UNIT PRICING

BID FORM

CITY OF PORT ORANGE

**ITB 21-21
FENCING SERVICES**

Completed "Attachment 1" Schedule of Unit Pricing Bid form **MUST** be included with Bid Submission

Instruction to save Attachment from DemandStar website:

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

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

Bidders are required to provide "Attachment 1" in Excel format in electronic format, preferably thumb drive.

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

General notes : Contractor shall be responsible to secure all permits required to install & complete project. No permit fees shall be charged or included. Projects shall be completed as per plans and/or scope of work from the City. Required Inspections, (As Built) Plans, correction notices and completion certificates shall be the responsibility of the contractor. All material and equipment shall meet or exceed design specifications as outlined in Invitation to Bid #21-21 and per project Scope of Work per City instructions.

NOTES

(1) Line Item Bid Price shall include furnishing of all labor & material to install total fencing project completed, as per Jurisdictional code and shall be gross value, inclusive of all associated costs such as vehicle, fuel, powered post hole diggers/augers, normal hand tools, etc.

(2) All Fence installations shall comply with and conform to all applicable Building Codes, Jurisdictional authorities, Local and State Jurisdictional Codes, and ASTM F 567 Standard Practices for Installation of Chain Link Fence.

(3) All Chain Link Fabric to be minimum 9 ga. Without vinyl (.144 dia) & 2" mesh.

(4) All Fence Installations shall be Colored Vinyl unless specifically specified to be Galvanized. See Bid Specifications

(5) Fence installations shall include all posts, post caps, components and hardware to be same color as fence fabric.

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
Scope of work: Furnish & Install Chain Link Fencing - includes fabric, line post, post caps, concrete footings, tension wires and fittings. (Notes 1-5). Terminal Post, stretcher bar, Top Rail and hardware not included.					
1	4 ft. high, Galvanized fencing	Lineal Foot	250	\$0.00	\$0.00
2	4 ft. high, Colored Vinyl fencing	Lineal Foot	100	\$0.00	\$0.00
3	6 ft. high, Galvanized fencing	Lineal Foot	2700	\$0.00	\$0.00
4	6 ft. high Colored Vinyl fencing	Lineal Foot	500	\$0.00	\$0.00
Scope of work: Furnish & Install Black Aluminum Ornamental Fencing - includes line post, post caps, concrete footings. (Notes 1-5). Hardware not included.					
5	4' High - Black Aluminum Ornamental Fence	Lineal Foot	100	\$0.00	\$0.00
6	6' High - Black Aluminum Ornamental Fence	Lineal Foot	100	\$0.00	\$0.00
Scope of work: Relocate or remove existing fencing, including fabric, line posts, top rails, tension wires and fittings. Fill all post holes with clean fill, and haul away any and all fence debris, including disposal of fence and posts. (Notes 1-5).					
7	Relocate existing 4 ft. high fencing	Lineal Foot	2700	\$0.00	\$0.00
8	Relocate existing 6 ft. high fencing	Lineal Foot	500	\$0.00	\$0.00
9	Relocate existing 8 ft. high fencing	Lineal Foot	200	\$0.00	\$0.00
10	Remove and dispose of damaged fencing material	Lineal Foot	3400	\$0.00	\$0.00
Scope of work: Furnish & Install Temporary Galvanized Chain-link Fencing. All materials furnished by the fencing contractor, and remain the property of the fencing contractor. (Notes 1-5). Price shall include installation and removal of fencing.					
11	Temporary - 4 ft. high, Galvanized	Lineal Foot	500	\$0.00	\$0.00
12	Temporary - 6 ft. high, Galvanized	Lineal Foot	500	\$0.00	\$0.00
Scope of work: Furnish & Install Hinged Swing Gate, 4 ft. high, complete, with all mounting hardware, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as single or double gate swing.					
13	3 ft. width - Galvanized	Each	5	\$0.00	\$0.00
14	3 ft. width - Black Aluminum Ornamental	Each	5	\$0.00	\$0.00
15	3 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
16	4 ft. width - Galvanized	Each	5	\$0.00	\$0.00
17	4 ft. width - Black Aluminum Ornamental	Each	5	\$0.00	\$0.00

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
18	4 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
19	5 ft. width - Galvanized	Each	5	\$0.00	\$0.00
20	5 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
21	6 ft. width - Galvanized	Each	5	\$0.00	\$0.00
22	6 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
23	10 ft. width - Galvanized	Each	5	\$0.00	\$0.00
24	10 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
25	12 ft. width - Galvanized	Each	5	\$0.00	\$0.00
26	12 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
Scope of work: Furnish & Install Hinged Swing Gate, 6 ft. high, complete, with all mounting hardware, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as Single or Double Gate Swing.					
27	3 ft. width - Galvanized	Each	4	\$0.00	\$0.00
28	3 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
29	3 ft. width - Black Aluminum Ornamental	Each	4	\$0.00	\$0.00
30	4 ft. width - Galvanized	Each	4	\$0.00	\$0.00
31	4 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
32	4 ft. width - Black Aluminum Ornamental	Each	4	\$0.00	\$0.00
33	5 ft. width - Galvanized	Each	4	\$0.00	\$0.00
34	5 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
35	6 ft. width - Galvanized	Each	4	\$0.00	\$0.00
36	6 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
37	10 ft. width - Galvanized	Each	4	\$0.00	\$0.00
38	10 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
39	12 ft. width - Galvanized	Each	4	\$0.00	\$0.00
40	12 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
Scope of work: Furnish & Install Cantilever Sliding Gate, 4ft.high, complete, with all mounting hardware, rollers, guide rails, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as Single or Double Gate Swing.					
41	Gate opening width of 10 ft. single gate - Galvanized	Each	5	\$0.00	\$0.00
42	Gate opening width of 10 ft. single gate - Colored Vinyl	Each	5	\$0.00	\$0.00
43	Gate opening width of 12 ft. single gate - Galvanized	Each	8	\$0.00	\$0.00
44	Gate opening width of 12 ft. single gate - Colored Vinyl	Each	5	\$0.00	\$0.00
Scope of work: Furnish & Install Cantilever Sliding Gate, 6 ft. high, complete, with all mounting hardware, rollers, guide rails, latching hardware and fabric included. (Notes 1-5). Configured as Single or Double Gate.					
45	Gate opening width of 10 ft. single gate - Galvanized	Each	10	\$0.00	\$0.00
46	Gate opening width of 10 ft. single gate - Colored Vinyl	Each	4	\$0.00	\$0.00
47	Gate opening width of 12 ft. single gate - Galvanized	Each	4	\$0.00	\$0.00
48	Gate opening width of 12 ft. single gate - Colored Vinyl	Each	4	\$0.00	\$0.00
49	Gate opening width of 12 ft. double gate(2)- Galvanized	Each	4	\$0.00	\$0.00
50	Gate opening width of 12 ft. double gate(2)- Colored Vinyl	Each	4	\$0.00	\$0.00
Scope of work: Furnish & Install 4 ft. high fencing, Terminal/Gate Post, including concrete footing, one (1) stretcher bar per post, with all required hardware to complete fencing connections. (Notes 1-5).					
51	Galvanized, 3" round terminal/gate post	Each	10	\$0.00	\$0.00
52	Colored, 3" round terminal/gate post	Each	10	\$0.00	\$0.00
53	Galvanized, 4" round terminal/gate post	Each	10	\$0.00	\$0.00
54	Colored, 4" round terminal/gate post	Each	20	\$0.00	\$0.00
55	Galvanized, 6-5/8" round terminal/gate post	Each	10	\$0.00	\$0.00
56	Colored, 6-5/8" round terminal/gate post	Each	10	\$0.00	\$0.00
57	Galvanized, 8-5/8" round terminal/gate post	Each	10	\$0.00	\$0.00

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
58	Colored, 8-5/8" round terminal/gate post	Each	10	\$0.00	\$0.00
Scope of work: Furnish & Install 6 ft. high fencing, Terminal/Gate Post, including concrete footing, one (1) stretcher bar per post, with all required hardware to complete fencing connections. (Notes 1-5).					
59	Galvanized, 3" round terminal/gate post	Each	5	\$0.00	\$0.00
60	Colored, 3" round terminal/gate post	Each	5	\$0.00	\$0.00
61	Galvanized, 4" round terminal/gate post	Each	5	\$0.00	\$0.00
62	Colored, 4" round terminal/gate post	Each	5	\$0.00	\$0.00
63	Galvanized, 6-5/8" round terminal/gate post	Each	5	\$0.00	\$0.00
64	Colored, 6-5/8" round terminal/gate post	Each	5	\$0.00	\$0.00
65	Galvanized, 8-5/8" round terminal/gate post	Each	5	\$0.00	\$0.00
66	Colored, 8-5/8" round terminal/gate post	Each	5	\$0.00	\$0.00
Scope of work: Furnish & Install Top Rail with all required hardware to complete fencing connection. (Notes 1-5).					
67	Galvanized Top Rail	Lineal Foot	60	\$0.00	\$0.00
68	Colored Top Rail	Lineal Foot	60	\$0.00	\$0.00
Scope of work: Furnish & Install Fabric with all required hardware to complete fencing connection. (Notes 1-5).					
69	4 ft. high, Galvanized fabric	Lineal Foot	10	\$0.00	\$0.00
70	4 ft. high, Colored fabric	Lineal Foot	10	\$0.00	\$0.00
71	6 ft. high, Galvanized fabric	Lineal Foot	10	\$0.00	\$0.00
72	6 ft. high, Colored fabric	Lineal Foot	10	\$0.00	\$0.00
Scope of work: Furnish & Install Stretcher Bar with all required hardware to complete fencing connection. (Notes 1-5).					
73	4 ft. high, Galvanized stretcher bar	Each	4	\$0.00	\$0.00
74	4 ft. high, Colored stretcher bar	Each	4	\$0.00	\$0.00
75	6 ft. high, Galvanized stretcher bar	Each	4	\$0.00	\$0.00
76	6 ft. high, Colored stretcher bar	Each	4	\$0.00	\$0.00
Additional services and labor may be purchased under this contract at an hourly rate for projects related to the installation, removal, and/or repair of any kind of fencing materials.					
77	Standard hourly labor rate for Foreman for additional fencing work as specified (Monday through Friday).	per hour	300	\$0.00	\$0.00
78	Standard hourly labor rate for Laborer for additional fencing work as specified (Monday through Friday).	per hour	300	\$0.00	\$0.00
79	Standard hourly labor rate for Foreman for additional fencing work as specified (Nights, weekends and holidays).	per hour	50	\$0.00	\$0.00
80	Standard hourly labor rate for Laborer for additional fencing work as specified (Nights, weekends and holidays).	per hour	50	\$0.00	\$0.00
				TOTAL	\$0.00

BID BOND

BID BOND

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that _____, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____, (hereinafter called "PRINCIPAL"), and _____, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____ (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel.: (386) 506-5501, (hereinafter called "OBLIGEE" or "CITY"), in the penal sum of _____ dollars and (____)/100 (\$_____), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated _____, 20____, for:

Project Name / Bid No.:

Project Address:

Legal Description:

Description of Work:

NOW, THEREFORE,

A. If the principal shall not withdraw said bid within one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies, if the latter amount be in excess of the former, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this _____ day of _____, A.D. 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to original bid bond and financial statement of Surety Company).

PRINCIPAL:

Signature

Corporate Officer & Title

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

WITNESSES:

SURETY:

Attorney-in-Fact (signature)

Name & Title

Name of Local Resident Agent

City, State, Zip

Telephone:
A.M. Best No.: _____ NAIC No. : _____

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

STATE OF _____
COUNTY OF _____

Before me this day personally appeared _____ (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the _____ (corporate surety) and that this person has been authorized by _____ (corporate surety) to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant

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

NOTARY PUBLIC – STATE OF

Type or print name: _____

Commission No.: _____

Commission Expires: _____

(Seal)

.....
END OF BID BOND

This document must be completed and returned with your Submittal

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

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

BOND NO. _____

PRINCIPAL:

Developer or Contractor: _____

Principal Business Address: _____

Contact Person: _____

Phone Number: _____

SURETY:

Address: _____

Contact Person: _____

Phone Number: _____

OWNER:

City of Port Orange, Florida, a chartered municipal corporation

1000 City Center Circle

Port Orange, Florida 32129-4144

Contact Person: City Manager

Phone Number: (386) 506-5501

Amount: \$ _____

City Project Number: ITB 21-21 Fencing Services

Description of Work: ITB 21-21 Fencing Services

Project Location: Various locations in and around the City of Port Orange, Volusia County, Florida

Legal Description: Various locations in and around the City of Port Orange, Volusia County, Florida

Front Page

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

ITB 21-21 Fencing Services

Bond No. _____

COMBINATION PAYMENT AND PERFORMANCE BOND FOR PUBLIC CONSTRUCTION

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

BY THIS BOND, We, _____, as Principal, and _____, a corporation, as Surety, are bound to **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of **AND 00/100 DOLLARS** (\$_____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

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

Notice of Nonpayment and Time Limitations

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.05(2), (8) and (10), Florida Statutes.

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

IN WITNESS WHEREOF, this performance and payment bond is executed and shall be deemed an original, this _____, day of _____, 2021.

Attest:

(Principal)

(As to Corporate Principal) Secretary

By: _____

_____, _____

(Witness to Principal)

(Corporate Seal)

(Surety)

(Witness to Surety)

By: _____

Name: _____

(Attorney-in-Fact)

(Corporate Seal)

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

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

This certificate must be completed and returned by the Awarded Vendor, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange. Please note, the City of Port Orange does not accept exemptions for Workers' Compensation coverage.

LEASED EMPLOYEE AFFIDAVIT

EXHIBIT CONTRACT # _____

☐ I hereby certify that I do not utilize an employee leasing company or employee leased employees. I further agree to notify the City in the event these circumstances change.

OR

☐ I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured sub-contractors or casual labor exposure.

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing arrangement. I agree to notify the City in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the City with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any City jobsite.

I further agree to notify the City if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

I further agree to notify the City in the event that I switch employee-leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the City that documents the change of carrier.

I hereby attest that the information provided in this affidavit is accurate. In addition,

I certify that I have read and understand the above statements regarding my responsibility under the Workers' Compensation coverage.

Name of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ **Date:** _____

AFFIDAVIT REGARDING WORKERS' COMPENSATION

IMPORTANT

This certificate must be completed and returned by the Awarded Vendor, upon issuance of a Notice of Intent to Award by the Purchasing Department of the City of Port Orange. Please note, the City of Port Orange does not accept exemptions for Workers' Compensation coverage.

State of _____

County of _____

I, _____, being duly sworn according to law, deposes and says (it, he, she, they) have accepted the Workers' Compensation laws of the State of Florida, with its supplements and amendments and has insured (its, his, her, their) liability there under accordance with the terms of said Laws with the _____ Company, under the terms of Policy Number _____ for a period from _____, 20__ to _____, 20__.

WITNESS:

By: _____

Name: _____

CONTRACTOR:

Company: _____

By: _____

Name/Title: _____

Sworn to and subscribed before me this _____ day of __, 20__.

My Commission Expires: _____

Notary Public

Notary Public Printed Name



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this ____ day of _____, 20____, 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 _____, a _____ corporation whose principal address is _____ ("Contractor"). The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

(a) The Contractor hereby agrees to provide Fencing Services to include repairs, replacement fence, and new fence on an as-needed basis throughout the City, and as more specifically described in and pursuant to Intent to Bid ("ITB 21-21"). This Contract together with ITB 21-21, Addenda, and Contractor's proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference, shall constitute the formal written contract between the City and Contractor. For convenience, Section 3, Scope of Services, and the Contractor's Schedule of Unit Pricing, as submitted by Contractor in Contractor's Proposal, are attached hereto as **Exhibit "1"**. A complete copy of ITB 21-21, Addenda, and Contractor's Proposal are available in the Office of the City Clerk. Contractor represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall become effective on the last date the Contract is signed by the Parties ("Effective Date"). This Contract shall be for a term of two (2) years ("Initial Term").

Renewals. Upon written agreement of the Parties, this Contract may be renewed for two (2) one-year periods, subject to the review and approval of the City Manager and budget appropriation.

Manner and Place: The work shall be in accordance with 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.

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

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

2. City Obligations. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1" attached hereto, subject to a limit not to exceed the appropriated budget per fiscal year,

and City Manager approval for each Purchase Order rendered under this Contract. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. Contract Documents. The following forms, attached as Exhibit "2," are an integral part of this Contract and must be completed, signed, witnessed and notarized as indicated and returned with the City Manager approved and signed written Purchase Order(s), for projects requiring a Payment and Performance Bond, as determined by the Department:

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

4. Contract Administration. The Department Head requesting service ("Purchase Order Administrator"), shall perform contract administration of their respective purchase order(s). The Parks and Recreation Director, Susan Lovallo, shall preform contract administration for the master contract ("Contract Administrator") The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

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

6. Termination for Convenience of the City

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

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

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

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

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

(e) The Finance Director, with the approval of the City Manager, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or

work completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

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

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

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

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

8. Termination for Default. Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the contractor, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result. City Council may elect to refrain from doing business with the bidder as stipulated in City Code 2-276 Suspension and Disbarment.

9. Examination of Records

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

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

(c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance

of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

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

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the City.

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

If Contractor does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Contractor may be subject to penalties under Section 119.0701, Florida Statutes.

CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129; TELEPHONE: (386) 506-5563; E-MAIL: CITYCLERK@PORT-ORANGE.ORG.

11. Termination for Non-Appropriation of Funds

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

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

12. Insurance. Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions. Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Exhibit Form. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

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. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

Contractor shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The Contractor is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Contractor to ensure the subcontractors maintain the required coverage, shall not relieve the Contractor of any contractual responsibility, obligation or liability.

The City reserves the right to increase insurance coverage as determined for higher risk contracts.

The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with this Contract and does not waive the insurance required by this Contract.

Should at any time the Contractor or subcontractors not maintain the insurance coverages required herein, the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

Standard Insurance Requirements				
	Insurance	Standards		Additional Requirements
☒	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<u>Contract Amount</u> Up to \$10 million \$10 - \$20 million Contracts over \$20 million To Be Determined by the City.	<u>Limits</u> Statutory/\$500,000 Statutory/\$1,000,000	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.

☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is 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 owned, hired and non-owned automobiles.	<u>Limits:</u> Auto Liability Body Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate	
Additional Insurance Requirements			
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	<u>Limits:</u> Coverage - \$1,000,000	
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000	
☐	Errors and Omissions	<u>Limits:</u> Coverage - \$1,000,000	
☐	Umbrella Policy	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Payment and Performance Bond Required	<u>Limits:</u> Coverage - Equal to amount of Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$25,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods under \$25,000.00.		

13. 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.

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.

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

20. 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.

21. Liability for Loss or Damage.

(a) 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.

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

22. 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.

23. 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 Agreement. 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, MMC. 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.

24. 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.

25. 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.**

26. Additional Provisions. This Contract includes all 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. In the event of a conflict between any attachments or exhibits to this Contract, and this Contract, the language of this Contract shall control.

27. 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.

28. 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: Susan Lovallo, Parks and Recreation Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5852

Contractor: _____
Attention: _____, President

() - Telephone
() - Facsimile

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.

29. 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.

30. 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:

Printed Name: _____

By: _____, 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 _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by _____, as President of _____, a _____ corporation. He/She is ____ personally known or ____ produced _____ as identification.

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

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Donald O. Burnette, Mayor

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Donald O. Burnette, as Mayor, of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ____ personally known or ____ produced _____ as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2021, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ____ personally known or ____ produced _____ as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



End of Solicitation Documents



"ATTACHMENT 1" ITB SCHEDULE OF UNIT PRICING

BID FORM

CITY OF PORT ORANGE

ITB 21-21
FENCING SERVICES

Completed "Attachment 1" Schedule of Unit Pricing Bid form **MUST** be included with Bid Submission

Instruction to save Attachment from DemandStar website:

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

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

Bidders are required to provide "Attachment 1" in Excel format in electronic format, preferably thumb drive.

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

General notes : Contractor shall be responsible to secure all permits required to install & complete project. No permit fees shall be charged or included. Projects shall be completed as per plans and/or scope of work from the City. Required Inspections, (As Built) Plans, correction notices and completion certificates shall be the responsibility of the contractor. All material and equipment shall meet or exceed design specifications as outlined in Invitation to Bid #21-21 and per project Scope of Work per City instructions.

NOTES

(1) Line Item Bid Price shall include furnishing of all labor & material to install total fencing project completed, as per Jurisdictional code and shall be gross value, inclusive of all associated costs such as vehicle, fuel, powered post hole diggers/augers, normal hand tools, etc.

(2) All Fence installations shall comply with and conform to all applicable Building Codes, Jurisdictional authorities, Local and State Jurisdictional Codes, and ASTM F 567 Standard Practices for Installation of Chain Link Fence.

(3) All Chain Link Fabric to be minimum 9 ga. Without vinyl (.144 dia) & 2" mesh.

(4) All Fence Installations shall be Colored Vinyl unless specifically specified to be Galvanized. See Bid Specifications

(5) Fence installations shall include all posts, post caps, components and hardware to be same color as fence fabric.

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
Scope of work: Furnish & Install Chain Link Fencing - includes fabric, line post, post caps, concrete footings, tension wires and fittings. (Notes 1-5). Terminal Post, stretcher bar, Top Rail and hardware not included.					
1	4 ft. high, Galvanized fencing	Lineal Foot	250	\$0.00	\$0.00
2	4 ft. high, Colored Vinyl fencing	Lineal Foot	100	\$0.00	\$0.00
3	6 ft. high, Galvanized fencing	Lineal Foot	2700	\$0.00	\$0.00
4	6 ft. high Colored Vinyl fencing	Lineal Foot	500	\$0.00	\$0.00
Scope of work: Furnish & Install Black Aluminum Ornamental Fencing - includes line post, post caps, concrete footings. (Notes 1-5). Hardware not included.					
5	4' High - Black Aluminum Ornamental Fence	Lineal Foot	100	\$0.00	\$0.00
6	6' High - Black Aluminum Ornamental Fence	Lineal Foot	100	\$0.00	\$0.00
Scope of work: Relocate or remove existing fencing, including fabric, line posts, top rails, tension wires and fittings. Fill all post holes with clean fill, and haul away any and all fence debris, including disposal of fence and posts. (Notes 1-5).					
7	Relocate existing 4 ft. high fencing	Lineal Foot	2700	\$0.00	\$0.00
8	Relocate existing 6 ft. high fencing	Lineal Foot	500	\$0.00	\$0.00
9	Relocate existing 8 ft. high fencing	Lineal Foot	200	\$0.00	\$0.00
10	Remove and dispose of damaged fencing material	Lineal Foot	3400	\$0.00	\$0.00
Scope of work: Furnish & Install Temporary Galvanized Chain-link Fencing. All materials furnished by the fencing contractor, and remain the property of the fencing contractor. (Notes 1-5). Price shall include installation and removal of fencing.					
11	Temporary - 4 ft. high, Galvanized	Lineal Foot	500	\$0.00	\$0.00
12	Temporary - 6 ft. high, Galvanized	Lineal Foot	500	\$0.00	\$0.00
Scope of work: Furnish & Install Hinged Swing Gate, 4 ft. high, complete, with all mounting hardware, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as single or double gate swing.					
13	3 ft. width - Galvanized	Each	5	\$0.00	\$0.00
14	3 ft. width - Black Aluminum Ornamental	Each	5	\$0.00	\$0.00
15	3 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
16	4 ft. width - Galvanized	Each	5	\$0.00	\$0.00
17	4 ft. width - Black Aluminum Ornamental	Each	5	\$0.00	\$0.00

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
18	4 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
19	5 ft. width - Galvanized	Each	5	\$0.00	\$0.00
20	5 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
21	6 ft. width - Galvanized	Each	5	\$0.00	\$0.00
22	6 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
23	10 ft. width - Galvanized	Each	5	\$0.00	\$0.00
24	10 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
25	12 ft. width - Galvanized	Each	5	\$0.00	\$0.00
26	12 ft. width - Colored Vinyl	Each	5	\$0.00	\$0.00
Scope of work: Furnish & Install Hinged Swing Gate, 6 ft. high, complete, with all mounting hardware, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as Single or Double Gate Swing.					
27	3 ft. width - Galvanized	Each	4	\$0.00	\$0.00
28	3 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
29	3 ft. width - Black Aluminum Ornamental	Each	4	\$0.00	\$0.00
30	4 ft. width - Galvanized	Each	4	\$0.00	\$0.00
31	4 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
32	4 ft. width - Black Aluminum Ornamental	Each	4	\$0.00	\$0.00
33	5 ft. width - Galvanized	Each	4	\$0.00	\$0.00
34	5 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
35	6 ft. width - Galvanized	Each	4	\$0.00	\$0.00
36	6 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
37	10 ft. width - Galvanized	Each	4	\$0.00	\$0.00
38	10 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
39	12 ft. width - Galvanized	Each	4	\$0.00	\$0.00
40	12 ft. width - Colored Vinyl	Each	4	\$0.00	\$0.00
Scope of work: Furnish & Install Cantilever Sliding Gate, 4ft.high, complete, with all mounting hardware, rollers, guide rails, latching hardware and fabric included. (Notes 1-5). Gate Post not included. Configured as Single or Double Gate Swing.					
41	Gate opening width of 10 ft. single gate - Galvanized	Each	5	\$0.00	\$0.00
42	Gate opening width of 10 ft. single gate - Colored Vinyl	Each	5	\$0.00	\$0.00
43	Gate opening width of 12 ft. single gate - Galvanized	Each	8	\$0.00	\$0.00
44	Gate opening width of 12 ft. single gate - Colored Vinyl	Each	5	\$0.00	\$0.00
Scope of work: Furnish & Install Cantilever Sliding Gate, 6 ft. high, complete, with all mounting hardware, rollers, guide rails, latching hardware and fabric included. (Notes 1-5). Configured as Single or Double Gate.					
45	Gate opening width of 10 ft. single gate - Galvanized	Each	10	\$0.00	\$0.00
46	Gate opening width of 10 ft. single gate - Colored Vinyl	Each	4	\$0.00	\$0.00
47	Gate opening width of 12 ft. single gate - Galvanized	Each	4	\$0.00	\$0.00
48	Gate opening width of 12 ft. single gate - Colored Vinyl	Each	4	\$0.00	\$0.00
49	Gate opening width of 12 ft. double gate(2)- Galvanized	Each	4	\$0.00	\$0.00
50	Gate opening width of 12 ft. double gate(2)- Colored Vinyl	Each	4	\$0.00	\$0.00
Scope of work: Furnish & Install 4 ft. high fencing, Terminal/Gate Post, including concrete footing, one (1) stretcher bar per post, with all required hardware to complete fencing connections. (Notes 1-5).					
51	Galvanized, 3" round terminal/gate post	Each	10	\$0.00	\$0.00
52	Colored, 3" round terminal/gate post	Each	10	\$0.00	\$0.00
53	Galvanized, 4" round terminal/gate post	Each	10	\$0.00	\$0.00
54	Colored, 4" round terminal/gate post	Each	20	\$0.00	\$0.00
55	Galvanized, 6-5/8" round terminal/gate post	Each	10	\$0.00	\$0.00
56	Colored, 6-5/8" round terminal/gate post	Each	10	\$0.00	\$0.00
57	Galvanized, 8-5/8" round terminal/gate post	Each	10	\$0.00	\$0.00

Item #	Description	Unit of Measure	Estimated Quantities	Unit Price	Extended Price
58	Colored, 8-5/8" round terminal/gate post	Each	10	\$0.00	\$0.00
Scope of work: Furnish & Install 6 ft. high fencing, Terminal/Gate Post, including concrete footing, one (1) stretcher bar per post, with all required hardware to complete fencing connections. (Notes 1-5).					
59	Galvanized, 3" round terminal/gate post	Each	5	\$0.00	\$0.00
60	Colored, 3" round terminal/gate post	Each	5	\$0.00	\$0.00
61	Galvanized, 4" round terminal/gate post	Each	5	\$0.00	\$0.00
62	Colored, 4" round terminal/gate post	Each	5	\$0.00	\$0.00
63	Galvanized, 6-5/8" round terminal/gate post	Each	5	\$0.00	\$0.00
64	Colored, 6-5/8" round terminal/gate post	Each	5	\$0.00	\$0.00
65	Galvanized, 8-5/8" round terminal/gate post	Each	5	\$0.00	\$0.00
66	Colored, 8-5/8" round terminal/gate post	Each	5	\$0.00	\$0.00
Scope of work: Furnish & Install Top Rail with all required hardware to complete fencing connection. (Notes 1-5).					
67	Galvanized Top Rail	Lineal Foot	60	\$0.00	\$0.00
68	Colored Top Rail	Lineal Foot	60	\$0.00	\$0.00
Scope of work: Furnish & Install Fabric with all required hardware to complete fencing connection. (Notes 1-5).					
69	4 ft. high, Galvanized fabric	Lineal Foot	10	\$0.00	\$0.00
70	4 ft. high, Colored fabric	Lineal Foot	10	\$0.00	\$0.00
71	6 ft. high, Galvanized fabric	Lineal Foot	10	\$0.00	\$0.00
72	6 ft. high, Colored fabric	Lineal Foot	10	\$0.00	\$0.00
Scope of work: Furnish & Install Stretcher Bar with all required hardware to complete fencing connection. (Notes 1-5).					
73	4 ft. high, Galvanized stretcher bar	Each	4	\$0.00	\$0.00
74	4 ft. high, Colored stretcher bar	Each	4	\$0.00	\$0.00
75	6 ft. high, Galvanized stretcher bar	Each	4	\$0.00	\$0.00
76	6 ft. high, Colored stretcher bar	Each	4	\$0.00	\$0.00
Additional services and labor may be purchased under this contract at an hourly rate for projects related to the installation, removal, and/or repair of any kind of fencing materials.					
77	Standard hourly labor rate for Foreman for additional fencing work as specified (Monday through Friday).	per hour	300	\$0.00	\$0.00
78	Standard hourly labor rate for Laborer for additional fencing work as specified (Monday through Friday).	per hour	300	\$0.00	\$0.00
79	Standard hourly labor rate for Foreman for additional fencing work as specified (Nights, weekends and holidays).	per hour	50	\$0.00	\$0.00
80	Standard hourly labor rate for Laborer for additional fencing work as specified (Nights, weekends and holidays).	per hour	50	\$0.00	\$0.00
				TOTAL	\$0.00



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: Yes

SUBJECT: (B8) Resolution No. 21-63 - Acceptance of Deed of Dedication for public purposes along the west side of Bruner Road, east of Clyde Morris Boulevard

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Resolution No. 21-63 accepting the Deed of Dedication for right-of-way along the west side of Bruner Road, east of Clyde Morris Boulevard.

SUMMARY: As part of the site improvements for Osprey Pointe Apartments (3835 Clyde Morris Boulevard), the property owner, Collier Clyde Morris Blvd. LLC., is dedicating a portion of the southern point of the subject property (6,106 square feet) for the realignment of the intersection of Bruner Road and Clyde Morris Boulevard. The realignment of the Bruner Road right-of-way will create a full intersection between Bruner Road/Regency Way and Clyde Morris Boulevard and could improve intersection safety by reducing potential turning conflicts from vehicles accessing Bruner Road or Regency Way. Staff from Port Orange and Volusia County have reviewed the realignment. The property owner is required by the Land Development Code to dedicate the additional right-of-way prior to issuance of the first certificate of occupancy (CO) for the multi-family project.

As part of the Osprey Pointe Apartments, Collier Clyde Morris Blvd. LLC., will extend Bruner Road +/- 500 feet from Clyde Morris Boulevard. The Bruner Road extension will be built in compliance with the City's Standard Construction Detail for a local road. Access to the north driveway of the Police Department, the City's Debris Management Site, the future Public Utilities facilities, and Osprey Pointe Apartments will be from this segment of Bruner Road. The Osprey Pointe Apartment site plan has been reviewed by staff and meets all required Land Development Code requirements.



Project No.: N/A

Funding Account No.: N/A

Presenter: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Resolution No. 21-63 with exhibit	Reso 21-63 Deed of Ded.pdf
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Gwen Perney	Created/Initiated - 10/15/2021
Tim Burman	Approved - 10/15/2021
Shannon Balmer	Approved - 10/17/2021
Wayne Clark	Approved - 11/4/2021
Robin Fenwick	Final Approval - 11/4/2021

RESOLUTION NO. 21-63

A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, ACCEPTING A DEED OF
DEDICATION CONVEYING A PORTION OF THE
SOUTHERN POINT OF THE SUBJECT PROPERTY FOR
ADDITIONAL RIGHT-OF-WAY FOR PUBLIC USE;
PROVIDING FOR CONFLICTING ORDINANCES;
PROVIDING FOR SEVERABILITY; AND PROVIDING FOR
AN EFFECTIVE DATE.

WHEREAS, Collier Clyde Morris Blvd., LLC is willing to convey to the City of Port Orange, Florida certain real property for the purpose of right-of way improvements; and

WHEREAS, Collier Clyde Morris Blvd., LLC has executed and presented to the City of Port Orange, Florida, a Deed of Dedication, attached hereto as **EXHIBIT “1”**, incorporated herein and made a part hereof by reference; and

WHEREAS, said deed conveys lands necessary for the realignment of the intersection of Bruner Road and Clyde Morris Boulevard; and

WHEREAS, it is in the best interest of the City to accept the Deed of Dedication for purposes stated herein; and

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

Section 1. The above Recitals are incorporated by reference into the body of this Resolution.

Section 2. The City Council of the City of Port Orange, Florida hereby accepts the Deed of Dedication, attached hereto.

Section 3. The City Council of the City of Port Orange, Florida has determined that the acquisition of the aforesaid property is for a public purpose.

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

Section 5. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this resolutions which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

Section 6. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on this _____ day of _____ 2021

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Prepared by:
Shannon K. Balmer,
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

EXHIBIT "1"

A portion of Parcel No. 6306-00-00-0112

Deed of Dedication (Right-of-Way)

This Deed of Dedication, is made and executed this _____ day of _____ 2021, between **COLLIER CLYDE MORRIS BLVD, LLC**, a Florida limited liability company whose address is 220 North Main Street, Gainesville, Florida 32601, hereinafter referred to as, "Dedicator;" and **CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation**, of the County of Volusia in the State of Florida, post office address: Attn: City Manager, 1000 City Center Circle, Port Orange, FL 32129-4144, "City."

WITNESSETH:

That the said Dedicator, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to said Dedicator, in hand paid by the City, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby dedicate, release, remise, and quit-claim unto the City, its successors and assigns forever, for the purposes of a right-of-way for a public road and appurtenances, all that certain land lying and being in the County of Volusia, State of Florida, being more particularly described as follows:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, lien, equity, and claim whatsoever of the Dedicator, either in law or equity forever.

CITY, by accepting this Dedication, obligates itself to forever preserve and use the property dedicated herein for the purpose recited above, and such other public purposes deemed desirable by City.

AND the said Dedicator hereby covenants with City that the Dedicator is lawfully seized of said land in fee simple; that the Dedicator has good right and lawful authority to dedicate and convey said land; that the Dedicator does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, the said Dedicator has caused this *Deed of Dedication* to be executed on its behalf the day and year first above written.

Signed, sealed and delivered in our presence:

DEDICATOR:

WITNESSES:

COLLIER CLYDE MORRIS BLVD., LLC
a Florida limited liability company

Printed Name: _____

By: _____
Nathan Collier, Manager

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2021, by Nathan Collier, Manager of **COLLIER CLYDE MORRIS BLVD, LLC**, a Florida limited liability company, on behalf of said entity, the “Dedicator” named in the foregoing Deed of Dedication, who is duly empowered and authorized to execute the foregoing Deed of Dedication, and who is: ☐ personally known to me; or ☐ produced _____ as identification.

Notary Public, State of Florida
Printed Name, Commission, Term Expiration Date and Seal:

EXHIBIT "A"

SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD

PORT ORANGE, FL. 32127

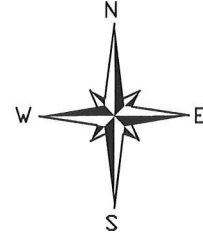
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SOUTHEAST 1/4 SECTION 6, TOWNSHIP 16
SOUTH, RANGE 33 EAST



EASTERLY R/W LINE
CLYDE MORRIS BLVD
100.00' R/W

WESTERLY R/W
LINE BRUNER
ROAD
60.00' R/W

N48°58'01"E
104.35'
6106
Sq. Feet
0.140 Acres
10.00'
N41°10'59"W
117.03'
N00°36'25"E
15.01'

S00°36'25"W
156.59'

POINT OF BEGINNING

NORTHEAST 1/4 SECTION 7, TOWNSHIP 16
SOUTH, RANGE 33 EAST

POINT OF COMMENCEMENT

INTERSECTION OF WESTERLY R/W LINE
BRUNER ROAD & EASTERLY R/W LINE
CLYDE MORRIS BLVD

SKETCH OF DESCRIPTION NOT A BOUNDARY SURVEY

FOR: THE COLLIER COMPANIES

DESCRIPTION: DRIVEWAY PARCEL
SECTIONS 6 AND 7, TOWNSHIP 16 SOUTH, RANGE 33 EAST
SEE SHEET 2 FOR DESCRIPTION.

ABBREVIATIONS

(P)	PLATTED DIMENSION
(D)	DEEDED DIMENSION
(M)	MEASURED DIMENSION
(C)	CALCULATED DIMENSION
ID	IDENTIFICATION
A/C	AIR CONDITIONER
R/W	RIGHT OF WAY
CL	CENTERLINE
D	CENTRAL ANGLE
R	RADIUS
L	ARC LENGTH
CB	CHORD BEARING
FP&L CO.	FLORIDA POWER & LIGHT COMPANY
N.G.V.D.	NATIONAL GEODETIC VERTICAL DATUM
U.S.C. & G.S.	UNITED STATES COAST AND GEODETIC SURVEY

SHEET 1 OF 2

LEGEND

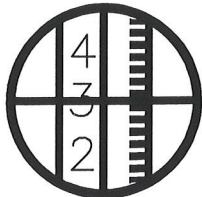
●	IRON ROD WITH CAP
○	IRON PIPE
□	CONCRETE MONUMENT
■	PERMANENT REFERENCE MONUMENT
△	PERMANENT CONTROL POINT
(R)	RADIAL LINE
(NR)	NON-RADIAL LINE
○	EXISTING ELEVATION
□	PROPOSED ELEVATION

JOB #21-0541

SCALE: 1"=100'

FIELD BOOK:

PAGE:



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD

PORT ORANGE, FL. 32127

(386) 761-5385

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SURVEYORS NOTES

1. NOTICE: THERE MAY BE ADDITIONAL RESTRICTIONS AND/OR OTHER MATTERS THAT ARE NOT SHOWN ON THIS PLAT OF SURVEY/SKETCH OF DESCRIPTION THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. THIS SURVEY/ SKETCH OF DESCRIPTION PREPARED WITHOUT BENEFIT OF AN ABSTRACT.
2. DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
3. BEARING STRUCTURE BASED ON NAD-83 FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, U.S. SURVEY FOOT WITH THE BEARING ON THE EASTERLY RIGHT OF WAY LINE OF CLYDE MORRIS BOULEVARD BEING N41°10'59"W.
4. "NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OR VALID DIGITAL SIGNATURE OF A FLORIDA LICENSED SURVEYOR AND MAPPER."
5. DESCRIPTION PREPARED BY SLIGER & ASSOCIATES, INC. APRIL 5, 2021.

DESCRIPTION

A PORTION OF SECTION 6 AND SECTION 7, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF BRUNER ROAD, A 60.00 FOOT WIDE RIGHT OF WAY WITH THE EASTERLY RIGHT OF WAY LINE OF CLYDE MORRIS BOULEVARD, A 100.00 FOOT WIDE RIGHT OF WAY; THENCE N00°36'25"E ALONG SAID WESTERLY RIGHT OF WAY LINE, 15.01 FEET TO THE POINT OF BEGINNING, SAID POINT BEING 10.00 FEET EASTERLY OF SAID EASTERLY RIGHT OF WAY LINE WHEN MEASURED PERPENDICULAR TO SAID EASTERLY RIGHT WAY LINE OF CLYDE MORRIS BOULEVARD; THENCE N41°10'59"W PARALLEL WITH SAID EASTERLY RIGHT OF WAY LINE OF CLYDE MORRIS BOULEVARD, 117.03 FEET; THENCE N48°58'01"E, 104.35 FEET TO THE WESTERLY RIGHT OF WAY LINE OF SAID BRUNER ROAD; THENCE S00°36'25"W ALONG SAID WESTERLY RIGHT OF WAY LINE OF BRUNER ROAD, 156.59 FEET TO THE POINT OF BEGINNING. CONTAINING 6,106 SQUARE FEET OR 0.140 ACRES, MORE OR LESS.

REFERENCE: DRIVEWAY PARCEL

TYPE OF SURVEY	CERTIFIED TO	SURVEY DATE	JOB NUMBER
SKETCH OF	THE COLLIER COMPANIES	APRIL 5, 2021	21-0541
DESCRIPTION	THE CITY OF PORT ORANGE, FLORIDA		

SHEET 2 OF 2

VALID WITH SIGNATURE & EMBOSSED SEAL ONLY

FOR: THE COLLIER COMPANIES

	DATE	JOB NO.	P.C.	DRW.	CHECKED BY
SKETCH OF DESCRIPTION	APRIL 5, 2021	21-0541		JZ	DH
BOUNDARY SURVEY					
TOPOGRAPHIC SURVEY					
FOUNDATION LOCATED					
FINAL IMPROVEMENTS					
RECERTIFICATION					
PROPOSED HOUSE LOCATION					

I HEREBY CERTIFY THAT THIS PLAT MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

J.E. ZAPERT, P.L.S. NO. 4046
STEVEN T. KRUGER, P.L.S. NO. 4722
C.O. VAN KLEECK JR., P.S.M. NO. 6149
MICHAEL S. MURPHY, P.S.M. NO. 6208



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: Yes

SUBJECT: (B9) Resolution No. 21-65 - Appropriation for FY22 Operating and Capital Budget

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 21-65.

SUMMARY: Staff analyzed the FY 2021-2022 budget utilizing cross-walks to align the past practice of Excel spreadsheets, as compared to the data entered into the Workday budget module. When the budget was presented, the bargaining process with the local unions was still underway and funds were not appropriated where they would eventually need to be expended. Staff requested each department to review the budgets when the data was uploaded on October 1, 2021 and note any discrepancies within the operating funds and spend categories. There were a few overtime accounts identified within some of the departments, and funding for these adjustments is within the current budget. A reallocation is being requested for these adjustments. Some funding had to be reallocated when several adjustments were presented at the final budget hearing on September 22, 2021.

The adjustment also includes the use of the American Rescue Plan Act (ARPA) funds for the lump-sum pay-outs for the IUPA and the IAFF; these adjustments are presented to council for approval based on both the IUPA and the IAFF union agreements being approved by the City Council. The funds for the lump-sum will be provided by the ARPA funds, in accordance with ARPA Section 602 (42 U.S.C. 802) Coronavirus State Fiscal Recovery Fund and U.S. Treasury Guidance. As discussed in the Interim Final Rule, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, for the portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency. Public safety employees would include police officers, sheriffs and deputy sheriffs, firefighters, emergency medical responders, etc.

Staff is requesting the City Council to authorize and approve the use of the ARPA funds for the lump-sum pay-outs. The budget amendment/transfer will reflect the actual dollars paid out to the public safety members, and a reduction of the ARPA funding equal to the lump-sum payments will be reflected.

Project No.: N/A

Funding Account No.: Per Composite Exhibit

Presenter: Robin Hayes

ATTACHMENTS:

1.	Bud Reso 21-65 FY22 Additional Operating Funds (CC Mtg 11-16-2021) (5)	Bud Reso 21-65 FY22 Additional Operating Funds (CC Mtg 11-16-2021) (5).pdf
2.	SKM_C450i21110514520	SKM_C450i21110514520.pdf

Scott Neils

Created/Initiated - 10/27/2021

Lupe Reyna-Coffin

Approved - 11/4/2021

Robin Hayes

Approved - 11/4/2021

Matthew Jones

Approved - 11/5/2021

Wayne Clark

Approved - 11/5/2021

Robin Fenwick

Final Approval - 11/5/2021

RESOLUTION NO. 21-65

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, REVISING AND APPROPRIATING OPERATING FUNDS FOR THE FISCAL YEAR 2022 BUDGET; TO BUDGET FOR ANTICIPATED OVERTIME NEEDS; TO BUDGET FOR TWO NEW POSITIONS FOR DRAINAGE; TO CORRECT BUDGET FOR MISC REVENUE AND INTERNAL SERVICE FEE CHARGES AND ADJUST INTERFUND CHARGES FOR FLEET FINANCING; TO PAY LUMP SUM PAYMENTS TO PUBLIC SAFETY WORKERS USING AMERICAN RESCUE PLAN ACT (ARPA) FUNDS AND REDUCE THE CAPITAL OUTLAY PROJECT BY THE SAME AMOUNT; SETTING FORTH REVENUES AND EXPENDITURES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS The City Council desires to budget for upcoming expenditures for overtime requests in the General Fund (001), the Building Fund (109), the Water and Sewer Fund (401), the Solid Waste (410), the Stormwater Utility Fund (412), the Wetland Mitigation Fund (416), the Forestry Management Fund (420), the Information Technology Fund (501), the Vehicle Maintenance Fund (503), the Risk Management Fund (504), the Building Maintenance Fund (506); and

WHEREAS the City Council desires to budget for upcoming expenditures for two new positions in the Drainage Fund (412); and

WHEREAS the City Council desires to adjust the budget to correct Miscellaneous Revenue in the General Fund (001) and

WHEREAS the City Council desires to correct the budget for Internal Service Fund Charges in the General Fund (001); and

WHEREAS the City Council desires to correct the budget for Fleet Financing in the Golf Course Fund (450) and similarly correct the associated budget for the Lease and Replacement Fund (505) and the Loan Pool Fund (508); and

WHEREAS the City Council desires to appropriate a portion of the American Rescue Plan Act (ARPA) Funding currently budgeted in Capital Outlay in the Water and Sewer R&R Fund (403) to fund the negotiated lump sum payments for Public Service workers; and

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

Section 1. The funds for the City operating items are hereby appropriated as set forth in Composite Exhibit A, attached hereto, which reflects revenues and corresponding expenditures for the designated funds.

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, 2021 through September 30, 2022.

Section 3. Supplemental appropriations, reductions of appropriations, emergency appropriations, and interdepartmental transfers of appropriations may be effected by the City Council and the City Manager as deemed necessary in strict compliance with the procedures specified in Chapter 2, Article VI, Division 3, Code of Ordinances, City of Port Orange, Florida.

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC City Clerk

Adopted on the _____ day of _____

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

COMPOSITE EXHIBIT A

Resolution Number: 21-65

FY 2022:
PREPARED: November 1, 2021
FINANCE: Finance Staff

		TOTAL	Personnel / OT Request	Personnel - New Requests	Correct Misc. Revenue	Interfund Transfers/ISF Charges	Correction to Internal Service Charges to GF	ADJUSTMENT DESCRIPTION
FUND								
001	General Fund	36,915			36,915			Remove Misc. Revenue - Used as temporary placeholder during budget prep
001	General Fund	(161,131)	(34,511)		-		(126,620)	Remove GF impact of Internal Service Fund Charges - based on estimate during budget prep, replaced with actual
001	General Fund	(29,296)	(29,296)					GF - To reflect department request for OT budget - removed in error budget based on actual
109	Building Special Revenue Fund	70,000	70,000					Department OT Budget request - removed in error
401	Water and Sewer O & M Revenue Fund	(5,000)	(5,000)					Department OT Budget request - removed in error
410	Solid Waste Fund	500	500					Department OT Budget request - removed in error
412	Stormwater Utility Operating Fund	102,691	7,500	95,191				Dept OT request and budget for two approved positions Equipment Operator and Inspector
416	Wetland Mitigation Credit Fund	500	500					Department OT Budget request - removed in error
420	Forestry Management Fund	4,500	4,500					Department OT Budget request - removed in error
450	Golf Course Fund	(1,618)					(1,618)	Adjust budget for Fleet Financing - See impact to Interfund Service Fee in Fund 505 and reduction in Loan Fund 508
501	Information Technology	(3,000)	(3,000)					Department OT Budget request - removed in error
503	Vehicle Maintenance Service Fund	3,000	3,000					Department OT Budget request - removed in error
504	Risk Management Fund	2,000	2,000					Department OT Budget request - removed in error
505	Fleet Lease and Replacement	-						No Net Charge - Change in Source of Funds - Reduction in Charges for Services (ISF) Increase in Appropriated FB
506	Building Maintenance Fund	(5,000)	(5,000)					Department OT Budget request - removed in error
508	Loan Pool Fund	(1,618)				(1,618)		Adjust Golf course Fleet Financing - Fee to Fund 505 (see also impact to Fund 508)
TOTAL:		\$ 13,443	\$ 11,193	\$ 95,191	\$ 36,915	\$ (1,618)	\$ (128,238)	

FY 2022: GENERAL FUND (#001)

PREPARED: November 1, 2021

FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
Miscellaneous Revenue	(36,915)
Appropriated Equity	(153,512)
TOTAL REVENUES:	(190,427)
<u>EXPENDITURES:</u>	
Non-Departmental	(161,131)
City Manager	(500)
Cose Enforcement	1,000
Community Development	(51,000)
Finance	2,409
Parks and Recreation	23,795
Public Works	(5,000)
TOTAL EXPENDITURES:	(190,427)

FY 2022: Building Special Revenue Fund (#109)

PREPARED: November 1, 2021

FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
Appropriated Equity	70,000
TOTAL REVENUES:	70,000
<u>EXPENDITURES:</u>	
Community Development-Building	70,000
TOTAL EXPENDITURES:	70,000

FY 2022: Water & Sewer O&M Fund (#401)

PREPARED: November 1, 2021

FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
Appropriated Equity	(5,000)
TOTAL REVENUES:	(5,000)
<u>EXPENDITURES:</u>	
W & S - Wastewater Treatment	(10,000)
W & S - Meter Shop	5,000
TOTAL EXPENDITURES:	(5,000)

FY 2022: Solid Waste Fund (#410)
PREPARED: November 1, 2021
FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
Appropriated Equity	500
TOTAL REVENUES:	500
<u>EXPENDITURES:</u>	
Solid Waste	500
TOTAL EXPENDITURES:	500

FY 2022: Drainage Utility Fund (#412)

PREPARED: November 1, 2021

FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
Appropriated Equity	<u>102,691</u>
TOTAL REVENUES:	<u><u>102,691</u></u>
<u>EXPENDITURES:</u>	
Drainage Utility	<u>102,691</u>
TOTAL EXPENDITURES:	<u><u>102,691</u></u>

FY 2022: Wetland Mitigation Credit Fund (#416)

PREPARED: November 1, 2021

FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
Miscellaneous Revenue	500
TOTAL REVENUES:	500
<u>EXPENDITURES:</u>	
Water and Sewer	500
TOTAL EXPENDITURES:	500

FY 2022: Forestry Fund (#420)
PREPARED: November 1, 2021
FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
Miscellaneous Revenue	4,500
TOTAL REVENUES:	4,500
<u>EXPENDITURES:</u>	
Water and Sewer	4,500
TOTAL EXPENDITURES:	4,500

FY 2022: Golf Course Fund (450)
PREPARED: November 1, 2021
FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
Interfund Transfer Revenue	(1,618)
TOTAL REVENUES:	<u>(1,618)</u>
<u>EXPENDITURES:</u>	
Non-Discretionary - Fleet Financing	(1,618)
TOTAL EXPENDITURES:	<u>(1,618)</u>

FY 2022: Information Technology Fund (#501)

PREPARED: November 1, 2021

FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
	(3,000)
Appropriated Equity	
TOTAL REVENUES:	<u>(3,000)</u>
<u>EXPENDITURES:</u>	
	(3,000)
Information Technology	
TOTAL EXPENDITURES:	<u>(3,000)</u>

FY 2022: Vehicle Maintenance Fund (#503)
PREPARED: November 1, 2021
FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
	3,000
Appropriated Equity	
TOTAL REVENUES:	3,000
<u>EXPENDITURES:</u>	
	3,000
Vehicle Maintenance	
TOTAL EXPENDITURES:	3,000

FY 2022: Risk Management Fund (#504)
PREPARED: November 1, 2021
FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
	2,000
Appropriated Equity	
TOTAL REVENUES:	2,000
<u>EXPENDITURES:</u>	
	2,000
Vehicle Maintenance	
TOTAL EXPENDITURES:	2,000

FY 2022: Fleet Lease and Replacement Fund (#505)

PREPARED: November 1, 2021

FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
Appropriated Fund Balance	1,618
Charges for Services	(1,618)
TOTAL REVENUES:	-
<u>EXPENDITURES:</u>	
No Impact	-
TOTAL EXPENDITURES:	-

FY 2022: Building Maintenance Fund (#506)
PREPARED: November 1, 2021
FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
	(5,000)
Appropriated Equity	
TOTAL REVENUES:	(5,000)
<u>EXPENDITURES:</u>	
	(5,000)
Building Maintenance	
TOTAL EXPENDITURES:	(5,000)

FY 2022: Loan Pool Fund **(#508)**
PREPARED: November 1, 2021
FINANCE: Finance Staff

	PROPOSED BUDGET
<u>REVENUES:</u>	
	(1,618)
Appropriated Equity	
TOTAL REVENUES:	(1,618)
<u>EXPENDITURES:</u>	
Interfund Transfer Expense	(1,618)
TOTAL EXPENDITURES:	(1,618)

Hayes, Robin

From: Truitt, Linda
Sent: Thursday, September 23, 2021 9:55 AM
To: Hayes, Robin
Subject: regarding ARPA funds for public safety
Attachments: premium pay .docx

The rules did change from CARES money to ARPA money – instead of all costs of the employee just being covered the Act now is asking for the portion of time dedicated to responding to COVID 19. Requiring more record keeping and documentation. (see below)

However the ACT allows for Premium Pay to eligible workers (see Attached). Eligible workers include Public Safety, as define in the Treasury FAQ. Premium pay is in addition to regular wages and would seem to fit the plan for one time payments that you described to me.

As stated in the Interim Rule, Recovery Funds may be used for payroll and covered benefits as follows.

- **PAYROLL AND COVERED BENEFITS EXPENSES** for county public safety, public health, health care, human services and similar employees to the extent that their services are devoted to mitigating or responding to the COVID-19 public health emergency
- Support the payroll and covered benefits for the portion of the **EMPLOYEE'S TIME THAT IS DEDICATED TO RESPONDING TO THE COVID-19 PUBLIC HEALTH EMERGENCY**
- **FOR ADMINISTRATIVE CONVENIENCE**, counties may consider public health and safety employees to be entirely devoted to mitigating or responding to the COVID-19 public health emergency, and therefore fully covered, if the employee, or his/her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency
- Recipients may reconsider and assess the **EXTENT AN EMPLOYEE, DIVISION OR OPERATING UNIT IS ENGAGED IN ACTIVITIES THAT RESPOND TO COVID-19**. A recipient can provide payroll records, attestations from supervisors/staff or regular work product or correspondence demonstrating work on COVID-19 response. **Counties DO NOT need to routinely track staff hours at the employee level**

The table below highlights the key differences between ARP and CARES Act guidance as it relates to payroll and covered benefits for public health and public safety employees.

ARP FISCAL RECOVERY FUND GUIDANCE

- Funds may be used for payroll/benefits for public, safety, public health, health care, human services and similar employees
- Funds can be used to support the payroll/benefits for the **portion of the employee's time that is dedicated to responding to COVID-19**
- Counties may consider public health/safety employees to be entirely devoted to mitigating/responding to COVID-19, and are fully recovered, **if the employee, or his/her operating unit or division, is primarily dedicated to responding to the COVID-19 public health emergency.**

CARES ACT CRF GUIDANCE

- As a matter of administrative convenience in light of emergency nature of this program, **a state, territorial, local or tribal government may presume that payroll costs for public health and public safety employee payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency**, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise
- **All costs of such employee may be covered** using payments from the Fund

Linda Truitt

Assistant Finance Director

City of Port Orange

www.port-orange.org



ARPA 602 (c)(1)(B)

“(B) to respond to workers performing essential work during the COVID–19 public health emergency by providing premium pay to eligible workers of the State, territory, or Tribal government that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;

ARPA 602(g)(2)

(2) ELIGIBLE WORKERS.—The term ‘eligible workers’ means those workers needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as each Governor of a State or territory, or each Tribal government, may designate as critical to protect the health and well-being of the residents of their State, territory, or Tribal government.

From FAQ

2.15. What staff are included in “public safety, public health, health care, human services, and similar employees”? Would this include, for example, 911 operators, morgue staff, medical examiner staff, or EMS staff? [5/27]

As discussed in the Interim Final Rule, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, for the portion of the employee’s time that is dedicated to responding to the COVID-19 public health emergency.

Public safety employees would include police officers (including state police officers), sheriffs and deputy sheriffs, firefighters, emergency medical responders, correctional and detention officers, and those who directly support such employees such as dispatchers and supervisory personnel. Public health employees would include employees involved in providing medical and other health services to patients and supervisory personnel, including medical staff assigned to schools, prisons, and other such institutions, and other support services essential for patient care (e.g., laboratory technicians, medical examiner or morgue staff) as well as employees of public health departments directly engaged in matters related to public health and related supervisory personnel. Human services staff include employees providing or administering social services; public benefits; child welfare services; and child, elder, or family care, as well as others

2165

ARPA 602(g)(3)

“(3) PREMIUM PAY.—The term ‘premium pay’ means an amount of up to \$13 per hour that is paid to an eligible worker, in addition to wages or remuneration the eligible worker otherwise receives, for all work performed by the eligible worker during the COVID–19 public health emergency. Such amount may not exceed \$25,000 with respect to any single eligible worker.

[Taylor County employees to receive 'premium pay' via ARPA funds \(reporternews.com\)](https://reporternews.com/taylor-county-employees-to-receive-premium-pay-via-arpa-funds/)



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: Yes

SUBJECT: (B10) Resolution No. 21-66 - Budget Appropriation - FY21 Budget Execution Review - Final Year End True-Up

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 21-66.

SUMMARY: At the end of the fiscal year, staff must review and recognize all revenues affecting the funds and the allocations established based on the revenues. The major funds affected will include the impact fee funds, internal service funds, capital improvement funds, enterprise funds, special revenue funds, and general funds. Allocations are established during the budget process, so a true-up is performed on an annual basis, and the true-up must be performed according to F.S. 166.241(7). Florida Statute 166.241(7) The governing body of each municipality at any time within a fiscal year or within 60 days following the end of the fiscal year may amend a budget for that year as follows: (a) Appropriations for expenditures within a fund may be decreased or increased by motion recorded in the minutes if the total appropriations of the fund is not changed. (b) The governing body may establish procedures by which the designated budget officer may authorize budget amendments if the total appropriation of the fund is not changed. (c) If a budget amendment is required for a purpose not specifically authorized in paragraph (a) or paragraph (b), the budget amendment must be adopted in the same manner as the original budget unless otherwise specified in the municipality's charter.

The exhibits attached to the Resolution for consideration explain the changes being requested.

Project No.: N/A

Funding Account No.: N/A

Presenter: Robin Hayes

ATTACHMENTS:

1.	Budget Resolution No. 21-66 with exhibit	Reso 21-66 FY21 Final Budget Execution Review - CC Mtg 11-16-21.pdf
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Scott Neils	Created/Initiated - 10/27/2021
Lupe Reyna-Coffin	Approved - 11/4/2021
Robin Hayes	Approved - 11/4/2021
Matthew Jones	Approved - 11/5/2021
Wayne Clark	Approved - 11/5/2021
Robin Fenwick	Final Approval - 11/5/2021

RESOLUTION NO. 21-66

A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROPRIATING
OPERATING AND CAPITAL FUNDS FOR VARIOUS
CITY OPERATIONS FOR FISCAL YEAR 2021;
SETTING FORTH REVENUES AND EXPENDITURES;
AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The City of Port Orange has approved the Budget Execution review;
and

WHEREAS, the City Council desires to appropriate the funds related to operations
and capital projects shown in the Budget Execution Review, and to set forth, appropriate
and change appropriations of certain revenues and expenses.

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

Section 1. The funds for City operations and capital projects are hereby
appropriated as set forth in Composite Exhibit A, attached hereto, which reflects revenues
and corresponding expenditures for the designated project.

Section 2. The Operating and Capital Budget items adopted in the preceding
section shall govern the expenditures relating to such operations and projects for the City
during the fiscal year effective October 1, 2020 through September 30, 2021.

Section 3. Supplemental appropriations, reductions of appropriations,
emergency appropriations, and interdepartmental transfers of appropriations may be
effected by the City Council and the City Manager as deemed necessary in strict
compliance with the procedures specified in Chapter 2, Article VI, Division 3, Code of
Ordinances, City of Port Orange, Florida.

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin Fenwick, MMC, City Clerk

Adopted on the day of

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

COMPOSITE EXHIBIT A

Resolution No. 21-66

FY2021 General Fund (001)
 PREPARED: October 29, 2021
 FINANCE: Finance Staff

	BUDGET INCREASE(DECREASE)
<u>REVENUES:</u>	
Appropriated Fund Balance	1,207,107
Admin Fee on Impact Fees - Fire (311)	1,518
Admin Fee on Impact Fees - Transportation - (312)	(5,493)
Admin Fee on Impact Fees - Water and Sewer - (405)	22,364
Admin Fee on Impact Fees - Recreation - (611)	12,718
Total Charges for Services - Admin Fee	31,107
Taxes - Delinquent Ad-Valorem	33,893
Special Assessments - Community Dev - Tree Mitigation Fees	1,018
Miscellaneous Revenue - Private Contributions	3,296
TOTAL REVENUES:	1,276,421
<u>EXPENDITURES:</u>	
Interfund Transfer Expense - Project Carry Forward Fund 317	1,207,107
Interfund Transfer Expense Fund 317 - QPI202	65,000
Community Development - Other Operating Supplies ZCV002	1,018
Parks & Recreation - Memorial Benches, Trees, Brick Pkwy QPC046	3,296
TOTAL EXPENDITURES:	1,276,421

**To budget for the use of Appropriated Fund Balance to transfer to Fund 317 and provide funding for FY20-21 Project Carry Forward and addition project omitted from CF list, budget for additional Administrative Fees due to greater than anticipated Impact Fees collected; budget for additional Delinquent Ad Valorem Taxes collected, to budget for additional Tree Mitigation Fees collected by Community Development Department (ZCV002) ; to budget for additional private contributions received by Parks and Recreation for Memorial Benches, Trees and Bricks Program (Project QPC046)*

COMPOSITE EXHIBIT A

Resolution No. 21-66

FY2021 Tax Increment Fund - Town Center (103)
PREPARED: October 29, 2021
FINANCE: Finance Staff

	BUDGET
	INCREASE(DECREASE)
<u>REVENUES:</u>	
Intergovernmental Revenue	
Tax Increment Revenue	6,865
Appropriated Fund Balance	<u>(1,500)</u>
TOTAL REVENUES:	<u>5,365</u>
<u>EXPENDITURES:</u>	
Debt Service - Interest Payments	5,365
TOTAL EXPENDITURES:	<u>5,365</u>

To budget for additional Tax Increment Revenue to cover additional interest due to Loan Pool Fund (508). Amount budgeted was based on estimated loan from the Loan Pool Fund, adjustment is needed to reflect interest due based on actual loan amount; and to budget for the use of additional tax increment revenue as source to cover increase in audit fees, previously covered by Appropriate Fund Balance.

COMPOSITE EXHIBIT A**Resolution No. 21-66**

FY2021 **Capital Projects Fund (301)**
PREPARED: **October 29, 2021**
FINANCE: **Finance Staff**

	BUDGET
	INCREASE(DECREASE)
<u>REVENUES:</u>	
Appropriated Fund Balance	(2,270)
TOTAL REVENUES:	(2,270)

EXPENDITURES:

Capital Outlay - Delete Duplicate Project	(13,000)
Non-Discretionary Supplies and Expense - Fleet Financing	10,730
TOTAL EXPENDITURES:	(2,270)

To decrease Capital Outlay for duplicate CIP (Project OMI023) also budgeted in Fund 312. To budget for additional Non Discretionary Charge for Fleet Financing, to budget for refunding of budgeted Appropriated Fund Balance

FY2021 Fire Impact Fee Fund (311)
 PREPARED: October 29, 2021
 FINANCE: Finance Staff

	BUDGET
	INCREASE (DECREASE)
<u>REVENUES:</u>	
Permits, Fees and Special Assessments - Residential	
Fire Impact Fees - Residential	744
Fire Impact Fees - Commercial	774
TOTAL REVENUES:	1,518

EXPENDITURES:

Fire Services	1,518
TOTAL EXPENDITURES:	1,518

**To budget for additional Permits, Fees and Special assessments and related increase budget for administrative fees to the General Fund due to higher than anticipated Impact Fee Revenue.*

FY2021 Transportation Impact Fees Fund (312)
PREPARED: October 29, 2021
FINANCE: Finance Staff

		BUDGET
		INCREASE(DECREASE)
<u>REVENUES:</u>		
Appropriated Fund Balance		<u>(5,493)</u>
TOTAL REVENUES:		<u><u>(5,493)</u></u>
<u>EXPENDITURES:</u>		
Transportation Impact		<u>(5,493)</u>
TOTAL EXPENDITURES:		<u><u>(5,493)</u></u>

**To budget for a reduction in Administrative fees to the General Fund due to lower than anticipated Impact Fee Revenue and refund the use of Appropriated Fund balance.*

COMPOSITE EXHIBIT A**Resolution No. 21-66**

FY2021 **General Capital Replacement Fund (317)**
PREPARED: **October 29, 2021**
FINANCE: **Finance Staff**

	BUDGET
	INCREASE(DECREASE)
<u>REVENUES:</u>	
Other Financing Sources	
Appropriated Equity - Correct Funding FY20-21 Project and Encumbrance CF (BR21-6)	(1,207,107)
Interfund Transfers - Correct From GF (Funding for FY20-21 Project and Encumbrance CF (BR21-6))	1,207,107
Other Financing Sources - Interfund Transfer Revenue	65,000
TOTAL REVENUES:	65,000

EXPENDITURES:

Capital Outlay -	65,000
TOTAL EXPENDITURES:	65,000

To budget for Transfer from the General Fund (001) to cover FY20-21 Project Carry Forward previously funded with Appropriated Fund Balance; budget for additional transfer from GF to cover Capital Outlay for Project QPI202 not included in Carry Forward - due to Workday FY20 YE error - POs with change orders were duplicated resulting in referenced project erroneously showing a credit balance and not carried forward.

COMPOSITE EXHIBIT A

Resolution No. 21-66

FY2021 Water & Sewer Fund (401)
PREPARED: October 29, 2021
FINANCE: Finance Staff

	BUDGET
	INCREASE (DECREASE)

REVENUES:

Appropriated Fund Balance	8,678,910
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TOTAL REVENUES:	<u><u>8,678,910</u></u>
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EXPENDITURES:

Interfund Transfer Expense	8,678,910
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TOTAL EXPENDITURES:	<u><u>8,678,910</u></u>
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To budget for the use of Appropriated Fund Balance and Interfund Transfer Expense (to Fund 403) to provide funding source FY20-21 Project and Encumbrance Carry Forward (\$5,681,910), (BR21-6) and Adjustment to Capital Budget (\$2,997,000), (BR20-67)

|

COMPOSITE EXHIBIT A

Resolution No. 21-66

FY2021 Water & Sewer R&R Fund (403)
PREPARED: October 29, 2021
FINANCE: Finance Staff

	BUDGET
	INCREASE (DECREASE)

REVENUES:

Other Financing Sources -	
Appropriated Fund Balance	(8,678,910)
Interfund Transfer Revenue	8,678,910

TOTAL REVENUES: -

EXPENDITURES:

No Impact -

TOTAL EXPENDITURES: -

To correct funding source from Appropriated FB to Interfund Transfers (from 401) for FY20-21 Project and Encumbrance Carry Forward (\$5,681,910), (BR21-6) and Adjustment to Capital Budget (\$2,997,000), (BR20-67)

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FY2021 Water & Sewer Impact Fee Fund 405
PREPARED: October 29, 2021
FINANCE: Finance Staff

	BUDGET
	INCREASE (DECREASE)

REVENUES:

Impact Fees	<u>22,364</u>
TOTAL REVENUES:	<u><u>22,364</u></u>

EXPENDITURES:

Water and Sewer	<u>22,364</u>
TOTAL EXPENDITURES:	<u><u>22,364</u></u>

**To budget for additional Impact Fees revenue and related administrative fees to the General Fund due to greater than anticipated Impact Fee Revenue.*

|

COMPOSITE EXHIBIT A

Resolution No. 21-66

FY2021
PREPARED: Drainage Fund (412)
October 29, 2021
FINANCE: Finance Staff

		BUDGET
		INCREASE(DECREASE)
<u>REVENUES:</u>		
APPROPRIATED EQUITY		105,539
	TOTAL REVENUE	105,539
<u>EXPENDITURES:</u>		
Capital Outlay - Drainage (Project DIP072)		105,539
	TOTAL EXPENSES	105,539

To budget for funding for Project DIP072 - Yorktown Sidewalk Improvements omitted from carryforward resolution 21-6. Available balance dropped to Fund Balance at end of FY20.

COMPOSITE EXHIBIT A**Resolution No. 21-66**

FY2021
PREPARED: Risk Management Fund (504)
FINANCE: October 29, 2021
Finance Staff

		BUDGET
		INCREASE(DECREASE)
<u>REVENUES:</u>		
Miscellaneous Revenue		140,000
	TOTAL REVENUE	140,000
<u>EXPENDITURES:</u>		
Insurance Claims Expense		140,000
	TOTAL EXPENSES	140,000

To budget for revenue received for Insurance claims reimbursement and settlements and appropriate to cover unanticipated Insurance Claims Loss

COMPOSITE EXHIBIT A

Resolution No. 21-66

FY2021 Loan Pool Fund (508)
PREPARED: October 29, 2021
FINANCE: Finance Staff

		BUDGET
		INCREASE(DECREASE)
<u>REVENUES:</u>		
Misc. Revenue - Interest Earnings		5,365
Appropriated Fund Balance		<u>(5,205)</u>
	TOTAL REVENUE	<u>160</u>
<u>EXPENDITURES:</u>		
Interfund Transfers Expense		<u>160</u>
	TOTAL EXPENSES	<u>160</u>

-

To budget for additional interest due from Fund 103 (\$5,365) original budget is based on estimates, and to adjust budget for Interfund Transfer Expense (loan to Funds 103 and 450)

FY2021 Recreation Impact Fee Fund 611
PREPARED: October 29, 2021
FINANCE: Finance Staff

	BUDGET
	INCREASE(DECREASE)
<u>REVENUES:</u>	
Impact Fees	12,718
TOTAL REVENUES:	12,718
<u>EXPENDITURES:</u>	
Recreation	12,718
TOTAL EXPENDITURES:	12,718

**To budget for additional administrative fees to the General Fund due to greater than anticipated Impact Fee Revenue.*



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: Yes

SUBJECT: (B11) Release of Drainage Easement at 3835 Clyde Morris Boulevard

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to release the existing access, drainage, and maintenance easement on the 35-acre parcel at 3835 Clyde Morris Boulevard, subject to provision of the replacement access, drainage, and maintenance easement, in recordable form; and authorize the Mayor and City Clerk to execute documents necessary for the release.

SUMMARY: Staff has received a request for the release of an existing access, drainage, and maintenance easement on the 35-acre vacant tract of land located at 3835 Clyde Morris Boulevard, south of Palmetto Pointe Marketplace Subdivision. The property owner/applicant, Collier Clyde Morris Blvd. LLC, has made this application in connection with the proposed development of a 306-unit multi-family development (Osprey Pointe Apartments). To develop the multi-family project as proposed, the existing drainage improvements on the subject property need to be relocated elsewhere on the subject property. The property owner/applicant will provide a replacement easement over the relocated drainage improvements once constructed and approved by the City.

The easement vacation application and legal description have been reviewed for completeness and accuracy. Required easement release letters were provided by all franchise utility companies for the easement to be vacated. City departments have reviewed this request and have requested the preparation and recording of a separate individual replacement easement prior to final development approval and the issuance of the first certificate of occupancy (CO) for the multi-family project. If approved, release of the existing easement will be made conditional upon the recording of the replacement access, drainage, and maintenance easement once the new drainage improvements have been constructed and approved by the City.



Project No.: N/A

Funding Account No.: N/A

Presenter: Tim Burman

ATTACHMENTS:

1.	Release of Easement	Release of Collier Easement F.pdf
2.	Permanent Access Drainage and Maintenance Easement proposed for release	SKM_C75921093014560.pdf

3.	Replacement Easement	Replacement Easement Collier.pdf
Lisa Epstein Created/Initiated - 10/5/2021 Tim Burman Approved - 10/15/2021 Shannon Balmer Approved - 10/17/2021 Wayne Clark Approved - 11/4/2021 Robin Fenwick Final Approval - 11/4/2021		

Portion of Parcel No. 6306-00-00-0112

Cross Reference to Instrument No. 2016-123462
Official Records Book 7274 Page 1430

**RELEASE OF PERMANENT ACCESS, DRAINAGE,
AND MAINTENANCE EASEMENT**

THIS Release of Access Maintenance and Drainage Easement is made this _____ day of _____, 2021, by and between **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, mailing address: 1000 City Center Circle, Port Orange FL 32129, hereinafter “City,” and **COLLIER CLYDE MORRIS BLVD, LLC**, a Florida limited liability company, whose address is 220 North Main Street, Gainesville FL 32601, as successor in interest to **Palmetto Pointe, LLP** as Grantor of the Easement, hereinafter “Collier”.

W I T N E S S E T H:

WHEREAS, the Collier is the fee simple owner of the property where the Easement is located, said property being graphically depicted and legally described in **Exhibit “A”**, attached hereto and made a part hereof by reference (hereinafter “Property”); and

WHEREAS, on June 27, 2016, Palmetto Pointe, LLP granted to the City a *Permanent Access, Drainage, and Maintenance Easement*, that document having been filed of record on July 7, 2016 in Official Records Book 7274, Pages 1430, et seq., Public Records of Volusia County, Florida (hereinafter referred to as the “Easement”); and

WHEREAS, the Easement is graphically depicted and legally described in Official Records Book 7274, Pages 1430 of the Public Records Volusia County, Florida; and

WHEREAS, the Easement was granted to the City as part of a site plan submission for development of the property adjacent to the Property; and

WHEREAS, the Property was sold and a new site plan is contemplated which necessitates relocation of the Easement; and

WHEREAS, Collier, has requested the City release the Easement in consideration of provision of a replacement easement that will provided the same easement rights as afforded under the Easement for release; and

WHEREAS, the specific area of the Easement being released is legally described and graphically depicted on **Exhibit “B”**, attached hereto and made a part hereof; and

WHEREAS, the City, as the owner of the Easement, has determined the release of the easement, as shown on the attached **Exhibit “B”** will not adversely impact the operation and

maintenance of drainage facilities on the Property as the future development will be required to comply with the City of Port Orange Land Development Code.

NOW, THEREFORE, in consideration for mutual covenants and consideration otherwise acknowledged, the City of Port Orange, hereby releases to Collier, its successors and assigns forever, the Easement more particularly described and graphically depicted on attached **Exhibit “B.”**

IN WITNESS WHEREOF, the City, has executed this Release of the *Permanent Access, Drainage, and Maintenance Easement* by and through its duly authorized representatives on the day and year first above written.

Signed in the presence of:

CITY OF PORT ORANGE, FLORIDA
a Florida chartered municipal corporation

Witness: _____
Printed Name: _____

Witness: _____
Printed Name: _____

By: _____
Donald O. Burnette, Mayor

Witness: _____
Printed Name: _____

Attest:

Witness: _____
Printed Name: _____

Robin L. Fenwick, MMC, City Clerk

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing **RELEASE OF Permanent Access, Drainage, and Maintenance Easement** was acknowledged before me by [XX] physical presence or [] online notarization this ____ day of _____, 2021, by Donald O. Burnette, the Mayor and Robin L. Fenwick, City Clerk who both acknowledged having full authority to execute the document on behalf of the City of Port Orange, Florida, a chartered municipal corporation, for the purposes stated therein. He is personally known to me.
(

Signature of Notary Public, State of Florida
Printed name, Commission, Seal, and Term Expiration:

EXHIBIT "A"

DESCRIPTION:

A PARCEL OF LAND LYING IN SECTIONS 6 AND 7, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHWEST CORNER OF LOT 6, PALMETTO POINTE MARKETPLACE AS RECORDED IN PLAT BOOK 56, PAGE 191 OF THE PUBLIC RECORDS OF VOLUSIA COUTNY, FLORIDA; THENCE NORTHERLY ALONG THE SOUTH LINE OF SAID LOT 6, N75°50'34"E, 283.80 FEET TO THE EAST LINE OF SAID LOT 6 AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 1575.61 FEET, A CENTRAL ANGLE OF 12°34'31" AND A CHORD BEARING OF N09°01'16"E, THENCE NORTHERLY ALONG THE EAST LINE OF SAID LOT 6 AND THE EAST LINE OF TRACT C AND ALONG THE ARC OF SAID CURVE, 345.81 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 44.50 FEET, A CENTRAL ANGLE OF 93°13'51" AND A CHORD BEARING OF N43°51'13"E, THENCE NORTHEASTERLY ALONG THE EAST LINE OF TRACT C AND THE ARC OF SAID CURVE, 72.41 FEET TO THE SOUTH LINE OF LOT 2, SAID PALMETTO POINTE MARKETPLACE; THENCE ALONG SAID SOUTH LINE OF LOT 2, TRACT D AND TRACT E, SAID PALMETTO POINTE MARKETPLACE S89°31'52"E, 668.39 FEET; THENCE CONTINUE ALONG TRACT E THE FOLLOWING TWO CALLS, N00°32'03"W, 253.47 FEET; THENCE S89°25'59"E, 246.70 FEET TO THE SOUTHEAST CORNER OF TRACT E AND THE WEST RIGHT-OF-WAY LINE OF BRUNER ROAD (60' R/W); THENCE ALONG SAID WEST RIGHT-OF-WAY LINE THE FOLLOWING TWO CALLS, S01°02'42"W, 926.58 FEET; THENCE S00°36'25"W, 1378.98 FEET TO THE EASTERLY RIGHT-OF-WAY OF CLYDE MORRIS BOULEVARD (100' R/W); THENCE ALONG THE SAID EASTERLY RIGHT-OF-WAY LINE N41°10'59"W, 950.95 FEET; THENCE DEPART SAID EASTERLY RIGHT-OF-WAY LINE N01°21'10"E, 302.95 FEET; THENCE N89°39'19"W, 254.70 FEET TO EASTERLY RIGHT-OF-WAY LINE OF CLYDE MORRIS BOULEVARD AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 1859.36 FEET, A CENTRAL ANGLE OF 19°56'45" AND A CHORD BEARING OF N25°06'40"W, THENCE NORTHERLY ALONG THE EASTERLY RIGHT-OF-WAY LINE OF CLYDE MORRIS BOULEVARD AND THE ARC OF SAID CURVE, 647.28 FEET TO THE POINT OF BEGINNING.

CONTAINING 35.005 ACRES, MORE OR LESS.

SKETCH OF DESCRIPTION

PROJECT: PALMETTO POINTE MARKETPLACE

PURPOSE: SWALE EASEMENT

THIS IS NOT A BOUNDARY SURVEY
NOT VALID WITHOUT SHEET 2

EXHIBIT "B"

DESCRIPTION:

A PARCEL OF LAND LYING IN SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST; THENCE RUN S00°15'37"W ALONG THE EASTERLY LINE OF SAID SECTION 6, A DISTANCE OF 2,620.11 FEET; THENCE RUN S89°15'33"W ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST, A DISTANCE OF 1322.84 FEET; THENCE RUN S00°17'28"W, A DISTANCE OF 67.03 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF MADELINE AVENUE; THENCE CONTINUE S00°17'28"W ALONG THE WEST RIGHT OF WAY LINE OF BRUNER ROAD, A DISTANCE OF 324.62 FEET; THENCE RUN S89°47'55"W, A DISTANCE OF 246.60 FEET; THENCE RUN S00°12'05"E, A DISTANCE OF 253.42 FEET; THENCE RUN S89°42'37"W, A DISTANCE OF 349.25 FEET TO THE POINT OF BEGINNING; THENCE RUN S16°58'11"W, A DISTANCE OF 360.12 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 34.00 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°02'19", AN ARC DISTANCE OF 32.66 FEET, HAVING A CHORD BEARING OF S10°32'59"E AND A CHORD DISTANCE OF 31.42 FEET; THENCE RUN S38°04'09"E, A DISTANCE OF 202.40 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 34.00 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17°58'23", AN ARC DISTANCE OF 10.67 FEET, HAVING A CHORD BEARING OF S47°03'20"E AND A CHORD DISTANCE OF 10.62 FEET; THENCE RUN S56°02'32"E, A DISTANCE OF 152.63 FEET; THENCE RUN S49°40'42"W, A DISTANCE OF 38.44 FEET; THENCE RUN N56°02'32"W, A DISTANCE OF 142.22 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 71.00 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17°58'23", AN ARC DISTANCE OF 22.27 FEET, HAVING A CHORD BEARING OF N47°03'20"W AND A CHORD DISTANCE OF 22.18 FEET; THENCE RUN N38°04'09"W, A DISTANCE OF 202.40 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 71.00 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°02'19", AN ARC DISTANCE OF 68.20 FEET, HAVING A CHORD BEARING OF N10°32'59"W AND A CHORD DISTANCE OF 65.61 FEET; THENCE RUN N16°58'11"E, A DISTANCE OF 348.63 FEET; THENCE RUN N89°42'37"E, A DISTANCE OF 38.74 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.654 ACRES, MORE OR LESS.

SURVEYORS NOTES

1. Bearings shown here on are relative to assumed datum, based on North line of the Southeast 1/4 of Section 6-16-33 as being S89°15'33"W.
2. I hereby certify that the standard of practice of the above described property is true and correct to the best of my knowledge and belief as recently drawn under my direction and that it meets the standards of practice for Land Surveying CH 5J-17 requirements.
3. Not valid without the signature and raised seal of a Florida Licensed Surveyor and Mapper.

SHANNON SURVEYING, INC.
499 NORTH S.R. 434 - SUITE 2155
ALTAMONTE SPRINGS, FLORIDA, 32714
(407) 774-8372 LB # 6898

DATE OF SURVEY: 07/29/2015

DRAWN BY: BP SCALE: 1" = 200'

PPM-ADJ-SWALE-SKETCH

SHEET 1 OF 2

JAMES R. SHANNON JR., P.L.S. #4671

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED
SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

Document Prepared by:
Matthew J. Jones, Dep. City Attorney
1000 City Center Circle
Port Orange, FL 32129

RETURN RECORDED DOCUMENT TO:
Attention: Records Clerk
CITY OF PORT ORANGE
1000 City Center Circle
Port Orange, FL 32129-4144

This document is accepted and recorded by the City of Port Orange without the benefit of title examination or survey; such acceptance shall not constitute a waiver of compliance with local and general laws regulating the subject property.

Portion of Parcel No. 6306-00-00-0130 &
[REDACTED] 132

Space Reserved For Recording Data

PERMANENT ACCESS, DRAINAGE AND MAINTENANCE EASEMENT

THIS INDENTURE made this 27th day of JUNE, 2016, by and between **PALMETTO POINTE LLP**, a Florida limited liability partnership, whose mailing address is 101 SE 2nd Place, Ste. 202, Gainesville, Florida 32601, as "Grantor," and the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, having its principal place of business located at 1000 City Center Circle, Port Orange FL 32129 in Volusia County, Florida, as "Grantee."

WITNESSETH

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor hereby grants, sells and conveys unto the Grantee, its successors and assigns, a permanent access, drainage and maintenance easement (hereinafter referred to as the "Easement") as more particularly described and graphically depicted on the attached Exhibit "A", consisting of two (2) pages, prepared by Shannon Surveying, Inc., 499 North S.R. 434, Ste. 2155, Altamonte Springs, FL 32714, dated July 29, 2015, and referred to hereafter as the "Easement Premises."

The purpose of this Easement hereby grants to the Grantee as follows:

1. The perpetual right to enter upon the Easement Premises to construct, install, operate, maintain, repair, replace and remove underground drainage systems, including but not specifically limited to: drainage and storm water facilities, along with associated conduit or pipes; and the right to transmit and convey storm water, together with the right to excavate and refill ditches and trenches for the placement of such lines or pipes within the Easement Premises.
2. Access, ingress and egress for emergency vehicles and government services within the described Easement Premises and over the adjoining lands of the Grantor for the purposes granted herein.

TO HAVE AND TO HOLD the same unto said Grantee and its successors and assigns, together with the right to enter upon the Easement Premises and construct and maintain public uses thereon, with all such fills, cuts, drains, pipelines, ditches, trenches and other incidents which said Grantee may deem necessary or convenient in connection therewith.

Grantor covenants to the Grantee that Grantor holds fee simple ownership of the Easement Premises; and, further agrees that Grantor shall not place or construct any buildings or structures of any type whatsoever on the Easement Premises and the Grantee shall not be liable for their removal if they are so placed.

Notwithstanding the foregoing, the Grantor shall be responsible for maintenance of the drainage system. In the event the Grantor fails to properly maintain the drainage system, the Grantee shall take corrective measures as deemed necessary in the sole discretion of the Grantee to maintain and repair the drainage system; however, the Grantee shall not be obligated to either maintain or repair the improvements and the Grantee shall not be liable for either undertaking or failing to maintain or repair the improvements. All costs and expenses of the Grantee resulting from maintenance or repair of the improvements, including administrative expenses, attorney's fees and costs, and expenses incurred in establishing a lien shall be chargeable to and assessed by the Grantee jointly and severally against all owners of record for property lying within **Exhibit "A."**

It is expressly understood and agreed that the terms, covenants and conditions of this Easement shall be and constitute covenants running with and binding upon the Easement Premises and shall constitute an obligation on the Easement Premises regardless of title or ownership thereof and regardless of any future change which may take place therein.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal on the day and year first above written.

[REMAINDER OF PAGE LEFT BLANK]

GRANTOR:

Palmetto Pointe LLP
a Florida limited liability partnership

By: LaCour and Company, Ltd., Limited Partnership
a Florida limited partnership,
its partner

By: Regency Hospitality Group, Inc.,
a Florida corporation,
its general partner

Signed in the presence of:
Witnesses as to

David Clark
Name: DAVID CLARK

Susan Kellett
Name: SUSAN KELLETT

By: [Signature]
Name: E.V. LaCour
Title: President

(Company Seal)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing ACCESS, DRAINAGE AND MAINTENANCE EASEMENT was sworn to and acknowledged before me this 27th day of JUNE, 2016 by E.V. LaCour, in his official capacity as President of Regency Hospitality Group, Inc., a Florida corporation, the general partner of LaCour and Company, Ltd, Limited Partnership, a Florida limited partnership, the partner of Palmetto Pointe, LLP, a Florida limited liability partnership, the Grantor named in the foregoing Easement who hereby acknowledges that he/she has full power and authority to convey interests in the above-described real property as the fee simple record title holder, and who: ☒ is personally known to me, or ☐ has produced _____ as identification.



Christina D. Carson
Notary Public, State of Florida

Printed, typed or stamped name, commission and Expiration of commission term:

SKETCH OF DESCRIPTION

PROJECT: PALMETTO POINTE MARKETPLACE

PURPOSE: SWALE EASEMENT

THIS IS NOT A BOUNDARY SURVEY
NOT VALID WITHOUT SHEET 2

EXHIBIT "A"

DESCRIPTION:

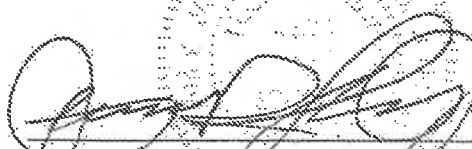
A PARCEL OF LAND LYING IN SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST; THENCE RUN S00°15'37"W ALONG THE EASTERLY LINE OF SAID SECTION 6, A DISTANCE OF 2,620.11 FEET; THENCE RUN S89°15'33"W ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST, A DISTANCE OF 1322.84 FEET; THENCE RUN S00°17'28"W, A DISTANCE OF 67.03 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF MADELINE AVENUE; THENCE CONTINUE S00°17'28"W ALONG THE WEST RIGHT OF WAY LINE OF BRUNER ROAD, A DISTANCE OF 324.62 FEET; THENCE RUN S89°47'55"W, A DISTANCE OF 246.60 FEET; THENCE RUN S00°12'05"E, A DISTANCE OF 253.42 FEET; THENCE RUN S89°42'37"W, A DISTANCE OF 349.25 FEET TO THE POINT OF BEGINNING; THENCE RUN S16°58'11"W, A DISTANCE OF 360.12 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 34.00 FEET; THENCE RUN SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°02'19", AN ARC DISTANCE OF 32.66 FEET, HAVING A CHORD BEARING OF S10°32'59"E AND A CHORD DISTANCE OF 31.42 FEET; THENCE RUN S38°04'09"E, A DISTANCE OF 202.40 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 34.00 FEET; THENCE RUN SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17°58'23", AN ARC DISTANCE OF 10.67 FEET, HAVING A CHORD BEARING OF S47°03'20"E AND A CHORD DISTANCE OF 10.62 FEET; THENCE RUN S56°02'32"E, A DISTANCE OF 162.63 FEET; THENCE RUN S49°40'42"W, A DISTANCE OF 38.44 FEET; THENCE RUN N56°02'32"W, A DISTANCE OF 142.22 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 71.00 FEET; THENCE RUN NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 17°58'23", AN ARC DISTANCE OF 22.27 FEET, HAVING A CHORD BEARING OF N47°03'20"W AND A CHORD DISTANCE OF 22.18 FEET; THENCE RUN N38°04'09"W, A DISTANCE OF 202.40 FEET TO THE BEGINNING OF A CURVE, CONCAVE TO THE EAST, HAVING A RADIUS OF 71.00 FEET; THENCE RUN NORTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 55°02'19", AN ARC DISTANCE OF 68.20 FEET, HAVING A CHORD BEARING OF N10°32'59"W AND A CHORD DISTANCE OF 65.61 FEET; THENCE RUN N16°58'11"E, A DISTANCE OF 348.63 FEET; THENCE RUN N89°42'37"E, A DISTANCE OF 38.74 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.654 ACRES, MORE OR LESS.

SURVEYORS NOTES

1. Bearings shown here on are relative to assumed datum, based on North line of the Southeast 1/4 of Section 6-16-33 as being S89°15'33"W.
2. I hereby certify that the standard of practice of the above described property is true and correct to the best of my knowledge and belief as recently drawn under my direction and that it meets the standards of practice for Land Surveying CH 5J-17 requirements.
3. Not valid without the signature and raised seal of a Florida Licensed Surveyor and Mapper.


JAMES R. SHANNON JR., P.L.S. #4671
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED
SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER

SHANNON SURVEYING, INC.
499 NORTH S.R. 434 - SUITE 2155
ALTAMONTE SPRINGS, FLORIDA, 32714
(407) 774-8372 LB # 6898

DATE OF SURVEY: 07/29/2015

DRAWN BY: BP SCALE: 1" = 200'

PPM-ADJ-SWALE-SKETCH

SHEET 1 OF 2

SKETCH OF DESCRIPTION

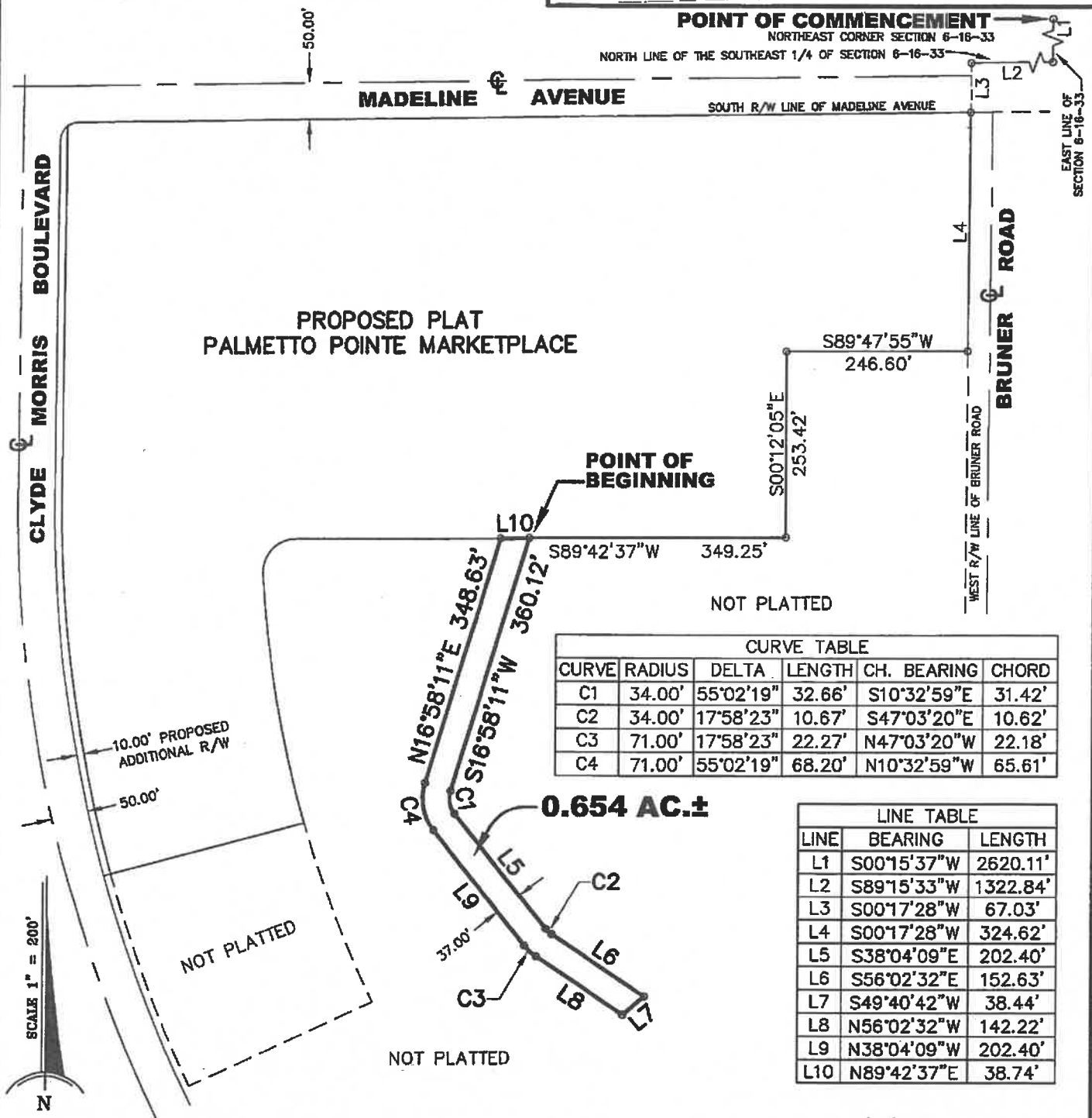
PROJECT: PALMETTO POINTE MARKETPLACE

PURPOSE: SWALE EASEMENT

THIS IS NOT A BOUNDARY SURVEY

NOT VALID WITHOUT SHEET 1

EXHIBIT "A"



SHANNON SURVEYING, INC.
499 NORTH S.R. 434 - SUITE 2155
ALTAMONTE SPRINGS, FLORIDA, 32714
(407) 774-8372 LB # 6898

DATE OF SURVEY: 07/29/2015

DRAWN BY: BP SCALE: 1" = 200'

PPM-ADJ-SWALE-SKETCH

SHEET 2 OF 2

Document Prepared by:
Matthew J. Jones, Dep. City Attorney
1000 City Center Circle
Port Orange, FL 32129

RETURN RECORDED DOCUMENT TO:
Attention: Records Clerk
CITY OF PORT ORANGE
1000 City Center Circle
Port Orange, FL 32129-4144

This document is accepted and recorded by the City of Port Orange without the benefit of title examination or survey; such acceptance shall not constitute a waiver of compliance with local and general laws regulating the subject property.

Portion of Parcel No. **6306-00-00-0112**

PERMANENT ACCESS, DRAINAGE AND MAINTENANCE EASEMENT

THIS INDENTURE made this _____ day of _____, 2021, by and between **COLLIER CLYDE MORRIS BLVD, LLC**, a Florida limited liability company, whose address is 220 North Main Street, Gainesville FL 32601, as "Grantor;" and the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, having its principal place of business located at 1000 City Center Circle, Port Orange FL 32129 in Volusia County, Florida, as "Grantee."

W I T N E S S E T H

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, receipt of which is hereby acknowledged, the Grantor hereby grants, sells and conveys unto the Grantee, its successors and assigns, a permanent access, drainage and maintenance easement (hereinafter referred to as the "Easement") as more particularly described and graphically depicted on the attached **Exhibit "A", consisting of two (2) pages**, prepared by Sliger and Associates, Inc., and referred to hereafter as the "Easement Premises."

The purpose of this Easement hereby grants to the Grantee as follows:

1. The perpetual right to enter upon the Easement Premises to construct, install, operate, maintain, repair, replace and remove underground drainage systems, including but not specifically limited to: drainage and storm water facilities, along with associated conduit or pipes; and the right to transmit and convey storm water, together with the right to excavate and refill ditches and trenches for the placement of such lines or pipes within the Easement Premises.
2. Access, ingress and egress for emergency vehicles and government services within the described Easement Premises and over the adjoining lands of the Grantor for the purposes granted herein.

TO HAVE AND TO HOLD the same unto said Grantee and its successors and assigns, together with the right to enter upon the Easement Premises and construct and maintain public uses thereon, with all such fills, cuts, drains,

pipelines, ditches, trenches and other incidents which said Grantee may deem necessary or convenient in connection therewith.

Grantor covenants to the Grantee that Grantor holds fee simple ownership of the Easement Premises; and, further agrees that Grantor shall not place or construct any buildings or structures of any type whatsoever on the Easement Premises and the Grantee shall not be liable for their removal if they are so placed.

Notwithstanding the foregoing, the Grantor shall be responsible for maintenance of the drainage system. In the event the Grantor fails to properly maintain the drainage system, the Grantee shall take corrective measures as deemed necessary in the sole discretion of the Grantee to maintain and repair the drainage system; however, the Grantee shall not be obligated to either maintain or repair the improvements and the Grantee shall not be liable for either undertaking or failing to maintain or repair the improvements. All costs and expenses of the Grantee resulting from maintenance or repair of the improvements, including administrative expenses, attorney's fees and costs, and expenses incurred in establishing a lien shall be chargeable to and assessed by the Grantee jointly and severally against all owners of record for property lying within **Exhibit "A."**

It is expressly understood and agreed that the terms, covenants and conditions of this Easement shall be and constitute covenants running with and binding upon the Easement Premises and shall constitute an obligation on the Easement Premises regardless of title or ownership thereof and regardless of any future change which may take place therein.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal on the day and year first above written.

[REMAINDER OF PAGE LEFT BLANK]

GRANTOR:

WITNESSES:

COLLIER CLYDE MORRIS BLVD., LLC
a Florida limited liability company

Printed Name: _____

By: _____
Nathan Collier, Manager

Printed Name: _____

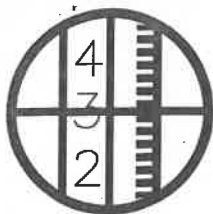
Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing ACCESS, DRAINAGE AND MAINTENANCE EASEMENT was sworn to and acknowledged before me by [XX] physical presence or [] online notarization this _____ day of _____, 2021 by *Nathan Collier, Manager* of Collier Clyde Morris Blvd., LLC, the Grantor named in the foregoing Easement who hereby acknowledges that he has full power and authority to convey interests in the above-described real property as the fee simple record title holder, and who: [] is personally known to me, or [] has produced _____ as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and Expiration of commission term:



SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD
PORT ORANGE, FL. 32127
(386) 761-5385

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www.sligerassociates.com

SURVEYORS NOTES

1. NOTICE: THERE MAY BE ADDITIONAL RESTRICTIONS AND/OR OTHER MATTERS THAT ARE NOT SHOWN ON THIS PLAT OF SURVEY/SKETCH OF DESCRIPTION THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY. THIS SURVEY/ SKETCH OF DESCRIPTION PREPARED WITHOUT BENEFIT OF AN ABSTRACT.
2. DIMENSIONS ARE SHOWN IN FEET AND DECIMALS THEREOF.
3. BEARING STRUCTURE BASED ON NAD-83 FLORIDA STATE PLANE COORDINATE SYSTEM, EAST ZONE, U.S. SURVEY FOOT WITH THE BEARING ON THE SOUTHERLY LINE OF TRACT E, PALMETTO POINTE MARKETPLACE, PLAT BOOK 56, PAGES 191-195 BEING N89°31'52"W.
4. "NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OR VALID DIGITAL SIGNATURE OF A FLORIDA LICENSED SURVEYOR AND MAPPER."
5. DESCRIPTION PREPARED BY SLIGER & ASSOCIATES, INC. SEPTEMBER 4, 2021.

DESCRIPTION

A PORTION OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF TRACT E, PALMETTO POINTE MARKETPLACE, AS RECORDED IN PLAT BOOK 56, PAGES 191 THROUGH 195, INCLUSIVE, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE RUN N89°31'52"W ALONG THE SOUTHERLY LINE OF SAID TRACT E AND ALONG THE SOUTHERLY LINE OF TRACT D, SAID PALMETTO POINTE MARKETPLACE, 339.46 FEET TO THE POINT OF BEGINNING; THENCE DEPART SAID SOUTHERLY LINE S72°47'17"E, 26.06 FEET; THENCE S10°14'40"E, 186.54 FEET; THENCE S69°21'38"E, 65.94 FEET; THENCE S21°29'22"E, 261.19 FEET; THENCE S33°57'27"W, 286.90 FEET; THENCE N56°02'33"W, 20.00 FEET; THENCE N33°57'27"E, 276.39 FEET; THENCE N21°29'22"W, 241.80 FEET; THENCE N69°21'38"W, 68.41 FEET; THENCE N10°14'40"W, 185.74 FEET; THENCE N72°47'17"W, 48.44 FEET; THENCE N17°12'43"E, 9.61 FEET TO THE SOUTHERLY LINE OF SAID TRACT D; THENCE S89°31'52"E ALONG SAID SOUTHERLY LINE, 36.06 FEET TO THE POINT OF BEGINNING.
CONTAINING 16,640 SQUARE FEET, OR 0.382 ACRES, MORE OR LESS.

REFERENCE: DRAINAGE EASEMENT FROM PALMETTO POINTE MARKETPLACE

TYPE OF SURVEY	CERTIFIED TO	SURVEY DATE	JOB NUMBER
SKETCH OF DESCRIPTION	THE COLLIER COMPANIES THE CITY OF PORT ORANGE, FLORIDA	SEPTEMBER 4, 2021	21-0541

SHEET 2 OF 2

VALID WITH SIGNATURE & EMBOSSED SEAL ONLY

FOR: THE COLLIER COMPANIES

	DATE	JOB NO.	P.C.	DRW.	CHECKED BY
SKETCH OF DESCRIPTION	SEPTEMBER 4, 2021	21-0541		JZ	DH
BOUNDARY SURVEY					
TOPOGRAPHIC SURVEY					
FOUNDATION LOCATED					
FINAL IMPROVEMENTS					
RECERTIFICATION					
PROPOSED HOUSE LOCATION					

I HEREBY CERTIFY THAT THIS PLAT MEETS THE STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 5J-17.05, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027, FLORIDA STATUTES.

J.E. ZAPERT, P.L.S. NO. 4046
STEVEN T. KRUGER, P.L.S. NO. 4722
C.O. VAN KLEECK JR., P.S.M. NO. 6149
MICHAEL S. MURPHY, P.S.M. NO. 6208



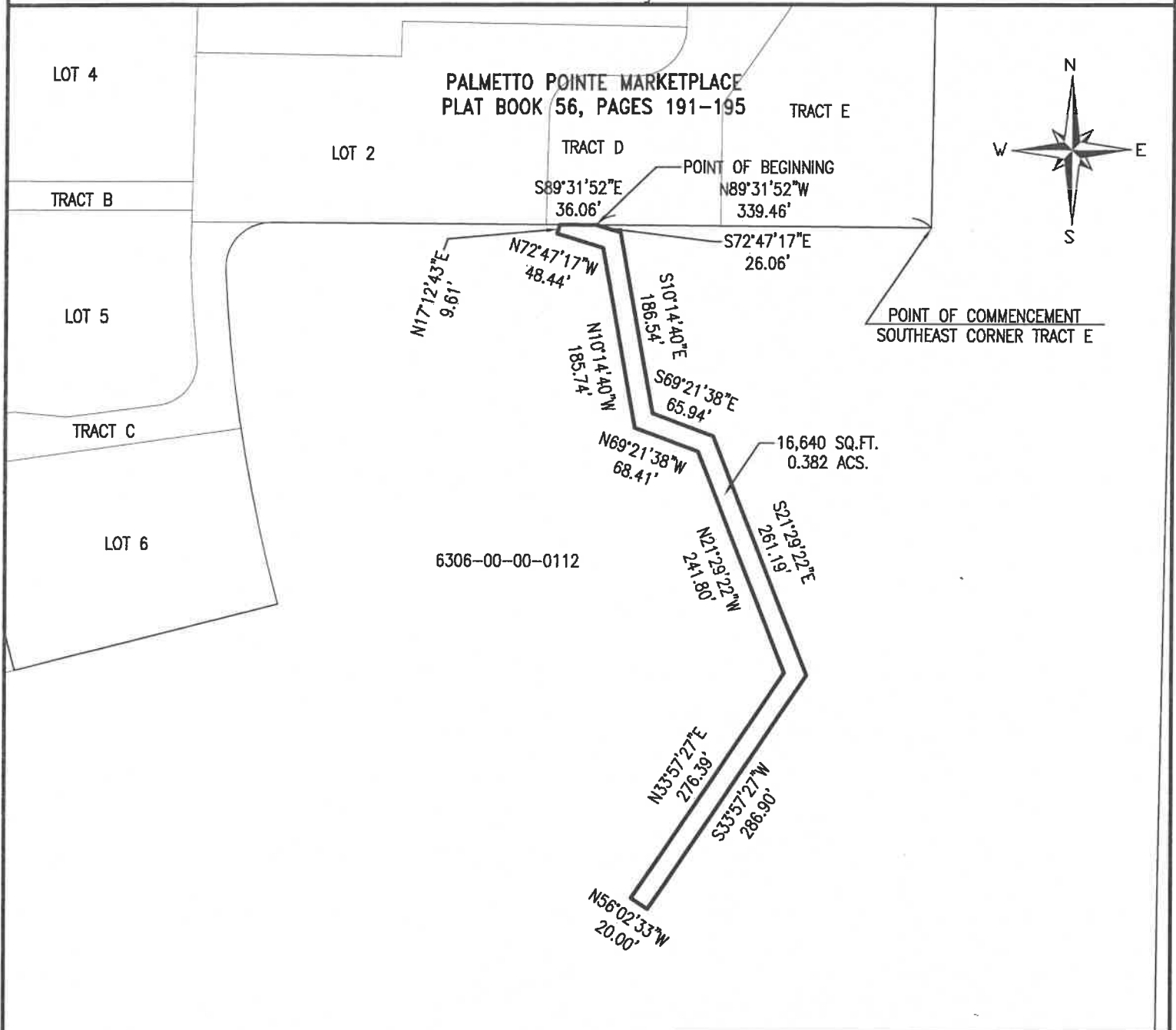
SLIGER & ASSOCIATES, INC.

PROFESSIONAL LAND SURVEYORS

LICENSED BUSINESS CERTIFICATION NO. 3019

3921 NOVA ROAD
PORT ORANGE, FL 32127
(386) 761-5385

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SKETCH OF DESCRIPTION
NOT A BOUNDARY SURVEY

FOR: THE COLLIER COMPANIES

DESCRIPTION: DRAINAGE EASEMENT
SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST
SEE SHEET 2 FOR DESCRIPTION.

JOB #21-0541

SCALE: 1"=150'

FIELD BOOK:

PAGE:

ABBREVIATIONS

(P)	PLATTED DIMENSION
(D)	DEEDED DIMENSION
(M)	MEASURED DIMENSION
(C)	CALCULATED DIMENSION
ID	IDENTIFICATION
A/C	AIR CONDITIONER
R/W	RIGHT OF WAY
CL	CENTERLINE
D	CENTRAL ANGLE
R	RADIUS
L	ARC LENGTH
CB	CHORD BEARING
FP&L CO.	FLORIDA POWER & LIGHT COMPANY
N.G.V.D.	NATIONAL GEODETIC VERTICAL DATUM
U.S.C. & G.S.	UNITED STATES COAST AND GEODETIC SURVEY

SHEET 1 OF 2

LEGEND

●	IRON ROD WITH CAP
○	IRON PIPE
□	CONCRETE MONUMENT
■	PERMANENT REFERENCE MONUMENT
△	PERMANENT CONTROL POINT
(R)	RADIAL LINE
(NR)	NON-RADIAL LINE
○	EXISTING ELEVATION
□	PROPOSED ELEVATION



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: Yes

SUBJECT: (B12) Approval of Memorandum of Understanding for Volusia Clandestine Laboratory Cleanup Task Force

DEPARTMENT: Police Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve the Memorandum of Understanding for Volusia Clandestine Laboratory Cleanup Task Force.

SUMMARY: The 2021 Volusia Clandestine Laboratory Cleanup Task Force Memorandum of Understanding (MOU) renews the current 2015 Memorandum of Understanding.

The MOU establishes and delineates the mission of the Task Force, as a joint cooperative effort. Additionally, the MOU formalizes relationships between and among the participating agencies in order to foster an efficient and cohesive unit capable of addressing the dismantling/cleanup of clandestine labs within Volusia County. It is the desire of the participating agencies to achieve maximum inter-agency cooperation in a combined law enforcement effort aimed at reducing the manpower burden on individual agencies while safely dismantling lab sites within the communities served.

The Port Orange Police Department has participated in the Task Force since 2015 and currently has trained personnel assigned to the Task Force. The officers assigned to the Task Force meet the requirements listed in the MOU and receive specialty pay. The specialty pay and issued equipment has been appropriately budgeted, and there are no new costs under this MOU.

Project No.: N/A

Funding Account No.: N/A

Presenter: William Proctor, Manuel Marino

ATTACHMENTS:

1.	Signed MOU- FDLE Meth Clan Lab Storage	Signed MOU- FDLE Meth Clan Lab Storage.pdf
2.	MOU-2015 Volusia Clandestine Laboratory Cleanup Task Force	MOU-2015 Volusia Clandestine Laboratory Cleanup Task Force.pdf

3.	MOU-2021 Volusia Clandestine Laboratory Cleanup Task Force	MOU-2021 Volusia Clandestine Laboratory Cleanup Task Force.pdf
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Beth Unruh	Created/Initiated - 6/28/2021
William Proctor	Approved - 10/25/2021
Matthew Jones	Approved - 11/5/2021
Wayne Clark	Approved - 11/5/2021
Robin Fenwick	Final Approval - 11/5/2021

**MEMORANDUM OF UNDERSTANDING
FOR PARTICIPATION IN
THE METHAMPHETAMINE CLANDESTINE DRUG LABORATORY
HAZARDOUS WASTE
AUTHORIZED CENTRAL STORAGE (ACS) CONTAINER PROGRAM**

I. PREFACE

A. Background

In April of 2021, the Florida Department of Law Enforcement (FDLE) renewed the Authorized Central Storage Program Letter of Agreement (LOA) with the United States Department of Justice, Drug Enforcement Administration (DEA). The LOA provided, as a condition of FDLE's participation in the DEA Central Storage Program, that FDLE may "enter into separate Agreements with its local law enforcement agencies in order for such agencies to participate in this Authorized Central Storage Program."

B. Purpose

The purpose of this MOU is to establish the terms and conditions under which the Florida Department of Law Enforcement and the undersigned, as a participating local law enforcement agency, will agree to jointly assume with FDLE, the obligations set forth herein in order to participate in the DEA Central Storage Program (hereinafter "Program").

II. TERM OF MOU

This MOU is effective upon the date last signed and executed by the duly authorized representatives of the parties to this MOU and shall remain in full force and effect until April 21, 2024.

III. RESPONSIBILITIES

A. The undersigned agency agrees that law enforcement officers employed and assigned by the undersigned agency, acting jointly with FDLE in the Program, will:

1. Perform the activities and duties of a "generator" of all hazardous waste that is transported, stored, or disposed off-site from a clandestine drug laboratory, as defined in 40 C.F.R. Parts 260, et seq.;
2. Assure that law enforcement officers employed by the undersigned agency and assigned to the Program have received 40 hours of Occupational Health and Safety Administration (OSHA) training and a minimum of eight (8) hours of RCRA/ United States Department of Transportation (DOT) function-specific training related to packaging, labeling, transporting and storing hazardous waste;
3. Seize, characterize, package, manage, and remove all hazardous waste discovered at or associated with clandestine laboratories (except for evidence or samples that are collected and maintained for investigation purposes and the remediation of residual contamination from a clandestine drug laboratory);
4. Transport such waste to designated collection stations that have been approved by the state for temporary storage prior to disposal;
5. Store, maintain, and secure only clandestine laboratory-related hazardous waste in approved collection stations;
6. Inventory and label all hazardous waste stored in the collection stations in proper containers according to the clandestine laboratory or location from which the

hazardous waste was generated (inventories must include date, time, and location of seizure);

7. Designate properly trained and equipped law enforcement officers to serve as collection station Operators for the purpose of accepting or declining hazardous waste delivered to collection stations;
8. If providing law enforcement officers to serve as collection station Operators, only accept clandestine drug laboratory-related waste when such waste has been identified, packaged, characterized and transported to the collection station by an individual or individuals possessing the required training;
9. Immediately report to the appropriate state or federal agency for appropriate action, instances in which clandestine laboratory-related hazardous waste has been packaged, transported, or stored in violation of applicable Federal, State, or local environmental requirements;
10. Complete an EPIC Form 143, upon seizure of a clandestine laboratory, and submit the information to the El Paso Intelligence Center (EPIC) for entry into the National Seizure System (NSS);
11. Send for pick-up and disposal services by DEA-designated hazardous waste contractors, by contacting the respective DEA POC and indicating which of the containers contain waste;
12. Immediately notify a FDLE POC or personnel of the local DEA office to request the cleanup services of a DEA hazardous waste contractor whenever hazardous waste is discovered at the site of a clandestine laboratory in excess of the CESQG exemption levels, including waste which qualifies as "acutely hazardous waste" under RCRA;
13. Carry out the tasks set out in paragraphs 1-12 above in compliance with all applicable Environmental Protection Agency (EPA), OSHA, and DOT authorizing statutes and regulations, as well as State of Florida and local restrictions;
14. Assign personnel to the tasks set out in 1-12 above who have received all necessary training and equipment under applicable Federal, state and local requirements, including, but not limited to, the training specified in paragraph 2 above, solely at the responsibility of their personnel to the extent possible;
15. Carry out the tasks set out in paragraphs 1-12 above in compliance, where applicable, with requirements and storage quantity and time limits for a hazardous waste Conditionally Exempt Small Quantity Generator (CESQG), as defined in EPA's regulations at 40 CFR Part 261.5;
16. Carry out the tasks set out in paragraphs 1-12 above in a way that protects human health and the environment and prevents a public nuisance;
17. Permit DEA, upon reasonable notice, to inspect container storage locations and have available for examination by DEA or any of its duly authorized agents and representatives, any and all investigative reports, records, inventories, and documents required to be maintained by the LOA; and
18. Maintain all such foregoing reports and records until all examinations are completed and resolved, or for a period of three (3) years after termination of the LOA, whichever is sooner.

B. FDLE agrees to perform the following actions:

1. Assume the responsibility of coordinating the administration of the Program in Florida with DEA;

2. Assume the responsibility of coordinating the participation of Florida local law enforcement agencies in the Program;
3. Facilitate delivery of the approved OSHA training and RCRA/DOT function-specific training related to packaging, labeling, transporting and storing hazardous waste;
4. Ensure compliance with the terms of the LOA with DEA;
5. Assist with coordinating response and assistance by DEA-designated hazardous waste contractors in instances in which hazardous waste is discovered at a clandestine laboratory site in excess of the CESQG exemption; and
6. Request pick-up and disposal services, when needed, with DEA-designated hazardous waste contractors.

VI. GENERAL PROVISIONS

A. Amendments:

Either party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, and shall be effective when executed and signed by all parties to this MOU.

B. Costs and Liability-Related Issues

1. To the extent the Federal Tort Claims Act, 28 U.S.C. §§ 2671-2680 may not be applicable, each party to this MOU agrees to assume its own liability and responsibility for the acts, omission, or conduct of such Party's own employee while such employees are engaged in Program activities/initiatives, and shall remain responsible for the compensation, retirement, workers compensation and other benefits accruing to the benefit of said participating employees.
2. Each party to this MOU agrees to furnish necessary personnel, property (including personal protective equipment), police equipment, vehicles, and resources in order to effect the purposes of the MOU, and agrees to bear the cost of loss or damage to its equipment, vehicles or property so provided and must pay any expense incurred in the operation and maintenance of that equipment.
3. The Parties understand and agree that they will be responsible for their own liability and bear their own costs with regard to their property and resources, or personnel expenses incurred by reason of death, injury or incidents giving rise to potential liability.

C. Sovereign Immunity

This MOU shall not be construed as a waiver of sovereign immunity by the undersigned agency, the Florida Department of Law Enforcement, or the State of Florida, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

D. Entirety of Agreement

This MOU, consisting of five (4) pages plus attachments, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

IN WITNESS WHEREOF, the authorized representatives of the Parties hereto sign on the date specified.

Party's Acceptance of Memorandum of Understanding
for Participation in the Methamphetamine Clandestine Drug Laboratory
Hazardous Waste Authorized (ACS) Central Storage Container Program

For the Florida Department of Law Enforcement (FDLE):

*J. Martin
OAG*

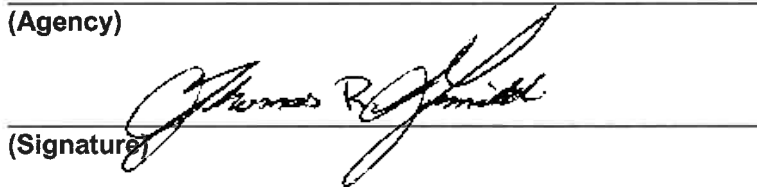


Richard L. Swearingen, Commissioner
Executive Director, Florida Department of Law Enforcement

4/24/21
Date

Party's Acceptance of Memorandum of Understanding
for Participation in the Methamphetamine Clandestine Drug Laboratory
Hazardous Waste Authorized (ACS) Central Storage Container Program

Port Orange Police Department
(Agency)



(Signature)
Thomas R. Grimaldi
(Printed Name)

Chief of Police
(Title)

05/11/2021
(Date)

Sheriff



Ben F. Johnson

VOLUSIA COUNTY SHERIFF'S OFFICE

123 W. Indiana Avenue
P.O. Box 569
DeLand, FL 32721-0569

August 26, 2015

Chief Gerald Monahan
Port Orange Police Department
4545 Clyde Morris Blvd.
Port Orange, FL 32129



Dear Chief Monahan:

The Volusia County Meth Task Team has been fully operational with the full cooperation of all Volusia Law Enforcement agencies since September 9, 2013. The Task Team has successfully investigated, dismantled and disposed of 28 clandestine labs in 2013, 139 clandestine labs in 2014 and 80 clandestine labs for 2015 (January 1, 2015 through August 23, 2015). Since the inception of the Meth Task Team in 2013, officers have dismantled a total of 247 labs countywide.

Participation in the Meth Task Team has proven beneficial to each participating agency as the assignment of multiple personnel allows for more On-Call Response Teams minimizing manpower shortages, overtime expenses and job-related stress and fatigue "burn out" of assigned personnel. Additionally, the cost to clean up 247 labs by a private company would have cost agencies approximately three hundred and seventy thousand dollars (\$370,000).

As we approach the third anniversary of the Task Team, a Memorandum of Understanding has been finalized for acceptance for all participating agencies. This MOU establishes and delineates the mission of the *Task Team*, as a joint cooperative effort. Additionally, the MOU formalizes relationships between and among the participating agencies in order to foster an efficient and cohesive unit capable of addressing the dismantling/cleanup of clandestine labs within Volusia County.

Please review the attached MOU, sign and return prior to the September Volusia Flagler Police Chiefs Meeting (September 25, 2015). Unfortunately, if any agency chooses not to enter into the MOU, the Meth Task Team will no longer respond to clandestine labs within that jurisdiction.

If you have any questions, please contact Captain Paul Kammerer or me at any time.

Sincerely,

A handwritten signature in black ink, appearing to be "Be" followed by a stylized flourish.

Ben F. Johnson
Sheriff

BFJ:sp/040L0291.15

Attachment

VOLUSIA COUNTY
CLANDESTINE LABORATORY CLEANUP
TASK TEAM
MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered this _____ day of _____ 2015, by and among the following agencies (hereinafter referred to as "participating agencies"):

Volusia County Sheriff's Office	Volusia County Beach Patrol
City of Daytona Beach	City of New Smyrna Beach
City of Edgewater	City of Port Orange
City of Ponce Inlet	City of South Daytona
City of Ormond Beach	City of Deland
City of Daytona Beach Shores	City of Orange City
City of Lake Helen	City of Holly Hill

WHEREAS, the participating agencies enter into this Memorandum of Understanding (hereinafter referred to as "MOU") for the operation of the Volusia County Clandestine Laboratory Cleanup Task Team (hereinafter referred to as "*Task Team*"); and

WHEREAS, it is necessary to create the *Task Team* in an effort to reduce the manpower burden associated with the cleanup of clandestine methamphetamine laboratories within the communities served in Volusia County; and

WHEREAS, it is necessary to enter into this MOU to provide guidelines for the overall operation of the participating agencies on the *Task Team*.

THEREFORE, the parties agree as follows:

PREAMBLE

Nothing in the MOU should be construed as limiting or impeding the basic spirit of cooperation, which exists between the participating agencies listed above.

The participating agencies to this MOU understand and agree that other law enforcement agencies may join the *Task Team* from time to time with notification made to all currently

participating *Task Team* members. All law enforcement agencies approved to join the *Task Team* will be considered participating agencies for the purposes of this MOU.

I. PURPOSE

This MOU establishes and delineates the mission of the *Task Team*, as a joint cooperative effort. Additionally, the MOU formalizes relationships between and among the participating agencies in order to foster an efficient and cohesive unit capable of addressing the dismantling/cleanup of clandestine labs within Volusia County. It is the desire of the participating agencies to achieve maximum inter-agency cooperation in a combined law enforcement effort aimed at reducing the manpower burden on individual agencies while safely and efficiently dismantling lab sites within the communities served.

II. ORGANIZATIONAL STRUCTURE

A. Composition

The *Task Team* will consist of a combined law enforcement body of agencies participating in this MOU. Agencies participating in this MOU will also have signed the DEA Authorized Central Storage Program (ACS) MOU (attachment A) as a prerequisite. The Task Team will be comprised of several **On-Call Response Teams** comprised of a minimum of six certified personnel supervised by a designated member of the Volusia County Sheriff's Office and/ or a member of the Volusia County Narcotic Task Forces and/ or a member of the Volusia Bureau of Investigation. Participating agencies with sixty or more sworn personnel will assign to the Task Team 1 certified sworn personnel for every 20 sworn personnel. Agencies with less than 60 sworn personnel will provide a minimum of three certified sworn personnel, or more, dependent on agency's methamphetamine clandestine laboratory related trends, to perform *Task Team* work in accordance with the direction and supervision stated below. The assignment of multiple personnel from each participating agency allows for more **On-Call Response Teams** minimizing manpower shortages, overtime expenses and job related stress and fatigue "burn out" of assigned personnel. The minimum certification requires successful completion of a 40 hour Basic Clandestine Laboratory Safety Course that meets the requirements set forth by OSHA regulation 1910.120(e)(3)(i). In addition, each agency will provide a liaison officer to communicate with the *Task Team* Coordinator on various issues to include, but not limited to, ensuring that OSHA requirements are met by those assigned to the *Task Team* from their agency. It is required that the designated liaison be of the rank of Sergeant or above and it is preferred that the individual be able to serve in that role for a minimum of two years. Liaison responsibilities are outlined in the personnel section on page 3 of this MOU.

B. Direction

All participants acknowledge that the *Task Team* is a joint operation in which all agencies will act in a cooperative manner to meet the purpose of the *Task Team*. The *Task Team* Coordinator will establish the call-out schedule for all participating *Task Team* members.

The call-out schedule places a *Task Team* member on-call for a period of one week at a time. When a *Task Team* member is on-call and he/she is unable to fulfill the obligation during that period, it will be the responsibility of that member's agency to fill their position during that time.

C. Supervision

The day-to-day operation and administrative control of the *Task Team* will be the responsibility of the Volusia County Sheriff's Office *Task Team* Coordinator. Responsibility for the conduct of the *Task Team* members shall remain with the respective agency law enforcement heads.

1. Complaints against Task Team Member

Any formal complaints filed against a participating agency's *Task Team* member will be handled by the member's agency. This would also include use of force complaints and supervisor reports that are necessary due to injury incurred by a *Task Team* member.

III. PROCEDURES

A. Personnel

Continued assignment of personnel to the *Task Team* will be based upon performance/proficiency and will be at the discretion of the respective agency law enforcement heads/supervisors or the Volusia County Sheriff's Office Coordinator assigned to the *Task Team*.

It is the responsibility of each respective agency (liaison officer) to ensure that their personnel receive all required training/certifications that are required of those entering clandestine labs, as well as training to participate in the Authorized Central Storage program. This includes annual recertification courses, annual fit testing, and annual medical screenings that are required per OSHA standards. Each agency is also responsible for maintaining documents related to training and medical fitness for members assigned to the *Task Team*.

B. Call Out Guidelines

Not all clandestine labs necessitate the activation of the **On-Call Response Team**; as such, the following guidelines will be put into place for determining when to call out

a **On-Call Response Teams**. During normal business hours (Monday through Friday 8am through 5pm, not including weekends/holidays) and if the lab is similar to one of the ones listed below it, will be the responsibility of the agency having jurisdiction to remove and separate the items found. After the removal and separation is complete, the agency will request thru Volusia County Sheriff's Office Communications for the Team Leader of the **On-Call Response Team** to coordinate packaging and transportation to the ACS container.

1. Suspected lab sites where there are no mixed chemicals, i.e. chemicals are still in their original containers or they are in another container but obviously not mixed.
2. Suspected lab sites where it is equipment only or the cooking vessels/gas generators are dry and no longer active.

Clandestine labs that would necessitate the activation of the **On-Call Response Teams** would include labs with mixed chemicals, active labs, large scale dumpsites and labs located within dwellings to include hotels/motels.

Note: Remote/isolated labs and dumpsites which are not an immediate danger to the public may require the location to be posted until the **On-Call Response Team** can safely respond to dismantle the site. Factors that may necessitate the area to be posted by the requesting agency include, but are not limited to, inclement weather and darkness. The posting of these areas will be the responsibility of the agency having jurisdiction over the area.

C. Investigations

Criminal investigations will be the responsibility of the agency making the request for the **On-Call Response Team** to include, but not limited to, arrest affidavits and search warrants. Evidence submission will also be the responsibility of the requesting agency. However, sampling of items will be conducted by an **On-Call Response Team** member. Once the items have been sampled and placed into a safe container, they will be turned over to the requesting agency for submission.

In order to maintain scene security, it will be the responsibility of the requesting agency to have at least one uniformed officer on scene for the duration that the **On-Call Response Team** is present. There is always the possibility that more than one uniformed officer will need to be present depending on the circumstances, i.e. high traffic area, numerous arrestees, crowd/media issues.

D. Media

Any media releases on a clandestine lab site will be handled by the agency completing the criminal charges/search warrant. No information pertaining to the *Task Team* itself will be released to the media without the approval of the Sheriff's Office *Task Team* Coordinator.

E. Equipment

The Volusia County Sheriff's Office will provide the necessary equipment to safely investigate and dismantle lab sites in which the *Task Team* is requested. This includes Tyvek suits, gloves, tape, APR cartridges, gas monitors, and SCBA's. The usage of items on a lab site that are considered "one time" use items will be billed to the requesting agency via the Meth *Task Team* Equipment Billing Form (VCSO Form 041114.001). Items that are considered "one time" use include Nitrile gloves (inner and outer), Chem tape, Tyvek suits, APR cartridges, Decon Wipes, Sample jars/cans, and prisoner coveralls.

Note: These items may change based on changes in industry safety standards prescribed by OSHA.

Equipment that is needed for the transportation and disposal of waste will be supplied per the Authorized Central Storage Program MOU that was signed by each participating agency. These items include buckets, barrels, absorbent, chemical neutralizers and labels.

IV. Duration

- A. This MOU shall be in effect upon the execution of this MOU by at least 2 participating agencies and shall remain in effect until terminated as specified below. Continuation of this MOU shall be subject to the availability of necessary funding. This agreement may be modified at any time upon written agreement of all participating agencies.
- B. The participating agencies may withdraw from this agreement at any time by providing a 30-day written notice of its intent to withdraw to all other participating agencies. Upon withdrawal of any agency, that agency will no longer be able to utilize the services of the *Task Team* or the equipment belonging to the Volusia County Sheriff's Office for the cleanup of a lab site. However, providing that an agency has signed the ACS MOU they would still be able to transport and store items in the ACS container per the MOU.

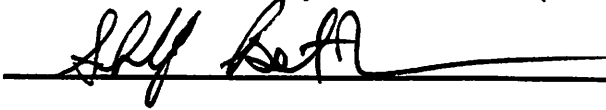
- C. This MOU may be terminated upon the written consent of all parties to this MOU. Upon the termination of the *Task Team* and the MOU, it will become the responsibility of each agency to dismantle and clean-up lab sites within their jurisdiction.

V. **Indemnification**

Each participating agency (indemnitor) hereby shall, to the extent permitted by law, indemnify from any liability and hold harmless the other participating agencies (indemnitees), against liability including, but not limited to, court costs and attorney's fees, arising from any actions, causes of action, suits, trespasses, damages, judgments, executions, and claims in law, brought against the respective indemnitees, as a result of the indemnitor's negligent acts or negligent omissions, while acting with the scope of their employment. Each participating agency will at all times be entitled to the benefits of sovereign immunity as provided in Florida Statutes Section 768.28 and common law. Nothing contained herein shall be construed as a waiver of sovereign immunity.

**Party's Acceptance of Memorandum of Understanding
for Participation in the
Volusia County Clandestine Laboratory Cleanup Task Team**

For the Volusia County Sheriff's Office (VCSO):



Ben F. Johnson

Sheriff, Volusia County, Florida

Party's Acceptance of Memorandum of Understanding

for Participation in the

Volusia County Clandestine Laboratory Cleanup Task Team

For the Name of Participating Agency:

(Agency)

PORT ORANGE POLICE DEPARTMENT

(Signature)

Gerald M Monahan Jr

(Printed Name)

GERALD M MONAHAN JR

(Title)

CHIEF OF POLICE

(Date)

8/31/2015

VOLUSIA
CLANDESTINE LABORATORY CLEANUP
TASK FORCE

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made and entered this _____ day of _____ 2021, by and among the following agencies (hereinafter referred to as “participating agencies”):

Volusia Sheriff’s Office	Volusia County Beach Patrol
City of Daytona Beach	City of New Smyrna Beach
City of Edgewater	City of Port Orange
City of Ponce Inlet	City of South Daytona
City of Ormond Beach	City of Deland
City of Daytona Beach Shores	City of Orange City
City of Lake Helen	City of Holly Hill

WHEREAS, the participating agencies enter into this Memorandum of Understanding (hereinafter referred to as “MOU”) for the operation of the Volusia Clandestine Laboratory Cleanup Task Force (hereinafter referred to as “*Task Force*”); and

WHEREAS, it is necessary to create the *Task Force* in an effort to reduce the manpower burden associated with the cleanup of clandestine methamphetamine laboratories within the communities served in Volusia County; and

WHEREAS, it is necessary to enter into this MOU to provide guidelines for the overall operation of the participating agencies on the *Task Force*.

THEREFORE, the parties agree as follows:

PREAMBLE

Nothing in the MOU should be construed as limiting or impeding the basic spirit of cooperation, which exists between the participating agencies listed above.

The participating agencies to this MOU understand and agree that other law enforcement agencies may join the *Task Force* from time to time with notification made to all currently participating

Task Force members. All law enforcement agencies approved to join the *Task Force* will be considered participating agencies for the purposes of this MOU.

I. PURPOSE

This MOU establishes and delineates the mission of the *Task Force*, as a joint cooperative effort. Additionally, the MOU formalizes relationships between and among the participating agencies in order to foster an efficient and cohesive unit capable of addressing the dismantling/cleanup of clandestine labs within Volusia County. It is the desire of the participating agencies to achieve maximum inter-agency cooperation in a combined law enforcement effort aimed at reducing the manpower burden on individual agencies while safely dismantling lab sites within the communities served.

II. ORGANIZATIONAL STRUCTURE

A. Composition

The *Task Force* will consist of a combined enforcement body of agencies participating in this MOU. Agencies participating in this MOU will also have signed the DEA Authorized Central Storage Program (ACS) MOU (attachment A) as a prerequisite. The Volusia Sheriff's Office currently provides a ratio of 1 certified deputy for every 20 sworn deputies in the agency. Thus, it is required that participating agencies with over sixty sworn officers maintain at least this ratio of 1:20. Agencies with less than sixty personnel will provide a minimum of three certified officers, or more, dependent on the agency's meth related trends, to perform *Task Force* work in accordance with the direction and supervision stated below. The minimum certification requires successful completion of a 40 hour Basic Clan Lab Safety Course that meets the requirements set forth by OSHA regulation 1910.120(e)(3)(i). In addition, each agency will provide a liaison officer to communicate with the *Task Force* Coordinator on various issues to include, but not limited to, ensuring that OSHA requirements are met by those assigned to the *Task Force* from their agency. It is required that the liaison be of the rank of Sergeant or above and it is preferred that the individual be able to serve in that role for a minimum of two years. This is requested so that the liaison may become proficient in the agency responsibilities that are outlined in the Personnel section on page 3 of this MOU.

B. Direction

All participants acknowledge that the *Task Force* is a joint operation in which all agencies will act in a cooperative manner to meet the purpose of the *Task Force*. The *Task Force* Coordinator will establish the call-out schedule for all participating *Task Force* members.

The call-out schedule places a *Task Force* member on-call for a period of one week at a time. When a *Task Force* member is on-call and he/she is unable to fulfill the

obligation during that period, it will be the responsibility of that member's agency to fill their position during that time.

C. Supervision

The day-to-day operation and administrative control of the *Task Force* will be the responsibility of the Volusia Sheriff's Office *Task Force* Coordinator. Responsibility for the conduct of the *Task Force* members shall remain with the respective agency law enforcement heads.

1. Complaints against Task Force Member

Any formal complaints filed against a participating agency's *Task Force* member will be handled by the member's agency. This would also include use of force complaints and supervisor reports that are necessary due to injury incurred by a *Task Force* member.

III. PROCEDURES

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B. Call Out Guidelines

Not all clandestine labs necessitate the activation of the *Task Force*; as such, the following guidelines will be put into place for determining when to call out a *Task Force* team. During normal business hours (Monday-Friday 8a-5p not including weekends/holidays) and if the lab is similar to one of the ones listed below it, will be the responsibility of the agency having jurisdiction to remove and separate the items found. After the removal and separation is complete, the agency will request thru Volusia Sheriff's Office Communications for a member of the On-Call *Task Force* Team Leader to respond so that the items can be packaged and transported to the ACS container.

1. Suspected lab sites where there are no mixed chemicals, i.e. chemicals are still in their original containers or they are in another container but obviously not mixed.
2. Suspected lab sites where it is equipment only or the cooking vessels/gas generators are dry and no longer active.

Clandestine labs that would necessitate the activation of the *Task Force* regardless of the time would include labs with mixed chemicals or labs that are active. Large scale dumpsites and labs located within dwellings to include hotels/motels would also be included in this list.

Note: Remote/isolated labs and dumpsites which are not an immediate danger to the public may require the location to be posted until the *Task Force* can safely respond to dismantle the site. Factors that may necessitate the area to be posted by the requesting agency include, but are not limited to, inclement weather and darkness. The posting of these areas will be the responsibility of the agency having jurisdiction over the area.

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considered “one time” use include Nitrile gloves (inner and outer), Chem tape, Tyvek suits, APR cartridges, Decon Wipes, Sample jars/cans, and prisoner coveralls.

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IV. Duration

- A. This MOU shall be in effect upon the execution of this MOU by at least 2 participating agencies and shall remain in effect until terminated as specified below. Continuation of this MOU shall be subject to the availability of necessary funding. This agreement may be modified at any time upon written agreement of all participating agencies.
- B. The participating agencies may withdraw from this agreement at any time by providing a 30-day written notice of its intent to withdraw to all other participating agencies. Upon withdrawal of any agency, that agency will no longer be able to utilize the services of the *Task Force* or the equipment belonging to the Volusia Sheriff's Office for the cleanup of a lab site. However, providing that an agency has signed the ACS MOU they would still be able to transport and store items in the ACS container per the MOU.
- C. This MOU may be terminated upon the written consent of all parties to this MOU. Upon the termination of the *Task Force* and the MOU, it will become the responsibility of each agency to dismantle and clean-up lab sites within their jurisdiction.

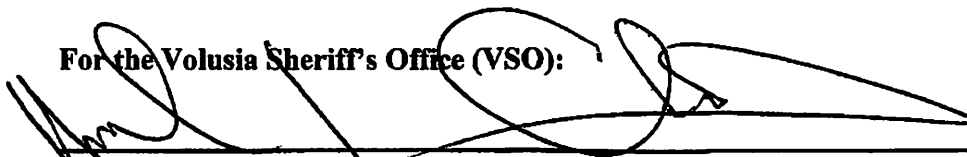
V. Indemnification

Each participating agency (indemnitor) hereby shall, to the extent permitted by law, indemnify from any liability and hold harmless the other participating agencies (indemnitees), against liability including, but not limited to, court costs and attorney's fees, arising from any actions, causes of action, suits, trespasses, damages, judgments, executions, and claims in law, brought against the respective indemnitees, as a result of the indemnitor's negligent acts or negligent omissions, while acting with the scope of their employment. Each participating agency will at all times be entitled to the benefits of sovereign immunity as provided in Florida Statutes Section 768.28 and

common law. Nothing contained herein shall be construed as a waiver of sovereign immunity.

**Party's Acceptance of Memorandum of Understanding
for Participation in the Volusia Meth Clean up Task Force**

For the Volusia Sheriff's Office (VSO):

A handwritten signature in black ink, appearing to read 'Michael J. Chitwood', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke.

Michael J. Chitwood

Sheriff, Volusia County, Florida

**Party's Acceptance of Memorandum of Understanding
for Participation in the Volusia Meth Clean up Task Force**

For the Name of Participating Agency:

(Agency)

(Signature)

(Printed Name)

(Title)

(Date)



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: Yes

SUBJECT: (B13) Approval and Ratification of the International Association of Firefighters (IAFF) 2021-2023 Collective Bargaining Agreement

DEPARTMENT: Administrative Services

GOAL: Goal 6: Organizational Excellence Objective 7: Continue to establish a positive working relationship with bargaining units.

RECOMMENDED MOTION: Move to approve the 2021 - 2023 Collective Bargaining Agreement negotiated between the City of Port Orange and IAFF.

SUMMARY: On September 30, 2021, the existing International Association of Firefighters (IAFF) Collective Bargaining Agreement (CBA) expired. The City and IAFF have negotiated a successor agreement, which is a two-year agreement covering the current Fiscal Year through 09/30/2023. The contract provides for two years of wage adjustments and up to three mutually agreed upon openers in the second year of the contract.

As discussed in the Interim Final Rule, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, for the portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency. Public safety employees would include police officers, sheriffs and deputy sheriffs, firefighters, emergency medical responders, etc.

The increase for FY22 has been included in the adopted budget.

On October 26, 2021, the City received notification that the IAFF members voted in favor of this agreement. In order to ratify this agreement, the City Council must also vote in favor of the proposed changes.

Staff has attached a summary/highlights of some of the major articles and a copy of the entire contract.

Project No.: N/A

Funding Account No.: N/A

Presenter: Heather Carrizales

ATTACHMENTS:

1.	IAFF 2021 - 2023 Collective Bargaining Agreement	IAFF 2021-2023 Collective Bargaining Agreement.pdf
2.	IAFF Proposal Summary 11-04-21	IAFF Proposal Summary 11-04-21.pdf

Heather Carrizales	Created/Initiated - 10/28/2021
Heather Carrizales	Approved - 10/28/2021
Lupe Reyna-Coffin	Approved - 10/28/2021
Robin Hayes	Approved - 11/1/2021
Matthew Jones	Approved - 11/5/2021
Wayne Clark	Approved - 11/5/2021
Robin Fenwick	Final Approval - 11/5/2021

**AGREEMENT
between
CITY OF PORT ORANGE
and
PORT ORANGE PROFESSIONAL
FIREFIGHTERS ASSOCIATION
IAFF**

Local 3118
PERC Certification #777

October 1, 2021 through September 30, 2023

TABLE OF CONTENTS

ARTICLE	SUBJECT	PAGE
	Agreement	5
1	Union Recognition	6
2	Management Rights.....	7
3	Employee Rights.....	8
4	Union Representatives & Activities	9
5	Rules & Regulations	11
6	Strikes.....	12
7	Dues Deductions	13
8	Bulletin Boards	14
9	Specialty & Education Incentive Pay	15
10	Hours of Work & Overtime	18
11	Wages	21
12	Retirement	24
13	Temporary Assignment to a Higher Classification	26
14	Holidays.....	28
15	Annual Leave.....	30
16	Sick Leave	34
17	Bereavement	38
18	Leave of Absence	39

TABLE OF CONTENTS (cont.)

ARTICLE	SUBJECT	PAGE
19	Jury Duty & Appearance as a Witness	40
20	Military Leave	41
21	Educational Leave	42
22	Wellness Hours.....	43
23	Tuition Reimbursement.....	44
24	Seniority.....	46
25	Probationary Employees.....	47
26	Vacancies & Promotions.....	48
27	Uniforms & Equipment.....	53
28	Disciplinary Action	55
29	Grievance & Arbitration Procedures	57
30	Physical Examination & Workers Compensation	61
31	Health & Safety.....	63
32	Light Duty	65
33	Alcohol & Drug Testing	66
34	Insurance.....	69
35	Authorize Use of Private Automobile	70
36	Separability.....	71

TABLE OF CONTENTS (cont.)

ARTICLE	SUBJECT	PAGE
37	Entire Agreement.....	72
38	Duration of Agreement.....	73

AGREEMENT

THIS AGREEMENT is entered into by and between the City of Port Orange, hereinafter referred to as the "City", and the Port Orange Professional Firefighters Association, Local 3118, IAFF, AFL-CIO, PFF, FLA., hereinafter referred to as the "Union".

The use of male gender in this Agreement is intended as a neutral term and it shall be construed to include both male and female employees.

WITNESSETH:

WHEREAS, This Agreement reduces to writing the understandings of the City and the Union to comply with the requirements contained in Chapter 447, Florida Statutes, as amended; and

WHEREAS, This Agreement is designed to provide for an equitable and feasible procedure for the resolution of differences concerning the enforcement of this Agreement in accordance with grievance procedures contained herein; and

WHEREAS, This Agreement is entered into to promote a harmonious relationship between the Union and the City and to encourage more effective employee service in the public interest; and

WHEREAS, The Union understands that the City is engaged in furnishing essential public service which affects the health, safety and welfare of the general public; and the Union recognizes the need to provide continuous and reliable service to the public; therefore, it is hereby agreed:

ARTICLE 1

UNION RECOGNITION

- 1.1 The City recognizes the Union as the exclusive collective bargaining representative for those employees in the following bargaining unit, as defined in PERC Certification #777, dated February 19, 1988.

Included: All Firefighter/EMT's, Driver Engineers, Paramedics, Fire Prevention Specialists and Fire Lieutenants.

Excluded: Chief, Shift Commander, Battalion Chief, Division Chief, EMS Manager/Commander, Public Education Specialist, Reserve Firefighters, Firefighter Recruits, temporary employees, and all other employees.

ARTICLE 2

MANAGEMENT RIGHTS

- 2.1 It is the right of the City to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations. It is also the right of the City to direct its employees, take disciplinary action for just cause, and relieve its employees from duty because of lack of work or for other legitimate reasons. However, the exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or any civil or career service regulation.

ARTICLE 3

EMPLOYEE RIGHTS

3.1 The parties agree that there shall be no discrimination, interference, restraint, or coercion against any employee for his exercise of any rights guaranteed by Florida law.

3.2 The Parties agree to abide by the Firefighter's Bill of Rights, Florida Statutes Section 112.80, et seq., as amended.

When an investigatory interview occurs, the following rules apply:

Rule 1: The employee must make a clear request for Union representation before or during the interview. The employee can't be punished for making this request.

Rule 2: After the employee makes the request, the supervisor has three (3) options. S/he may either:

- a) Grant the request and delay the interview until the Union representative arrives and has had a chance to consult privately with the employee: or
- b) Deny the request and end the interview immediately; or
- c) Give the employee a choice of:
 - 1. Having the interview without representation; or
 - 2. Ending the interview

Rule 3: If the supervisor denies the request and continues to ask questions, the employee has the right to refuse to answer. The employee cannot be disciplined for such refusal but is required to sit there until the supervisor terminates the interview. Leaving before this happens may constitute punishable insubordination.

ARTICLE 4

UNION REPRESENTATIVES AND ACTIVITIES

- 4.1 The Union shall be represented by its President or his designee.
- 4.2 The Union shall notify the City Human Resources Director in writing of the name of the President or the designee, at least ten (10) working days prior to the effective date of them taking office. It shall be the responsibility of the Union to immediately notify the City's Human Resources Director and the Fire Chief in writing of any change in the designation of President or his designee.
- 4.3 The Union President or representative will be allowed to process and investigate grievances during working hours provided the City is first notified of the investigation and provided further that such investigation would not unduly hamper the operation where the employee or Union President is employed.
- 4.4 The Union President or the President's designee will be permitted to attend local and state seminar functions of the Association without a loss of pay for a maximum for forty-eight (48) hours per calendar year each without such leave being charged against leave time. No other compensation shall be allowed for expenses. No compounding of compensation shall be allowed for functions occurring on leave or holidays. This time will not be counted as hours worked for the purpose of calculating overtime.
- 4.5 The Union President and one (1) member of the Union negotiating committee (employees of the City) shall be permitted to attend, without loss of pay, the City Council meeting where final action is scheduled to be taken on approval (or rejection) of this Collective Bargaining Agreement and its successor.
- 4.6 Two (2) members of the designated Association negotiating team (employees of the City) shall be permitted to attend all negotiating sessions for a successor agreement to this Agreement without loss of pay.
- 4.7 The Department Chaplain appointed by the Fire Chief shall be allowed a minimum of twenty-four (24) hours per year to attend to Department personnel needs, including seminars for Fire Department Chaplains, family deaths, area firefighter personnel deaths, injuries, and illnesses.
- 4.8 The City and the Union agree to maintain a Leadership Committee which will meet at least monthly. The Committee shall consist of the Department

Head and the Union President, with their respective designees. In the event personnel issues are to be discussed, then the City's Director of Administrative Services shall be given at least twenty-four (24) hours' notice of the place, time, and date of the meeting to also attend.

ARTICLE 5

RULES AND REGULATIONS

- 5.1 The City shall have the right to establish, maintain and enforce, or rescind, amend, or change, reasonable rules and regulations and standard operational procedures ("SOP").
- 5.2 Failure to take corrective action against an employee for violation of these rules, regulations and/or standard operational procedures shall not affect the right of the City to discipline the same or other employees for the same or other violations.
- 5.3 Reserved.
- 5.4 Reserved.
- 5.5 Employees shall comply with all applicable policies, SOPs, and amendments thereto, which are currently in effect unless in conflict with an express or specific provision of this agreement or MOUs. In such case the negotiated provisions of this Collective Bargaining Agreement will control. Amendments shall be made in accordance with the procedures outlined in this Agreement.
- 5.6 Except in exigent circumstances as defined by law, the City will provide the Union with a copy of all proposed additions and modifications of rules, regulations, and standard operating procedures at least seven (7) days before implementing the new rule or regulation.
- 5.7 After adoption, all employees have the right to have the amendment explained to them by the Chief or his/her designee if requested.

ARTICLE 6

STRIKES

- 6.1 The Union and bargaining unit members shall have no right to instigate, promote, sponsor, engage in, or condone any work stoppage, boycott, slow-down, strike, intentional disruption of City operations, or to withhold services for any reason. Each employee who holds a position in the Union also occupies a position of special trust and responsibility in maintaining and bringing about compliance with this Article, the strike prohibition of Section 447.505, Florida Statutes, and the Constitution of the State of Florida, Article 1, Section 6.
- 6.2 The Union, its officers, agents, stewards and other representatives agree that it is their continuing obligation and responsibility to maintain compliance with this Article and the law, including their responsibility to abide by the provisions of this Article and the law by remaining at work during any interruption which may be initiated by others; and including their responsibility, in the event of breach of this Article or the law by other employees, and upon the request of the City, to encourage and direct employees violating this Article or the law to return to work, and to disavow the strike publicly.
- 6.3 In addition to the penalties set forth in Section 447.507, Florida Statutes, all employees who violate any provision of the law prohibiting strikes or this Article may be disciplined, up to and including discharge, by the City.
- 6.4 The circuit courts of this State shall have jurisdiction to enforce the provisions of this Section by ex parte injunction and contempt proceedings, if necessary.
- 6.5 For the purpose of this Article, it is agreed that the Union shall be responsible and liable for any act committed by any of their officers, agents, and/or representatives, which act constitutes a violation of State law, City ordinance, or policy or the provisions herein. In addition to all other rights and remedies available to the City under State law, in the event of a breach of the provisions herein, the City shall have the right, without further notice, to suspend this Collective Bargaining Agreement and withdraw recognition from the Union.

ARTICLE 7

DUES DEDUCTION

- 7.1 Upon receipt of a written authorization from an employee covered by this Agreement, the City will deduct from the employee's pay each pay period the amount owed to the Union by each employee for dues. No authorization shall be allowed for payment of any collection of fines penalties or special assessments. The City shall remit monies collected to the Treasurer of the Union within ten (10) days following the payday in which the deduction is made. The City remittance will be deemed correct if the Union does not give written notice to the City within thirty (30) calendar days of a remittance, of its belief with reasons stated therefore that the remittance is incorrect. It shall be the responsibility of the Union to notify the City Manager or his designee in writing of any change in the amount of dues to be deducted at least sixty (60) days in advance of said change.
- 7.2 The Union shall indemnify the City and hold the City harmless against any and all suits, claims demands and liabilities which arise out of or by reason of any action taken or not taken by the City for complying with any of the provisions of this Article. If there is an amount deducted in excess of what is authorized by this Agreement, the employee affected shall seek recourse with the Union and not the City.
- 7.3 An employee may revoke his authorization for deduction of dues provided the employee gives thirty (30) days written notice to the City and the Union. Upon receipt of such notification, the City shall terminate dues on the pay date immediately following the expiration of the thirty (30) day notice period.
- 7.4 No deduction shall be made from the pay of an employee for any payroll period in which the employee's net earnings* for that payroll period are less than the amount of dues to be checked off.
- (*) Net earnings shall mean wages owed after all pre-tax withholdings (medical, dental, retirement, etc.) taxes, and court ordered post-tax deductions (child support, garnishment, etc.) have been withheld.*
- 7.5 In the event the Union delivers additional dues authorization to the Administrative Services Director, it is agreed and understood that the City shall have thirty (30) days from the date of delivery in which to commence the dues deduction procedures.

ARTICLE 8

BULLETIN BOARDS

8.1 The City shall provide the Union with space for a Bulletin Board two (2) feet by two (2) feet in size.

8.2 The Union agrees that it shall use space on the Bulletin Board provided for in Section 8.1, for the positing of the following:

Notices of Union Meetings
Election of Officers (not including representation elections)
Reports of Union Committees
Recreational & Social Affairs of the Union
Notices of Meetings by Public Bodies
Notices of Ratification Meetings
Minutes of Meetings

In no event shall the Bulletin Board be used to post political material or controversial material which adversely reflects upon the City of Port Orange, its independent agencies, its employees, elected officials, or any labor organization among its employees.

8.3 All material or notices must bear the signature of the Union president and said signature must be dated.

8.4 Failure of the Union to follow the procedures for the proper posting of material and notices on the Bulletin Board shall result in the material or notices being removed from the Bulletin Board.

ARTICLE 9

SPECIALTY AND EDUCATION INCENTIVE PAY

- 9.1 This will establish a Specialty Payment Program within the Fire and Rescue Department whereby members of special teams and members with special assignments are to receive a Specialty Payment for their assignments to these positions. Specialty Payments will only be received for periods in which an individual is assigned to and working in the special duty:

EMS Coordinator	\$15.00 per week
EMS Assistant	\$15.00 per week
EMS Quality Assurance (Reporting)	\$15.00 per week
Training Committee Member	\$15.00 per week
Tactical Rescue Team (TRT)	\$15.00 per week
Live Fire Training Instructor	\$15.00 per week
EMS Instructor	\$15.00 per week

- For EMS Instructor, one of the following categories qualifies: BLS, ACLS, ITLS/PHTLS, PEPP or PALS.

The determination of the number of authorized members assigned to and working in the special duty shall be determined by the Fire Chief. Designated members of the above teams must meet all required obligations and maintain good standing in order to be eligible for compensation. The teams must be fully functional and operational as defined by the Fire Chief in order for employees to be eligible for compensation. The total number of special duty assignments as listed above will be limited to three (3) assignments per employee.

- 9.2 In accordance with State requirements, an employee covered under this Collective Bargaining Unit will be paid according to the following schedule:

A two (2) year Fire Service-related degree	\$50 per month
A four (4) year Fire Service-related degree	\$110 per month

Payments detailed in this section will be paid on a prorated basis each pay period.

- 9.3 A Firefighter or Lieutenant who meets the requirements listed in Article 13 and who completes and is cleared through Department testing shall be designated by the Fire Chief as a relief driver/pump operator and shall receive a \$15.00 a week additional duty payment. All relief drivers must be qualified to drive all apparatus. Promotion to Driver or Lieutenant will result in the elimination of this additional duty payment.

Upon promotion, the \$15.00 a week will be converted into an hourly amount based on the standard base pay for a week and incorporated into the employee's current base rate of pay prior to determining the employee's promotional rate of either five percent (5%) or minimum starting rate for their promotional assignment. If the starting rate for the promotional assignment is higher, they will go to the starting promotional rate, not the starting promotional rate plus the additional \$15.00 a week.

- 9.4 A Firefighter or Driver Engineer who meets the requirements listed in Article 13 and who has completed the department clearing process shall be designated by the Fire Chief as a relief lieutenant and shall receive additional duty pay in the amount of \$15.00 per week. Promotion to Lieutenant will result in elimination of this additional duty pay.

Upon promotion, the \$15.00 a week will be converted into an hourly amount based on the standard base pay for a week and incorporated into the employee's current base rate of pay prior to determining the employee's promotional rate of either the five percent (5%) or minimum starting rate for their promotional assignment. If the starting rate for the promotional assignment is the higher, they will go to the starting promotional rate, not the starting promotional rate plus the additional \$15.00 a week.

- 9.5 An employee who completes the requirements for, and becomes certified as a Fire Safety Inspector, will be entitled to receive a \$20.00 weekly education incentive payment.

- 9.6 Any employee completing and maintaining certification for State of Florida Fire Instructor shall receive a payment of:

- | | |
|-------------------------|------------------|
| 1. Fire Instructor I: | \$10.00 per week |
| 2. Fire Instructor II: | \$25.00 per week |
| 3. Fire Instructor III: | \$40.00 per week |

Employees will receive payment for the highest instructor level held and maintained.

- 9.7 Employees who are certified paramedics who have been cleared by the department and medical director and eligible for paramedic specialty pay will receive \$112.00 per week of specialty pay, as long as the paramedic certification is maintained. The determination of the number of authorized members receiving paramedic specialty pay shall be determined by the Fire Chief. Designated members of the above teams must meet all required obligations and maintain good standing in order to be eligible for compensation.

- 9.8 Employees will not be eligible for payments for periods in which an individual was not assigned to special duty, or where a required certification lapse.

ARTICLE 10

HOURS OF WORK AND OVERTIME

- 10.1 The purpose of this Article is to define hours of work but nothing in this Agreement shall be construed as a guarantee or limitation of the number of hours to be worked per day, days per week, or for any other period of time, except as may be specifically provided therein.
- 10.2 The basic work period for bargaining unit employees (with the exception of the Fire Prevention Specialists) will consist of a twenty-one (21) day cycle. The tour of duty will normally be 24 hours on and 48 hours off. Hours worked during an employee's normal work schedule in an amount less than or equal to one hundred fifty-nine (159) in a twenty-one (21) day work period which are assigned by the City shall be compensated at the regular hourly rate of pay. Hours worked during an employee's normal work schedule in excess of one hundred fifty-nine (159) in a twenty-one (21) day work period which are assigned by the City shall be compensated at the rate of time and one half (1 ½) the employee's regular rate of pay. Sick leave and holiday hours shall not count as normal work schedule hours worked for overtime purposes. The association and the City will work together to identify and explore options related to potential improvements to the administration of payroll.
- 10.3 Should a shift employee voluntarily switch shifts with another shift employee for the employee's convenience, no overtime compensation will be payable and the hours the employee worked as a substitute shall be excluded by the City in the calculation of the hours for which the employee is entitled to overtime compensation. All such shift trading must be in accordance with Fire and Rescue Department policy concerning shift exchanges.
- 10.4 Nothing in this Article shall require payment for overtime hours not worked. In calculating the amount of overtime compensation due an employee only the hours actually worked shall be counted. Such extra compensation shall be creditable toward overtime payable under the Act. Premium payments shall not be duplicated for the same hours worked under any of the terms of this Agreement.
- 10.5 **Scheduled Overtime:** Scheduled overtime shall be defined as any hours outside an employee's regularly scheduled shift in which they receive more than 12 hours' notice. This time will be subject to the minimum required hours in the FLSA cycle to be eligible for compensation at time and a half.

Hold Over: Hold over shall be defined as when an individual has not left their workplace and agrees or is mandated to holdover until relief arrives for

up to 4 hours. This time will be subject to the minimum required hours in the FLSA cycle to eligible for compensation at time and a half. At no time shall a holdover that is less than twenty (20) minutes change the order or position of an employee on the mandate list. If the employee is required to work in excess of the 4-hour limit, the entire time will be addressed as Short Notice Period.

Short Notice Period: A Short Notice Period shall be defined as any hours outside an employee's regularly scheduled shift in which they have received less than 12 hours' notice. A Short Notice Period pay shall be a minimum of three (3) hours at time and one-half ($1\frac{1}{2}$) the employee's regular rate of pay or the actual hours worked at time and one half ($1\frac{1}{2}$), whichever is greater. These hours will be included in the payroll check that corresponds with the week in which the short notice period hours were actually worked. Employees will be eligible for payments qualified under this section as appropriate even if they have not worked the minimum required hours in the FLSA cycle. Mandatory Overtime, which are hours outside an employee's regularly scheduled shift, that they did not elect/volunteer to work will be assigned and paid in accordance with the Short Notice provision.

- 10.6 Any employee who works an outside detail for work performed on behalf of and paid for by outside employers/businesses who contract with the City for such purposes shall be paid at time and one half ($1\frac{1}{2}$) his/her regular rate of pay for all hours worked during the detail.
- 10.7 Upon proof of attending court, a deposition or administrative hearing pursuant to subpoena or other court order involving a job-related case, not as a plaintiff or claimant in litigation against the City nor as a defendant in litigation by the City, an off-duty employee will receive pay equal to one and one-half ($1\frac{1}{2}$) the employee's regular straight time hourly rate of pay for the hours he attends court. Provided, that such employee shall receive a minimum of three (3) hours pay at the rate of one and one-half ($1\frac{1}{2}$) times the employee's regular straight time hourly rate for such attendance. The City reserves the right to institute any procedure or system it deems appropriate to measure, record, and/or verify attendance and duration of off-duty court appearance. In the event any employee claims time not actually spent in off-duty court appearance, he may be discharged or disciplined. The employee will sign over all subpoena and witness fees, excluding travel fees, unless City transportation is furnished in which case such travel fee will be signed over.
- 10.8 No employee shall authorize overtime for himself but shall be entitled to work overtime as assigned or authorized by his supervisor. It is understood that the City has the right to schedule overtime work as needed, and in a manner most advantageous to the City.

- 10.9 Overtime hours shall be distributed as nearly equal as possible among employees as long as such sharing will not delay or increase the cost of the City's operations.
- 10.10 All employees shall be required to report to work on time, shall not leave the job early unless otherwise approved by the Fire Chief or his designee, shall be prompt in reporting to their assigned duties, and shall faithfully perform their duties.
- 10.11 Employees covered by this Agreement shall be given twenty-four (24) hours' notice of any change in their regular hours of work or work shift, unless an unscheduled absence by another employee or any emergency necessitates a quicker change.
- 10.12 There will be no duplication of premium payments and no claims that provide for "overtime on overtime".
- 10.13 Forty-eight (48) hours will be the maximum number of consecutive hours that may be worked at one time before requiring a minimum of twelve (12) hours off before returning to duty. The forty-eight (48) hours will include all forms of work such as normal tours of duty, overtime, shift exchanges, early relief, and special details requiring emergency services. The Chief or his designee may override this provision in extraordinary circumstance.

ARTICLE 11

WAGES

11.1 During the term of this contract, employees shall receive no increase in pay other than what is provided for in this agreement. All future wage increases beyond the term of this collective bargaining agreement, if any, shall be subject to negotiation by the Union and the City. Wage increases set forth in this Article shall be effective on the designated dates set forth in this Article below.

11.2 Effective upon ratification of this agreement, for Fiscal Year 2022, the following pay ranges will be in effect.

Firefighter:	\$14.00 - \$21.50
Driver Engineer:	\$15.35 - \$23.50
Lieutenant:	\$18.00 - \$26.50

Base pay adjustments for Fiscal Year shall be effective the first full pay period following ratification of this agreement according to the following:

a. All employees in the rank of Firefighter with less than seven (7) years of service from date of hire shall receive nine and eight tenths of a percent (9.8%) pay increase to their base rate of pay.

b. All other shift employee shall receive a five percent (5%) pay increase to their base rate of pay.

c. All employees will be eligible to receive a one-time lump sum payment in the amount of \$42.00 for every month of service from date of hire up to the date of ratification for fiscal year 2022 and 2023. Fiscal year 2023 shall be calculated by adding 12 months to the total months of service calculated for fiscal year 2022. [Fiscal Year 2022 + (Fiscal Year 2022+12) = Lump Sum Payout.] The maximum amount of payment for each fiscal year is \$8,000. Employees will have the option to request the payment be rolled into a 457 deferred compensation account. The lump sum payment shall be issued to employees within thirty (30) days from date of ratification.

11.3 Fiscal Year 2023, the following pay ranges will be in effect:

Firefighter:	\$14.50 - \$23.25
Driver Engineer:	\$16.00 - \$24.50
Lieutenant:	\$18.50 - \$27.50

Base pay adjustments for Fiscal Year 2023 shall be effective the first full pay period following ratification of this agreement according to the following:

- a. All employees in the rank of Firefighter with less than two (2) full years of service will be brought up to the new minimum base pay rate of \$14.50.
- b. All other employees in the rank of Firefighter shall receive a four percent (4%) pay increase to their base rate of pay.
- c. All employees in the rank of Driver Engineer or Lieutenant with less than twenty (20) full years of service shall receive an with and seventy-five hundredths' percent (8.75%) pay increase to their base rate of pay.
- d. All employees in the rank of Driver Engineer or Lieutenant with more than twenty (20) full years of service shall receive a six percent (6%) pay increase to their base pay rate.

- 11.4 Promoted employees shall receive a five percent (5%) salary adjustment above their current Pay rate, but in no event shall the salary adjustment be lower than the hiring rate for the new position.
- 11.5 Bargaining unit employees shall receive a performance evaluation annually with the City. An employee who receives an "unsatisfactory" performance rating will be re-evaluated at the end of three (3) months. Failure to receive a "satisfactory" performance rating after the re-evaluation period will result in disciplinary action, up to and including termination. Any employee with an "unsatisfactory" rating on their last performance evaluation will not be eligible for a salary adjustment on the next October 1st, if one is granted by the City Council.
- 11.6 Employees newly hired may be started at a higher rate of pay than the minimum starting rate, upon evaluation by management. New hires with five (5) or more years of working experience in fire or EMS may only be started at a higher rate of pay not to exceed a 5% increase higher than the minimum starting rate, upon evaluation by management.
- 11.7 The employee and City may mutually agree to provide time off as compensation for overtime. Such time off ("compensatory time") shall be accrued at the same rate as overtime pay, i.e., one and one-half (1 ½) hours of compensatory time for each hour of overtime worked. The maximum number of hours of compensatory time which will be allowed to accrue is one hundred-ninety-two (192) hours of compensatory time.

- 11.8 For the purpose of taking compensatory time off, the employee shall request in writing to be allowed to utilize his accrued hours and shall designate the day(s) he wants off. Said request should be made as far in advance as possible. Compensatory time will be used prior to any use of annual leave and will be scheduled at the discretion of the Fire Chief, or his designee; provided that the employee will be permitted to use such time off within a reasonable period after making the request, if such does not unduly disrupt operations of the City.
- 11.9 Nothing in this Agreement shall be construed to prohibit the City from substituting cash, in whole or in part, for compensatory time off at any time; and overtime payment shall not affect subsequent granting of compensatory time off in future workweeks or work periods.
- 11.10 Upon termination of employment, an employee shall be paid for compensatory time earned and accrued at the employee's final regular hourly rate of pay. However, such lump sum payment shall not be included in the employee's base salary for the purpose of computing pension benefits.

ARTICLE 12

RETIREMENT PLAN

- 12.1 The parties hereto recognize that the employees in the Bargaining Unit are participants in a Retirement Plan of the City as provided for by Chapter 175, Florida Statutes, and Section 54-76, etc. of the Code of Ordinances, City of Port Orange, Florida (hereby referred to as the "Retirement Plan"). Pensions and other retirement benefits for bargaining Unit employees which are not specifically enumerated in this labor Agreement are as set forth in the Retirement Plan. The City agrees to maintain the benefits and member contributions set forth in the Retirement Plan, with the changes provided below. An employee in this bargaining Unit who enters the DROP program on and after the effective date of this contract shall be subject to all of the terms of this contract including this Article.

The parties agree to amend the Retirement Plan following the adoption of the Ordinance implementing this Article, with changes to benefits effective the first of the month following the adoption of the Ordinance, as follows:

- 12.2 For members hired on or after September 25, 2012 the accrued benefit will be determined as three percent (3.0%) of Average Final Compensation for each year of Credited Service. The maximum benefit is the lesser of ninety percent (90%) of Average Final Compensation and \$95,000.

The definition of Salary will be amended to include the additional item of all Specialty and Incentive Payments as pensionable compensation for calculating benefits.

- 12.3 Reserved.

- 12.4 After the Retirement Plan achieves a funded ratio of one hundred percent (100%) or greater as reflected in the current Disclosure Information prepared in accordance with Governmental Accounting Standards Board requirements, the City will make a contribution, of the higher of either the normal cost of the plan or a minimum thirteen percent (13%) towards a stabilization fund for use during economic downturns to smooth the volatility of required pension payments. This contribution shall be paid to the pension fund and shall not be used by the City or the members to acquire or fund new or additional benefits.

- 12.5 Should an issue arise with the State Division of Retirement regarding any provisions in this Article, both parties agree to work together to resolve the issues in order to gain approval of Plan changes.

12.6 Mutual Consent Agreement:

In compliance with section 175.351(6), F.S., a defined contribution plan component ("share plan") has been established as part of the benefit pension plan, to be funded exclusively with Ch. 175 premium tax revenues. However, the City and Union have mutually agreed that no Ch. 175 premium tax revenues will be allocated to a share plan at this time. The share plan shall not be activated until Ch. 175 premium tax revenues are allocated to the share plan by mutual agreement of the parties. At such time in which the City and Union agree to allocate Ch. 175 premium tax revenues to the share plan, the parties will negotiate the details of the share plan. All annual premium tax revenues received pursuant to Ch. 175 will continue to offset the City's pension contributions. All accumulated excess premium tax revenues as of 10/01/16 will be used to offset the City's pension contributions.

ARTICLE 13

TEMPORARY ASSIGNMENT TO A HIGHER CLASSIFICATION

- 13.1 The City may select any employee from a lower classification to temporarily fill a higher classification position, provided that the employee in the lower classification is on the eligibility list for promotion to the higher classification or has been deemed qualified through a valid process. Upon ratification of this agreement, anyone not currently qualified must meet the following requirements listed below:

Relief Driver: Successful completion of Fire Service Hydraulics, Apparatus Operations, and Aerial Operations

Ride-up Lieutenant: Successful completion of the Fire Officer 1 courses, Building construction for the fire services, Company Officer, Fire Fighting Strategy and Tactics 1, and Fire Service Course Delivery.

The Fire Chief and Union Leadership may agree to a modified requirements list for a determined period of time. This agreement will be established prior to implementation and mutually agreed upon by both parties.

- 13.2 An employee in the rank of Lieutenant who is temporarily assigned to a position of Battalion Chief for a period of two (2) hours or more shall be entitled to fifteen percent (15%) ride up pay for the period of time the employee is so assigned. This ride up pay will be computed in the pay period in which it was earned and paid to the employee in his/her regular paycheck for that period.

- 13.3 In the event an employee is temporarily selected to fill a vacant promotional position on an interim basis for two-hundred-forty (240) of the last four hundred eighty (480) hours, the employee shall receive a ten percent (10%) salary adjustment above their current base pay, but in no event shall the salary adjustment be lower than the hiring rate for the new position.

If the employee selected for a temporary position is not selected to the permanent position, this employee shall be returned to his/her previous classification and pay rate.

- 13.4 An employee who is temporarily assigned to a shift required to perform the transport function for a period of two (2) hours or more shall be entitled to \$3.00 per hour assignment pay for the period of time the employee is so assigned. The assignment pay will be computed in the pay period in which it was earned and paid to the employee in his/her regular paycheck for that period. All bargaining unit employees shall be eligible for overtime

opportunities on the transport unit(s), but an employee on overtime shall not be forced to work on the transport unit unless all other options have been exhausted.

ARTICLE 14

HOLIDAYS

- 14.1 It is recognized that the City will close its offices for ten (10) official holidays. The following ten (10) days are paid holidays under this Agreement:

Thanksgiving Day
Friday after Thanksgiving
Christmas Day
New Year's Day
Martin Luther King Jr. Day
Good Friday
Memorial Day (Observed Day)
Independence Day
Labor Day
Veteran's Day

- 14.2 In addition to the paid holidays above, employees shall be granted additional leave as follows:

Floating Holiday: Twenty-four (24) hours will be added to the employee's annual leave accruals for forty (40) hour employees. Thirty-six (36) hours of annual leave will be added for shift personnel. This annual leave will be added on the first pay period after the first of January for the employee to use as he or she wishes. These hours are to be scheduled in the same fashion as annual leave.

Employee Birthday: Eight (8) hours will be added to the employee's annual leave accruals for forty (40) hour employees. Twelve (12) hours of annual leave will be added for shift personnel. This annual leave will be added on the first pay period after the first of October for the employee to use as he or she wishes for his or her birthday. These hours are to be scheduled in the same fashion as annual leave.

In order to qualify for the four (4) annual leave accruals for the Floating Holidays, and Birthday Holiday, an employee must have been employed for the entire 12 consecutive previous months. After 12 consecutive months of service, employees shall be eligible to receive the additional hours added to their annual leave accruals. After new employees complete their first consecutive 12 months of service, they will receive the additional hours added to their annual leave accruals.

- 14.3 Shift employees who work the actual holiday referenced in 14.1 will be the employees who are compensated with holiday pay rather than the employees who work on the day the holiday is observed by the City.
- 14.4 If a holiday referenced in 14.1 falls on a shift employee off duty day, they shall receive twelve (12) hours holiday pay at their regular straight time rate of pay.
- 14.5 If a shift employee is required to start his/her shift of work on one of the holidays specified in 14.1, he/she shall receive payment of one and one half (1 ½) regular hours at his/her regular rate of pay for each hour worked up to twelve (12) hours worked on that shift, in addition to twelve (12) hours of holiday pay at his/her regular rate of pay. Under no circumstance will total compensation exceed two and one half (2 ½) times one day's pay at the regular rate.
- 14.6 Employees who work a forty-hour (40) work week, either by regular schedule or during a modified schedule due to Worker's Compensation assignment will be paid for such holidays specified in 14.1 in accordance with the provisions of this Section:
- A. Should a paid holiday fall on Sunday, the Monday immediately following the holiday shall be the day observed as such holiday and should such holiday fall on a Saturday the preceding Friday shall be the day observed as such holiday.
 - B. An employee who performs no work on the holiday, and who is eligible, shall receive an additional day's compensation, paid at his regular rate of pay.

ARTICLE 15

ANNUAL LEAVE

- 15.1 Annual Leave is provided for the purpose of allowing employees time off from their work for vacation or for necessary time to attend to personal business.
- 15.2 In computing annual leave time, holidays, or regular days off immediately preceding the commencement of, falling within, or following the termination of an employee's annual leave, shall be excluded from the computation of the employee's annual leave time.
- 15.3 Selection of vacations shall be on a seniority basis. Employee's vacation requests for a calendar year must be submitted in writing and received in the Fire Administration office after January 1st of the year, but not later than 5:00 p.m. by February 1st of each year. The individual employee is responsible to ensure the request is received in the Fire Administration office on the proper date and time. The City will permit a minimum of two (2) persons on any shift to take off on annual leave at the same time. In addition to the minimum of two (2) persons off on any shift, the City will also allow a minimum of twenty percent (20%) of staffing off for the shift if it does not cause overtime.
- 15.4 Notification by the City of vacation schedules shall be made in writing by March 1st of each year. Nothing in this Agreement shall restrict the City's right to reschedule vacations in the event of a disaster or emergency. The City will make every effort to accommodate scheduled requests for annual leave or a reschedule request in a situation where cancellation of annual leave is permitted, whether the request is made before or after February 1, providing such request is submitted in writing to the Department Head, or in the Department Head's absence, the Department Head's designee, and providing staffing requirements are met.
- 15.5 Any request for annual leave other than vacation selection must be submitted in writing to the Chief or the Chief's designee at least twelve (12) hours in advance of the date requested. If the request is made verbally and approved, it shall be documented in writing as soon as practicable thereafter. After the employee has reported for duty, the Chief or his designee may grant annual leave if staffing is available and overtime is not incurred.
- 15.6 Emergency Annual Leave.

On no more than three (3) occasions per fiscal year (October 1 through

September 30), an employee may utilize annual leave with little or no advance notice ("emergency annual leave") to deal with personal or family emergency situations. In order to be granted annual leave for these purposes, an employee must request the leave verbally or in writing as far in advance of taking the leave as possible. If the employee is unable to make a written leave request prior to taking emergency annual leave, he/she must submit such a request as soon as is practicable thereafter. The employee's request for emergency annual leave must include information specifically describing the situation for which the leave is required. After emergency annual leave has been granted, the City shall have the right to require verification from the employee of the emergency circumstances which necessitated the taking of annual leave, if evidence verifying the circumstances is available. If an employee is found to have provided false information concerning his/her need to take emergency annual leave, he/she may be subject to corrective action and shall be responsible for any costs incurred by the City to provide staffing coverage for the falsified emergency leave situation.

The City shall grant an employee's request for emergency annual leave regardless of whether or not granting the leave request would require the City to pay overtime to meet minimum staffing levels. If an employee has already taken emergency annual leave on three occasions during a fiscal year and makes a request for additional emergency annual leave, the Department Head or designee may grant or deny the request at his/her discretion.

15.7 Cancellation of Requested Annual Leave.

If an employee wishes to cancel approved annual leave which was selected on or before February 1st, the employee may do so provided that he/she provides the Department Head or the Department Head's designee with notice at least twelve (12) hours prior to the start of the approved annual leave.

Should an employee have an emergency situation that causes the cancellation of scheduled annual leave, the Department Head or the Department Head's designee may approve the cancellation of annual leave and authorize the employee to return to work.

15.8 Accrual of Annual Leave:

- A. General Term of Accrual - Annual leave shall be earned and accrued from the most recent day of employment under the conditions hereinafter stated, but no annual leave shall be granted until an employee has completed six (6) months of continuous service. An

employee who is paid for less than twenty (20) hours of work in a week shall accrue no annual leave credit for such week of service. Provided however, that the limit of twenty (20) hours shall not apply to an employee on annual leave, sick leave, or other authorized leave with pay who would otherwise have worked at least twenty (20) hours.

- B. Accrual for Current Full-Time Employees working a forty (40) hour week: Each employee working a 40-hour work week shall accrue annual at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:

Length of Continuous Service	Maximum Annual Accrual
less than 5 years	100
5 to 8 years	116
8 to 11 years	132
11 to 16 years	148
16 to 20 years	164
more than 20 years	180

- C. Accrual for Current Full-Time Employees Working Extended Shifts 168 Hours Every 21 Day Cycle. Each full-time employee working extended shifts shall earn annual leave at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:

Length of Continuous Service	Maximum Annual Accrual
less than 7 years	148
7 to 9 years	172
9 to 16 years	208
16 to 20 years	220
More than 20 years	244

- D. Maximum Accrual for Current Employees - Annual leave normally is to be taken in the anniversary year in which it is accrued. Unused annual leave may be accumulated to a maximum of three hundred and twenty (320) hours for bargaining unit employees working a forty (40) hour work week, and three hundred and eighty-six (386) hours for bargaining unit employees working extended shifts as set forth above.

E. Employees will be permitted to use annual leave in accordance with Department policy in units of not less than four (4) hour increments subject to the approval of their supervisor. In case of conflict, annual leave shall be granted on the basis of seniority. For shift Firefighters, the maximum amount of accumulated annual leave which may be taken at one time, shall be ten (10) shifts of twenty-four (24) hours each, which, with the forty-eight (48) hours off duty time per shift, will permit a maximum of thirty-two (32) days away from duty. Fire administration has the right to grant more than 10 shifts of leave consecutively. Requests can be made in writing by the employee.

F. Employees hired prior to December 4, 2012 who have accrued more than the maximum accrual set forth in section 15.8.D shall receive payment, or at the employee's option, deferral into an ICMA-RC 457 Plan account or other City adopted 457 Plan, for this unused leave.

Leave balances as of September 1st of each fiscal year shall be paid or deferred into the employee's ICMA-RC 457 Plan account or other City adopted 457 Plan at the rate in effect on September 15, by the last pay period in September.

G. Employees hired after December 4, 2012, shall forfeit any unused annual leave in excess of the maximum accrual set forth in section 15.8.d as of the last full pay period in September.

H. All employees who have not received an accrual rate increase based upon length of continuous service shall receive a one-time lump sum of annual leave accruals in the amount of forty-eight (48) hours in addition to the normal accrual rate for the year.

15.9 An employee who is terminated for cause (not for inline duty disability) or who resigns without a two (2) week notice shall not be eligible for compensation for any accumulated leave. An employee who resigns with a two (2) week notice, is laid off, or retires under the provisions of the City's pension plan (or in the event of death, his/her heirs) shall be compensated for all accumulated unused annual leave up to the maximum accrual as provided for in Section 15.8 (d). Pay, or at the employee's option, deferral into an ICMA-RC 457 Plan account or other City adopted 457 Plan, for such accumulated leave shall be based on the regular hourly rate of pay of the employee at the time of termination. In the case of death, compensation shall be paid to the surviving spouse or the employee's estate.

15.10 Employees taking annual leave shall have their accounts charged for the actual number of scheduled hours absent because of leave.

ARTICLE 16

SICK LEAVE

16.1 Sick leave benefits shall not be considered as a right to be used at an employee's discretion. Sick leave is an allowance granted by the City to provide employees with reasonable time off during periods of personal or family illness or injury and to attend medical appointments without loss of pay. This includes time off to recover from off-duty illness or injury that prevents an employee from being able to adequately perform their required job duties and functions. All employees desiring to utilize sick leave are required to notify their supervisor as early as possible, and at least one (1) hour in advance of their scheduled reporting time each day of their intended absence due to illness. Extenuating circumstances to the above shall be given due consideration. Such notice shall be given each day of the absence and the employee shall notify the supervisor as soon as possible of the employee's intention to return to work. Abuse of sick leave privileges shall be considered cause for disciplinary action or dismissal. When abuse is suspected, the City may require a physician's certificate to authenticate an absence or to determine qualifications to resume work.

16.2 General Terms of Accrual - Sick leave shall be accrued from the most recent day of continuous uninterrupted employment under the conditions hereinafter stated.

A. Accrual for Full-Time Employees - Each full-time employee working a forty (40) hour work week shall accrue of 96 hours of sick leave at an equally prorated amount per pay period per year. Firefighters on shift shall accrue of 156 hours (3.00 hours per pay period) of sick leave at an equally prorated amount per pay period per year. In the event an employee has worked less than a full year, the total number of accrued hours of sick leave will be reduced proportionally.

B. Accumulation and Pay-Off of Sick Leave - Subject to the provisions of this Agreement, employees may accumulate sick leave from year to year for use in future years as needed. Employees may exchange sick leave for pay, or at their option, deferral into an ICMA-RC 457 Plan account up to the maximum amount provided by law, as provided herein. The maximum unused sick leave that may be exchanged for pay or deferral in any one year is one hundred ninety-two (192) hours, provided however, that shift employees must maintain a minimum balance of seventy-two (72) hours after the amount of sick leave requested to be sold is subtracted from their accrual. Other personnel must maintain a minimum balance of at least forty (40) hours of accumulated sick leave after the amount of

sick leave requested to be sold is subtracted from their accrual.

16.3 Accumulation of Sick Leave and Sick Leave Sell Back/Deferral

The maximum amount of sick leave that employees will be able to carry forward into the following year will be seven hundred fifty (750) hours. Only employees who have already accrued in excess of seven hundred fifty (750) hours of sick leave as of December 4, 2012, will be able to carry forward each fiscal year a sick leave balance equal to their total sick leave accruals as of December 4, 2012 but in no case more than 1000 hours. Accrued sick leave balances as of September 1st each fiscal year which are in excess of the accrual cap amounts for each particular employee shall be paid off by the City at the employee's regular hourly rate in effect on September 15th for each hour of sick leave.

At the employee's option, the employee may defer this payment into an ICMA-RC 457 Plan account up to the maximum amount provided by law.

A. Sick Leave Sell Back/Deferral

- i. For employees who have a minimum of ten (10) years of seniority with the City as of September 30 of the year in which the employees seek to exchange sick leave for pay or deferral, the following procedures shall apply to sick leave exchanges for pay:

All members must maintain a minimum balance of forty (40) hours of sick leave (or seventy-two (72) hours of sick leave for shift employees). Employees may exchange a maximum of one hundred ninety-two (192) hours of unused sick leave for pay or deferral into the employee's ICMA-RC 457 Plan account each year. Each employee shall receive one hour of pay or deferral at his/her regular hourly rate as of September 15 of the year that the exchange is being made for each hour of unused sick leave being cashed in or deferred.

- ii. For employees who have less than ten (10) years of seniority with the City as of September 30 of the year in which the employees seek to exchange sick leave for pay, the following procedures shall apply to sick leave exchange:

All members must maintain a minimum balance of forty (40) (or seventy-two (72) hours of sick leave for shift employees).hours of sick leave. Employees may exchange a maximum of one hundred ninety-two hours of unused sick leave for pay or deferral into the employee's ICMA-RC 457

Plan account each year. Employees who have accumulated more than the minimum hours of sick leave but less than one hundred (100) hours which they wish to exchange may exchange that leave for pay or deferral at the rate of three (3) hours of sick leave for one (1) hour of pay or deferral.

Employees who accumulate more than one hundred (100) hours of sick leave which they wish to exchange may exchange that leave for pay or deferral at a rate of two (2) hours of sick leave for one (1) hour of pay or deferral. At all times a minimum of forty (40) hours (or seventy-two (72) hours of sick leave for shift employees) of sick leave must be maintained in order for the employee to exchange sick leave for pay or deferral.

- 16.4 Subject to the provisions of this Agreement, an employee may cash in, or at his/her option, defer into an ICMA-RC 457 Plan account, at his/her regular rate of pay effective on September 15, his/her accumulated sick leave hours by submitting a request in the time and absence system to the Human Resources division no later than September 1st of such fiscal year, subject to the restrictions indicated in Section 16.2.B. Failure to submit this form will result in an employee's accrued sick leave bank being "banked" for future use or pay-off as provided here-in.

All payments or deferrals for unused sick leave made under this Article shall be made on or about the last pay period in September.

- 16.5 Participants receiving sick leave shall be paid and their account charged for the actual number of scheduled hours absent because of sickness.
- 16.6 Any absence for a fraction or part of a day which is chargeable to sick leave shall be charged in increments of not less than one-half (1/2) hour.
- 16.7 Resignation, Retirement, or Death – An employee who resigns with two (2) weeks prior notice or retires under the provisions of the City's pension plan (or in the event of his death, her or his heirs) shall be entitled to a lump sum payment, or a lump sum deferral into the employees' ICMA-RC 457 Plan account up to the maximum provided by law, for all unused sick leave accrued, at their regular rate of pay.
- 16.8 An employee who is fired (other than for in line duty disability), dismissed, or who quits and/or separates from the City for any reason other than detailed in 16.7 shall forfeit accrued sick leave. Under such circumstances the accrued sick leave is forfeited and the employee shall have no claim to payment or deferral into the employee's ICMA-RC457 Plan account for

accrued sick leave.

- 16.9 Sick Leave Donation Process - Both parties agree to work towards establishing a Sick Leave donation process to allow employees to contribute sick leave hours to other employees.

ARTICLE 17

BEREAVEMENT LEAVE

- 17.1 All employees may be granted time off with pay to arrange and/or attend funeral services in the event of death(s) in the family. Such time off shall ordinarily not exceed forty-eight (48) hours for extended shift employees or four (4) workdays for employees working a forty-hour work week per event, for a maximum ninety-six (96) hours per fiscal year for extended shift employees or eight (8) workdays per fiscal year for employees working a forty hour work week, and shall not be charged as annual leave or sick leave. Requests for time off shall be submitted in writing to the employee's supervisor when possible. In extraordinary circumstances, where the employee has exhausted the maximum bereavement leave provided for in this part, the Department Head may, in his discretion, grant an employee additional leave time.
- In the event of the death of an immediate family member, defined as parent, spouse, child, stepchild, or sibling the employee shall be allowed to use seventy-two (72) hours for extended shift employees of consecutive time off. The maximum of ninety-six (96) hours of paid bereavement leave in a fiscal year remains.
- 17.2 Management may require the employee to verify the employee's relationship to the deceased and to provide proof of death.
- 17.3 In the event of the need for additional time for a death, an employee may use accrued sick or vacation leave.

ARTICLE 18

LEAVE OF ABSENCE

- 18.1 The City of Port Orange will grant up to twelve (12) weeks of family and medical leave during any twelve-month (12) period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA) and in accordance with the City Family and Medical Leave Act Policy. This Policy is set forth in the City's Administrative Policies Manual as Policy 1-22.
- 18.2 The City Manager shall have the sole discretion to grant or deny a leave of absence under circumstances which are not covered by the Family and Medical Leave Act. The maximum length of time for this type of leave of absence shall be twelve (12) weeks. If such a leave is granted, the employee must first use any accrued annual leave and sick leave. The remainder of the leave of absence will be unpaid. Requests for a leave of absence under this Section must be made in writing. The leave of absence request may be approved in full, modified or denied as specified in writing by the City Manager.
- 18.3 Longevity increases, merit increases, and any other increases for which an employee may become eligible based in whole or in part on length of service with the City shall not be credited during any period of leave of absence without pay. An employee shall return from leave of absence to the same step of his salary grade as at the time of commencement of leave of absence
- 18.4 If permitted by the Retirement Plan, an employee may maintain his/her retirement credit during the period of an unpaid leave of absence under this Article by paying both his/her and the City's share of the Retirement Plan contributions.

ARTICLE 19

JURY DUTY AND APPEARANCE AS A WITNESS

- 19.1 Any employee in the Bargaining Unit who is summoned to perform jury service during his normal working hours in any court (City, Federal, or County) shall be granted leave with pay for the time he is absent from work as a result of fulfilling his jury duty obligation. The employee summoned as a juror shall attach a copy of his summons to the Leave of Absence Request. An employee who is released from jury duty prior to four (4) hours from his normal end of the workday, shall be required to report to his work site immediately after his release.
- 19.2 An employee subpoenaed as a witness for a court proceeding, not involving personal litigation, shall be granted leave with pay to appear and testify pursuant to the subpoena. If the employee is released from the subpoena prior to the expiration of twelve (12) hours for shift Firefighters and four (4) hours for 40-hour employees from his normal starting time for that workday, he shall be required to report to his work site immediately after his release from such subpoena.
- 19.3 Any court proceeding of a personal nature will not be subject to this Article.

ARTICLE 20

MILITARY LEAVE

- 20.1 Bargaining unit members will be allowed military leave in accordance with conditions set forth in the Uniformed Services Employment and Reemployment Act (USERRA), and Sections 115.07, 115.09, 115.14 and 250.48, Florida Statutes and in accordance with the City's Military Leave Policy. This Policy, as amended from time to time, is set forth in the City's Civil Service Rules and Regulations, Chapter 3, Attendance and Leave, 3.07, Military Leave.
- 20.2 With respect to any bargaining unit employee whose working day consists of over twelve (12) hours, each such shift shall equal two (2) working days leave of absence.
- 20.3 During such period of leave with pay, the employee's benefits shall continue in the same manner as if he were on active duty with the City.
- 20.4 If permitted by the Retirement Plan, an employee may maintain his/her retirement credit during the period of an unpaid leave of absence under this Article by paying both his/her and the City's share of the Retirement Plan contributions.

ARTICLE 21

EDUCATIONAL LEAVE

- 21.1 Any employee covered hereunder may be given educational leave for the purpose of taking courses or attending conferences and/or seminars directly related to the employee's work as determined in writing by the Department Head. Requests for such educational leave must be approved in writing in advance by the Department Head.
- 21.2 An employee granted educational leave with full pay shall be entitled to receive all City benefits in the same manner as if he were on active duty during the period of the leave. Entitlement to benefits for employees on partially compensated or uncompensated educational leave shall be determined by the City Manager.

ARTICLE 22

WELLNESS HOURS

- 22.1 The City recognizes the high stress environments and situations that come with Fire Services. The City agrees to provide wellness hours for full-time employees working a one hundred-sixty-eight (168) hours in every twenty-one (21) day cycle.
- 22.2 All employees with the rank of Firefighter shall accrue wellness hours beginning on their 5th anniversary date of hire in the amount of fifty (50) hours per year pro-rated each pay period.
- 22.3 All employee with the rank of Driver Engineer shall accrue wellness hours in the amount of one hundred (100) hours per year pro-rated each pay period.
- 22.4 All employees with a rank of Lieutenant shall accrue wellness hours in the amount of one hundred-seventy-five (175) hours per year pro-rated each pay period.
- 22.5 The use of wellness hours shall be consistent with the requirements for annual leave set forth in Article 15.
- 22.6 Unused wellness hours may be accumulated to a maximum of five hundred (500) hours. Wellness hours in excess of five hundred (500) hours effective the last full pay period in September of each successive year shall be forfeited.
- 22.7 An employee who retires or resigns from the City in good standing after giving two weeks advanced separation of serviced shall be compensated (or request compensation be rolled to a 457 deferred compensation plan) for fifty percent (50%) of all unused wellness hours accrued at the time of separation.

ARTICLE 23

TUITION REIMBURSEMENT

- 23.1 Subject to budget constraints and availability of funds, the City agrees to reimburse the employee for tuition (excluding fees) up to two (2) approved classes per semester. The employee will be reimbursed at the Daytona State College (DSC) rate.
- 23.2 The City will reimburse the employee for tuition (excluding fees) for graduate course work at the rate of one half (1/2) the cost of tuition for graduate course work at the University of Central Florida (UCF) rate, regardless of where the courses are taken. Courses will be paid on a reimbursement basis with proof of payment and grade.
- 23.3 The City will require each employee to remain in the service of the City for one (1) year after completion or termination of the most recent class paid for by the City or the employee will be required to reimburse the City for the costs of tuition unless the employee is terminated by the City. This obligation will begin on the day after the school semester is completed.
- 23.4 The employee shall not receive reimbursement by the City for any course not passed with a grade of "C" or better or a passing grade on a pass/fail system or if grades are not received within three (3) months after the completion of the course.
- 23.5 All employees must pre-register with the Human Resources Department regardless of where the courses are taken, if the employee intends to apply for tuition reimbursement. The City maintains the option to refuse to pay for courses that are not directly related to a degree program or courses that have excessively high costs.
- 23.6 The City of Port Orange will also provide reimbursement for internet and correspondence courses to the employee at the same reimbursement rates as stated in section 23.1 and 23.2 above. Employees may take internet-based certificate programs from accredited online programs for courses that would also be available through degree-seeking programs and will be reimbursed for the actual cost of the course, not to exceed the amounts outlined in 23.1 and 23.2. Employees who wish to complete internet-based courses, which are job related, but do not relate to a college degree, will be monitored by Department Directors who will approve and pay for the courses. Employees shall not be allowed to work on internet-based college courses during normal work hours (8:00 A.M.-5:00 P.M.). At a Lieutenant's discretion, an employee may be permitted to work on college courses while

on shift outside of these work hours.

- 23.7 Employees must have completed twelve (12) months of service with the City to be eligible for taking courses as allowed under this article.
- 23.8 It is clearly understood that all tuition reimbursement is subject to budget constraints and availability of funds as defined in the line item for tuition reimbursement. The funds assigned to this line item are for use City Wide and approval of funds will be based on a first come, first serve basis upon applying for reimbursement prior to the course beginning. All documentation must be complete when turned into the Human Resources department in order to be considered for tuition reimbursement. Notwithstanding the aforesaid, the Department Head may within his discretion, allocate from the various Fire Department's operational funds to provide tuition reimbursement for employees.

ARTICLE 24

SENIORITY

- 24.1 For the purpose of this Agreement, seniority is defined as the length of continuous, uninterrupted service in the Fire Department. Effective the date of the ratification of this agreement, employees hired on the same day will be placed on the seniority list in the order of their ranking on the hiring eligibility list. For employees hired prior to the date of the ratification of this Agreement, employees hired on the same day have been placed on the seniority list in the order of their security numbers with the lowest number having the highest seniority for all purposes.
- 24.2 Continuous service shall be considered as having been interrupted when the employee:
- (a) Resigns;
 - (b) Is discharged;
 - (c) Takes unauthorized leave of absence leave; or
 - (d) Is absent due to a lay-off for more than one (1) year.
- 24.3 In the event of a lay-off or elimination of a classification within the Department seniority as recognized in 24.1 shall be the determining factor:
- 24.4 Employee will be recalled from a lay-off in the inverse order of their lay-off, by job classification, provided the employee is still qualified to perform his work. Provided further that recall rights shall continue for a period of one (1) year from the date of an employee's lay-off. The City shall notify the employee of all job openings in the employee's former classification during the one (1) year period. Such notification will be mailed to the employee's last known address. The laid-off employee must accept the recall option within five (5) calendar days of receipt, or the employee will be considered to have forfeited any recall right.
- 24.5 An employee on lay-off shall retain his seniority for one (1) year following his layoff but shall not accrue seniority while on lay-off. Group insurance benefits shall be continued in accordance with the Consolidated Omnibus Budget Reconciliation Act, as amended.

ARTICLE 25

PROBATIONARY EMPLOYEES

- 25.1 All new members in the Department shall be classified as probationary employees for the first three hundred and sixty-five (365) calendar days of continuous, uninterrupted employment during which time such employees may be laid-off, disciplined, or discharged at the sole discretion of the City. Shorter periods of employment shall not be cumulative. Provisions as to seniority shall not apply to probationary employees; rather, seniority shall date back to the initial or adjusted date of employment after an employee successfully completes his probationary period. If more than one employee is hired on the same day or has the same adjusted date of employment, seniority shall be determined by the ranking order of the eligibility list the employee is hired from, subject to the provisions of Article 24. Any employee who is hired who lacks the state of Florida minimum standards Firefighter certification shall have their one-year probationary period (365 calendar days) begin on the date the State of Florida minimum standards certification is received, not the date of hire.
- 25.2 Employees who have been promoted to a new classification or selected to fill a vacancy within the bargaining unit shall serve a one hundred eighty (180) calendar day probationary period in the new classification or filled position. If at any time during the probationary period the promoted employee is found not to have the aptitude or ability for the position to which they are promoted, the employee will be returned to their former classification, at their prior rate of pay, and all moves made because of their promotion shall be reversed, including the termination of newly hired employees.
- 25.3 The employee's starting date of employment for purposes of calculating his probationary status and seniority shall be adjusted if the employee takes leave without pay. For example, should an employee take five (5) days of leave without pay, the employee's starting date of employment will be adjusted by moving the employee's original date up five (5) days. Should the employee be in his probationary period at the time he takes leave without pay, the employee's probationary period shall be extended in proportion to the days he was on such leave.
- 25.4 The City shall have the right to extend the probationary periods set forth in sections 25.1 and 25.2, for a period of ninety (90) calendar days, in lieu of discharging the employee.

ARTICLE 26

VACANCIES AND PROMOTIONS

26.1 Whenever a budgeted promotional vacancy occurs in a Lieutenant or Driver Engineer classification the City shall promote an employee to fill such vacancy within thirty (30) days from an existing eligibility list. However, if the current list has less than three (3) names remaining on the list, the City may either promote from this list or retest, at the City's option. Should there be no valid list at the time a vacancy occurs, or should the City elect to retest as indicated above, the City shall initiate actions to establish a new list within thirty (30) days, provided personnel are qualified for promotion. An eligibility list will be established within fourteen (14) days following completion of the promotional process and will remain in effect for a period of two (2) years from that date. Upon certification of the new eligibility list, the budgeted vacancy shall be filled within fourteen (14) days.

26.2 The City shall provide employees with a list of the required study materials that will be utilized on the promotional exam (45) forty-five days in advance of the promotional exam date. Additionally, the City shall furnish each fire station with a hard copy of all study materials and texts or the equivalent information in electronic format for the promotional examination process.

26.3 ELIGIBILITY FOR DRIVER ENGINEER PROMOTIONAL PROCESS

In order to participate in the Driver/Engineer promotional process personnel must have successfully passed Aerial Operations, Fire Service Hydraulics and Fire Apparatus Operations for Driver Engineer promotions occurring after ratification of this contract. Personnel must also have at least three (3) years with Port Orange Fire & Rescue on the date on which phase one (1) of the test is administered. If a candidate has two (2) or more years' experience as a paid firefighter, the above-mentioned requirements will be reduced by one (1) year.

Candidates shall be required to hold State of Florida certification as a State Certified Pump Operator.

The City shall reimburse each employee for the actual cost of the class (employee must submit receipt) upon passing the State exam for Fire Service Hydraulics and Fire Apparatus/Pump Operator.

Ranking on the promotional list for Driver/Engineer will be established using the following scoring system and points as outlined in Article 26 section 26.5 under "Additional Points":

PHASE I:
Driver Engineer Written Exam 100 points

Phase I includes a comprehensive written examination of 100 multiple choice questions derived from relevant Driver Engineer texts selected by the Fire Chief. Points are awarded for each successful answer. Candidates must achieve a minimum passing score of seventy (70) percent in order to continue to Phase II of the Driver Engineer promotional process.

PHASE II:
Pump Practical Exercise 100 points

Driving Practical Exercise:
Over the Road 50 points
Cone Course 25 points
Truck Check Out 25 points
100 points total

PHASE II: includes two separate practical exercises to include the basic functions of a Driver Engineer as well as the candidate's knowledge of the apparatus and its components. The driving practical exercise will include an over the road and cone course as well as a pumping evolution which will incorporate scenarios which may include items such as the candidate's ability to utilize water and foam operations, incoming water supply, large and small handlines and master streams. Once the City announces the promotional application process, the City shall identify the specific apparatus designated to be used for Phase II. In the event the apparatus becomes unavailable, the City shall identify an alternative apparatus. Candidates must achieve a minimum passing score of seventy (70) percent in the Pump Practical Exercise and seventy (70) percent in the Driving Practical Exercise in order to become eligible for promotion.

26.4 ELIGIBILITY FOR LIEUTENANT'S PROMOTIONAL PROCESS:

Eligibility is six (6) years of continuous service as a Port Orange career fire fighter or driver/engineer; or five (5) years of continuous service as a Port Orange career fire fighter or driver/engineer with an Associate Degree in Fire Science or Emergency Medical Service, Public or Business Administration or related field; or four (4) years of continuous service as a Port Orange career fire fighter or driver/engineer with a Bachelor Degree in Fire Science or Emergency Medical Service, Public or Business Administration or related field. Candidates shall be required to be State of Florida certified at the Officer I level. If a candidate has two (2) or more years' experience as a paid firefighter, the above-mentioned requirements will be reduced by one (1) year. The City shall reimburse each employee

for the actual cost of the class (employee must submit receipt) upon passing the State Exam.

Ranking on the promotional list for Lieutenant will be established using the following scoring system and points as outlined in Article 26 section 26.5 under "Additional Points":

PHASE I:

Lieutenant Written Examination: 100 points

Phase I includes a comprehensive written examination of 100 multiple choice questions derived from relevant Lieutenant texts selected by the Fire Chief. Points are awarded for each successful answer. Candidates must achieve a minimum passing score of seventy (70) points to continue to Phase II of the Lieutenant promotional process.

PHASE II:

Assessment Center 100 points

A "Development Team" consisting of the Administrative Services Director, the Fire Chief, and a Fire and Rescue Department Division Chief (the latter chosen by the Administrative Services Director and the Fire Chief) shall develop an Assessment Center designed to measure the cognitive and practical skills needed by a Lieutenant to successfully perform the duties of the position. The Fire Chief and the Administrative Services Director may hire or contract with an outside consultant in developing all or part of the process.

In developing the Assessment Center exercises, the Development Team will solicit input from the Department's current Lieutenants.

26.5 ADDITIONAL POINTS – ALL PROMOTIONS

Additional points for formal education and longevity will be awarded after all scores have been tabulated. These points apply to both Driver Engineer and Lieutenant promotions. Points will be awarded as follows:

EDUCATION: (Only one (1) Degree may be counted)

Four (4) Year Fire/EMS Related Degree	3 Points
Four (4) Year Non-Fire/EMS Related Degree	2 Points
Two (2) Year Fire/EMS Related Degree	2 Points
Two (2) Year Non-Fire/EMS Related Degree	1 Point

Certifications:

Fire Officer II –	2 Points
Paramedic License cleared with Volusia County	2 Points
Municipal Fire Inspector–	1 Point

Employees who have one or more Fire Service Instructor certifications shall receive one (1) point. Only the highest level may be counted.

MILITARY SERVICE:

Military service with honorable discharges shall receive one (1) point.

LONGEVITY:

Eligible candidates will receive one quarter (.25) point for each consecutive year of Port Orange Fire Department service to a maximum of five (5) points. The closest anniversary date to the processing date will be used to determine points. In the event of a tie score at the conclusion of the entire testing process, the senior eligible candidate will be ranked ahead of the candidate with less seniority.

26.6 After testing is complete, a listing will be made of all qualified applicants. The Fire Chief then will have authority to choose one (1) of the top three (3) candidates for the vacant position. The written test grade, practical exercise, seniority, and education credit (if applicable) will all be compiled to determine the final score. Candidates will be listed in the order of the final score achieved. The Fire Chief will choose one of the eligible candidates from those with the top three final scores. No eligible candidate can be passed over more than twice. "Passing over" shall be defined as a candidate of lower position on list being selected over a higher-ranking candidate for a permanent promotion. (If candidate # 2 is selected over candidate #1 this would be a passover. If candidate #2 is selected over candidate #3, this would not be a passover for candidate #3). An eligible candidate, however, may ask to be passed over as many times as that candidate wishes during the process period without adverse effects or loss of position on the list.

26.7 Employees who have been promoted to a new classification or selected to fill a vacancy within the bargaining unit shall serve a one hundred eighty (180) calendar day probationary period in the new classification or filled position. If at any time during the probationary period the promoted employee is found not to have the aptitude or ability for the position to which they were promoted, the employee will be returned to their former classification, and all moves made as a result of their promotion shall be

reversed, including (if necessary) the termination of newly hired employees.

ARTICLE 27

UNIFORMS AND EQUIPMENT

27.1 The City will provide to all new employees the following equipment and clothing:

- 1 Class A Shirt (with appropriate patches)
- 1 Class B Shirt (with appropriate patches)
- 1 Tie
- 1 Tie clip
- 5 Polo Style Shirts
- 5 Work Style Pants (Shorts optional)
- 2 T-Shirts
- 2 Gym Shorts
- 2 Long Sleeved T-shirts
- 1 Beanie Cap
- 1 Pair of Sweatpants
- 2 Sweatshirts
- 1 Ball Cap
- 1 Pair of Boots – low or high-top style
- 1 Badge
- 1 Set of Collar Brass
- 1 Name Tag
- 1 Winter Jacket, with liner – with appropriate patches
- 1 Helmet with face shield
- 1 Turnout Jacket
- 1 Turnout Pants
- 1 Suspenders
- 1 Pair Turnout boots
- 1 Belt
- 1 Flashlight
- 1 Pair of Structural Firefighting Gloves
- 2 Nomex Hood
- Brush Fire Gear (1 pair pants, 1 jacket, 1 helmet, 1 pair goggles, 1 respirator, 1 mask, 1 belt, 1 pair of gloves).
- 1 Gear Bag
- 1 SCBA Mask

27.2 The City agrees to furnish all bargaining unit employees, at City expense, those replacement uniform items that are worn, torn, or damaged through normal wear and tear, rather than through negligence or misconduct. No item will be replaced without the old one being turned in. The City will not pay for the replacement of civilian clothing damaged while on duty unless approved by the Chief and the City Manager.

- 27.3 The Department Head and Union Leadership will have the discretion to agree upon the addition or removal of City provided uniform items from the list in Section 27.1, subject to budgetary limitations.
- 27.4 Reserved.
- 27.5 When the employee leaves the employ of the City, he shall return all equipment and clothing issued by the City.
- 27.6 The City will continue to provide for the cleaning of uniforms. Civilian dress will not be cleaned at the City's expense.
- 27.7 Fire service employees will be permitted to wear a pin approved by the Fire Chief no larger than collar brass, that includes the union emblem on their Class A uniform. Placement of the pin shall be in a manner which does not obstruct any other department insignia.

ARTICLE 28

DISCIPLINARY ACTION

- 28.1 In the event an employee is discharged, suspended, or demoted for just cause, the City agrees that he shall be provided with written notification of the action. This notification shall be hand delivered to the employee by a supervisor at the rank of Battalion or higher rank or sent by certified mail, return receipt requested, to the address in the City of Human Resource Department records. The City agrees that no employee shall be disciplined except for just cause (This sentence does not apply for employees serving a new hire probation).
- 28.2 Except in extraordinary circumstances, before the employee is discharged or suspended without pay for disciplinary reasons the notification described in Section 28.1 will be provided to the employee in advance of the action so as to give the affected employee an opportunity to present his position. Disciplinary action requiring a signature shall be signed by the employee or acknowledged in the electronic HR system, not in admission of the offense, but in acknowledgement that a copy of the reprimand has been delivered to the employee.
- 28.3 In the event an employee becomes the subject of a formal Departmental or City investigation arising from a complaint or allegation, the Department, or the City, whichever is appropriate, shall notify the employee of the disposition of the complaint upon the conclusion of the formal investigation.
- 28.4 Disciplinary action, except termination, shall not become effective until such time that an employee has exhausted all appeals or until such time that the time period for an appeal has expired.
- 28.5 Disciplinary action shall follow the guidelines for progressive disciplinary action set forth in the City's civil service procedures for all City employees, except that oral reprimands will only be considered active for a period of one year. Discipline shall be accomplished in a constructive, progressive manner, to rehabilitate and correct an offender, if possible.
- 28.6 Any employee violating a rule or regulation, or standard operational procedure may be subject to corrective action, including dismissal for just cause.

Whenever an action occurs which may or may not lead to the City initiating corrective action, the City will conduct an informal, or if necessary, a formal investigation after the incident has been reported to management. The City shall allow the employee to state in writing his/her

account of what occurred and an explanation of his/her conduct, prior to the Department issuing a verbal warning or initiating a request for higher levels of corrective action. If the decision is made to discipline the employee, the employee will be so notified within four (4) work shifts after the date upon which the City Manager has authorized the corrective action, provided the employee is available for notification.

ARTICLE 29

GRIEVANCE AND ARBITRATION PROCEDURES

- 29.1 In a mutual effort to provide harmonious working relations between the parties to this Agreement, it is agreed to and understood by both parties that there shall be a procedure for the resolution of grievances.
- 29.2 For the purpose of this Agreement, a grievance is defined as a claim or complaint that an employee or group of employees may have that the City has violated a specific provision of this Agreement during the term of this Agreement.
- 29.3 Grievances may be taken up during the working time of the grievant upon mutual agreement between the City and Union.
- 29.4 All grievances must be reduced to writing in an electronic PDF format, submitted through the City's emailing system, and must contain the following information:
- (a) The specific Article and Section of the Agreement alleged to have been violated by the City;
 - (b) A statement of the grievance, giving a detailed description of the facts, dates and times of the events involved in the alleged violation, and the remedy desired by the grievant;
 - (c) The electronic signature of grievant (or the signature of all employees in the case of a group of employees filing a single grievance) and date(s) signed; and in the event that the Union is filing a "class action" grievance on behalf of its members, the grievance shall be signed by the Union President. Each step of the grievance must contain a new signature from the grievant;
 - (d) Designation of the Union representative (must be an elected officer or steward) if the grievant requests Union representation.

Unless the grievance is presented in the manner set forth in this Section, it shall be deemed not to exist.

- 29.5 It is understood that many items can and will be resolved informally by the immediate supervisor, however if an issue cannot be resolved informally, grievances shall be presented in the following manner:

Step 1 - The grievant (i.e., employee, or group of employees) and/or union

representative shall present their grievance to their immediate supervisor in writing within ten (10) working days of the occurrence of the action giving rise to the grievance. Discussions will be informal for the purpose of settling differences in the simplest and most effective manner. The immediate supervisor should discuss and make an effort to resolve all legitimate grievances with fairness and justice for both the grievant and the City. The immediate supervisor shall communicate a decision to the grievant in writing within ten (10) working days from the date the grievance was presented to them.

Step 2 - If the grievance is not settled at the first step, the grievant and/or union representative within ten (10) working days of receiving a reply from the supervisor to the grievance shall present the grievance in written form (in compliance with Section 29.4) to the next higher supervisor in the chain of command (Division Chief) with a copy to the Administrative Services Director. The supervisor or their designees, shall investigate the alleged grievance and may within ten (10) working days of receipt of the written grievance conduct a meeting with the City Representatives (if applicable), the grievant and the Union Steward if the grievant requests Union representation. This supervisor or their designee shall notify the grievant of his decision no later than ten (10) working days following the meeting, or within ten (10) working days of the receipt of the grievance if a meeting is not held.

Step 3 - If the grievance is not settled at the second step, the grievant and/or union representative within ten (10) working days from the date of that supervisor's decision shall present the written grievance to the Department Head (Fire Chief) or designee and shall immediately submit a copy to the Administrative Services Director. The Department Head or designee shall investigate the alleged grievance and may within ten (10) working days of receipt of the written grievance conduct a meeting with City representatives, if applicable, the grievant and the Union Steward if the grievant requests Union representation. The Department Head or designee shall notify the grievant in writing of their decision not later than ten (10) working days subsequent to the date the grievance was received by the Department Head, or within ten (10) working days after the meeting held with the employee/representative if one is held.

Step 4 – If the grievance is not settled at the third step, the grievant and/or union representative within ten (10) working days from the date of the Fire Chief's decision shall present the written grievance to the City Manager and shall immediately submit a copy to the Administrative Services Director. The City Manager shall investigate the alleged grievance and may within ten (10) working days of receipt of the written grievance conduct a meeting with City representatives, if applicable, the grievant, and the Union Steward if

the grievant requests representation. The City Manager shall notify the grievant of his/her decision not later than ten (10) working days after the date the grievance was received, or within ten (10) working days after the meeting held with the employee/representative if one is held.

Step 5 - Arbitration - If a grievance, as defined in this Article, has not been satisfactorily resolved within the Grievance Procedure, the Union, and not the employee, may request arbitration in writing to the Office of the Administrative Services Director no later than ten (10) working days after the response is received in Step 4 of the Grievance Procedure.

29.6 Whenever the Union requests arbitration in accordance with the provisions of Section 29.5, the parties shall within ten (10) working days following appeal to arbitration attempt to agree upon an impartial individual to act as arbitrator. If an impartial individual cannot be mutually agreed upon within ten (10) working days following appeal to arbitration the parties shall jointly request the Federal Mediation and Conciliation Service to submit a panel of seven (7) arbitrators, each of whom shall be a member of the National Academy of Arbitrators. Arbitrators shall be selected from such panel by alternately striking names from this list (the Union shall make the first strike) until the last name on the list is reached

29.7 The limitations on the powers of the Arbitrator are as follows:

- (a) The Arbitrator shall not have the power to add, to subtract from, or alter the terms of this Agreement.
- (b) The Arbitrator shall have no authority to consider or rule upon any matter which is not a grievance as defined in this Agreement, nor shall this Agreement be construed by the Arbitrator to supersede applicable laws in existence at the time of the signing of this Agreement. The arbitration hearing shall be conducted in accordance with the rules of procedure promulgated by the F.M.C.S.

29.8 Each party shall bear the expense of its own witnesses and of its own representatives for the purpose of the arbitration hearing. The impartial Arbitrator's fees and related expenses for retaining a hearing room, if any, shall be equally divided between the parties. Any party desiring a transcript of the hearing shall bear the cost of such transcript, unless both parties mutually agree to share said cost. The Arbitrator's award shall be final and binding on both parties.

29.9 It is the mutual desire of the City and the Union that grievances shall be adjusted as quickly as possible and to that end the time limits set forth in this Article are to be strictly enforced. The time limits may only be extended

by mutual written agreement. The term "workdays" as used in this Article includes Monday through Friday of each work week regardless of the grievant's work schedule. Saturdays, Sundays, and holidays as set forth in this Agreement shall not be considered "workdays" even if work is assigned on these days. For the purpose of calculating time limits, the day on which a grievance, or a reply by management to a grievance, is received, shall not be counted. Failure of management to observe the time limits for any step in the Grievance Procedure without a mutually agreed written extension of time shall entitle the grievant (or the Union in the case of Step 4) to the relief sought in the grievance. Failure of the grievant (or the Union in the case of Step 4) to observe the time limits for any steps in this Article without a mutually agreed written extension of time shall terminate the grievance. Extensions of timelines may be mutually agreed to by both parties but must be done in writing (or via email). Any request for an extension of time must be made in writing and communicated to the other party prior to the expiration of the original period which the party is seeking to extend.

29.10 All grievances shall begin at Step 1, except the following grievances shall begin at Step 3:

- (1) A grievance that is general in nature, in that it applies to a number of employees, rather than a single employee, or
- (2) A grievance that is directly between the IAFF and the City, or
- (3) A grievance involving a suspension, demotion, or discharge.

29.11 If a decision or resolution is proposed at any step of the process that is determined by the City to be outside of the authority of the employee providing the decision/resolution, the City may overturn this decision, proceeding the grievance to the next step in the process. Any decision to overturn the remedy is required to occur within ten (10) days of the response being issued. In the event that a remedy is overturned, the grievant and/or Union, if applicable's, timeline to proceed to the next grievance level will begin upon issuance of the decision to overturn the remedy.

If the grievance is not determined to be satisfactorily resolved, the Union and/or grievant if applicable maintains the right to request the grievance to proceed to the next step in accordance with the remainder of this article.

All other requirements regarding the content, format, and timeliness of the grievance remain.

ARTICLE 30

PHYSICAL EXAMINATION AND WORKERS' COMPENSATION

30.1 Any Bargaining Unit employee who is temporarily disabled as a result of an injury sustained in the course of his employment with the City shall be entitled to the following compensation.

- (a) During such temporary, total disability, the employee shall receive differential payments from the City (differential payments being the sum difference between the amount of workers' Compensation received and the employee's salary earned from the City at the time of the accident) for a period not to exceed sixty (60) calendar days for any one injury.
- (b) Unless an extension of the sixty (60) calendar day period is granted pursuant to Subsection C, at the end of sixty (60) calendar days, the employee shall only be entitled to benefits provided by the Workers' Compensation law.
- (c) If, as a direct result of the continuation of the disability involved, the employee is unable to return to work at the end of the sixty (60) calendar day working period, the employee may petition the City requesting that he be carried in pay status beyond the sixty (60) calendar day period. Upon receipt of such a petition, the City shall have the sole discretion to decide whether pay status should be extended.
- (d) Once an employee is receiving Worker's Compensation benefits directly from the Worker's Compensation carrier, the employee may utilize available sick and/or annual leave to supplement their wages for the amount not paid under the Worker's Compensation carrier. At no point shall the compensation be in excess of their normally scheduled base wage.
- (e) Leave for Worker's Compensation shall run concurrent with leave as covered under Family Medical Leave Act (FMLA).

30.2 The City agrees that any employee injured on the job shall be paid for the employee's full schedule of hours for the day of the accident if his physician advises him that he could not or should not return to work that day. However, the City reserves the right to have the employee examined by a physician designated by the City, at no cost to the employee.

30.3 Based upon having probable cause to believe that any employee may have

a physical and/or mental disability which impairs the employee's effectiveness as an employee, limits the employee's ability to perform his/her assigned duties, or makes the employee's continuation in his/her job a danger to the employee, the public, or any other employees, the City may direct the employee to submit to a physical and/or mental examination conducted by a physician, psychiatrist or psychologist designated by the City. The sole purpose of such examination under this Article shall be to determine whether the employee has a physical and/or mental disability which impairs his effectiveness as an employee, limits his ability to perform his assigned duties, or makes his continuation in his job a danger to himself, the public, or other employees. In the event the City and the designated physician determine that a non-job-related disability does exist, the following action shall be taken:

If the designated physician determines that the disability can be corrected, the employee shall be allowed a specified time to have it corrected. During this period of time and after consulting with the Department Head, the City Manager in his discretion may permit the employee to continue with his normal duties, or temporarily remove the employee from the City service. Should the employee be temporarily removed from the City service during the period of time specified for the correction of his disability, the employee may utilize his annual leave, sick leave, or leave without pay for the correctional period. However, if the employee fails to take the necessary steps to have the disability corrected within the specified period of time, he shall be subject to dismissal from City service.

ARTICLE 31

HEALTH AND SAFETY

- 31.1 The purpose of this Article is to promote better physical fitness throughout the Fire and Rescue Department.
- 31.2 Management and Labor will design a mutually agreeable, validated Annual Physical Ability Assessment Program, designed to ensure a firefighter is capable of meeting the physically demanding challenges of his/her job. This shall become mandatory for all personnel. This Program will be included within the departmental standard operational guidelines. Changes to this Program must be approved by the Department Head or his/her designee.
- 31.3 Medically determined stress tests shall be provided for all employees according to the following schedule:

<u>AGE</u>	<u>FREQUENCY</u>
Under 40 years	once every three years
40 - 50 years	once every two years
over 50 years	once each year

The parties agree that all Departmental employees shall undergo an annual physical exam to be paid for by the City. These exams will be scheduled while the employee is on duty.

In the event that it is medically determined by a physician that an employee should undertake further test procedures as a result of the City-paid annual exam in order to return to work, the employee shall not be charged sick or annual leave for any time lost as a direct result of this need for further testing. However, this shall not apply to tests that the employee might voluntarily take which are not medically determined as a result of the annual, City-paid exam.

Employees who are instructed by a physician to undertake further testing as a result of the annual, City-paid exam shall also be required to report the results of each test to the City's Risk Manager and complete any documentation required by the City. Failure of an employee to comply with this requirement shall cause him/her to be charged with sick leave to cover any missed work time which results from the need for further testing. The employee will be returned to active duty upon providing a physician's statement to the City's Risk Manager to the effect that the employee is medically fit to return to full duty.

- 31.4 It is acknowledged and agreed by the parties hereto that the Port Orange Fire and Rescue Department is a tobacco-free workplace, and that it is a condition of employment that each member of this bargaining unit refrain from the use of tobacco during the period of his or her employment with the City. All newly hired firefighters will be required to sign an affidavit, attesting that they have been tobacco-free for at least one (1) year in accordance with Section 633.34 (6), Florida Statutes.

ARTICLE 32

LIGHT DUTY

- 32.1 Please refer to the Fire & Rescue department standard operating guideline for light duty provisions. Change to light duty standard operating procedures shall be mutually agreed upon.

ARTICLE 33

ALCOHOL AND DRUG TESTING

- 33.1 Both the City and Union recognize that drug and alcohol abuse is a growing problem among our nation's work force. The City and the Union also recognize the tremendous cost, both in terms of efficiency and in human suffering caused by needless workplace accidents. Acknowledging the necessity for action, the following Alcohol and Drug Testing Program is hereby initiated.
- 33.2
- A. All bargaining unit employees shall be subject to drug and alcohol testing as part of their annual physical examination.
 - B. In the event the Department Head, or in his absence his designee, has a reasonable suspicion to believe that an employee is under the influence of drugs or alcohol on duty, the Department Head, or in his absence his designee, may require that the employee submit to breathalyzer test, blood tests, urinalysis, and/or other appropriate testing. Should the employee test positive to a drug test, the City will utilize a confirmatory process before instituting further action. Such confirmatory process will utilize the gas chromatography - mass spectrophotometry test.
 - C. In the event the Department Head, or in his absence his designee, requests that an employee submit to breath, blood, urine and/or other tests and the employee chooses not to submit to such test or tests, the reasonable suspicion to believe the employee was under the influence shall be grounds for discharge.
 - D. If the employee submits to the tests and the results indicate alcohol or drug use (other than as indicated in Section G), the employee shall be suspended without pay. It will be recommended that the employee utilize the EAP services. After thirty (30) days have passed, a suspended employee desiring reinstatement shall, upon written request be given the opportunity to submit to further blood or urine drug/alcohol tests, at the employee's expense. If such tests indicate the absence of alcohol or substance abuse, the employee is reinstated. In the event forty (40) days have passed and the City has not received the written request signed by the employee to take the alcohol or substance abuse test, or the employee has failed to take such tests at a time and location designated by the City, the employee shall be discharged. An employee shall also be discharged if tested under this section twice within a two (2) year period with both test results indicating alcohol or substance abuse.

- E. An employee may be granted a one-time leave of absence without pay not to exceed sixty (60) days to undergo treatment for alcohol or substance abuse pursuant to an approved treatment program. No employee benefits shall accrue during this period except that the employee may continue health, dental and life insurance coverage by paying the employee premium and dependent premium if applicable. The request must be voluntarily made in writing prior to the institution of disciplinary measures for alcohol or substance abuse.
- F. The Department Head, or in his absence his designee, has the right to search lockers, handbags, lunchboxes, other containers, or other personal effects of employees at any time provided the Department Head, or in his absence his designee, has reasonable suspicion to believe that an employee is under the influence of drugs or alcohol. If deemed necessary by the Department Head or in his absence his designee, the employees themselves may be asked to submit to a search. At no time will any employee be searched by or in the presence of a member of the opposite sex. An employee's refusal to cooperate with or submit to a search may be treated as serious insubordination that warrants immediate discipline.
- G. All employees who must use a prescription drug that causes adverse side effects (drowsiness or impaired reflexes or reaction time) shall inform their supervisor in writing that they are taking such medication on the advice of a physician. It is the employee's responsibility to also inform their supervisor of the possible side effects of the drug on performance and expected duration of use.
- H. Except as stated in subsection D of this Article, the cost of drug and alcohol screening tests shall be paid by the City.
- I. The City retains its right to maintain discipline or invoke disciplinary measures in the case of conduct which may result from or be associated with alcohol or substance abuse.
- J. Decisions of an arbitrator under this Article shall be limited to a determination of whether or not the City had reasonable suspicion, and whether or not the employee was under the influence of alcohol or drugs, and not the disciplinary measures imposed by the City.

33.3 All members of the bargaining unit will participate in random drug and alcohol testing through the same procedures as utilized under Federal Requirements for individuals required to possess a Commercial Driver's License. Each Firefighters name shall be entered into the computer which

will then select fifty (50) percent of the Firefighters to be tested on an annual basis for illegal drugs and twenty-five (25) percent for alcohol. Testing will be done a minimum of once a quarter.

ARTICLE 34

INSURANCE

- 34.1 The City will enable the employees to insure themselves under a group life insurance plan with the amount available being one-time base annual salary rounded to the next highest thousand. The City will pay 100% of the premium.
- 34.2 The City agrees to maintain a health insurance program for the employees, with the City paying the lowest "employee only" rate among any health insurance plans with a co-pay offered. Dependent coverage will be at the employee's expense.

ARTICLE 35

AUTHORIZED USE OF PRIVATE AUTOMOBILE

- 35.1 Any employee authorized to use his private automobile in the performance of his official City duties will be compensated at the current IRS standard mileage rate. Such mileage shall be computed based on the distance between the employee's regular duty station and the place of assignment or the employee's residence and the place of assignment, whichever is shorter.
- 35.2 A written claim for compensation under this Article must be submitted to the Department Head by the employee during the week that the private automobile was used. Failure to follow this procedure will result in the claims being denied.
- 35.3 Those using personal vehicles are required to have minimum automobile insurance coverage for liability in the amount of \$100,000 (required by law) for each person, \$300,000 for each accident, and property damage of \$50,000. The City will not assume responsibility for any damages to employee's vehicle. The mileage reimbursement payment includes a factor for both liability and collision insurance coverage. Proof of insurance is to be provided to the City's Risk Manager on an annual basis.

ARTICLE 36

SEPARABILITY

- 36.1 In the event any Article, Section or portion of this Agreement should be held invalid and unenforceable by any court of competent jurisdiction, such holding shall apply only to the Article, Section or portion thereof specified in the court's decision; and all other Articles or Sections or portions not so invalidated shall remain in full force and effect. The parties will mutually agree in writing to renegotiate the affected Article, Section or portion specified in the court's decision.

ARTICLE 37

ENTIRE AGREEMENT

- 37.1 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties are set forth in this Agreement.
- 37.2 Therefore, the City and the Union, for the duration of this Agreement, each waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this Agreement.
- 37.3 However, no language in this Agreement shall preclude the parties from mutually agreeing in writing to re-open any of the provisions covered by this contract.
- 37.4 The City agrees that it will negotiate with the Union the impact of any decision that affects any monetary benefits.

ARTICLE 38

DURATION OF AGREEMENT

- 38.1 This Agreement shall commence and become effective upon ratification by both parties shall continue in full force and effect until midnight of the 30th day of September 2023; provided however, that in year two of the Agreement (October 1, 2022 – September 30, 2023) Retirement shall be subject to negotiations along with two (2) mutually agreed upon articles. Upon expiration of the Agreement, it shall continue in full force and effect thereafter from year to year unless notice is given in writing by either party to the other via certified mail, return receipt requested by April 1, 2023, of intent to modify, terminate, or change this Agreement.
- 38.2 No item or provision of this Agreement shall be a proper subject for negotiation during the term of this Agreement unless it is mutually agreed by the parties in writing to renegotiate such items in negotiations.

Approved this

____ day of _____, 2021.

PORT ORANGE PROFESSIONAL FIRE
FIGHTERS ASSOCIATION, LOCAL 3118,
IAFF, AFL-CIO, PFF, FLA.:



Joseph Hartman, President, Local 3118



Jason Wilgers, Vice-President, Local 3118

Approved this

____ day of _____, 2021.

CITY OF PORT ORANGE, FLORIDA:

Donald Burnette, Mayor

Wayne Clark, City Manager

Attest

IAFF Summary of Proposed Changes

Below is a summary of the IAFF articles that have been changed or added in the proposed collective bargaining agreement:

Management Rights – Update language to be consistent with Florida Statute 447.209

Specialty and Education Incentive Pay – Added Live Fire Training Instructor specialty pay; added Lieutenant and Firefighter to be eligible for relief assignments; increased maximum number of specialty assignments to three at the discretion of the Fire Chief. This will not necessarily increase the availability of assignments but provides flexibility to the Chief in allocation.

Hours of Work and Overtime – Added language for “normal work schedule”; annual leave, bereavement leave, and jury duty now count as “normal work schedule” which incentivizes employees to volunteer for overtime opportunities and reduces mandated overtime.

Wages – 2-year agreement, employees will receive a 10% - 14.8% adjustment to base wages over the 2-year period; lump sums for \$500 per year of service pro-rated for year 1 and \$500 per year of service pro-rated for year 2 capped at \$8,000 each year; raised comp time cap from 96 to 192 hours

Temporary Assignment to a Higher Classification – Removes an unnecessary requirement for all Fire staff to meet ride up eligibility requirements; increased ride up pay to Battalion Chief from 5% to 15% and increased temp assignment pay from 5% to 10%; changed consecutive shifts requirements to be 240 of the last 480 hours; increased transport pay from \$1 to \$3 per hour while working on the ambulance; added language that mandated overtime on transport will only be a last resort.

Holidays – Added 3 additional holidays to include Martin Luther King, Jr. Birthday, Good Friday and Veteran's Day

Annual Leave – Made it permissible for additional personnel to be on annual leave so long as it doesn't create overtime; made it permissible to take more than 10 consecutive shifts off with Fire Chief approval; un-bifurcated accrual rates; added one-time addition of 48 hours to employees who did not get an increase in accruals.

Sick Leave – Increased accrual rate by 12 hours annually; increased carryover limit for post-2012 employees from 500 to 750 to be consistent with all other city employees with sick leave.

Wellness Hours – New article to provide wellness hours for mental health purposes based upon length of service and rank.

Vacancies and Promotions – Updated eligibility requirements to require one additional year of service with Port Orange Fire & Rescue before being eligible for promotional opportunities

Light Duty – New article referencing departmental standard operating procedure for light duty assignments

Duration of Agreement – Updated dates of agreement

All other articles remain unchanged.



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: Yes

SUBJECT: (B14) Approval of the negotiated re-openers of the International Union of Police Associations (IUPA) Collective Bargaining Agreement regarding Article 16 - Holidays, Article 28 - Wages, and Article 32 Duration of Agreement for fiscal years 2022 and 2023

DEPARTMENT: Administrative Services

GOAL: Goal 6: Organizational Excellence Objective 7: Continue to establish a positive working relationship with bargaining units.

RECOMMENDED MOTION: Move to approve the negotiated re-opener of the IUPA Collective Bargaining Agreement regarding Article 28 - Wages and Article 16 - Holidays for fiscal years 2022 and 2023.

SUMMARY: The City and the International Union of Police Associations (IUPA) have negotiated a two-year wage reopener on Article 28 for fiscal years Fiscal Year 2022 and Fiscal Year 2023 as part of the IUPA 2020-2023 Collective Bargaining Agreement. In addition, changes were made to Article 16 - Holidays.

On October 29, 2021, the City received notification that the IUPA members voted in favor of this agreement. In order to ratify this agreement, the City Council must also vote in favor of the proposed changes.

These proposed changes will become effective upon ratification. Staff has included a brief summary of the proposed changes below:

For FY 22:

The new starting rate for Police Officer will be \$21.00 per hour.

The step plan will increase incrementally by 1.5% for each step.

Employees will receive a lump sum in the amount of \$500 for each year of service.

For FY 23:

Increase each step by 5% making the new starting rate for Police Officer \$22.05 per hour.

Employees will receive a lump sum in the amount of \$500 for each year of service.

In addition, a specialty pay assignment for Range Master has been added. Two additional holidays for Good Friday and Veteran's Day have been added.

The FY 2021-2022 Annual Budget includes funding for salary adjustments, incrementally by 1.5% per step over the next two years. As discussed in the Interim Final Rule, funds may be used for payroll and covered benefits expenses for public safety, public health, health care, human services, and similar employees, for the

portion of the employee's time that is dedicated to responding to the COVID-19 public health emergency. Public safety employees would include police officers, sheriffs and deputy sheriffs, firefighters, emergency medical responders, etc.

The increase for FY22 has been included in the adopted budget.

Project No.: N/A

Funding Account No.: N/A

Presenter: Heather Carrizales

ATTACHMENTS:

1.	Memorandum Of Understanding IUPA 2021	Memorandum Of Understanding IUPA 2021.pdf
2.	IUPA AGREEMENT 2021-2023	IUPA AGREEMENT 2021-2023.pdf

Heather Carrizales	Created/Initiated - 10/28/2021
Heather Carrizales	Approved - 10/28/2021
Lupe Reyna-Coffin	Approved - 11/1/2021
Robin Hayes	Approved - 11/3/2021
Matthew Jones	Approved - 11/5/2021
Wayne Clark	Approved - 11/5/2021
Robin Fenwick	Final Approval - 11/5/2021

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CITY OF PORT ORANGE
AND THE
INTERNATIONAL UNION OF POLICE ASSOCIATIONS
PERC CERTIFICATION #1983

This Memorandum of Understanding ("MOU") is entered into between the International Union of Police Associations – PERC Certification #1983 ("Association") and the City of Port Orange ("City") herein collectively referred to as the "parties," to modify the provision of the 2020-2023 collective bargaining agreement ("Agreement") as follows:

1. Pursuant to Article 32, Paragraph 32.1 of the Agreement which authorizes wage negotiations and additional re-openers in years 2 and 3 of the Agreement, this MOU between the City and the Association shall serve to modify said wages by providing an increase to the step plan for Police Officers and Sergeants for Fiscal Year 22 and Fiscal Year 23. Furthermore, a specialty assignment for Range Master has been added as well as two additional holidays.
2. Upon execution by the parties, this MOU shall amend Article 16, Article 28, and Article 32 of the Agreement as delineated below.
3. For purposes of this MOU, words with bold (**bold**) and underlined (underlined) type shall constitute additions to the original text of the Agreement, and words with strikethrough (~~strikethrough~~) type shall constitute deletions to the original text of the Agreement.
4. By executing this MOU, it is understood and agreed by the parties that Article 16, Article 28, and Article 32 of the Agreement are hereby amended to read as follows:

- 16.1 It is recognized that the City will close its offices for ~~eight (8)~~ **ten (10)** official holidays. The City will recognize the following as paid holidays for employees:

Thanksgiving Day
Friday after Thanksgiving
Christmas Day
New Year's Day
Martin Luther King Jr. Day
Good Friday
Memorial Day
Fourth of July
Labor Day
Veteran's Day

In addition to the paid holidays above, employees shall be granted additional leave as follows:

Annual Leave in the amount equal to the number of hours in the employee's regular work shift shall be added to the employee's annual leave accruals for each of the following days: **Three (3)** Floating Holidays, and Employee Birthday, ~~Veteran's Day, and Good Friday~~. These hours will be credited on or around the first full pay period in January. These

hours are to be scheduled and utilized in the same fashion as annual leave.

In order to qualify for the four (4) annual leave accruals for the Floating Holidays^s, and Birthday Holiday, ~~Veteran's Day, and Good Friday~~, an employee must have been employed for the entire 12 consecutive previous months.

- 16.2 The actual day of the holiday will be the observed day for all members of the bargaining unit.
- 16.3 An employee who is eligible and is not scheduled to work on one of the eight official holidays listed under 16.1 shall receive additional compensation, paid at his/her regular rate of pay, for the number of hours in his/her regular work shift.
- 16.4 An employee who is required to start his/her work shift on one of the official holidays listed under 16.1 shall receive payment at one and one half times his/her regular rate of pay for all hours that he/she works on that shift in addition to holiday pay, whether or not the employee's work shift extends into the following day.

28.2 Upon execution of the memorandum of understanding resulting from the 2021 wage negotiations, employees will be compensated in accordance with the following pay schedule:

Officers		Sergeants	
Year	Pay/Hr.	TIG	Pay/Hr.
Prob	\$21.00	Prob	\$27.50
1	\$21.32	1	\$27.91
2	\$21.63	2	\$28.33
3	\$21.96	3	\$28.76
4	\$22.29	4	\$29.19
5	\$22.62	5	\$29.63
6	\$22.96	6	\$30.07
7	\$23.31	7	\$30.52
8	\$23.66	8	\$32.05
9	\$24.01	9	\$32.53
10	\$24.37	10	\$33.02
11	\$24.74		
12	\$25.11		
13	\$25.48		
14	\$25.87		
15	\$26.33		
16	\$26.85		

- A. **Employees will have their hourly rate adjusted effective upon execution of the memorandum of understanding by both parties, according to the above pay schedule. The Officer rate is based on Years of Service (YOS). The Sergeant Rate is based on Time in Grade (TIG).**
- B. **Any employee whose current rate of pay is at a level higher than the**

corresponding rate of pay for the equivalent YOS/TIG will not be eligible to receive any adjustment to their pay.

- C. After execution of the memorandum of understanding, current employees will be eligible to receive a one-time lump-sum payment of \$500.00 for every full year of service from date of hire through October 1, 2021 with the option to request the payment be deferred into their 457 account.

28.3 Beginning in Fiscal year 2023 (on October 1, 2022) employees will be compensated in accordance with the following pay schedule:

Officers		Sergeants	
Year	Pay/Hr.	TIG	Pay/Hr.
Prob	\$22.05	Prob	\$28.88
1	\$22.39	1	\$29.31
2	\$22.71	2	\$29.75
3	\$23.06	3	\$30.20
4	\$23.40	4	\$30.65
5	\$23.75	5	\$31.11
6	\$24.11	6	\$31.57
7	\$24.48	7	\$32.05
8	\$24.84	8	\$32.53
9	\$25.21	9	\$33.01
10	\$25.59	10	\$33.51
11	\$25.98		
12	\$26.37		
13	\$26.75		
14	\$27.16		
15	\$27.65		
16	\$28.19		

- A. Employees will have their hourly rate adjusted effective October 1, 2022, according to the above pay schedule. The Officer rate is based on Years of Service (YOS). The Sergeant Rate is based on Time in Grade (TIG).
- B. Until September 30, 2023 only, employees will be moved through the pay schedule as provided on their anniversary date for officers or promotion date for Sergeants (to include probationary Sergeant status). No step increases will occur beyond September 30, 2023 unless or until agreed to by the parties pursuant to re-opener negotiations as provided for in the Duration Article of this Agreement.
- C. Any employee whose current rate of pay is at a level higher than the corresponding rate of pay for the equivalent YOS/TIG will not be eligible to receive any adjustment to their pay.
- D. After October 1, 2022, current employees will be eligible to receive a one-time lump-sum payment of \$500.00 for every full year of service from date of

hire through October 1, 2022 with the option to request the payment be deferred into their 457 account.

- 28.24 Employees will receive no increase in pay other than what is provided for in this agreement. All future wage increases beyond the term of this collective bargaining agreement shall be subject to negotiation by the parties.
- 28.35 New hires will generally start at the minimum rate of pay established for the classification. However, if a new hire has comparable Police experience with another agency, the Police Chief may elect to bring a new hire in at a higher rate of pay commensurate with their years of experience. Any requests above YOS-5 will require concurrence by the City Manager.
- 28.46 The City performance evaluation system will be a satisfactory/unsatisfactory procedure. If the employee's performance for the previous year has been satisfactory, they will receive a rating of satisfactory. The employee will then undergo performance evaluations each year thereafter. Should the employee receive a rating of unsatisfactory, due to unsatisfactory work or performance, the employee will be placed under intensive management guidelines, and re-evaluated in ninety (90) days. If the employee has still not raised his/her performance level to satisfactory at the conclusion of this ninety (90) day period, additional counseling may be provided, and the employee may be re-evaluated at the conclusion of another extended rating period; or, the supervisor may initiate action to terminate the employee.
- 28.57 The rate of pay for promotional appointments shall be in line with the pay schedule detailed in ~~28.4~~ **this article**. An Officer selected by the Police Chief for a promotion to the rank of Sergeant with more than 14 years of service as an Officer shall be promoted to the rank of Sergeant at a starting rate of the first TIG rate higher than their current officer rate.
- 28.68 In addition to wages, incentive pay, if appropriate, shall be provided in accordance with pertinent Florida Statutes or in accordance with this contract.
- a. Specialty pay will be provided to all employees who are assigned as members of a specialized or hazardous unit (division) or other groups which are herein specified as follows:

<u>Specialty Assignment</u>	<u>Amount of Pay</u>
Motorcycle Officer	\$70.00/pay period
Emergency Response Team	\$70.00/pay period
Traffic Homicide Investigator	\$70.00/pay period
Field Training Officer	\$70.00/pay period
Canine Officer	\$70.00/pay period
Drug Recognition Expert	\$70.00/pay period
Meth Team	\$70.00/pay period
Crime Suppression Team	\$70.00/pay period
Range Master	\$70.00/pay period
Detective Assignment	\$100.00/pay period

32.1 This Agreement will be in full force and effect upon ratification by both parties and shall remain in full force and effect until midnight of the 30th day of September, 2023; provided, however, that in year two of the Agreement (October 1, 2021 - September 30, 2022) and year three of the Agreement (October 1, 2022 - September 30, 2023) ~~Wages shall be subject to negotiations along with two Articles of the Agreement,~~ **other than wages,** for both the City and the Union shall be subject to negotiations. Upon expiration of the Agreement, it shall continue in full force and effect thereafter from year to year unless notice is given in writing by either party to the other via electronic mail (email) or certified mail return receipt requested by April 1st, 2023, of intent to modify, terminate, or change the terms of this Agreement, except as provided hereinafter.

Unless expressly modified herein, the remaining terms and conditions set forth in the Agreement shall remain in full force and effect.

This MOU shall become effective upon ratification by the Union members, approval by the City Council, and execution by both parties.

INTERNATIONAL UNION OF POLICE ASSOCIATIONS, PERC CERTIFICATION #1983, IUPA:

_____, Unit Representative
_____, Date: _____

CITY OF PORT ORANGE, FLORIDA

_____, Date: _____
Donald O. Burnette, Mayor

Attest:

Robin Fenwick, MMC, City Clerk

**AGREEMENT
BETWEEN
CITY OF PORT ORANGE, FLORIDA
AND
INTERNATIONAL UNION OF POLICE ASSOCIATIONS
LOCAL 6051**

PERC Certification #1983

2-16-2021 through September 30, 2023

TABLE OF CONTENTS

Article	Subject	Page
1	AGREEMENT.....	3
2	ASSOCIATION RECOGNITION	4
3	MANAGEMENT RIGHTS.....	5
4	EMPLOYEES RIGHTS	7
5	STRIKES AND LOCKOUTS	8
6	DUES DEDUCTION	9
7	ASSOCIATION REPRESENTATIVES	10
8	BULLETIN BOARDS	11
9	SENIORITY	12
10	PROBATIONARY EMPLOYEES	13
11	PROMOTIONAL PROCEDURES	14
12	TEMPORARY ASSIGNMENT TO ANOTHER CLASSIFICATION	18
13	DISCIPLINARY ACTION.....	19
14	GRIEVANCES AND ARBITRATION PROCEDURE	22
15	HOURS OF WORK AND OVERTIME	25
16	HOLIDAYS.....	28
17	ANNUAL LEAVE	29
18	SICK LEAVE	32
19	OTHER LEAVE	35
20	JURY DUTY AND APPEARANCE AS A WITNESS.....	37
21	AUTHORIZED USE OF A PRIVATE VEHICLE	38
22	UNIFORMS AND EQUIPMENT	39
23	WORKERS' COMPENSATION, PHYSICAL EXAMINATIONS & HEALTH & FITNESS .	41
24	ALCOHOL AND DRUG TESTING	44
25	INSURANCE	47
26	PERSONNEL RECORDS.....	48
27	TRAINING AND TUITION REIMBURSEMENT	49
28	WAGES	51
29	RETIREMENT PLAN.....	53
30	SEVERABILITY	54
31	ENTIRE AGREEMENT	55
32	DURATION OF AGREEMENT.....	56

ARTICLE 1 AGREEMENT

THIS AGREEMENT is entered into by and between the City of Port Orange, hereinafter referred to as the "City", and the International Union of Police Associations, AFL-CIO (IUPA), hereinafter referred to as the "Association".

Whenever a male gender is used in this Agreement, it shall be construed to include male and female employees.

Whenever the phrase "in writing" is used in this Agreement, it shall be construed to include regular mail, facsimile, and electronic mail (email) as an acceptable form of written communication unless specifically stated otherwise in a particular Article.

WITNESSETH:

WHEREAS, This Agreement reduces to writing the understandings of the City and the Association to comply with the requirements contained in Chapter 447, Florida Statutes, as amended; and

WHEREAS, This Agreement is designed to provide for an equitable and feasible procedure for the resolution of differences concerning the enforcement of this Agreement in accordance with grievance procedures contained herein; and

WHEREAS, This Agreement is entered into to promote a harmonious relationship between the Association and the City and to encourage more effective employee service in the public interest; and

WHEREAS, The Association understands that the City is engaged in furnishing essential public service which affects the health, safety and welfare of the general public; and the Association recognizes the need to provide continuous and reliable service to the public; therefore, it is hereby agreed:

ARTICLE 2
ASSOCIATION RECOGNITION

2.1 The City recognizes the Association as the exclusive collective bargaining representative for those employees in the following bargaining unit, as defined in PERC Certification # 1983, dated October 2, 2020.

Included: Sworn full time police personnel for the following ranks: Police officer and police sergeant.

Excluded: All other classifications.

Any Amendment to the unit certified by Public Employees Relations Committee (PERC) must be accomplished by a unit clarification petition filed with and approved by PERC. Bargaining unit employees in positions formally included and approved by PERC will be entitled to the terms and benefits of this Agreement.

ARTICLE 3 MANAGEMENT RIGHTS

- 3.1 The Association recognizes that it is the function of management to determine and direct the policies, mode and method of providing its services without any interference in the management and conduct of the City's operations.
- 3.2 The City shall continue to exercise the exclusive right to take any action it deems necessary or appropriate in the management of its operations and the direction of its work force. The City expressly reserves all rights, powers and authority customarily exercised by management, including all inherent and common law management rights and functions which the City has not expressly modified or delegated by express provisions of this Agreement. Unless specifically addressed in this Agreement nothing in this Agreement shall be construed to limit or impair the right of the City to exercise its own discretion in determining whom to employ, and nothing shall be interpreted as interfering in any way with the City's right to alter, rearrange, or change, extend, limit or curtail its operations or any part thereof.
- 3.3 Without limiting the provisions of Sections 3.1 and 3.2, but in order to clarify some of the more important unilateral rights retained by management, the City shall have the following unilateral management rights, unless such rights are specifically limited and in direct conflict with this Agreement or the law:
- (a) To determine the size and composition of the work force, including the number or composition of employees assigned to any particular operation, shift or turn;
 - (b) To determine the number and type of equipment, vehicles, materials, and supplies to be used, operated, or distributed;
 - (c) To hire, rehire, promote, lay-off and recall employees;
 - (d) To evaluate, maintain, and/or improve the efficiency of employees;
 - (e) To create or abolish job classifications and the minimum qualifications for job classifications, and to determine the amount and type of work;
 - (f) To determine the assignment of work, and to schedule the hours and days to be worked on each job and each shift, unless contrary to a specific provision of this Agreement;
 - (g) To discontinue, temporarily or permanently, in whole or in part its operations and to transfer, or assign all or any part of its operation or any part thereto to new facilities;
 - (h) Should management have a reasonable basis to believe the employee is not physically capable of performing his job they may require an employee to take a physical or mental examination, given by a health service or a physician or psychiatrist selected by the City;
 - (i) To determine the location, method, means and personnel by which operations are to be conducted;
 - (j) To introduce new, different or improved methods, means and processes of conducting the operations, transportation, maintenance and service of the employer;
 - (k) To determine the work to be performed during the employees' regular workday and require that all work be performed in a satisfactory and professional manner;

- (l) To assign overtime work in accordance with the provisions of this Agreement;
- (m) To reward or reprimand, discharge or otherwise discipline an employee for just cause;
- (n) Establish, maintain and enforce, or rescind, amend or change, reasonable rules and regulations and standard operational procedures, it being understood that such rules and regulations and standard operational procedures shall not conflict with the provisions of this Agreement. If the proposed additions, deletions or changes affect the terms and conditions of employment of bargaining unit employees that are mandatory subjects of bargaining, the Association shall have the right to request bargaining over those proposed additions, deletions or changes. This request must be made in writing to the Department Head and submitted to him/her within seven (7) days of the change being published. If no request for bargaining is made by the Union during this seven (7) day period, or the proposed additions, deletions or changes do not affect terms and conditions of employment of bargaining unit members or is not a mandatory subject of bargaining, the modifications shall become effective on the date specified when published.

- 3.4 The City reserves and retains in full and completely any and all management rights, prerogatives and privileges except to the extent that such rights, prerogatives and privileges are specifically limited by some express provision of this Agreement or the law, and has no obligation to bargain over the decision to exercise such rights, prerogatives and privileges, or the effect of such decisions.
- 3.5 The City's failure to exercise any function or right hereby reserved to it, or its exercising any function or right in a particular way, shall not be deemed a waiver of this right to exercise such function or right, nor preclude the City from exercising the same in some other way not in conflict with the express provisions of this Agreement.
- 3.6 The City, subject to State law, has the sole authority to determine its purpose and mission and the amount and allocation of the budget.
- 3.7 If, in the sole discretion of the City, it is determined that civil emergency conditions exist, including but not limited to riots, pandemics, civil disorders, hurricanes or other weather conditions, or similar catastrophes the provisions of this Agreement may be suspended during the time of the declared emergency except for the grievance, disciplinary and economic provisions.
- 3.8 However, the exercise of the above rights shall not preclude employees or their representative from raising grievances or seeking other relief, should decisions on the above matters have the consequence of violating the terms and conditions of this Agreement or the law.

ARTICLE 4
EMPLOYEE RIGHTS

- 4.1 The parties hereto agree not to interfere with the right of, or discriminate against, any employee for becoming a member of the Association, being a member of the association, withdrawing from membership from the Association, or refraining from becoming a member of the Association, as defined by Florida Statute Chapter 447. Any employee who believes their statutory rights under Chapter 447 have been violated, may address such through the steps of the grievance procedure set forth in this Agreement through the City Manager, but not arbitration. If the grievant is not satisfied with the final decision of the City Manager, the grievant may proceed through the statutory mechanism set forth in Chapter 447.
- 4.2 There shall be no discrimination against any employee covered by this agreement by reason of race, color, religion, sex, sexual orientation or transgender status, pregnancy, national origin, age, handicap or marital status. Allegations of discrimination shall be handled pursuant to Police Department policy and not the grievance procedure set forth in this Agreement.
- 4.3 Nothing contained in this Agreement shall foreclose any employee covered by this Agreement from pursuing any right or remedy, not including arbitration, as defined in Article 14 available under this Agreement, without representation by the Association. Further, nothing contained in this Agreement shall foreclose any employee from discussing a non-contract problem directly with his immediate supervisor or other Departmental Official without the intervention of the Association, provided that the immediate supervisor or other Departmental Official agreed to discuss and/or attempt to resolve the matter.
- 4.4 In matters involving a formal grievance filed pursuant to the grievance Article of this Agreement, the Association shall be given the right to be present at any meeting called for the resolution of such grievance.
- 4.5 The employees and the Association expressly reserve all rights, powers, and authority customarily exercised by an employee organization or employees in a collective bargaining unit, including all inherent and common law rights and functions. Nothing in this Agreement shall be construed to be a waiver of any of these rights of the Association or the employees.

ARTICLE 5
STRIKES AND LOCKOUTS

- 5.1 The Association and bargaining unit members shall have no right to instigate, promote, sponsor, engage in, or condone any work stoppage, boycott, slow-down, strike, intentional disruption of City operations, or to withhold services for any reason. Each employee who holds a position in the Association occupies also a position of special trust and responsibility in maintaining and bringing about compliance with this Article, the strike prohibition of Section 447.505, Florida Statutes, and the Constitution of the State of Florida, Article 1, Section 6.
- 5.2 The Association, its officers, agents, and other representatives agree that it is their continuing obligation and responsibility to promote compliance with this Article and the law, including their responsibility to abide by the provision of this Article and the law by remaining at work during any interruption which may be initiated by others; and including their responsibility, in the event of breach of this Article or the law by other employees, and upon the request of the City, to encourage and direct employees violating this Article or the law to return to work, and to disavow the strike publicly.
- 5.3 In addition to the penalties set forth in Section 447.507, Florida Statutes, any and all employees who violate any provision of the law prohibiting strikes or this Article may be disciplined, up to and including discharge, by the City; provided, however, that the decision to so discipline shall be governed by Florida law and not be subject to the grievance procedure of this Agreement.
- 5.4 The circuit courts of this State shall have jurisdiction to enforce the provisions of this Section by ex parte injunction and contempt proceedings, if necessary.
- 5.5 For the purpose of this Article, it is agreed that the Association shall be responsible and liable for any action committed by any of its officers, agents, and/or representatives, which act constitutes a violation of State law, City ordinance or policy, or the provisions herein. In addition to all other rights and remedies available to the City under State law, in the event of a breach of the provisions herein, the City shall have the right, without further notice, to suspend this Collective Bargaining Agreement and withdraw recognition from the Association.
- 5.6 The City agrees that there will be no lockouts for the duration of the Agreement.

ARTICLE 6

DUES DEDUCTION

- 6.1 Upon receipt of a written authorization from an employee covered by this Agreement, the City will deduct from the employee's pay each pay period the amount owed to the Association by each employee for dues. No authorization shall be allowed for payment of any collections of fines, penalties or special assessments. The City shall remit monies collected to the Treasurer of the Association monthly. The City remittance will be deemed correct if the Association does not give written notice to the City within thirty (30) calendar days of a remittance, of its belief with reasons stated therefore that the remittance is incorrect. It shall be the responsibility of the Association to notify the Administrative Services Director in writing of any change in the amount of dues to be deducted at least thirty (30) days in advance of said change. The City shall provide 26 biweekly deductions, to occur each pay day. The City shall include the name of the employee, the amount deducted and for what period the deduction is for on each remittance report.
- 6.2 The Association shall indemnify the City and hold the City harmless against any and all suits, claims, demands and liabilities which arise out of or by reason of any action taken or not taken by the City for complying with any of the provisions of this Article. If there is an amount deducted in excess of what is authorized by this Agreement, the employee affected shall seek recourse with the Association and not the City.
- 6.3 An employee may revoke their authorization for deduction of dues by providing a written notice, thirty (30) calendar days prior to cancelation, to the City and the Association. Upon receipt of such notification, the City shall terminate the dues on the pay date immediately following the expiration of the thirty (30) calendar day notice.
- 6.4 No deduction shall be made from the pay of an employee for any payroll period in which the employee's net* earnings for that payroll period are less than the amount of dues to be checked off. "Net earnings" shall mean net after required deduction of federal taxes, social security, pensions, and all insurance premiums such as health, dental, and life insurance.
- 6.5 In the event the Association notifies the City of a change in dues by certified mail from the Association President or designee, or delivers additional dues authorization to the Administrative Services Director, it is agreed and understood that the City shall have thirty (30) calendar days from the date of delivery in which to commence the dues deduction procedure.

ARTICLE 7
ASSOCIATION REPRESENTATIVES

- 7.1 The Association shall be represented by its President, Business Agent, and/or their designee, collectively hereafter referred to as "Representatives". The employee organization is composed of five (5) Executive Board Members: President, Vice President, Secretary, Treasurer, and Board Member. For any matters requiring the association herein to take action or receive notice, the President and/or Business Agent will serve as the authorized parties.
- 7.2 The Association shall notify the City Administrative Services Director in writing of the name of the President or his designee, at least ten (10) working days prior to the effective date of his taking office.
- 7.3 During an investigation proceeding the employee shall be entitled to one representative of their choosing.
- 7.4 The employee or Association shall not engage in Association business of any kind, including solicitation of membership during working hours. An Employee Representative of the Association, designated in writing by the President, shall be permitted reasonable access to all Department locations at reasonable times during a working day for investigating grievances provided the City is first notified of the investigation, and provided further that such absence would not unduly hamper the operation where the officer is employed.
- 7.5 Two (2) members of the Association negotiating committee (employees of the City) shall be permitted to attend all negotiating sessions without loss of pay, as well as the City Council meeting where final action is scheduled to be taken on approval (or rejection) of this Collective Bargaining Agreement and its successor.
- 7.6 Representatives may request to utilize annual leave to attend state or local seminar functions of the Association. No compensation for expenses or travel will be allowed.

ARTICLE 8
BULLETIN BOARDS

- 8.1 The Association shall be provided with partial use of existing City bulletin boards as space permits. In lieu of the space provided on the City's current bulletin boards, the Association, if so desires, may provide a bulletin board of standard size, not to exceed two (2) square feet for its own exclusive use in keeping with the décor of the location and with the approval of the Police Chief.
- 8.2 The Association agrees that it shall use its space on bulletin boards to post only the following:
- (a) Notice of Association Meetings
 - (b) Association Elections of Officers (not including representation elections)
 - (c) Reports of Association Committees
 - (d) Ruling and Policies of the Association
 - (e) Recreational & Social Affairs of the Association
 - (f) Notices of Meetings by Public Bodies
 - (g) Notices of Ratification Meetings
 - (h) Contract Administration
- In no event shall the Bulletin Boards be used to post political material or controversial material which adversely reflects upon the City of Port Orange, its independent agencies, its employees, elected officials, or any labor organization among its employees.
- 8.3 All Association materials placed on the Bulletin Boards shall be signed by the Association representative or his designee, and copies of the material shall be sent to the Police Chief prior to posting.
- 8.4 Failure of the Association to follow the procedures for the proper posting of materials and notices on the Bulletin Boards shall result in the materials or notices being removed from the Bulletin Boards by the City and a suspension of all Bulletin Board privileges.

ARTICLE 9 SENIORITY

- 9.1 For the purpose of this Agreement, employees shall have three (3) types of seniority: Department Seniority, Time in Grade Seniority and City Seniority. Department Seniority is defined as the length of continuous, uninterrupted service in the Port Orange Police Department. Time in Grade Seniority is defined as the length of continuous, uninterrupted service in a specific job classification or rank in the Port Orange Police Department. City Seniority is defined as the length of continuous, uninterrupted service with the City, measured from the employee's initial or adjusted date of employment.
- 9.2 Continuous service shall be considered as having been interrupted when the employee:
- (a) Resigns;
 - (b) Is discharged;
 - (c) Takes unauthorized leave of absence leave; or
 - (d) Is absent due to a lay-off for more than twelve (12) months.
- In the event of a lay-off or elimination of a classification or rank within the Department the following factors as listed below, shall be considered by the City in determining which employees to lay-off:
- (a) Time in Grade Seniority as defined in Section 9.1;
 - (b) Department Seniority as defined in Section 9.1;
 - (c) Ability to perform work in a satisfactory manner and prior conduct
- 9.3 For the purpose of filling any employment opening in the City, the City shall give preference to previously laid off employees over new hires provided that the laid off employee meets the minimum qualifications for the position; provided that there are no other eligible laid-off employees from the Department with an opening; and provided they are otherwise eligible to be rehired by the City.
- 9.4 Under no circumstances shall any employee be entitled to accrual of seniority or any other employee benefit during the period of his lay-off.
Should an employee be hired after having been on lay-off the employee will retain his seniority only if re-hired within six (6) months of being laid off.
- 9.5 For purposes of a recall, employees shall be returned to their former position in the inverse order of lay-off. No laid-off employee shall retain recall rights beyond one (1) year from date of lay-off.
- 9.6 In the event of a layoff resulting in a Lieutenant bumping a Sergeant, the Sergeant with the least amount of time in grade will be subject to a reduction in rank to Officer and will be paid at the Officer rate based on the total sworn years of service in accordance with the wage article of this Agreement. In the event of a reduction in rank from Sergeant to Officer, those personnel affected by such move shall be given first consideration and preference if/when these positions re-open for a period of one calendar year.

ARTICLE 10
PROBATIONARY EMPLOYEES

- 10.1 All new members in the Department shall be classified as probationary employees for the first three hundred and sixty-five (365) calendar days of continuous, uninterrupted employment during which time such employees may be laid-off, , or discharged without recourse to the grievance and arbitration procedures of this Agreement. Any disciplinary action other than termination shall be subject to the disciplinary action article of this agreement up through Step III only. Shorter periods of employment shall not be cumulative but during such period, such new members shall be subject to other terms and conditions of this Agreement, except as limited in this Agreement. Provisions as to seniority shall not apply to probationary employees; rather, seniority shall date back to the initial or adjusted date of employment after an employee successfully completes his probationary period. If more than one employee is hired on the same day or has the same adjusted date of employment, seniority shall be determined by employee number.
- 10.2 All probationary employees as defined in Section 10.1 of this Article shall be entitled to the leave and holiday provisions of this Agreement.
- 10.3 The employee's starting date of employment for purposes of calculating his probationary status, longevity pay, and seniority shall be adjusted if the employee takes leave without pay. For example, should an employee take five (5) days of leave without pay, the employee's starting date of employment will be adjusted by moving the employee's original date up five (5) days. Should the employee be in his probationary period at the time he takes leave without pay, the employee's probationary period shall be extended in proportion to the days he was on such leave.
- 10.4 The City shall have the unilateral management right to extend the probationary periods set forth in Section 10.1 for 180 days in lieu of discharging the employee. The decision to extend the probationary period shall not be subject to the grievance and/or arbitration procedures of this Agreement.

ARTICLE 11
PROMOTIONAL PROCEDURES

11.1 It is the policy of the Port Orange Police Department to promote personnel based on their knowledge, skills and abilities in an equal and impartial manner, consistent with the City's rules and regulations. A promotional examination will be given when a rank position becomes open and there is no current valid eligibility list. An eligibility list will be established within 60 days of the examination and will remain in effect for a period of two (2) years from the effective date of the new eligibility list. If there is no vacancy after the list has expired, a new list will not be established until a vacancy occurs necessitating a promotion. The date of the vacancy necessitating the process will determine the eligibility cutoff for all candidates. If the eligibility list has less than three persons, a new test can be given at the City's option.

11.2 The rank of Sergeant with the Port Orange Police Department will be achieved by the process herein.

Nothing in these rules precludes the Department Head from changing departmental staffing patterns or eliminating certain ranking positions. The Department Head reserves the right to make lateral transfers at his discretion.

11.3 APPLICATION AND QUALIFICATION

To be eligible to participate in the Sergeant testing process, all candidates shall be required to be a full time Port Orange Police Officer for a minimum of four (4) years with an associate's degree or five years without a degree as of the effective date of the written test date. Any officer with a break in service is required to have two consecutive years of service as of the effective date of the new process to be eligible.

Officers who have received major or minor disciplinary actions shall be ineligible for actual promotion during set periods of time following their receipt of disciplinary actions, as specified in the following paragraphs. However, disciplinary actions against Officers shall not render them ineligible to participate in promotion testing, nor shall they affect Officers' placements on eligibility lists.

Any Officer receiving major disciplinary action (ten (10) suspension days or more) shall be ineligible for promotion for a period of two (2) years from the date of the adjudication of the offense.

Any Officer receiving major disciplinary action (four (4) to nine (9) suspension days) shall be ineligible for promotion for a period of one (1) year from the date of the adjudication of the offense.

Any Officer receiving minor disciplinary action (one (1) to three (3) suspension days) shall be ineligible for promotion for a period of six (6) months from the date of the adjudication of the offense.

The exam announcement will be posted and sent electronically to all sworn employees. The announcement shall contain the purpose of the exam, the prerequisites to be eligible for the exam, and a deadline date to sign up for the exam. It shall be the individual employee's responsibility to notify the Office of Chief of Police of their intent to take the exam via the City's online applicant tracking system. If an eligible employee does not indicate his/her intent prior to the deadline date established in the announcement, it shall be assumed that he/she is not interested in taking said exam and will not be allowed to take said exam.

Any candidate who does not follow all requirements of this policy will be excluded from the promotional process.

11.4

TESTING PROCESS

The written examination for all candidates will be conducted as soon as possible after the effective date of the vacancy necessitating the new process taking into account a reasonable study preparation period and process timeline requirements.

Participants will be notified in writing as to the amount of credit they will receive for seniority, education and/or the military.

Any issue that cannot be resolved by the Department Head is subject to resolution through Article 14 Grievance and Arbitration Procedure of this Agreement.

The exam announcement shall be at least twenty-one (21) calendar days in advance of the test date. All participants must present themselves at the time and place indicated on the testing announcement. Candidates who absent themselves from the test without justification will forfeit their right to participate until the next promotional process is held. Officers who have been excused under justifiable circumstances must take the test no later than seven (7) calendar days from the day the initial test was given.

The process for all positions shall consist of three (3) parts with relative weights as follows:

Written Test	60%
Outside Oral or Assessment	20%
Seniority	10%
Education	6%
Military Service	4%

A. Written = 60%

Officers taking the written test will be given credit for whatever score they achieve. This raw score will be multiplied by .60 to determine the written test credit.

B. Outside Oral Board or Assessment Center = 20%

Officers passing the written exam with a score of 70% or better, will be allowed to move forward to the "outside oral board or assessment center", which will count towards 20% of the overall exam grade. The outside oral board or assessment shall be administered by individuals not employed by the City of Port Orange. The Chief

shall assign a member of his/her staff to the Oral Board for Quality Assurance purposes only.

C. Seniority = 10%

Seniority is worth a total of 10% of the final test score. Eligible candidates will receive one-half (.5) point for each consecutive uninterrupted year of full-time service as a Police Officer for the Port Orange Police Department to a maximum of 10 points. An officer with a break in service will be eligible for no more than four years prior service plus consecutive newly accumulated service time as of the date of the new process. Credit for seniority will begin with the candidate's swear-in date. The candidate will receive .042 points for every full month of the partial year between the candidate's last anniversary date and date of the vacancy necessitating the new process. To receive full credit for the last partial month (if applicable) a minimum fifteen (15) day time in service period within that partial month is required. In the event of a tie score at the conclusion of the entire testing process, the senior eligible candidate will be ranked ahead of the candidate with less seniority.

D. Education = 6%

Education is worth a total of 6% of the final test score. The maximum points attainable are 6. To qualify, a degree must be conferred from an accredited institution of higher education affiliated with the Council for Higher Education Accreditation. Points for education are not cumulative and are awarded as follows:

- 6 Masters/Law Degree or Higher
- 4 Bachelor's Degree
- 2 Associates (AA or AS Degree)
- 2 Equivalent AA or AS Degree

An "EQUIVALENT" AA or AS Degree is defined as in Fla. Statute section 943.22(1)(c) "graduation from an accredited community college or successful completion of 60 semester hours or 90 quarter hours AND eligibility to receive an associate degree."

E. Military Service Credit = 4%

a) **Active Duty:** Military service is worth a total of 4% towards the final test score. The maximum points attainable are four. Points for military service are awarded for active duty as follows:

- 4 Four or more years of service
- 3 Less than four years of service but more than three
- 2 Less than three years of service but more than two
- 1 Less than two years of service but more than one

b) **Reserve/National Guard:** Military Reservist and National Guard will receive 1 year of credit for every 365 days considered active duty. Points for this time will be awarded in accordance with (a) above.

11.5

SELECTION PROCESS

The written test grade, oral board exam, seniority and college/military credit will all be compiled to determine the final score. Candidates will be listed in the order of the final score achieved. The Department Head will choose one of the eligible candidates from those with the top five final scores. No eligible candidate can be passed over more than twice in a testing period without written justification from the Department Head. An eligible candidate, however, may ask to be passed over as many times as that candidate wishes during the process period without adverse effects or loss of position or reinstated position on the list. If any candidate wishes to have their name removed from the list said candidate will not be eligible for promotion for duration of the list period.

Employees who have been promoted to Sergeant within the bargaining unit shall serve a three hundred and sixty-five (365) calendar day probationary period in the new classification. If at any time during the probationary period the promoted employee is found, by the City in its sole discretion, not to be suited for the position to which he was promoted, the employee shall be returned to his former classification, at their prior rate of pay for the former classification, adjusted for any contractual wage increases, if applicable.

When there is an opening for a Sergeant's position in any specialized unit (Motors, CID, SIU, etc.), the City agrees to post such opening for existing Sergeants to apply. The interested applicants will submit their names to the Department Head for review. The Department Head shall not be limited to the list for the appointment to specialized units.

11.6

TEST RESULTS NOTIFICATION

Candidates will be notified of their compiled test results and final eligibility ranking.

The final eligibility list of all candidates will be posted. Said notice will contain the final test scores and seniority and education/military points credited (if applicable).

ARTICLE 12
TEMPORARY ASSIGNMENT TO ANOTHER CLASSIFICATION

- 12.1 The City may select any employee from a lower classification to temporarily fill a bargaining unit position.
- 12.2 An employee who is temporarily assigned to a position of higher rank for a period of more than one (1) month (four (4) consecutive weeks) shall be entitled to the salary pertaining to that rank or position for the period of time the employee is so assigned.
- 12.3 If the employee selected for a temporary position is not selected to the permanent position, this employee shall be returned to his previous classification and pay rate.
- 12.4 An employee with the least amount of time in grade may be required to perform duties in a lower classification on a temporary, incidental, or emergency basis with no change in classification or decrease in base rate of pay. Such temporary assignment shall not exceed six (6) months, unless the temporary assignment is due to an identified situation. This situation must have a specific time frame identified for resolution, which may generally not exceed a period of eighteen 18 months except in emergency circumstances. The City Manager must approve any temporary assignments beyond six (6) months in writing.

ARTICLE 13
DISCIPLINARY ACTION

13.1 Any bargaining unit employee who has achieved regular status with the City may only be disciplined or terminated for just cause. Any dispute over whether a regular status bargaining unit employee has been disciplined or terminated for just cause shall be grieved and adjudicated pursuant to the process set forth in this Article, and not the grievance procedure set forth in Article 14 of this Agreement. Furthermore, only disciplinary actions that rise to the level of suspension, demotion or terminations are subject to the procedures set forth in this Article. Disciplinary actions of written reprimands and below are not subject to grievance.

13.2 **STEP ONE**

Any bargaining unit employee that has achieved regular status with the City and who has been issued a disciplinary action, may file within seven (7) calendar days a written grievance with the appropriate Division Captain. Failure to timely file the grievance shall render the disciplinary action final and binding. The Division Captain may meet with the grievant within ten (10) calendar days of receipt of the grievance, unless such meeting has been mutually waived or such meeting has been mutually agreed to be held at a time outside of the ten (10) day period if the Division Chief requires any additional information. The Division Captain shall answer the grievance in writing within ten (10) calendar days of the meeting, or within receipt of the grievance if no meeting is held.

STEP TWO

If the grievant or the Association representative is not satisfied with the written answer of the Division Captain, or if no timely written answer is rendered by the Division Captain, the grievant or the Association representative shall submit a written appeal to the Chief of Police within ten (10) calendar days of the answer or failure of a timely answer to be rendered by the Division Captain. The Chief of Police, or their designee may meet with the grievant within ten (10) calendar days of receipt of the appeal, unless such meeting has been mutually waived or such meeting has been mutually agreed to be held at a time outside of the ten (10) day period if the Police Chief or their designee requires any additional information. The Chief of Police, or their designee shall answer the grievance in writing within ten (10) calendar days of the meeting, or within receipt of the appeal if no meeting is held.

STEP THREE

If the grievant or the Association representative is not satisfied with the written answer of the Police Chief, or if no timely written answer is rendered by the Police Chief, the grievant or the Association representative shall submit a written appeal to the City Manager within ten (10) calendar days of the answer or failure of a timely answer to be rendered by the Police Chief. The City Manager shall meet with the grievant within ten (10) calendar days of receipt of the appeal, unless such meeting has been mutually waived or such meeting has been mutually agreed to be held at a time outside of the ten (10) day period if the City Manager or their designee requires any additional information. The City Manager, or their designee shall answer the grievance in writing within ten (10) calendar days of the meeting, or within receipt of the appeal if no meeting is held.

STEP FOUR

If the Association is not satisfied with the written answer of the City Manager, or if no timely written answer is rendered by the City Manager, the Association shall submit a written request, signed also by the officer, appealing the grievance to arbitration within ten (10) calendar days of the answer or failure of a timely answer to be rendered by the City Manager. Timely delivery to the City Manager of a written notice to initiate arbitration shall satisfy the requirements of this section.

13.3

Arbitrator Selection and Proceedings

An impartial arbitrator will be selected utilizing the process defined in Article 14, Section 14.4.

- (a) Arbitration hearings shall be held at a City facility during times mutually agreed to by the parties.
- (b) The Arbitrator may fashion an appropriate remedy to resolve the grievance. The Arbitrator's hearings shall be conducted pursuant to the evidentiary standards set forth in Florida's Administrative Procedures Act, Chapter 120, Florida Statutes. Provided the decision is in accordance with their jurisdiction and authority under this Agreement, the decision shall be final and binding on the City, the Association, and the grievant; except that the decision may be reviewable to Florida's Fifth District Court of Appeal pursuant to the standards set forth in Chapter 120, Florida Statutes.
- (c) The Arbitrator shall have no authority to determine any other issue and shall refrain issuing any statement of opinion or conclusion not essential to the determination of the issue submitted.
- (d) The Arbitrator shall limit their decision strictly to the application and interpretation of the specific provisions of this Agreement and police department policy that is not inconsistent with the terms of this agreement.
- (e) In rendering its decision, the Arbitrator may take into consideration any proven violation of the Law Enforcement Officers Bill of Rights, Section 112.532, Florida Statutes, provided, however, that the alleged violation of the Law Enforcement Officer's Bill of Rights must have been specifically raised by the Association/Grievant in writing at or prior to Step two (2) of the grievance procedure set forth in this Article. No new arguments not raised by the Association/Grievant in writing at or prior to Step three (3) of the grievance procedure set forth in this Article shall be considered by the Arbitrator.
- (f) In rendering its decision, the Arbitrator may take into consideration disciplinary actions taken by the Police Department for conduct substantially similar to the conduct for which the Grievant was disciplined; however, such consideration by the Arbitrator shall be confined to disciplinary actions taken within the last five (5) years. In rendering its decision, the Arbitrator may take into consideration previous disciplinary actions in the grievant's history, however such consideration by the Arbitrator shall be confined to disciplinary actions taken within the last five (5) years.
- (g) The Arbitrator's award may include back pay to the grievant. No award for back pay shall exceed the amount of pay the employee would otherwise have earned at his or her regular rate of pay, including overtime, and such back pay shall not

be retroactive to a date earlier than the date of the occurrence of the event giving rise to the grievance under consideration and in no event more than the time limits permitted for initiation of the grievance.

- (h) The award shall not exceed the actual loss to the grievant, will not include compensatory and/or punitive damages, and will be reduced by the amount of wages earned from other sources and/or unemployment compensation received by the officer during the period of time affected by the award.
- (i) Each party shall be responsible for compensating and paying the expenses of its own representatives, attorneys, and witnesses. The impartial Arbitrator's fees and related expenses and expenses in retaining a hearing room, if any, shall be equally divided between the parties. Any party desiring a transcript of the hearing shall bear the cost of such transcript unless both parties mutually agree to share said cost;

13.4 A member of the Association shall have the option of utilizing the Civil Service appeal procedure or the grievance and arbitration procedure set forth in this Article, but such employee cannot use both the Civil Service appeal procedure and the procedure of this article. At the time that an employee initiates a written grievance, he/she shall state in the body of the grievance whether the grievance is filed under the Labor Agreement or the City's Civil Service Rules. If the employee fails to make this statement, the employee shall be deemed to have filed the grievance under the Labor Agreement. At no time following the filing of a written grievance may the employee change his/her selection of which procedure and standards the grievance shall be processed under.

13.5 For all time frames set forth in this Article, if the tenth calendar falls on a Saturday, Sunday, or City recognized holiday under this Agreement, the time frame shall be extended until 5:00 pm on the next day that is not a Saturday, Sunday, or City recognized holiday under this Agreement. Both parties may mutually agree in writing to an extension of timelines under this Article.

ARTICLE 14
GRIEVANCES AND ARBITRATION PROCEDURE

14.1 In a mutual effort to provide a harmonious working relationship between the parties to this Agreement, it is agreed and understood that there shall be a procedure for the resolution of grievances between the parties and that such procedure shall cover grievances involving the application, violation, or interpretation of this Agreement. Disciplinary actions taken against bargaining unit employees shall not be subject to this grievance procedure.

14.2 Every effort will be made by the parties to settle any grievance as expeditiously as possible. Any grievance not answered by Management within the prescribed time limits shall automatically advance to the next higher step. Should the grieving party fail to observe the time limits as set forth in the steps of this Article, the grievance shall be considered conclusively abandoned.

14.3 All grievances shall begin at Step 1, except the following grievances shall begin at Step 2:

- (1) A grievance that is general in nature, in that it applies to a number of employees, rather than a single employee, or
- (2) A grievance that is directly between the Association and the City.

The above referenced grievances shall be reduced to writing, as outlined in 14.4, Step 1, and filed within ten (10) workdays of the occurrence of the event(s).

14.4 Grievances shall be presented in the following manner:

Step 1. The employee, employee representative, or the Association shall first present his/her grievance in writing to the employee's Captain within ten (10) work days of the occurrence of the event(s) which gave rise to the grievance or from the date on which the employee becomes knowledgeable of the cause of action. If the event(s) which gave rise to the grievance occurred at a time when the employee was on annual leave, sick leave, or other compensated leave, the ten (10) workday period shall commence running immediately upon the employee's return from such compensated leave. The Captain shall answer the grievance in writing within (10) workdays of the presentation of the grievance. The answer shall be given to the employee, with a copy to the Association. All grievances must be reduced to writing and must contain the following information:

- (a) The specific article and section of the Agreement alleged to have been violated by the City;
- (b) A full statement of the grievance, giving a complete description of the facts, dates, and times of the events involved in the alleged violation, and the specific remedy desired by the grievant;
- (c) Signature of grievant and the date signed is required at Step 1. In case of a group of employees filing a single grievance, the grievants will be identified, and the association representative shall sign and date on behalf of the unit. In case of a class action grievance involving the entire bargaining union, the grievants will not need to be identified, and the Association's representative shall sign and date on behalf of the unit.

- (d) Designation of the specific association representative (must be an elected officer, representative, or steward) if the grievant requests association representation.

Unless the grievance is presented in the manner set forth in this Section, it shall be deemed not to exist.

Step 2. Any grievance which cannot be satisfactorily settled with the Division Captain shall next be presented to the Department Head or their designee. The grievance as specified in writing in Step 1 shall be submitted within ten (10) workdays after the receipt of the Step 1 answer. The Department Head or Designee may meet with the employee and his/her representative within ten (10) workdays after receipt of the grievance (or such longer period of time as is mutually agreed upon). The Department Head or Designee shall render his decision in writing and send it to the employee, with a copy to the Association, within ten (10) workdays after the grievance meeting or receipt of grievance, if no meeting is held.

Step 3. Any grievance which is not resolved at Step 2, shall next be presented to the City Manager within ten (10) workdays after the receipt of the Step 2 answer. The City Manager shall meet with the employee and his/her representative within ten (10) workdays after receipt of the grievance (or such longer period of time as mutually agreed upon). The City Manager shall render their decision in writing and send it to the employee, with a copy to the Association, within ten (10) workdays after the grievance meeting.

Step 4 - Arbitration. In the event a grievance processed through the grievance procedure has not been resolved in Step 3 the Association shall request, in writing, that the grievance be submitted to arbitration within ten (10) workdays after the City Manager renders a written decision on the grievance.

The Arbitrator may be any impartial person mutually agreed upon by and between the parties. If an impartial Arbitrator cannot be agreed upon within ten (10) work days after the date the grievance has been submitted for Arbitration, the Association shall request the Federal Mediation and Conciliation Services to furnish a panel of seven (7) Arbitrators within twenty (20) work days after the grievance is submitted to arbitration. Within ten (10) workdays of receipt of the panel, each party shall have the option to alternatively strike three (3) names from the list in alternating fashion, thus leaving the seventh (7th) which will give a neutral or impartial Arbitrator.

The City and the party requesting arbitration shall attempt to mutually agree in writing as to the statement of the grievance to be arbitrated prior to the arbitration hearing, and thereafter, the Arbitrator shall confine his decision to the particular grievance thus specified. In the event the parties fail to agree on the statement of the grievance to be submitted to the Arbitrator, the arbitrator will confine his consideration and determination to the written statement of the grievance presented in Step 2 of the grievance procedure. The Arbitrator shall fashion an appropriate remedy for violations of the provisions contained in this Agreement.

The Arbitrator shall have no authority to change, amend, add to, subtract from, or otherwise alter or supplement this Agreement or any part thereof or amendment hereto. The Arbitrator shall have no authority to consider or rule upon any matter which is stated

in this Agreement not to be subject to arbitration or which is not a grievance as defined in this Agreement; nor shall this Agreement be construed by the Arbitrator to supersede applicable laws in existence at the time of the signing of this Agreement, except to the extent as herein provided. The arbitration hearing shall be conducted in accordance with the rules of procedure promulgated by the American Arbitration Association.

Each party shall bear the expense of its own witnesses and of its own representatives for purposes of the arbitration hearing. The impartial Arbitrator's fees and related expenses and expenses in retaining a hearing room, if any, shall be equally divided between the parties. Any party desiring a transcript of the hearing shall bear the cost of such transcript unless both parties mutually agree to share said cost.

The Arbitrator's award shall be final and binding on the parties, except to the extent provided by the Florida Arbitration Act.

14.5 Consistent with the provisions of the Florida Public Employees Relation Act, Chapter 447 Florida Statutes unless amended, it is mutually acknowledged and agreed that this Agreement shall be administered within the amounts agreed to by the City Council for funding of the Agreement. Accordingly, and notwithstanding any other provision of the Agreement, the Arbitrator shall have no authority, power or jurisdiction to construe any provision of the law, statute, ordinance, resolution, rule or regulation or provision of this Agreement to result in, obligate or cause the City to have to bear any expense, debt, cost or liability which would result, directly or indirectly, in the City exceeding the amounts initially agreed to by the City council for the funding of this Agreement as agreed upon by the parties. Any such award which contravenes or is not in compliance with the provisions of this paragraph shall be null and void.

14.6 It is the mutual desire of the City and the Union that grievances shall be adjusted as quickly as possible and to that end the time limits set forth in this Article are to be strictly enforced. The time limits may only be extended by mutual written agreement. Failure of the grievant to observe the time limits for any steps in this Article without a mutually agreed written extension of time shall terminate the grievance, and any Arbitrator called upon to resolve a grievance under this Agreement shall strictly enforce the time limits. The term "workdays" as used in this article includes Monday through Friday of each work week regardless of the grievant's work schedule. Saturdays, Sundays, and holidays as set forth in this Agreement shall not be considered "workdays" even if work is assigned on these days. For the purpose of calculating time limits, the day on which a grievance, or a reply by management to a grievance is received, shall not be counted.

ARTICLE 15
HOURS OF WORK AND OVERTIME

- 15.1 The purpose of this Article is to define hours of work but nothing in this Agreement shall be construed as a guarantee or limitation of the number of hours to be worked per day, days per week, or for any other period of time, except as may be specifically provided herein.
- 15.2
- a. The basic work period for bargaining unit employees in the Administration, Detective, Traffic and Patrol Division will consist of 84 hours during a fourteen (14) day period. Hours worked in an amount less than or equal to eighty (80) in a fourteen (14) day work period in the Administration, Detective, Traffic and Patrol Division which are assigned by the City, shall be compensated at the regular hours rate of pay. Hours worked in excess of eighty (80) in a fourteen (14) day work period, which are assigned by the City, shall be compensated at the rate of one and one-half (1 ½) the employee's regular rate of pay. An employee is not guaranteed 84 hours of work. The City shall have the right to reduce the numbers of hours of work should it become financially necessary, or pursuant to disciplinary action or light duty assignment.
 - b. Officers in the Patrol Division will work twelve (12) hour shifts. Management has the right to schedule early and late cars at times different from the above. Officers of the Patrol Division assigned to inside desk duty will work an eighty-four (84) hour bi-weekly work week with their schedule being dictated by the Department Head or his designee.
 - c. The hours of work for employees in the Traffic Unit will be flexible taking into consideration peak traffic periods, special events, weather, hours of light and darkness.
 - d. Hours of work in the Detectives division will be flexible and based upon workload and assignments.
 - e. Employees scheduled to work during the time change in November shall receive one (1) hour of overtime pay. Employees scheduled to work during the March time change shall make up the one (1) hour of time during the pay period in which that time change occurs.
- 15.3 Should an employee voluntarily switch shifts with another employee for the employee's convenience, the shift exchange will only be permitted when the shifts are exchanged between two employees scheduled on the same shift rotations in that pay period as to preclude any overtime compensation as a result of the shift exchange. All such shift exchanges must be approved by the immediate shift supervisor prior to the shift exchange and prior to the pay period that the shift exchange has been requested.
- 15.4 Nothing in this Article shall require payment for overtime hours not worked. In calculating the amount of overtime compensation due an employee only the hours actually worked shall be counted. Such extra compensation shall be creditable toward overtime payable

under the Fair Labor Standards Act. Premium payments shall not be duplicated for the same hours worked under any of the terms of this Agreement. During pay periods in which a holiday occurs, employees who are not shift employees and who are not required to work on the holiday (Detectives and Administration) shall be paid for hours worked in excess of their normally scheduled hours, at a rate of one and one half (1 ½) their normal rate of pay.

- 15.5 An employee who has left his normal place of work and who is "called-back" for overtime work shall receive a minimum payment of three (3) hours at one and one-half (1½) the employee's regular rate of pay or the actual hours worked at one and one half (1½), whichever is greater. Provided that this Section shall not include scheduled overtime and shall not apply if hours worked as a result of a call back extend into the start of the employee's regular work period.
- 15.6 Upon proof of attending court pursuant to subpoena, state attorney investigation (SAI), deposition or other court order involving a job-related case, not as a plaintiff in litigation against the City, an off-duty employee will receive pay equal to one and one-half (1½) the employee's regular straight time hourly rate of pay for the hours he attends court, SAI, or deposition. Provided, that such employee shall receive a minimum of three (3) hours pay at the rate of one and one-half (1½) times the employee's regular straight time hourly rate for such attendance. The City reserves the right to institute any procedure or system it deems appropriate to measure, record and/or verify attendance and duration of off-duty court appearance. The employee will sign over all subpoena and witness fees, excluding travel fees, unless City transportation is furnished, in which case such travel fee will be signed over.
- 15.7 No employee shall authorize scheduled overtime for himself but shall be entitled to work overtime as assigned or authorized by his supervisor. It is understood that the City has the right to schedule overtime work as needed, and in a manner most advantageous to the City.
- 15.8 Overtime hours shall be distributed as nearly equal as possible among employees as long as such sharing will not delay or increase the cost of the City's operations. To ensure fairness in the distribution of mandated overtime a call-out wheel maintained by the shift Lieutenant.
- There are some specialized overtime details, such as the Christmas parade and the Fourth of July celebration etc., which cannot be run smoothly if put on a rotation detail list. Such special events require a police motorcycle for traffic control. Such events will be exempted from the rotation detail list.
- 15.9 All employees shall be required to report to work on time, shall not leave the job early, shall be prompt in reporting to their assigned duties, and shall faithfully perform their duties.
- 15.10 Except for Detectives, employees covered by this Agreement shall be given forty-eight (48) hours' notice of any change in their regular hours of work, unless an emergency necessitates a quicker change. Whenever possible, Detectives will be given a forty-eight

(48) hour notice of any change in their shift. If an employee is not notified prior to forty-eight (48) hours of a shift change, he shall receive one and one-half (1½) times the straight time hourly rate for the first eight (8) hours of the new shift.

- 15.11 Except for Detectives, Detective Sergeants, THI, and Meth Team members there will be no telephone standby ("on call"). Employees issued pagers and/or cell phones shall be required to have those devices with them whenever possible. Detectives, Detective Sergeants, or Meth Team members will receive three (3) hours overtime pay per week when assigned as the "on call" Detective, Detective Sergeants, THI, or Meth Team member. These employees will not be placed informally on a restrictive telephone standby.

When an employee is formally designated to an "on call" status for at least a half a week, that employee will receive three (3) hours overtime pay for that week. "On Call" is defined as: Formal notification by a supervisor that while off duty, the employee is designated as "on call" for a specific period and is expected to be able to respond ready and fit for duty as expeditiously as possible.

- 15.12 There will be no duplication of premium payments and no claims that provide for "overtime on overtime".

- 15.13 The maximum number of overtime hours that can be used to calculate average final compensation for pension purposes shall be no more than three hundred (300) hours per calendar year.

- 15.14 **Voluntary Special Event Work:** Voluntary, special event work performed for a second-party employer, other than work performed for City-sponsored events, shall be paid by the second-party employer to the City and the City shall, in turn, pay these second-party wages to the Officer or Sergeant as a separate line-item on the employee's pay stub, after deducting a fifteen percent (15%) administrative per-hour fee thereof for use of City property while performing the special event work. The hourly rate charged to the second party will be determined as per City ordinance. These second-party wages will not be considered as wages paid by the City and will therefore be excluded for purposes of calculating overtime and shall not be factored into the average final compensation for pension purposes. No pension contributions or insurance payments will be withheld from payments made for work performed for a second party employer.

Officers engaged in extra-duty employment (Special Detail) are authorized to wear and use department issued uniforms and equipment. Employees shall observe their normal standards of conduct during such special event work.

Voluntary Special Event Work will be administered in accordance with Police Department Directive 22.5 related to Off Duty and Extra-Duty Employment.

ARTICLE 16
HOLIDAYS

- 16.1 It is recognized that the City will close its offices for eight (8) official holidays. The City will recognize the following as paid holidays for employees:

Thanksgiving Day
Friday after Thanksgiving
Christmas Day
New Year's Day
Martin Luther King Jr. Day
Memorial Day
Fourth of July
Labor Day

In addition to the paid holidays above, employees shall be granted additional leave as follows:

Annual Leave in the amount equal to the number of hours in the employee's regular work shift shall be added to the employee's annual leave accruals for each of the following days: Floating Holiday, Employee Birthday, Veteran's Day, and Good Friday. These hours will be credited on or around the first full pay period in January. These hours are to be scheduled and utilized in the same fashion as annual leave.

In order to qualify for the four (4) annual leave accruals for the Floating Holiday, Birthday Holiday, Veteran's Day, and Good Friday, an employee must have been employed for the entire 12 consecutive previous months.

- 16.2 The actual day of the holiday will be the observed day for all members of the bargaining unit.
- 16.3 An employee who is eligible and is not scheduled to work on one of the eight official holidays listed under 16.1 shall receive additional compensation, paid at his/her regular rate of pay, for the number of hours in his/her regular work shift.
- 16.4 An employee who is required to start his/her work shift on one of the official holidays listed under 16.1 shall receive payment at one and one half times his/her regular rate of pay for all hours that he/she works on that shift in addition to holiday pay, whether or not the employee's work shift extends into the following day.

ARTICLE 17
ANNUAL LEAVE

- 17.1 Annual leave is provided for the purpose of allowing employees time off from their work for vacation or for necessary time to attend to personal business. No employee shall be permitted to use annual leave for any period spent on unauthorized leave or participating in an unlawful work stoppage.

Annual leave shall be accrued from the most recent day of employment under the conditions hereinafter stated but no annual leave shall be granted until an employee has completed three (3) months of continuous service. An employee who is paid for less than twenty (20) hours of work in a week shall accrue no annual leave credit for such week of service. Provided, however, that the limit of twenty (20) hours shall not apply to an employee on annual leave, sick leave, or other authorized leave with pay who would otherwise have worked at least twenty (20) hours.

- 17.2 The following sections 17.2, A – D apply to current employees **hired before January 24, 2011**:

- A. Accrual for Current Full-Time Employees - 40 Hours - Full time employees working a forty (40) hour week shall accrue annual leave at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:

<u>Length of Continuous Service</u>	<u>Hours Accrued Each Year</u>
Less than 5 years	96
5 through 7 years	112
8 through 10 years	128
11 through 15 years	144
16 through 19 years	160
More than 20 years	176

- B. Accrual for Current Full-Time Employees Working Extended Shifts - 84 Hours Bi-weekly - Full time employees working extended shifts (Eighty-four [84] hours biweekly) shall accrue annual leave at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:

<u>Length of Continuous Service</u>	<u>Hours Accrued Each Year</u>
Less than 5 years	100
5 through 7 years	118
8 through 10 years	134
11 through 15 years	151
16 through 19 years	168

- C. Maximum Accrual Carryover - Annual leave normally is to be taken in the anniversary year in which it is accrued. Unused annual leave may be accumulated to a maximum of three hundred twenty (320) hours. An employee will be paid for or have deferred into the employee's ICMA-RC 457 Plan account, all accumulated annual leave balances in excess of 320 hours as of September 1st each fiscal year. This payment will be made by the last pay period in September of each year at the employee's regular rate of pay in effect on September 15th.
- D. Termination, Resignation, Retirement or Death - An employee who is terminated for cause or who resigns without a two (2) week notice shall not be eligible for compensation for any accumulated unused annual leave. An employee who resigns with a two (2) week notice or retires under the provisions of the City's pension plan (or in the event of death, his/her heirs) shall be compensated for all accumulated unused annual leave up to the maximum accrual as provided for in Section 17.2 (C). Pay for such accumulated leave shall be based on the regular hourly rate of pay of the employee at the time of termination. The employee may also have the option of deferring his or her accumulated unused leave into an ICMA-RC 457 Plan account, up to the maximum provided by law. In case of death, compensation shall be paid to the surviving spouse or the employee's estate.

17.3

The following sections 17.3 A-E apply to employees **hired after January 24, 2011**:

- A. Accrual for full time employees working a forty (40) hour week hired on or after January 24, 2011 shall accrue no more than ninety-six (96) hours of Annual Leave each year.
- B. Accrual for full time employees working extended shifts – 84 hours bi-weekly hired on or after January 24, 2011 shall accrue no more than one hundred (100) hours of Annual Leave each year.
- C. Unused annual leave may be accumulated up to a maximum accrual of three hundred twenty (320) hours. Leave in excess of three hundred twenty (320) hours effective the last full pay period in September of each successive fiscal year shall be forfeited.
- D. Probationary Period - Should a new employee, as defined in Article 10.1, fail to successfully complete his probationary period or should such employee be discharged the employee shall forfeit all accrued annual leave.
- E. Termination, Resignation, Retirement or Death An employee who is terminated for cause or who resigns without a two (2) week notice shall not be eligible for compensation for any accumulated unused annual leave. An employee who resigns with a two (2) week notice or retires under the provisions of the City's pension plan (or in the event of death, his/her heirs) shall be compensated for all accumulated unused annual leave up to 220 hours. Pay for such accumulated leave shall be based on the regular hourly rate of pay of the employee at the time

of termination. The employee may also have the option of deferring his or her accumulated unused leave into an ICMA-RC 457 Plan account, up to the maximum provided by law. In case of death, compensation shall be paid to the surviving spouse or the employee's estate.

- 17.5 Employees will be permitted to use annual leave in units of not less than one-half (1/2) hour subject to approval of their supervisor. In case of conflict, annual leave shall be granted based on seniority.

ARTICLE 18
SICK LEAVE

- 18.1 Sick leave benefits shall not be considered as a right to be used at an employee's discretion. Sick leave is an allowance granted by the City to provide employees with reasonable time off during periods of personal or family illness or injury and to attend medical appointments without loss of pay. This includes time off to recover from off-duty illness or injury that prevents an employee from being able to adequately perform their required job duties and functions. All employees desiring to utilize sick leave are required to notify their supervisor as early as possible, and at least one (1) hour in advance of their scheduled reporting time each day of their intended absence due to illness. Extenuating circumstances to the above shall be given due consideration. Such notice shall be given each day of the absence and the employee shall notify the supervisor as soon as possible of the employee's intention to return to work. Abuse of sick leave privileges shall be considered cause for disciplinary action or dismissal. The City may require a physician's certificate to authenticate an absence or to determine qualifications to resume work.
- 18.2 General Terms of Accrual - Sick leave shall be accrued from the most recent day of continuous employment under the conditions hereinafter stated. An employee who is paid for less than twenty (20) hours of work in a week shall accrue no sick leave credit for such week of service. Provided, however, that the limit of twenty (20) hours shall not apply to an employee on annual leave, sick leave, or other authorized leave with pay who would otherwise have worked at least twenty (20) hours. No employee shall be permitted to use sick leave for any period spent on unauthorized leave or participating in an unlawful work stoppage.
- Accrual for Full-Time Employees - Each full-time employee shall accrue sick leave at an equally prorated amount per pay period to yield 100.8 hours of sick leave per year. In the event an employee has worked less than a full year, the total number of accrued hours of sick leave will be reduced proportionally.
- 18.3 Accumulation of Sick Leave and Sick Leave Sell Back/Deferral
Subject to the provisions of this Agreement employees may accumulate sick leave from year to year for use in future years as needed. The maximum amount of sick leave that employees will be able to carry forward into the following year will be seven hundred fifty (750) hours. All accrued sick leave balances as of September 1st of each fiscal year in excess of the above cap shall be paid or deferred into the employee's ICMA-RC 457 Plan account or other City adopted 457 Plan (up to the maximum amount provided by law) at the rate in effect on September 1st, by last paycheck in September.
- 18.4 Sick Leave Sell Back/Deferral
Subject to the provisions of this Agreement, an employee may exchange sick leave for pay, or at their option, deferral into an ICMA-RC 457 Plan account up to the maximum provided by law, as provided herein. The maximum unused sick leave that may be exchanged in any one year is one hundred ninety-two (192) hours, provided each member maintains a balance of at least forty (40) hours of accumulated sick leave after the sick leave requested for exchange is deducted from their accumulation.

- a. For employees who have a minimum of ten (10) years of seniority with the City as of September 30 of the year in which the employees seek to exchange sick leave for pay or deferral, the following procedures shall apply to sick leave exchanges for pay:

All members must maintain a minimum balance of forty (40) hours of sick leave. Employees may exchange a maximum of one hundred ninety-two (192) hours of unused sick leave for pay or deferral into the employee's ICMA-RC 457 Plan account each year. Each employee shall receive one hour of pay or deferral at his/her regular hourly rate as of September 1 of the year that the exchange is being made for each hour of unused sick leave being cashed in or deferred.

- b. For employees who have less than ten (10) years of seniority with the City as of September 30 of the year in which the employees seek to exchange sick leave for pay, the following procedures shall apply to sick leave exchange:

All members must maintain a minimum balance of forty (40) hours of sick leave. Employees may exchange a maximum of one hundred ninety-two hours of unused sick leave for pay or deferral into the employee's ICMA-RC 457 Plan account each year. Employees who have accumulated more than forty (40) hours of sick leave but less than one hundred (100) hours which they wish to exchange may exchange that leave for pay or deferral at the rate of three (3) hours of sick leave for one (1) hour of pay or deferral.

Employees who accumulate more than one hundred (100) hours of sick leave which they wish to exchange may exchange that leave for pay or deferral at a rate of two (2) hours of sick leave for one (1) hour of pay or deferral. At all times a minimum of forty (40) hours of sick leave must be maintained in order for the employee to exchange sick leave for pay or deferral.

These payments will be processed at the employee's regular rate of pay effective on September 1. The employee must request such exchange through the Time and Absence system no later than September 1 of such fiscal year, subject to the restrictions indicated in Section 18.4. Failure to submit this form will result in an employee's accrued sick leave being "banked" for future use or pay-off as provided herein. Any sick leave taken after the filing of such request shall first be deducted from accrued sick leave "in the bank" and, secondly, from those days for which payment is sought but not yet paid.

- 18.5 All payments or deferrals for unused sick leave made under this Article shall be paid by check issued by the City on or about last paycheck received in September.
- 18.6 Employees shall not be allowed to utilize sick leave in lieu of annual leave.
- 18.7 Retirement, Resignation or Death - An employee who resigns with two (2) weeks prior notice and has a minimum of ten (10) years of service with the City, or retires under the provisions of the City's pension plan (or in the event of death, his or her heirs) shall be entitled to a lump sum payment for all unused sick leave accrued at a rate of one hour of

pay for one hour of leave. The employee may also have the option of deferring his or her payment of unused leave into an ICMA-RC 457 Plan account, up to the maximum amount provided by law.

- 18.8 An employee who is fired, dismissed or who quits and/or separates from the City for any reason other than detailed in section 18.7 shall forfeit accrued sick leave.

ARTICLE 19
OTHER LEAVE

- 19.1 **FMLA:** The City of Port Orange will grant leave to eligible employees, in accordance with Policy, as amended from time to time, is set forth in the City's Administrative Policies Manual as Policy 1-22.
- 19.2 **Military Leave:** Bargaining unit members will be allowed military leave in accordance with Policy, as amended from time to time, is set forth in the City's Civil Service Rules and Regulations, Chapter 3, Attendance and Leave, 3.07, Military Leave.
- 19.3 **Bereavement Leave:** An employee may be granted time off with pay to arrange and/or attend funeral services in the event of death(s) in the family. Such time off shall ordinarily not exceed four (4) calendar days i.e., 48 hours for extended shift employees per event, for a maximum 96 hours annually for extended shift employees and shall not be charged as annual leave or sick leave.
- Requests for time off shall be submitted in writing to the employee's supervisor when possible. Management may require the employee to verify the employee's relationship to the deceased and to provide proof of death. In the event of the need for additional time for a death, an employee may use accrued sick or vacation leave.
- 19.4 Longevity increases, if any, merit increases, if any, and any other increases, if any, for which an employee may become eligible based in whole or in part on length of service with the City shall not be credited during any period of leave of absence without pay. An employee shall return from leave of absence to the same step of his salary grade as at the time of commencement of leave of absence, except as required by law.
- 19.5 If permitted by the Retirement Plan, an employee may maintain their retirement credit during the period of an unpaid leave of absence under this Article by paying both his/her and the City's share of the Retirement Plan contributions.
- 19.6 Holidays, paid leave, and any other benefits based on time spent in the employ of the City shall not accrue (or be credited) during a leave of absence without pay. Employees shall be responsible for insurance premiums for single and dependent coverage during an unpaid leave of absence, except as required by law.
- 19.7 Any employee covered hereunder may be given educational leave for the purpose of taking courses or attending conferences and/or seminars directly related to the employee's work as determined in writing by the Department Head and the City Manager. Requests for such educational leave must be approved in writing in advance by the City Manager. The decision to grant (or not to grant) such educational leave and the determination as to whether such leave will be compensated shall be the sole and exclusive function of the City Manager and shall not be subject to the grievance and arbitration procedures of this Agreement.

- 19.8 An employee granted education leave with full pay shall be entitled to receive all City benefits in the manner as if he were on active duty during the period of the leave. Entitlement to benefits for employees on partial compensated or uncompensated educational leave shall be determined by the City Manager. Such determination shall not be subject to the grievance and arbitration procedures of this Agreement.

ARTICLE 20
JURY DUTY AND APPEARANCE AS A WITNESS

- 20.1 Any employee in the Bargaining Unit who is summoned to perform jury service during their normal working hours in any court (City, Federal, or County) shall be granted leave with pay for the time he or she is absent from work as a result of fulfilling this jury duty obligation. The employee summoned as a juror shall attach a copy of the summons to the Leave of Absence Request. An employee, who is released from jury duty prior to four (4) hours from his or her normal end of the workday, shall be required to report to their work site immediately after their release.
- 20.2 Upon proof of attending court, a deposition, or an administrative hearing during the employee's normal working hours pursuant to a subpoena or other court order involving a job-related case and not as a plaintiff or claimant in litigation against the City nor as a defendant in litigation by the City, the employee shall receive his or her regular rate of pay for such attendance. The City reserves the right to institute any procedure or system it deems appropriate to measure, record, and/or verify attendance and duration of an on-duty deposition, or court or administrative hearing appearance. The employee will sign over all subpoena and witness fees, excluding travel fees, unless City transportation is furnished in which case such travel fee will also be signed over. The employee shall provide a copy of the subpoena to his or her supervisor within twenty-four (24) hours of its service or receipt.
- 20.3 An employee subpoenaed as a witness for a court or administrative proceeding or a deposition, other than a job-related case and other than a case involving personal litigation by the employee as a plaintiff, claimant or defendant, shall be granted leave without pay to appear and testify pursuant to the subpoena. If the employee is released from the subpoena four (4) hours prior to his or her normal starting time for that workday, the employee shall be required to report to his or her work site immediately after release from such subpoena. An employee may take sick or vacation leave when subject to a subpoena under this provision. The employee shall provide a copy of the subpoena to his or her supervisor within twenty-four (24) hours of its service or receipt.
- 20.4 An employee may take vacation pay, but not sick leave, when participating in any court or administrative proceeding of a personal nature in which the employee is a claimant, plaintiff or defendant.

ARTICLE 21
AUTHORIZED USE OF PRIVATE VEHICLE

- 21.1 Any employee may be authorized to use their private automobile in the performance of official city duties. If authorized, the employee may be eligible for compensation if the use is in accordance with Policy 1-16, Use of Personal and City Vehicles for City Business and/or Policy 1-17, Travel.
- 21.2 A written claim for compensation under this Article must be submitted to the Department Head by the employee within five (5) scheduled working days following the date the private automobile was used.

ARTICLE 22
UNIFORMS AND EQUIPMENT

- 22.1 The City will provide to all Officers the following equipment and clothing and other items as necessary:
- 4 Trousers
 - 2 Long sleeve shirts
 - 1 Short sleeve shirt
 - 1 Winter jacket
 - 2 Collar insignias
 - 1 Tie
 - 1 Tie Clasp
 - 2 Badges
 - 1 Identification card and carrier
 - 1 Portable Radio and holder
 - Shoes as needed. Generally, not to exceed one pair/year unless authorized by the Chief.
 - 1 Rechargeable flashlight
 - 1 Concealed vest carrier
 - 1 Pair non-prescription sunglasses for employees in the Traffic Unit
 - 1 Bullet proof vest to be worn in accordance with Department policy
 - 1 External Load bearing vest to be worn in accordance with Department policy
 - 1 pair Handcuffs
 - 5 Summer shirts
 - 1 Baseball Cap
- 22.2 The City agrees to furnish all sworn Officers, at City expense, those replacement uniform items that are worn, torn, or damaged through normal wear and tear, rather than through negligence or misconduct.
- 22.3 Any employee who shall receive any breakage or damage to his personal equipment in the line of duty shall have it replaced at no cost to the employee, to a maximum of one hundred (\$100.00) dollars per item. However, if the employee is not negligent, then, in the case of loss or damage to prescription eyeglasses they will be replaced or repaired, as the case may be, without regard to the one hundred (\$100.00) dollar limitation.
- 22.4 The City agrees to provide each uniformed and non-uniformed-employee dry cleaning at City expense for all uniforms and business attire used for employment
- 22.5 The City and the Association agree that sworn Officers who are required to wear non-issue clothing in the course of their employment shall receive a clothing allotment. Upon initial assignment to Detective, Sworn Officers will be eligible to receive a one-time lump sum of \$500.00. Thereafter, after twelve (12) months of assignment to the Detective unit, sworn officers who are required to wear non-issue clothing, will be eligible to receive an annual payment of a clothing allotment of \$750.00 pro-rata per year. This allowance shall be paid in one installment annually paid before the last pay period in September for the

preceding years' work. Upon departure from assignment, employee will be eligible to receive the prorated share for the time in the assignment in the previous year if the amount exceeds \$150.00. If an employee works any day in a calendar month, they will be eligible for the prorated amount for that given month.

- 22.6 The City agrees to arrange to have each police vehicle maintained by a mechanic on a regular basis. The employee will be responsible for regular vehicle inspections and reporting any concerns in accordance with Department Policy.
- 22.7 City-issued uniforms and other articles of clothing are provided for wear while at work and are not to be worn for non-duty purposes.
- 22.8 The City will issue uniforms in compliance with IRS regulations pertaining to work clothes and Uniform Allowances and Reimbursements.

ARTICLE 23
WORKERS COMPENSATION, PHYSICAL EXAMINATIONS, AND HEALTH AND FITNESS

- 23.1 A bargaining unit employee who is temporarily disabled as a result of an injury sustained in the course of their employment with the City, shall be entitled to the following compensation:
- a. During such temporary, total disability, paid disability leave shall not exceed sixty (60) calendar days for any one injury. If as a direct result of the continuation of the disability involved, the employee is unable to return to work at the end of the sixty (60) calendar days, the employee shall revert to normal Workers' Compensation benefits from the Worker's Compensation Carrier.
 - b. Once an employee is receiving Worker's Compensation benefits directly from the Worker's Compensation carrier, the employee may utilize available sick and/or annual leave in order to supplement their wages for the amount not paid under the Worker's Compensation carrier. At no point shall the compensation be in excess of their normally scheduled base wage.
 - c. Leave for Worker's Compensation shall run concurrent with leave as covered under the Family Medical Leave Act (FMLA)
- 23.2 The City may direct any employee claiming disability to submit to a physical and/or mental examination conducted by a physician, psychiatrist or psychologist selected by the employee from a list of not less than three (3) physicians designated by the City. The sole purpose of such examination under this Article shall be to determine whether the employee has a physical and mental disability which impairs his effectiveness as an employee, limits his ability to perform his assigned duties, or makes his continuation in his job a danger to himself, the public, or other employees. In the event the City and a designated physician determine that a non-job-related disability does exist, the following action shall be taken:
- If the designated physician determines that the disability can be corrected, the employee shall be allowed a specified time determined by the physician to have it corrected. During this period of time and after consulting with the Department Head, the City Manager, in his discretion, may permit the employee to continue with his normal duties, or temporarily remove the employee from the City service. Should the employee be temporarily removed from the City service during the period of time specified for the correction of his disability, the employee may utilize his annual leave, sick leave, or leave without pay for the correctional period. For employees that have exhausted their paid leave prior to any exhaustion of an approved FMLA will generally be separated from service upon exhaustion of the approved FMLA leave, except as otherwise provided for by law. For employees with accrued paid leave in excess of the standard FMLA time will be able to utilize their accrued paid leave to stay in a paid status beyond the standard FMLA time, however, this period will not generally extend beyond twelve (12) months, unless an imminent return has been documented by a physician, or as otherwise provided

for by law. However, if the employee fails to take the necessary steps to have the disability corrected within the specified period of time, he shall be subject to dismissal from City service.

23.3 The City agrees that any employee injured on the job shall be paid for the employee's full schedule of hours for the day of the accident if his physician advises them that they could not or should not return to work that day. However, the City reserves the right to have the employee examined by a physician designated by the City, at no cost to the employee.

23.4 Each bargaining unit employee shall be required to complete the Physical Abilities Test (PAT) previously established by the Division of Criminal Justice Standards and Training of the Florida Department of Law Enforcement every two years. The physical abilities test measures specific physical abilities through participation in a series of job-related tasks as follows:

- A. Exiting car/enter trunk.
- B. 220 yard run.
- C. Obstacle course.
- D. Dummy drag.
- E. Obstacle course (repeat).
- F. 220 yard run (repeat).
- G. Weapon fire.
- H. Enter trunk/enter car.

The test is intended to be conducted in a continuous fashion resulting in a total composite score (i.e., time to complete the course). The test will be administered on a pass/fail basis. The employee must complete the test in 6 minutes and 30 seconds or less to pass. (Employees scoring at or above 6 minutes and 31 seconds fail.)

23.5 All bargaining unit employees shall be scheduled to take the PAT every two years.

23.6 If an employee does not pass their scheduled PAT, after a short recovery period (30 minutes), the employee will be given a chance to complete the test within the allotted time. If the employee still does not pass the test, they will be temporarily reassigned for a period not to exceed thirty (30) days to prepare and retake the test. If the employee still fails to pass the PAT, they shall be subject to discipline.

23.7 An employee who has a bona fide medical condition or injury which prevents them from taking the physical abilities test (or a portion thereof) will be dealt with on an individual basis. In all such cases, the physician conducting the annual examination under Section 23.8 below will determine the nature and extent of the employee's medical condition or injury (if such medical condition or injury is temporary); whether the test may be modified so as to accommodate the employee's medical condition while still measuring the same physical abilities; and such other medically-related issues which facilitate proper measurement of the physical abilities necessary to successfully perform the employee's job.

23.8 The parties agree that all members shall undergo an annual physical exam covered by the employee's insurance prior to the scheduling of the biennial PAT, and the doctor shall clear the individual to take the PAT. These exams may be scheduled while the employee is on duty.

In the event that it is medically determined by a physician that an employee should undertake further test procedures as a result of the City-paid annual exam in order to return to work, the employee shall not be charged sick or annual leave for any time lost as a direct result of this need for further testing. However, this shall not apply to tests that the employee might voluntarily take which are not medically determined as a result of the annual, City-paid exam.

Employees who are instructed by a physician to undertake further testing as a result of the annual, City-paid exam shall also be required to report the results of each test to the City's Administrative Services Director and complete any documentation required by the City. Failure of an employee to comply with this requirement shall cause him/her to be charged with sick leave to cover any missed work time which results from the need for further testing. The employee will be returned to active duty upon providing a physician's statement to the City's Administrative Services Director to the effect that the employee is medically fit to return to full duty.

23.9 It is acknowledged and agreed by the parties hereto that a statutory presumption exists, under Section 112.18 F. S., that any condition or impairment of health of a bargaining unit member that results in a disability, or death, was accidentally suffered in the line of duty. Therefore, the parties further acknowledge and agree that the Port Orange Police Department is a tobacco-free workplace and that it is a condition of employment that each member of this bargaining unit hired on and after January 20, 2012 refrain from the use of tobacco during the period of his or her employment with the City. New employees or those offered conditional employment with this bargaining unit, shall be required to sign an affidavit attesting that they agree to be tobacco-free throughout the term of their employment.

ARTICLE 24
ALCOHOL AND DRUG TESTING

24.1 The parties agree to work together to fully comply with the Criminal Justice Standards and Training Commission Rules (11B 27.0011 et seq., F.A.C), Florida's Drug Free Workplace Program (F.S. Sections 440.101 and 440.102), and the Florida Workers' Compensation Act. Employees will be generally governed under the City's Drug Free Workplace Policy, General Administrative Policy 1-12, as amended from time to time.

24.2 **Illegal Controlled Substances**

- A. The City prohibits employees at any time, whether on or off duty or whether on or off City property, from manufacturing, selling, attempting to sell, distributing, possessing, using, being under the influence of illegal controlled substances, or having the presence of illegal controlled substances in an individual's body. Prohibited substances consist of any controlled substances as defined by applicable state and/or federal laws. For purposes of this policy, marijuana is considered a controlled substance under federal law.
- B. The City does not distinguish between marijuana and medical marijuana for its policies. The use of marijuana in any form, including but not limited to medical marijuana used pursuant to a "physician certification" that is in compliance with Section 381.986 of the Florida Statutes, is prohibited. If an employee's drug test result is positive confirmed for marijuana due to the employee's use of medical marijuana, even if such use was pursuant to a "physician certification" that is in compliance with Section 381.986 of the Florida Statutes, will be considered a positive result.
- C. For purposes of this policy, CBD products containing tetrahydrocannabinol ("THC") are considered a prohibited substance. Use of CBD products in any form, including but not limited to oils, body creams, beverages, chocolates, and gummies, that contain THC is prohibited. If an employee's drug test result is positive confirmed for marijuana due to the employee's use of CBD products containing THC, this will be treated as a positive result. An employee who chooses to use CBD products does so at their own risk. An employee's or job applicant's violation of this policy will not be excused because they were unaware that the CBD product that was used contained THC.

24.3 **Alcohol Abuse**

- A. The City prohibits employees from using or possessing alcohol while on duty, while on the City's premises, while driving or being a passenger in a City vehicle, or while operating the City's equipment; reporting to work under the influence of alcohol; reporting to work with the presence of alcohol in an individual's body; or from otherwise using alcohol in a manner at any time that adversely affects the City's business interests.

24.4

Use of Legal Drugs

- A. The term “legal drug” means (1) a controlled substance prescribed by a licensed physician for a specific medical purpose; or (2) an over-the-counter medication that has the potential to interfere with the safe and effective performance of the employee’s duties, the operation of vehicles or equipment, or the safety of employees or the general public.
- B. Employees must notify their immediate supervisor before beginning work when they are taking a legal drug that may possibly impact an employee from safely performing their duties so that the City can evaluate the impact, if any, that the employee’s use of the legal drug may have on the safe and efficient operation of the City

24.5

Testing

- A. Reasonable Suspicion (to include Post Accident Testing)
 - a. Supervisors are responsible for monitoring employees for drug and alcohol use and other policy violations and for contacting the Police Chief or the Administrative Services Director (or designee) when there is articulable reasonable suspicion that an employee is under the influence of drugs or alcohol or otherwise using drugs on or off the job or alcohol on the job. Supervisors who have reasonable suspicion must prevent the employee from further engaging in work and from leaving the work area and must notify the employee of the need for testing. The supervisor shall provide articulable facts in writing to substantiate their reasonable suspicion.
 - b. Reasonable suspicion may be based upon, but not limited to, the following:
 - i. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of drugs or alcohol.
 - ii. Abnormal conduct or erratic behavior while at work.
 - iii. A significant deterioration in work performance.
 - iv. A report of drug or alcohol use provided by a reliable and credible source.
 - v. Evidence that an employee has tampered with a drug test during his or her employment with the City.
 - vi. Information that an employee has caused, contributed to, or been involved in an accident while at work giving rise to a reasonable suspicion of drug or alcohol use
 - vii. Evidence that an employee has used, possessed, manufactured, sold, solicited, or transferred drugs.
 - viii. Frequent absences from work without a satisfactory explanation.
 - c. In the event that the City has reasonable suspicion that an employee is under the influence of drugs or alcohol or may be in the possession of drugs or alcohol, the City reserves the right search, without employee consent, all City areas and property, including, but not limited to, an employee’s office, locker, or workspace.
- B. Follow Up Testing

- a. The City will require any employee who returns to work after successfully completing a voluntary drug or alcohol rehabilitation program to submit to drug and alcohol testing on at least a semi-annual basis for at least two (2) years as coordinated by Risk Management.

C. Random Testing

- a. Random test dates and times will not be announced and shall be spread reasonably throughout the year.
- b. Each employee in the unit shall have an equal chance of being selected for both drug and alcohol testing each and every time selections are made.
- c. The City agrees to provide the Association a list of all City employees who were selected for random testing at the end of each fiscal year upon request.

D. Testing Procedures

- a. Employees will be subject to a 10-Panel Urine Drug Screen by Immunoassay Methodology for Amphetamines, Barbiturates, Benzodiazepines, Cocaine, Methadone, Methaqualone, Opiates, Phencyclidine, Propoxyphene, and Tetrahydrocannabinol (marijuana metabolites).
- b. Procedures for testing for the presence of illegal controlled substances and alcohol shall be conducted consistent with the provisions of Section 440.102(5), (6) of the Florida Statutes and the corresponding regulations.
- c. Urine will be used for the initial test and confirmation test for controlled substances.
- d. Breath will be used as the initial test and confirmation test for alcohol.
- e. Direct observation collections, by an observer of the same gender as the employee, may be required for reasonable suspicion drug and alcohol testing.

24.6 Employees must notify their immediate supervisor, department director, or Administrative Services Director regarding any criminal drug or alcohol infraction, arrest, indictment, or conviction, as well as any resulting loss of driving privileges, within 24 hours of occurrence or as soon as reasonably possible.

24.7 Refusal to Test

- A. Employees who refuse to submit to a required test will be considered insubordinate.
- B. Refusal to submit to a required test may include, but is not limited to the following:
 - a. Failing to show at the collection site for a required test.
 - b. Inability to produce sufficient quantities of breath, saliva, or urine to be tested without a valid medical explanation.
 - c. Tampering with or attempting to adulterate the specimen.
 - d. Interfering with the collection procedure.
 - e. Not immediately reporting to the collection site. An employee must report to the testing site immediately upon notification. Immediately is defined as within thirty (30) minutes, unless otherwise authorized.
 - f. Failing to remain at the collection site until the collection process is complete.
 - g. Having a test result reported by a Medical Review Officer as adulterated or substituted.

- h. Leaving the scene of the accident without a valid reason before the tests have been conducted.

ARTICLE 25 INSURANCE

- 25.1 The City will enable the employees to insure themselves under a group life insurance plan with the amount available being one times base annual salary rounded to the next higher thousand. The employer will pay the premium.
- 25.2 The City agrees to maintain a health insurance program for the employees, with the City paying the lowest "employee only" rate among all health insurance plans with a co-pay offered. Dependent coverage will be at the employee's expense. The employee electing coverage with a plan which has a higher premium shall pay the difference in any premium charged by that carrier. Dependent coverage will also be at the employee's expense.
- 25.3 The City will continue to provide the Department with the personal injury liability and false arrest policy.

ARTICLE 26
PERSONNEL RECORDS

- 26.1 Employees covered by this Agreement shall have the right to inspect their department and official personnel files provided, however, that such inspection shall take place during working hours at the location where the official personnel file is kept. The employee shall have the right to make duplicate copies, at his own expense, of any item contained in his official personnel file. The official personnel file is maintained in the City's Human Resources Office.
- 26.2 Employees have the right to file a written response to a letter of reprimand or other document which is placed in the employee's official personnel file, as a result of supervisory action or citizen complaint. At the employee's request, any such written response shall be included in the employee's official personnel file together with the letter of reprimand or other document against which it is directed.

ARTICLE 27
TRAINING AND TUITION REIMBURSEMENT

- 27.1 The City will make every reasonable effort to enable the employee to attend required in-service training during the employee's normal working hours. When necessary to attend in-service training with schedules different from the normal work schedule, an Officer's work schedule can be adjusted with forty-eight (48) hours' notice to the Officer.
- 27.2 Where the City requires any employee to attend supervisory training and/or training in specialized police techniques and/or any other job-related training, the City will make every reasonable effort to schedule the employee attending such training during his normal working hours. When necessary to attend training classes with schedules different from the normal work schedule, an Officer's work schedule can be adjusted with forty-eight (48) hours' notice to the employee.
- For special courses, such as Basic Recruit School, employees will be required to sign an Education Agreement with the City. The Education Agreement will require an obligated length of service depending on the length and cost of the course. These classes shall be police related courses or seminars and must be approved by the City.
- 27.3 This Article shall not in any manner apply to any training required by the Florida Police Standards Board to re-obtain Police Officer certifications for purposes of employment with reinstatement to the Department in the event that such certification shall have lapsed, expired, and/or terminated.
- 27.4 Subject to budgetary constraints and availability of funds, the City agrees to reimburse the employee for tuition (excluding fees categorized as "other fees") up to two (2) approved classes per semester (fall, spring, summer). These courses may be online or in person. Employee will be reimbursed at the Daytona State College (DSC) rate. Courses will be paid on a reimbursement basis with proof of payment and grade.
- 27.5 The City will reimburse the employee for tuition (excluding fees categorized as "other fees") for graduate course work at the rate of one half (1/2) the cost of tuition for graduate course work at the University of Central Florida (UCF) rate, regardless of where the courses are taken. These courses may be online or in person. Courses will be paid on a reimbursement basis with proof of payment and grade.
- 27.6 The City will require each employee to remain in the service of the City for one (1) year after completion or termination of the most recent class paid for by the City or the employee will be required to reimburse the City for the costs of tuition unless the employee is terminated by the City. This obligation will begin on the day after the school semester is completed.
- 27.7 The decision for approval or disapproval of courses is not subject to the grievance and arbitration provisions of this Agreement. The employee shall not be reimbursed by the City if the course is not passed with a grade of "C" or better or a passing grade on a

pass/fail system or if grades are not received within three (3) months after the completion of the course.

- 27.8 All employees must pre-register with the Human Resources Division regardless of where the courses are taken, if the employee intends to apply for tuition reimbursement. The City maintains the option to refuse to pay for courses that are not directly related to a degree program or courses that have excessively high costs.
- 27.9 Employees must have completed twelve (12) months of service with the City to be eligible for taking courses as allowed under this article.
- 27.10 It is clearly understood that all tuition reimbursement is subject to budget constraints and availability of funds as predefined for tuition reimbursement. The funds assigned to this line item are for use City Wide and approval of funds will be based on a first come, first serve basis upon applying for reimbursement prior to the course beginning. All documentation must be complete when turned into the Human Resources division in order to be considered for tuition reimbursement. Notwithstanding the aforesaid, the Department Head may within his discretion, allocate from the various Police Department's operational funds to provide tuition reimbursement for employees.

ARTICLE 28
WAGES

- 28.1 Upon ratification of this agreement, for Fiscal 2021, expiring 09/30/2021, employees will be slotted into the following pay schedule:

Officers		Sergeants	
Year	Pay/Hr.	TIG	Pay/Hr.
Prob	\$19.50	Prob	\$26.00
1	\$19.84	1	\$26.52
2	\$20.19	2	\$27.05
3	\$20.54	3	\$27.59
4	\$20.90	4	\$28.14
5	\$21.55	5	\$28.71
6	\$21.98	6	\$29.28
7	\$22.42	7	\$29.87
8	\$22.87	8	\$30.46
9	\$23.33	9	\$31.07
10	\$23.79	10	\$31.69
11	\$24.27		
12	\$24.75		
13	\$25.25		
14	\$25.75		
15	\$26.27		
16	\$26.79		

- A. Employees will have their hourly rate adjusted effective upon ratification of the agreement by both parties, according to the above pay schedule. The Officer rate is based on Years of Service (YOS). The Sergeant Rate is based on Time in Grade (TIG).
- B. Until September 30, 2021 only, employees will be moved through the pay schedule as provided on their anniversary date for officers or promotion date for Sergeants (to include probationary Sergeant status). No step increases will occur beyond September 30, 2021 unless or until agreed to by the parties pursuant to re-opener negotiations as provided for in the Duration Article of this Agreement.
- C. Any employee whose current rate of pay is at a level higher than the corresponding rate of pay for the equivalent YOS/TIG will not be eligible to receive any adjustment to their pay.
- D. After ratification, current employees will be eligible to receive a one-time lump sum payment of \$500.00

- 28.2 Employees will receive no increase in pay other than what is provided for in this agreement. All future wage increases beyond the term of this collective bargaining agreement shall be subject to negotiation by the parties.
- 28.3 New hires will generally start at the minimum rate of pay established for the classification. However, if a new hire has comparable Police experience with another agency, the Police Chief may elect to bring a new hire in at a higher rate of pay commensurate with their years of experience. Any requests above YOS-5 will require concurrence by the City Manager.
- 28.4 The City performance evaluation system will be a satisfactory/unsatisfactory procedure. If the employee's performance for the previous year has been satisfactory, they will receive a rating of satisfactory. The employee will then undergo performance evaluations each year thereafter. Should the employee receive a rating of unsatisfactory, due to unsatisfactory work or performance, the employee will be placed under intensive management guidelines, and re-evaluated in ninety (90) days. If the employee has still not raised his/her performance level to satisfactory at the conclusion of this ninety (90) day period, additional counseling may be provided, and the employee may be re-evaluated at the conclusion of another extended rating period; or, the supervisor may initiate action to terminate the employee.
- 28.5 The rate of pay for promotional appointments shall be in line with the pay schedule detailed in 28.1. An Officer selected by the Police Chief for a promotion to the rank of Sergeant with more than 14 years of service as an Officer shall be promoted to the rank of Sergeant at a starting rate of the first TIG rate higher than their current officer rate.
- 28.6 In addition to wages, incentive pay, if appropriate, shall be provided in accordance with pertinent Florida Statutes or in accordance with this contract.
- a. Specialty pay will be provided to all employees who are assigned as members of a specialized or hazardous unit (division) or other groups which are herein specified as follows:

<u>Specialty Assignment</u>	<u>Amount of Pay</u>
Motorcycle Officer	\$70.00/pay period
Emergency Response Team	\$70.00/pay period
Traffic Homicide Investigator	\$70.00/pay period
Field Training Officer	\$70.00/pay period
Canine Officer	\$70.00/pay period
Drug Recognition Expert	\$70.00/pay period
Meth Team	\$70.00/pay period
Crime Suppression Team	\$70.00/pay period
Detective Assignment	\$100.00/pay period

ARTICLE 29 RETIREMENT

- 29.1 The parties hereto recognize that the employees in the Bargaining Unit are participants in a Retirement Plan of the City as provided for by Chapter 185, Florida Statutes. The Police Pension Fund Ordinance of the City is set forth in the Port Orange City Code. Pensions and other retirement benefits for Bargaining Unit employees not specifically set forth in this Labor Agreement are as set forth in the Police Pension Fund Ordinance.

The City of Port Orange agrees to maintain a retirement plan for Police Officers as required by City Ordinance.

The City agrees to maintain the benefits and member contributions set forth in the Police Pension Fund Ordinance.

There will be no change in the accrued benefits of Plan members.

Should an issue arise with the State Division of Retirement regarding any provisions in this Article, both parties agree to return to the table to negotiate the issues to resolve the issues in order to gain approval of Plan changes.

- 29.2 Mutual Consent Agreement:

In accordance with section 185.35(6), F.S., a defined contribution plan component ("share plan") shall be established as part of the defined benefit pension plan, to be funded exclusively with Ch. 185 premium tax revenues. However, the City and the Union have mutually agreed that no Ch. 185 premium tax revenues will be allocated to a share plan at this time. The share plan shall not be activated until Ch. 185 premium tax revenues are allocated to the share plan by mutual agreement of the parties. At such time as the City and Union agree to allocate Ch. 185 premium tax revenues to the share plan, the parties will negotiate the details of the share plan.

- A. All annual premium tax revenues received pursuant to Ch. 185 will continue to offset the City's pension contributions.
- B. All accumulated excess premium tax revenues as of 10/01/2016 will be used to offset the City's pension contributions.

ARTICLE 30
SEVERABILITY

- 30.1 In the event any Article, Section or portion of this Agreement should be held invalid and unenforceable by any court of competent jurisdiction, such holding shall apply only to the Article, Section or portion thereof specified in the court's decision; and all other Articles or Sections or portions not so invalidated shall remain in full force and effect. The parties may mutually agree in writing to renegotiate the affected Article, Section or portion specified in the court's decision.

ARTICLE 31
ENTIRE AGREEMENT

- 31.1 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.
- 31.2 Therefore, the City and the Association, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to, or covered in this Agreement, or the impact of decisions made with respect to matter not specifically referred to or covered in this agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the same time they negotiated or signed this Agreement.
- 31.3 However, no language in this Agreement shall preclude the parties from mutually agreeing in writing to re-open any of the provisions covered by this contract.

ARTICLE 32
DURATION OF AGREEMENT

- 32.1 This Agreement will be in full force and effect upon ratification by both parties and shall remain in full force and effect until midnight of the 30th day of September, 2023; provided, however, that in year two of the Agreement (October 1, 2021-September 30, 2022) and year three of the Agreement (October 1, 2022-September 30, 2023) Wages shall be subject to negotiations along with two Articles of the Agreement for both the City and the Union. Upon expiration of the Agreement, it shall continue in full force and effect thereafter from year to year unless notice is given in writing by either party to the other via electronic mail (email) or certified mail return receipt requested by April 1st2023, of intent to modify, terminate, or change the terms of this Agreement, except as provided hereinafter.
- 32.2 Upon expiration of year one of this Agreement all provisions of the Agreement concerning wage rate increases shall cease and shall not be considered to be part of the status quo.
- 32.3 Article 15 entitled HOURS OF WORK AND OVERTIME PAYMENT shall be subject to renegotiation by either party in the event that the Federal Fair Labor Standards Act of 1938 is amended, or federal regulations are promulgated by the United States Department of Labor with respect to overtime payment to public employees, or the provisions of this agreement concerning overtime payment should become inconsistent with federal law or regulation.

Approved this

29 day of January, 2021

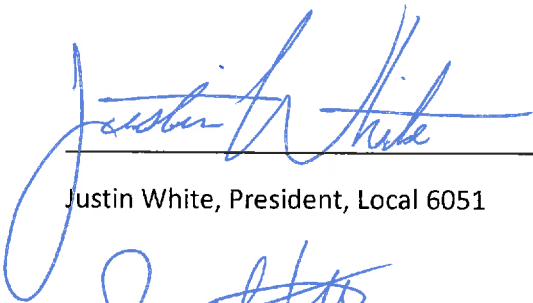
Approved this

16 day of February, 2021

INTERNATIONAL UNION OF POLICE ASSOCIATION

LOCAL 6051

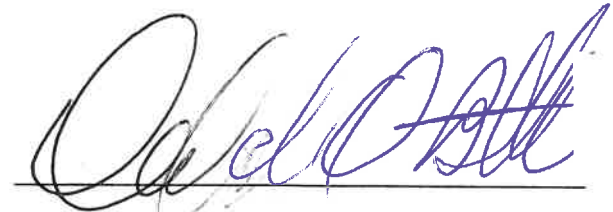
CITY OF PORT ORANGE, FLORIDA



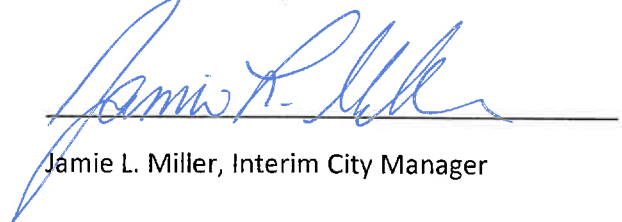
Justin White, President, Local 6051



Witness



Donald O. Burnette, Mayor



Jamie L. Miller, Interim City Manager



Attest





CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: No

SUBJECT: (F17) Second Reading - Ordinance No. 2021-24 - 21-1 Large-Scale Comprehensive Plan Amendment/Property Rights Element (Case No. 21-20000001)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance 2021-24, amending the Comprehensive Plan to create a Property Rights Element (Chapter 11), and transmittal to the State and regional agencies for review.

SUMMARY: Planning Commission Action (8/26/21): Recommended Approval (7-0)

The proposed amendment is a City initiated request to approve a Large-Scale Comprehensive Plan Text Amendment, creating a Property Rights Element in the City's Comprehensive Plan, to ensure that private property rights for property owners are considered in local decision making. House Bill 59 was approved during the 2021 legislative session and signed by Governor DeSantis on June 29, 2021 and became effective on July 1, 2021. The proposed amendment will not create any impact on residents, as the amendment is to ensure it is documented at the local level that private property rights are to be considered in all local decision making, in addition to existing protection in State and Federal law related to private property rights.

House Bill 59 included model language that a local government could use to establish the mandated property rights element in their comprehensive plan and be in compliance with House Bill 59. The Goal, Objective, and Policies listed below are consistent with the model language provided in House Bill 59 and is proposed to be included as Chapter 11 in the City's Comprehensive Plan.

CHAPTER 11 – PROPERTY RIGHTS ELEMENT

GOAL 1: TO RESPECT JUDICIALLY ACKNOWLEDGED AND CONSTITUTIONALLY PROTECTED PRIVATE PROPERTY RIGHTS.

Objective 1.1: The following policies are to ensure that private property rights shall be considered in local decision making.

Policy 1.1: The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

Policy 1.2: The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to

state law and local ordinances.

Policy 1.3: The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

Policy 1.4: The right of a property owner to dispose of his or her property through sale or gift.

The Staff Report is attached for more information.

Project No.: N/A

Funding Account No.: N/A

Presenter: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ord 2021-24 Property Rights	Ord 2021-24 Property Rights.pdf
2.	Staff Rpt_21-1CPA_Property Rights Element	Staff Rpt_21-1CPA_Property Rights Element.pdf

Robin Fenwick

Created/Initiated - 11/4/2021

ORDINANCE NO. 2021-24

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA; AMENDING THE
COMPREHENSIVE PLAN BY CREATING A NEW
PROPERTY RIGHTS ELEMENT IN ACCORDANCE WITH
SECTION 163.3177(6)(i), FLORIDA STATUTES;
PROVIDING FOR CONFLICTING ORDINANCES,
SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Section 163.3167, Florida Statutes, part of *Florida's Community Planning Act*, requires the City of Port Orange to maintain a comprehensive plan to guide its future development and growth; and

WHEREAS, Florida's *Community Planning Act* was amended during the 2021 Legislative Session by the passage of House Bill Number 59 (initially codified as Chapter Number 2021-195, *Laws of Florida*) to require every city and county within the State "to include in its comprehensive plan a property rights element." (Section 163.3177(6)(i), *Florida Statutes*); and

WHEREAS, City of Port Orange respects judicially acknowledged and constitutionally protected private property rights; and

WHEREAS, after careful review and a public hearing, the Planning Commission, sitting as the Local Planning Agency, has forwarded a recommendation to the City Council regarding this proposed amendment to the Comprehensive Plan for the City of Port Orange; and

WHEREAS, the pertinent goals, objectives and policies of the *Comprehensive Plan* support the approval of the amendment set forth in this Ordinance as well as the controlling provisions of State law; and

WHEREAS, the City Council of the City of Port Orange has received comments and proposals from the general public and held at least one public hearing with regard to the proposed amendment to the Comprehensive Plan; and

WHEREAS, the amendment to the Comprehensive Plan shall be submitted to the Volusia Growth Management Commission for a determination of consistency in accordance with Section 202.3 of the Charter of Volusia County, Florida; and

WHEREAS, the City Council hereby declares that the purpose and intent of the proposed amendment to the Comprehensive Plan is to guide future growth and development; encourage the most appropriate use of land, water, and other resources, consistent with the public interest; promote and protect the public health, safety, comfort, good order, appearance, convenience, aesthetics, and general welfare; prevent the overcrowding of land and avoid undue concentration of population; provide adequate and efficient transportation, water, sewage, drainage, fire protection, parks, recreational facilities, housing, and other services, facilities and resources; and conserve and protect natural resources within the City, while protecting private property rights; and

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

Section 1. For purposes herein, the term “Comprehensive Plan”, shall mean the Comprehensive Plan for the City of Port Orange, consisting of the two (2) volumes entitled “Comprehensive Plan City of Port Orange 2010-2025”, including Binder No. 1, consisting of ten (10) elements, including Future Land Use and Future Land Use Map; Transportation; Housing; Public Facilities; Public Schools Facilities; Coastal Zone Management; Conservation; Recreation and Open Space; Intergovernmental

Coordination; and Capital Improvements, all as adopted by Ordinance No. 1999-43, as subsequently amended by Ordinances No. 1999-46, 1999-56, 1999-57, 2000-1, 2000-8, 2000-13, 2000-25, 2000-29, 2000-41, 2001-2, 2001-21, 2001-26, 2001-28, 2001-75, 2001-76, 2001-89, 2002-7, 2002-20, 2003-3, 2003-1, 2003-22, 2003-39, 2004-34, 2004-39, 2005-1, 2005-3, 2005-13, 2005-15, 2005-25, 2005-27, 2005-30, 2005-31, 2005-49, 2006-9, 2006-16, 2006-24, 2006-41, 2006-51, 2006-53, 2007-4, 2007-14, 2007-30, 2007-48, 2007-55, 2007-57, 2007-60, 2007-61, 2008-2, 2008-8, 2008-9, 2008-12, 2008-16, 2008-19, 2008-36, 2009-3, 2009-19, 2009-20, 2010-14, 2010-20, 2010-30, 2011-24, 2011-34, 2012-8, 2012-24, 2012-30, 2013-20, 2013-25, 2014-31, 2014-32, 2015-42, 2015-44, 2016-6, 2016-20, 2016-24, 2016-26, 2017-4, 2017-33, 2018-10, 2018-15, 2018-18, 2018-20, 2018-29, 2018-30, 2019-11, 2019-21, 2019-23, 2019-33, 2019-41, 2020-2, 2020-5, 2020-11, 2020-14, 2020-22, 2020-34, 2020-39, 2021-1, 2021-14, and this ordinance.

Section 2. The City Council hereby adopts and incorporates into this Ordinance the recitals (whereas clauses) to this Ordinance as well as City staff report relating to this Ordinance as the legislative findings of the City Council.

Section 3. This Ordinance is internally consistent with the goals, objectives and policies of the Comprehensive Plan of the City of Port Orange.

Section 4. The City Council hereby adopts an amendment to the Comprehensive Plan of the City of Port Orange thereby creating the property rights element as set forth in **EXHIBIT “A”**, attached hereto and made a part of this Ordinance as if fully set forth herein.

Section 5. The Community Development Director or designee is hereby authorized to transmit copies of the proposed amendment to the Comprehensive Plan City of Port Orange 2010-2025 to the appropriate agencies and to any other unit of local government.

Section 6. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 7. 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 8. This ordinance shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of

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

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

EXHIBIT "A"

COMPREHENSIVE PLAN
PROPERTY RIGHT ELEMENT

Policy Document

CHAPTER 11: PROPERTY RIGHTS ELEMENT

TABLE OF CONTENTS

Chapter 11: PROPERTY RIGHTS ELEMENT 1

GOALS, OBJECTIVES, AND POLICIES 2

GOALS, OBJECTIVES, AND POLICIES

GOAL: TO RESPECT JUDICIALLY ACKNOWLEDGED AND CONSTITUTIONALLY PROTECTED PRIVATE PROPERTY RIGHTS.

Objective 1: The following policies are to ensure that private property rights shall be considered in local decision making.

Policy 1.1: The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.

Policy 1.2: The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.

Policy 1.3: The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

Policy 1.4: The right of a property owner to dispose of his or her property through sale or gift.



STAFF REPORT

21-1 Large-Scale Comprehensive Plan Amendment/
CASE NO. 21-20000001

REQUEST:	Amend the Comprehensive Plan to create a Property Rights Element in compliance with House Bill 59.
APPLICANT:	City of Port Orange
STAFF CONTACT:	Penelope Cruz, Planning Manager, (386) 506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval (August 26, 2021)
CITY COUNCIL:	September 21, 2021

OVERVIEW

The proposed amendment is a City initiated request to approve a Large-Scale Comprehensive Plan Text Amendment, creating a Property Rights Element in the City's Comprehensive Plan, to ensure that private property rights for property owners are considered in local decision making. House Bill 59 was approved¹ during the 2021 legislative session and signed by Governor DeSantis on June 29, 2021 and became effective on July 1, 2021. The proposed amendment will not create any impacts for residents, as the amendment is to ensure it is documented at the local level that private property rights are to be considered in all local decision making, in addition to existing protection in State and Federal law related to private property rights.

DISCUSSION

House Bill 59 mandates all local governments to adopt a Property Rights Element as part of their comprehensive plan. According to House Bill 59, prior to the City processing the next city-initiated or private property landowner-initiated amendment to the City's Comprehensive Plan, the City must add a property rights element to the comprehensive plan. Therefore, this essentially means that any development proposal that requires a comprehensive plan amendment is under a moratorium until the City adds a property rights element into their Comprehensive Plan. Staff has initiated this amendment as there are pending private property owner-initiated and City-initiated Future Land Map amendment requests that would not be able to be processed until the property rights element is added into the City's Comprehensive Plan.

House Bill 59 included model language that a local government could use to establish the mandated property rights element in their comprehensive plan and be in compliance with House Bill 59. Staff is proposing the following Goal, Objective, and Policies be included as Chapter 11 in the City's Comprehensive Plan to ensure private property

¹ House Vote 82 Yeas - 32 Nays; Senate Vote 38 Yeas - 0 Nays

rights are considered in all local decision making and comply with House Bill 59. The Goal, Objective, and Policies listed below are consistent with the model language provided in House Bill 59:

PROPOSED AMENDMENT

CHAPTER 11 – PROPERTY RIGHTS ELEMENT

GOAL 1: TO RESPECT JUDICIALLY ACKNOWLEDGED AND CONSTITUTIONALLY PROTECTED PRIVATE PROPERTY RIGHTS.

Objective 1.1: The following policies are to ensure that private property rights shall be considered in local decision making.

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Policy 1.3: The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.

Policy 1.4: The right of a property owner to dispose of his or her property through sale or gift.

RECOMMENDATION

Staff recommends approval of the proposed amendment to the City's Comprehensive Plan to create a Property Rights Element (Chapter 11) in compliance with House Bill 59.

Attachments

Exhibit A - House Bill 59 (see the highlighted State mandate)

Exhibit A

CHAPTER 2021-195

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 59

An act relating to growth management; amending s. 163.3167, F.S.; specifying requirements for certain comprehensive plans effective, rather than adopted, after a specified date and for associated land development regulations; amending s. 163.3177, F.S.; requiring local governments to include a property rights element in their comprehensive plans; providing a statement of rights which a local government may use; requiring a local government to adopt a property rights element by the earlier of its adoption of its next proposed plan amendment initiated after a certain date or the next scheduled evaluation and appraisal of its comprehensive plan; prohibiting a local government's property rights element from conflicting with the statement of rights contained in the act; amending s. 163.3237, F.S.; providing that the consent of certain property owners is not required for development agreement changes under certain circumstances; providing an exception; amending s. 337.25, F.S.; requiring the Department of Transportation to afford a right of first refusal to certain individuals under specified circumstances; providing requirements and procedures for the right of first refusal; amending s. 380.06, F.S.; authorizing certain developments of regional impact agreements to be amended under certain circumstances; providing retroactive applicability; providing a declaration of important state interest; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(3) A municipality established after the effective date of this act shall, within 1 year after incorporation, establish a local planning agency, pursuant to s. 163.3174, and prepare and adopt a comprehensive plan of the type and in the manner set out in this act within 3 years after the date of such incorporation. A county comprehensive plan is controlling until the municipality adopts a comprehensive plan in accordance with this act. A comprehensive plan for a newly incorporated municipality which becomes effective ~~adopted~~ after January 1, 2016 ~~2019~~, and all land development regulations adopted to implement the comprehensive plan must incorporate each development order existing before the comprehensive plan's effective date, may not impair the completion of a development in accordance with such existing development order, and must vest the density and intensity approved by such development order existing on the effective date of the comprehensive plan without limitation or modification.

Section 2. Paragraph (i) is added to subsection (6) of section 163.3177, Florida Statutes, to read:

163.3177 Required and optional elements of comprehensive plan; studies and surveys.—

(6) In addition to the requirements of subsections (1)-(5), the comprehensive plan shall include the following elements:

(i)1. In accordance with the legislative intent expressed in ss. 163.3161(10) and 187.101(3) that governmental entities respect judicially acknowledged and constitutionally protected private property rights, each local government shall include in its comprehensive plan a property rights element to ensure that private property rights are considered in local decisionmaking. A local government may adopt its own property rights element or use the following statement of rights:

The following rights shall be considered in local decisionmaking:

1. The right of a property owner to physically possess and control his or her interests in the property, including easements, leases, or mineral rights.
2. The right of a property owner to use, maintain, develop, and improve his or her property for personal use or for the use of any other person, subject to state law and local ordinances.
3. The right of the property owner to privacy and to exclude others from the property to protect the owner's possessions and property.
4. The right of a property owner to dispose of his or her property through sale or gift.

2. Each local government must adopt a property rights element in its comprehensive plan by the earlier of the date of its adoption of its next proposed plan amendment that is initiated after July 1, 2021, or the date of the next scheduled evaluation and appraisal of its comprehensive plan pursuant to s. 163.3191. If a local government adopts its own property rights element, the element may not conflict with the statement of rights provided in subparagraph 1.

Section 3. Section 163.3237, Florida Statutes, is amended to read:

163.3237 Amendment or cancellation of a development agreement.—A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. A party or its designated successor in interest to a development agreement and a local government may amend or cancel a development agreement without securing the consent of other parcel owners whose property was originally subject to the development agreement, unless the amendment or



CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 11/16/2021

Consent item: No

SUBJECT: (G18) Update on the REC Project

DEPARTMENT: Parks & Recreation

GOAL: Organizational Excellence

RECOMMENDED MOTION: No action required.

SUMMARY: The Parks and Recreation Department will present a brief video update on the REC project.

Project No.: n/a

Funding Account No.: n/a

Presenter: Susan Lovallo

ATTACHMENTS:

Robin Fenwick	Created/Initiated - 10/6/2021
Susan Lovallo	Approved - 10/29/2021
Wayne Clark	Approved - 11/4/2021
Robin Fenwick	Final Approval - 11/4/2021
