



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

OCTOBER 4, 2022

AGENDA

ALL CITIZENS DESIRING TO ADDRESS THE PORT ORANGE CITY COUNCIL DURING PUBLIC PARTICIPATION SHOULD COMPLETE THE 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 Pastor Mike Swingle of First Baptist Church of Harbor Oaks
2. Pledge of Allegiance
3. Roll Call

B. HURRICANE IAN UPDATE

4. Resolution No. 22-32 - Budget Resolution for Hurricane Ian

C. CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only
6. Agenda Approval
7. Approval of Minutes
 - a. September 20, 2022 - Regular City Council Meeting
 - b. September 21, 2022 - Special City Council Meeting
 - c. September 26, 2022 - Special City Council Meeting
8. Bid Awards and Contract Items
 - a. Waiver of Bidding Requirements and Approval of License Agreement for Kayak, Paddleboard, and Small Sailboat Rentals at Riverwalk Park with Sandypoint Progressive Sports
 - b. Approval of Third Party Access and Use Agreement with Zoll Data Systems Inc. for Fire Reports and EMS Charts
 - c. Approval of License Agreement for Concession at Riverwalk with Hoffman & Capell, LLC

9. Granting of Easement for TECO gas line at City Center
10. Approval of Proportionate Fair-Share Agreement for O2B Kids Childcare Facility Site Plan (Case No. 22-80000004)
11. Approval of Major Special Event Request for Biketoberfest 2022 from The Doghouse Bar and Grill at 3400 S. Nova Road
12. Approval of Major Special Event Request for the Daytona's Original First Turn Biketoberfest Event at 5164, 5204, and 5236 South Ridgewood Avenue
13. Approval and Ratification of the National Association of Government Employees (NAGE) 2022-2025 Collective Bargaining Agreement

D. PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

E. COUNCIL COMMENTS

14. Comments/Concerns from Council Members

F. PROCLAMATIONS

15. Domestic Violence Awareness Month

G. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

16. Environmental Advisory Board Report

H. PUBLIC HEARING

17. First Reading - Ordinance No. 2022-27 - Sixth Amendment to the Master Development Agreement for the Crystal Lake Planned Unit Development / Case No. 21-40000002

I. REGULAR AGENDA

18. First Reading - Ordinance No. 2022-25 - Revising Article VI. - Peddlers, Solicitors, and Transient Merchants

J. ADDITIONAL ITEMS

19. City Attorney
20. City Manager

K. COUNCIL COMMITTEE REPORTS

21. City Council Committee Reports
 - a. River to Sea TPO - Council Member Reed Foley

b. General Employees' Pension Plan - Vice Mayor Scott Stiltner

L. 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.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (B4) Resolution No. 22-32 - Budget Resolution for Hurricane Ian

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 22-32.

SUMMARY: Hurricane Ian's winds and historic rains resulted in widespread damage throughout the city. With 18 to 24 inches of rain over a 24-hour period, the city experienced significant flooding, necessitating evacuations to emergency shelters in some areas. Recovery efforts have been ongoing and, in addition to the standing water, numerous downed trees have blocked roads and staff are currently working to clean city facilities and parks. The initial estimation is that there is approximately \$1.3 million in damage to city parks and facilities. Also, the initial estimate for the debris hauling and monitoring is \$1.5 million.

This \$2 million budget amendment is to fund initial repairs, insurance deductibles, damaged equipment replacement and the debris hauling and monitoring contracts.

Staff will be working with State of Florida and FEMA representatives to navigate the required public assistance programs with the assistance of a consultant. They will assist staff to provide applicable documentation, technical assistance, and negotiations required to maximize the eligible activities to be funded by the Public Assistance Program including, Categories A through G, 406 mitigation and the 404 (HMGP) Grant Programs awarded to the State.

We will work with our consultant to provide support and Federal program expertise to identify all eligible activities for FEMA / Federal Funding to repair, restore, and mitigate the local public infrastructure impacted and vulnerable to the hazards of current and future incidents. By working with our consultant, they shall work with the State Level Grantee and FEMA to maximize the eligible Public Assistance recovery and HMGP mitigation activities and shall assist in identifying other federal or state level funding sources that may also be utilized, such as the Natural Resources Conservation Services (NRCS), Housing and Urban Development (HUD) and United States Environmental Protection Agency (USEPA) and support with grant development and submittal.

PRESENTER: John McKinney

ATTACHMENTS:

1.	Budget Resolution No. 22-32	Budget Resolution No. 22-32.pdf
2.	Exhibit A to Resolution No. 22-32	Exhibit A to Resolution No. 22-32 .pdf

Robin Fenwick	Created/Initiated - 10/2/2022
John McKinney	Approved - 10/2/2022
Matthew Jones	Approved - 10/2/2022
Wayne Clark	Approved - 10/3/2022
Robin Fenwick	Final Approval - 10/3/2022

RESOLUTION NO. 22-32

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, PERTAINING TO HURRICANE IAN BUDGET ADJUSTMENTS FOR FISCAL YEAR 2022-23; PROVIDING FOR APPROVAL OF 2022-2023 BUDGET ADJUSTMENTS; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 21, 2022, the City of Port Orange, adopted Resolution 22-30, approving the City's total operating and capital budgets for Fiscal Year 2022-23; and

WHEREAS, in order to recognize unanticipated revenues and expenditures related to Hurricane Ian, it is necessary to make adjustments to the City's 2022-23 operating budget.

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

Section 1. Approval of 2022-2022 Budget Adjustments. The City's 2022-23 Operating Budget is hereby adjusted as set forth in **Exhibit "A"** attached hereto. As applicable, the transfer of funds may be made from any legally acceptable source.

Section 2. The budget items adopted in the preceding section shall govern the expenditures relating to such items for the City during the ensuing fiscal year effective October 1, 2022 through September 30, 2023.

Section 3. Supplemental appropriations, reductions of appropriations, emergency appropriations, and interdepartmental transfers of appropriations may be affected by the City Council and the City Manager as deemed necessary in strict compliance with the procedures

specified in Chapter 2, Article VI, Division 3, Code of Ordinances, City of Port Orange, Florida.

Section 4. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

Section 5. 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



Exhibit "A"

AMENDED BUDGET FISCAL YEAR 2022 - 23

Fund	Description	Resolution 22-30	Resolution 22-32	Amended Budget
001	General	48,601,261	2,000,000	50,601,261
019	Federal Disaster Funds	9,981,987	2,000,000	11,981,987
102	Tax Increment - Eastport	416,282		416,282
103	Tax Increment - Town Center	430,819		430,819
106	Recreational Facilities	235,700		235,700
109	Building Special Revenue	2,999,775		2,999,775
110	CDBG Special Revenue	777,846		777,846
199	Grant Special Revenue	286,379		286,379
214	Debt Srvs GO	901,154		901,154
217	Debt Srvs Eastport Tax Note	236,885		236,885
218	Debt Srvs Town Center Bonds	402,609		402,609
220	Debt Srvs Bonds	1,150,525		1,150,525
301	Capital Projects	2,826,909		2,826,909
306	Transp Cap Projects	150,250		150,250
311	Fire Impact Fee	448,000		448,000
312	Transp Impact Fee	551,696		551,696
317	General Cap Rplcmnt	11,037,097		11,037,097
401	Water / Sewer	29,135,000		29,135,000
403	W / S R&R	15,560,000		15,560,000
405	W / S Impact Fee	165,000		165,000
410	Solid Waste	9,187,000		9,187,000
412	Drainage	5,703,074		5,703,074
414	Drainage Bond Sinking	2,110,640		2,110,640
416	Wetland Mitigation	699,004		699,004
417	Water/Sewer Bond Debt Srvs	53,945		53,945
418	SRF Debt Service	1,698,982		1,698,982
420	Forestry	397,004		397,004
450	Golf Course Operating	1,898,806		1,898,806
501	Information Technology	2,686,580		2,686,580
503	Vehicle Maintenance	1,296,831		1,296,831
504	Risk Management	2,419,833		2,419,833
505	Lease & Replacement	2,893,815		2,893,815
506	Building Maint	2,620,347		2,620,347
508	Loan Pool	179,509		179,509
606	Police Benefit Trust	4,900		4,900
607	Police Forfeiture	62,000		62,000
611	Recreation Impact Fee	27,000		27,000
615	Police Education Trust	10,000		10,000
621	Recreation Scholarship	27,300		27,300
625	Federal Police Forfeiture	50,000		50,000
Grand Total:		160,321,744	4,000,000	164,321,744

**Exhibit "A" DETAIL FOR RES. 2022-32
STAFF RECOMMENDED ADJUSTMENTS**

FUND	ACCOUNT DESCRIPTION	PROPOSED ADJUSTMENT	Description
GENERAL FUND - 001	PRIOR YEAR FUND BALANCE	2,000,000	HURRICANE IAN STORM DAMAGE
	REVENUES	2,000,000	
	TRANSFER OUT TO FUND 019	2,000,000	HURRICANE IAN STORM DAMAGE
	EXPENDITURES	2,000,000	
FEDERAL DISASTER - 019	TRANSFER IN FROM FUND 001	2,000,000	HURRICANE IAN STORM DAMAGE
	REVENUES	2,000,000	
	BUDGET CONTINGENCY - HURRICANE IAN	2,000,000	HURRICANE IAN STORM DAMAGE
	EXPENDITURES	2,000,000	
	REVENUES	4,000,000	
	EXPENDITURES	4,000,000	
	VARIANCE	-	

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
SEPTEMBER 20, 2022

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 Kari Niedermaier of All Saints Lutheran Church

Pledge of Allegiance

Roll Call

Present: Council Member Reed Foley
Council Member Chase Tramont
Council Member Drew Bastian
Vice Mayor Scott Stiltner
Mayor Donald Burnette

Also Present: City Manager Wayne Clark
City Attorney Matthew Jones
City Clerk Robin Fenwick
Assistant City Clerk Tracee Cody

PROCLAMATIONS

4. Childhood Cancer Awareness Month

Vice Mayor Scott Stiltner read the proclamation for Childhood Cancer Awareness month and Mayor Don Burnette presented it to Laurie Parker.

CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only

There were none.

6. Agenda Approval

Item 8(b) was removed from the Consent Agenda for further discussion by Vice Mayor Scott Stiltner.

Motion to approve the Agenda as amended was made by Vice Mayor Scott Stiltner and Seconded by Council Member Reed Foley. Motion carried unanimously by voice vote.

7. Approval of Minutes
 - a. September 6, 2022 - Regular City Council Meeting
 - b. September 7, 2022 - Special City Council Meeting
8. Bid Awards and Contract Items
 - a. Approval of Amendment and Renewal No. 2 with G&G Outdoors, LLC for the Standard Contract for Services (CA7285) relating to the City Landscape Maintenance Services for the Police Shooting Range
 - b. Approval of Amendment No. 2 to the Standard Contract for Services with Sparks Concrete, LLC (CA6825) under ITB #19-02 Concrete Installation, Repairs, and Replacement
 - c. Approval of Change Order No. 1 to Standard Contract for Services (CA7244) with Kimley Horn & Associates for RFSQ 20-02, 20-Inch Force Main River Crossing Design
 - d. Approval of Task Authorization No. 1 under the Master Contract for Professional Engineering Services CA7763 to Zev Cohen and Associates, Inc for services relating to the Design and Bidding Assistance for the City Center Exterior Improvement Project.
 - e. Approval of Task Authorization No. 2 with Zev Cohen & Associates, Inc. under the Master Contract for Professional Engineering Services (CA7763) for Jackson St. and Oak St. Stormwater Improvements Design and Bidding Assistance Services
 - f. Approval of Amendment No. 2 & Renewal No. 1 with VerdeGo LLC (CA6897) for - Major Thoroughfare Landscaping Maintenance (ITB 19-18)
 - g. Approval of Change Order No. 2 to Brightly Software Inc. (Formerly Dude Solutions, Inc.) Piggyback Agreement for Community Development Permit Software Project (SmartGov)
 - h. Approval of one-month extension to the Annual Service and Trap Neuter Release (TNR) Agreement with Halifax Humane Society (HHS)
 - i. Approval to Renew the City's Property and Casualty Insurance / Loss Control and Prevention Services
9. Resolution No. 22-27- Partial Utility Easement Vacation at Lot 24, Brandy Hills Unit 1 Subdivision (24 Tula Drive)
10. FY 2022 Utility Billing and Accounts Receivable Accounting Adjustment
11. Approval of Proportionate Fair-Share Agreement for Shoppes at Summer Trees Site Plan (Case No. 22-800000001)

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

Item #8(b) - Mayor Don Burnette asked if there is anything that can be done to improve the number of concrete bids received. Wayne Clark, City Manager, explained the challenge that the City doesn't do a large enough volume to get more bids but it will be re-bid later in the fiscal year. Mayor Don Burnette asked to review doing concrete work in-house.

Motion to approve Item #8(b) was made by Vice Mayor Scott Stiltner and Seconded by Council Member Chase Tramont. Motion carried unanimously by voice vote.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Joseph Adazzio, citizen, spoke regarding the concerns discussed at their HOA meeting relating to overgrowth of foliage, weeds, etc. at Southwinds Drive and Madeline Avenue. Mayor Don Burnette asked the City Manager to address the concerns with Staff.

COUNCIL COMMENTS

12. Comments/Concerns from Council Members

Mayor Don Burnette spoke regarding the 9/11 ceremony and thanked Halifax Health for the invitation.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

13. Citizen Advisory Committee for TPO

Bobby Ball, CAC member, provided an update from their recent meeting.

PUBLIC HEARING

14. Second Reading - Ordinance No. 2022-23 - Prohibiting Smoking and Vaping in City Parks

Mayor Don Burnette read Ordinance No. 2022-23.

ORDINANCE NO. 2022-23

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 50 OF THE CODE OF ORDINANCES, TO ESTABLISH SECTION 50-40, PROHIBITING SMOKING AND VAPING IN PARKS; PROVIDING FOR EXCEPTIONS; PROVIDING FOR DEFINITIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2022-23 was made by Vice Mayor Scott Stiltner and Seconded by Council Member

Chase Tramont. Motion carried
unanimously by roll call vote.

15. First Reading – Ordinance No. 2022-24 - Rezoning/904 Taylor Road
(Case No. 22-60000005)

Mayor Don Burnette read Ordinance No. 2022-24.

ORDINANCE NO. 2022-24

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA
COUNTY, FLORIDA, REZONING PROPERTY CONSISTING OF
APPROXIMATELY +3.2 ACRES FROM COMMUNITY
COMMERCIAL (CC) TO GOVERNMENT/PUBLIC USE (GPU);
AUTHORIZING REVISION OF THE OFFICIAL ZONING ATLAS;
AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2022-24
was made by Vice Mayor Scott Stiltner
and Seconded by Council Member
Chase Tramont.

Gideon Smith, Planner, spoke regarding the rezoning request.

Motion carried unanimously by roll call
vote.

ADDITIONAL ITEMS

16. City Attorney

There was nothing further.

17. City Manager

There was nothing further.

COUNCIL COMMITTEE REPORTS

18. City Council Committee Reports

a. First Step Shelter - Council Member Chase Tramont provided details
from their recent meeting.

b. ArtHaus - Council Member Chase Tramont had nothing to report. Staff is
working with them to revise the contract.

c. Port Orange/South Daytona Chamber of Commerce - Mayor Don Burnette
advised the meeting was rescheduled for Friday, September 23.

Regular City Council Meeting

September 20, 2022

Page **5** of **5**

d. Roundtable of Elected Officials - Mayor Don Burnette advised the meeting was canceled.

e. Fire Pension Plan - Council Member Reed Foley provided details from their recent meeting.

ADJOURNMENT - 6:56 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, MMC
City Clerk

SPECIAL CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
SEPTEMBER 21, 2022

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

Silent Invocation

Pledge of Allegiance

Roll Call	Present:	Council Member Reed Foley Council Member Chase Tramont Council Member Drew Bastian Vice Mayor Scott Stiltner Mayor Donald Burnette
	Also Present:	City Manager Wayne Clark City Attorney Matthew Jones City Clerk Robin Fenwick Assistant City Clerk Tracee Cody

DISCUSSION / ACTION

4. Discussion on Final City Millage and Final City Budget for FY 2023

Mayor Don Burnette announced the public hearing has convened to discuss the millage rate and budget. The Fiscal Year (FY) 2023 Budget commences on October 1, 2022 and continues through September 30, 2023. We will begin with the City of Port Orange City Council discussion of the final millage necessary to fund the FY2023 Final budget for the City of Port Orange. The City of Port Orange is the taxing authority and the current year taxable value for operating purposes is \$4,513,302,821. The rolled-back millage rate is \$4.4557 mills per \$1,000 of valuation. The tentative millage rate is \$4.8610 mills per \$1,000 of valuation which represents a 9.10% increase in ad valorem tax revenues above the rolled-back rate. In addition to the foregoing final millage levy, there is a voter-approved millage levy of 0.2100 mills necessary to fund the debt service payments on the 2006 general obligation bonds for public safety capital facilities which were refunded in 2016.

Mayor Don Burnette asked the City Manager to comment on the increase in millage over the rolled-back rate and the specific purposes for the increase. Wayne Clark, City Manager, explained the increase needed to fund increases guided by the City's Strategic Plan, which prioritizes the voter-approved minimum wage increase, infrastructure improvements, and provides high-quality core services. Project funding that is in this budget includes \$1 million in Town West Blvd improvements, \$397,000 in ball field lamp replacement, \$8 million in City Hall building renovations, \$965,000 in

Jackson Street Drainage improvements, and \$16 million in water/sewer system improvements.

Mayor Don Burnette asked Council for discussion relating to the reasons for the increase in the final millage above the rolled-back rate. There were no comments.

There were no public comments and Council had no revisions to the proposed final budget as presented.

5. Resolution No. 22-29 - Adopting the Final Millage Rate for FY 2023

Mayor Don Burnette read Resolution No. 22-29.

RESOLUTION NO. 22-29

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; ADOPTING THE FINAL AD VALOREM PROPERTY TAX MILLAGE RATES TO BE LEVIED FOR FISCAL YEAR 2023 (OCTOBER 1, 2022 TO SEPTEMBER 30, 2023); PROVIDING FOR SCRIVENER'S ERRORS: AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Resolution No. 22-29 was made by Vice Mayor Scott Stiltner and Seconded by Council Member Drew Bastian. Motion carried 3-2 by roll call vote with Council Members Reed Foley and Chase Tramont voting no.

6. Resolution No. 22-30 - Adopting the Final Budget for FY 2023

Mayor Don Burnette read Resolution No. 22-30.

RESOLUTION NO. 22-30

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; ADOPTING THE FINAL BUDGET FOR FISCAL YEAR 2023 (OCTOBER 1, 2022 TO SEPTEMBER 30, 2023) FOR THE CITY OF PORT ORANGE; PROVIDING FOR APPROPRIATION AND PROCEDURES; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Resolution No. 22-30 was made by Vice Mayor Scott Stiltner and Seconded by Council Member Drew Bastian. Motion carried 3-2 by roll call

vote with Council Members Reed Foley
and Chase Tramont voting no.

Mayor Don Burnette announced the budget includes all operating and capital costs for FY 2023. This budget includes the General, Special Revenue, Debt Service, Capital, Enterprise, and Internal Service Funds. The proposed City-wide FY 2023 budgets for all funds is \$160,321,744.

ADJOURNMENT - 5:37 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, MMC
City Clerk

SPECIAL CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
SEPTEMBER 26, 2022

THE SPECIAL CITY COUNCIL MEETING of the City of Port Orange was called to order by Mayor Donald O. Burnette at 3:30 p.m.

Silent Invocation

Pledge of Allegiance

Roll Call	Present:	Council Member Chase Tramont Council Member Drew Bastian Vice Mayor Scott Stiltner Mayor Donald Burnette
	Absent:	Council Member Reed Foley
	Also Present:	City Manager Wayne Clark Assistant City Attorney Carly Meek City Clerk Robin Fenwick Assistant City Clerk Tracee Cody

DISCUSSION / ACTION

4. Resolution No. 22-31 - Declaring a State of Local Emergency – Hurricane Ian

Mayor Don Burnette read Resolution No. 22-31.

RESOLUTION NO. 22-31

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, DECLARING A STATE OF LOCAL EMERGENCY; AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO EXERCISE EMERGENCY MANAGEMENT POWERS; RATIFYING ALL ACTIONS TAKEN IN PREPARATION FOR HURRICANE IAN; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Resolution No. 22-31 was made by Vice Mayor Scott Stiltner and Seconded by Council Member Drew Bastian.

Mayor Don Burnette provided an update as to the City's preparations as well as the County's and School Board's.

Motion carried unanimously by roll call
vote.

ADJOURNMENT - 3:35 p.m.

Attest:

Mayor Donald O. Burnette

Robin Fenwick, MMC
City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (C8a) Waiver of Bidding Requirements and Approval of License Agreement for Kayak, Paddleboard, and Small Sailboat Rentals at Riverwalk Park with Sandypoint Progressive Sports

DEPARTMENT: Parks & Recreation

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to waive bidding requirements and approve a license agreement with SandyPoint Progressive Sports and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: Sandypoint Progressive Sports provides kayak, paddleboard, and small sailboat rentals at Riverwalk Park. They are the City's original vendor at this location and have been providing these services since 2016. Sandypoint has been a very good tenant, assists the department with daily maintenance, provides free rentals during our Get-Fit program, and has been very responsive to the community looking to rent these types of items. They currently pay \$200 per month and provide a great service for our residents and visitors.

Staff is requesting that the bidding requirements be waived and a new License Agreement be granted for five years with one additional five-year renewal. Staff recommends keeping the terms of the existing agreement, including a \$200 monthly fee.

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	Sandy Point License Agreement Effective September 6, 2022	Sandy Point License Agreement Effective September 6, 2022.pdf
----	---	---

Susan Lovallo	Created/Initiated - 8/15/2022
Susan Lovallo	Approved - 8/15/2022
Jill Poolman	Approved - 8/16/2022
John McKinney	Approved - 8/23/2022
Matthew Jones	Approved - 9/23/2022
Wayne Clark	Approved - 9/26/2022

This Document Prepared by:

Shannon K. Balmer
Assistant City Attorney
1000 City Center Circle
Port Orange, FL 32129

A Portion of Parcel No: 6303-10-01-0011

LICENSE AGREEMENT

THIS **LICENSE AGREEMENT** is made and entered into this ____ day of _____, 2022, by and between the City of Port Orange, Florida, a chartered municipal corporation ("City"), 1000 City Center Circle, Port Orange, FL 32129, ("Licensor"), and Sandy Point Progressive Sports, Inc., whose mailing address is 3090 S. Ridgewood Avenue, S. Daytona, FL 32119, ("Licensee").

PREMISES

WHEREAS, the Licensor is the owner of real property located at 3441 S. Ridgewood Avenue, Port Orange, Florida 32127, commonly known as the Riverwalk Park Phase I, hereinafter referred to as the "Subject Property", and described on **Exhibit "A"**; and

WHEREAS, the Licensor has constructed improvements at the Subject Property which include a +/- 400 sq. ft. concession/vendor building with two restrooms, a 30' wide canoe/kayak launch, a canoe kayak rack area, and public parking, hereinafter referred to as the "License Areas", as depicted on the attached **Exhibit "B"**; and

WHEREAS, the Licensee was a successful bidder to the City's RFP #16-27 to provide water recreation rental operations to the public, and the Parties have completed a successful six (6) year License Agreement; and

WHEREAS, the Parties desire to enter into a new License Agreement for the continuation of the services described herein; and

Licensee hereby warrants to the City that the Licensee has full power and authority to enter into this Agreement, and that the Licensee agrees to be bound by the terms and conditions hereof; and

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. Use. The City hereby grants to the Licensee a license to access the Subject Property described on Exhibit "A", and to the non-exclusive use of the License Areas, as shown on Exhibit "B", subject to the terms and conditions herein contained, for the purpose of operating a water recreation rental operation ("License").

2. Term. Notwithstanding the date of execution, this License Agreement shall commence on September 6, 2022 and shall continue for a period of two (2) years, with two

optional two (2) year extensions thereafter, upon City Manager approval. Notwithstanding the foregoing, either party may terminate this License at any time by giving sixty (60) days' written notice to the other party. At the expiration or earlier termination of this License, Licensee shall immediately cease use of the License Areas and remove any personal property located thereon.

3. License Fee. Licensee shall pay to Licensor a license fee at the monthly rate of **TWO HUNDRED AND 00/100 DOLLARS (\$200.00)**. The first payment shall be made prior to the Licensee's use of the License Area, and shall thereafter be paid on the 1st day of the month until expiration or earlier termination of this License. Payments shall be made to the Finance Department of the City of Port Orange.

4. Taxes.

(a) In the event that taxes are legally imposed, Licensee is solely responsible for all taxes, if any, imposed under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, accruing during the term of the License Agreement or any renewal thereof. In the event that taxes are legally imposed, Licensee is solely responsible for Licensee's pro rata share of ad valorem and non-ad valorem taxes, impact fees, and assessments levied, if any, against the Subject Property as more particularly described in Exhibit "A" to this License Agreement, accruing during the term of the License Agreement or any renewal thereof. Licensee shall pay all such legally imposed taxes imposed under Section 212.031, Florida Statutes, directly to the respective taxing authority.

(b) All ad valorem and non-ad valorem taxes that are legally imposed shall be advanced and paid by Licensor on behalf of Licensee directly to the Volusia County Tax Collector's Office and reimbursed by Licensee to Licensor within thirty (30) days of delivery of an invoice therefor to Licensee.

(c) Licensee acknowledges that any taxes legally imposed on the License under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, if any, are imposed on Licensee, and not on Licensor. Licensee acknowledges that any ad valorem taxes legally imposed on the Subject Premises under Section 196.199, Florida Statutes (taxation of government leaseholds), any non-ad valorem taxes, impact fees and assessments, if any, are imposed on Licensee, and that Licensor, as a governmental entity, is immune or exempt from such imposition.

5. Conditions Applicable to License. This License is subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions and rights of way with respect to the License Areas, whether or not of record.

6. City Use. The City reserves the right to use the License Areas and/or Subject Property at any time. Licensor may request removal of any and all personal property of the Licensee located at or on the Subject Property in the event that the City needs to utilize the Subject Property for City purposes, such as special events, maintenance work, or other public uses. The City shall endeavor to give at least ten (10) days prior notice to the Licensee. If the Licensee's personal property is not removed within the time specified by the City or in cases where emergency work by the City becomes necessary, the City may remove or cause to be removed the Licensee's personal property without any liability to the City. The Licensee shall be responsible for any and all expenses for the storage of Licensee's personal property.

7. Signage. Licensors shall not install or construct permanent signage at the Subject Property; however, temporary signage may be displayed during the Licensee's regular operating hours, so long as it is displayed in accordance with the City of Port Orange Land Development Code. Signage design, layout and location, or any modification thereto, shall be submitted to the Parks and Recreation Director for review and approval prior to display. Such approval shall not be valid unless in writing.

8. Operating Hours. The Licensee may operate daily from dawn to dusk. Licensee may request additional hours of operation by providing a written request to the Parks and Recreation Director fifteen (15) days in advance of the special event requiring additional hours.

9. Licensee Obligations.

(a) Licensee shall operate a non-motorized marine equipment rental operation serving the general public in accordance with the City's RFP 16-27, as modified by Addendum 1, and Licensee's proposal in response thereto, attached hereto as **Exhibit "C"** and incorporated herein by reference. In the event that there is a conflict between the terms of this License Agreement and the terms of RFP 16-27, as modified by Addendum 1, or the Licensee's proposal in response thereto, the terms of this License Agreement shall control.

(b) All operating costs, including the cost of utilities used exclusively by the Licensee, its employees or its patrons, shall be the responsibility of the Licensee.

(c) Licensee shall be responsible for securing and safeguarding its equipment and other personal property. Licensors shall not be responsible for vandalism or theft of property while located in or on the Subject Property.

(d) Licensee shall maintain the License Areas to keep a neat and clean appearance. This maintenance shall include, but is not limited to daily refuse removal, sweeping, mopping, and cleaning the License Areas and areas immediately surrounding the License Areas daily, and screening of any refuse collection from public view prior to disposal.

(e) All equipment and staffing necessary to meet the public demand shall be provided by the Licensee at its own expense.

(f) Licensee shall conduct regular inspections of all rental equipment and safety equipment to ensure the safety of those individuals renting the equipment. Licensee shall not use or rent equipment that is damaged or defective, and shall repair or replace any damaged or defective equipment at its own expense.

(g) Licensee shall train each renter on water safety and equipment operation prior to renting equipment, and shall develop standard equipment rental procedures to ensure the safety of all participants.

(h) Licensee shall conduct annually, at its expense, a Florida Department of Law Enforcement (FDLE) Level 1 background check for any and all employees of the Licensee involved in the operations described in this License Agreement. Documented evidence of such check shall be maintained by the Licensee for the entire duration of employment for each employee and shall be made available for inspection by the Parks

and Recreation Director upon request.

10. Equipment Rental Pricing. The maximum allowable equipment rental rates shall be those rates set forth in Licensee's proposal submitted in response to RFP 16-27 (see Exhibit "C").

11. No Transfer or Assignment. The License is personal to the Licensee and shall not inure to the successors or assigns of the Licensee. The rights, privileges and permission granted herein shall not be assignable by the Licensee in whole or in part.

12. Permits and Regulations. Licensee shall be responsible for securing any required approvals, permits and authorizations from any federal, state or local agencies and shall comply with all applicable laws and regulations, including strict adherence to the regulations set forth in Chapters 327 and 328 of the Florida Statutes, as may be amended.

13. No Interference. Licensee shall not interfere with the normal operation and activities of Licensors, and Licensee shall conduct its activities on the License Areas to minimize damage to the License Areas and inconvenience to Licensors, its agents, employees and invitees.

14. Repair and Restoration. If Licensee, its employees or agents cause any damage to the License Areas, or to any improvements located at or on the Subject Property in connection with the exercise of this License, Licensee shall repair and restore the License Areas and Subject Property to their original condition prior to Licensee's use. Licensee shall perform the repair and restoration required hereunder prior to the expiration of this License, or within ten (10) days of the earlier termination of Licensee's rights hereunder. In the event that repair and restoration is performed following the termination of this License, the Licensee's indemnity and insurance obligations set forth herein shall continue until repair and restoration is completed as provided herein.

15. Security Deposit. Licensee shall provide Licensors with a security deposit in the form of irrevocable letters of credit, cash deposits or surety instruments satisfactory to the Licensors prior to the effective date of the License. The security deposit amount shall be **FOUR HUNDRED AND 00/100 DOLLARS (\$400.00)** to be used to offset any damage to the Subject Property or License Areas caused by the Licensee.

16. Insurance. Licensee, at its sole cost and expense, shall insure its activities in connection with this License and obtain, keep in force, and maintain insurance as follows:

(a) Commercial General Liability Insurance (contractual liability included) with minimum limits as follows:

- (1) Each Occurrence - \$1,000,000
- (2) General Aggregate - \$2,000,000
- (3) Products/Completed Operations Aggregate - \$2,000,000
- (4) Personal and Advertising Injury - \$1,000,000

(b) Property Insurance, Fire and Extended Coverage in an amount sufficient to reimburse Licensee for all of its equipment and other personal property located at or on the Subject Property.

(c) Workers Compensation as required by Florida Law.

(d) Such other insurance in such amounts which from time to time may be reasonably required by the Licensors.

The coverages required herein shall not limit the liability of the Licensee. The coverage set for the in (a) of this section shall include the Licensors as an additional insured. Licensee shall provide to Licensors a Certificate of Insurance annually as proof of insurance coverage in accordance with this section. The policies herein required shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insurers are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Licensee shall provide Licensors notice of cancellation, nonrenewal or any other changes in coverage no later than (10) days prior to the effective date of the change.

17. Hold Harmless and Indemnification. The Licensee shall not claim any damages from the City for any injuries or damages in connection with or on account of the exercise of such rights, privileges or permission, the condition of the City's property, or the use of the City's property pursuant to this License. The Licensee shall indemnify and hold harmless the City, its officers, employees and agents, from and against all claims, damages, losses and expenses, attorneys' fees and costs, arising out of, resulting from, or in any way connected with the condition of the City's property, the use of the property by Licensee, his invitees and members of the public, the exercise of the license granted by this License Agreement, the failure on the part of the Licensee to comply with any of the provisions specified herein, or otherwise permitted by this License Agreement. The City shall not be liable to the Licensee if for any reason the Licensee's use of the Subject Property is hindered or disturbed.

18. Notice. Any notice required hereunder shall be in writing and shall be addressed as follows:

Licensors: City of Port Orange
Parks and Recreation Director
1000 City Center Circle
Port Orange, FL 32129

Licensee: Sandy Point Progressive Sports, Inc.
c/o Mike Klein
3090 S. Ridgewood Avenue
South Daytona, Florida 32119

19. Lien Free Condition. Licensee shall not cause or permit any liens to be placed against the Premises or against Licensors' other property as a result of Licensee's exercise of rights under this License. In the event of the filing of any such liens, Licensee shall promptly cause such liens to be removed. In no event shall such lien removal require more than thirty (30) days.

20. License Administrator. The Parks and Recreation Director for the City of Port Orange shall perform the administration of this License Agreement.

21. Entire Agreement. This License Agreement constitutes the entire agreement between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This License Agreement may be amended or modified only by an instrument of equal formality signed by the

respective parties.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the respective dates below.

WITNESSES:

LICENSOR:

Printed Name: _____

CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation

Printed Name: _____

By: _____
Donald O. Burnette, Mayor

Printed Name: _____

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

Printed Name: _____

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2022, by Donald O. Burentte, as Mayor of the City of Port Orange, a Florida municipal corporation, and who is personally known to me.

Notary Public, State of Florida at Large
Printed name, commission and expiration:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2022, 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 at Large
Printed name, commission and expiration:

WITNESSES:

LICENSEE:

Sandy Point Progressive Sports, Inc.
a Florida corporation

Printed Name: _____

Steven B. Gottlieb, President

Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ____ physical presence or ____ online notarization, this ____ day of _____, 2022, by Steven B. Gottlieb, as President of Sandy Point Progressive Sports, Inc., a Florida corporation, and who ☐ is personally known to me, or ☐ has produced _____ as identification.

Notary Public, State of Florida at Large
Printed name, commission and expiration:

EXHIBIT "A"

A Portion of Riverwalk Park 3441 Ridgewood Avenue, Port Orange, FL 32129

A Portion of the Below Parcel Number:

Full Parcel ID:

03-16-33-10-01-0011

Short Parcel ID:

6303-10-01-0011

Legal Description:

A portion of the Parcel ID listed above.



EXHIBIT "C"

CITY OF PORT ORANGE, FLORIDA

REQUEST FOR PROPOSALS

WATER RECREATION RENTAL OPERATIONS

RFP #16-27



City of Port Orange Purchasing Division
Diana M. Fye, CPPB, FCPA, Purchasing Manager

Prepared by: Diana Fye, Purchasing Manager

Release Date: June 10, 2016

Proposal Due Date and Time: July 15, 2016 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

RFP #16-27 WATER RECREATION RENTAL OPERATIONS

Notice is hereby given that the City of Port Orange is soliciting proposals for WATER RECREATION RENTAL OPERATIONS. 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 15, 2016** 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 required forms in order to deem the proposer responsive or non-responsive. Proposals will be opened and read aloud at 2:30 P.M. in Council Chambers.

There will be a Non-Mandatory Pre-Proposal Conference and site visit for the project at **10:00 A.M.** (local time) on **June 24, 2016** 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

DESCRIPTION: The City of Port Orange is seeking proposals from qualified firms to enter into a lease agreement for water recreation rental operations at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127.

All proposals are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-256, and all proposals 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 proposal documents, requirements, scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from Onvia (DemandStar) via their website at www.demandstar.com. All questions shall be directed **in writing** to the Purchasing Manager, Diana M. Fye, CPPB, FCPA, purchdiv@port-orange.org and reference "Questions on RFP #1627 WATER RECREATION RENTAL OPERATIONS" in the subject line. Last day for questions will be **July 1, 2016 at 5:00 PM.**

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

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

Proposals shall be **submitted in the City Clerk's office** with one (1) original and one (1) digital (CD or flash drive) version in pdf format, addressed to Diana M. Fye, CPPB, FCPA, Purchasing Manager, Finance Department, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 in a **SEALED ENVELOPE/PACKAGE** plainly marked on the outside: **"RFP #16-27 WATER RECREATION RENTAL OPERATIONS"**.

Diana M. Fye, CPPB, FCPA, Purchasing Manager
Legal Ad - One Time – **June 10, 2016**

Cut along the outer border and affix this label to your sealed proposal envelope to identify it as a “Sealed Proposal”. Be sure to include the name of the company submitting the proposal where requested.



SEALED PROPOSAL • DO NOT OPEN	
SEALED PROPOSAL NO.	RFP #16-27 _____
PROPOSAL TITLE:	WATER RECREATION RENTAL OPERATIONS _____
DUE DATE/TIME:	July 15, 2016 at 2:30 pm _____
SUBMITTED BY:	_____ (Name of Company)
DELIVER TO:	City of Port Orange City Clerk’s Office Attn: Diana M. Fye, CPPB, FCPA Purchasing Manager 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 SERVICES	12
SECTION 4 – STANDARD PURCHASE DEFINITIONS	17
SECTION 5 – GENERAL TERMS AND CONDITIONS	20
SECTION 6 – SPECIAL CONDITIONS.....	44
SECTION 7 – PROPOSAL SUBMITTAL & REQUIREMENTS.....	45
SECTION 8 – EVALUATION OF PROPOSALS.....	48
SECTION 9 – REQUIRED FORMS.....	52
FORM 9.1 – PROPOSAL SUBMITTAL CHECKLIST	52
FORM 9.2 – PROPOSER’S ACKNOWLEDGEMENT FORM.....	53
FORM 9.3 – ADDENDUM ACKNOWLEDGEMENT.....	54
FORM 9.4 – DRUG FREE PREFERENCE STATEMENT.....	55
FORM 9.5 – SWORN STATEMENT UNDER SECTION 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES	56
FORM 9.6 – ANTI-COLLUSION FORM.....	57
FORM 9.7 – AUTHORIZED SIGNATURES/NEGOTIATORS	58
FORM 9.8 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY	59
FORM 9.9 - VENDOR APPLICATION	61
W-9 Form.....	63
EXHIBIT 1 – MONTHLY LEASE FEE PROPOSAL (TO BE INSERTED UNDER TAB H)	65

SECTION 1 – PURPOSE AND OVERVIEW

The purpose for this Request for Proposals (RFP) is to solicit competitive sealed proposals from vendors for the provision of entering into a lease agreement for water recreation rental operations at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127, as described herein.

It is the intent and purpose of the City of Port Orange (City) that this Request for Proposals 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 single source.

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO PROPOSERS

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

TIMELINE (Local Time):

The City reserves the right to alter dates as needed.

Date of Distribution:June 10, 2016
Non-Mandatory Pre-Proposal ConferenceJun 24, 2016 at 10:00 a.m.
Deadline for Questions: July 1, 2016 by 5:00 p.m.
Final Addendum Posting: July 7, 2016
Proposals Due: July 15, 2016 by 2:30 p.m.
Evaluation Committee MeetingJuly 22, 2016 at 1:30 p.m.
Shortlisted Firms Presentations/Discussions (if required)To Be Determined

Proposals must be delivered in a sealed envelope/package and delivered to the City of Port Orange City Clerk's Office, Attn: Diana M. Fye, CPPB, FCPA, Purchasing Manager, Finance Department, 1000 City Center Circle, Port Orange, Florida 32129 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.

Proposers 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, 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 (including opening of proposals) 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/SITE VISIT:

There will be a Non-Mandatory Pre-Proposal Conference and Site Visit 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 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. 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.

All prospective Proposers are strongly encouraged to attend because this will be the ONLY opportunity to tour the sites. City staff will not give individual tours after the scheduled Pre-Proposal Meeting.

CONE OF SILENCE:

Proposers shall not direct any queries or statements concerning their proposal to the City Council, City staff and/or Evaluation Committee Member during the selection process, from the time of submission of a proposal until recommendation of award. Any Proposer who initiates any discussions with staff in any manner other than that described below is subject to disqualification from this procurement.

QUESTIONS REGARDING THIS RFP:

All questions shall reference "Questions on RFP # 16-27 WATER RECREATION RENTAL OPERATIONS" 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:

Diana M. Fye, CPPB, FCPA
Purchasing Manager
1000 City Center Circle
Port Orange, FL 32129
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. 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. It is the responsibility of the proposer to ensure all addenda have been received prior to submitting a proposal.

Written responses, in the form of an addendum, will be provided via the Demand Star website at: www.demandstar.com

The failure of proposers to submit acknowledgement of any addenda that affects the RFP price(s) is considered a major irregularity and will be cause for rejection of the proposal.

The City of Port Orange reserves the right to consider the omission of an acknowledgement of addendum as cause for rejection of the RFP submittal.

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 there from.

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 shall be licensed to do business in the State of Florida. Submit Sunbiz report with your company registered as "Active".

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.

EXCEPTIONS TO SPECIFICATIONS:

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

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, and will not be returned to the proposers. Upon opening, Proposals become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

PRICING SHEETS:

Pricing sheets are to be completed as directed and without modification and returned as part of the RFP submittal prior to the RFP deadline for submission. Failure to fill out the price sheets as directed and without modification may negatively affect the evaluation of your proposal.

LITIGATION HISTORY:

The City will consider a Proposer's litigation history information in its review and determination of responsibility. All Proposers 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 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 litigation history is an issue of responsibility, the failure to provide litigation history as required in the Proposal Submittal and Requirements section may result in a recommendation of non-responsive by the Purchasing Manager.

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 its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager.

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

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

A joint venture is also required to provide with its response a Statement of Authority indicating that 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 request of the Purchasing Manager.

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. No responsibility will attach the Purchasing Department 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 VENDOR(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

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

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.

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 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 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.

[Remainder of this page left intentionally blank]

SECTION 3 – SCOPE OF SERVICES

The City of Port Orange is seeking proposals from qualified firms or companies to enter into a lease agreement for water recreation rental operations at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127. The premises shall be used for purposes consistent with related marine use such as canoe, kayak, paddleboard, and other non-motorized equipment. The Proposer shall be responsible for all self-contained maintenance, trash, sewer, cable, phone internet and other utilities required for adequate operation of the facility. Electricity and water availability is to be included in the lease fee.

The Proposer shall furnish all necessary labor and equipment for the operations and provide rental preparations as requested by the customers. The proposer shall also be responsible for the collection of all rental fees, contracts and records for the rental operation.

The agreement terms contained in this solicitation shall be part of a final agreement to be approved by the City Council. Proposers are advised to fully review all terms and conditions expressed in the solicitation as the contents of that document have precedence in all regards and will govern the operations of all parties in the provision of the required services.

Objectives:

To serve the general public as a full service outfitter in an attractive setting in compliance with all governmental codes and regulations, subject to inspection and review by the City of Port Orange and to generate revenue for the City through the base rent component of the lease agreement. The City's goal is to have the outfitter fully operational for Riverwalk Park on August 1, 2016.

Proposers must provide a sample of services with pricing for services with their operation plan. (See Tab E under Section 7 – Proposal Submittal and Requirements.)

Lease Terms:

The term of the lease is two years with the option to renew two (2) times in two (2) year intervals.

Lease terms will include a monthly base rent. Monthly lease costs include the concession area of the building and designated park areas as well as shared use of the restrooms, (attached as Exhibit 1). The Lease will also include electric, water, sewer and trash removal. The Lease will not include cable, phone and internet.

The Proposer shall provide the City with a security deposit in the form of irrevocable letters of credit, cash deposits, or surety instruments satisfactory to the City upon signing the negotiated lease. The amount of the total deposit will be the total of first and last month's rent. The anticipated lease will be a net lease in which the Tenant will pay all operating expenses.

Outfitter Operation:

The Tenant shall be responsible for operations, marketing and advertising, staffing, cleaning, security, cost of some utilities, including but not limited to cable, satellite TV service, internet and maintenance within the leased areas, and obtaining all required permits and licenses.

The City will in no way be obligated to subsidize or support the operation of the operation of the outfitter. The City will not pledge any revenues, taxes, fees, or other financial resources to pay expenses incurred by the Proposer that enters into the Contract with the City. It will be the complete responsibility of the successful Proposer to ensure that the outfitter operates in a financially responsible manner.

Background Information:

Port Orange's Riverwalk Park covers approximately sixteen (16) acres and is located along Halifax River (ICW) situated between Ocean Avenue and Dunlawton Avenue on US 1. The park amenities include a paved trail used by walkers and bikers and alike. There are playgrounds, restroom facilities, picnic areas, splash pad and fishing piers. The Riverwalk Park will serve as host to a variety of activities and special events throughout the year.

The Facility:

The Riverwalk Park, located at 3441 South Ridgewood Ave, Port Orange, FL, 32127, is a 16-acre park located along the intercostal waterway. The Park is owned by the City of Port Orange and operated by Department of Parks and Recreation.

The Riverwalk Floor Plan indicates the area available to lease. Any interior modifications can be negotiated between the successful Proposer and the City. All equipment will be provided by tenant.

The Building: The electric system meets code, water, sanitary sewer is all currently available in the facility. Phone, cable television and High speed internet are the tenant's responsibility.

The concession building is 202 square feet and has a three basin sink, roll up concession windows and electrical outlets. Outside restrooms attached to building are open to the public and maintained by the city.

Any improvements installed by the Lessee shall be approved by the City of Port Orange and shall be code compliant. Suggestions for specific improvements by the Proposer should be reviewed by the Building Department prior to submittal of the Proposal. All suggested improvements are negotiable.

The Tenant will keep and maintain the premises in good condition and repair in a neat, sanitary and orderly manner to comply with all applicable City, County, and State regulations, and shall bear the expense of any and all painting and decoration furnished to the interior of the building, and of custodial services.

Signage:

Signage, including way-finding signs, may be included in the Proposal for consideration. Proposers should suggest signage locations which the City may consider.

Signage adjacent to US1 on park property is permitted for 24sq. ft. and will be the responsibility of the tenant to pay, permit, and install and maintain the sign.

Operating Hours:

The concession(s) may be open at all appropriate times during regular park hours from dawn to dusk. Required hours of operation by the City include:

<u>Weekends</u> Jan. – May	<u>Weekends</u> Sep. – Dec.	<u>Weekly</u> Jun. – Aug.	<u>Weekly</u> Volusia County Schools Breaks and National Holidays
9:00 A.M. To 4:00 P.M.	9:00 A.M. To 4:00 P.M.	9:00 A.M. To 4:00 P.M.	9:00 A.M. To 4:00 P.M.

Vendor may request authorization from the City fifteen (15) calendar days in advance to stay open later on special occasions and holidays or to be closed.

The City Reserves the Right to:

Block out dates, limit hours of operation, or authorize other vendors that may compete with the successful proposer as a result of special events taking place at Riverwalk Park.

Equipment Rentals:

Rentals may include canoe, kayak, paddle board, and other non-motorized equipment. The following requirements for water recreation rental services shall be followed:

- Vendor shall be in compliance with all requirements of Florida Statutes 327 and 328 and State of Florida Boating Safety Laws, and any amendments or additions thereto. Vessel registrations shall be provided by the successful respondent.
- All rental items must be in good working order and pass inspection prior to being placed on the water.

Taxes:

The Tenant will pay all federal, state, and local taxes in connection with the lease, including sales tax due on the rental of the facility, as well as employment taxes and other federal taxes.

Maintenance:

Successful proposer shall be responsible for the following:

- Keeping the staging area neat, clean and in good standing;
- Removing rental-related refuse to the dumpster daily;
- Arranging seating area (if applicable);
- Sweeping, mopping and cleaning the public area surrounding the staging area daily upon completion of usage;
- Do not allow boxes, cartons, barrels trash or similar items to be in the view of the public.

- Evaluation of maintenance compliance will be at the City's sole discretion. If found to be in default, the City will issue a letter of non-compliance. The vendor will have two (2) working days to correct noncompliance items. If not corrected, vendor will be considered in breach of contract.

Parking:

The outfitter has non-exclusive use of the parking lot which must be shared among general public.

Employee Standards:

Successful Proposer shall ensure a staff that is fully responsible for all on-site operations to include but not limited to:

- Courteous and friendly service.
- To recruit, train, supervise and direct its employees in additions to having a number of employees to match the work requirements.
- Every employee will be clean and well-groomed and be professional and friendly to the public.

Rental Inspection/Pricing:

The Proposer shall charge reasonable prices for all rental services. The City reserves the right, but shall not have the obligation, to inspect rental equipment to make sure assure its safety to the public as well as the prices to make sure they are fair and reasonable.

There will be no sale or dispensing of alcoholic beverages, tobacco products, or any other item that is not in consonance with general community standards.

Proposal Requirements:

Any and all offers must include the following:

- **Operating Plan:** Proposals must include a staffing and operational plan to address the items listed in Section 3 Scope of work. This operational plan must also address procedures and methods that will ensure outstanding customer service to the customer of the concession at Riverwalk Park. (See Tab E in Section 7 – Proposal Submittal & Requirements)
- **Financial Plan:** Proposals must include a two (2) year financial plan consisting of, but not limited to proforma (forecasted) income statement, balance sheet and statement of cash flows. (See Tab G in Section 7 – Proposal Submittal & Requirements)
- **Marketing Plan:** Proposals must include a marketing plan indicating services to be provided, pricing of services, target markets, proposed marketing budget, advertising campaign, promotions to be offered or any marketing related activities. (See Tab F in Section 7 – Proposal Submittal & Requirements)
- **Financial Solvency:** Please note that selected proposers with highest evaluation score will be asked to provide proof of financial solvency, which may include providing copies of financial statements, tax records, sworn statements, and/or any other relevant documents. All information will be kept confidential. (See Tab D in Section 7 – Proposal Submittal & Requirements)

Background Checks:

The Successful Proposer shall provide, at their expense, a 2-year Florida Department of Law Enforcement (FDLE) Level 1 background check for any and all employees of the successful respondent involved in the performance of this contract on the City of Port Orange property within ten (10) business days following contract execution and, in the event of employee changes, throughout the term of the contract. Documentation must be submitted to the Parks and Recreation Director.

[Remainder of this page left intentionally blank]

SECTION 4 – STANDARD PURCHASE DEFINITIONS

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

1. **Addendum** means a written instrument issued by the Contract Awarding Authority that modifies or clarifies the Solicitation prior to the Due Date. “Addenda” is the plural form of the word.
2. **Alternate Bid** means multiple Bids with substantive variations from the same Bidder in response to a Solicitation.
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. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
5. **Bidder or Proposer** is a person, firm, or entity 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.
6. **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
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. **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.
10. **Contractor** means the person, firm or entity selling goods or services to the City under a Contract.
11. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
12. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
13. **Goods** are supplies, materials, or equipment.
14. **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.

15. **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.
16. **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.
17. **Lowest Responsible Bidder** means the Bidder submitting Lowest Responsible Bid.
18. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
19. **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.
20. **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.
21. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Bidders/Proposers to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
22. **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.
23. **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.
24. **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.
25. **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.

26. **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.
27. **Response/Submission** means submission of a Bid, Proposal, Reply, or Quote to a formal Solicitation.
28. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
29. **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.
30. **Subcontractor** means a person, firm or entity providing goods or services to a Bidder/Proposer to be used in the performance of the Bidder's/Proposer's obligations under the Contract.
31. **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.

[Remainder of this page left intentionally blank]

SECTION 5 – GENERAL TERMS AND CONDITIONS

These instructions are standard for all contracts for commodities or services issued through the City of Port Orange Purchasing Division. General Requirements apply to all advertised Solicitations; however, these may be superseded, in whole or in part, by the SPECIAL REQUIREMENTS/INSTRUCTIONS OR OTHER DATA CONTAINED HEREIN. READ THIS ENTIRE DOCUMENT CAREFULLY. FOLLOW ALL INSTRUCTIONS. YOU ARE RESPONSIBLE FOR FULFILLING ALL REQUIREMENTS AND SPECIFICATIONS. BE SURE YOU UNDERSTAND THEM.

1. ACCEPTANCE BY CITY

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

2. ADDENDA

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

The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the Solicitation Response Due Date. 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.

3. ANTI-COLLUSION STATEMENT

By submitting this Response to a Formal Solicitation, the Bidder/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, Bidder/Proposer agrees to abide by all conditions of this Solicitation and certifies that they are authorized to sign this Response for the Bidder/Proposer. In submitting a Response to the City of Port Orange, the Bidder/Proposer offers and agrees that if the Response is accepted, the

Bidder/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 Bidder/Proposer.

4. APPLICABLE LAWS

In connection with the furnishing of supplies or performance of work under the Contract, the Bidder/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.

5. ASSIGNMENT

The successful Bidder/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 Bidder/Proposer from all contractual obligations.

6. AWARDS

Results from the evaluation committee will be considered by the City of Port Orange City Council at the earliest possible regular meeting subsequent to the evaluation process. This RFP 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 proposers; to reject any and all proposals, or to waive any informality or technicality in proposals received as deemed to be in the best interest of the City.

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

7. CONE OF SILENCE

Bidders/Proposers shall not direct any queries or statements concerning their Response to a Formal Solicitation to the City Council, City staff and/or Evaluation Committee during the selection process, from the time of submission of a Response until recommendation of award. Any Bidder/Proposer who initiates any discussions with staff in any manner other than that described below is subject to disqualification from this procurement.

8. 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.

9. SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES

Unless otherwise specified, Bidders/Proposers 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/Proposer's authorized representative. Responses containing erasures or corrections must be initialed by the Bidder/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: Diana M. Fye, CPPB, FCPA, Purchasing Manager, Purchasing Office, a division of the Finance Department, Port Orange City Hall, 1000 City Center, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 p.m. on the date indicated in the Solicitation documents or as addenda issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All Responses deemed non-responsive will be returned to the Bidder/Proposer and will not be opened.

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

10. BID RETURNS

Bidder/Proposers shall return all completed Responses to the City of Port Orange at the address set forth in paragraph 7 above on the date and at the time specified. Late submissions will not be accepted and shall be returned to Bidder/Proposers unopened.

11. BID PROTEST

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

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

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

12. BID/PROPOSAL TABULATION

Bidders/Proposers who wish to receive a copy of the bid/proposal tabulation may obtain it via www.demandstar.com or by contacting the City of Port Orange, Purchasing Manager at purchdiv@port-orange.org.

13. BONDS

If this Solicitation requires submission of bid guarantee and performance bonds, there will be a separate page explaining those requirements. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. When the Purchasing Manager deems it necessary, bid bonds/deposits shall be prescribed and are advertised in the public notices inviting bids. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the bid amount. Payment and Performance Bonds requested for construction projects shall be in an amount equal to one hundred percent (100%) of the total contract amount. Upon award, the successful Bidder/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 Bidder's/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 Bidder's/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 Bidders/Proposers are entitled to the return of their surety where the Purchasing Manager has required such. A successful Bidder/Proposer shall forfeit any surety required by the Purchasing Manager upon failure on the part of the Bidder/Proposer to enter into a contract within the time specified after the award of bid.

14. BIDDER'S/PROPOSER'S PRODUCT OR SERVICES:

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

- a. If the Bidder/Proposer is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.
- b. The Bidder/Proposer 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/Proposer.
- c. In furnishing the service or product to the City, the Bidder/Proposer 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.

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 orders shall be made in writing by the City of Port Orange Purchasing Division.

16. CONDUCT OF BIDDERS/PROPOSERS

All Bidders/Proposers or individuals acting on behalf of Bidders/Proposers 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 Bidder/Proposer. All Bidders/Proposers or individuals acting on behalf of Bidders/Proposers 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 Bidder/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. CONFLICT OF INTEREST

For purposes of determining any possible conflict of interest, all Bidders/Proposers must disclose if any City of Port Orange employee is also an owner, corporate officer, or employee of Bidder's/Proposer'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.

18. 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.

19. 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 Bidder/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.

20. CONTRACT RENEWALS

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

21. 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)

22. COPYRIGHT AND PATENT RIGHTS

Bidder/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 Bidder/Proposer agrees to hold the City harmless from any and all liability, loss or expense by any such violation.

23. COST INCURRED BY BIDDER/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 Bidder/Proposer. No payment shall be made for any response received, nor for any other effort required of or made by the Bidder/Proposer prior to commencement of work as defined by the contract approved by the City Council.

24. DEFAULT PROVISIONS

In the event of default by the Bidder/Proposer, the City reserves the right to procure the item(s) bid from other sources and hold the Bidder/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 Bidder/Proposer for a period of 36 months from the date of default.

25. DELIVERY OF GOODS/SERVICES

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

Delivery dates pertaining to this invitation must be clearly stated in the bid form where required and include weekends and holidays. Failure to comply with this requirement may be a cause for disqualification of bid. Unless otherwise specified, delivery at the earliest date is required. The

Bidder/Proposer shall clearly state in the bid the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases “as required,” “as soon as possible” or “prompt” may result in disqualification of the bid. Delivery time will be a factor for any orders placed as a result of this bid. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the vendor in default.

Upon approval of a contract, the vendor is obligated to deliver the goods to the destination specified in the Solicitation or the Purchase Order and bears the risk of loss until delivery. If this Solicitation or Purchase Order does not contain delivery instructions, Bidder/Proposer 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 Invitation to Bids shall prevail.

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

26. DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER /PROPOSER

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

- a. The ability, capacity and skill of the Bidder/Proposer to perform the contract.
- b. Whether the Bidder/Proposer can perform the contract within the time specified, without delay or interference.
- c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder/Proposer.
- d. The quality of performance of previous contracts.
- e. The previous and existing compliance by the Bidder/Proposer with laws and ordinances relating to the contract.
- f. The sufficiency of the financial resources and ability of the Bidder/Proposer to perform the contract or provide the service.
- g. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- h. The ability of the Bidder/Proposer to provide further maintenance and service for the use of the subject of the contract.
- i. The number and scope of conditions attached to the bid.

- j. Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

27. DISCLOSURE OF CONFLICTS

The award is subject to the provisions of Chapter 112.313, Florida Statutes. All Bidders/Proposers must disclose with their Response the name of any officer, director, or agent who is also an employee of the City. Further, all Bidders/Proposers must disclose the name of any employee who owns, directly or indirectly, an interest in the Bidder's/Proposer's firm or any of its branches. The Bidder/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 Bidder/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 Bidder/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.

28. DISQUALIFICATION OF BIDDER/PROPOSER

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

29. EVALUATION

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

30. EVALUATING RFPs/RFSQs/ITNs

The evaluation process is formally conducted by a committee appointed by the Purchasing Manager or requesting department as required by general law. The Purchasing Manager leads and oversees the entire process. The evaluation is based upon specific criteria outlined in the Solicitation. The user department shall assign a weight to each of the evaluation criteria by its relative importance, with the total weights equaling 100. Each committee member establishes a summary of total scores for all the vendors. The summary of total scores is used to rank the vendors. Based upon the scores/ranking of the committee members, consensually a short list is obtained. In this Solicitation process this short list will consist of no less than three vendors

(unless less than three were received). This committee falls under the Florida Sunshine Law and therefore cannot speak with one another concerning the Solicitation unless in a public committee meeting. These meetings also shall be announced publicly in a designated area and meetings are recorded. In the case of the Solicitation, one member of the Evaluation Committee may consist of one (1) member from the City Council; and at least one (1) member from the user department, except as otherwise required by general law. The Evaluation Committee, through the Purchasing Division, schedules oral presentations from the firms that were short-listed. At the oral presentation, the short listed firms present an over view of their company and their approach to the scope of work outlined. Upon conclusion of the oral presentations, with the same criteria and procedures used to evaluate the written Responses, the committee members then evaluate those three firms again to determine a second ranking. Then, by consensus a final ranking is determined. That final ranking is then presented to the City Council by the using department head requesting approval to negotiate with the individual/firm ranked as number one. A contract is completed pursuant to the negotiations with this individual and/or firm. If a successful contract cannot be obtained with the number one ranked firm, the negotiations then move to the team ranked as number two, never to return to the number one again.

31. EXCEPTIONS TO SPECIFICATIONS

For purposes of evaluation, Bidder/Proposer 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/Proposer that are required to be signed by the City. If exceptions are not stated by the Bidder/Proposer, in his bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the Bidder/Proposer 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.

32. FACILITIES

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

33. FAILURE TO RESPOND

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

34. 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.

35. GOVERNING LAW

Bidder/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.

36. GRANT FUNDING

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

37. HIPAA COMPLIANCE

Bidder/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 Bidder/Proposer uses, discloses or has access to protected health information as defined by HIPAA.

38. 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.

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 vendor as an independent contractor. The parties hereto understand and agree that

the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful vendor under this contract and that the successful vendor has no authority to bind the City.

The Bidder/Proposer represents itself to be an independent contractor offering such services to the general public and shall not represent himself or his employees to be an employee of the City. Therefore, the Bidder/Proposer shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers 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/Proposer shall further understand that the City cannot save and hold harmless and or indemnify the Bidder/Proposer and/or the Bidder's/Proposer's employees against any liability incurred or arising as a result of any activity of the Bidder/Proposer or any activity of the Bidder's/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 Bidder/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

Please submit a copy of your insurance certificate with your Response. 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 Bidder/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. 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 Bidder/Proposer offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Bidder/Proposers should state any payment discount in the space provided on the bid form for construction services.

45. IRREVOCABILITY OF RESPONSES

Each Bidder/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 Bidder/Proposer.

46. 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.

47. 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/Proposer shall not constitute a cognizable defense against the legal effect thereof.

Upon execution of a contract, the successful Bidder/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.

48. LICENSES, PERMITS AND TAXES

The Bidder/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 Bidder/Proposer shall abide by all ordinances and laws pertaining to his operations and shall secure, at his expense, all licenses and permits necessary for construction and operation.

49. LITERATURE (if applicable):

If no particular brand, model or make is specified, Proposers shall submit with the RFP two (2) copies of descriptive literature and technical data, fully detailing all features, designs, construction, appointments, finishes and the like not covered in the specifications, necessary to fully describe the equipment, material, and/or services he proposes to furnish.

50. 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.

51. 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/Proposers may offer items of equal stature and the burden of proof of such stature rests with Bidder/Proposer, unless otherwise specified by the City. The City of Port Orange shall act as sole judge in determining equality and acceptability of products offered.

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. 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.

55. 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.

56. PATENTS/COPYRIGHTS

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

57. PRE-BID CONFERENCE OR PRE-PROPOSAL CONFERENCE

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

58. 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, in both words and numerals, in the blank spaces for each item, with the amounts extended if a unit price bid, and all amounts totaled. 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. 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/Proposer 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.

59. 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.

60. PRICING

Bidder/Proposer 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, Bidder/Proposer 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.

61. 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 Bidder/Proposer during the term of contract, and the Bidder/Proposer shall be held responsible for any damage to the property occurring by reason of his operation on the property.

62. 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/Proposer 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.

63. PUBLIC ENTITY CRIMES

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

64. PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT

Section 119.071(1)(c), Florida Statutes: Any financial statement that an agency requires a prospective Bidder/Proposer 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 Bidder/Proposers 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 Bidder/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 Bidder/Proposers, but the new law limits public attendance to portions of such meetings.

65. PURCHASE ORDER AND DELIVERY

The successful Bidder/Proposer 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/Proposer. 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.

66. 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.

67. 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.

68. 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.

69. 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/Proposers shall become the property of the City when received.

70. RIGHT OF NEGOTIATION RFP/RFSQ/ITN

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

71. RECORDS/AUDIT

The Bidder/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.

72. RECYCLED MATERIALS

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

73. REQUEST FOR ADDITIONAL INFORMATION

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

74. 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.)

75. 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.

76. RULES, REGULATIONS AND LICENSING REQUIREMENT

The Bidder/Proposer shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Bidders/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.

77. 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 Bidder/Proposer's request, be returned within thirty (30) days after bid award at Bidder/Proposer's expense. If requested by the City, samples and/or inspection of like items are to be made available in the central Florida area.

78. 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.

The City will utilize Demand Star for distribution of Formal Solicitations at:

www.demandstar.com.

79. 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.

80. 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.

81. SIGNED RESPONSE CONSIDERED AN OFFER

The signed Response is considered an offer on the part of the Bidder/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 Bidder/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 Bidder/Proposer after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

82. 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.

83. 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/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 Bidder/Proposer shall provide follow-up evidence that the Bidder/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

Bidder/Responder to do business in the State of Florida, or other evidence of legal authority to do business in the state, county, city and/or any other agency of authority should be provided with your response to the Solicitation. Information concerning certification with the Secretary of State may be obtained at <http://ccfcorp.dos.state.fl.us/index.html>. Contract documents shall be executed by the entity's duly authorized officer as evidence by entity records.

84. SUBCONTRACTING:

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

85. SUPPLEMENTAL MATERIALS

Bidders/Proposers 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/Proposer 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.

86. 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.

87. TERM CONTRACTS

Acceptance by the City of Port Orange of Bidder's/Proposer'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.

88. TERMINATION

The City of Port Orange reserves the right to terminate the contract for default if Bidder/Proposer breaches any of the terms therein, including warranties of Bidder/Proposer or if the Bidder/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 Bidder/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 Bidder/Proposer.

89. TERMINATION - NOTICE

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

90. 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. Bidder/Proposer 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.

91. USE OF SOLICITATION FORMS

Bidder/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 Bidder's/Proposer's Acknowledgement Form contained in each Solicitation.

92. VARIANCES

For purposes of Response evaluation, Bidders/Proposers must indicate any variances, no matter how slight, contained in the Response. No variations or exceptions by a Bidder/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.

93. 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/Proposers, and to accept any Responses or portions of Responses deemed to be in the best interest of the City. The city council shall have the authority to waive any and all non-substantial irregularities in any and all formal Solicitations. (Code 1981, § 8-29)

94. WARRANTIES

Bidders/Proposers shall furnish all data pertinent to warranties or guarantees which may apply to items in the Response. Bidders/Proposers may not limit or exclude any implied warranties. Bidder/Proposer 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/Proposer's expense. If Bidder/Proposer fails to make the appropriate correction within a reasonable time, City of Port Orange may correct at the Bidder/Proposer's expense.

95. 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.

96. NON-EXCLUSIVITY:

The City of Port Orange reserves the right to procure items herein described in any manner it sees fit, including but not limited to: awarding of other contracts, the use of contracts awarded by GSA, federal agencies, the State of Florida, any county or municipality, or any authorized contract, whichever is considered in the best interest of the City.

97. 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) Request for Proposals, Qualifications or other Qualitative Submittals. In any ranking conducted pursuant to a request for proposals, qualifications, or other qualitative submittals where the bidders are rated by a point system, local businesses shall be granted the following preference:
- (1) Port Orange business shall be granted up to eight percent (8%) of the available points.
 - (2) Volusia County business shall be granted up to five percent (5%) of the available points.
 - (3) Florida business shall be granted up to three percent (3%) 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.
- (c) 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.

98. INSURANCE REQUIREMENTS

Please submit a copy of your insurance certificate with your proposal. Upon execution of a contract, the Bidder/Proposer shall maintain insurance during the life of the Contract. Bidder/Proposer shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers' compensation coverage, the Bidder's/Proposer's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation.

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

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

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

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

[Remainder of this page left intentionally blank]

SECTION 6 – SPECIAL CONDITIONS

PRECEDENCE IN TERMS:

In the event of a conflict, the Special Terms and Conditions shall take precedence over all other sections.

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 / COMPLETION TIME:

The Term of the lease shall be for a two (2) year period with two (2) additional two (2) year renewal options.

ELIGIBILITY OF PROPOSER:

To be eligible to respond to this RFP, the Proposer must have prior successful experience working with rentals and water recreational activities. Please provide eligibility experience.

[Remainder of this page left intentionally blank]

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.

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) digital (CD or flash drive) version in PDF format, and all attachments of the following 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.

TAB A – 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.

TAB B – FIRM AND STAFF QUALIFICATIONS and REFERENCES:

To be eligible to respond to this RFP, the Proposer must have prior successful experience working with rentals and water recreational activities. Please provide eligibility experience.

Include the following information about your firm in the proposal:

- Qualifications and experience of the respondent, including type of business entity, organizational size, structure and history of the organization, experience in the provision of services, and location of the office that would contract for services to the City of Port Orange.
- A listing of the firm's personnel that will be assigned to the City, along with a summary of their qualifications and specific responsibilities.
- References: List at least five (5) contracts with similar sized cities completed within the last two (2) years for the services described in this RFP, indicating the type of entity, the name, email address and telephone number of the public officer in charge of the contract, and the years in which the services have been provided. ***City of Port Orange shall not be listed as a current contract. *The information provided under this tab, must be current and the City must be able to contact for verification as part of the evaluation process.**

- Provide a complete list of all cities and counties for which the firm has completed similar strategic plan facilitations with elected officials within the last five (5) years.
- Have any contracts been terminated for any reason? If so, please elaborate.
- Any other information that the respondent believes would be helpful to the City in evaluating the respondent's ability to provide the services described in this RFP.

TAB C – LICENSES/INSURANCE:

- Include copy of license to do business in the State of Florida or Sunbiz report showing your company registered as "Active."
- Include a copy of any and all professional licenses and certifications as required to perform the services described herein and of the professional licenses for each team member.
- Attach evidence of required insurance coverage or proof of insurability in the amounts indicated. If available, a properly completed ACORD Form is preferable. Final forms must contain the correct solicitation and/or project number.

TAB D – FINANCIAL STABILITY/LITIGATION:

- It is essential that the Proposer clearly demonstrates the financial ability to reliably deliver services.
- The Selected Proposer with the highest evaluation score will be requested to provide proof of financial solvency, which may include providing copies of financial statements, tax records, sworn statements, and/or any other relevant documents. All information will be kept confidential.
- This Tab shall contain information on the nature and magnitude of any litigation or proceeding whereby, during the past five (5) years, a court or any administrative agency has ruled against the firm in any matter related to the professional activities of the firm.
- This shall include any class actions within your company where named, industry investigations by Attorneys General, in addition to individual cases.
- Respondent must indicate whether any contract awarded by another government agency has been terminated in default or convenience.
- Respondent has a continuing duty to inform the City of any new claims filed against the Respondent.

TAB E – OPERATING PLAN:

- State your firm’s plans and approach for providing the goods and services outlined in this RFP.
- Sample of services with pricing for services.
- Operating Plan – Proposals must include a staffing and operational plan to address the items listed in Section 3 – Scope of Work. This operational plan must also address procedures and methods that will ensure outstanding customer service to the customer of the concession at Riverwalk Park.
- The information presented shall be in enough detail to enable the City to ascertain the Proposer understands the effort to be accomplished and should essentially outline the steps in the total services proposed.

TAB F – MARKETING PLAN:

Provide a marketing plan indicating services to be provided, pricing of services, target markets, proposed marketing budget, advertising campaign, promotions to be offered or any other marketing related activities.

TAB G – FINANCIAL PLAN:

Provide a two (2) year financial plan consisting of, but not limited to proforma (forecasted) income statement, balance sheet and statement of cash flows.

TAB H – PROPOSED MONTHLY LEASE FEE:

- Attached Exhibit 1– Proposed Monthly Lease Fee must be submitted with your proposal under Tab H.

TAB I – 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 Acknowledgement Form
- Form 9.3 Addendum Acknowledgement Form
- Form 9.4 Drug Free Preference Statement
- Form 9.5 Sworn Statement on Public Entity Crimes
- Form 9.6 Affidavit of Anti-Collusion Form
- Form 9.7 Authorized Signatures/Negotiators
- Form 9.8 Local Business Affidavit of Eligibility
- Form 9.9 Vendor Application and W-9 Form

[Remainder of this page left intentionally blank]

SECTION 8 – EVALUATION OF PROPOSALS

EVALUATION CRITERIA:

Firms submitting the required criteria will have their proposals evaluated and scored for quality of response, qualifications and experience and cost. The following represents the principal selection criteria, which will be considered during the evaluation process. Criteria will be weighted based on 100% of total value.

EVALUATION CRITERIA FOR WRITTEN PROPOSALS

CATEGORY SCORE

A. QUALIFICATIONS AND RELATED EXPERIENCE: (Max 10 points outlined below)

(1) General Qualifications and Capabilities of Firm and Key Principal(5 points)

- 4-5 points – More than 5 years of related experience
- 2-3 points – 3 to 4 years of related experience
- 1 point – 1 to 2 years related experience
- 0 points – No prior related experience

(2) Experience with Related Scope of Work Required with this RFP (5 points)

- 4-5 points – 3 or more directly related projects
- 2-3 points – 1 to 2 directly related projects
- 1 point – Similar but not directly related projects
- 0 points – No directly related or similar projects

B. STRENGTH OF PROPOSAL AND PRESENTATION: (Max 80 points outlined below)

(1) Clarity/Completeness of Proposal..... (10 points)

- 8-10 points – Proposal is exceptionally well written and clearly addresses
- all issues outlined in the RFP
- 4-7 points – Proposal is understandable and addresses most of the specific
- issues outlined in the RFP
- 1-3 points – Proposal is somewhat understandable and addresses some of the
- issues outlined in the RFP
- 0 points – Proposal does not address issues outlined in the RFP

(2) Understanding of Scope of Requirements (10 points)

- 8-10 points – Demonstrated exceptional understanding of the scope and
- goals of the project
- 4-7 points – Understands the scope and goals of the project
- 1-3 points – Has some understanding of the scope requirements and goals
- of the project
- 0 points – Has no solid or working understanding of the scope of services or
- Goals of the project

(3) Marketing Plan..... (20 points)

- 15-20 points – Marketing plan is exceptionally detailed, well organized and shows services to be provided, pricing, target markets, proposed budget, advertising campaign, promotions, all related marketing activities and clearly demonstrates capacity to carry out the objectives.
- 8-14 points – Marketing plan is generally organized, and shows ability to carry out tasks but lacks sufficient detail on services to be provided, pricing, target markets, proposed budget, advertising campaign, promotions, and all related marketing activities in order to carry out the objectives.
- 1-7 points – Marketing plan appears to be addressed but is poorly organized and lacks sufficient detail of the services to be provided, pricing, target markets, proposed budget, advertising campaign, promotions and all related marketing activities. In order to carry out the objectives.
- 0 points – Marketing plan appears difficult to understand, poorly organized and lacks details of the services to be provided, pricing, target markets, proposed budget, advertising campaign, promotions and all related marketing activities. In order to carry out the objectives.

(4) Operating Plan..... (20 points)

- 15-20 points – Operating plan is highly detailed and directly addresses all items listed in Section 3 – Scope of Services, including a sample of services with pricing for services.
- 8-14 points – Operating plan is modestly detailed and addresses most of the items listed in Section 3 – Scope of Services, including a sample of services with pricing for services.
- 1-7 points – Operating plan lacks detail and only addresses some of the items listed in Section 3 – Scope of Services, and the sample of services with pricing for services is vague.
- 0 points – Operating plan is difficult to understand and addresses a few or none of the items in Section 3 – Scope of Services, and does not include a sample of services with pricing for services.

(5) Financial Plan (20 points)

- 15-20 points – Financial plan is highly detailed and includes a proforma (forecasted) income statement, balance sheet and statement of cash flows for a two year plan.
- 8-14 points – Financial plan is modestly detailed and includes a proforma (forecasted) income statement, balance sheet and statement of cash flows for a two year plan.
- 1-7 points – Financial plan lacks detail and does not include all the required proforma (forecasted) forms: income statement, balance sheet and statement of cash flows for a two year plan.
- 0 points – Financial plan is difficult to understand and does not provide a two year plan.

C. Proposed Monthly Lease Fee (Exhibit 1)..... (5 points)

D. REFERENCES: (Max 5 points overall)

(1) A minimum of three (3) references all from similar projects that have been successfully completed within the past 5 years (4 points)

(2) References were able to be contacted and verified..... (1 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.

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:

The Evaluation Committee is comprised of City staff and **may** include City Council Member or Council appointed Board of Commission member 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 Purchasing Manager 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, as identified above, 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. Such other information as may be secured.
12. Local preference policy (if applicable)

FORMAL ORAL PRESENTATIONS/INTERVIEWS (If Required):

The City may choose to conduct oral interviews with, or receive oral presentations from no less than three (unless less than three proposals were received) of the Proposers. If the City chooses to allow oral interviews and/or presentations, such interviews or oral 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 at least five (5) calendar days in advance of the date, time and place of the presentations. The specific format of each presentation will be provided to Proposers with the notifications.

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

FINAL RANKING AND RECOMMENDATION FOR AWARD:

After the oral presentation is completed, the Evaluation Committee will re-score all short-listed proposals, using the same criteria utilized for evaluation of the written proposals, 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 final ranking sheets by the committee will be posted on www.demandstar.com 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
- _____ Form 9.3 – Addendum Acknowledgement
- _____ Form 9.3 – Drug Free Preference Statement
- _____ Form 9.4 – Sworn Statement Pursuant to Section 287.133 (3)(a) F.S. in Public Entity Crimes (BS-2)
- _____ Form 9.5 – Affidavit of Anti-Collusion Form
- _____ Form 9.6 – Authorized Signatures/Negotiators
- _____ Form 9.7 – Local Business Affidavit of Eligibility
- _____ Form 9.8 – Vendor Application Form
- _____ Exhibit 1 – Monthly Lease Fee Proposal
- _____ W-9 Form
- _____ Copy of Certificate of Insurance
- _____ Submission of one (1) original marked “ORIGINAL”, and one (1) digital (CD or flash drive) version in PDF format.

BY: _____
Proposer

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 Proposals 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 proposal. Furthermore, I agree to abide by all conditions of the Request for 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 / FAX NUMBER

FEDERAL IDENTIFICATION #

E-MAIL ADDRESS

STATE OF _____ COUNTY OF _____

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

My Commission Expires:

Notary Public

This document must be completed and returned with your Submittal

FORM 9.3 – 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 Proposals.

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.

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

Name of Business

Authorized Signature

Date

Print Name

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 9.4 – DRUG FREE PREFERENCE STATEMENT

IDENTICAL TIE BIDS - Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, 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 Firm: _____

By: _____
(Name and Title)

Date: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of _____ and who: [] is personally known to me; or [] has produced _____ as identification.

Notary Public, State of

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 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.)**

(Authorized Signature)

(Date)

(Print Name)

STATE OF _____ COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of _____ and who: ☐ is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____
Printed Name, Commission Seal and Term Expiration Date

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 PROPOSERS 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 – AUTHORIZED SIGNATURES/NEGOTIATORS

The Bidder or Proposer represents that the following persons are authorized to sign and/or negotiate contracts and related documents to which the Bidder or Proposer will be duly bound:

Name	Title	Phone #
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Authorized Signature)

This document must be completed and returned with your Submittal

FORM 9.8 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

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

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

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

CONTACT PERSON/TITLE: _____

MAILING ADDRESS: _____

CITY-STATE-ZIP: _____

Length of Time at Address Provided: _____

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

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

FEIN (Federal Employer Identification Number): _____

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

PHONE NUMBER: _____ FAX: _____

EMAIL: _____

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

ATTESTATION – I understand that:

In accordance with City Of Port Orange City Code 2-275, local businesses shall have five (5) business days from bid/proposal opening to submit a best and final bid for evaluation. To qualify: A Port Orange business initial bid must be within (8%) of the lowest and best responsible bid from a non-Port Orange business; A Volusia County business initial bid must be within (5%) of the lowest and best responsible bid from a non-Volusia County business; A State of Florida business initial bid must be within (3%) of the lowest and best responsible bid from a non-State of Florida business.

A local business must have its headquarters, manufacturing facility, or locally owned franchise located within the legal boundaries of the City of Port Orange, Volusia County, or the State of Florida, as indicated herein, for at least twelve (12) months prior to the bid or proposal opening date and a valid business license, issued by the corresponding government agency. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. Bidders shall attach to this affidavit of eligibility with a bid or proposal, a copy of a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within corresponding local limits.

The preference does not apply to goods or services exempted by statute or prohibited by Federal law, State law, or other funding source restrictions.

The preference established in this policy does not prohibit the right of the City, or other authorized purchasing authority, to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals.

- The information contained herein may be subject to verification.

A vendor who misrepresents the local preference status of its firm in a proposal or bid submitted to the City of Port Orange will lose the privilege to claim local preference status, and shall lose eligibility to claim local preference for a period of one (1) year. The City Manager may also recommend that the firm be referred for debarment.

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

(Form 9.8 Local Business Affidavit of Eligibility – Page 2)

SWORN AND SUBSCRIBED BEFORE ME

SIGNATURE OF NOTARY PUBLIC

NOTARY SEAL

THIS _____ DAY OF _____, 20____

My Commission Expires: _____

SIGNATURE OF AFFIANT DATE

PRINTED NAME OF AFFIANT / TITLE

COMPANY

This document must be completed and returned with your Submittal



FORM 9.9 - VENDOR APPLICATION

City of Port Orange
Vendor Application

City of Port Orange

Attn: Lisa Pallante

(386) 506-5712

lpallante@port-orange.org

1000 City Center Circle

Port Orange, FL 32129

Date: _____

FIRM NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

If remittance payment address is different than application or W9 please fill out below:

ADDRESS: _____

TEL. # (including area code): _____ FAX.# _____

SIGNATURE PERSON FILING APPLICATION: _____

PRINTED NAME: _____

TITLE: _____

FEDERAL I.D. (F.E.I.N.) # _____

E-MAIL ADDRESS: _____

(Authorized Company Representative)

COMPANY STATUS:

INCOPRORATED: ☐ Y ☐ N State Incorporated: _____ Year: _____

TYPE OF ORGANIZATION: ☐ Indiv. ☐ Partnership ☐ Corp. ☐ Non-Profit ☐ LLC

ATTORNEY TRUST ACCOUNT NAME: _____

INSURANCE: Proof of adequate coverage for professional general liability, errors and omissions and workers' compensation may be required for certain types of procurements.

☐ Check this box to waive insurance requirements **only** if you are providing goods for F.O.B destination with no installation services.

*** NOTE TO VENDORS***

The City of Port Orange, Florida does not maintain a prospective vendor's list, classified by commodities for the purpose of inviting sealed bids and quotation.

The City utilizes DemandStar www.demandstar.com to release Bids/RFP's and quotes. While the City advertises the Invitation to Bid in the local newspaper (Daytona News Journal) only in rare cases does the City mail out announcement notices to vendors. Vendors interested in becoming a member of DemandStar may visit their web site at: www.demandstar.com or by calling them at 1-800-711-1712.

Vendors will automatically receive notice of request for Bids/RFP's or quotes after they sign up on DemandStar. It is important that vendors sign, complete and return this application. Also include the W-9 and insurance information requirements in order for the City to assign a vendor number on our computer system.

It is also the vendor's responsibility to keep the Purchasing Division informed as to any change of address or insurance that may occur.

If your company is interested in bidding on commodities/services in addition to those specified, on any specific article related to the main category, insert the type of those materials on the blank space provided for each category group. Attorney services are secured by direct telephone quotes or written price inquiries.

Drug Free Workplace: A statement as to whether or not your firm has implemented a drug-free workplace program, as described in Section 287.087 of the Florida Statutes should be noted. Failure to respond in affirmative to this request will not disqualify you from consideration. Preference will be given to firms which have implemented a drug-free workplace program in the case where the City has received two or more bids what are equal with respect to price, quality, and service.

Equal Employment Opportunity (EEO). All vendors will be required to make an affirmative statement as to their support of all applicable equal opportunity affirmative actions requirements. A copy of the City's Equal Employment Opportunity statement (EEO) will be available to the vendor upon request.

I certify that the information supplied herein is correct and that neither the applicant nor any person (or concern) in any connection with the applicant as a principal or officer, so far as is known, is now disqualified from the public contracting and purchasing process by any agency of the federal government, the State of Florida or the City of Port Orange.

Signature of Person Completing Form: _____

Printed/Types Name: _____ Title: _____

Commodity/Services _____

This document must be completed and returned with your Submittal

W-9 Form

Form **W-9**
(Rev. January 2011)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

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

Print or type
on page 2.
See Specific Instructions

Name (as shown on your income tax return)

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax

classification (required): ☐ Individual/sole proprietor ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership)

☐ Exempt payee

☐ Other (see instructions)*

Address (number, street, and apt. or suite no.)

Requester's name and address (optional)

City, state, and ZIP code

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

 - -

Employer identification number

 -

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).
4. Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign
Here

Signature of
U.S. person

Date

General Instructions

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

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

Cat. No. 10231X

Form Page 30 of 32W-9 (Rev. 1-2011)

This document must be completed and returned with your Submittal



EXHIBIT I - MONTHLY LEASE FEE PROPOSAL
RFP # 16-27
WATER RECREATION RENTAL OPERATIONS

(Include under Tab H of Proposal)

NAME OF BUSINESS:

CONTACT PERSON:

EMAIL ADDRESS:

AUTHORIZED SIGNATURE:

PROPOSED MONTHLY LEASE FEE		Fee Per Month
1	Lease Fee per Month	\$ -
Annual Lease (Monthly Lease Fee x 12 Months)		\$ -



CITY OF PORT ORANGE

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

ADDENDUM NO. 1

July 11, 2016

RFP 16-27 WATER RECREATION RENTAL OPERATIONS

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated June 10, 2016 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. CHANGES TO SPECIFICATIONS: The following changes to specifications for RFP 16-27 Water Recreation Rental Operations have been made. Vendors are to make note of these changes to in their copies of the RFP document.

1. All references to "lease" or "lease agreement" within this bid are deleted and replaced by "license" or "license agreement".
2. All references to "rent" or "rental fee" within this bid are deleted and replaced by "fee" or "license fee".
3. All references to "tenant" within this bid are deleted and replaced by "Licensee".
4. Section 3 – SCOPE OF SERVICES, shall be amended to read as follows:

The City of Port Orange is seeking proposals from qualified firms or companies to enter into a **license** ~~lease~~ agreement for water recreation rental operations at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127. The premises shall be used for purposes consistent with related marine use such as canoe, kayak, paddleboard, and other non-motorized equipment. The Proposer shall be responsible for **all operating costs including but not limited to water, electricity, waste removal, sewer, cable, phones, internet and other utilities.** ~~self contained maintenance, trash, sewer, cable, phone internet and other utilities required for adequate operation of the facility. Electricity and water availability is to be included in the lease fee.~~

License Lease Terms:

The term of the **license agreement** lease is two years with the option to renew two (2) times in two (2) year intervals. **However, the license is subject to revocation upon a sixty (60) day notice to the Licensee by the City.**

The license will be subject to a monthly license fee. ~~Lease terms will include a monthly base rent. Licensee shall be permitted to use the concession area of the building and designated park areas as well as shared use of the restrooms, (attached as Exhibit 1). Monthly lease costs include the concession area of the building and designated park areas as well as shared use of the restrooms, (attached as Exhibit 1).~~ **The Licensee will be responsible for all operating expenses, including but not limited to water, electricity, waste removal, sewer, cable, phones, internet and other utilities.** ~~The Licensee will not include cable, phone and internet. The Lease will also include electric, water, sewer and trash removal. The Lease will not include cable, phone and internet.~~

The Proposer shall provide the City with a security deposit in the form of irrevocable letters of credit, cash deposits, or surety instruments satisfactory to the City upon signing the **license agreement** ~~negotiated lease~~. The amount of the ~~total~~ deposit, **to offset any damage to property caused by the Licensee**, will be **determined upon negotiation of the contract** ~~the total of first and last month's rent. The anticipated lease will be a net lease in which the Tenant will pay all operating expenses.~~

Outfitter Operation:

The Tenant shall be responsible for operations, marketing and advertising, staffing, cleaning, security, **and** cost of ~~some~~ utilities, including but not limited to **water, electricity, waste removal, sewer, cable, phones, internet** ~~cable, satellite TV service, internet and maintenance within the leased areas, and obtaining all required permits and licenses.~~

The Facility:

The Riverwalk Floor Plan indicates the area available to **use** ~~lease~~. **The Licensee shall not make any modification to the interior or exterior of the facilities used.** ~~Any interior modifications can be negotiated between the successful Proposer and the City. All equipment will be provided by Licensee tenant.~~

The Building: The electric system meets code, water, sanitary sewer is all currently available in the facility. **The cost of using any utilities shall be the responsibility of the Licensee.** ~~Phone, cable television and High speed internet are the tenant's responsibility.~~

~~Any improvements installed by the Lessee shall be approved by the City of Port Orange and shall be code compliant. Suggestions for specific improvements by the Proposer~~

~~should be reviewed by the Building Department prior to submittal of the Proposal. All suggested improvements are negotiable.~~

Signage:

Signage, including way-finding signs, may be included in the Proposal for consideration. Proposers should suggest signage locations which the City may consider.

No permanent signage may be constructed by the Licensee. ~~Signage adjacent to US1 on park property is permitted for 24sq. ft. and will be the responsibility of the tenant to pay, permit, and install and maintain the sign.~~

Operating Hours:

The concession(s) may be used at all appropriate times during regular park hours from dawn to dusk. ~~Required hours of operation by the City include:~~

Maintenance:

Successful proposer shall be responsible for the following:

- Keeping the staging area neat, clean and in good standing;
- Removing rental-related refuse to the dumpster daily;
- Arranging seating area (if applicable);
- Sweeping, mopping and cleaning the public area surrounding the staging area daily upon completion of usage;
- Do not allow boxes, cartons, barrels trash or similar items to be in the view of the public.
- Evaluation of maintenance compliance will be at the City's sole discretion. **If Licensee fails to maintain to the standards of the City, the License may be revoked.** ~~If found to be in default, the City will issue a letter of non-compliance. The vendor will have two (2) working days to correct noncompliance items. If not corrected, vendor will be considered in breach of contract.~~

In all other respects, except as specifically stated herein, the subject RFP 16-27 remains unchanged.

END OF ADDENDUM NO. 1

Sandy Point Progressive Sports

Proposal

Water recreation rental operations

Mike Klein
7/11/2016

Table of contents

Page

- 2. Tab A: Statement of interest
- 3. Tab B: Firm and staff qualifications and references
- 5. Tab C: Licenses/insurance
- 10. Tab D: Financial stability/litigation
- 11. Tab E: Operating plan
- 17. Tab F: Marketing plan
- 18. Tab G: Financial plan
- 19. Tab H: Proposed monthly lease fee
- 20. Tab I: Required documents

Tab A: Statement of interest

Sandy Point Progressive Sports is presenting this proposal for a “Water Recreation Rental Operation” RFP #16-27, located at Riverwalk Park, 3441 South Ridgewood Ave, Port Orange, FL 32127. We believe our decades of experience in the water sports industry serving the communities of Volusia County and beyond shall provide evidence of our ability to professionally setup, manage and maintain a water recreation rental operation at this location.

As a water recreation rental operation we would operate and maintain an adequate number of rental kayaks, SUP’s, windsurfing rigs and small sailboats to serve the community in both the high season and low. We would staff the location with a professional employee who would be able to assist all patrons regardless of skill level. We pride our company on staffing our retail location and service operations with staff that has the experience in all disciplines of water sports activities that we sell.

In addition to providing an adequate supply of equipment and a professional staff our organization will offer rental equipment that will be unique and unavailable from other local outfitters which will draw special interest and attention to the park and rental operation. This equipment will be in the kayak, SUP and sail sports.

In conclusion, in this proposal for RFP #16-27 Water Recreation Rental Operations, we will not only express our interest to operate this rental operation, but we will also provide information that will show we have the financial capability, experience, knowledge, passion and staff to operate the rental operation.

Name: _____ Signature: _____

Tab B: Firm and staff qualifications

Founded in 1983 Sandy Point Progressive Sports has professionally served our community in the retail sales of kayaks, sailboats, windsurfing, surfing and other watersports equipment for over 30 years. In addition, we also set up community events on an annual, monthly and weekly basis to help educate and train our community on proper water safety, equipment instruction and environmental awareness. These events have included, but not limited to, free kayak demo's, free sup demo's, eco tours, kayak and sup tours, competitive watersports events, windsurfing and kitesurfing instruction. We are committed to the promotion and safety of water sports activities.

The Riverwalk Park is located on the back yard of Sandy Point Progressive Sports. Our previous location of almost 20 years was located just a few blocks north of the Riverwalk Park on the water. For that period of time we successfully operated, without incident, kayak and windsurfing rentals, tours and lessons on that stretch of the ICW. Our staff has spent years, then and now, kayaking and sailing up and down that portion of the ICW and the surrounding islands.

During that time we operated a kayak rental concession with over 20 kayaks. Our staff was trained and operated in the highest regard to safety. On a daily basis our staff assisted renters with: Choosing the correct kayak for their size and experience, inspecting the kayak to make sure it was suited for rent and had all the proper safety equipment, making sure the renter had proper footwear, reviewing with the renter the proper procedure for entering and exiting the kayak, giving the renter an overview of the waterway including areas to avoid and points of interest, assisting the renter to the water and making sure the renter successfully launches and is in proper kayaking form. Our passion and attention to water safety and promotion of the watersports we rent is evident in our 30 plus years of a successful rental operation from our facility without incident.

We have some of the most dedicated and professional staff in the area. Our primary staff has been with Sandy Point for 10-20+ years and our average employee stays with us for 5-6 years. We employ only the most professional personnel in our industry that have the highest knowledge and passion of the water sports equipment we sell and rent.

We have no previous contracts with any cities or counties in regards to a rental concession. However, we have successfully organized and partnered with several

private organizations in which we setup and operated large competitive events. For these events we organized the finances, marketing, operations, equipment, staffing and personally operated the events day to day. These events have included the several Kona Worlds Competitions, an event that brought competitors from around the world to the Florida Keys for a week long competition. We also organized a West coast tour of competitive events that had a dozen stops along the West coast of the US, including several demos around the US for multiple sporting activities.

Our ability to setup, staff and manage a water recreation rental operation at the Riverwalk Park will hopefully be evident in our 30 plus year of experience.

Tab C: License/Insurance



2016 Florida Annual Resale Certificate for Sales Tax

THIS CERTIFICATE EXPIRES ON DECEMBER 31, 2016

DR-13
R. 10/15

Business Name and Location Address

Certificate Number

74-8012065552-9

SANDY POINT PROGRESSIVE SPORTS INC
3090 S RIDGEWOOD AVE
SOUTH DAYTONA, FL 32119-3546

By extending this certificate or the certificate number to a selling dealer to make eligible purchases of taxable property or services exempt from sales tax and discretionary sales surtax, the person or business named above certifies that the taxable property or services purchased or rented will be resold or re-rented for one or more of the following purposes:

- Resale as tangible personal property.
- Re-rental as tangible personal property.
- Resale of services.
- Re-rental as commercial real property.
- Incorporation into and sale as part of the repair of tangible personal property by a repair dealer.
- Re-rental as transient rental property.
- Incorporation as a material, ingredient, or component part of tangible personal property that is being produced for sale by manufacturing, compounding, or processing.

Florida law provides for criminal and civil penalties for fraudulent use of a *Florida Annual Resale Certificate*.

The *Florida Annual Resale Certificate* is issued to active, registered sales and use tax dealers. **As a buyer**, use your certificate to purchase or rent property or services tax exempt that you intend to resell or re-rent to your customers. You cannot use this certificate to purchase or rent property or services that you will use in your business. **As a seller**, you must collect sales tax and discretionary sales surtax imposed on retail sales or rentals of taxable property or services, unless the transaction is exempt.

Seller Certificate Verification – Verify resale or exemption certificates using a customer's sales tax certificate number:

- Phone: **877-FL-RESALE** (877-357-3725)
- Online: Go to **www.myflorida.com/dor** and select "*More e-Services*" and then "*Verify resale and exemption certificates*"
- Mobile App: **Florida Tax (FL Tax)** mobile app for iPhone, iPad, Android phones and tablets, Windows Phone

If you obtain an authorization number for each tax-exempt sale, or for all sales to a specific customer, you do **not** need to keep a copy of the customer's *Florida Annual Resale Certificate*.



**CITY OF SOUTH DAYTONA
LOCAL BUSINESS TAX RECEIPT**

SUBJECT TO
LOCAL BUSINESS
TAX RECEIPT ORDINANCE

VALID PERIOD: 10/01/2015-09/30/2016

BUSINESS CLASSIFICATION

MERCHANTS WHOLESALE RETAIL
RETAIL SALES-SPORTING GOODS
300,000 INVENTORY
SIGNS OVER 15 S.F.(1)

ACCOUNT ID RECEIPT NUMBER

1223 1216

AMOUNT DUE: IF PAID BY:

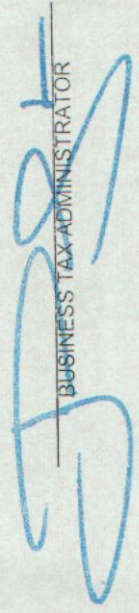
260.00	SEPT. 30
286.00	10/31/2015
299.00	11/30/2015
312.00	12/31/2015
325.00	01/31/2016

LOCATION

3090 RIDGEWOOD AVENUE

ISSUED TO

SANDY POINT PROGRESSIVE SPORTS
GOTTLIEB, STEVE AND MARTY
SANDY POINT PROGRESSIVE SPORTS
3090 S RIDGEWOOD AVENUE
SOUTH DAYTONA, FL 32119


BUSINESS TAX ADMINISTRATOR

PAID NOV 30 2015

POST IN CONSPICUOUS PLACE AT BUSINESS LOCATION

2015/2016

Volusia County Business Tax Receipt

Issued pursuant to F.S. 205 and Volusia County Code of Ordinances Chapter 114-1 by:
Volusia County Revenue Division - 123 W Indiana Ave, Room 103, Deland, FL 32720 - 386-736-5938

Receipt # 199605080025 Expires: September 30, 2016
Business Location: 3090 S RIDGEWOOD AV



Business Name: SANDY PT PROGRESSIVE SPORTS
Owner Name: POINT PROGRESSIVE SPORTS SANDY
Mailing Address: 3090 S RIDGEWOOD AVE
SOUTH DAYTONA, FL 32119

BUSINESS TYPE	CODE	COUNT	TAX
Retail / Wholesale Sales	482	10	\$30.00

- This receipt indicates payment of a tax, which is levied for the privilege of doing the type(s) of business listed above within Volusia County. This receipt is non-regulatory in nature and is not meant to be a certification of the holder's ability to perform the service for which he is registered. This receipt also does not indicate that the business is legal or that it is in compliance with State or local laws and regulations.
- The business must meet all County and/or Municipality planning and zoning requirements or this Business Tax Receipt may be revoked and all taxes paid would be forfeited.
- The information contained on this Business Tax Receipt must be kept up to date. Contact the Volusia County Revenue Division for instructions on making changes to your account.

**THIS PORTION OF THE BUSINESS TAX RECEIPT MUST BE
POSTED CONSPICUOUSLY IN YOUR PLACE OF BUSINESS**



CERTIFICATE OF LIABILITY INSURANCE

SANDY-3 OP ID: SZ

DATE (MM/DD/YYYY)
07/13/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Brown & Brown of Florida, Inc.
Daytona Beach Office
P.O. Box 2412
Daytona Beach, FL 32115-2412
Joann Keenan

CONTACT NAME: STEPHANIE REYNOLDS
PHONE (A/C, No, Ext): 386-239-4058 FAX (A/C, No): 386-323-9110
E-MAIL ADDRESS: SREYNOLDS@BBDAYTONA.COM

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Westfield Ins Co	24112
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	
INSURER F:	

INSURED
SANDY POINT PROGRESSIVE SPORTS
AEROTECH SAILS, INC
3090 S. RIDGEWOOD AVE.
SOUTH DAYTONA, FL 32119

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:			CWP7706040	09/17/2015	09/17/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PO/AGG \$ 2,000,000
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS HIRED AUTOS SCHEDULED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ NONE			CWP7706040	09/17/2015	09/17/2016	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

Marty

From: donotreply@sunbiz.org
Sent: Thursday, April 23, 2015 1:39 PM
To: marty@progressivesports.com
Subject: Sunbiz.org Payment Receipt

Thank you for submitting your payment to Florida Department of State, Division of Corporations. This email will serve as confirmation that your payment was received by our office. Your filing will be posted on our website <http://www.sunbiz.org/> within 1-3 business days.

The transaction information is listed below:

Receipt Number:	3640444015
Transaction Date/Time:	04/23/2015 01:38 PM
Card Number:	XXXX XXXX XXXX 6986
Card Type:	MC
Approval Code:	85423P
Payment Amount:	\$150.00
Tracking Number:	CC6139582105
Document Number:	P96000000815

Tab D: Financial Stability/Litigation

In the past 5 years no litigation or proceedings have been ruled against Sandy Point Progressive Sports, Inc.

There have been no government contracts that have been awarded to Sandy Point Progressive Sports, Inc. that have been terminated in default or convenience.

Tab E: Operating Plan

Objective:

Serve the general public as a full service outfitter of non-motorized water sports equipment at the Riverwalk Park, 3441 South Ridgewood Ave, Port Orange, FL , 32127. Market and operate a water recreation rental operation and promote water safety while providing a fun and professional atmosphere.

Staff:

Sandy Point Progressive Sports will employ and provide one staff member to operate the water recreation rental operation for the term of the lease. This staff member will meet all current requirements of any staff member of Sandy Point Progressive Sports. Sandy Point Progressive Sports will have additional staff members to support the primary staff member during lunch periods, sick days, time off and during times of high volume when additional staff is required.

Equipment:

Sandy Point Progressive Sports will provide kayaks, stand up paddle boards and small sailing crafts as needed to supply the demand of the rental concession. As demand increases or decreases equipment will added or removed from the fleet. All equipment will be supplied at the expense of Sandy Point Progressive Sports and secured onsite at the Riverwalk Park.

All equipment will be of the “sealed hull” type to insure the highest safety to the renters. All equipment will be continuously inspected for damage or defects that would jeopardize the safety of the renter and will be replaced or repaired as needed at the expense of Sandy Point Progressive Sports.

Safety equipment will be provided by Sandy Point Progressive Sports and all crafts will comply with any and all coast guard regulations upon entering the water. All safety equipment will be continuously inspected for damage or defects that would jepordize the safety of the renter and will be replaced or repaired at the expense of Sandy Point Progressive Sports. Additional equipment and supplies that would add to the safety and well being of the renter will be sold onsite. Additional equipment and supplies include: proper water shoes, sunscreen and water.

Rental Pricing:

Sandy Point Progressive Sports will use its current pricing structure for kayak, sup and small sailing craft rentals. This pricing will remain unchanged and in effect for the term of this lease.

Kayaks	Single Kayak	Tandem Kayak	Hobie Single Mirage Kayak
Per hour	\$20	\$30	\$40
Stand up paddle boards	Standard		
Per hour	\$20		
Windsurfer	Standard		
Per hour	\$35		
Small Sailing Craft	Standard		
Per hour	\$50		

Rental Procedures:

All staff will be required and trained to follow a strict guideline for renting equipment. This guideline is outline below:

1. Greet all potential renters with a professional and courteous attitude.
2. Require all renters to properly fill out Sandy Point Progressive Sports waiver forms.
3. Make sure all minors are accompanied by an adult who can cosign the rental waiver forms.
4. Obtain payment and a deposit for all vessels rented.
5. Fit all renters with the proper fitting life vest and explain the vest must be worn at all times.
6. Make sure all renters have the proper footwear.
7. Remove vessels from rack and review the vessels features and proper standing/sitting and paddling techniques. If a sailing craft is being rented, previous sailing knowledge is required and renter must be questioned about sailing experience. Questions will be in detail and only qualified sailors should be able to appropriately respond.
8. Accompany renter to the launch with the vessel.
9. Educate and the renter about the local waterway including all hazards, points of interest and waypoints for navigation.
10. Make sure renter is aware of their launch time and required return time.
11. Help renter launch.

12. A returning renter should be helped back into the launch area or immediately greeted if they have already returned.
13. Renter should be questioned about their experience and if they experienced any troubles.
14. Rental equipment should be checked in for any damage or missing pieces.
15. Renter may be returned their deposit slip if all equipment is returned in satisfactory condition. Only major damage or missing pieces should be considered when returning deposit.
16. Rental equipment must be cleaned and inspected before returning to the rental rack to ensure all equipment is suitable for further rental.

Below are copies of the waiver forms provided by our insurance company that will be used in the water recreation rental operation.

14 | Page



Sandy Point Progressive Sports
3090 S. Ridgewood Ave, S. Daytona, FL 32119



PROTECTIVE HEADGEAR REFUSAL AGREEMENT

Please read and be certain you understand the implications of signing.

I, FOR MYSELF AND/OR ON BEHALF OF MY CHILD OR LEGAL WARD, HAVE BEEN FULLY WARNED AND ADVISED BY SANDY POINT PROGRESSIVE SPORTS THAT WE SHOULD WEAR A PROPERLY FITTED HELMET IN ORDER TO REDUCE SOME OR ALL OF OUR HEAD INJURIES AS THE RESULT OF A FALL OR ANY OTHER OCCURRENCE ASSOCIATED WITH THIS HAZARDOUS ACTIVITY. WE REALIZE WE ARE SUBJECT TO INJURY FROM THIS ACTIVITY WHICH WE ARE EXPOSING OURSELVES PURELY VALUNTARILY.

AGAINST THIS ADVICE, WE ARE REFUSING THIS CRITICAL SAFETY PRECATION.

I/WE THE UNDERSIGNED, HAVE READ THE FOREGOING STATEMENT AND DO UNDERSTAND IT'S WARNINGS AND ASSUMPTION OF RISKS.

S/ _____
Signature of Adult Rider

Name of Adult Rider (Please Print)

Date

FOR PARTICIPANTS OF MINORITY AGE: This is to certify that I, as a Parent, Guardian, Temporary Guardian with legal responsibility for this participant, do consent and agree not only to his/her release of all Releasees, but also to release and indemnify the Releasees from any and all liabilities incident to his/her involvement in these programs for myself, my heirs, assigns, and next of kin.

S/ _____
Signature of Parent or adult age legal
Guardian if Participant is a Minor, and
By their signature, they on my behalf
Release all claims that both they and
I have

Name of Parent or adult legal Guardian
(Please Print)

Date

Minor's Full Name

Date

RJ526 (03/2006)



Sandy Point Progressive Sports
3090 S. Ridgewood Ave, S. Daytona, FL 32119



Declaration of Fitness To Use The Rental Equipment

I hereby declare that I am physically fit. I do not, and have not, suffered from any of the following conditions, which I understand may lead to a dangerous situation with regard to other persons or myself during activities:

Epilepsy, fits, severe head injury, recurrent blackouts or giddiness, disease of the brain or nervous system, high blood pressure, lung or heart disease, recurrent weakness or dislocation of any limb, diabetes, mental illness, drug or alcohol addiction, recent back injury, arthritis and severe joint sprains, chronic bronchitis, asthma, rheumatic fever, thyroid adrenal or other glandular disorder, recent blood donation or any condition that requires the regular use of drugs.

I hereby declare that I have no physical or mental condition that should preclude me from participating in my chosen activity, that I am not participating against medical advice or treatment and that I have not been diagnosed by a registered doctor as having a terminal illness.

I further declare that in the event that I feel ill or unwell, have any physical complaints whatsoever or if an injury is sustained of any kind during the course of activities, I will notify the instructor / guide / employee of the insured immediately and before moving away from the immediate vicinity.

I have read the above Declarations, understand them, and I agree to be bound by them.

S/ _____ Signature of
Adult Participant Name of Adult Participant (Please Print) _____ Date _____

Address of Adult Participant _____ Contact No# _____

S/ _____ Signature of
Parent or Guardian if Participant is a Minor, and by their signature, they on my behalf Name of Parent or Guardian (Please Print) _____ Date _____
release all claims that both they and I have

Address of Parent or Guardian _____ Contact No# _____

Name of Minor (Please Print) _____ Date _____

.....
If you cannot sign the above declaration because of any of the above conditions, you must notify the Instructor / Guide / Employee of the Insured immediately before you use the equipment or commence any activities.
.....

Attention of the Authorised Insured Only (Counter- Sign upon full and correct completion)

S/ _____ Counter-
Signature of Authorised Insured Name of Authorised Insured (Please Print) _____ Date _____

RJ526 (03/2006)

Tab F: Marketing Plan

Sandy Point Progressive Sports will be marketing a water recreation rental operation located at the Riverwalk Park to two primary markets; the local community and the tourism market. Given the success of our current rental operation we will extend our current marketing plan to include the Riverwalk Park as a rental location. This will be most effective as a large portion of the inquiries we receive are looking for a location on the water.

Marketing Strategies:

1. Produce and distribute kayak rental cards to be placed in hotels along beachside. Rental Card printing and distribution cost per year \$400.
2. Discovery Maps: We will have the Riverwalk Park Rental Location added to the Discovery Maps which is free map that is distributed to hotels and businesses in Volusia county. This is an annual fee of \$655.
3. Website page and online marketing. We will add the location of the Riverwalk Park to our website and continue to promote that page through an online pay per click campaign targeting the following keywords 'Daytona Kayak Rental', 'Daytona SUP Rental', 'Daytona Boat Rental'. Current annual budget \$1000.
4. Listing and promotion of the Riverwalk Park as a kayak rental location on the website www.Florida-Kayak-Tours.com. Current annual listing fee is \$99.

Tab G: Financial Plan

Given Sandy Point Progressive Sports current rental operation revenue we have extended out a 2 year financial plan based on the increase in rental operations revenue for the proposed water recreation rental operations.

2 Year Financial Plan	
Startup Expenses/ Assets	
Kayaks	\$4,740.00
SUP's	\$4,104.00
Windsurfing equipment	\$2,700.00
Small sailing craft	\$2,564.00
Total Assets	\$14,108.00
Expenses	
Employees	\$36,000.00
Lease	\$4,800.00
Advertising	\$4,308.00
Asset depreciation	\$5,643.20
Total Expenses	\$50,751.20
Income	
Projected rental sales	\$57,000.00
Projected accessory sales	\$8,640.00
Total Income	\$65,640.00
Projected Net Income	\$14,888.80

Tab H: Proposed Monthly Lease Fee

RFP #16-27

Water Recreation Rental Operations

Name of Business:	Sandy Point Progressive Sports
Contact Person:	Mike Klein
Email Address:	mike@progressivesports.com
Authorized Signature:	

Proposed Monthly Lease Fee		Fee Per Month
1	Lease Fee per Month	\$200.00
Annual Lease(Monthly Lease Fee x 12 Months)		\$2400.00



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (C8b) Approval of Third Party Access and Use Agreement with Zoll Data Systems Inc. for Fire Reports and EMS Charts

DEPARTMENT: Fire/Rescue Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve the Third Party Access and Use Agreement with Zoll Data Systems, Inc. ("Zoll") for a records management system for fire calls and transport, subject to the approval of Volusia County's agreement with Zoll; authorizing City Manager and City Attorney to finalize the terms of the agreement, and authorizing Mayor and City Clerk to sign all necessary documents.

SUMMARY: Volusia County currently provides fire dispatch services to the City of Port Orange ("City") through its central dispatch center. As part of that service, the County has been responsible for providing a records management system for tracking fire and emergency medical calls. The County currently performs these tasks through Firehouse, a software reporting platform. The County anticipates approval of the contract with Zoll Data Systems, Inc. ("Zoll") to provide fire and emergency medical services records management system at their October 18, 2022 meeting. In order to participate in the county's provision of a records management system at no cost to the City, Zoll requires the City to enter into a third-party user agreement for use and access. While the City could provide its own records management system, the County is covering the costs of this records management system. Hence, there is no cost associated with the City entering into this agreement for the services the County is providing to the City. In addition, the City Attorney's Office is still working to finalize the agreement with Zoll and is requesting the Council to authorize the City Manager and City Attorney to finalize the terms of the agreement.

PRESENTER: Joe Wulfig

ATTACHMENTS:

1.	Third Party Access and Use Agreement - ZOLL Fire Reports and emsCharts with	Third Party Access and Use Agreement - ZOLL Fire Reports and
----	---	--

	Proposed Addendum20220801	emsCharts 20220801 (1).pdf
2.	Volusia County Order Q-39417 (NFPA for ZFR) 20220921-rev	ZDS _ Volusia County Order Q-39417 (NFPA for ZFR) 20220921-rev.pdf
3.	Volusia County Order Q-39185 (ZFR_ ZEMS - Fire) 20220921-rev	ZDS _ Volusia County Order Q-39185 (ZFR_ ZEMS - Fire) 20220921-rev.pdf

Joe Wulfing	Created/Initiated - 8/4/2022
Joe Wulfing	Approved - 8/4/2022
Matthew Jones	Approved - 9/27/2022
Wayne Clark	Approved - 9/27/2022
Robin Fenwick	Final Approval - 9/27/2022

**THIRD PARTY ACCESS AND USE AGREEMENT – ZOLL FIRE REPORTS AND EMSCHARTS
FOR COUNTY OF VOLUSIA, FL**

THIS THIRD PARTY ACCESS AND USE AGREEMENT ("**Agreement**"), effective as of the date on which both parties have signed

below, is entered into by and between _____ ("**Third Party**") and ZOLL Data Systems, Inc. ("**ZOLL**") located at 11802 Ridge Parkway, Suite 400, Broomfield, CO 80021.

1. **Access and Use.** Subject to the terms and conditions of this Agreement, ZOLL grants Third Party a limited, revocable, non-exclusive right to access and use ZOLL Fire Reports and/or ZOLL emsCharts at ZOLL's designated URL (currently zoll.emscharts.com) (the "**Cloud Services**") solely for the purpose of submitting records to one or more entities identified as receiving entities for Third Party with respect to such records, which may include submitting patient care records to one or more entities identified as receiving hospitals or other receiving entities for Third Party with respect to the patients named in such records and for other authorized purposes (the "**Access and Use**"). ZOLL reserves the right to monitor such Access and Use and use the results of such monitoring for any lawful purpose. Third Party's Access and Use requires an active agreement(s) between ZOLL and the County of Volusia, FL for the implemented Cloud Services (ZOLL Fire Reports and/or emsCharts).

2. **Authorization.** Third Party represents, warrants and covenants that (A) it has the full right, power and authority for the Access and Use; (B) the Access and Use do not violate any agreement, law, regulation or other legal standard, including but not limited to any business associate agreement or other requirement of Health Insurance Portability and Accountability Act of 1996, as amended; (C) ZOLL will not as a result, or arising out, of the Access and Use (i) be an agent of Third Party; (ii) receive, maintain or transmit protected health information on behalf of Third Party; or (iii) make any representation or warranty, or have any liability, to Third Party; (D) Third Party will not be a third party beneficiary under an agreement between ZOLL and any customer.

3. **Restrictions.** Without limiting any other term or condition of this Agreement, Third Party shall not, and shall not permit any other third party to: (a) use, reproduce, modify, adapt, alter, translate or create derivative works from the Cloud Services, the software that underlies the Cloud Services, as modified, updated and enhanced from time to time (the "**Underlying Software**") or the documentation or users manuals from time to time made available by ZOLL for the Cloud Services (the "**Instructions**"); (b) merge the Cloud Services, Underlying Software or Instructions with other software or services; (c) sublicense, distribute, sell, use for service bureau use, lease, rent, loan, or otherwise transfer or allow access to the Cloud Services, Underlying Software or Instructions to any third party; (d) reverse engineer, decompile, disassemble, or otherwise attempt to alter or derive the Source Code (as defined in Section 8) for the Cloud Services or Underlying Software; (e) remove, alter, cover or obfuscate any copyright notices or other proprietary rights notices included in the Cloud Services, Underlying Software or the Instructions; (f) use the Cloud Services in any manner that could disable, overburden, damage, or impair the site or interfere with any other party's use of the Cloud Services; (g) introduce any viruses, trojan horses, worms, logic bombs or other material which is malicious or technologically harmful; (h) otherwise attempt to interfere with the proper working of the Cloud Services; or (i) otherwise use or copy the Cloud Services, Underlying Software or Instructions in any manner not expressly permitted by the Agreement. Third Party agrees not to use the Cloud Services in excess of its authorized login protocols. Third Party shall immediately notify ZOLL of any unauthorized use of Third Party's login ID, password or account or other breach of security. If Third Party becomes aware of any actual or threatened activity contemplated by the restrictions on use set forth in this Agreement, Third Party will, and will cause its users to, immediately take all reasonable measures necessary to stop the activity or threatened activity and to mitigate the effect of such activity including: (i) discontinuing and limiting any improper access to any data; (ii) preventing any use and disclosure of improperly obtained data; (iii) destroying any copies of improperly obtained data that may have been made on the systems of Third Party or its users; (iv) otherwise attempting to mitigate any harm from such events; and (v) immediately notifying ZOLL of any such event so that ZOLL may also attempt to remedy the problem and prevent its future occurrence.

4. **Confidentiality.** Third Party will not use any trade secrets, business or financial information, computer software, machine or operator instructions, business methods, procedures, know how, technical, marketing, financial, employee, planning or other information that relates to the business or technology of ZOLL and is marked or identified as confidential or is disclosed in circumstances that would lead a reasonable person to believe such information is confidential ("**Confidential Information**") for any purpose not expressly permitted by this Agreement, and will further disclose the Confidential Information only to the employees or contractors of Third Party who have a need to know Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than Third Party's duty hereunder. Third Party will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as Third Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. the Cloud Services, the Underlying Software and Instructions shall be Confidential Information (including without limitation any routines, subroutines, directories, tools, programs, or any other technology included in the Cloud Services or Underlying Software), notwithstanding any failure to mark or identify it as such. Third Party's obligations under this Section 4 with respect to any Confidential Information will terminate if and when Third Party can document that such information: (a) was already lawfully known to Third Party at the time of disclosure by ZOLL; (b) is disclosed to Third Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Third Party has become, generally available to the public; or (d) is independently developed by Third Party without access to, or use of, Confidential Information. In addition, Third Party may disclose Confidential Information to the extent that such disclosure is: (i) approved in writing by ZOLL, (ii) necessary for Third Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court or similar judicial or administrative body, *provided that* Third Party notifies ZOLL of such required disclosure in writing prior to making such disclosure and cooperates with ZOLL, at ZOLL's reasonable request and expense, in any lawful action to contest or limit the scope of such required disclosure.

5. **Warranties.** THE CLOUD SERVICES ARE PROVIDED "AS IS", WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY. ZOLL SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES WITH RESPECT TO THE CLOUD SERVICES, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. THIRD PARTY ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES AND THAT NO WARRANTIES ARE MADE HEREIN BY ZOLL OR ANY OF ITS REPRESENTATIVES OR SUPPLIERS WITH RESPECT TO THE CLOUD SERVICES AND THAT NO WARRANTIES ARE MADE BY ANY OF ZOLL'S LICENSORS OR SUPPLIERS.

6. **Limitation on Liability.** IN NO EVENT WILL ZOLL OR ANY OF ITS REPRESENTATIVES OR LICENSORS OR SUPPLIERS BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST DATA, LOST PROFITS AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THE CLOUD SERVICES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF ZOLL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Third

party acknowledges that these limitations reflect the allocation of risk set forth in this Agreement and that ZOLL would not enter into this Agreement without these limitations on its liability, and Third Party agrees that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy. In addition, ZOLL disclaims all liability of any kind of ZOLL's licensors and suppliers.

7. **Indemnification.** Except to the extent prohibited by Section 768.28, Florida Statutes, Third Party agrees to defend, indemnify and hold harmless ZOLL, its affiliates, licensors and service providers, and its and their respective officers, directors, employees, contractors, agents, licensors, suppliers, successors and assigns from and against any claims, liabilities, damages, judgments, awards, losses, costs, expenses or fees, including reasonable attorneys' fees ("**Claims**") arising out of or relating to Third Party's violation of this Agreement or access to, and use of, the Cloud Services other than as expressly authorized in this Agreement. The foregoing obligations are conditioned on ZOLL: (i) notifying Third Party promptly in writing of any such Claim; (ii) giving Third Party sole control of the defense thereof and any related settlement negotiations; and (iii) cooperating with Third Party and, at Third Party's request and expense, assisting in such defense.

8. **Ownership.** All right, title and interest, including but not limited to all existing or future copyrights, trademarks, service marks, trade secrets, patents, patent applications, know how, moral rights, contract rights, and proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing ("**Intellectual Property Rights**"), in and to the following are the exclusive property of ZOLL (or, as the case may be, its licensors and suppliers): (i) the Cloud Services, Underlying Software and Instructions and all proprietary technology used by ZOLL to perform its obligations under this Agreement; (ii) all software, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that ZOLL makes, develops, conceives or reduces to practice, whether alone or jointly with others; (iii) the fully compiled version of any of the foregoing software programs that can be executed by a computer and used without further compilation (the "**Executable Code**"); (iv) the human readable version of any of the foregoing software programs that can be compiled into Executable Code (the "**Source Code**"); (v) all enhancements, modifications, improvements and derivative works of each and any of the foregoing; and (vi) all ideas, suggestions or other comments provided by Third Party or its representatives to ZOLL regarding each of the foregoing or otherwise in any form, manner or place (the "**ZOLL Property**"). If any derivative work is created by Third Party from the Cloud Services, Underlying Software or Instructions, ZOLL shall own all right, title and interest in and to such derivative work. Any rights not expressly granted to Third Party hereunder are reserved by ZOLL (or its licensors and suppliers, as the case may be).

9. **Termination.** Either party may terminate this Agreement immediately upon notice to the other party. Upon termination of this Agreement: (a) all rights granted to Third Party in this Agreement will immediately cease to exist; and (b) Third Party must promptly discontinue all use of the Cloud Services and return or destroy, all copies of the Instructions in Third Party's possession or control.

10. **Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile, or certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth below such party's signature and, in the case of ZOLL, to the attention of the Chief Financial Officer (or to such other address or person as from time to time provided by such party in accordance with this Section), and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner.

11. **Assignment.** Third Party may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party without ZOLL's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. ZOLL shall have the right to assign this Agreement to any successor to its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

12. **Amendment.** This Agreement may not be amended except in writing signed by both parties. Any waiver or failure to enforce any provision of this Agreement once will not be a waiver of any other provision or of such provision on any other occasion.

13. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.

IN WITNESS WHEREOF, each party has executed this Agreement on the date that appears below such party's name.

ZOLL Data Systems, Inc.

Address: 11802 Ridge Parkway, Suite 400

Broomfield, CO 80021

Authorized Signature:

Name:

Title:

Date:

Third Party:

Address: _____

Authorized Signature:

Name:

Title:

Date:

DRAFT ONLY – DO NOT SIGN

**ADDENDUM NO. 1 TO THIRD PARTY ACCESS AND USE AGREEMENT –
ZOLL FIRE REPORTS AND EMSCHARTS
FOR COUNTY OF VOLUSIA, FL**

THIS ADDENDUM NO. 1 (“Addendum”) is entered into as of the date of last signature below and is incorporated to the Third Party Access and Use Agreement by and between ZOLL Data Systems, Inc. and _____ (“**Third Party**”). To the extent the terms and conditions set forth in this Addendum conflict with the terms and conditions of the Agreement, the terms and conditions set forth in this Amendment will prevail. Unless otherwise defined in this Addendum, capitalized terms used herein shall have the meanings assigned to such terms in the Agreement.

A. **Access and Use.** For avoidance of doubt, Third Party and its users may be designated by Volusia County as Registered Users of emsCharts and ZOLL Fire Reports (which may include NFPA codes) according to its agreement with ZOLL.

B. **Additional Terms - Political Subdivision of the State of Florida.** For avoidance of doubt, the Agreement is governed by and interpreted in accordance with the laws of the State of Florida without reference to its choice of law rules.

- 1) **Indemnification.** To the extent the terms and conditions of Section 7 (“Indemnification”) of the Agreement are prohibited by Section 768.28, Florida Statutes, Section 7 (“Indemnification”) shall not apply. Third Party agrees to be fully responsible for its own acts of negligence, and its agents’ acts of negligence when acting within the scope of their employment, and agrees to be liable for any damages proximately caused thereby; provided, however, that to the extent required by Section 768.28, Florida Statutes, the parties agree that Third Party’s liability is subject to the monetary limitations and defenses imposed by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the parties, nor shall anything herein be construed as consent by the parties to be sued by any third party for any cause or matter arising out of or related to this Agreement.
- 2) **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, TO THE EXTENT REQUIRED BY SECTION 768.28, FLORIDA STATUTES, THE PARTIES AGREE THAT THIRD PARTY’S LIABILITY IS SUBJECT TO THE MONETARY LIMITATIONS AND DEFENSES IMPOSED BY SECTION 768.28, FLORIDA STATUTES. NOTHING HEREIN IS INTENDED TO SERVE AS A WAIVER OF SOVEREIGN IMMUNITY BY THE PARTIES, NOR SHALL ANYTHING HEREIN BE CONSTRUED AS CONSENT BY THE PARTIES TO BE SUED BY ANY THIRD PARTY FOR ANY CAUSE OR MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 3) **Verification of Employment Eligibility.** ZOLL and each applicable subcontractor has registered with and uses the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. The rights and remedies provided by Section 448.095, Florida Statutes will apply to ZOLL’s violation thereof.
- 4) **Public Entity Crime Act.** ZOLL represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. ZOLL further represents that there has been no determination that it committed a “public entity crime” as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether ZOLL has been placed on the convicted vendor list.
- 5) **Discriminatory Vendor and Scrutinized Companies List; Countries of Concern.** ZOLL represents that it has not been placed on the “discriminatory vendor list” as provided in Section 287.134, Florida Statutes, and that it is not a “scrutinized company” pursuant to Sections 215.473 or 215.4725, Florida Statutes. ZOLL represents and certifies that it is not, and for the duration of the term will not be, ineligible to contract with Third Party on any of the grounds stated in Section 287.135, Florida Statutes. ZOLL represents that it is, and for the duration of the term will remain, in compliance with Section 286.101, Florida Statutes.
- 6) **Public Records.** Third Party is a public agency subject to Chapter 119, Florida Statutes. To the extent ZOLL is acting on behalf of Third Party pursuant to Section 119.0701, Florida Statutes, ZOLL shall comply with all applicable public records laws as “contractor,” specifically to:
 - a. Keep and maintain public records required by the public agency to perform the service.
 - b. Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost

- that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
 - d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT _____ (email), _____ (phone), BY MAIL: _____ (address).

IN WITNESS WHEREOF, each party has executed this Agreement on the date that appears below such party's name.

ZOLL Data Systems, Inc.

Address: 11802 Ridge Parkway, Suite 400

Broomfield, CO 80021

Authorized Signature:

Name: _____

Title: _____

Date: _____

Third Party:

Address: _____

Authorized Signature:

Name: _____

Title: _____

Date: _____

ORDER

THIS ORDER FORM (this "Order") is made as of the date on which both parties have signed below (the "Effective Date") by and between ZOLL Data Systems, Inc., a Delaware corporation with offices at 11802 Ridge Parkway, Suite 400, Broomfield, CO 80021, accountsreceivable@zoll.com ("ZOLL") and County of Volusia with offices at 123 W. Indiana Avenue, Room 302, DeLand, FL 32720 (the "Customer").

Bill To: Volusia County Fire Rescue 125 W. New York Ave., Suite 220 Deland, FL 32720 Email for Notices: sdarby@volusia.org	Ship To: Volusia County Fire Rescue 125 W. New York Ave., Suite 200 Deland, FL 32117
---	---

Territory Manager: Kayleb Bowes**Offer Expires:** 09/30/2022

ASP Services								
Item	Lic. Type	Description	Qty	List Price	Disc	Adj. Price	*Annual Fees or One Time Charge	*Monthly Fees
NFPA1H 3	TPL	Hosted NFPA 1 (Fire Codes) – Tier: Includes up to 50 identified Registered Users. Includes selected edition of NFPA 1. NFPA codes accessed through ZOLL Fire Reports only.	1	\$683.00	--	\$683.00	\$8,196.00	\$683.00
NFPA101 H3	TPL	Hosted NFPA 101 (Life Safety Codes) – Tier: Includes up to 50 identified Registered Users. Includes selected edition of NFPA 101. NFPA codes accessed through ZOLL Fire Reports only.	1	\$683.00	--	\$683.00	\$8,196.00	\$683.00

Comments: Custom Order. No automatic renewal.

*MONTHLY FEES: \$1,366.00
*ANNUAL FEES: \$16,392.00
*ANNUAL FEES FOR INITIAL TERM: \$16,392.00

***TOTAL FEES FOR INITIAL TERM: \$16,392.00**

ASP Services Payment Terms: ZOLL will invoice Customer upon the earlier of the Deployment Date or 60 days after on the Effective Date (the "Monthly Fees Commencement Date") and at the beginning of each calendar month during the Term for the amount of the Monthly Fees listed above for such ASP Services (i) prorated to account for any partial month, (ii) increased or decreased as set forth in the Adjustments to Fees section below.

Monthly Fees are payable in advance for each month of ASP Services ("Monthly Service Period"), except for the first Monthly Service Period. Accordingly, the first invoice for Monthly Fees shall be for the amount of the Monthly Fee for the first Monthly Service Period and the Monthly Fee for the second Monthly Service Period. Each subsequent invoice shall be for the amount of the Monthly Fee.

Term. Unless earlier terminated as set forth in the Agreement, (i) the initial term of this Order shall begin on the Effective Date and continue for one year after the Monthly Fees Commencement Date (the "Initial Term").

This Order does not automatically renew. The parties will confer about renewal at least thirty (30) days prior to the end of the Term. This Order will automatically terminate if Customer's associated Order for ZOLL Fire Reports (Order No. Q-39185) terminates prior to the end of the Term of this Order.

Early Termination Fee. Notwithstanding the Agreement, if this Order is terminated prior to the expiration of the Initial Term by ZOLL for a material default or by Customer without cause, then Customer immediately shall pay ZOLL an early termination fee equal the amount of (i) the Annual Fees for the Initial Term minus (ii) the sum of Monthly Fees paid by Customer to ZOLL prior to the date of termination for the ASP Services set forth in this Order.

System and Organization Controls (SOC) Report. Upon Customer's request, ZOLL will provide a copy of its current SOC 2 Type 2 Report (or successor equivalent report), which ZOLL represents is confidential information and proprietary to ZOLL; as such, it would be provided to Customer under assertion of trade secrets protection.

Notices. ZOLL may send a courtesy copy of notices to the "Email for Notices" address listed at the beginning of the Order. In addition, all notice required under the Agreement shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this paragraph. For the present, the parties designate the following:

In the case of Customer:	with a copy of legal notices to:
County of Volusia Attn: Director of Purchasing & Contracts Address: 123 W. Indiana Ave., Rm. 302 DeLand, Florida 32720 Phone: 386-736-5935	County of Volusia Attn: County Attorney Address: 123 W. Indiana Ave., Rm. 301 DeLand, Florida 32720 Phone: 386-736-5950
In the case of ZOLL:	
ZOLL Data Systems, Inc. Attn: Chief Financial Officer Address: 11802 Ridge Park Way, Suite 400 Broomfield, CO 80021	

Choice of Law. The Agreement will be governed by and interpreted in accordance with the laws of the State of Florida without reference to its choice of law rules.

Additional Terms for Political Subdivision of the State of Florida:

- 1) **Payments.** Notwithstanding anything to the contrary in Section 2 (Payment) of the Terms and Conditions: (a) pursuant to Section 218.74, Florida Statutes, Customer will pay ZOLL all amounts due under this Agreement within 45 days after the date of the invoice; (b) Customer shall have no obligation to pay any expenses (including reasonable attorney's fees) incurred by ZOLL in connection with collection of late payments, to the extent prohibited by Chapter 768.28, Florida Statutes; and, (c) after the Initial Term, ZOLL may increase Fees annually.
- 2) **Indemnification.** To the extent the terms and conditions of Subsection 5.2 (Customer) of Section 5 (Indemnification) of the Terms and Conditions are prohibited by Section 768.28, Florida Statutes, Subsection 5.2 shall not apply. Customer agrees to be fully responsible for its own acts of negligence, and its agents' acts of negligence when acting within the scope of their employment, and agrees to be liable for any damages proximately caused thereby; provided, however, that to the extent required by Section 768.28, Florida Statutes, the parties agree that Customer's liability is subject to the monetary limitations and defenses imposed by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the parties, nor shall anything herein be construed as consent by the parties to be sued by any third party for any cause or matter arising out of or related to this Agreement.
- 3) **Customer Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 6 (LIMITATION OF LIABILITY) OF THE TERMS AND CONDITIONS, TO THE EXTENT REQUIRED BY SECTION 768.28, FLORIDA STATUTES, THE PARTIES AGREE THAT CUSTOMER'S LIABILITY IS SUBJECT TO THE MONETARY LIMITATIONS AND DEFENSES IMPOSED BY SECTION 768.28, FLORIDA STATUTES. NOTHING HEREIN IS INTENDED TO SERVE AS A WAIVER OF SOVEREIGN IMMUNITY BY THE PARTIES, NOR SHALL ANYTHING HEREIN BE CONSTRUED AS CONSENT BY THE PARTIES TO BE SUED BY ANY THIRD PARTY FOR ANY CAUSE OR MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 4) **Audits and Inspections.** Notwithstanding anything to the contrary in Subsection 9.2 (Audits and Inspections) of Section 9 (General Provisions) of the Terms and Conditions, the costs of the audit will be paid solely by ZOLL.
- 5) **Revocation of Administrative Rights.** Notwithstanding anything to the contrary in Subsection 6.7 (Revocation of Administrative Rights) of Section 6 (Service Level Agreement) of the ASP Services Addendum, ZOLL may not revoke administrative rights, including database access rights, if the use of any such rights results in more than five (5) Support Tickets.
- 6) **Verification of Employment Eligibility.** ZOLL and each applicable subcontractor has registered with and uses the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. The rights and remedies provided by Section 448.095, Florida Statutes will apply to ZOLL's violation thereof.

- 7) **Public Entity Crime Act.** ZOLL represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. ZOLL further represents that there has been no determination that it committed a “public entity crime” as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether ZOLL has been placed on the convicted vendor list.
- 8) **Discriminatory Vendor and Scrutinized Companies List; Countries of Concern.** ZOLL represents that it has not been placed on the “discriminatory vendor list” as provided in Section 287.134, Florida Statutes, and that it is not a “scrutinized company” pursuant to Sections 215.473 or 215.4725, Florida Statutes. ZOLL represents and certifies that it is not, and for the duration of the term will not be, ineligible to contract with Customer on any of the grounds stated in Section 287.135, Florida Statutes. ZOLL represents that it is, and for the duration of the term will remain, in compliance with Section 286.101, Florida Statutes.
- 9) **Public Records.** Customer is a public agency subject to Chapter 119, Florida Statutes. To the extent ZOLL is acting on behalf of Customer pursuant to Section 119.0701, Florida Statutes, ZOLL shall comply with all applicable public records laws as “contractor,” specifically to:
 - a. Keep and maintain public records required by the public agency to perform the service.
 - b. Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
 - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
 - d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency’s custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT PURCHASING@VOLUSIA.ORG, 386-736-5935, BY MAIL: PURCHASING AND CONTRACTS DIVISION, ATTN: PUBLIC RECORDS CUSTODIAN, 123 W. INDIANA AVE. RM 302 DELAND, FL 32720.

- 10) **Third Party Providers.** Customer’s third party EMS agencies must sign ZOLL’s standard ZOLL Fire Reports Third Party Access and Use Agreement.
- 11) **Non-appropriations.** ZOLL acknowledges that Customer is a governmental entity, and payments under this Agreement are based upon the availability of public funding under its authority. In the event Customer fails to appropriate funds or make monies available, after making due efforts, for the subsequent fiscal year covered by the term of this Agreement for the Products and Services to be provided, Customer shall notify ZOLL prior to the start of such fiscal year and this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without further liability for such fiscal year payment and such termination shall not be a breach of this Agreement.
- 12) **Price Increase following Initial Term.** If the Term of this Order is renewed following the Initial Term, ZOLL may increase prices by up to ten percent (10%) per year over the then-current Adjusted Price.
- 13) **Insurance.** ZOLL shall maintain throughout the term of this Agreement and for at least two years thereafter, at its own expense, insurance of at least the following types and amounts: (a) Cyber Liability: \$2 million per claim / \$2 million aggregate; and, (b) Professional Liability / Errors and Omissions: \$2 million per occurrence / \$2 million aggregate. ZOLL will provide certificate(s) of insurance evidencing such coverage upon Customer’s request. Such insurance shall be written by one or more commercial insurance carriers with A.M. Best ratings of at least A-/VII.

THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS, AND APPLICABLE ADDENDA, AVAILABLE AT <https://www.zolldata.com/legal>, WHICH ARE INCORPORATED BY REFERENCE. BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES HAVING READ AND AGREES TO AND INTENDS TO BE BOUND BY THEM. HARD COPIES ARE AVAILABLE UPON REQUEST.

Order of Precedence. In the event of any inconsistency between such terms and conditions, and applicable addenda, and this Order, the terms and conditions of this Order will control.

Each person signing below represents and warrants that she or he has the authority to bind the party for which he or she is signing to the terms of this Order. By signing below, the parties agree to the terms and conditions of this Order. Once signed, any reproduction of this Order made by reliable means (for example, photocopy or facsimile) is considered an original.

ZOLL Data Systems, Inc.

Authorized Signature:

County of Volusia

Authorized Signature:

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

THIS ORDER FORM (this "Order") is made as of the date on which both parties have signed below (the "Effective Date") by and between ZOLL Data Systems, Inc., a Delaware corporation with offices at 11802 Ridge Parkway, Suite 400, Broomfield, CO 80021, accountsreceivable@zoll.com ("ZOLL") and County of Volusia with offices at 123 W. Indiana Avenue, Room 302, DeLand, FL 32720 (the "Customer").

Bill To: Volusia County Fire Rescue 125 W. New York Ave., Suite 220 Deland, FL 32720 Email for Notices: sdarby@volusia.org	Ship To: Volusia County Fire Rescue 125 W. New York Ave., Suite 200 Deland, FL 32117
---	---

Territory Manager: Kayleb Bowes

Offer Expires: 09/30/2022

Professional Services				
Item	Description	Qty	Price	Extended Price
T&E	Travel Expenses (Not to exceed)	15	\$390.00	\$5,850.00
EMCS-IMP	emsCharts Implementation Day (Excludes T&E)	10	\$1,500.00	\$15,000.00

ASP Services								
Item	Lic. Type	Description	Qty	List Price	Disc (rounded)	Adjusted Price	Annual Fees or One Time Charge	Monthly Fees
ZEMSC	HL	ZOLL emsCharts (Per PCR)	9,333	\$1.08	48%	\$0.56	\$62,904.48	\$5,242.04
ZEMSC- CMZ	HL	ZOLL emsCharts - Core Modules w/ ZOLL Defibs (Per PCR) Includes: CAD Import, Mobile, Tablet, EKG Web, EKG Mobile, Remote Downloader, Geocoding, Archiving.	9,333	\$0.85	48%	\$0.44	\$49,502.28	\$4,125.19
ZEMSC- OM	HL	ZOLL emsCharts - Operations Modules (Per PCR) Includes: GER911 Triage Tag Interface, Operative IQ Interface, RSQ911 Survey Interface, Aladtec Scheduling Interface, Research Module.	9,333	\$0.27	86%	\$0.04	\$4,237.20	\$353.10
ZEMSC- FX	HL	ZOLL emsCharts - PCR Faxing (Per PCR)	2,750	\$0.49	0%	\$0.49	\$16,170.00	\$1,347.50
ZFR	HL	ZOLL Fire Reports (Per Incident)	1,167	\$1.08	48%	\$0.56	\$7,865.64	\$655.47
ZFR-OM	HL	ZOLL Fire Reports - Operations Modules (Per Incident) Includes: CAD Import, Inspections, Investigations, Occupancy/Hydrants, LOSAP	1,167	\$0.85	48%	\$0.44	\$6,189.72	\$515.81
ZFR-IM	HL	ZOLL Fire Reports - Inventory Module (Per PCR)	1,167	\$0.45	90%	\$0.05	\$630.24	\$52.52
ZFR-SCH	HL	ZOLL Fire Reports - Scheduling Interface (Per Incident) Includes: Aladtec Interface	1,167	\$0.16	90%	\$0.02	\$224.04	\$18.67

Comments: Custom Order. For clarification, fire codes not included.

*MONTHLY FEES:	\$12,310.30
*ANNUAL FEES:	\$147,723.42
*ANNUAL FEES FOR INITIAL TERM:	\$738,617.13
PROFESSIONAL SERVICES FEES:	\$15,000.00
EXPENSES (NOT TO EXCEED):	\$5,850.00
*TOTAL FEES FOR INITIAL TERM:	\$759,467.13

Professional Services Expenses. Customer will reimburse ZOLL for Expenses incurred by ZOLL in providing the Professional Services. Any estimated Expenses above are based on the facts that ZOLL currently knows and represent ZOLL's good faith assessment of the time and materials required.

ASP Services Payment Terms: ZOLL will invoice Customer for the sum of any One-Time Fees and the Professional Services Fees listed above for the deployment of each of the ASP Services listed above upon completion of the Professional Services for which such Professional Services Fees are payable. ZOLL separately will invoice Customer for Expenses incurred by ZOLL in providing such Professional Services.

Additionally, ZOLL will invoice Customer upon the earlier of the Deployment Date or 60 days after on the Effective Date (the "**Monthly Fees Commencement Date**") and at the beginning of each calendar month during the Term for the amount of the Monthly Fees listed above for such ASP Services (i) prorated to account for any partial month, (ii) increased or decreased as set forth in the Adjustments to Fees section below and (iii) if such Monthly Fees are based on the quantity of Concurrent Users, increased by an amount equal to \$10 per month for any Registered User in excess of 200% of the Concurrent Users Cap.

Monthly Fees are payable in advance for each month of ASP Services ("**Monthly Service Period**"), except for the first Monthly Service Period. Accordingly, the first invoice for Monthly Fees shall be for the amount of the Monthly Fee for the first Monthly Service Period and the Monthly Fee for the second Monthly Service Period. Each subsequent invoice shall be for the amount of the Monthly Fee.

Term. Unless earlier terminated as set forth in the Agreement, (i) the initial term of this Order shall begin on the Effective Date and continue for 60 months after the Monthly Fees Commencement Date (the "**Initial Term**") and (ii) after the Initial Term, this Order automatically shall continue on a month-to-month basis until so terminated.

Early Termination Fee. Notwithstanding the Agreement, if this Order is terminated prior to the expiration of the Initial Term by ZOLL for a material default or by Customer without cause, then Customer immediately shall pay ZOLL an early termination fee equal the amount of (i) the Annual Fees for the Initial Term minus (ii) the sum of Monthly Fees paid by Customer to ZOLL prior to the date of termination for the ASP Services set forth in this Order.

*** Adjustments to Fees.** Fees are subject to adjustment based on quantity as set forth in the attached Adjustment-to-Fees Addendum, including (if applicable) as a result of Registered Users being in excess of the Concurrent Users Cap for Fees based on Concurrent Users.

System and Organization Controls (SOC) Report. Upon Customer's request, ZOLL will provide a copy of its current SOC 2 Type 2 Report (or successor equivalent report), which ZOLL represents is confidential information and proprietary to ZOLL; as such, it would be provided to Customer under assertion of trade secrets protection.

Notices. ZOLL may send a courtesy copy of notices to the "Email for Notices" address listed at the beginning of the Order. In addition, all notice required under the Agreement shall be in writing and shall be sent by certified United States Mail or national parcel service, postage prepaid, return receipt requested, or by hand-delivery with a written receipt of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this paragraph. For the present, the parties designate the following:

In the case of Customer:		with a copy of legal notices to:	
Attn:	County of Volusia	Attn:	County of Volusia
Address:	Director of Purchasing & Contracts 123 W. Indiana Ave., Rm. 302 DeLand, Florida 32720	Address:	County Attorney 123 W. Indiana Ave., Rm. 301 DeLand, Florida 32720
Phone:	386-736-5935	Phone:	386-736-5950
In the case of ZOLL:			
Attn:	ZOLL Data Systems, Inc.		
Address:	Chief Financial Officer 11802 Ridge Park Way, Suite 400 Broomfield, CO 80021		

Choice of Law. The Agreement will be governed by and interpreted in accordance with the laws of the State of Florida without reference to its choice of law rules.

Additional Terms for Political Subdivision of the State of Florida:

- 1) **Payments.** Notwithstanding anything to the contrary in Section 2 (Payment) of the Terms and Conditions: (a) pursuant to Section 218.74, Florida Statutes, Customer will pay ZOLL all amounts due under this Agreement within 45 days after the date of the invoice; (b) Customer shall have no obligation to pay any expenses (including reasonable attorney's fees) incurred by ZOLL in connection with collection of late payments, to the extent prohibited by Chapter 768.28, Florida Statutes; and, (c) after the Initial Term, ZOLL

may increase Fees annually.

- 2) **Indemnification.** To the extent the terms and conditions of Subsection 5.2 (Customer) of Section 5 (Indemnification) of the Terms and Conditions are prohibited by Section 768.28, Florida Statutes, Subsection 5.2 shall not apply. Customer agrees to be fully responsible for its own acts of negligence, and its agents' acts of negligence when acting within the scope of their employment, and agrees to be liable for any damages proximately caused thereby; provided, however, that to the extent required by Section 768.28, Florida Statutes, the parties agree that Customer's liability is subject to the monetary limitations and defenses imposed by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the parties, nor shall anything herein be construed as consent by the parties to be sued by any third party for any cause or matter arising out of or related to this Agreement.
- 3) **Customer Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 6 (LIMITATION OF LIABILITY) OF THE TERMS AND CONDITIONS, TO THE EXTENT REQUIRED BY SECTION 768.28, FLORIDA STATUTES, THE PARTIES AGREE THAT CUSTOMER'S LIABILITY IS SUBJECT TO THE MONETARY LIMITATIONS AND DEFENSES IMPOSED BY SECTION 768.28, FLORIDA STATUTES. NOTHING HEREIN IS INTENDED TO SERVE AS A WAIVER OF SOVEREIGN IMMUNITY BY THE PARTIES, NOR SHALL ANYTHING HEREIN BE CONSTRUED AS CONSENT BY THE PARTIES TO BE SUED BY ANY THIRD PARTY FOR ANY CAUSE OR MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 4) **Audits and Inspections.** Notwithstanding anything to the contrary in Subsection 9.2 (Audits and Inspections) of Section 9 (General Provisions) of the Terms and Conditions, the costs of the audit will be paid solely by ZOLL
- 5) **Revocation of Administrative Rights.** Notwithstanding anything to the contrary in Subsection 6.7 (Revocation of Administrative Rights) of Section 6 (Service Level Agreement) of the ASP Services Addendum, ZOLL may not revoke administrative rights, including database access rights, if the use of any such rights results in more than five (5) Support Tickets.
- 6) **Verification of Employment Eligibility.** ZOLL and each applicable subcontractor has registered with and uses the E-Verify system maintained by the United States Department of Homeland Security to verify the work authorization status of all newly hired employees in compliance with the requirements of Section 448.095, Florida Statutes, and that entry into this Agreement will not violate that statute. The rights and remedies provided by Section 448.095, Florida Statutes will apply to ZOLL's violation thereof.
- 7) **Public Entity Crime Act.** ZOLL represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. ZOLL further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether ZOLL has been placed on the convicted vendor list.
- 8) **Discriminatory Vendor and Scrutinized Companies List; Countries of Concern.** ZOLL represents that it has not been placed on the "discriminatory vendor list" as provided in Section 287.134, Florida Statutes, and that it is not a "scrutinized company" pursuant to Sections 215.473 or 215.4725, Florida Statutes. ZOLL represents and certifies that it is not, and for the duration of the term will not be, ineligible to contract with Customer on any of the grounds stated in Section 287.135, Florida Statutes. ZOLL represents that it is, and for the duration of the term will remain, in compliance with Section 286.101, Florida Statutes.
- 9) **Public Records.** Customer is a public agency subject to Chapter 119, Florida Statutes. To the extent ZOLL is acting on behalf of Customer pursuant to Section 119.0701, Florida Statutes, ZOLL shall comply with all applicable public records laws as "contractor," specifically to:
 - a. Keep and maintain public records required by the public agency to perform the service.
 - b. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
 - c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
 - d. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF

PUBLIC RECORDS AT PURCHASING@VOLUSIA.ORG, 386-736-5935, BY MAIL: PURCHASING AND CONTRACTS DIVISION, ATTN: PUBLIC RECORDS CUSTODIAN, 123 W. INDIANA AVE. RM 302 DELAND, FL 32720.

- 10) **Third Party Providers.** Customer's third party EMS agencies must sign ZOLL's standard ZOLL Fire Reports Third Party Access and Use Agreement.
- 11) **Non-appropriations.** ZOLL acknowledges that Customer is a governmental entity, and payments under this Agreement are based upon the availability of public funding under its authority. In the event Customer fails to appropriate funds or make monies available, after making due efforts, for the subsequent fiscal year covered by the term of this Agreement for the Products and Services to be provided, Customer shall notify ZOLL prior to the start of such fiscal year and this Agreement shall be terminated on the last day of the fiscal year for which funds were appropriated or monies made available for such purposes without further liability for such fiscal year payment and such termination shall not be a breach of this Agreement.
- 12) **Price Increase following Initial Term.** Following the Initial Term, ZOLL may increase prices. ZOLL's price increases for ZOLL emsCharts and ZOLL Fire Reports are limited to ten percent (10%) per year over the then-current Adjusted Price, provided that: (a) Actual PCR Volume has remained at least the original Estimated PCR Volume contracted in the original Order; and, (b) Actual Fire Report Volume has remained at least the original Estimated Fire Report Volume contracted in the original Order.
- 13) **Insurance.** ZOLL shall maintain throughout the term of this Agreement and for at least two years thereafter, at its own expense, insurance of at least the following types and amounts: (a) Cyber Liability: \$2 million per claim / \$2 million aggregate; and, (b) Professional Liability / Errors and Omissions: \$2 million per occurrence / \$2 million aggregate. ZOLL will provide certificate(s) of insurance evidencing such coverage upon Customer's request. Such insurance shall be written by one or more commercial insurance carriers with A.M. Best ratings of at least A-/VII.

THIS ORDER IS SUBJECT TO THE TERMS AND CONDITIONS, AND APPLICABLE ADDENDA, AVAILABLE AT <https://www.zolldata.com/legal>, WHICH ARE INCORPORATED BY REFERENCE. BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES HAVING READ AND AGREES TO AND INTENDS TO BE BOUND BY THEM. HARD COPIES ARE AVAILABLE UPON REQUEST.

Order of Precedence. In the event of any inconsistency between such terms and conditions, and applicable addenda, and this Order, the terms and conditions of this Order will control.

Each person signing below represents and warrants that she or he has the authority to bind the party for which he or she is signing to the terms of this Order. By signing below, the parties agree to the terms and conditions of this Order. Once signed, any reproduction of this Order made by reliable means (for example, photocopy or facsimile) is considered an original.

ZOLL Data Systems, Inc.

Authorized Signature: _____

County of Volusia

Authorized Signature: _____

Name: _____
 Title: _____
 Date: _____

Name: _____
 Title: _____
 Date: _____

*** Adjustments to Fees:** Fees in the Order Form to which this addendum is attached (the “**Order**”), and of which it is a part, are subject to adjustment based on quantity as specified below (“**Qty**”), including as a result of Registered Users being in excess of the Concurrent Users Cap for Fees based on Concurrent Users:

Product	Basis for Adjustment
ZOLL emsCharts ZOLL emsCharts – Critical Care	Qty of PCRs (the “ PCR Volume ”) listed in the line item in the Order. ZOLL may conduct an audit of PCR Volume following the 12 th month after the Monthly Fees Commencement Date for <i>ZOLL emsCharts</i> and each anniversary of such date (a “ PCR Audit ”). Should actual PCR Volume (the “ Actual PCR Volume ”) for the preceding 12-month period (the “ PCR Audit Period ”) exceed 110% of the quantity of PCRs that was the basis for Monthly Fees in the PCR Audit Period multiplied by 12 (the “ Estimated PCR Volume ”), then ZOLL will invoice Customer for such excess multiplied by the per-PCR price listed in the Order (the “ Per-PCR Price ”). Should the Actual PCR Volume be less than the Estimated PCR Volume by more than 10% during the PCR Audit Period, then ZOLL will issue a credit in the amount of 10% of the Estimated PCR Volume multiplied by the Per-PCR Price. Future billings of the Monthly Fee will be adjusted based on the Actual PCR Volume as determined by the PCR Audit; provided, that the Monthly Fee shall not decrease by more than 10%.
ZOLL Fire Reports	Qty of Fire Reports (the “ Fire Report Volume ”) listed in the line item in the Order. ZOLL may conduct an audit of Fire Report Volume following the 12 th month after the Monthly Fees Commencement Date for ZOLL Fire Reports and each anniversary of such date (a “ Fire Report Audit ”). Fire Report Volume (the “ Actual Fire Report Volume ”) for the preceding 12-month period (the “ Fire Report Audit Period ”) exceed 110% of the quantity of Fire Reports that was the basis for Monthly Fees in the Fire Report Audit Period multiplied by 12 (the “ Estimated Fire Report Volume ”), then ZOLL will invoice Customer for such excess multiplied by the per-Fire Report price listed in the Order (the “ Per-Fire Report Price ”). Should the Actual Fire Report Volume be less than the Estimated Fire Report Volume by more than 10% during the Fire Report Audit Period, then ZOLL will issue a credit in the amount of 10% of the Estimated Fire Report Volume multiplied by the Per-Fire Report Price. Future billings of the Monthly Fee will be adjusted based on the Actual Fire Report Volume as determined by the Fire Report Audit; <i>provided, that</i> the Monthly Fee shall not decrease by more than 10%.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (C8c) Approval of License Agreement for Concession at Riverwalk with Hoffman & Capell, LLC

DEPARTMENT: Parks & Recreation

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve the Riverwalk Concession Agreement with Hoffman & Capell, LLC and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: On July 17, 2018, the City of Port Orange entered into an agreement with Hoffman & Capell, LLC DBA Kona Ice, Inc. The initial term was for two years with an optional renewal for two additional two-year terms. In April 2020, the agreement was renewed for two more years. That left one more two-year renewal remaining on the agreement. The City and Hoffman & Capell, LLC would like to exercise the final remaining two-year renewal from the original agreement.

Hoffman & Capell, LLC recently sold Kona Ice, Inc. and no longer has a DBA listed on Sunbiz. in order to move forward with this renewal, a contract amendment is required to remove Kona Ice, Inc. from the License Agreement.

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	Amendment and Extension No. 2	Amendment and Extension No. 2.pdf
2.	License Agreement with Hoffman & Capell, LLC for Concession at Riverwalk	Kona Ice Concession Riverwalk.pdf

Peter Ferreira	Created/Initiated - 9/16/2022
Susan Lovallo	Approved - 9/16/2022
John McKinney	Approved - 9/19/2022
Matthew Jones	Approved - 9/22/2022
Wayne Clark	Approved - 9/26/2022
Robin Fenwick	Final Approval - 9/26/2022

**AMENDMENT AND EXTENSION NO. 2
TO LICENSE AGREEMENT
DATED July 17, 2018**

THIS AMENDMENT and EXTENSION NO. 2 OF LICENSE AGREEMENT ("Amendment") is made and entered into the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located at 1000 City Center Circle, Port Orange, Volusia County, Florida 32129-4144 ("Licensor"), and Hoffman & Capell, LLC, whose mailing address is 3811 S. Atlantic Avenue #402, Daytona Beach Shores, FL 32118 ("Licensee"). The Licensor and the Licensee are hereinafter collectively referred to as the "Parties."

WHEREAS, the Licensee is the successful bidder to the City's RFP #18-11 to provide concessionaire services to the public; and

WHEREAS, on the 17th day of July 2018, the Licensor granted to the Licensee a license to access the Subject Property described on Exhibit "A" to the License Agreement, and to the non-exclusive use of the License Areas, as shown on Exhibit "B" to the License Agreement, subject to the terms and conditions contained within the License Agreement, for the purpose of concessionaire services ("License") for a period of two (2) years with two optional two (2) year extensions thereafter (License Agreement); and

WHEREAS, on the 21st day of April 2020, the Parties extended the Agreement for an additional two (2) year term as provided for in the License Agreement; and

WHEREAS, on the 21st day of April 2020, the Parties amended the Licensee's hours of operations set forth in Paragraph 8, "Operating Hours", of the License Agreement, in furtherance of the use of the License Area granted in the License Agreement; and

WHEREAS, the Parties desire to extend the Agreement for an additional two (2) year term as provided for in the License Agreement, notwithstanding the date of execution this Agreement shall be effective July 17, 2022 and continue until July 17, 2024; and

WHEREAS, the Parties desire to amend the Licensee's business name, to remove the "doing business as" ("d/b/a"), as it is no longer utilized and has been removed from the Florida Department of State Division of Corporations records; and

WHEREAS, the Port Orange Mayor has determined that the execution of this Amendment and Extension No. 2 is beneficial to the citizens of the City of Port Orange.

NOW, THEREFORE, the Parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. The foregoing recitals are true and current and incorporated herein.

2. Notwithstanding the date of execution, the effective date of this Amendment is July 17, 2022, and shall continue for two (2) years, subject to the terms and conditions set forth in the License Agreement and as amended herein.

3. Licensee's name referenced as "Hoffman & Capell, LLC d/b/a Kona Ice South Volusia" in the License Agreement and Amendment and Extension No. 1 is hereby deleted in its entirety, and is herewith replaced and amended to reflect "Hoffman & Capell, LLC, as reflected in the Florida Department of State Division of Corporations.

4. The terms and conditions of the License Agreement shall remain in full force and effect except with respect to those matters specifically amended by Amendment and Extension No. 1 and this Amendment and Extension No. 2.

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

IN WITNESS WHEREOF, the Parties hereto have signed, sealed, and delivered this Extension on the day and year stated hereinafter.

WITNESSES:

LICENSEE:

Hoffman & Capell, LLC

a Florida limited liability company

Printed Name: _____

Tammy Hoffman, Managing Member

Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2022, by Tammy Hoffman, as Managing Member of Hoffman and Capell, LLC, a Florida limited liability company, on behalf of said entity, who is authorized to execute the foregoing LICENSE AGREEMENT, and who ☐ is personally known to me, or ☐ has produced _____ as identification.

Notary Public, State of Florida at Large
Printed name, commission and expiration:

Witnesses:

LICENSOR:

CITY OF PORT ORANGE

a chartered municipal corporation

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 _____, 2022, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

Witnesses:

ATTEST:

Printed Name: _____

By: _____

Robin L. Fenwick, 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 _____, 2022, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

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

This Document Prepared by:

Shannon K. Balmer
Assistant City Attorney
1000 City Center Circle
Port Orange, FL 32129

Portion of Parcel No.: 6303-10-01-0011

LICENSE AGREEMENT

THIS **LICENSE AGREEMENT** is made and entered into this 17th day of July, 2018, by and between the City of Port Orange, Florida, a chartered municipal corporation, 1000 City Center Circle, Port Orange, FL 32129, ("City" or "Licensor"), and Hoffman & Capell, LLC whose mailing address is 3811 S. Atlantic Avenue #402, Daytona Beach Shores, FL 32118 doing business as Kona Ice South Volusia County, ("Licensee").

PREMISES

WHEREAS, the Licensee is the successful bidder to the City's RFP #18-11 to provide concessionaire services to the public; and

WHEREAS, the Licensor is the owner of real property located at 3441 S. Ridgewood Avenue, Port Orange, Florida 32127, commonly known as the Riverwalk Park Phase I, identified as Parcel No. **6303-10-01-0011**, hereinafter referred to as the "Subject Property", and graphically depicted on **Exhibit "A"**; and

WHEREAS, the Licensor has constructed improvements at the Subject Property which include a +/- 202 sq. ft. concession building with three-sink basin, roll up concession windows, and electrical outlets, and public parking, hereinafter referred to as the "License Areas", as depicted on the attached **Exhibit "B"**; and

WHEREAS, the Licensee hereby warrants to the City that the Licensee has full power and authority to enter into this Agreement, and that the Licensee agrees to be bound by the terms and conditions hereof; and

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. Use. The City hereby grants to the Licensee a license to access the Subject Property described on Exhibit "A", and to the non-exclusive use of the License Areas, as shown on Exhibit "B", subject to the terms and conditions herein contained, for the purpose of concessionaire services ("License").

2. Term. This License shall commence upon the execution of this License Agreement and shall continue for a period of two (2) years, with two optional two (2) year extensions thereafter. Notwithstanding the foregoing, either party may terminate this License at any time by giving sixty (60) days' written notice to the other party. At the expiration or earlier

termination of this License, Licensee shall immediately cease use of the License Areas and remove any personal property located thereon.

3. License Fee. Licensee shall pay to Licensor a license fee at the monthly rate of **ONE HUNDRED FIFTY AND 00/100 DOLLARS (\$150.00)**. The first payment shall be made within ten (10) days of City Council's approval of this License and prior to the Licensee's use of the License Area, and shall thereafter be paid on the 1st day of the month until expiration or earlier termination of this License. The City reserves the right to invoice the Licensee Fee but City is in no way obligated to invoice for said payments. It shall be the obligation of the Licensee to assure payments are received as and when agreed hereinabove. Payments not received on or before the fifth (5th) day of each month shall be considered late. Failure to make payments as and when agreed shall be a material breach and grounds for immediate termination of this License without further notice. Payments shall be made to the attention of the Finance Department of the City of Port Orange at the address referenced in Section 17 of this License.

4. Taxes.

(a) In the event that taxes are legally imposed, Licensee is solely responsible for all taxes, if any, imposed under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, accruing during the term of the License Agreement or any renewal thereof. In the event that taxes are legally imposed, Licensee is solely responsible for Licensee's pro rata share of ad valorem and non-ad valorem taxes, impact fees, and assessments levied, if any, against the Subject Property as more particularly described in Exhibit "A" to this License Agreement, accruing during the term of the License Agreement or any renewal thereof. Licensee shall pay all such legally imposed taxes imposed under Section 212.031, Florida Statutes, directly to the respective taxing authority.

(b) All ad valorem and non-ad valorem taxes that are legally imposed shall be advanced and paid by Licensor on behalf of Licensee directly to the Volusia County Tax Collector's Office and reimbursed by Licensee to Licensor within thirty (30) days of delivery of an invoice therefor to Licensee.

(c) Licensee acknowledges that any taxes legally imposed on the License under Section 212.031, Florida Statutes, or as that provision may be amended, by the Florida Department of Revenue or locally imposed through a surtax, if any, are imposed on Licensee, and not on Licensor. Licensee acknowledges that any ad valorem taxes legally imposed on the Subject Premises under Section 196.199, Florida Statutes (taxation of government leaseholds), any non-ad valorem taxes, impact fees and assessments, if any, are imposed on Licensee, and that Licensor, as a governmental entity, is immune or exempt from such imposition.

5. Conditions Applicable to License. This License is subject to all existing covenants, conditions, reservations, contracts, leases, licenses, easements, encumbrances, restrictions and rights of way with respect to the License Areas, whether or not of record.

6. City Use. The City reserves the right to use the License Areas and/or Subject Property at any time. Licensor may request removal of any and all personal property of the Licensee located at or on the Subject Property in the event that the City needs to utilize the Subject Property for City purposes, such as special events, maintenance work, or other public

uses. The City shall endeavor to give at least ten (10) days prior notice to the Licensee. If the Licensee's personal property is not removed within the time specified by the City or in cases where emergency work by the City becomes necessary, the City may remove or cause to be removed the Licensee's personal property without any liability to the City. The Licensee shall be responsible for any and all expenses for the storage of Licensee's personal property.

7. Signage. Licensor shall not install or construct permanent signage at the Subject Property; however, temporary signage may be displayed during the Licensee's regular operating hours, so long as it is displayed in accordance with the City of Port Orange Land Development Code. Signage design, layout and location, or any modification thereto, shall be submitted to the Parks and Recreation Director for review and approval prior to display. Such approval shall not be valid unless in writing.

8. Operating Hours. The Licensee may operate daily during regular park hours from 8:00 am until 8:00 pm with required hours of operation to include:

<u>Weekends</u>	<u>Weekends</u>	<u>Weekly</u>	<u>Weekly</u>
Jan. – May	Sep. – Dec.	Jun. – Aug.	Volusia County Schools Breaks and National Holidays
9:00 A.M.	9:00 A.M.	9:00 A.M.	9:00 A.M.
To	To	To	To
4:00 P.M.	4:00 P.M.	4:00 P.M.	4:00 P.M.

Licensee may request additional hours of operation or to be closed by providing a written request to the Parks and Recreation Director fifteen (15) days in advance of the special event requiring additional hours.

9. Licensee Obligations.

(a) Licensee shall operate concessionaire services consistent with and related to food, non-alcoholic beverage items, and picnic game rentals serving the general public in accordance with the City's RFP 18-11, and Licensee's proposal in response thereto, attached hereto as **Exhibit "C"** and incorporated herein by reference. In the event that there is a conflict between the terms of this License Agreement and the terms of RFP 18-11 or the Licensee's proposal in response thereto, the terms of this License Agreement shall control.

(b) All operating costs, including the cost of utilities used exclusively by the Licensee, its employees or its patrons, shall be the responsibility of the Licensee.

(c) Licensee shall be responsible for securing and safeguarding its equipment and other personal property. Licensor shall not be responsible for vandalism or theft of property while located in or on the Subject Property.

(d) Licensee shall maintain the License Areas to keep a neat and clean

appearance. This maintenance shall include, but is not limited to daily refuse removal, sweeping, mopping, and cleaning the License Areas and areas immediately surrounding the License Areas daily, and screening of any refuse collection from public view prior to disposal.

(e) All equipment and staffing necessary to meet the public demand shall be provided by the Licensee at its own expense.

(f) Licensee shall conduct regular inspections of all rental equipment and safety equipment to ensure the safety of those individuals renting the equipment. Licensee shall not use or rent equipment that is damaged or defective, and shall repair or replace any damaged or defective equipment at its own expense.

(g) Licensee shall train each renter on water safety and equipment operation prior to renting equipment, and shall develop standard equipment rental procedures to ensure the safety of all participants.

(h) Licensee shall conduct annually, at its expense, a Florida Department of Law Enforcement (FDLE) Level 1 background check for any and all employees of the Licensee involved in the operations described in this License Agreement. Documented evidence of such check shall be maintained by the Licensee for the entire duration of employment for each employee and shall be made available for inspection by the Parks and Recreation Director upon request.

10. No Transfer or Assignment. The License is personal to the Licensee and shall not inure to the successors or assigns of the Licensee. The rights, privileges and permission granted herein shall not be assignable by the Licensee in whole or in part.

11. Permits and Regulations. Licensee shall be responsible for securing any required approvals, permits and authorizations from any federal, state or local agencies and shall comply with all applicable laws and regulations, including strict adherence to the regulations set forth in Chapters 327 and 328 of the Florida Statutes, as may be amended.

12. No Interference. Licensee shall not interfere with the normal operation and activities of Licensor, and Licensee shall conduct its activities on the License Areas to minimize damage to the License Areas and inconvenience to Licensor, its agents, employees and invitees.

134. Repair and Restoration. If Licensee, its employees or agents cause any damage to the License Areas, or to any improvements located at or on the Subject Property in connection with the exercise of this License, Licensee shall repair and restore the License Areas and Subject Property to their original condition prior to Licensee's use. Licensee shall perform the repair and restoration required hereunder prior to the expiration of this License, or within ten (10) days of the earlier termination of Licensee's rights hereunder. In the event that repair and restoration is performed following the termination this License, the Licensee's indemnity and insurance obligations set forth herein shall continue until repair and restoration is completed as provided herein.

14. Security Deposit. Licensee shall provide Licensor with a security deposit in the form of irrevocable letters of credit, cash deposits or surety instruments satisfactory to the

Licensor prior to the effective date of the License. The security deposit amount shall be **FOUR HUNDRED AND 00/100 DOLLARS (\$400.00)** to be used to offset any damage to the Subject Property or License Areas caused by the Licensee.

15. Insurance. Licensee, at its sole cost and expense, shall insure its activities in connection with this License and obtain, keep in force, and maintain insurance as follows:

(a) Commercial General Liability Insurance (contractual liability included) with minimum limits as follows:

- (1) Each Occurrence - \$1,000,000
- (2) General Aggregate - \$2,000,000
- (3) Products/Completed Operations Aggregate - \$2,000,000
- (4) Personal and Advertising Injury - \$1,000,000

(b) Property Insurance, Fire and Extended Coverage in an amount sufficient to reimburse Licensee for all of its equipment and other personal property located at or on the Subject Property.

(c) Workers Compensation as required by Florida Law.

(d) Such other insurance in such amounts which from time to time may be reasonably required by the Licensor.

The coverages required herein shall not limit the liability of the Licensee. The coverage set for the in (a) of this section shall include the Licensor as an additional insured. Licensee shall provide to Licensor a Certificate of Insurance annually as proof of insurance coverage in accordance with this section. The policies herein required shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insurers are required to have a minimum rating of "A" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Licensee shall provide Licensor notice of cancellation, nonrenewal or any other changes in coverage no later than (10) days prior to the effective date of the change.

16. Hold Harmless and Indemnification. The Licensee shall not claim any damages from the City for any injuries or damages in connection with or on account of the exercise of such rights, privileges or permission, the condition of the City's property, or the use of the City's property pursuant to this License. The Licensee shall indemnify and hold harmless the City, its officers, employees and agents, from and against all claims, damages, losses and expenses, attorneys' fees and costs, arising out of, resulting from, or in any way connected with the condition of the City's property, the use of the property by Licensee, his invitees and members of the public, the exercise of the license granted by this License Agreement, the failure on the part of the Licensee to comply with any of the provisions specified herein, or otherwise permitted by this License Agreement. The City shall not be liable to the Licensee if for any reason the Licensee's use of the Subject Property is hindered or disturbed.

17. Notice. Any notice required hereunder shall be in writing and shall be addressed as follows:

Licensor: City of Port Orange
Parks and Recreation Director
1000 City Center Circle
Port Orange, FL 32129

Licensee: Hoffman & Capell, LLC
d/b/a Kona Ice South Volusia County
c/o Tammy Hoffman
3811 S. Atlantic Avenue #402
Daytona Beach Shores, FL 32118

18. Lien Free Condition. Licensee shall not cause or permit any liens to be placed against the Premises or against Licensor's other property as a result of Licensee's exercise of rights under this License. In the event of the filing of any such liens, Licensee shall promptly cause such liens to be removed. In no event shall such lien removal require more than thirty (30) days.

19. License Administrator. The Parks and Recreation Director for the City of Port Orange shall perform the administration of this License Agreement.

20. Entire Agreement. This License Agreement constitutes the entire agreement between the parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This License Agreement may be amended or modified only by an instrument of equal formality signed by the respective parties.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement on the respective dates below.

WITNESSES:

Printed Name: Scott Stiltner

Printed Name: Margaret T. Roberts

Printed Name: Alicia M. Londer

Printed Name: Kiley Provenzano

LICENSOR:

CITY OF PORT ORANGE, FLORIDA

a chartered municipal corporation

By:

Donald O. Burnette, Mayor

Attest:

Robin L. Fenwick, CMC, City Clerk

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 17th day of July, 2018, by Donald O. Burnette, as Mayor of the City of Port Orange, Florida, who acknowledged that he is duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who ☒ is personally known to me, or ☐ has produced _____ as identification.



Margaret T. Roberts
Notary Public, State of Florida at Large
Printed name, commission and expiration:

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 17 day of July, 2018, by Robin L. Fenwick, as the City Clerk of the City of Port Orange, Florida, who acknowledged that she is duly authorized to execute the foregoing LICENSE AGREEMENT on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who ☒ is personally known to me, or ☐ has produced _____ as identification.



Kiley Provenzano
Notary Public, State of Florida at Large
Printed name, commission and expiration:

WITNESSES:

LICENSEE:

Hoffman & Capell, LLC
a Florida limited liability company
d/b/a Kona Ice South Volusia County

Tammy Hoffman
Printed Name: _____

Tammy Hoffman
Tammy Hoffman, Managing Member

Peter Ferreira
Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 17 day of July, 2018, by Tammy Hoffman, as Managing Member of Hoffman and Capell, LLC, a Florida limited liability company, d/b/a Kona Ice South Volusia County on behalf of said entity, who is authorized to execute the foregoing LICENSE AGREEMENT, and who ☒ is personally known to me, or ☐ has produced _____ as identification.

Elizabeth S. Anderson
Notary Public, State of Florida at Large
Printed name, commission and expiration:

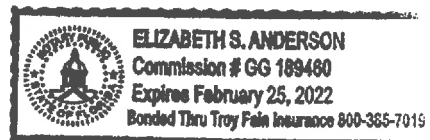


EXHIBIT "A"

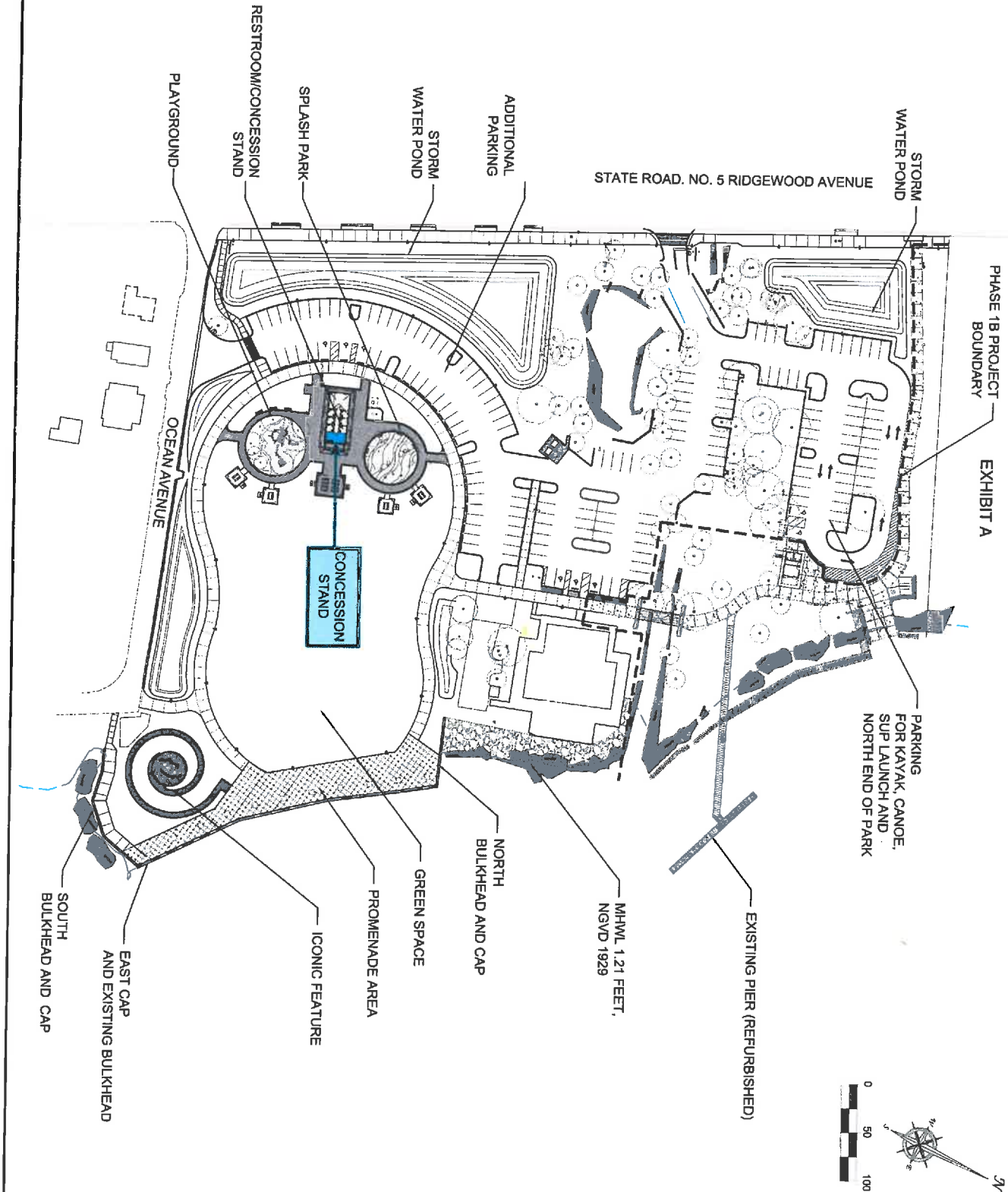
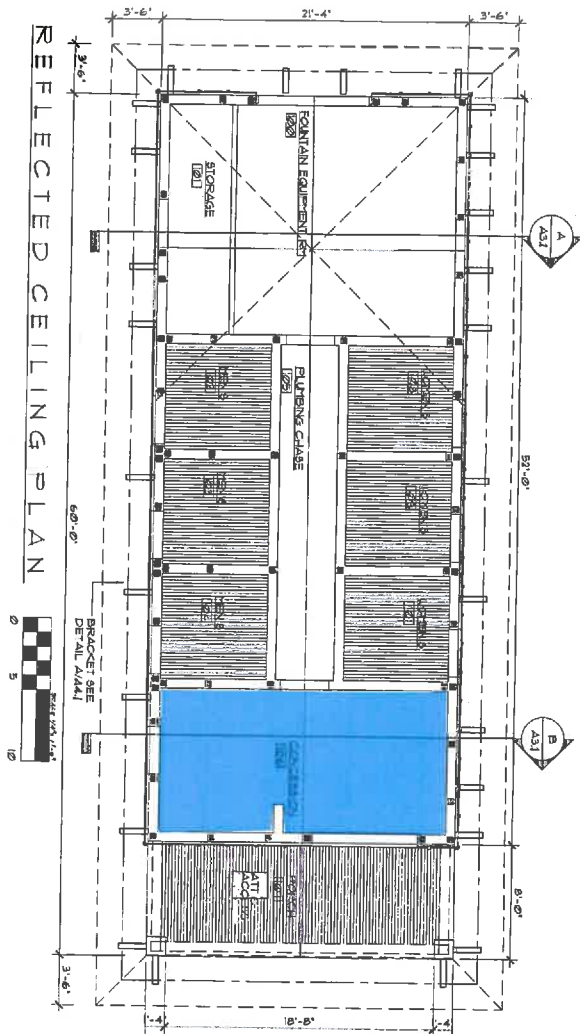


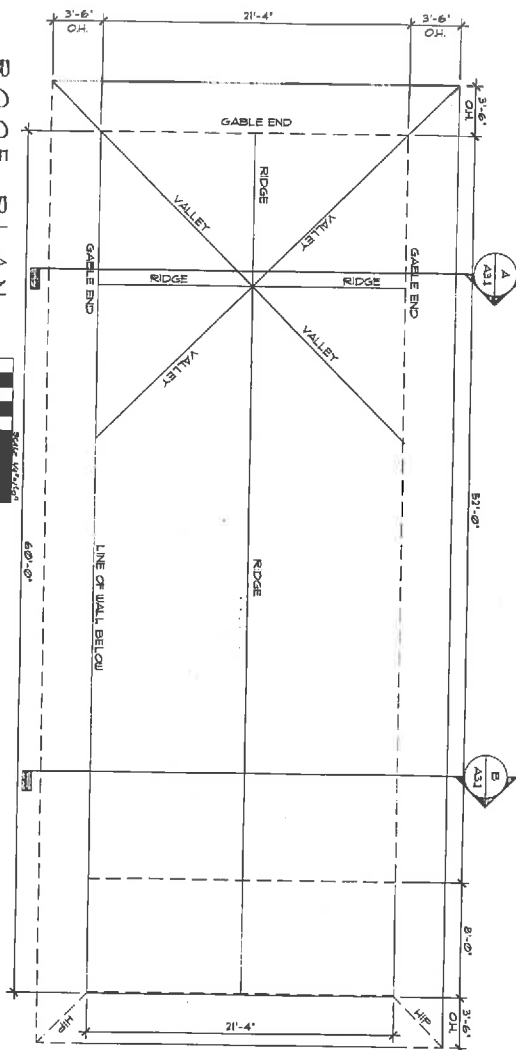
EXHIBIT "B"

Nov 18
Revised Deck 2

REFLECTED CEILING PLAN



ROOF PLAN



- ROOF NOTES:
1. ALL EXPOSED WOOD IS TO BE PRESURE TREATED NO. 1 GRADE S.T.P.
 2. ROOF SHEATHING NAIL PATTERN, EDGES: 12d @ 6" O/C FIELD: 12d @ 12" O/C
 3. ROOF SLOPE TYPICAL AT 9/12



1000 CITY CENTER CR.
PORT ORANGE
FL 32129

Dredging & Marine Consultants
DMC
ENGINEERS • SCIENTISTS
CORTIS H. TERRY, P.E. FLORIDA LICENSE NO. 0037138

4843 S. Clyde Morris Blvd
Unit 302
Port Orange, FL 32129
Phone: (386) 304-8505
Fax: (386) 304-6506
www.dmc08.com

CONSULTANT
S • C • A
AT 11088
500 CORNHORN ARCHITECTURE, INC.
P.O. BOX 823
NEW SMYRNA BEACH, FLORIDA
PHONE 386.4382.0006

PROJECT NAME:

RIVERWALK PARK
PHASE 1B

CLIENT:

CITY OF PORT ORANGE

DRAWING:

DMC JOB NO.

DRAWN

CHECKED

CAD

CHECKED

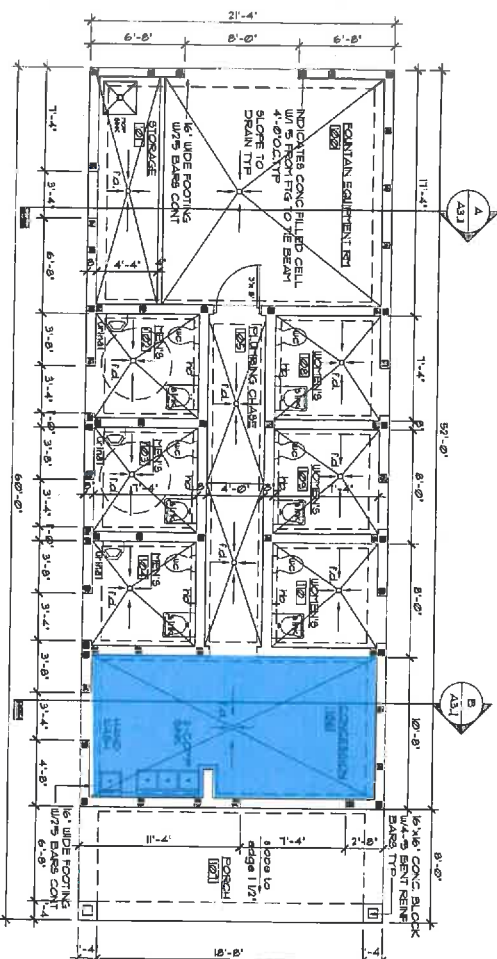
CHECKED

DATE

SHEET NO.

02-19-15

A5.1



FOUNDATION PLAN

FOOTING NOTE:
ALL FOOTINGS TO BE 16" DEEP
UNLESS OTHERWISE NOTED

ALL CONCRETE WALKING SURFACES NOT TO EXCEED 1/4" MAX. DEPTH SLOPE.

1. THE CONNECTIONS TO BE STAINLESS STEEL.
2. PROVIDE TIES AS SHOWN ON DETAIL NO. 1003-34) FOR MID GRAV. FROM REINCE TO WALL ON MAIN FLOOR.
3. HANG NUTBERS USED ARE FROM SIMPSON STRONG TIE CONNECTIONS.
4. IF ONE OVERLAPPED AT CORNERS TO BE CONNECTED W/ 4" X 3/8 TREADED ROD TYP.

APPLICABLE CODES:

2005 Florida Building Code-Building 5th Ed.	2005 Florida Building Code-Accessibility
2005 Florida Building Code-Energy Conservation	2005 Florida Building Code-Fire and Life Safety
2005 Florida Building Code-Mechanical	2005 Florida Building Code-Plumbing
2005 Florida Building Code-Pest Management	2005 Florida Building Code-Signs
2005 Florida Building Code-Specialties	2005 National Electrical Code 2001

NOTE: THESE PLANS HAVE BEEN DESIGNED TO MEET STANDARDS SET BY THE FLORIDA BUILDING CODE, 2005 EDITION CHAPTERS 6, 8, 9, 10 FOR ALL ROOF COMPONENTS AND EXTERIOR CLADDING FOR MID RISE LIFT/STAIR AND VERTICAL EXPOSURE CATEGORY "C".

AND ABOVE STANDARDS:

WIND FREELINE (WSFL, FREQ)	140 mph
WIND FREELINE (WSFL, FREQ)	150 mph
WIND FREELINE (WSFL, FREQ)	160 mph
II	
EXPOSURE "C"	140
EXPOSURE "C"	150
EXPOSURE "C"	160
PARTIALLY ENCLOSED	
NO	

LOCATION	DATE/TIME	UNIT	ACTUAL	PLANNED
CONNECTION SCHEDULE : PHASE 1B - SPLASH PARK RESTROOM DOOR LOUVER				

NOTE:
1. PREPARED SOIL TREATMENT FOR TESTSITE CONTROL. AFTER GRADING OPERATIONS ARE COMPLETED AND PRIOR TO CONCRETE WORK, APPLY AS REQUIRED PER COMPANY INSTRUCTIONS. SEE SECTION 05401 FOR THE CONTROL IN SPECIFICATIONS.



1000 CITY CENTER CR
PORT ORANGE
FL 32129

Dredging & Marine Consultants
DMC
ENGINEERS • SCIENTISTS
CLINT N. TODD, P.E. FLORIDA LICENSE NO. 0071736
4543 S. Clyde Morris Blvd.
Unit 302
Port Orange, FL 32129
Phone: (386) 304-8505
Fax: (386) 304-8508
www.dmcse.com

CONSULTANT

S ♦ C ♦ A

AA 11058

SID CORRIEHN ARCHITECT, INC.
P.O. BOX 8229
NEW SMYRNA BEACH, FLORIDA
PHONE 385.428.0000

PROJECT NAME:
RIVERWALK PARK
PHASE 1B
CLIENT:
CITY OF PORT ORANGE

DRAWING:		SHEET NO. A6.1
DMC JOB NO.		
DRAWN	CHECKED	
CHECKED	CHECKED	
CAD	DATE	

EXHIBIT "C"

CITY OF PORT ORANGE, FLORIDA

**REQUEST FOR PROPOSALS
RFP #18-11
CONCESSIONAIRE SERVICES**



City of Port Orange Purchasing Division

Prepared by: David Battaglia, Purchasing Agent
Date: May 8, 2018

**Proposal Due Date and Time:
May 29, 2018 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 Vendors

RFP #18-11 CONCESSIONAIRE SERVICES

Notice is hereby given that the City of Port Orange is soliciting proposals for CONCESSIONAIRE SERVICES. 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 May 29, 2018** which may be amended by addendum issued by the City. All untimely proposals will not be considered and will be returned to the Vendor unopened. All proposals will be evaluated to ensure they contain all required forms in order to deem the Vendor responsive or non-responsive. Proposals will be opened and 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 May 15, 2018** 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 Vendor shall be an authorized employee of the Vendor and shall sign in accordingly

DESCRIPTION: *CONCESSIONAIRE SERVICES at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127, as described herein.*

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 Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, and the Policies and Procedures as set forth in the City's Purchasing Manual. 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.

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 Onvia (DemandStar) via their website at www.demandstar.com. All questions shall be directed in **writing** to the to the Purchasing Agent, David Battaglia, dbattaglia@port-orange.org or purchdiv@port-orange.org and reference **"Questions on RFP #18-11 CONCESSIONAIRE SERVICES"** in the **subject line**. Last day for questions will be **May 22, 2018 at 5:00 P.M.**

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

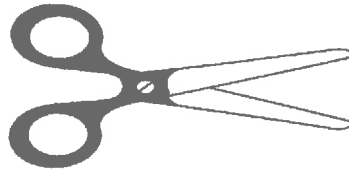
NO proposal shall be withdrawn for a period of ninety (90) days subsequent to the proposal opening without the consent of the City of Port Orange, Florida.

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

Proposals shall be **submitted in the City Clerk's office** with one (1) original and one (1) identical digital version in pdf format on CD or USB flash/thumb drive, addressed to the Purchasing Division, Finance Department, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 in a **SEALED ENVELOPE/PACKAGE** plainly marked on the outside: **"RFP 17-41 CONCESSIONAIRE SERVICES"**.

David Battaglia, Purchasing Agent
Legal Ad - One Time – **May 8, 2018**

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



SEALED PROPOSAL • DO NOT OPEN	
SEALED PROPOSAL NO.	<u>RFP #18-11</u>
PROPOSAL TITLE:	<u>CONCESSIONAIRE SERVICES</u>
DUE DATE/TIME:	<u>May 29, 2018 at 2:30 P.M.</u>
SUBMITTED BY:	<u></u>
	(Name of Company)
DELIVER TO:	City of Port Orange City Clerk's Office Attn: David Battaglia Purchasing Agent Finance Department 1000 City Center Circle Port Orange, Florida 32129
DATE/TIME RECEIVED:	<u></u>
	(To be stamped by Clerk's Office)

CONTENTS	
SECTION 1 – PURPOSE AND OVERVIEW	5
SECTION 2 – INSTRUCTIONS TO VENDORS	6
SECTION 3 – SCOPE OF SERVICES.....	11
SECTION 5 – GENERAL TERMS AND CONDITIONS	19
SECTION 6 – SPECIAL CONDITIONS.....	45
SECTION 7 – PROPOSAL SUBMITTAL & REQUIREMENTS	46
SECTION 8 – EVALUATION OF PROPOSALS.....	49
SECTION 9 – REQUIRED FORMS.....	51
FORM 9.1 – PROPOSAL SUBMITTAL CHECKLIST	51
FORM 9.2 – VENDOR’S ACKNOWLEDGEMENT FORM	52
FORM 9.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT	53
FORM 9.4 – DRUG-FREE PREFERENCE STATEMENT	54
FORM 9.5 – SWORN STATEMENT UNDER § 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES	55
FORM 9.6 – ANTI-COLLUSION FORM.....	56
FORM 9.7 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY.....	57
ATTACHMENT 1 – LEASE/FEE PROPOSAL (TO BE INSERTED UNDER TAB E:	59
CAPITAL IMPROVEMENT PLAN (OPTIONAL)	60
EXHIBIT 1 FLOOR PLAN	61

SECTION 1 – PURPOSE AND OVERVIEW

The purpose for this Request for Proposals (RFP) is to solicit competitive sealed proposals from Firms or Companies (Vendors) for the provision of Concessionaire Services at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127, as described herein.

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 Vendor'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 single source.

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO VENDORS

Firms or companies (Vendor) 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: May 8, 2018
Non-Mandatory Pre-Proposal Conference May 15, 2018 at 10:00 A.M.
Deadline for Questions: May 22, 2018 by 5:00 P.M.
Final Addendum Posting: May 23, 2018 by 5:00 P.M.
Proposals Due: May 29, 2018 by 2:30 P.M.
Evaluation Committee Meeting To Be Determined
Shortlisted Firms Presentations/Discussions (if required) 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: David Battaglia, Purchasing Agent
Finance Department
1000 City Center Circle
Port Orange, Florida 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 Vendors 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 Vendor
- d) Address of Vendor

Due to the timing of mail service, the City cautions Vendors 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.

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

Offers by telephone, email or telegram shall not be accepted. Also, Vendors are instructed NOT to fax their 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 Vendors 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/SITE VISIT:

There will be a Non-Mandatory Pre-Proposal Conference and Site Visit for the project on the date and time referenced in the Timeline above at City Hall, Choose an item., 1000 City Center Circle, Port Orange, Florida 32129. All prospective Vendors are strongly encouraged to attend because the Pre-Proposal Conference will offer potential Vendors the opportunity to ask questions and discuss the project directly with staff.

QUESTIONS REGARDING THIS RFP:

All questions shall reference "Questions on RFP #18-11 Concessionaire Services" 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:

David Battaglia
Purchasing Agent
1000 City Center Circle
Port Orange, FL 32129
dbattaglia@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. Vendors 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 Vendor's responsibility to be sure all correct number of addenda was received. The Vendor should verify with the designated contact persons prior to submitting a proposal that all addenda have been received. Vendors should acknowledge the correct number of addenda received as part of their proposals. It is the responsibility of the Vendor to ensure all addenda have been received prior to submitting a proposal.

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

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

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

CLARIFICATIONS:

It is the Vendor's responsibility to become familiar with and fully informed regarding the terms, conditions, and specifications of this 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. Vendors must contact the Purchasing Representative, at the email provided, should clarification be required.

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

MINIMUM QUALIFICATIONS:

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

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

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

NO LOBBYING:

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

PRICING SHEETS:

Pricing sheets are to be completed as directed and without modification and returned as part of the RFP submittal prior to the RFP deadline for submission. Failure to fill out the price sheets as directed and without modification may negatively affect the evaluation of your proposal.

EXCEPTIONS TO SPECIFICATIONS:

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

PROPOSAL SUBMISSION AND WITHDRAWAL:

Unless otherwise specified, Vendor shall use the forms supplied by the Purchasing Division. Proposals, once opened, become the property of the City, cannot be withdrawn, and will not be returned to the Vendors. 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. Vendors 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 Vendor 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. No responsibility will attach the Purchasing Department 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 VENDOR(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

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

OWNERSHIP OF DOCUMENTS:

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

AMERICANS WITH DISABILITIES ACT (ADA):

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

[Remainder of this page left intentionally blank]

SECTION 3 – SCOPE OF SERVICES

SPECIFICATIONS:

The City of Port Orange is seeking proposals from qualified firms or companies to provide Concessionaire Services at Riverwalk Park, 3441 South Ridgewood Avenue, Port Orange, Florida 32127. The successful proposer will enter into a license agreement for the premises which will be used for purposes consistent with and related to food, non-alcoholic beverage items, and picnic game rentals. The Proposer shall be responsible for all self-contained maintenance at the premises. The Licensee shall be responsible for all operating expenses, including, but not limited to water, sewer, electricity, waste removal, and all other utilities utilized by the Licensee, its employees and/or patrons.

The Proposer shall furnish all necessary labor and equipment for the operations and provide rental preparations as requested by the customers. The Proposer shall also be responsible for the collection of all rental fees, contracts, and records for the rental operation.

The agreement terms contained in this solicitation shall be part of a license agreement to be approved by the City Council. Proposers are advised to fully review all terms and conditions expressed in this solicitation as the contents will govern the operations of the required services.

Objectives:

To serve the general public as a full-service Concessionaire in an attractive setting in compliance with all governmental codes and regulations, subject to inspection and review by the City of Port Orange and to generate revenue for the City through the base license fee component of the license agreement. The City's goal is to have the Concessionaire fully operational for Riverwalk Park by July 1, 2018.

Proposers must provide a sample of services with pricing for services with their Marketing plan. (See Tab C under Section 7 – Proposal Submittal and Requirements.)

License Terms:

The term of the License is two years with the option to renew two (2) times in two (2) year intervals.

License terms will include a monthly base license fee. Licensee will have access to the concession area of the building and designated park areas as well as shared use of the restrooms, (attached as Exhibit 1). The premises is serviced by electric, water, sewer and trash removal. The premises are not serviced by cable, phone and internet.

The Proposer shall provide the City with a security deposit in the form of irrevocable letters of credit, cash deposits, or surety instruments satisfactory to the City upon signing the negotiated license. The amount of the deposit, which will be used to offset any damage to the property or missed license payments, shall be determined upon negotiation of the License Agreement. The Tenant will pay all operating expenses. Electric and water will be included in the license fee.

Concession-Operation:

The Tenant shall be responsible for operations, marketing, advertising, staffing, cleaning, security, cost of utilities, and maintenance within the leased areas, and obtaining all required permits and licenses.

The City will in no way be obligated to subsidize or support the operation of the operation of the Concessionaire. The City will not pledge any revenues, taxes, fees, or other financial resources to pay expenses incurred by the Proposer that enters into the Contract with the City. It will be the complete

responsibility of the successful Proposer to ensure that the outfitter operates in a financially responsible manner.

Background Information:

Port Orange's Riverwalk Park covers approximately sixteen (16) acres and is located along Halifax River (ICW) situated between Ocean Avenue and Dunlawton Avenue on US 1. The park amenities include a paved trail used by walkers and bikers and alike. There are playgrounds, restroom facilities, picnic areas, splash pad and fishing piers. The Riverwalk Park will serve as host to a variety of activities and special events throughout the year.

The Facility:

The Riverwalk Park, located at 3441 South Ridgewood Ave, Port Orange, FL, 32127, is a 16-acre park located along the intercostal waterway. The Park is owned by the City of Port Orange and operated by Department of Parks and Recreation.

The Riverwalk Floor Plan indicates the area available to Licensee. Any interior modifications can be negotiated between the successful Proposer and the City. All equipment will be provided by the licensee.

The Building: The electric system meets code, water, sanitary sewer is all currently available in the facility.

The concession building is 202 square feet and has a three-basin sink, roll up concession windows and electrical outlets. Outside restrooms attached to the building are open to the public and maintained by the city.

The Licensee will keep and maintain the premises in good condition and repair in a neat, sanitary and orderly manner to comply with all applicable City, County, and State regulations, and shall bear the expense of any and all painting and decoration furnished to the interior of the building, and of custodial services.

Signage:

Signage, including way-finding signs, may be included in the Proposal for consideration. Proposers should suggest signage locations which the City may consider.

No permit signage may be constructed by the Licensee.

Operating Hours:

The concession(s) may be open at all appropriate times during regular park hours from 8:00 A.M. 8:00 P.M. Required hours of operation by the City include:

<u>Weekends</u>	<u>Weekends</u>	<u>Weekly</u>	<u>Weekly</u>
Jan. – May	Sep. – Dec.	Jun. – Aug.	Volusia County Schools Breaks and National Holidays
9:00 A.M.	9:00 A.M.	9:00 A.M.	9:00 A.M.
To	To	To	To
4:00 P.M.	4:00 P.M.	4:00 P.M.	4:00 P.M.

The vendor may request authorization from the City fifteen (15) calendar days in advance to stay open later on special occasions and holidays or to be closed.

The City Reserves the Right to:

Block out dates, limit hours of operation, or authorize other vendors that may compete with the successful proposer as a result of special events taking place at Riverwalk Park.

Taxes:

The Licensee shall pay all federal, state, and local taxes in connection with the license agreement, including sales tax due on the use of the facility, as well as employment taxes and other federal taxes.

Maintenance:

Successful proposer shall be responsible for the following:

- Keeping the staging area neat, clean and in good standing;
- Removing Concessionaire refuse to the dumpster daily;
- Arranging seating area (if applicable);
- Sweeping, mopping and cleaning the public area surrounding the staging area daily upon completion of usage;
- Do not allow boxes, cartons, barrels trash or similar items to be in the view of the public.
- Evaluation of maintenance compliance will be at the City's sole discretion. If Licensee fails to maintain at a level acceptable to the City, the License may be revoked.

Parking:

The concessionaire has non-exclusive use of the parking lot which must be shared among the general public.

Employee Standards:

Successful Proposer shall ensure a staff that is fully responsible for all on-site operations to include but not limited to:

- Courteous and friendly service.
- To recruit, train, supervise and direct its employees in additions to having a number of employees to match the work requirements.
- Every employee will be clean and well-groomed and be professional and friendly to the public.
- All employees must pass a background screening.

Inspection/Pricing:

The Proposer shall charge reasonable prices for all services and products. The City reserves the right, but shall not have the obligation, to inspect equipment to make sure assure its safety to the public as well as the prices to make sure they are fair and reasonable.

There will be no sale or dispensing of alcoholic beverages, tobacco products, or any other item that is not in consonance with general community standards.

Proposal Requirements:

Any and all offers must include the following:

- **Operating Plan:** Proposals must include a staffing and operational plan to address the items listed in Section 3 Scope of work. This operational plan must also address procedures and methods that will ensure outstanding customer service to the customer of the concession at Riverwalk Park. (See Tab B in Section 7 – Proposal Submittal & Requirements)
- **Financial Plan:** Proposals must include a two (2) year financial plan consisting of, but not limited to proforma (forecasted) income statement, balance sheet and statement of cash flows. Please note that selected proposers with highest evaluation score will be asked to provide proof of financial solvency, which may include providing copies of financial statements, tax records, sworn statements, and/or any other relevant documents (See Tab D in Section 7 – Proposal Submittal & Requirements)
- **Marketing Plan:** Proposals must include a marketing plan indicating services to be provided, pricing of services, target markets, proposed marketing budget, advertising campaign, promotions to be offered or any marketing related activities. (See Tab C in Section 7 – Proposal Submittal & Requirements)
- **License Fee Proposal:** State the proposed license fee to be paid to the City monthly as a set amount. The monthly license fee will be negotiated between the City and the successful proposer in the final license agreement. Proposers who offer higher base license fee will receive additional consideration in the evaluation criteria addressing license Cost, and Proposers offering lower base license fee will receive less consideration. (See Tab E in Section 7 – Proposal Submittal & Requirements)

Background Checks:

The Successful Proposer shall provide, at their expense, a 2-year Florida Department of Law Enforcement (FDLE) Level 1 background check for any and all employees of the successful respondent involved in the performance of this contract on the City of Port Orange property within ten (10) business days following contract execution and, in the event of employee changes, throughout the term of the contract. Documentation must be submitted to the Parks and Recreation Director upon request.

SECTION 4 – STANDARD PURCHASE DEFINITIONS

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

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

16. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
17. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
18. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
19. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for evaluation of proposals, statements of qualifications or replies as part of a Request for Proposals (RFP), Request for Submission of Qualifications (RFSQ), or Invitation to Negotiate (ITN), or competitive grant process.
20. **Evaluator** is a member of the evaluation committee/team.
21. **Goods** are supplies, materials, or equipment.
22. **Intent to Award** is a document, published on Onvia/DemandStar, that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
23. **Invitation to Bid (ITB) or Bid** means a formal request to prospective vendors requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper.
24. **Invitation to Negotiate (ITN)** means a formal request to prospective vendors requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.
25. **Issues** means points, matters, or concerns to be addressed during negotiations.
26. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the "driver of change" and seeks alternatives/options.
27. **Lowest Responsible Bid means the responsive Bid** meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.
28. **Lowest Responsible Bidder** means the Bidder submitting Lowest Responsible Bid.
29. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).
30. **Negotiator** is a member of the negotiation team.
31. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a Bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.

33. **Onvia/DemandStar** is the official online repository for all City competitive solicitations.
34. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
35. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Vendors to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
36. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
37. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
38. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
39. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
40. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Vendor to perform the resultant Contract.
41. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.
42. **Request for Proposal (RFP)** means a formal request to prospective vendors requesting qualifications of the vendor and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
43. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective vendors requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.
44. **Respondent** means an entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.
45. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.
46. **Responsible (Vendor)** is a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.

47. **Responsive (Vendor)** is a vendor that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
48. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
49. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a vendor must execute in terms of delivering specific commodities or in performance of contractual services.
50. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
51. **Solicitation** means a formal request, as applicable, for prospective vendors to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.
52. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.
53. **Stakeholder** means an individual, who is not likely to become a vendor, who has an interest in the commodities/contractual services needed.
54. **Subcontractor** means a person, firm or entity providing goods or services to a Vendor to be used in the performance of the Vendor's obligations under the Contract.
55. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.
56. **Unbalanced Bid** means a Bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.
57. **Vendor** is a person, firm, or entity that that provides commodities or services and submits a Response to a Solicitation. Any Vendor may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. (Also called "Bidder" or "Proposer".)

[Remainder of this page left intentionally blank]

SECTION 5 – GENERAL TERMS AND CONDITIONS

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

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

1. ACCEPTANCE BY CITY

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

2. ADDENDUM

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

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

3. ADDITIONAL GOODS

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

4. **ANTI-COLLUSION STATEMENT**

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

5. **APPLICABLE LAWS**

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

6. **ASSIGNMENT**

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

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

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

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

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

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

8. **AWARDS**

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

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

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

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

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

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

10. **BID RETURNS**

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

11. **BID PROTEST**

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

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

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

12. **BID/PROPOSAL TABULATION**

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

13. **BONDS**

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

14. **CERTIFICATE OF INSURANCE**

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

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

15. **CHANGE ORDERS**

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

16. **CHANGE ORDER REQUEST NOTIFICATION**

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

17. **CLEAN UP**

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

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

18. **CONDUCT OF VENDORS**

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

19. **CONE OF SILENCE**

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

The Cone of Silence is defined as the period beginning with the issuance of the solicitation document and continues through the execution of the award document. During this time

vendors, service providers and the like are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City Agents, or elected officials. Any vendor who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation.

Exceptions to the Cone of Silence:

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

20. **CONFLICT OF INTEREST**

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

21. **CONFLICT OF INSTRUCTIONS**

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

22. **CONTRACT**

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

23. **CONTRACT OBLIGATION**

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

24. **CONTRACT RENEWALS**

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

25. **COOPERATIVE PURCHASING**

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

26. **COPYRIGHT AND PATENT RIGHTS**

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

27. **COST INCURRED BY VENDOR**

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

28. **DAMAGE**

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

29. **DEBARMENT HISTORY**

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

30. **DEFAULT PROVISIONS**

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

31. **DELIVERY OF GOODS/SERVICES**

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

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

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

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

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

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

- a. The ability, capacity and skill of the Bidder/Proposer to perform the contract.
- b. Whether the Bidder/Proposer can perform the contract within the time specified, without delay or interference.
- c. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder/Proposer.
- d. The quality of performance of previous contracts.
- e. The previous and existing compliance by the Bidder/Proposer with laws and ordinances relating to the contract.
- f. The sufficiency of the financial resources and ability of the Bidder/Proposer to perform the contract or provide the service.
- g. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- h. The ability of the Bidder/Proposer to provide further maintenance and service for the use of the subject of the contract.
- i. The number and scope of conditions attached to the bid.

- j. Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

33. **DISCLOSURE OF CONFLICTS**

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

34. **DISQUALIFICATION OF BIDDER/PROPOSER**

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

35. **EVALUATION**

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

36. **EVALUATING RFPs/RFSQs/ITNs**

The evaluation process is formally conducted by a committee appointed by the Purchasing Manager or requesting department as required by general law. The Purchasing Manager leads and oversees the entire process. The evaluation is based upon specific criteria outlined in the Solicitation. The user department shall assign a weight to each of the evaluation criteria by its relative importance, with the total weights equaling 100. Each committee member establishes a summary of total scores for all the vendors. The summary of total scores is used to rank the vendors. Based upon the scores/ranking of the committee members, consensually a short list is

obtained. In this Solicitation process this short list will consist of no less than three vendors (unless less than three were received). This committee falls under the Florida Sunshine Law and therefore cannot speak with one another concerning the Solicitation unless in a public committee meeting. These meetings also shall be announced publicly in a designated area and meetings are recorded. In the case of the Solicitation, one member of the Evaluation Committee may consist of one (1) member from the City Council; and at least one (1) member from the user department, except as otherwise required by general law. The Evaluation Committee, through the Purchasing Division, schedules oral presentations from the firms that were short-listed. At the oral presentation, the short-listed firms present an over view of their company and their approach to the scope of work outlined. Upon conclusion of the oral presentations, with the same criteria and procedures used to evaluate the written Responses, the committee members then evaluate those three firms again to determine a second ranking. Then, by consensus a final ranking is determined. That final ranking is then presented to the City Council by the using department head requesting approval to negotiate with the individual/firm ranked as number one. A contract is completed pursuant to the negotiations with this individual and/or firm. If a successful contract cannot be obtained with the number one ranked firm, the negotiations then move to the team ranked as number two, never to return to the number one again.

37. **EXCEPTIONS TO SPECIFICATIONS**

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

38. **E-VERIFY**

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

39. **FACILITIES**

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

40. **FAILURE TO RESPOND**

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

41. **FINANCIAL STABILITY**

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

42. **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.

43. **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.

44. **GOVERNING LAW**

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

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

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

45. **GRANT FUNDING**

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

46. **HIPAA COMPLIANCE**

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

47. **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.

48. **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.

49. **INDEPENDENT CONTRACTOR**

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

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

50. **INSPECTIONS AND TESTING**

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

51. **INSURANCE**

If required upon notice of Intent to Award and prior to execution of a contract, the Vendor shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers' compensation coverage, the Vendor's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation. Vendor shall maintain insurance during the life of the Contract.

52. **INSURANCE CANCELLATION**

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

53. **INSURANCE REQUIREMENTS**

If required upon notice of Intent to Award and prior to execution of a contract, the Vendor shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers' compensation coverage, the Vendor's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation. Vendor shall maintain insurance during the life of the Contract.

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

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

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

Comprehensive Business, Automobile Liability to include all automobiles. <u>Additional Coverage:</u>	Auto Liability Body Injury: \$100,000 each person, \$300,000 each occurrence. Property Damage Liability \$100,000 each occurrence. Non-Owned, Hired Car	Or \$500,000 Combined Single Limit for Bodily Injury and Property Damage
Property Insurance Builders Risk. <u>Additional Coverage:</u>	Buildings - Completed value of contract. "All Risk" coverage on latest ISO form or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If the Contract requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
Professional Liability (Errors & Omissions)	Coverage- \$1,000,000 minimum	

54. **INVOICES AND PAYMENTS**

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

55. **IRREVOCABILITY OF RESPONSES**

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

56. **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.

57. **LEGAL REQUIREMENTS**

Applicable provision of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all Responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a Solicitation hereto and the City by and through its officers,

employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any Vendor shall not constitute a cognizable defense against the legal effect thereof.

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

58. **LICENSES, PERMITS AND TAXES**

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

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

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

60. **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 Submittals. In any ranking conducted pursuant to a request for proposals, qualifications, or other qualitative submittals where the bidders are rated by a point system, local businesses shall be granted the following preference:
 - (1) Port Orange business shall be granted up to eight percent (8%) of the available points.
 - (2) Volusia County business shall be granted up to five percent (5%) of the available points.
 - (3) Florida business shall be granted up to three percent (3%) 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) 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.

61. **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.

62. **NAME BRANDS**

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

63. **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.

64. **NON-EXCLUSIVITY OF CONTRACT**

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

65. **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.

66. **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.

67. **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.

68. **OTHER AGENCIES**

- (a) All Vendors awarded contracts from this Bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices, terms, and conditions, if agreed to by both parties.
- (b) It is understood that at no time will any city, municipality, or other agency be obligated for placing an order for any other city, municipality, or agency; nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further, it is understood that each agency will issue its own purchase order to the awarded Vendor(s).

69. **PATENTS/COPYRIGHTS**

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

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

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

71. **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, written in ink, or inputted electronically in the blank spaces for each item, with the amounts extended if a unit price bid, and all amounts totaled. The sum of the Total Bid as calculated from the individual items,

Schedule of Unit Prices, shall equal the Total Price. Except as provided below, bids containing substitutions or combinations of alternates will not be considered unless such substitutions or combinations are specifically authorized by the Proposal. The Vendor shall sign his/her name and give his/her business address in the spaces provided therefore. If the Proposal is made as a partnership, it shall be signed by all partners; if made by a corporation, it shall be signed in the name of the corporation by one of the officers thereof and shall have affixed the seal of the corporation.

72. **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.

73. **PRICING**

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

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

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

74. **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.

75. **PROPRIETARY INFORMATION**

Upon receipt by the City, responses to Solicitations, become public records subject to the provisions Florida's state policy on public records, Section 119, Florida Statutes. If you believe that any portion of your response is exempt, you should clearly identify the specific documents

for which confidentiality is claimed, and provide specific legal authority of the asserted exemption. Any financial statement that an agency requires a prospective Vendor to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution.

76. **PROTECTION**

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

77. **PUBLIC ENTITY CRIMES**

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

78. **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.

79. **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.

80. **PURCHASE ORDER AND DELIVERY**

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

81. **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.

82. **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.

83. **RECORDS/AUDIT**

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

84. **RECYCLED MATERIALS**

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

85. **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.)

86. **REQUEST FOR ADDITIONAL INFORMATION**

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

87. **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.

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

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

89. **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.

90. **RIGHTS TO SOLICITATION SUBMITTED MATERIAL**
- All Responses, inquiries, or correspondence relating to or in reference to a Solicitation, and all reports, charts, and other documentation submitted by Vendors shall become the property of the City when received.
91. **RULES, REGULATIONS AND LICENSING REQUIREMENT**
- The Vendor shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Vendors are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.
92. **SAMPLES**
- Samples, when requested, must be furnished at, or before, Response opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at the Vendor's request, be returned within thirty (30) days after bid award at the Vendor's expense. If requested by the City, samples and/or inspection of like items are to be made available in the central Florida area.
93. **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.
94. **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.
95. **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.
96. **SIGNED RESPONSE CONSIDERED AN OFFER**
- The signed Response is considered an offer on the part of the Vendor, which offer shall be considered accepted upon approval by the City of Port Orange City Council (if required). The City of Port Orange will issue a purchase order or a letter of authorization to the successful Vendor, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein. In the event of default on the part of the Vendor after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.
97. **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.

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

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

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

99. **STATE LICENSING REQUIREMENTS**

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

100. **SUBCONTRACTING**

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

101. **SUPPLEMENTAL MATERIALS**

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

102. **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.

103. **TERM CONTRACTS**

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

104. **TERMINATION**

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

105. **TERMINATION - NOTICE**

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

106. **TITLE TRANSFER**

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

107. **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.

108. **USE OF SOLICITATION FORMS**

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

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

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

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

109. **VARIANCES**

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

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

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

- a. If the Vendor is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.
- b. The Vendor shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Vendor.

- c. In furnishing the service or product to the City, the Vendor shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, Contract, proposal or quote.

111. **WAIVER OF IRREGULARITIES**

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

112. **WARRANTIES**

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

[Remainder of this page left intentionally blank]

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 / COMPLETION TIME:

The term of the contract shall be for two (2) years and may, by agreement between the City of Port Orange and the vendor, be renewed for two (2) two (2) year periods subject to City Manager approval. The City reserves the right to extend any contract after the last day of the current contract expiration date for a period no more than 6 months.

ELIGIBILITY OF VENDOR:

To be eligible to respond to this RFP, the Vendors must have the ability to prove in their submission that they meet all qualifications and working experience with the services as described in this RFP.

ESCALATION / DE-ESCALATION

Bid prices shall remain firm for a period of one-year (1) year from the date of award. The contract prices may be changed after the first year for the following reasons:

An increase or decrease in the supplier's cost of materials may be justification for price change; however, this shall not be construed in any way to increase vendor's margin of profit. All written request for a price increase must include backup documentation as to the nature of the increase and shall be submitted to the City Purchasing Manager at least 30 days prior to the scheduled price increase/decrease or renewal of contract. Approval of each request shall be by written confirmation from the City Purchasing Manager. If the City should consider said increase unwarranted or unreasonable, the City reserves the right to terminate the contract with the vendor. Any price decline at the manufacturer's level shall be reflected in an immediate reduction of the contract prices and the vendor shall notify the buyer of said decline.

[Remainder of this page left intentionally blank]

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 Vendor'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 Vendors 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 HISTORY, QUALIFICATIONS, ABILITY, and CAPACITY:

- Legal name and principal office address.
- Telephone number and e-mail address.
- State of incorporation of the entity.
- List of names and addresses of the primary owners/board members.
- Name of agent who is authorized to negotiate with the City of Port Orange.
- List of Concession stands currently or previously actively managed by the Proposer (the firm) and their locations.
- Provide a summary of the qualifications and experience of the entity (i.e., the firm) responsible for the management of the Concessionaire Services, especially with regard to prior experience with operation of projects similar in scale and character to these services, Include years and type of experience relevant to the Scope of Services.

TAB B – BUSINESS OPERATIONAL CONCEPTS:

- A clear statement of the Proposer's Vision for the Concessionaire Services operation and how the Proposer will appeal to the public, including any proposed improvements to the Concession area.
- Proposers must clearly state their understanding of the City's intent to operate the concession stand in such a manner as to recognize the need to balance that expectation with the desire to operate the Concessionaire strictly on a for-profit basis. It is also very important that each proposer ensure full accountability of all public assets and policies.
- The Proposer's intended approach toward achieving and measuring customer satisfaction.
- The nature and extent to which the Proposer intends to maximize public use of the premises and the facilities.
- Address proposed hours and days of operation on both weekdays and weekends and types of concession items being offered.
- Proposals must include a staffing and operational plan to address the items listed in Section 3 Scope of work. This operational plan must also address procedures and methods that will ensure outstanding customer service to the customer of the concession at Riverwalk Park.

TAB C – MARKETING PLAN:

- Provide a marketing plan indicating services to be provided, target markets, proposed marketing budget, advertising campaign, promotions to be offered or any other marketing related activities.
- Provide projections and outlook for operating and growing the business.
- Proposers should submit copies of policies and procedures, organizational charts, job descriptions, etc. that they use in their everyday effort to improve the businesses they are responsible for managing. The Proposer hereby acknowledges that these attachments and statements are an integral part of the proposal and as such are truthful and complete. Furthermore, Proposer affirms its liability to the City in carrying out its proposed operational concepts, financial commitments and plans should it be the successful Proposer.
- Provide sample menu/game rental with proposed prices.

TAB D – FINANCIAL STABILITY/LITIGATION and DEBARMENT HISTORY:

- All Respondents 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.
- Proposals must include two (2) year financial plan consisting of, but not limited to proforma (forecasted) income statement, balance sheet and statement of cash flows.
- It is essential that the Vendor clearly demonstrates the financial ability to reliably deliver services. This Tab shall contain information on the nature and magnitude of any litigation or proceeding whereby, during the past five (5) years, a court or any administrative agency has ruled against the firm in any matter related to the professional activities of the firm.
This shall include any class actions within your company where named, industry investigations by the Attorney General, in addition to individual cases.
- This shall include any debarment actions against your company by the City or other public entity.
- Respondent must indicate whether any contract awarded by another government agency has been terminated in default or convenience.
- Respondent has a continuing duty to inform the City of any new claims filed against the Respondent.
- A copy of the most recent external peer review report and any letter of comment.

TAB E – LICENCE FEE:

- **License Fee Proposal:** Use the attached license fee Proposal (Microsoft Excel spreadsheet) to submit formal unit cost data in your proposal under Tab E. Only the License Proposal form provided by the City of Port Orange in this solicitation will be accepted.
- State the proposed license fee to be paid to the City monthly as a set amount. The fee will be negotiated between the City and the Tenant in the final license agreement.
- Proposers who offer higher base license fee will receive additional consideration in the evaluation criteria addressing License proposal, and Proposers offering a lower license fee will receive less consideration.

TAB F – REFERENCES:

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:

- Provide a minimum of three (3) and a maximum of five (5) Client References (**DO NOT INCLUDE THE CITY OF PORT ORANGE AS REFERENCES**) within the last five (5) years for the services described in this RFSQ. Include the name and type of entity, the contact name, email address and telephone number of the public officer in charge of the contract, and the years in which the services have been provided.

***The information provided under this tab, must be current and the City must be able to contact references for verification as part of the evaluation process.**

- All reference contact information MUST be verified as current by the Proposer prior to submittal. References which cannot be verified using the provided contact information will receive no points under the evaluation criteria.
- Below is a sample of the verification questions that may be used:
 1. Did they meet the terms of the contract?
 2. Was the project completed on time and within budget?
 3. Did they respond in a timely manner to calls, requests, etc.?
 4. Did they provide adequate staff to take care of the needs of your company/agency?
 5. How was your experience in working with this Vendor?
 6. Overall, would you recommend this Vendor?

TAB G– REQUIRED FORMS:

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 Vendor Acknowledgement Form
- Form 9.3 Addendum and Change Order Procedure Acknowledgement Form
- Form 9.4 Drug-Free Preference Statement
- Form 9.5 Sworn Statement on Public Entity Crimes
- Form 9.6 Affidavit of Anti-Collusion Form
- Form 9.7 Local Business Affidavit of Eligibility
- Attachment1- License /Fee proposal (inserted under Tab E of submitted proposal)

SECTION 8 – EVALUATION OF PROPOSALS

EVALUATION CRITERIA:

Firms submitting the required criteria will have their proposals evaluated and scored for quality of response, qualifications and experience and cost. The following represents the principal selection criteria, which will be considered during the evaluation process. Criteria will be weighted based on 100% of total value. Category Scores listed below are the maximum number of points to be awarded per each evaluator.

<u>EVALUATION CRITERIA FOR WRITTEN PROPOSALS</u>	<u>CATEGORY SCORE</u>
<i>COMPANY HISTORY, QUALITIFICATIONS, ABILITY AND CAPACITY:.....</i>	<i>(10 points)</i>
<i>CONCESSIONAIR EXPERIENCE AND & QUALIFICATIONS:</i>	<i>(20 points)</i>
<i>BUSINESS PLAN, OPERATIONAL AND MARKETING CONCEPTS:.....</i>	<i>(25 points)</i>
<i>LICENCES, FINANCIAL HISTORY AND REFERENCES:</i>	<i>(15 points)</i>
<i>LICENCE FEES PROPOSAL:</i>	<i>(30 points)</i>
<i>Total Maximum Points</i>	<i>(100 points)</i>

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.

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:

The Evaluation Committee is comprised of City staff and may include City Council Member 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 Purchasing Manager 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 Vendors 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.

FORMAL ORAL PRESENTATIONS/INTERVIEWS (If Required):

The City may choose to conduct oral interviews with, or receive oral presentations from one or more of the Vendors. If the City chooses to allow oral interviews and/or presentations, such interviews or oral 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 Vendors will be notified via www.demandstar.com at least five (5) calendar days in advance of the date, time and place of the presentations.

The City will allot equal time for each Vendor divided into two sequential parts: formal presentations and questions and answers. The times allotted are maximums and no Vendor 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 presentations for qualifications, experience, engagement approach, and schedule to determine a final ranking of the short-listed Vendors considered to be most capable of performing the required project in the best interest of the City. The following represents the principal selection criteria, which will be considered during the evaluation process. Criteria will be weighted based on 100% of total value. Category Scores listed below are the maximum number of points to be awarded per each evaluator.

<u>EVALUATION CRITERIA FOR ORAL PROPOSALS</u>	<u>CATEGORY SCORE</u>
<i>COMPANY HISTORY, QUALIFICATIONS, ABILITY AND CAPACITY:.....</i>	<i>(10 points)</i>
<i>CONCESSIONAIRS EXPERIENCE AND & QUALIFICATIONS:</i>	<i>(20 points)</i>
<i>BUSINESS PLAN, OPERATIONAL AND MARKETING CONCEPTS:</i>	<i>(25 points)</i>
<i>LICENCES, FINANCIAL HISTORY AND REFERENCES:.....</i>	<i>(15 points)</i>
<i>LICENCE FEES PROPOSAL:</i>	<i>(30 points)</i>
<i>Total Maximum Points</i>	<i>(100 points)</i>

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)*

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 The City project manager will create an agenda item recommending award to the City Council. City Council's decision will be final.

SECTION 9 – REQUIRED FORMS

FORM 9.1 – PROPOSAL SUBMITTAL CHECKLIST

- _____ Form 9.2 – Vendor’s Acknowledgement Form
- _____ Form 9.3 – Addendum and Change Order Procedure Acknowledgement Form
- _____ Form 9.4 – Drug-Free Preference Statement
- _____ Form 9.5 – Sworn Statement Pursuant to Section 287.133 (3)(a) F.S. in Public Entity Crimes
- _____ Form 9.6 – Affidavit of Anti-Collusion Form
- _____ Form 9.7 – Local Business Affidavit of Eligibility
- _____ Attachment 1 – Lease/Fee Proposal (Inserted under Tab E of submitted Proposal)
- _____ Capital Improvement Plan (Optional)
- _____ Submission of one (1) original marked “ORIGINAL”, and one (1) identical digital version in PDF format on CD or USB flash/thumb drive.

BY: _____
Vendor

Authorized Signature

Date

This document must be completed and returned with your Submittal

FORM 9.2 – VENDOR’S ACKNOWLEDGEMENT FORM

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

I hereby propose to furnish the goods or services specified in the Request for Proposals 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 proposal. Furthermore, I agree to abide by all conditions of the Request for 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 Vendor / Contractor as its act and deed and that the Vendor / Contractor is ready, willing and able to perform if awarded the contract.

I further certify that this 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 Vendor interested in said RFP; and that the undersigned executed this Vendor’s Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

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

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

NAME OF BUSINESS

MAILING ADDRESS

AUTHORIZED SIGNATURE

CITY, STATE & ZIP CODE

NAME, TITLE, TYPED

TELEPHONE NUMBER / FAX NUMBER

FEDERAL IDENTIFICATION #

E-MAIL ADDRESS

STATE OF _____ COUNTY OF _____

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

My Commission Expires:

Notary Public

This document must be completed and returned with your Submittal

FORM 9.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

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

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

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

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

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

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

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

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

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

(NAME)

(TITLE)

(NAME OF ORGANIZATION) and who:

[Notary: *Please select one*]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 9.4 – 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: Plicenceselect 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 9.5 – SWORN STATEMENT UNDER § 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

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

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

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

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____
COUNTY OF _____

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

[Notary: *Plicenceselect 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 Vendor 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 VENDOR THAT THE SIGNING AND DELIVERY OF THE PROPOSAL REPRESENTS THE VENDORS ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FOREGOING SPECIFICATIONS, CONTRACT AND PROVISIONS, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE VENDOR 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 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

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

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

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

CONTACT PERSON/TITLE: _____

MAILING ADDRESS: _____

CITY-STATE-ZIP: _____

Length of Time at Address Provided: _____

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

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

FEIN (Federal Employer Identification Number): _____

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

PHONE NUMBER: _____ FAX: _____

EMAIL: _____

****Plisceattach a valid business tax receipt, or other such documentation****

ATTESTATION – I understand that:

In accordance with City of Port Orange City Code 2-275, local businesses shall have five (5) business days from bid/proposal opening to submit a best and final bid for evaluation. To qualify: A Port Orange business initial bid must be within (8%) of the lowest and best responsible bid from a non-Port Orange business; A Volusia County business initial bid must be within (5%) of the lowest and best responsible bid from a non-Volusia County business; A State of Florida business initial bid must be within (3%) of the lowest and best responsible bid from a non-State of Florida business.

A local business must have its headquarters, manufacturing facility, or locally owned franchise located within the legal boundaries of the City of Port Orange, Volusia County, or the State of Florida, as indicated herein, for at least twelve (12) months prior to the bid or proposal opening date and a valid business license, issued by the corresponding government agency. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. Bidders shall attach to this affidavit of eligibility with a bid or proposal, a copy of a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within corresponding local limits.

The preference does not apply to goods or services exempted by statute or prohibited by Federal law, State law, or other funding source restrictions.

The preference established in this policy does not prohibit the right of the City, or other authorized purchasing authority, to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals.

- The information contained herein may be subject to verification.

A vendor who misrepresents the local preference status of its firm in a proposal or bid submitted to the City of Port Orange will lose the privilege to claim local preference status, and shall lose eligibility to claim local preference for a period of one (1) year. The City Manager may also recommend that the firm be referred for debarment.

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

(Form 9.7 Local Business Affidavit of Eligibility – Page 2)

SWORN AND SUBSCRIBED BEFORE ME

SIGNATURE OF NOTARY PUBLIC

NOTARY SEAL

THIS _____ DAY OF _____, 20__

My Commission Expires: _____

SIGNATURE OF AFFIANT

DATE

PRINTED NAME OF AFFIANT / TITLE

COMPANY

This document must be completed and returned with your Submittal



"ATTACHMENT 1" LICENSE FEE PROPOSAL (TO BE INSERTED UNDER TAB E)
PROPOSAL FORM

CITY OF PORT ORANGE
CONCESSIONAIRE SERVICE

RFP# 18-11

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

Instruction to save Attachment from Demandstar website:

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

Fill in pricing in highlighted cells, preferably electronically.

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

NAME OF BUSINESS:

CONTACT PERSON:

EMAIL ADDRESS:

AUTHORIZED SIGNATURE:

ITEM	QTY EACH	DESCRIPTION	MONTHLY PRICE
1	1	License fee. LESSEE shall pay monthly to LESSOR on the 1 st day of each month during the Term and any Renewal Term, Base Rent in the amount of	\$ -
TOTAL PROPOSAL			\$ -

This document must be completed and returned with your Submittal

CAPITAL IMPROVEMENT PLAN (OPTIONAL)

It will be the responsibility of the Proposer to determine what capital projects are needed to improve the overall operation and maintenance of the concession stand. The successful Proposer will be expected to ensure that the minimum amount for capital projects is adequately funded within the annual operating and capital budget approved by the City each year. Proposals should also include a description of the projects they believe will be necessary to maintain the long-term viability of the concession stand. All costs associated with the improvements will be the vendors responsibility.

The undersigned agrees that the annual dollar amount of Capital Improvements shall not be less than:

Year 1 \$ _____

Year 2 \$ _____

Year 3 \$ _____

Year 4 \$ _____

Year 5 \$ _____

The undersigned, as Bidder, hereby declares that the only person or persons interested in the Proposal, as principal or principals, is or are named herein and that no other persons than herein mentioned has any interest in the Proposal or the Contract to which the work pertains; that this Proposal is made without connection or arrangement with any other person, company, or parties making a bid or proposal and that the Proposal is in all respects fair and made in good faith without collusion or fraud.

Company Name: _____

Contact Person / Title: _____

Mailing Address: _____ State: _____ Zip: _____

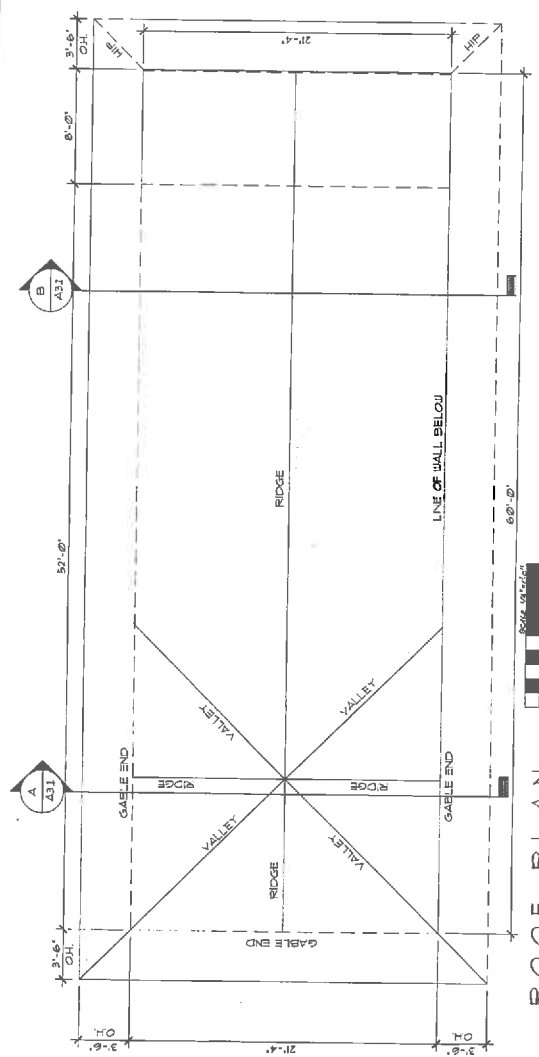
Phone: _____ Fax: _____ E-Mail: _____

Signature: _____ Submitted on: _____, 20__

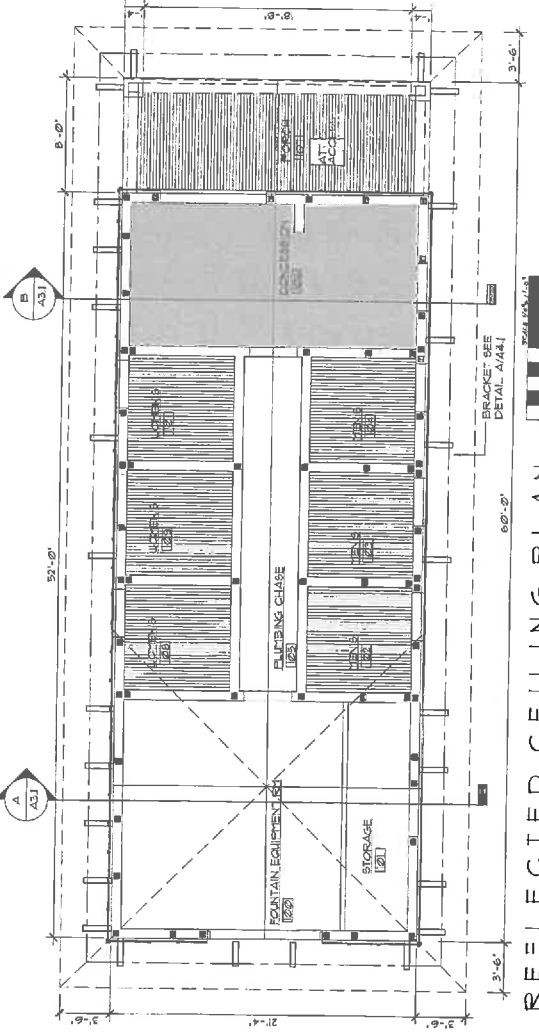
 DMC ENGINEERS • SCIENTISTS 1000 CITY CENTER CR. PORT ORANGE FL 32129 4043 S. Clyde Morris Blvd. Unit 302 Port Orange, FL 32129 Phone: (386) 304-6505 Fax: (386) 304-6508 www.dmcna.com		CLIENT: CITY OF PORT ORANGE PROJECT NAME: RIVERWALK PARK PHASE 1B DRAWING: DMC JOB NO. CHECKED: AS.1 DATE: 02-18-15		CONSULTANT: S.C.A. 310 CONVENT ARCHITECT INC. P.O. BOX 803 NEW SMYRNA BEACH, FL 32109 PHONE: 386-438-0048	
---	--	---	--	---	--

ROOF NOTES:

1. ALL EXPOSED WOODS TO BE PRESSURE TREATED NO. 1 GRADE SYP.
2. ROOF SEATING NAIL PATTERN: EDGES: 102 # 6 O/C FIELD: 102 # 12 O/C
3. ROOF SLOPE TYPICAL AT 3/4



ROOF PLAN



REFLECTED CEILING PLAN

 1000 CITY CENTER PORT ORANGE, FL 32129 F.L. 32129		DMC ENGINEERS & MARINE CONSULTANTS 4643 S. CYRUS MORRIS BLVD PORT ORANGE, FL 32129 Phone: (386) 304-6508 Fax: (386) 304-6508 WWW.DMCOR.COM		S.C.A. CONSULTANT 828 S. RIVER ST. PORT ORANGE, FL 32129 Phone: (386) 304-6508 Fax: (386) 304-6508 WWW.DMCOR.COM		CLIENT: CITY OF PORT ORANGE PROJECT NAME: RIVERWALK PARK PHASE 1B		DRAWING: CONNECTION SCHEDULE SHEET NO. A6.1 DATE: 02-18-15 CHECKED: DRAWN: CAD: DATE: 02-18-15	
--	--	---	--	---	--	--	--	--	--

NO.	MODEL	DESCRIPTION	REMARKS
1	133A UPLIFT	133A UPLIFT	133A UPLIFT
2	133B UPLIFT	133B UPLIFT	133B UPLIFT
3	133C UPLIFT	133C UPLIFT	133C UPLIFT
4	133D UPLIFT	133D UPLIFT	133D UPLIFT
5	133E UPLIFT	133E UPLIFT	133E UPLIFT
6	133F UPLIFT	133F UPLIFT	133F UPLIFT
7	133G UPLIFT	133G UPLIFT	133G UPLIFT
8	133H UPLIFT	133H UPLIFT	133H UPLIFT
9	133I UPLIFT	133I UPLIFT	133I UPLIFT
10	133J UPLIFT	133J UPLIFT	133J UPLIFT
11	133K UPLIFT	133K UPLIFT	133K UPLIFT
12	133L UPLIFT	133L UPLIFT	133L UPLIFT
13	133M UPLIFT	133M UPLIFT	133M UPLIFT
14	133N UPLIFT	133N UPLIFT	133N UPLIFT
15	133O UPLIFT	133O UPLIFT	133O UPLIFT
16	133P UPLIFT	133P UPLIFT	133P UPLIFT
17	133Q UPLIFT	133Q UPLIFT	133Q UPLIFT
18	133R UPLIFT	133R UPLIFT	133R UPLIFT
19	133S UPLIFT	133S UPLIFT	133S UPLIFT
20	133T UPLIFT	133T UPLIFT	133T UPLIFT
21	133U UPLIFT	133U UPLIFT	133U UPLIFT
22	133V UPLIFT	133V UPLIFT	133V UPLIFT
23	133W UPLIFT	133W UPLIFT	133W UPLIFT
24	133X UPLIFT	133X UPLIFT	133X UPLIFT
25	133Y UPLIFT	133Y UPLIFT	133Y UPLIFT
26	133Z UPLIFT	133Z UPLIFT	133Z UPLIFT
27	133AA UPLIFT	133AA UPLIFT	133AA UPLIFT
28	133AB UPLIFT	133AB UPLIFT	133AB UPLIFT
29	133AC UPLIFT	133AC UPLIFT	133AC UPLIFT
30	133AD UPLIFT	133AD UPLIFT	133AD UPLIFT
31	133AE UPLIFT	133AE UPLIFT	133AE UPLIFT
32	133AF UPLIFT	133AF UPLIFT	133AF UPLIFT
33	133AG UPLIFT	133AG UPLIFT	133AG UPLIFT
34	133AH UPLIFT	133AH UPLIFT	133AH UPLIFT
35	133AI UPLIFT	133AI UPLIFT	133AI UPLIFT
36	133AJ UPLIFT	133AJ UPLIFT	133AJ UPLIFT
37	133AK UPLIFT	133AK UPLIFT	133AK UPLIFT
38	133AL UPLIFT	133AL UPLIFT	133AL UPLIFT
39	133AM UPLIFT	133AM UPLIFT	133AM UPLIFT
40	133AN UPLIFT	133AN UPLIFT	133AN UPLIFT
41	133AO UPLIFT	133AO UPLIFT	133AO UPLIFT
42	133AP UPLIFT	133AP UPLIFT	133AP UPLIFT
43	133AQ UPLIFT	133AQ UPLIFT	133AQ UPLIFT
44	133AR UPLIFT	133AR UPLIFT	133AR UPLIFT
45	133AS UPLIFT	133AS UPLIFT	133AS UPLIFT
46	133AT UPLIFT	133AT UPLIFT	133AT UPLIFT
47	133AU UPLIFT	133AU UPLIFT	133AU UPLIFT
48	133AV UPLIFT	133AV UPLIFT	133AV UPLIFT
49	133AW UPLIFT	133AW UPLIFT	133AW UPLIFT
50	133AX UPLIFT	133AX UPLIFT	133AX UPLIFT
51	133AY UPLIFT	133AY UPLIFT	133AY UPLIFT
52	133AZ UPLIFT	133AZ UPLIFT	133AZ UPLIFT
53	133BA UPLIFT	133BA UPLIFT	133BA UPLIFT
54	133BB UPLIFT	133BB UPLIFT	133BB UPLIFT
55	133BC UPLIFT	133BC UPLIFT	133BC UPLIFT
56	133BD UPLIFT	133BD UPLIFT	133BD UPLIFT
57	133BE UPLIFT	133BE UPLIFT	133BE UPLIFT
58	133BF UPLIFT	133BF UPLIFT	133BF UPLIFT
59	133BG UPLIFT	133BG UPLIFT	133BG UPLIFT
60	133BH UPLIFT	133BH UPLIFT	133BH UPLIFT
61	133BI UPLIFT	133BI UPLIFT	133BI UPLIFT
62	133BJ UPLIFT	133BJ UPLIFT	133BJ UPLIFT
63	133BK UPLIFT	133BK UPLIFT	133BK UPLIFT
64	133BL UPLIFT	133BL UPLIFT	133BL UPLIFT
65	133BM UPLIFT	133BM UPLIFT	133BM UPLIFT
66	133BN UPLIFT	133BN UPLIFT	133BN UPLIFT
67	133BO UPLIFT	133BO UPLIFT	133BO UPLIFT
68	133BP UPLIFT	133BP UPLIFT	133BP UPLIFT
69	133BQ UPLIFT	133BQ UPLIFT	133BQ UPLIFT
70	133BR UPLIFT	133BR UPLIFT	133BR UPLIFT
71	133BS UPLIFT	133BS UPLIFT	133BS UPLIFT
72	133BT UPLIFT	133BT UPLIFT	133BT UPLIFT
73	133BU UPLIFT	133BU UPLIFT	133BU UPLIFT
74	133BV UPLIFT	133BV UPLIFT	133BV UPLIFT
75	133BW UPLIFT	133BW UPLIFT	133BW UPLIFT
76	133BX UPLIFT	133BX UPLIFT	133BX UPLIFT
77	133BY UPLIFT	133BY UPLIFT	133BY UPLIFT
78	133BZ UPLIFT	133BZ UPLIFT	133BZ UPLIFT
79	133CA UPLIFT	133CA UPLIFT	133CA UPLIFT
80	133CB UPLIFT	133CB UPLIFT	133CB UPLIFT
81	133CC UPLIFT	133CC UPLIFT	133CC UPLIFT
82	133CD UPLIFT	133CD UPLIFT	133CD UPLIFT
83	133CE UPLIFT	133CE UPLIFT	133CE UPLIFT
84	133CF UPLIFT	133CF UPLIFT	133CF UPLIFT
85	133CG UPLIFT	133CG UPLIFT	133CG UPLIFT
86	133CH UPLIFT	133CH UPLIFT	133CH UPLIFT
87	133CI UPLIFT	133CI UPLIFT	133CI UPLIFT
88	133CJ UPLIFT	133CJ UPLIFT	133CJ UPLIFT
89	133CK UPLIFT	133CK UPLIFT	133CK UPLIFT
90	133CL UPLIFT	133CL UPLIFT	133CL UPLIFT
91	133CM UPLIFT	133CM UPLIFT	133CM UPLIFT
92	133CN UPLIFT	133CN UPLIFT	133CN UPLIFT
93	133CO UPLIFT	133CO UPLIFT	133CO UPLIFT
94	133CP UPLIFT	133CP UPLIFT	133CP UPLIFT
95	133CQ UPLIFT	133CQ UPLIFT	133CQ UPLIFT
96	133CR UPLIFT	133CR UPLIFT	133CR UPLIFT
97	133CS UPLIFT	133CS UPLIFT	133CS UPLIFT
98	133CT UPLIFT	133CT UPLIFT	133CT UPLIFT
99	133CU UPLIFT	133CU UPLIFT	133CU UPLIFT
100	133CV UPLIFT	133CV UPLIFT	133CV UPLIFT
101	133CW UPLIFT	133CW UPLIFT	133CW UPLIFT
102	133CX UPLIFT	133CX UPLIFT	133CX UPLIFT
103	133CY UPLIFT	133CY UPLIFT	133CY UPLIFT
104	133CZ UPLIFT	133CZ UPLIFT	133CZ UPLIFT
105	133DA UPLIFT	133DA UPLIFT	133DA UPLIFT
106	133DB UPLIFT	133DB UPLIFT	133DB UPLIFT
107	133DC UPLIFT	133DC UPLIFT	133DC UPLIFT
108	133DD UPLIFT	133DD UPLIFT	133DD UPLIFT
109	133DE UPLIFT	133DE UPLIFT	133DE UPLIFT
110	133DF UPLIFT	133DF UPLIFT	133DF UPLIFT
111	133DG UPLIFT	133DG UPLIFT	133DG UPLIFT
112	133DH UPLIFT	133DH UPLIFT	133DH UPLIFT
113	133DI UPLIFT	133DI UPLIFT	133DI UPLIFT
114	133DJ UPLIFT	133DJ UPLIFT	133DJ UPLIFT
115	133DK UPLIFT	133DK UPLIFT	133DK UPLIFT
116	133DL UPLIFT	133DL UPLIFT	133DL UPLIFT
117	133DM UPLIFT	133DM UPLIFT	133DM UPLIFT
118	133DN UPLIFT	133DN UPLIFT	133DN UPLIFT
119	133DO UPLIFT	133DO UPLIFT	133DO UPLIFT
120	133DP UPLIFT	133DP UPLIFT	133DP UPLIFT
121	133DQ UPLIFT	133DQ UPLIFT	133DQ UPLIFT
122	133DR UPLIFT	133DR UPLIFT	133DR UPLIFT
123	133DS UPLIFT	133DS UPLIFT	133DS UPLIFT
124	133DT UPLIFT	133DT UPLIFT	133DT UPLIFT
125	133DU UPLIFT	133DU UPLIFT	133DU UPLIFT
126	133DV UPLIFT	133DV UPLIFT	133DV UPLIFT
127	133DW UPLIFT	133DW UPLIFT	133DW UPLIFT
128	133DX UPLIFT	133DX UPLIFT	133DX UPLIFT
129	133DY UPLIFT	133DY UPLIFT	133DY UPLIFT
130	133DZ UPLIFT	133DZ UPLIFT	133DZ UPLIFT
131	133EA UPLIFT	133EA UPLIFT	133EA UPLIFT
132	133EB UPLIFT	133EB UPLIFT	133EB UPLIFT
133	133EC UPLIFT	133EC UPLIFT	133EC UPLIFT
134	133ED UPLIFT	133ED UPLIFT	133ED UPLIFT
135	133EE UPLIFT	133EE UPLIFT	133EE UPLIFT
136	133EF UPLIFT	133EF UPLIFT	133EF UPLIFT
137	133EG UPLIFT	133EG UPLIFT	133EG UPLIFT
138	133EH UPLIFT	133EH UPLIFT	133EH UPLIFT
139	133EI UPLIFT	133EI UPLIFT	133EI UPLIFT
140	133EJ UPLIFT	133EJ UPLIFT	133EJ UPLIFT
141	133EK UPLIFT	133EK UPLIFT	133EK UPLIFT
142	133EL UPLIFT	133EL UPLIFT	133EL UPLIFT
143	133EM UPLIFT	133EM UPLIFT	133EM UPLIFT
144	133EN UPLIFT	133EN UPLIFT	133EN UPLIFT
145	133EO UPLIFT	133EO UPLIFT	133EO UPLIFT
146	133EP UPLIFT	133EP UPLIFT	133EP UPLIFT
147	133EQ UPLIFT	133EQ UPLIFT	133EQ UPLIFT
148	133ER UPLIFT	133ER UPLIFT	133ER UPLIFT
149	133ES UPLIFT	133ES UPLIFT	133ES UPLIFT
150	133ET UPLIFT	133ET UPLIFT	133ET UPLIFT
151	133EU UPLIFT	133EU UPLIFT	133EU UPLIFT
152	133EV UPLIFT	133EV UPLIFT	133EV UPLIFT
153	133EW UPLIFT	133EW UPLIFT	133EW UPLIFT
154	133EX UPLIFT	133EX UPLIFT	133EX UPLIFT
155	133EY UPLIFT	133EY UPLIFT	133EY UPLIFT
156	133EZ UPLIFT	133EZ UPLIFT	133EZ UPLIFT
157	133FA UPLIFT	133FA UPLIFT	133FA UPLIFT
158	133FB UPLIFT	133FB UPLIFT	133FB UPLIFT
159	133FC UPLIFT	133FC UPLIFT	133FC UPLIFT
160	133FD UPLIFT	133FD UPLIFT	133FD UPLIFT
161	133FE UPLIFT	133FE UPLIFT	133FE UPLIFT
162	133FF UPLIFT	133FF UPLIFT	133FF UPLIFT
163	133FG UPLIFT	133FG UPLIFT	133FG UPLIFT
164	133FH UPLIFT	133FH UPLIFT	133FH UPLIFT
165	133FI UPLIFT	133FI UPLIFT	133FI UPLIFT
166	133FJ UPLIFT	133FJ UPLIFT	133FJ UPLIFT
167	133FK UPLIFT	133FK UPLIFT	133FK UPLIFT
168	133FL UPLIFT	133FL UPLIFT	133FL UPLIFT
169	133FM UPLIFT	133FM UPLIFT	133FM UPLIFT
170	133FN UPLIFT	133FN UPLIFT	133FN UPLIFT
171	133FO UPLIFT	133FO UPLIFT	133FO UPLIFT
172	133FP UPLIFT	133FP UPLIFT	133FP UPLIFT
173	133FQ UPLIFT	133FQ UPLIFT	133FQ UPLIFT
174	133FR UPLIFT	133FR UPLIFT	133FR UPLIFT
175	133FS UPLIFT	133FS UPLIFT	133FS UPLIFT
176	133FT UPLIFT	133FT UPLIFT	133FT UPLIFT
177	133FU UPLIFT	133FU UPLIFT	133FU UPLIFT
178	133FV UPLIFT	133FV UPLIFT	133FV UPLIFT
179	133FW UPLIFT	133FW UPLIFT	133FW UPLIFT
180	133FX UPLIFT	133FX UPLIFT	133FX UPLIFT
181	133FY UPLIFT	133FY UPLIFT	133FY UPLIFT
182	133FZ UPLIFT	133FZ UPLIFT	133FZ UPLIFT
183	133GA UPLIFT	133GA UPLIFT	133GA UPLIFT
184	133GB UPLIFT	133GB UPLIFT	133GB UPLIFT
185	133GC UPLIFT	133GC UPLIFT	133GC UPLIFT
186	133GD UPLIFT	133GD UPLIFT	133GD UPLIFT
187	133GE UPLIFT	133GE UPLIFT	133GE UPLIFT
188	133GF UPLIFT	133GF UPLIFT	133GF UPLIFT
189	133GG UPLIFT	133GG UPLIFT	133GG UPLIFT
190	133GH UPLIFT	133GH UPLIFT	133GH UPLIFT
191	133GI UPLIFT	133GI UPLIFT	133GI UPLIFT
192	133GJ UPLIFT	133GJ UPLIFT	133GJ UPLIFT
193	133GK UPLIFT	133GK UPLIFT	133GK UPLIFT
194	133GL UPLIFT	133GL UPLIFT	133GL UPLIFT
195	133GM UPLIFT	133GM UPLIFT	133GM UPLIFT
196	133GN UPLIFT	133GN UPLIFT	133GN UPLIFT
197	133GO UPLIFT	133GO UPLIFT	133GO UPLIFT
198	133GP UPLIFT	133GP UPLIFT	133GP UPLIFT
199	133GQ UPLIFT	133GQ UPLIFT	133GQ UPLIFT
200	133GR UPLIFT	133GR UPLIFT	133GR UPLIFT
201	133GS UPLIFT	133GS UPLIFT	133GS UPLIFT
202	133GT UPLIFT	133GT UPLIFT	133GT UPLIFT
203	133GU UPLIFT	133GU UPLIFT	133GU UPLIFT
204	133GV UPLIFT	133GV UPLIFT	133GV UPLIFT
205	133GW UPLIFT	133GW UPLIFT	133GW UPLIFT
206	133GX UPLIFT	133GX UPLIFT	133GX UPLIFT
207	133GY UPLIFT	133GY UPLIFT	133GY UPLIFT
208	133GZ UPLIFT	133GZ UPLIFT	133GZ UPLIFT
209	133HA UPLIFT	133HA UPLIFT	133HA UPLIFT
210	133HB UPLIFT	133HB UPLIFT	133HB UPLIFT
211	133HC UPLIFT	133HC UPLIFT	133HC UPLIFT
212	133HD UPLIFT	133HD UPLIFT	133HD UPLIFT
213	133HE UPLIFT	133HE UPLIFT	133HE UPLIFT
214	133HF UPLIFT	133HF UPLIFT	133HF UPLIFT
215	133HG UPLIFT	133HG UPLIFT	133HG UPLIFT
216	133HH UPLIFT	133HH UPLIFT	133HH UPLIFT
217	133HI UPLIFT	133HI UPLIFT	133HI UPLIFT
218	133HJ UPLIFT	133HJ UPLIFT	133HJ UPLIFT
219	133HK UPLIFT	133HK UPLIFT	133HK UPLIFT
220	133HL UPLIFT	133HL UPLIFT	133HL UPLIFT
221	133HM UPLIFT	133HM UPLIFT	133HM UPLIFT
222	133HN UPLIFT	133HN UPLIFT	133HN UPLIFT
223	133HO UPLIFT	133HO UPLIFT	133HO UPLIFT
224	133HP UPLIFT	133HP UPLIFT	133HP UPLIFT
225	133HQ UPLIFT	133HQ UPLIFT	133HQ UPLIFT
226	133HR UPLIFT	133HR UPLIFT	133HR UPLIFT
227	133HS UPLIFT	133HS UPLIFT	133HS UPLIFT
228	133HT UPLIFT	133HT UPLIFT	133HT UPLIFT
229	133HU UPLIFT	133HU UPLIFT	133HU UPLIFT
230	133HV UPLIFT	133HV UPLIFT	133HV UPLIFT
231	133HW UPLIFT	133HW UPLIFT	133HW UPLIFT
232	133HX UPLIFT	133HX UPLIFT	133HX UPLIFT
233	133HY UPLIFT	133HY UPLIFT	



End of Solicitation Documents

Original

Bid Proposal
RFP #18-11
Concessionaire Services

Completed by: Tammy Hoffman, Judy Capell, and Maria Mills-Benat

FORM 9.2 - VENDOR'S ACKNOWLEDGEMENT FORM

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

I hereby propose to furnish the goods or services specified in the Request for Proposals 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 proposal. Furthermore, I agree to abide by all conditions of the Request for 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 Vendor / Contractor as its act and deed and that the Vendor / Contractor is ready, willing and able to perform if awarded the contract.

I further certify that this 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 Vendor interested in said RFP; and that the undersigned executed this Vendor's Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

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

Hoffman & Capell, dba PRC

AUTHORIZED SIGNATURE

Tammy Hoffman President

NAME, TITLE, TYPED

46-3990173

FEDERAL IDENTIFICATION #

STATE OF Florida COUNTY OF Volusia

MAILING ADDRESS

413 Oak Pl. Bldg. 3 Unit H PO. FL.

CITY, STATE & ZIP CODE

386-872-8582

TELEPHONE NUMBER / FAX NUMBER

Thoffman@Kona-IT.com

E-MAIL ADDRESS

The foregoing instrument was acknowledged before me this day of 18th May, 2011 by Tammy Hoffman who is personally known to me or who has produced an identification and who did take an oath.

My Commission Expires:

[Signature]
Notary Public

This document must be signed and returned with your Submittal!



MY COMMISSION # FF 341442

EXPIRES: July 2, 2010

Renew This Budget Notary Stamp!

FORM 9.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

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

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

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

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

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

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

.....
Hoffman & Capell LLC.
Name of Business

By: Tommy Hoffman
Printed Name: Tommy Hoffman
Title: President

STATE OF Florida
COUNTY OF Volusia

Sworn to (or affirmed) and subscribed before me this 28 day of July, 2018, by
Tommy Hoffman as President of
Hoffman & Capell LLC
SUBSCRIBER'S SIGNATURE

[Notary: Please select one]

☒ is personally known to me; or
☐ has produced P.O.L. as identification.



RONALD S. STEGER
MY COMMISSION # FF 24142
EXPIRES: July 2, 2019
Notary Public - State of Florida

[Signature]
Notary Public, State of Florida

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

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.

Hoffman & Capell, LLC.

Name of Business

By: Tammy Hoffman

Printed Name: Tammy Hoffman

Title: President

STATE OF Florida
COUNTY OF Volusia

Sworn to (or affirmed) and subscribed before me this 28th day of May, 2018, by
Tammy Hoffman (NAME) as President (TITLE) of
Hoffman & Capell (NAME OF ORGANIZATION) and who:

[Notary: Please select one]

☒ is personally known to me; or

☐ has produced Real as identification.



RONALD S. STEGER
MY COMMISSION # FF 241442
EXPIRES: July 2, 2019
Bonded thru Budget Notary Services

[Signature]
Notary Public, State of FLORIDA

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 9.5 - SWORN STATEMENT UNDER § 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 Tommy Hoffman who, being by me first duly sworn, made the following statement:

1. The business address of 3811 S. Atlantic Ave. #402
Daytona Beach Shores, FL 32118 (name of Offensor or business) is
2. My relationship to Tommy Hoffman
president (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 embezzlement, 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 Offensor or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offensor or contractor, nor any affiliate of the Offensor 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 Offensor or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offensor or contractor who is active in the management of the Offensor or contractor or an affiliate of the Offensor 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 attached to this statement. (Draw a line through paragraph 7 if paragraph 6 above applies.)

Hoffman & Caprell LLC
Name of Business

By: Tommy Hoffman
Printed Name: Tommy Hoffman
Title: President

STATE OF Florida
COUNTY OF Volusia

Sworn to (or affirmed) and subscribed before me this 31 day of May, 2014 by
Tommy Hoffman as President of
Hoffman & Caprell

(Notary: Please select one)

☒ is personally known to me; or

it has produced FLC as identification.



RONALD S. STEGER
MY COMMISSION # FF 281422
EXPIRES: July 2, 2016
Bonded Two Hundred Twenty Five Thousand Dollars

[Signature]
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration.

This document must be completed and returned with your submission.

FORM 9.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT PROPOSAL FORM:

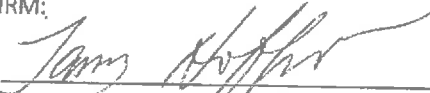
By signing this form, the Vendor agrees that this Proposal is made without any other understanding, agreement, or connection with any person, corporation, or firm submitting a proposal for the same purpose and that the proposal is in all respects fair and without collusion or fraud.

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

NAME OF FIRM:

SIGNED BY:



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

PRINTED SIGNATURE: Tammy Hoffman

TITLE: President

ADDRESS: 4130 Oak Pl. Bldg. 3 Unit H Port Orange, FL 32127

CITY: Port Orange STATE: FL ZIP CODE: 32127

TELEPHONE: 386-872-8582 FAX: —

COMPLETION TIME: May 28, 2018

F.E.I.N. NUMBER: 46-3900173

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 - 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: Hoffman & Capell LLC

CONTACT PERSON/TITLE: Timmy Hoffman

MAKING ADDRESS: 413 Oak Pt. Blvd. 3 Unit #1 P.O. Box 32127 Daytona Beach Shores, FL 32118

CITY-STATE-ZIP: Daytona Beach Shores, FL 32118

Length of Time at Address Provided: 3 1/2 years

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

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

FIRM (Federal Employer Identification Number): 46-3990173

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

☐ Other (Specify):

PHONE NUMBER: 386-872-8582 FAX: -

EMAIL: THoffman@Kona-Tire.com

****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 (5%) of the lowest and best responsible bid from a non-Port Orange business; A Volusia County business initial bid must be within (5%) of the lowest and best responsible bid from a non-Volusia County business; A State of Florida business initial bid must be within (3%) of the lowest and best responsible bid from a non-State of Florida business.

A local business must have its headquarters, manufacturing facility, or locally owned franchise located within the legal boundaries of the City of Port Orange, Volusia County, or the State of Florida, as indicated herein, for at least twelve (12) months prior to the bid or proposal opening date and a valid business license, issued by the corresponding government agency. Post office boxes are not verifiable and shall not be used for the purpose of establishing said physical address. Bidders shall attach to this affidavit of eligibility with a bid or proposal, a copy of a valid business tax receipt or such other documentation, to the city's satisfaction, demonstrating the physical business presence of the firm within corresponding local limits.

The preference does not apply to goods or services oversold by statute or prohibited by Federal law, State law, or other funding source restrictions.

The preference established in this policy does not prohibit the right of the City, or other authorized purchasing authority, to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms or corporations submitting bids or proposals.

The information contained herein may be subject to verification.

A vendor who misrepresents the local preference status of its firm in a proposal or bid submitted to the City of Port Orange will lose the privilege to claim local preference status, and shall lose eligibility to claim local preference for a period of one (1) year. The City Manager may also recommend that the firm be referred for debarment.

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

(Form 9.7 Local Business Affidavit of Eligibility – Page 2)

SWORN AND SUBSCRIBED BEFORE ME



SIGNATURE OF NOTARY PUBLIC

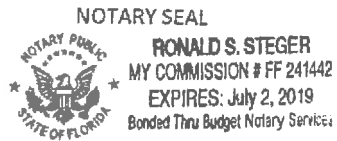
THIS 20 DAY OF May, 2018

My Commission Expires: July 2, 2019

 5/24/18
SIGNATURE OF AFFIANT DATE

Tammy Hoffman / President
PRINTED NAME OF AFFIANT / TITLE

Hoffman & Capell, LLC
COMPANY



This document must be completed and returned with your Submittal



"ATTACHMENT 1" LICENSE FEE PROPOSAL (TO BE INSERTED UNDER TAB E)
PROPOSAL FORM

**CITY OF PORT ORANGE
CONCESSIONAIRE SERVICE**

RFPE 18-11

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

Instruction to save Attachment from Demandstar website:

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

Fill in pricing in highlighted cells, preferably electronically.

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

NAME OF BUSINESS:

Hoffman & Capell, LLC

CONTACT PERSON:

Tammy Hoffman

EMAIL ADDRESS:

thoffman@hcapell.com

AUTHORIZED SIGNATURE:

Tammy Hoffman

ITEM	QTY EACH	DESCRIPTION	MONTHLY PRICE
1	1	LESSON fee: LESSE shall pay monthly to LESSOR as the 1 st day of each month during the Term and any Renewal Term. Base Rent = the amount of	\$150/month
TOTAL PROPOSAL			\$150/month

Financial Plan

Due to the various products and services that we would be offering our customers, we are confident that there will always be a demand for our food, drink, and picnic products. Our location at Riverwalk Park in Port Orange is very strategic, and we are well positioned to infiltrate and gain a huge share of the target market, thereby meeting our goal of generating adequate revenue, making a considerable profit, and making sizable monthly payments (20% of gross sales) to the City of Port Orange within the first year and growing our business throughout the second year.

Below are the sales projection for Picnic in the Park Concessions based on several factors and assumptions;

- **2018-2019:** \$22,000
- **2019-2020:** \$27,000

It should be noted that the above sales projections are based on comparable businesses in the industry and area at the time. Several assumptions that were used to forecast the above sales projections were the non-arrival of any major competitor during the defined period, as well as a stable economy. However, should any of these factors change, it would affect the sales projected figures and might cause an increase or decrease in total sales.

Projected Sales	2018-2019	2019-2020
Hot Dogs	\$3,200	\$4,400
Nachos	\$2,500	\$3,000
Pretzels	\$2,000	\$2,500
Sandwiches	\$3,500	\$4,000
Salads	\$1,000	\$1,200
Kona Ice	\$3,500	\$4,500
Pickles	\$800	\$1,000
Candy	\$800	\$900
Snacks	\$800	\$900
Drinks	\$1,400	\$1,600
Picnic Games	\$2,500	\$3,000

TOTAL SALES	\$22,000	\$27,000
----------------	----------	----------

Financial Statement

Within the past five years, we have had no litigation or proceedings filed against us. We have also had no debarment actions and no terminated or defaulted contracts. Being transparent and honest, we will inform the City of Port Orange of if any claims are filed against us in within the timeline of our 2-year contract.



PO Box 290610
Port Orange, FL 32127 Phone: 386-506-5935
Fax: 386-322-5148
E-mail: info@familydays.com
Web: www.familydays.com

Officers

President, Jenny Fike
Vice President, Kim Ball
Treasurer, Terry Fedea
Secretary, Amy Hall

Board of Directors

Mike Annunio
Tom Bennett
Anita Burnette
Kelly Clapsaddle
Marcy Downey
Kelly Gasowski
Katrina Guevara
Robin Henning
John Junco
Dawn LeBeau
Betsy Lindley
Billy Lingo
Samira Mirzai
Kenneth Parker
Anthony Pinion
Mike Randow
Legal Counsel,
Barbara Reid

Executive Director,

Jennifer Marano



HALIFAX
HEALTH



If there's any delay, it's you we pay!



May 24, 2018

To Whom It May Concern,

I would like to take this opportunity to recommend Kona Ice for any opportunities that may arise in the City of Port Orange.

We have been working with Tammy and Judy for quite a few years, and have had nothing but positive experiences with them both professionally and personally.

They are prompt, courteous and professional. Kona Ice has been a great addition to our events and to our nonprofit. They provide a quality product to our clients, while giving back to the community at the same time.

Our business relationship continues to grow, as they have now taken on an even more important role as a sponsor with us.

Any venture with Kona Ice is sure to be a positive and successful one.

Please feel free to reach out with any questions or concerns you may have.

Kind Regards,

Jennifer Marano
Executive Director

Port Orange Family Days Community Trust, Inc. is a 501(c)(3) non-profit organization. All contributions are tax-deductible to the full extent allowed by law check with your Tax Advisor. A copy of the official registration (#CH15735) and financial information may be obtained from the division of consumer services by calling toll-free within the state, 1-800-HELP-FLA (1-800-435-7352). Registration does not imply endorsement, approval or recommendation by the State. Port Orange Family Days Community Trust, Inc. does not employ any professional solicitors and retains 100% of every contribution.

Port Orange Soccer Club
1648 Taylor Road #456
Port Orange, FL 32128
5/26/2018

To Whom It May Concern:

I had the pleasure of working with Maria Mills-Benat for two years at the Port Orange Soccer Club concession stand at Southwinds Soccer Fields in Port Orange.

During this time, Maria worked diligently in making sure the concession stand was run efficiently. She not only worked with local restaurants regarding donations, but she also coordinated with other volunteers to help with the concession stand. Maria was always very personable and has a clear and concise communication style. Under Maria the concession stand was always clean and organized.

I can whole-heartedly recommend Maria to run the concession stand at Riverwalk Park. If you have any questions, please contact me at 386-451-5137.

Sincerely,

Chantel Roy

Treasurer
Port Orange Soccer Club



It is my pleasure to offer a reference for Maria Mills-Benat. I have known Maria for more than ten years. She is very active in the community and serves on several City Boards, including the Parks & Recreation Board and the Planning Commission.. She and I worked together on the Port Orange Family Days Board for several years.

Maria has catered many events over the years for Chamber of Commerce members. She always does an excellent job! She is a reliable business person who put 100% into everything she does. In my opinion she would serve the City well in the capacity of running a concession for the park.

If I can answer any questions or provide further information, please do not hesitate to call me. My cell phone number is (386) 212-8388.

Debbie Connors

President

Port Orange South Daytona Chamber of Commerce

3431 S. Ridgewood Avenue, Port Orange FL 32129

386.761.1601

FAX 386.788.9165



CERTIFICATE NO. 12220145

ServSafe® CERTIFICATION

to
MARIA MILLS BENAT

for successfully completing the standards set forth for the ServSafe® Food Protection Manager Certification Examination, which is accredited by the American National Standards Institute (ANSI)—Conference for Food Protection (CFP).

0123456789

DATE OF EXAMINATION

04/08/2020

DATE OF EXPIRATION
local laws apply. Check with your local

for recertification requirements.

ACCREDITED PROGRAM
American National Standards Institute
and the Conference Board
International Standards Organization

#0655

International Brotherhood of Bookbinders

In accordance with Maritime Labour Convention 2006

©2015 National Restaurant Association. All rights reserved. No portion of this publication may be reproduced without written permission from the National Restaurant Association. A portion of this publication may be reproduced for personal or internal use only on the condition that the copier pay the stated per-copy fee through the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923, (978) 750-8400, www.copyright.com.

Logos are trademarks of the NRAEF, National Restaurant Association® and the our decision.

Contact us with questions at 175 W. Jackson Blvd. Ste 1500, Chicago, IL 60604 or Service@restaurant.org

2017/2018

Volusia County Business Tax Receipt

Issued pursuant to F.S. 205 and Volusia County Code of Ordinances Chapter 114-1 by:
Volusia County Revenue Division - 123 W Indiana Ave, Room 103, DeLand, FL 32720 - (386) 736-5938



Volusia County
FLORIDA

Account # 201402180008

Expires: September 30, 2018

Business Location: 413 OAK PL BLD 3 UNIT L

Business Name: KONA ICE SOUTH VOLUSIA COUNTY
Owner Name: T HOFFMAN & J CAPELL
Mailing Address: 413 OAK PL BLDG 3 UNIT L
PORT ORANGE, FL 32127

BUSINESS TYPE	CODE	COUNT	TAX
Snack Wagon (Mobile)	291D	2	\$30.00

- This receipt indicates payment of a tax, which is levied for the privilege of doing the type(s) of business listed above within Volusia County. This receipt is non-regulatory in nature and is not meant to be a certification of the holder's ability to perform the service for which he is registered. This receipt also does not indicate that the business is legal or that it is in compliance with State or local laws and regulations.
- The business must meet all County and/or Municipality planning and zoning requirements or this Business Tax Receipt may be revoked and all taxes paid would be forfeited.
- The information contained on this Business Tax Receipt must be kept up to date. Contact the Volusia County Revenue Division for instructions on making changes to your account.

**THIS PORTION OF THE BUSINESS TAX RECEIPT MUST BE
POSTED CONSPICUOUSLY IN YOUR PLACE OF BUSINESS**

Volusia County Business Tax Receipt

Revenue Division - 123 W Indiana Ave, Room 103, DeLand, FL 32720 - (386) 736-5938

DATE PAID: 09/21/2017
RECEIPT #: Lockbox-16-00090386
TOTAL TAX: 30.00
PENALTY: 0.00
TOTAL PAID: 30.00



Business Name: KONA ICE SOUTH VOLUSIA COUNTY
Owner Name: T HOFFMAN & J CAPELL
Mailing Address: 413 OAK PL BLDG 3 UNIT L
PORT ORANGE, FL 32127



Account # 201402180008 Expires: September 30, 2018
Business Location: 413 OAK PL BLD 3 UNIT L

PLEASE DETACH THIS PORTION OF THE BUSINESS TAX RECEIPT FOR YOUR RECORDS



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (C9) Granting of Easement for TECO gas line at City Center

DEPARTMENT: Parks & Recreation

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Resolution No. 22-17, authorizing Mayor and City Clerk to sign all necessary documents.

SUMMARY: During construction of the REC, a TECO gas line was found that was not shown on locates. The gas line is underneath what will be the west side addition of the REC and had to be relocated to continue renovations. TECO has relocated the gas line outside of the new construction boundary. The gas line is now located on the west side of the REC close to City Center Circle. This gas line runs to the YMCA for the heating of the pool.

Currently, there is no easement in place. TECO is requesting an easement to allow them access to the site to conduct work on the line when needed.

TECO is required to promptly repair any damage to the Easement Area, or any other property not owned by the company, caused by the company including ground cover, planting, roadways, driveways, sidewalks, and parking areas.

Attached is the easement requested and provided by TECO.

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	Teco Gas Easment for REC	Teco Gas Easment for REC.pdf
----	--------------------------	------------------------------

Susan Lovallo

Created/Initiated - 9/10/2021

Susan Lovallo

Approved - 9/10/2021

Lupe Reyna-Coffin

Approved - 9/10/2021

Robin Hayes

Approved - 9/10/2021

Matthew Jones

Approved - 9/22/2022

Wayne Clark

Approved - 9/26/2022

SEC. 8 TWP. 16 S. RGE. 33 E.
FOLIO/PARCEL ID NO. 3598784 / 630800060010

PROJECT NO. D0012033

PREPARED BY
AND RETURN TO:

Isabel M. Morales
Real Estate Department
Peoples Gas System
P.O. Box 2562
Tampa, FL 33601

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, that **CITY OF PORT ORANGE**, a Florida municipal corporation, whose address is 1000 City Center Circle, Port Orange, FL 32129, ("Grantor"), in consideration of One Dollar and other valuable considerations paid to Grantor by **PEOPLES GAS SYSTEM**, A DIVISION OF TAMPA ELECTRIC COMPANY, a Florida corporation, P.O. Box 2562, Tampa, Florida 33601 ("Company"), receipt whereof is hereby acknowledged, has given and granted unto the Company, its successors and assigns, a perpetual easement over and the right to enter upon the land in Volusia County, Florida, described as follows:

See Exhibit "A" attached hereto and by reference made a part hereof ("Easement Parcel")

together with the right of ingress and egress to and from the same, and all rights therein and all privileges thereon which are or may be necessary or convenient for the full use and enjoyment of such easement, which is for the purposes of placing, constructing, operating, maintaining, repairing, replacing on and removing from said land, installations described as follows:

Underground gas line and aboveground and underground necessary appurtenances thereto, including without limitation telecommunications equipment, risers, and pipeline markers ("Facilities").

The width of the Easement (the "Easement Area") shall be ten (10) feet lying five (5) feet on each side of the centerline of the Facilities as installed or to be constructed.

The aforesaid rights and privileges granted shall include the right and privilege to root prune or remove any and all deep-rooted vegetation upon said Easement Area and upon the Grantor's lands adjacent to said land, wherever the Company may deem it necessary or desirable to do so for the protection of said installations.

Company shall promptly repair any damage to the Easement Area, or any other property not owned by Company, caused by Company exercising its rights under this agreement, including ground cover, planting, roadways, driveways, sidewalks, and parking areas.

Grantor reserves the right to install minor landscaping, irrigation and/or fencing within the Easement parcel provided that it does not and will not directly interfere with the Company's Facilities, does not change grade, and does not cause water impoundment. Grantor further acknowledges that under the "Underground Facility Damage Prevention and Safety Act" (ch. 556 Fla. Stat.), that Grantor is obligated to notify "Sunshine State One-Call of Florida, Inc." of its intent to engage in excavation or demolition prior to commencing any work and that this notification system shall provide member operations an opportunity to identify and locate, if applicable, their underground Facilities prior to said excavation or demolition. In the event Grantor fails to notify as set forth above, Grantor may be held responsible for costs and expenses incurred due to damage of Company's Facilities.

The Company agrees, at the sole expense of Grantor, to relocate its Facilities, over, under and upon subject parcel upon the request of Grantor, and the vacated portion of this easement being released and conveyed back to Grantor and the site of the relocated Facilities being conveyed and included in this easement grant as though it had been included ab initio.

Company, at its option and in its sole discretion, may remove those underground portions of the Facilities that should be removed and purge and cap any portions of abandoned Facilities to be left in place.

The terms "Grantor" and "Company" herein employed shall be construed to include the words "heirs, executors, administrators and assigns" and "successors and assigns" of the respective parties hereto, wherever the context so admits or requires. This Grant of Easement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. This Grant of Easement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Grant of Easement shall be binding upon the parties hereto and their respective successors and assigns.

Grantor warrants to Company that it is duly formed, validly existing and in good standing under the laws of its state of formation, and Grantor has all requisite right, power, and authority to enter into this Easement, Grantor owns the Easement Parcel, and no consent of any other person is required to render this Easement a valid and binding instrument.

IN WITNESS WHEREOF, the Grantor has executed this Grant of Easement this ____ day of _____, 20__.

Signed, Sealed and Delivered
in the presence of:

WITNESS: _____
Print Name: _____

WITNESS: _____
Print Name: _____

GRANTOR:

CITY OF PORT ORANGE,
a Florida municipal corporation,

By: _____

Name: Donald O. Burnette, Mayor

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

(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The forgoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this ____ day of _____ 2022 by Donald O. Burnette, Mayor and Robin L. Fenwick, City Clerk, both on behalf of **CITY OF PORT ORANGE**, a Florida corporation. They personally appeared before me, are personally known to me or have produced _____ as identification and who did (did not) take an oath.

(SEAL)

Notary Public

Print Name
Commission Expires:

EXHIBIT 'A'

DESCRIPTION: PREPARED BY BRIEL & ASSOCIATES LAND SURVEYORS, INC.

A PORTION OF THAT PARCEL OF LAND KNOWN AS TAX PARCEL ID 630800060010 LYING IN SECTION 8, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A CONCRETE MONUMENT AT THE SOUTHWEST CORNER OF THE PLAT OF COUNTRYSIDE COMMERCIAL CENTER PHASE III RECORDED IN MAP BOOK 40, PAGE 35 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, SAID CORNER HAVING COORDINATES OF NORTH 1740456.39 FEET, EAST 650916.12 FEET BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE EAST ZONE OF FLORIDA, NAD 83(2011) DATUM, RUN N00°56'20"W ALONG THE WEST LINE OF SAID MAP BOOK 40, PAGE 35 AND THE WEST LINE OF THE PLAT OF COUNTRYSIDE PUD UNIT XII-A RECORDED IN MAP BOOK 41, PAGE 170, ALSO BEING THE EAST LINE OF PORT ORANGE CORPORATE PARK RECORDED IN MAP BOOK 47, PAGES 99-100 A DISTANCE OF 2348.78 FEET TO AN IRON ROD WITH A CAP STAMPED "LB 4335" HAVING COORDINATES OF NORTH 1742804.85 FEET, EAST 650877.63 FEET; THENCE DEPARTING SAID LINE S87°18'29"W 878.71 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED EASEMENT, SAID POINT HAVING COORDINATES OF NORTH 1742763.58 FEET, EAST 649999.90 FEET; THENCE S06°09'19"E 34.90 FEET; THENCE S01°13'41"E 125.77 FEET; THENCE S06°52'01"E 51.67 FEET; THENCE S14°30'29"E 6.44 FEET; THENCE S30°26'59"E 10.15 FEET; THENCE S89°51'49"E 57.34 FEET; THENCE N54°36'57"E 12.00 FEET; THENCE S35°23'03"E 20.85 FEET; THENCE S54°36'57"W 12.00 FEET; THENCE N35°23'03"W 8.57 FEET; THENCE N89°51'49"W 70.19 FEET; THENCE N30°26'59"W 17.26 FEET; THENCE N14°30'29"W 8.51 FEET; THENCE N06°52'01"W 52.83 FEET; THENCE N01°13'41"W 125.84 FEET; THENCE N06°09'19"W 34.47 FEET; THENCE N83°50'41"E 10.00 FEET TO THE POINT OF BEGINNING. CONTAINING 3227 SQUARE FEET MORE OR LESS.

NOTES:

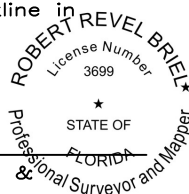
1. THIS SKETCH OF DESCRIPTION IS NOT INTENDED TO REPRESENT A LAND BOUNDARY SURVEY.
2. BEARINGS ARE BASED ON THE STATE PLANE COORDINATE SYSTEM FOR THE EAST ZONE OF FLORIDA, NAD 83(2011) DATUM.

© 2022, BRIEL & ASSOCIATES LAND SURVEYORS, INC.

SHEET 1 OF 2

SKETCH & DESCRIPTION FOR: CITY OF PORT ORANGE

This Map or Report conforms to the Standards of Practice for professional surveyors and mappers as outline in Chapter 5J-17, F.A.C.



ROBERT R. BRIEL, Florida Professional Surveyor & Mapper, No. 3699

This survey is prepared and certified for the exclusive use of the client or clients named hereon. Not valid without the signature and original raised seal of a Florida licensed surveyor and mapper. Additions or deletions to survey maps or reports by other than the signing party is prohibited.

SKETCH OF		
DESCRIPTION	AUGUST 30, 2022	21022TECO
TYPE	DATE	JOB NO.
EASEMENT LYING IN SECTION 8, TOWNSHIP 16 SOUTH, RANGE 33 EAST VOLUSIA COUNTY PROPERTY ID 630800060010		
DWN BY: RRB	CHK BY: RRB	SCALE: 1"=40'



BRIEL & ASSOCIATES
Land Surveyors, Inc.

LB 3869

1790 Hwy A1A, Suite 208 • Satellite Bch., Florida 32937 • (321) 773-7775

EXHIBIT 'A'



TAX PARCEL ID
630800060010
SECTION 8
TOWNSHIP 16 SOUTH,
RANGE 33 EAST,
VOLUSIA COUNTY, FL

ABBREVIATIONS:

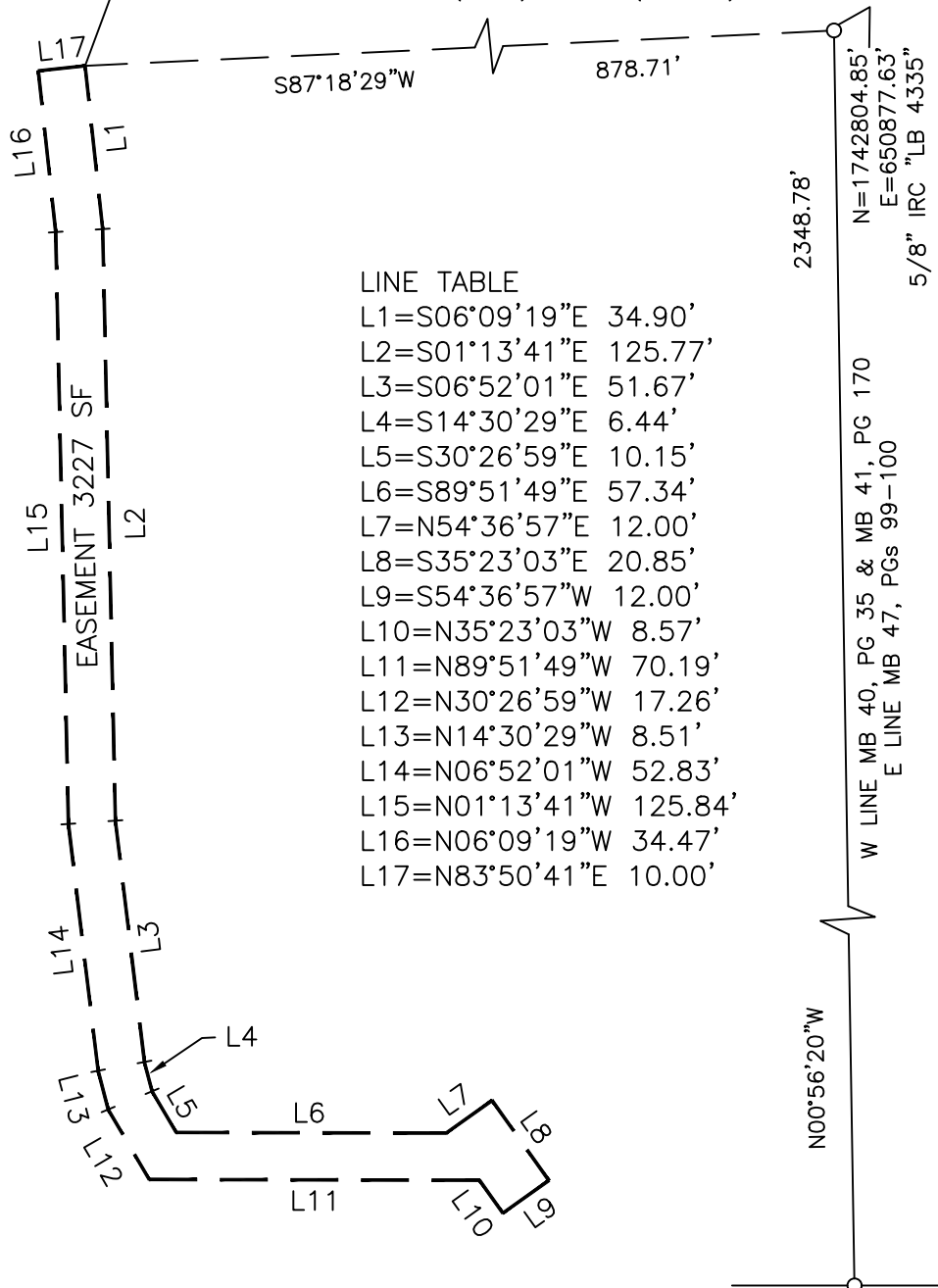
A = ARC LENGTH
CM = CONCRETE MONUMENT
COR = CORNER
D = DELTA ANGLE
IRC = IRON ROD & CAP
MB = MAP BOOK
NT = NON-TANGENT
P.O.B. = POINT OF BEGINNING
PC = POINT OF CURVATURE
PCC = POINT OF COMPOUND CURVATURE
PG = PAGE
PT = POINT OF TANGENCY
R = RADIUS
RAD = RADIAL
SF = SQUARE FEET

P.O.B.

N=1742763.58'

E=649999.90'

PER STATE PLANE COORDINATE SYSTEM FOR THE EAST
ZONE OF FLORIDA, NAD 83(2011) DATUM (TYPICAL)



LINE TABLE

L1=S06°09'19\"E 34.90'
L2=S01°13'41\"E 125.77'
L3=S06°52'01\"E 51.67'
L4=S14°30'29\"E 6.44'
L5=S30°26'59\"E 10.15'
L6=S89°51'49\"E 57.34'
L7=N54°36'57\"E 12.00'
L8=S35°23'03\"E 20.85'
L9=S54°36'57\"W 12.00'
L10=N35°23'03\"W 8.57'
L11=N89°51'49\"W 70.19'
L12=N30°26'59\"W 17.26'
L13=N14°30'29\"W 8.51'
L14=N06°52'01\"W 52.83'
L15=N01°13'41\"W 125.84'
L16=N06°09'19\"W 34.47'
L17=N83°50'41\"E 10.00'

SW COR COUNTRYSIDE
COMMERCIAL CENTER
PHASE III, MB 40, PG 35
N=1740456.39'
E=650916.12'
4\"x4\" CM, NO ID



BRIEL & ASSOCIATES

Land Surveyors, Inc.

LB 3869

SHEET 2 OF 2

1790 Hwy. A1A, Suite 208 • Satellite Bch., Florida 32937 • (321) 773-7775



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (C10) Approval of Proportionate Fair-Share Agreement for O2B Kids Childcare Facility Site Plan (Case No. 22-80000004)

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve the Proportionate Fair-Share Agreement for the O2B Kids Childcare Facility Site Plan - Case No. 22-80000004, subject to review and approval by Volusia County; authorize the City Manager to accept modifications requested by the County; and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: The O2B Kids childcare facility is proposed to be located at 3671 Clyde Morris Boulevard (see location map below). The proposed Proportionate Fair-Share Agreement has been prepared in conjunction with the site plan for the development of a 11,050 square foot child day care facility on 4.1 acres, along with associated on-site improvements. The Transportation Impact Technical Memorandum, completed by Hagen Consulting Services, LLC anticipates impacts on Williamson Boulevard and the intersection of Williamson Boulevard and Taylor Road upon completion of the project. The technical memorandum was prepared according to the City of Port Orange's adopted guidelines and was reviewed and approved by the City of Port Orange.

Based on the technical memorandum prepared, the developer, Concept Development LLC, is required to make a \$167,407.93 fair-share mitigation payment for the 76 PM peak hour trips per day generated by the development. The Proportionate Fair-Share Agreement is to document the number of vested trips being used by the proposed development and to mitigate the impact of the new traffic generated from the development. The fair-share mitigation payment includes payment to the City of Port Orange and Volusia County: 1) payment of \$7,332 towards the completed City of Port Orange Summer Trees Road project for impacts on the intersection of Williamson Boulevard and Taylor Road; and 2) payment of \$160,075.93 to Volusia County for impacts to Williamson Boulevard and Taylor Road. The Proportionate Fair-Share Agreement has been executed by the property owner and is attached for review. Due to the impact of the project involving both the City of Port Orange and Volusia County, the agreement is required to be approved by the County as well as the City. Once approved by the City, the agreement and supporting documents will be forwarded to the County for review and final approval. It is anticipated to go before the Volusia County Council in October or November 2022.

The O2B Kids childcare facility site is currently zoned CC (Community Commercial), which allows for the proposed use. The site plan for the proposed project has been reviewed at the staff level and may be approved once all Land Development Code requirements have been met and the required fair-share mitigation payments have been received.



PRESENTER: Tim Burman, Penelope Cruz

ATTACHMENTS:

1.	Proportionate Fair Share Agreement with exhibits	O2BKids Prop Fair Share w County.pdf
----	--	--------------------------------------

Gwen Perney	Created/Initiated - 9/13/2022
Tim Burman	Approved - 9/13/2022
John McKinney	Approved - 9/15/2022
Shannon Balmer	Approved - 9/23/2022
Wayne Clark	Approved - 9/26/2022
Robin Fenwick	Final Approval - 9/26/2022

**O2B KIDS CHILDCARE FACILITY
PROPORTIONATE FAIR SHARE AGREEMENT**

THIS AGREEMENT is entered into by and between the following entities: **Concept Development Inc.**, a Florida corporation whose mailing address is 1449 SW 74th Drive, Suite 200, Gainesville, Florida 32607, ("Developer"); **City of Port Orange, Florida**, a Chartered Florida Municipality located in Volusia County, Florida, 1000 City Center Circle, Port Orange, Florida 32129 ("City"); and the **County of Volusia**, a political subdivision of the State of Florida ("County"), mailing address: 123 West Indiana Avenue, DeLand, FL 32720.

WHEREAS, Developer intends to develop Four and one-tenth (± 4.1) acres of land generally located on the east side of Clyde Morris Boulevard, south of Reed Canal Road in Port Orange, Florida, otherwise identified as Parcel Identification Numbers 6306-19-00-0050 (the "Property") as shown in **Exhibit A**; and

WHEREAS, the Property has undergone site plan review by the City of Port Orange to authorize the construction of 11,050 square foot child day care facility along with associated on-site improvements as O2B Kids Childcare Facility ("Project"); and

WHEREAS, in connection with the site plan review, a transportation impact analysis memorandum of the existing road network in the vicinity of the Project was performed on behalf of the Developer on July 8, 2022 ("Technical Memorandum") in order to determine the availability of roadway capacity to serve the Project; and

WHEREAS, the results of the Technical Memorandum indicate that insufficient roadway capacity exists in the vicinity of the Property without the anticipated traffic impacts of the Project; and;

WHEREAS, Florida Statutes § 163.3180(5)(h) (2021) authorizes payment of proportionate fair-share mitigation funds as an alternative to demonstrating traffic concurrency in certain circumstances, but specifically exempts backlogged failures from the requirement for proportionate fair share payment; and

WHEREAS, through the Technical Memorandum, certain traffic impacts were identified in the area of the development ("Impact Area"), and payment for such site-related improvements are set forth in this Agreement; and

WHEREAS, Hagen Consulting Services, LLC, in a written analysis, calculated a proportionate fair share for the total buildout of the Project and offsite traffic improvements based upon a maximum buildout of 11,050 square foot child day care facility; and

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and with the intent to be legally bound and to bind their successors and assigns, the Developer and County do hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct, form a material part of this Agreement, and are incorporated herein by reference.
2. Roadway Improvements. Developer shall take or shall cause to be taken the following actions to address roadway improvements identified by the City and County as a result of the impacts by the Project ("Roadway Improvements") in order to satisfy concurrency requirements consistent with Chapters 4 and 21 of the City's Land Development Code and Section 72 of the County's Land Development Code:

(a) Proportionate Fair Share. For purposes of this Agreement, the amount of \$167,407.93 referred to herein as "Proportionate Fair Share" as calculated in **Exhibits B and C**, attached hereto and made apart hereof by reference. The Proportionate Fair Share shall be paid as follows: 1) \$160,075.93 shall be paid to the County, as set forth in Exhibit B, and 2) \$7,332.00 shall be paid to the City, as set forth in Exhibit C, prior to the issuance of a final site plan approval letter by the City of Port Orange. Once payment is made, the Developer agrees to waive the right to request a return of the Proportionate Fair Share payment. Nothing contained herein shall be deemed to waive the requirements for site plan approval or an issuance of a concurrency certificate under the City of Port Orange's Land Development Code. If Developer does not pay the Proportionate Fair Share within one year of the date of the execution of this Agreement by all parties hereto, then the Proportionate Fair Share shall be revised based on the applicable Florida Department of Transportation published inflationary rate. The parties agree that construction of the Roadway Improvements shall be constructed as determined by the City and County, as applicable. Nothing herein is intended to alter, reduce or otherwise waive Developer's right to receive impact fee or capacity credits in connection with the Proportionate Fair Share to the extent that Developer would be entitled to receive such credits. Subsequent to payments received by the City and County, Developer shall be entitled to County thoroughfare road impact fee credits against the payment of the Proportionate Fair Share to the County. County impact fee credits issued as detailed in **Exhibit D**. For purposes of road impact fee credits against the payment of the Proportionate Fair Share to the City, Developer specifically waives Developer's right to claim any and all City road impact fee credits, except as such credits may be due pursuant to Section 11, Article II, Chapter 21 of the Land Development Code, City of Port Orange, Florida.

(b) County's Application of Proportionate Share. The parties intend that the County will apply the Proportionate Fair Share for the purpose of installing improvements in the Impact Area. Owner acknowledges that it has no right to direct or claim a right to direct the application of the Proportionate Fair Share to making any specific public roadway infrastructure improvements.

(c) City's Application of Proportionate Share. The parties intend that the City will

apply the Proportionate Fair Share for the purpose of installing improvements in the Impact Area. Developer acknowledges that it has no right to direct or claim a right to direct the application of the Proportionate Fair Share to making any specific public roadway infrastructure improvements.

3. Developer Acknowledgement/Waiver. Developer acknowledges that the payment of the Proportionate Fair Share does not release the Developer from payment of any other development or building related fees including impact fees, or such other fees as may be prescribed by law.
4. Timing. The parties agree that construction of the Roadway Improvements shall be constructed as determined by the County of Volusia or the City of Port Orange, whichever jurisdiction shall govern said improvements.
5. Effective Date. The effective date this Agreement shall be the last date upon which the County executes this Agreement.
6. Binding Nature of this Agreement. This Agreement shall inure to the benefit of the parties hereto and the subject property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.
7. Venue. In the event of any claim, action, litigation or proceeding under this Agreement, venue shall be in Volusia County, State of Florida.
8. Recordation. This Agreement will be recorded in the Public Records of Volusia County, Florida, at Developer's expense.
9. Counterparts. 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 electronic (i.e., facsimile or email) transmittal of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of the respective entities, their successors and assigns.

Signed, sealed and delivered in the presence of:

COUNTY OF VOLUSIA, a political subdivision of the State of Florida

Witness 1

Jeffrey S. Brower, County Chair

Print Name of Witness 1

Attest

Witness 2

By: _____

Print Name of Witness 2

George Recktenwald, County Manager

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2022 by Jeffrey S. Brower, County Chair of the County of Volusia, Florida, a political subdivision of the State of Florida, on behalf of the County. They are personally known to me and did not take an oath.

Notary Public _____

Printed Name: _____

Commission No. _____

Approved as to form by:

Russ Brown, Assist County Attorney

Date: _____

Signed, sealed and delivered in the presence of: **CITY OF PORT ORANGE
FLORIDA, a Florida municipal
corporation**

Witness 1

Print Name of Witness 1

By: _____
Donald O. Burnette, Mayor

Witness 2

Print Name of Witness 2

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

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 _____, 2022 by Donald O. Burnette and Robin L. Fenwick, Mayor and City Clerk, respectively, of The City of Port Orange, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public

Printed Name:

Commission No. _____

Approved as to form by:

Shannon K. Balmer, Assistant City Attorney

WITNESSES:

Printed Name: _____

Printed Name: _____

DEVELOPER:

Concept Development, Inc., a Florida corporation

By: _____
Matthew D. Cason, President

Date: _____, 2022

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged by means of [☐] physical presence or [☐] online notarization before me this ___ day of ___, 2022, by *Matthew D. Cason, President* for Concept Development Inc., who is ___ personally known to me OR _____ produced _____ as identification.

Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and expiration of commission term

EXHIBIT “A”

Exhibit A
Legal Description

A PORTION OF LOT 5, NEW PORT SUBDIVISION, PER MAP BOOK 56, PAGES 42-44 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID LOT 5; THENCE RUN N01°09'31"E ALONG THE WEST LINE OF SAID LOT 5, A DISTANCE OF 55.02 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG THE WEST LINE OF SAID LOT 5, N01°09'31"E, 30.00 FEET TO THE NORTH LINE OF REVISED LOT 5 AS DESCRIBED IN OFFICIAL RECORDS BOOK 7437, PAGE 4730, SAID PUBLIC RECORDS; THENCE N89°54'26"E ALONG SAID NORTH LINE, 321.97 FEET TO THE WEST LINE OF SAID LOT 5; THENCE N01°09'31"E ALONG SAID WEST LINE, 644.35 FEET TO THE NORTH LINE OF SAID LOT 5; THENCE N89°54'26"E ALONG SAID NORTH LINE, 250.10 FEET TO THE EAST LINE OF SAID LOT 5; THENCE S01°11'16"W ALONG SAID EAST LINE, 674.36 FEET; THENCE S89°54'26"W, 571.73 FEET TO THE WEST LINE OF SAID LOT 5 AND THE POINT OF BEGINNING.

Exhibit B

County Application for Impact Fee Credit

Exhibit B

Proportionate Fair Share Calculation for Volusia County

Volusia County Proportionate Share Determination														
Roadway	Segment		FDOT Cost per Lane Mile	Estimated Lane Length (mile)	Improvement	Segment Improvement Costs	Additional Costs	Cost + Preliminary Engineering & CEI (25%)	Project Distribution (%)	Project Volume	Unimproved Lane Group Capacity	Improved Lane Capacity	Project Share (%)	Proportionate Share
	From	To							(a)	(b)	(c)	(d)	e = b/(d-c)	
Taylor Branch Rd	Dunlawton Ave	Clyde Morris Blvd	Volusia County	0.53	Widen from 2 to 3 lanes (urban)	-		\$8,300,000.00	2%	2	1,020	2,000	0.16%	\$12,873.47
Williamson Blvd	Beville Rd	Madeline Ave	Volusia County	1.70	Widen from 2 to 4 lanes (rural)	-		\$6,700,000.00	1%	1	1,540	3,410	0.04%	\$2,722.99
	Madeline Ave	Willow Run Blvd	Volusia County	0.81	Widen from 2 to 4 lanes (rural)	\$7,083,000.00		\$7,171,537.50	13%	10	1,540	3,410	0.53%	\$37,890.26
	Willow Run Blvd	Town West Blvd	Volusia County	0.85	Widen from 2 to 4 lanes (rural)	\$7,083,000.00	\$10,000,000.00	\$20,025,687.50	12%	9	1,540	3,410	0.49%	\$97,665.39
	Town West Blvd	North Pavilion Driveway	Volusia County	0.62	Widen from 2 to 4 lanes (rural)	\$7,083,000.00		\$5,489,325.00	4%	3	1,540	3,410	0.16%	\$8,923.82
Segment PS Subtotal:													\$160,075.93	

Exhibit C

City Proportionate Share Calculation



Exhibit C – Proportionate Fair Share Calculation for City of Port Orange
Concurrency and Fair-Share Agreement
Transportation Improvement (“TI”)

Development Data:

Development Name	O2B Kids – New Port, Lot 5
Site Address	3671 Clyde Morris Blvd.
City Case No.	22-80000004
Zoning District	CC (Community Commercial)
TIA Report Date	July 8, 2022
TIA Prepared by	Lawrence T. Hagen, P.E., PTOE, RSP
Name of Firm	Hagen Consulting Services, LLC
Est. Date of Impact	2023

Developer:

Corporate Entity	Concept Development, Inc.
Contact Person	Matt Cason, Manager
Mailing Address	1449 SW 74 th Drive, Suite 200, Gainesville, FL 32607

Land Owner:

Corporate Entity	Concept Development, Inc.
Contact Person	Matt Cason, Manager
Mailing Address	1449 SW 74 th Drive, Suite 200; Gainesville, FL 32607

Real Property

Total Acreage	+/- 4.1 acres
Parcel Number(s)	6306-19-00-0050
Legal Description	Legible real property legal description and sketch attached as EXHIBIT A

Exhibit C – Proportionate Fair Share Calculation for City of Port Orange

Traffic Impact Analysis

Development Name:	O2B Kids – New Port, Lot 5
City Case No.:	22-80000004
TIA Report Date:	July 8, 2022
TIA Prepared by (Firm):	Hagen Consulting Services, LLC
Estimated Date of Impact:	2023

Contribution Calculations: Adjusted July 8, 2022

Impacted Intersections/Road Segments per Transportation Master Concurrency Plan	TI Stage I Reservation Deposit Estimated Cost	TI Stage II Project Cost	TI Stage III Actual Cost	DT/CI Ratio	% of Cost	Contribution Without Multiplier ^[3]	Contribution with Multiplier* ^[3]
Summer Trees Road Extension [1] OR Book 7486 Page 1855	N/A	N/A	\$3,152,938.60	2/860	4.53%	\$7,332	\$7,332
*Financial Guarantee Multiplier	1.1	1.1	1.0				
Total Fair-Share Contribution [2]						[2] Port Orange FSP- \$7,332	

Fair Share Projects Dunlawton/Taylor at I-95 (PRVCF ORB 5709/4728), Dunlawton/Clyde Morris (PRVCF ORB 5709/4732, and Town West/Williamson (PVRCF 5709/4736) are completed or fully funded.

[1] City Project Participant - *Eligible for City trans. impact fee credits*

[2] Rounded up to nearest whole dollar

Planning Review: _____ Date _____

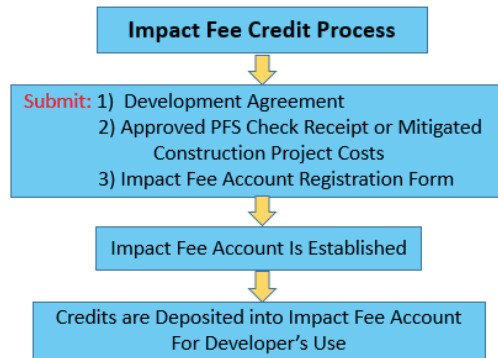
Finance Review: _____ Date _____

Exhibit D

Volusia County Impact Fee Credit Instructions

IMPACT FEE CREDITS

The following steps are required to be able to obtain impact fee credits for PFS payment or construction mitigation improvement:



1. Establish an Impact Fee Credit Account:

- After the PFS payment is made or constructed improvements are complete, contact Engineering & Construction to establish an impact fee credit account and obtain credits. Contact: Storm Kazmierczak (skazmierczak@volusia.org, (386) 736-5967 x12294). Please allow 5-7 business days.
 - For Impact Fee Credits related to PFS Payments, please submit the following supporting documentation to Engineering and Construction:
 - Copy of the project's recorded development agreement
 - Copy of your PFS check and receipt.
 - Completed Volusia County Impact Fee Account Registration form** attached. Registration forms require original signatures. Copies or PDF's will not be accepted.
 - .
 - For Impact fee credits related to Constructed Improvements, please submit the following to Engineering & Construction:
 - Copy of the project's recorded development agreement.
 - Actual costs incurred such as executed construction contracts or contractor invoices. Engineers' estimates are not accepted. An itemized tabulation delineating eligible costs is required when contracts or invoices include ineligible items. Note: Eligible costs include design, permitting, right-of-way (if applicable), and construction & CEI.
 - Completed Volusia County Impact Fee Account Registration form**, attached. Registration forms require original signatures. Copies or PDF's will not be accepted.

***Note: Your Transportation Impact Fee Credit Account is like a bank account. The "List of Person(s) authorized to sign for this account", on the form, will be the people authorized to make withdrawals from your Transportation Impact Fee Credit Account.*

2. Allow Staff to Process Information and Make Deposit:

- The submittal will be reviewed by county engineering staff and additional information may be requested of the applicant.
- Engineering & Construction will deliver the original executed Registration Form to County Growth and Resource Management (GRM). Contact: Beth Branton (bbranton@volusia.org, (386) 736-5924, ext. 12097).
- GRM will not accept executed forms from anyone other than Engineering & Construction.
- GRM will establish the Transportation Impact Fee Credit Account and send the applicant an email with instructions on how to pay County Transportation Impact Fees with credits, or if desired, transfer your credits. Please be aware that the county auditor completes audits of transportation impact fee credit files.

For questions regarding the following, please call:

- **Impact Fee Credit Registration** - Storm Kazmierczak at (386) 736-5967, ext. 12294, skazmierczak@volusia.org
- **Impact Fees or Impact Fee Credit Account balance** - Beth Branton at (386) 736-5924, ext. 12097, bbranton@volusia.org.
- **PFS Agreements**, please contact Russ Brown at [386-736-5950](tel:386-736-5950) x12947, rbrown@volusia.org
- **PFS payments**, please contact Kristen Vieira at 386-736-5968, ext. 12177, kvieira@volusia.org
- **PFS calculations**, please contact Melissa Winsett at 386-736-5968, ext. 12322, mwinsett@volusia.org



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (C11) Approval of Major Special Event Request for Biktoberfest 2022 from The Doghouse Bar and Grill at 3400 S. Nova Road

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the four (4) day Biktoberfest Major Special Event request for The Doghouse Bar and Grill, located at 3400 S. Nova Road, subject to the attached conditions.

SUMMARY: Rhonda Harrison, owner of The Doghouse Bar and Grill, requests approval of a Special Event to be held during Biktoberfest 2022 at 3400 S. Nova Road (see Location Map below). The proposed event is planned for Thursday, October 13, 2022, through Sunday, October 16, 2022. According to the application submitted for the Special Event, the proposed hours for outdoor music and activities are from 11:00 am until 10:00 pm. Normal indoor hours of operations (11:00 am until 2:00 am) of The Doghouse Bar and Grill will continue during the event.

The dates of Biktoberfest as recognized by the Daytona Regional Chamber of Commerce are Thursday, October 13, 2022, to Sunday, October 16, 2022, the same as the proposed special event dates. This will be the second Special Event at this location in 2022.

Normal operations of The Doghouse Bar and Grill will continue during the event. The outdoor activities for this event, intended to target the crowd attending Biktoberfest 2022, include live music daily and other contests and will end at 10:00 pm. There will be no vendors at this event. Setup of the event will occur 72 hours prior to the event and take down of the event within 72 hours after the event. There will be six (6) port-o-let facilities for the event as well as the restrooms inside the business. The applicant for this Special Event is not requesting assistance from the Police Department or Public Works Department.

Chapter 42, Article IV. Noise Regulations, Section 42-80. General Restrictions of the City of Port Orange Code of Ordinances describe the acceptable sound level limit dBA. It shall be the responsibility of the permit holder to monitor for noise violations. The Doghouse Bar and Grill shall take care of the placement of speakers for amplified music by adjusting them away from residential areas. A warning may be issued and if not corrected or the violation recurs, the Special Event may be terminated, and noise violations from this event will be taken into account before permitting future events.

The proposed event has been reviewed by Police, Fire, Public Works, Parks and Recreation, Code Enforcement, and Community Development staff. According to Code Enforcement, there are no code violations existing on the site at this time.

The Doghouse Bar and Grill has not requested the surety bond be waived. The cost of the surety bond is determined by City Council as outlined in Chapter 58, Article III of the City of Port Orange Code of Ordinances and has historically been set at \$250 when required for past events. City Council has required staff to secure payment of the surety bond in past years and staff conditions require it.



PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Doghouse Bar and Grill Conditions - Biketoberfest 2022	Doghouse Bar and Grill Conditions - Biketoberfest 2022.docx
----	--	---

Penelope Cruz	Created/Initiated - 9/15/2022
Tim Burman	Approved - 9/15/2022
Manuel Marino	Approved - 9/19/2022
Ronny Buttrum	Approved - 9/20/2022
Wayne Clark	Approved - 9/22/2022
Robin Fenwick	Final Approval - 9/22/2022

The following conditions apply to the Major Special Event for Doghouse Bar and Grill for Biketoberfest 2022.

1. The subject Major Special Event is for October 13th – 16th, 2022.
2. In accordance with the application submitted and approved by City Council, the proposed hours for outdoor music and activities at this are from 11:00 am until 10:00 pm. Normal indoor hours of operations (11:00 am until 2:00 am) of The Doghouse Bar and Grill will continue during the event. Alcohol shall not be served indoors or outdoors past 2:00 a.m., as required by *Port Orange Code of Ordinances*.
3. Chapter 42, Article IV. Noise Regulations, Section 42-80. General Restrictions of the City of Port Orange Code of Ordinances describe the acceptable sound level limit dBA. It shall be the responsibility of the permit holder to monitor for noise violations. The Doghouse Bar and Grill shall take care of the placement of speakers for amplified music by adjusting them away from residential areas. Sound or noise projecting from one use district into another use district with a different noise level limit shall not exceed the limits of the district into which the noise is projected. A warning may be issued and if not corrected or the violation recurs, the Special Event may be terminated, and noise violations from this event will be taken into account before permitting future events.

Use occupancy category	Time	Sound level limit dBA
Residential	7:00 a.m.—10:00 p.m.	60
	10:00 p.m.—7:00 a.m.	50
Commercial or business	7:00 a.m.—10:00 p.m.	65
	10:00 p.m.—7:00 a.m.	55
Manufacturing, industrial or agriculture	All times	75
Noise sensitive zone	All times	55

4. There are no vendors for this event.
5. Tents or canopies being used in association with this event shall comply with the requirements set forth in *NFPA 101 Chapter 11.11.1.2 (Tents)*. Tents shall be permitted only on a temporary basis.
 - Tents or canopies being used in association with this event shall comply with the requirements set forth in NFPA 101 Chapter 11.11 (Tents) Standards for Special Structures and High-Rise Buildings.
 - Tents or canopies cannot be erected more than seventy-two (72) hours prior to the event and must be removed within seventy-two (72) hours after the duration of the event. All tents/canopies must maintain at least two (2) exit ways in an unobstructed fashion to allow for a continuous path of travel.
6. If any outdoor lighting or other structural features are to be installed in association with this event, the event coordinator shall obtain the proper Building Permits from the Community Development Department. Such lighting must be a minimum of twenty (20) foot candles to provide a safe environment at night.
7. Temporary electrical wiring shall be installed by a certified electrician and shall comply with Article 590 of the current adopted *NFPA #70 National Electrical Code*. This includes (F) Lamp protection. Any temporary lamps shall be protected from accidental contact or breakage by a suitable fixture or lamp holder with a guard.

8. Fire extinguishers shall be provided as outlined in accordance with the *NFPA #10, Standard for Portable Fire Extinguishers*.
9. All exits and means of egress shall remain accessible and unobstructed and it shall be the responsibility of the event coordinator to maintain access for emergency vehicles.
10. The event coordinator will be providing restrooms located inside the business.
11. All areas being used for this special event shall be handicapped-accessible. Handicapped parking is to remain open and accessible for this event.
12. Tripping hazards shall be removed or isolated from pedestrian traffic. Vehicle areas, including parking, shall be physically separated from pedestrian areas.
13. If there are calls for police service, or if security threats develop, the Police Department shall require additional officers to provide security for this event. The additional officers will be hired at the expense of the event coordinator at the rate of \$48.00 per hour with a minimum of three hours.
14. The City's *Code of Ordinances* prohibits the exposure of any sexual organs at commercial establishments that serve alcoholic beverages. Furthermore, *Florida Statutes* prohibit any type of public nudity at such an event.
15. A temporary sign permit shall be required for signage for this event.
16. No trees shall be removed, and care shall be taken to protect landscaped areas.
17. The event coordinator shall schedule an inspection online at <https://www.port-orange.org/570/How-to-Schedule-an-Inspection> for any fences or tents larger than 10x10 prior to first day of the event.
18. Repair of any disturbance of public right-of-way shall be the sole responsibility of the event coordinator.
19. It is the event coordinator's responsibility to contact Code Enforcement at 386-506-5604 for an inspection of debris removal within 72 hours after the event.
20. The event coordinator shall comply with the approved maximum capacity occupancy requirements within the confines of the facility.
21. Camping on premises prohibited by code; includes, but not limited to, tents, motor homes, travel trailers, or other vehicles.
22. The \$250.00 surety bond must be paid in full before issuance of permit.

Applicant (Print Name)

Applicant Signature



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (C12) Approval of Major Special Event Request for the Daytona's Original First Turn Biketoberfest Event at 5164, 5204, and 5236 South Ridgewood Avenue

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the four (4) day Annual Biketoberfest Major Special Event request for Daytona's Original First Turn located at 5164, 5204, and 5236 South Ridgewood Avenue, subject to attached conditions, and including a 1-hour time extension for the event to end at 12:00 am on all four (4) days of the event.

SUMMARY: Dewayne Snipes, owner/operator of Daytona's Original First Turn and event coordinator, requests approval for a Special Event to be held during Biketoberfest 2022 at 5164, 5204, and 5236 South Ridgewood Avenue (see Location Map below). The proposed event is four (4) days, from Thursday, October 13, 2022, to Sunday, October 16, 2022. The proposed hours for the event are 11:00 am to midnight daily, with outdoor music playing until 12:00 am.

According to the Code of Ordinances, the hours of operation of a Special Event shall generally be limited to 11:00 pm, unless specifically waived or amended by the City Council. The applicant for this special event is requesting a time extension of 1-hour for the four (4) nights of the event. If the Council grants the 1-hour time extension, the special event, including outdoor music, will end at 12:00 am instead of 11:00 pm. All noise from outdoor music between the hours of 11:00 am to 12:00 pm shall not exceed the sound level limits established in Chapter 42, Article IV of the Code of Ordinances. The applicant has held a 2021 Biketoberfest event and a 2022 Bike Week event at this location and there were no noise complaints made to the Police Department during either of these events.

Setup of the event will occur 72 hours prior to the event and take down of the event within 72 hours after the event. This will be the second Special Event at this location in 2022. The Daytona Regional Chamber of Commerce recognizes Biketoberfest regional event dates as Thursday, October 13, 2022, to Sunday, October 16, 2022, the same as the proposed Special Event dates.

Normal operations for Daytona's Original First Turn will continue for the duration of the event. Three (3) vendors have been requested and will be located throughout the event location. Vendors are required to obtain a temporary merchant license for \$250 to participate in this event. Activities associated with the event are intended to attract

those visiting the area for Biketoberfest 2022, including the sale of food, alcohol, clothing, and bike accessories. Port-o-let facilities will also be provided. According to the applicant for this request, the southbound outside lane of Ridgewood Avenue will **not** be closed and assistance from the Police Department or Public Works Department is **not** being requested.

The proposed event has been reviewed by staff from Police, Fire, Public Works, Parks and Recreation, Code Enforcement, and Community Development. According to Code Enforcement, there are no current code violations existing on the proposed site.

Chapter 42, Article IV. Noise Regulations, Section 42-83. Noise Restrictions in an Entertainment District, of the City of Port Orange Code of Ordinances, describe the acceptable sound level limit dBA for the subject property located within the Ridgewood/Commonwealth Entertainment District. Sound or noise projecting from an entertainment district into a residential district located outside the boundary of the entertainment district shall not exceed the limits set forth for the residential district as set forth in Section 42-80. It shall be the responsibility of the permit holder to monitor for noise violations. The event coordinator shall take care of the placement of speakers for amplified music by adjusting them away from residential areas. A warning may be issued and if not corrected or the violation recurs, the Special Event may be terminated. All previous noise violations will be taken into account before permitting future events. According to the applicant, outdoor live music will occur between 11:00 am and 12:00 am for the duration of the event.

The First Turn has not requested the surety bond be waived. The cost of the surety bond is determined by the City Council as outlined in Chapter 58, Article III of the City of Port Orange Code of Ordinances and has historically been set at \$250 when required for past events. City Council has required staff to secure payment of the surety bond in past years and staff conditions require it.



PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Daytona's Original First Turn - Biketoberfest 2022 Special Event Conditions	Daytona's Original First Turn - Major Special Event Conditions 2022.docx
----	---	--

Penelope Cruz	Created/Initiated - 9/14/2022
Tim Burman	Approved - 9/14/2022
Manuel Marino	Approved - 9/19/2022
Ronny Buttrum	Approved - 9/20/2022
Wayne Clark	Approved - 9/22/2022
Robin Fenwick	Final Approval - 9/22/2022

The following conditions apply to the Major Special Event for Daytona's Original First Turn for Biketoberfest 2022.

1. The subject Major Special Event is for October 13th – 16th, 2022.
2. Hours for the event shall be from 11:00 a.m. to 12:00 a.m., with outside music ending at 12:00 am for the duration of the event. Alcohol shall not be served indoors or outdoors past 2:00 a.m., as required by *Port Orange Code of Ordinances*.
3. Chapter 42, Article IV. Noise Regulations, Section 42-83. Noise Restrictions in an Entertainment District, of the City of Port Orange Code of Ordinances, describe the acceptable sound level limit dBA for the subject property located within the Ridgewood/Commonwealth Entertainment District. It shall be the responsibility of the permit holder to monitor for noise violations. The event coordinator shall take care of the placement of speakers for amplified music by adjusting them away from residential areas. Sound or noise projecting from an entertainment district into a residential district located outside the boundary of the entertainment district shall not exceed the limits set forth for the residential district as set forth in Section 42-80.

	Time	Sound level limit dBA Sunday - Wednesday	Sound level limit dBA Thursday – Saturday*
Ridgewood/Commonwealth Entertainment District	7:00 a.m.—11:00 p.m.	65	75
	11:00 p.m.—7:00 a.m.	55	55
Residential District	7:00 a.m.—10:00 p.m.	60	
	10:00 p.m.—7:00 a.m.	50	

*Applies to the day before a legal holiday, legal holidays or dates of public celebration declared by City Council. For example, if the 4th of July is on a Monday, the sound level limit (dBA) on Sunday July 3rd and Monday, July 4th would follow the sound level limit dBA limitations for Thursday through Saturday.

4. Where fences are required to delineate outdoor alcohol serving areas, as well as parking areas for automobiles, motorcycles and the handicapped, a four (4)-foot high temporary fence shall be erected to enclose the event area. All fencing must be in place prior to the site inspection for the event.
5. All outdoor cooking equipment involving liquefied petroleum gas and/or storage cylinders shall comply with *NFPA #58 Liquefied Petroleum Gas Code* and be approved by the Fire Marshal.
6. A copy of Daytona's Original First Turn liquor license for outdoor sales of alcohol during this event shall be obtained from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, prior to the event.
7. The event coordinator shall be responsible for all participating vendors with respect to any permit conditions or compliance with applicable state, county and city laws, rules, regulations, codes and ordinances. Therefore, the event coordinator must screen all participating vendors to ensure compliance with but not limited to the following:

- a. *Article VI, Chapter 18, Port Orange Code of Ordinances*, relating to peddlers and transient merchants.
 - b. Temporary event permits issued by the Department of Business and Professional Regulation, Division of Hotels and Restaurants for all food vendors.
 - c. Required liquor license for a temporary event shall be obtained from the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco.
 - d. Provisions and Standards of the City's *Body Art Ordinance*.
 - e. Provisions and Standards of the City's *Sexually Oriented Businesses Code*.
 - f. *Special Event Fee Resolution* establishing Temporary Merchant Fee.
8. Tents or Tents or canopies being used in association with this event shall comply with the requirements set forth in *NFPA 101 Chapter 11.11.1.2 (Tents)*. Tents shall be permitted only on a temporary basis.
 - Tents or canopies being used in association with this event shall comply with the requirements set forth in NFPA 101 Chapter 11.11 (Tents) Standards for Special Structures and High-Rise Buildings.
 - Tents or canopies cannot be erected more than seventy-two (72) hours prior to the event and must be removed within seventy-two (72) hours after the duration of the event. All tents/canopies must maintain at least two (2) exit ways in an unobstructed fashion to allow for a continuous path of travel.
9. If any outdoor lighting or other structural features are to be installed in association with this event, the event coordinator shall obtain the proper Building Permits from the Community Development Department. Such lighting must be a minimum of twenty (20) foot candles to provide a safe environment at night.
10. Temporary electrical wiring shall be installed by a certified electrician and shall comply with Article 590 of the current adopted *NFPA #70 National Electrical Code*. This includes (F) Lamp protection. Any temporary lamps shall be protected from accidental contact or breakage by a suitable fixture or lamp holder with a guard.
11. Fire extinguishers shall be provided as outlined in accordance with the *NFPA #10, Standard for Portable Fire Extinguishers*.
12. All exits and means of egress shall remain accessible and unobstructed and it shall be the responsibility of the event coordinator to maintain access for emergency vehicles.
13. The event coordinator will be providing 8 port-o-let facilities during the event. *A minimum of five percent (5%) of the portable toilets, but no less than one (1) for each sex, shall comply with Section 603 of FBCA as required per Section 213.2 FBCA for handicapped-accessible facilities.*
14. All areas being used for this special event shall be handicapped-accessible. Handicapped parking is to remain open and accessible for this event.
15. Tripping hazards shall be removed or isolated from pedestrian traffic. Vehicle areas, including parking, shall be physically separated from pedestrian areas.
16. If there are calls for police service, or if security threats develop, the Police Department shall require additional officers to provide security for this event. The additional officers will be hired

at the expense of the event coordinator at the rate of \$48.00 per hour with a minimum of three hours.

17. The City's *Code of Ordinances* prohibits the exposure of any sexual organs at commercial establishments that serve alcoholic beverages. Furthermore, *Florida Statutes* prohibit any type of public nudity at such an event.
18. A temporary sign permit shall be required for signage for this event.
19. No trees shall be removed, and care shall be taken to protect landscaped areas.
20. The event coordinator shall schedule an inspection online at <https://www.port-orange.org/570/How-to-Schedule-an-Inspection> for any fences or tents larger than 10x10 prior to first day of the event.
21. Repair of any disturbance of public right-of-way shall be the sole responsibility of the event coordinator.
22. It is the event coordinator's responsibility to contact Code Enforcement at 386-506-5604 for an inspection of debris removal within 72 hours after the event.
23. No more than the requested three (3) vendors shall be on this site.
24. The event coordinator shall comply with the approved maximum capacity occupancy requirements within the confines of the facility.
25. Camping on premises prohibited by code; includes, but not limited to, tents, motor homes, travel trailers, or other vehicles.
26. The \$250.00 surety bond must be paid in full before issuance of permit.

Applicant (Print Name)

Applicant Signature



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (C13) Approval and Ratification of the National Association of Government Employees (NAGE) 2022-2025 Collective Bargaining Agreement

DEPARTMENT: Administrative Services

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve the Collective Bargaining Agreement negotiated between the City of Port Orange and NAGE with the term of October 1, 2022 through September 30, 2025.

SUMMARY: History:

On January 5, 2017 the National Association of Government Employees (NAGE) was certified by PERC as the exclusive collective bargaining representative for blue and white collar employees within the City. The City and NAGE have negotiated the contract every three-years.

The current Collective Bargaining Agreement covering fiscal year 2020 through 2022 with the NAGE was effective through September 30, 2022. The City's negotiating team met with NAGE over the course of several in-person meetings and negotiated a new agreement. The parties reached a tentative agreement for the entire package after the September 15, 2022 meeting and all articles were tentatively agreed (TA) to on September 21, 2022.

On 09/27/2022 the City received notification that NAGE members voted in favor of this collective bargaining agreement. In order to ratify this agreement, the City Council must also vote in favor of the proposed changes.

Below is a summary of changes to the articles:

Article 10 Seniority:

Agreed to clarify language on when an individual is eligible for the shift bidding process

Article 12 Internal Investigations:

Agreed to clarify language throughout the article regarding the process and the individual/department responsible

Article 13 Discipline:

Agreed to clarify language to align with Article 14

Article 14 Grievance and Arbitration Procedures:

Agreed to clarify language regarding the grievance process

Article 15 Hours of Work an Overtime:

Agreed to clarify language surrounding personal leave, notice of change in schedule, and special detail.

Article 16 Holidays:

Agreed to add the following:

1. Junteenth
2. Christmas Eve

Article 17 Personal Leave Time:

Clarified the payment of personal leave surrounding a holiday, increased exchange hours of personal leave time, and the process for donating personal leave to other employees.

Article 20 Bereavement Leave:

Clarified member in the same household, increased leave from 3 to 5 days; no more than 64 hours in a fiscal year.

Article 23 Uniforms:

Agreed to the following:

1. Reimburse prescription safety glasses up to \$100 every two years
2. Increase safety footwear from \$165 to \$200 annually

Article 28 Wages:

Agreed to the following:

1. Effective first pay in October 2022 - \$1.00 per hour
2. Effective first pay in April 2023 - \$1.00 per hour
3. Wages open for negotiations in Fiscal Years 2024 and 2025
4. Various Incentive pays increased across the board
5. Added tool allowance of \$250 per year for automotive mechanics.
6. Added incentive pay for employees within the stormwater division up to \$1,500 annually
7. Clarified the shift differential and increased the third shift to \$1.00 per hour

Article 29 Retirement Plan:

Agreed to continue to explore the option of entering into the Florida Retirement System (FRS)

Article 31 Duration of Agreement:

Agreed with the exception of wages, this agreement would be effective through September 30, 2025.

PRESENTER: Melonie Donnally, John McKinney

ATTACHMENTS:

1.	NAGE Agreement 2022-2023 clean copy 10.2.22 Final signed	NAGE Agreement 2022-2023 clean copy 10.2.22 Final signed.pdf
----	--	--

Robin Fenwick	Created/Initiated - 9/16/2022
Melonie Donnally	Approved - 9/28/2022
John McKinney	Approved - 9/30/2022
Matthew Jones	Approved - 9/30/2022
Wayne Clark	Approved - 9/30/2022
Robin Fenwick	Final Approval - 9/30/2022

**AGREEMENT BETWEEN
CITY OF PORT ORANGE, FLORIDA
AND
NATIONAL ASSOCIATION OF GOVERNMENT
EMPLOYEES LOCAL 5000**

PERC Certification #1904

October 1, 2022 through September 30, 2025

TABLE OF CONTENTS

Article	Subject	Page
1	AGREEMENT	3
2	ASSOCIATION RECOGNITION	4
3	MANAGEMENT RIGHTS	5
4	EMPLOYEES RIGHTS	8
5	STRIKES AND LOCKOUTS	10
6	DUES DEDUCTION	11
7	ASSOCIATION REPRESENTATIVES	12
8	LABOR MANAGEMENT COMMITTEE	13
9	BULLETIN BOARDS	14
10	SENIORITY	15
11	PROBATIONARY EMPLOYEES	17
12	INTERNAL INVESTIGATIONS	19
13	DISCIPLINE.....	22
14	GRIEVANCE AND ARBITRATION PROCEDURES	23
15	HOURS OF WORK AND OVERTIME	27
16	HOLIDAYS	31
17	PERSONAL LEAVE TIME	32
18	LEAVE OF ABSENCE.....	34
19	JURY DUTY AND APPEARANCE AS A WITNESS.....	35
20	BEREAVEMENT LEAVE	36
21	MILITARY LEAVE.....	37
22	AUTHORIZED USE OF A PRIVATE AUTOMOBILE	38
23	UNIFORMS AND EQUIPMENT	39
24	PHYSICAL EXAMINATION AND WORKERS' COMPENSATION	41
25	ALCOHOL AND DRUG TESTING	43
26	INSURANCE	47
27	TUITION REIMBURSEMENT AND TRAINING.....	48
28	WAGES	50
29	RETIREMENT PLAN	55
30	SEVERABILITY	56
31	DURATION OF AGREEMENT	57

ARTICLE 1
AGREEMENT

THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN THE City of Port Orange, hereinafter referred to as the "City", and the National Association of Government Employees (NAGE), hereinafter referred to as the "Association".

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 bargaining unit, as defined in PERC Certification #1904, dated January 5, 2017.

ARTICLE 3
MANAGEMENT RIGHTS

3.1 The Association recognizes that it is the function of management to determine and direct the policies and 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, not in conflict with provisions of this Agreement or in conflict with any federal or state law, 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, which the City has not expressly modified or delegated by express provisions of this Agreement or by federal or state law. 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, re-arrange, or change, extend, limit or curtail its operation or any part thereof unless specifically addressed in this Agreement, nor should this article be interpreted to be a waiver of any right of the Association or the members of the Association.

3.3 Without limiting the provisions of Sections 3.1 and 3.2, but in order to clarify some of the important rights retained by management, the City shall have the following management rights, unless such rights are specifically limited and in direct conflict with this Agreement:

A. To determine the size and composition of the work force, including the number and composition of employees assigned to any particular operations, shift or turn;

B. Create, expand, reduce, assign, or cease any job;

C. To determine the number and type of equipment, vehicles, materials, and supplies to be used, operated, or distributed;

D. To hire, rehire, and promote employees;

E. To fill any job on an emergency or interim basis;

F. To reward or reprimand, discharge or otherwise discipline an employee for just cause;

G. To evaluate, maintain, and/or improve the efficiency of employees;

H. To create, abolish, or change job classifications and to determine job content and minimum qualifications for job classifications, and the amount and type of work to be performed;

I. 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;

J. To discontinue, temporarily or permanently, in whole or in part, its operations, and to transfer or assign all or any part of its operations to new facilities;

K. To require an employee at the City's expense, to take a physical or mental examination on an annual basis or more frequently if the City has reasonable cause to believe there is a health problem which impairs the employee's ability to perform his/her job or which appears to threaten the safety of the employee, other employees or the general public. If these findings may result in a job action, the employee, at his own expense, may obtain a second opinion, given by a health service or a physician or psychiatrist selected by the City;

L. To determine the location, method, means and personnel by which operations are to be conducted, including the right to contract and sub- contract existing and future work;

M. To establish, maintain and enforce, or rescind, amend, or change, reasonable rules and regulations and standard operating procedures, it being understood that such rules and regulations shall not be in direct conflict with any provision of this Agreement in accordance with State law;

N. To determine work schedules, work cycles, starting and quitting times, and the number of hours and shifts to be worked unless contrary to a specific provision of this Agreement;

O. To introduce new, different, or improved methods, means and processes of conducting the operation, transportation, maintenance, and service of the City;

P. Set procedures and standards to evaluate City employees job performance including the formulation and/or amendment of job descriptions;

Q. To determine the work to be performed during the employee's regular workday and require that all work be performed in a satisfactory and workman- like manner; and

R. To assign overtime work in accordance with provisions of this Agreement.

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 and has no obligation to bargain over the decision to exercise such right, prerogatives and privileges, or the effect of such decisions unless the changes involve changes in the terms and conditions of employment which must be negotiated with the Association.

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, 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 economic provisions.

3.8 It is agreed that every incidental duty connected with operations, enumerated in job descriptions, is not always comprehensive and the employees, at the discretion of the City, may be required to perform duties not within their specific job descriptions as related to the objectives and mission of the employee's particular Department.

ARTICLE 4
EMPLOYEE RIGHTS

4.1 The parties hereto agree not to interfere with the right of any employee to become a member of the Association, withdraw from membership from the Association, or refrain from becoming a member of the Association.

4.2 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 that Section 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 Officer agrees to discuss and/or attempt to resolve the matter.

4.3 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.

4.4 The Association'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 Association from exercising the same in some other way not in conflict with the express provisions of this Agreement.

4.5 There should be no discrimination against any employee by reason of Employee Organization membership or activity.

4.6 The City agrees that it is the right of bargaining unit employees to participate in the following activities without permission of the City and without being subject to discipline, discrimination or harassment:

- A. to engage in protected concerted activity;
- B. to hold office within the Association and to represent other members of the Association before representatives of the City on Association matters;
- C. to author articles for the Association's newsletter or the Association's flyers;
- D. to participate in political screenings, political endorsements and/or political activities of the Association;
- E. to speak to local, state, or federal elected officials concerning Association concerns or issues;
- F. to participate as a member of the Association's negotiation team or any

other committee of the Association;

G. to appear in political or informational flyers;

H. to speak to citizens and/or civic groups about Association concerns or issues;

I. to participate in media press conferences and press statements concerning Association concerns or issues

J. to inspect his/her official personnel file in accordance with Florida Statutes 119. The employee shall have the right to make duplicate copies, at their own expense, of any item contained in their official personnel file.

This list is not considered to be all inclusive but includes examples of the rights that the employees of this bargaining unit maintain in addition to other rights given to them by local ordinances and state and federal laws.

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 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 I, Section 6.

5.2 The Association's officers, agents, stewards 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 provisions of this Article and the law by remaining at work during any interruption which may be initiated by other City employees; and including their responsibility, in the event of breach of this Article or the law by other City 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 violated any provision of the law prohibiting strikes or this Article may be disciplined, up to and including discharge, by the City. Any such action by the City pursuant to this Section shall not be givable or abatable under the provisions of the grievance and arbitration procedures of this contract, except to determine if violations, in fact, occurred.

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 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.

5.6 The City agrees that there will be no lockouts for the duration of this 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 collection 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 City Manager or his designee in writing of any change in the amount of dues to be deducted at least thirty (30) days in advance of said change.

6.2 If there is an amount deducted in excess of what is authorized by this Agreement and forwarded to the Association, the employee affected shall seek recourse with the Association and not the City. Association dues only will be deducted once a pay period and thereafter, will be transmitted to the Association monthly. The City will not deduct other Association assessments. The Association will indemnify, defend, and hold the City harmless against the City on account of payroll deduction of Association dues.

6.3 An employee may revoke his authorization for deduction of dues provided the employee gives thirty (30) days written notice to the City and the Association. 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.

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 wages owed after all pre-tax withholdings (taxes, medical, dental, retirement, etc.) and court ordered post-tax deductions (child support, garnishment, etc.) have been withheld.

6.5 In the event the Association delivers additional dues authorization to the City 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 procedure. Dues will only be deducted from those employees covered by this Agreement.

ARTICLE 7

ASSOCIATION REPRESENTATIVES AND ACTIVITIES

7.1 The Association shall be represented by its President or his/her designee.

7.2 The Association shall notify the City Administrative Services Director in writing of the name of the President or his/her designee. It shall be the responsibility of the Association to immediately notify the City's Administrative Services Director and the City Manager in writing of any change in the designation of President or his/her designee. The Association shall notify the City of the NAGE Unit Representatives and/or Alternate Representatives.

7.3 The employee or Association shall not engage in Union business of any kind, including solicitation of membership during work time. 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 investigations, and provided further that such absence would not unduly hamper the operation where the Representative or steward is employed or result in any overtime payments.

7.4 Bargaining unit members will be allowed to use accrued personal leave to attend local and state seminar functions of the Association subject to approval and appropriate staffing. Attendance at union seminars and other functions shall be at the employee's own expense.

7.5 The President and two (2) members of the Association negotiating committee (employees of the City) shall be permitted to attend the City Council meeting where final action is scheduled to be taken on approval (or rejection) of this Collective Bargaining Agreement and its successor, without loss of pay.

7.6 Two (2) members of the designated negotiating team shall be allowed to attend negotiation sessions that occur within their normal duty hours without a loss of pay. Time spent attending negotiations sessions will not be considered hours worked for purposes of calculating an employee's overtime.

7.7 Any hours spent attending seminars, negotiation sessions, or Council Meetings as described in 7.4, 7.5 and 7.6 above will not be counted as hours worked towards overtime.

ARTICLE 8

LABOR MANAGEMENT COMMITTEE

8.1 There shall be a Labor Management Committee which shall consist of two (2) members who shall be designated, in writing, by the Association and two (2) members who shall be designated by the City.

8.2 The Labor Management Committee may meet on a semi-annual basis, or more or less often by mutual consent; and such meetings may be held during working hours. The purpose of these meetings shall be to discuss problems and subjects of mutual concern; however, the Committee shall not engage in collective bargaining or the resolution of any grievances. This Committee is to serve in an advisory capacity only.

ARTICLE 9
BULLETIN BOARDS

9.1 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 above locations and with the approval of the respective Department Director.

9.2 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.

9.3 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 Administrative Services Director prior to posting.

9.4 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 in suspension of all Bulletin Board privileges.

9.5 The City may make available a publicly accessible section on the employee intranet for items detailed in 9.2 to be posted electronically.

ARTICLE 10
SENIORITY

10.1 For this Agreement, employees shall have two (2) types of seniority; Department Seniority and City Seniority. Department Seniority is defined as the length of continuous, uninterrupted service in one of the 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.

10.2 Service shall be considered as having been interrupted in the event of:

- A. Resignation and all other voluntary means of leaving employment;
- B. Discharge;
- C. Unauthorized leave of absence;
- D. Lay-off for more than twelve (12) months;

or,

For purposes of Department Seniority, any transfer, promotion, or reassignment likewise to a new Department in which an employee completes the probation for the new assignment will be considered an interruption in department service. In the event an employee returns to a previous department; they do not retain their previous department seniority.

10.3 Seniority shall be utilized for the following purposes:

A. Vacations for each calendar year shall be scheduled by employees based on Department Seniority, however, that the Department shall retain the right to disregard seniority preference to provide adequate coverage during any vacation period. Nothing contained herein shall be interpreted as restricting the Department's right to cancel all vacations during any given period in the event of disaster or emergency.

B. In the event of a reduction in force (RIF), employees shall be laid-off based on least amount of City seniority within their Department. An employee with higher Seniority shall be given an opportunity to revert to any non – supervisory vacant position within the Department, provided he/she is fully qualified to perform work in that position classification. All temporary and probationary employees in the Department shall be laid-off before any permanent employee is laid-off or reduced in classification.

In the event of a RIF, the City agrees to meet with the union prior to the RIF to review and discuss the requirements and parameters of the RIF.

C. Employees shall be recalled from lay-off in accordance with their City seniority in the Department from which they were laid-off. No new employees shall be hired within that Department until all employees on lay-off status within that Department have had an opportunity to return to work in positions that they are qualified to perform. No laid-off employee shall retain recall rights beyond twelve (12) months from the date of lay-off. It is the responsibility of the employee to keep current the location and telephone number where

he can be reached for recall. Employees recalled shall report to work within ten (10) working days of the recall notification.

D Seniority of employees who are laid-off up to twelve (12) months will be adjusted for the time of lay-off. Employees who are laid-off for twelve (12) months or more and are later rehired, start as new employees with no accrued seniority.

E. In the event of a departmental or divisional re-organization by the City, the City shall meet with the Association to address seniority of the affected employees.

F. Departmental Seniority shall be utilized for the shift bidding process, where applicable. Separate schedules will be maintained for shift supervisors and operators. The individual with the most departmental seniority shall select his shift first and others in turn shall select their shift. However, seniority shall not apply for shift selection until the individual has been in the position for six (6) months and required license(s) have been obtained.

The City shall have the following management rights in accordance with Article 3, unless such rights are specifically limited and in direct conflict with this Agreement:

To determine the size and composition of the work force, including the number and composition of employees assigned to any particular operations, shift or turn.

10.4 An employee on lay-off shall retain his seniority but shall not accrue any benefits. Should an employee be rehired after having been on lay-off for more than twelve (12) consecutive months, the employee will be considered a new employee for purposes of seniority.

10.5 The City will give preference to employees with Department Seniority or those employees who will become subject to a RIF. Preference is defined as a benefit when filling vacancies where two candidates are equal in all other matters, provided the employee is qualified to perform the work, and is eligible. The decision on qualifications and eligibility shall not be subject to the grievance and arbitration procedures of this Agreement.

10.6 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 last four (4) digits of their social security number and the employee with the lowest number shall be considered the employee with the most seniority, subject to this Article.

ARTICLE 11

PROBATIONARY EMPLOYEES

11.1 New Employee Probation - All new employees shall be classified as probationary employees for the six months of continuous, uninterrupted employment during which time, employees may be laid-off, disciplined, or discharged with or without cause and without recourse to the grievance and arbitration procedures of this Agreement. During the initial probationary period, new employees shall be subject to all other terms and conditions of this Agreement except as limited in this Agreement.

A. At the discretion of the City, a probationary period may be extended up to eighteen (18) months to allow an employee to obtain a minimum license/certification. A decision by the City to extend or not extend the probationary period shall not be subject to the grievance and/or arbitration procedures of this Agreement.

B. Employees serving their initial probationary periods will have limited accrued personal leave time and are not generally permitted to take personal leave at all until they have completed their first three months of service. The City recognizes, though, that probationary employees may become legitimately sick or otherwise require time away from work to handle real emergencies before they have accrued sufficient leave to cover their time off. In these situations, the Department Head shall have the discretion to grant probationary employees excused unpaid time off. This leave shall be granted only for clear and compelling cause, and in no event shall the duration of this leave exceed forty (40) hours during the entire term of the employee's initial probationary period without the express written approval of the City Manager. If such leave is granted, the City shall add on to the employee's probationary period an amount of time equivalent to the amount of leave which the employee has taken under this section to allow the employee to be evaluated for his/her full probationary period.

11.2 Classification Probation - Employees who have been promoted, transferred, voluntarily demoted, or otherwise reassigned to a new classification within the bargaining unit shall serve a ninety (90) calendar day probationary period. At the discretion of the City, probation may be extended up to eighteen (18) months to allow sufficient time for an employee to attain the minimum certifications and/or licenses of the new position. If at any time during the probationary period the employee is found by the City, at its sole discretion, not to be suited for the new position, the employee shall be returned to his/her former classification. A decision by the City to extend or not extend the probationary period shall not be subject to the grievance and/or arbitration procedures of this Agreement.

Furthermore, if no vacancy exists in the classification from which the employee was transferred or promoted, the City will temporarily place the employee in a vacant position in another (lower) classification, if available, for which the employee is qualified. During the period of temporary placement (not to exceed three [3] months), the employee shall be paid at the rate of pay he/she would have earned had he/she been returned to his/her pre-promotion/pre-transfer classification. If, during the period of temporary placement, a vacancy in the employee's pre-promotion/pre-transfer

classification occurs, the employee will be returned to that classification. If no vacancy occurs in the employee's pre- promotion/pre-transfer classification during the period of temporary placement, the employee may accept a permanent position in the lower classification; provided there exists a vacancy in that position and the employee's compensation is reduced accordingly. The temporary placement in this article is to be utilized as a one-time option per employee.

ARTICLE 12

INTERNAL INVESTIGATIONS

12.1 The parties recognize that from time to time the City must investigate allegations made against bargaining unit employees covered by this Agreement. In order to fully investigate these allegations, the City agrees that all investigations that may lead to disciplinary action will be conducted under the following standards:

A. Prior to questioning a bargaining unit employee, the employee will be provided with written notice that will include a description of any alleged acts constituting misconduct and reference any written City policies or standards which the conduct may have violated.

B. Bargaining unit employees shall have the freedom of choice regarding representation or non-representation in dealings with the City concerning contract grievance and matters involving questioning about the employee's alleged misconduct which could lead to disciplinary action. However, if during the investigation process, the investigator determines the representation has either: (1) a conflict of interest or (2) has direct involvement in the investigative case, the member shall be immediately notified and given an opportunity to choose another representative.

A bargaining unit employee shall have the right to secure representation by an Association Representative, if the employee reasonably believes that the investigatory interview will result in a disciplinary action and the employee has requested representation from their union.

During a management initiated investigatory interview where the allegations are focused on the employee and may result in disciplinary action, the employee will be advised of their right to a representative prior to being interviewed. The employee will be advised if the inquiry is supervisor initiated or the result of a citizen complaint, or other. Upon the arrival of the Union Representative, the employee has the right to be informed of the subject matter of the interview, i.e., the type of misconduct being investigated. If requested, the union representative is entitled to privately meet with the employee before the investigatory interview commences, so long as the meeting does not interfere with a prompt investigation by creating an extended delay prior to the interview. The Association recognizes and agrees that the City has the right to conduct the interview promptly after any alleged misconduct has taken place and that a bargaining unit employee accused of misconduct cannot use unavailability of a particular representative as justification for unreasonably delaying an interview. If no Association Representative is available, the meeting, conference, interview, or investigation may be delayed for a period not to exceed twenty-four (24) hours, unless a longer extension is mutually agreed upon in writing.

During the interview, the interviewer shall not prohibit the Union representative from engaging in meaningful representation, including but not limited to advising, consulting, and counseling the employee. However, the interviewer may insist that they are only interested in hearing the employee's own account of the matter under

investigation. The Union Representative also may not behave in a violent, verbally abusive, insulting, or demeaning manner toward the interviewer. The Union representative may not interrupt the employee's response to a question or prevent the employee from responding to a question.

At the conclusion of the meeting the member or representative will have an opportunity to make a closing statement. At this time the employee will also be afforded a minimum of twenty-four (24) hours, excluding weekends and off duty days, to provide a written response to supplement the oral interview.

C. All questioning of the bargaining unit employee accused of misconduct shall be related to the acts of alleged misconduct and other relevant information reasonably related to those alleged acts.

D. Any interview of the bargaining unit employee accused of misconduct shall be conducted during the bargaining unit employee's normal work hours and at the bargaining unit employee's normal work site or at the office of Human Resources unless other time and place arrangements are mutually agreed to by all parties.

E. Interview sessions shall be for reasonable periods of time and shall be timed to allow for such rest periods as are reasonably necessary.

F. No bargaining unit employee shall be required to, requested, or asked to volunteer to submit to any device that is designed to measure the truthfulness of a statement, unless an exemption would be provided under the Employee Polygraph Protection Act of 1988, or as amended.

G. Bargaining unit employees accused of misconduct shall be given copies of any written statements they provided during the interview.

H. Bargaining unit employees may reserve the right to refuse to answer questions concerning alleged acts which could be criminal in nature until such time that any criminal investigation has been completed. The City reserves the right in these circumstances to initiate disciplinary actions against employees based on information otherwise disclosed by the investigation. An employee charged with (1) a felony or (2) a misdemeanor which the City Manager feels may impact the efficient operation of the City may be suspended without pay pending action by the City Manager. At his/her option, the City Manager may wait until the final resolution of the criminal charges to decide what disciplinary action, if any, to take, or the City Manager may decide not to wait but take whatever disciplinary action he/she deems appropriate, if any, based on the investigation. The result of the criminal proceeding shall not in any way be binding on the City or the City Manager in determining whether disciplinary action or the form of disciplinary action selected is appropriate.

I. During interviews, the bargaining unit employee shall not be subjected to offensive language; or threats of transfer, dismissal, or other disciplinary actions. The

interviewer does not have the right to make any promises of reward as an inducement to answering questions.

J. The City, the Association, and the employee agree to make no statements concerning an investigation until such time as the investigation is complete and the bargaining unit employee has been notified of the final disposition. The City may, however, acknowledge that an investigation is underway. In any case where the City chooses to relieve a bargaining unit employee from duty pending an investigation, except as otherwise indicated in this article, the bargaining unit employee shall remain in a paid status during this period of time.

K. All investigations shall result in a final investigative report being completed by the City. This final report will include any written statements or other evidence considered prior to making the final determination.

L. Any disciplinary action will be administered in accordance with Article 13, Discipline.

ARTICLE 13
DISCIPLINE

13.1 The employees covered hereunder shall comply with all rules, regulations, policies, procedures, and operating guidelines of the City and its Departments and any amendments thereto.

13.2 Any employee violating a rule, regulation, policy, procedure, or operating guideline may be subject to disciplinary action, including dismissal. Discipline will be evaluated based on the totality of the circumstances.

13.3 In the event an employee is discharged, suspended without pay, or demoted for disciplinary reasons, the City agrees that the employee shall be provided with written notification of the action. This notification shall be hand delivered to the employee or sent by certified mail, return receipt requested, to the address in the City Human Resources Division records.

13.4 Except in extraordinary circumstances, before the employee is discharged or suspended without pay for disciplinary reasons, the notification described in Section 13.3 will be provided to the employee in advance of the action so as to give the affected employee an opportunity to present his or her position.

13.5 No employee shall be disciplined except for just cause.

13.6 Disciplinary action, except termination, shall not become effective until such time that an employee has exhausted the grievance process through Step 3, or until such time that the time period for initiating Step 1 of the grievance process has expired. This does not limit the right to place an employee on administrative leave with pay pending an investigation. Suspensions, demotions, and terminations shall begin at Step 2 of the grievance process. The grievance shall be presented to the Department Head, or their designee, by an employee (either through/with an Association Representative or without one). The employee/association must provide written notice to the Department Head, or their designee, with a copy to the Administrative Services Director of their intent to proceed to step 2, containing an executed and dated signature of the grievant within ten (10) working days of notification of the suspension, demotion, or termination.

13.7 Employees shall have the right to file a written response to any letter of reprimand or other document that is placed in the employee's official personnel file or department file (per General Administrative Policy 1-11), as a result of supervisory action or citizen complaint, which at the employee's request, shall be included in the employee's file along with the documentation against which it is directed.

ARTICLE 14

GRIEVANCE AND ARBITRATION PROCEDURES

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 or interpretation of this Agreement.

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 step. Should the grieving party fail to observe the time limits as set forth in the steps of this Article, his or her grievance shall be considered conclusively abandoned.

14.3 Association Representatives are permitted to investigate grievances in accordance with Article 7, Association Representatives and Activities. These investigations shall be conducted professionally, and no employee shall be subject to offensive language, threats, or intimidation.

14.4 Where a grievance is general in nature, in that it applies to a number of employees rather than a single employee, or if the grievance is directly between the employee organization and the City (i.e., Class Action), such grievance shall be presented by the association's representative, in writing, directly to the City Manager, Step III, within ten (10) workdays of the occurrence or the event(s).

14.5 It is understood that many items can and will be resolved informally, however if an issue cannot be resolved informally, grievances shall be presented in the following manner:

All grievances shall begin at Step I, except for suspension, demotion and termination for disciplinary decisions which will begin at Step II, and except for class action grievances between the Association and the City which will begin at Step III.

The term "working days" as used in this article includes Monday through Friday of each work week regardless of the grievant's work schedule. Saturdays, Sundays, and holidays on which City Hall is closed, shall not be considered "working days" even if work is assigned or performed on these days. The term "calendar days" as used in this article includes each and every day including weekdays, weekends, and holidays.

Step I- The employee (either through/with an Association Representative) shall submit a written grievance to his/her superintendent or division manager within ten (10) working days of the occurrence or reasonable knowledge of the occurrence of the basis of the grievance. A copy of the grievance must be forwarded by the Association to the Administrative Services Director.

All grievances 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 the grievant (or the signature of all employees in the case of a group of employees filing a single grievance) and date(s) signed.

D. Designation of the specific association representative (must be an elected officer, representative, or steward) if the grievant requests association representation.

Failure of the grievant(s) to substantially comply with any part of this section shall make the grievance null and void. The superintendent or division manager shall, within ten (10) working days after the presentation of the grievance, render his/her decision of the grievance in writing, unless a longer period of time is mutually agreed upon in writing.

Step II - Any grievance which cannot be satisfactorily settled by the superintendent or division manager at Step I shall be presented in writing by an employee (either through/with an Association Representative or without one). The employee/association must provide written notice to the Department Head with a copy to the Administrative Services Director of their intent to proceed to Step II, containing a newly executed and dated signature of the grievant within ten (10) working days of the date of decision rendered in Step I. The grievance may be discussed with the employee (and/or Association Representative) and the Department Head within ten (10) working days unless a longer period of time is mutually agreed upon in writing. The Department Head shall within ten (10) working days after presentation of the grievance render his/her decision of the grievance in writing or within ten (10) working days after meeting with the grievant, if such meeting is requested, unless a longer period of time is mutually agreed upon in writing.

Step III - Any grievance which cannot be satisfactorily settled by the Department Head at Step II, shall be presented to the City Manager, or their designee, by an employee (either through/with an Association Representative or without one). The employee/association must provide written notice to the City Manager, or their designee, with a copy to the Administrative Services Director of their intent to proceed to Step III, containing a newly executed and dated signature of the grievant within ten (10) working days of the date of decision rendered in Step II. The grievance as specified in Step II shall be discussed with the employee (and/or Association Representative) and the City Manager, or their designee, within ten (10) working days, unless a longer period of time is mutually agreed upon in writing. The City Manager, or their designee shall, within ten (10) working days after meeting on the grievance render his/her decision of the grievance in writing, unless a longer period of time is mutually agreed upon in writing.

Step IV - Arbitration. In the event a grievance processed through the grievance procedure has not been resolved by the City Manager at Step III above, the Association may request that the grievance be submitted to arbitration within ten (10) working days

after the City Manager renders a written decision on the grievance at Step III. The Association shall request the Federal Mediation and Conciliation Service to furnish a panel of seven (7) Arbitrators. Within five (5) working days of receipt of the panel, each party shall have the option to alternatively strike three (3) names from the list. The party requesting arbitration shall strike first. No new arguments may be raised at arbitration by the Association/Grievant that have not been submitted in writing at or prior to Step III of the grievance procedure as set forth in this Article.

Should the Association fail to request the panel of Arbitrators within the prescribed time period the grievance shall be rendered null and void.

The City and the Employee Organization shall attempt to mutually agree, in writing, as to the statement of the grievance to be arbitrated prior to the arbitration hearing, and the arbitrator, thereafter, 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 I 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 thereto. 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 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 Federal Mediation and Conciliation Service.

Each party shall bear the expenses 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 of obtaining a hearing room, if any, shall be paid by the party declared by the arbitrator to be the loser of the arbitration. The arbitrator shall have the obligation in resolving the case before him/her to declare which party has lost the decision. If the Arbitrator fails to specify the losing party, the 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.

Copies of the arbitrator's award shall be furnished to both parties within thirty (30) calendar days of the close of the arbitration hearing. The arbitrator's award shall be final and binding on the parties.

14.6 Consistent with the provisions of the Florida Public Employees Relations 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 this Agreement, the arbitrator shall have no authority, power, or jurisdiction to construe any 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.

14.7 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 grievance and arbitration procedure of this article. A grievance pertaining to a specific article of this agreement must be filed as a grievance under the provisions of this agreement. Civil Service issues not addressed in this agreement cannot be grieved under the provisions of this agreement. 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 this 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 this 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.

ARTICLE 15

HOURS OF WORK AND OVERTIME

15.1 The purpose of this Article is to define hours of work but nothing in the 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 Forty (40) hours in a seven (7) day period shall constitute a standard work week for an employee covered by this Agreement, except as hereinafter provided. The City defines standard work period as Monday through Sunday. Non-exempt employees shall be paid time and one-half ($1\frac{1}{2}$) their regular hourly rate of pay for hours worked in excess of forty (40) hours in any work period. For the purposes of computing overtime compensation, only those hours actually worked shall be utilized, except as identified hereunder. Nothing herein shall guarantee an employee overtime payment unless the employee actually worked in excess of a forty (40) hour work week. Scheduled personal Leave (PL) will count as hours worked for the purposes of calculating overtime, however unscheduled Personal Leave (PL), bereavement leave, jury duty, holiday, and all other forms of paid leave shall not.

15.3 In the event of an operational emergency, as determined by the Department Director or a Division Head, an employee may receive compensation at a rate of one and one half ($1\frac{1}{2}$) their regularly hourly rate for a specified duration, even if the employee has not worked in excess of forty (40) hours in the work week:

Change in Schedule - Where a Department Director or the Division Head changes the work schedule (e.g., workdays, starting and/or quitting time, days off, etc.) of any employee or group of employees, the affected employees shall be given seven (7) calendar days' notice, unless an emergency or operational emergency necessitates a quicker change. Should it be necessary to change schedules to ensure one (1) licensed operator is on duty; schedules can be changed without the seven (7) calendar days' requirement and without paying overtime. Personnel who are not provided the appropriate notice will receive pay at one and one-half ($1\frac{1}{2}$) times the regular rate of pay for the first changed shift.

Flexible Scheduling - In the event an employee has scheduled personal leave and is required to work in addition to his/her normal work schedule resulting in greater than 40 hours for the week, has the option to either reduce their scheduled personal leave request or accept the overtime or comp time.

Call Back - An employee who has left their normal place of work and who is "called back" for overtime work must report to his/her designated work area within forty-five (45) minutes and shall receive a minimum payment of three (3) hours at time and one half ($1\frac{1}{2}$) or the actual hours worked at time and one half ($1\frac{1}{2}$), whichever is greater. If an employee is called out multiple times during any three-hour "call back" period, and his/her actual hours do not exceed three (3) hours, the employee shall receive three (3) hours pay at time and one half ($1\frac{1}{2}$). If an employee covered by this agreement is

required to work additional hours continuous with their scheduled work hours, only the work hours worked outside the scheduled hours will be compensated at time and one-half (1 ½). This section shall not apply if hours worked because of a call back extend into the start of the employee's regular work period (i.e., If you are scheduled to work at 7:00am and you get called in and report at 5:00 am, the hours subject to call back is from 5:00am-7:00am, which is two hours. This is less than three-hours, therefore the employee will receive the three-hour minimum, after 7:00 they will be compensated per their regular schedule).

Ordered Appearances - An employee, who in the exercise of their official duties, is court ordered, subpoenaed, or required to appear by the City to attend court involving a job-related case on their off-duty, will receive a minimum of three (3) hours pay at the rate of one and one half (1 ½) their regularly scheduled rate of pay. Employees must adhere to Article 19, Jury Duty, and Appearance as a Witness. This section does not apply in the event the employee is the plaintiff in the litigation against the City, if the employee is a grievant in an arbitration against the City, or if the employee is court ordered, subpoenaed, or required to appear at the request of a plaintiff or grievant adverse to the City. In the event an employee claims time not actually spent in an off-duty court appearance, they may be discharged or disciplined. All hours under this section in excess of the three (3) hours minimum will be considered hours worked and be paid at the regular straight time or overtime rate, if more than 40 hours has been worked during the week.

Special Events in a week including a Holiday - If there is a Special Event in the Parks and Recreation department (i.e., baseball tournament) scheduled in the same period as a holiday and the employee has not utilized any PL in that period, the holiday hours will count as hours worked in the calculation of overtime. This may apply to employees covered under this agreement who report to a department other than Parks and Recreation but are required to work the event.

15.4 Scheduled overtime shall be defined as overtime scheduled with the employee prior to the employee leaving the work site, additional hours contiguous with their normal work time, or overtime scheduled to commence when the employee is provided more than eight (8) hours of notice. This time will be compensated at a rate of time and one-half (1 ½) if the employee has exceeded forty (40) hours in the work week.

15.5 Employees shall only be entitled to work as assigned or authorized by his/her 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. No employee shall authorize overtime for himself/herself, and no employee is permitted to work overtime from home without prior written authorization.

15.6 Overtime hours shall be distributed as nearly equal as possible among employees in the same classification within a division as long as such sharing will not delay or increase the cost of the City's operations.

15.7 All employees shall be required to start work on time, shall not leave the job early,

shall be prompt in reporting to their assigned duties, and shall faithfully perform their duties, unless previously authorized by a supervisor.

15.8 Employees covered by this agreement who work (not to include any use of paid time) sixteen (16) or more hours in any twenty-four (24) hour period will be required to take a minimum of a six (6) hour rest immediately before returning to work. Unless approved by management, employees will not be permitted to volunteer for overtime if they are unable to work all or part of their next scheduled shift due to the rest period described herein. This provision may be suspended in declared emergencies.

15.9 Compensatory Time - In accordance with the Fair Labor Standards Act (FLSA), compensatory time may be granted in lieu of overtime to non-exempt employees. Compensatory time shall be credited to the employee at one- and one-half hours (1 ½) hours of compensatory time for each overtime hour worked. No employee may accrue more than 96 hours of compensatory time. This 96-hour limitation represents no more than 64 hours of actual overtime worked. A non-exempt employee who has accrued compensatory time shall be encouraged to use accrued compensatory time before using any personal leave. An employee may generally request to utilize this leave under the same terms identified for scheduled leave in Article 17, Personal Leave Time, however this time will be approved unless it will unduly disrupt operations. The City may, at its option and at any time, pay an employee cash in order to reduce or eliminate accrued compensatory time at the employee's current rate of pay. When a non-exempt employee separates employment from the City for any reason, all unused compensatory time shall be paid to such employee at the employee's final regular rate of pay. Compensatory time will not be counted as hours worked for calculating overtime.

15.10 There will be no duplication of premium payments and no claims that provide for "overtime on overtime".

15.11 Employees working in the Police Department are eligible to receive special detail at the applicable rate of pay and all other established parameters. Special detail is defined as voluntary, special event work performed for a third-party employer other than work performed at City-sponsored events, that is paid by the third-party employer to the City and the City, in turn pays these second party wages to the employees as a separate line item on the employee's pay slip after deducting a fifteen percent (15%) administrative per-hour fee thereof for the use of City property while performing the special event work. The hourly rate charged to the third party will be determined as per City ordinance. These third-party wages will not be considered as wages paid by the City and will therefore be excluded for the 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 third-party employer.

Employees 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. 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 The City will recognize the following as paid holidays for employees:

1. New Year's Day
2. Martin Luther King Jr. Birthday
3. Good Friday
4. Memorial Day
5. Juneteenth
6. Independence Day
7. Labor Day
8. Veteran's Day
9. Thanksgiving Day
10. Friday after Thanksgiving Day
11. Christmas Eve
12. Christmas Day

16.2 For those holidays where the City is officially closed for business and a holiday fall on an employee off duty day or on a scheduled Personal Leave day, he or she shall receive holiday pay at his/her regular rate of pay for the number of hours of his/her regular work shift.

16.3 Employees who are required to be on duty on any holiday covered under 15.1 shall be paid time and one-half ($1 \frac{1}{2}$) their regularly hourly rate (coded as overtime) for each hour actually worked on the holiday, in addition to receiving the number of hours of his/her regular work shift as holiday pay (coded as holiday). Under no circumstances will holiday pay exceed two and one-half ($2 \frac{1}{2}$) times one (1) day's pay at the regular rate unless there is required overtime.

16.4 The holiday hours shall not be allowed if an employee has a full shift of unscheduled absence on the workday prior to or the workday following such holiday. This is to prevent employees from creating an operational hardship in order to extend their time off around the holiday. The Department Head shall have discretion to allow for the paid holiday in the event of illness or emergency circumstances that have been verified by noting these circumstances in the time and absence system.

16.5 For non-shift personnel, if a holiday falls on a Saturday or Sunday, the City will designate another day as the holiday. For employees who work in a twenty-four-hour operation (24), the holiday will be observed on the actual holiday.

ARTICLE 17

PERSONAL LEAVE TIME

17.1 Employees shall start to earn Personal Leave (PL) Time allowances as of their date of appointment. New employees shall be eligible to begin using paid PL Time in accordance with Article 11, Probationary Employees.

17.2 Personal Leave Time cannot be used before it is earned. Personal Leave Time shall accrue at an equally prorated amount per pay period as follows:

<i>Length of Continuous Service:</i>	<i>Hours Accrued Annually:</i>
Less than 5 Years	225 Hours
5th Year thru 9th Year	250 Hours
10th Year thru 14th Year	275 Hours
15th Year thru 19th Year	300 Hours
20 + Years	325 Hours

An employee who is on unpaid status for more than half of their standard work week shall not accrue paid leave credit for such week of service.

17.3 Personal Leave must be requested and approved using the City's time and absence system at least three working days in advanced to be considered "scheduled leave".

17.4 In the event of an emergency, such as personal or family illness or other unforeseen emergency, no advance notice for the use of Personal Leave Time will be required. To maintain service, all bargaining unit members agree that unscheduled Personal Leave Time will only be used when it is impossible to give the advance notice normally required for the use of scheduled Personal Leave Time. Employees shall request an unscheduled leave absence under this section as soon as possible, but not later than one (1) hour prior to the start of the work period. Approval of PL which has not been scheduled in advance shall be at the discretion of the Department Director after consideration of the needs of the employee and the effect of the absence on the work department. Unscheduled personal leave shall not be approved when the employee could have reasonably anticipated the need and submitted a timely request in advance. Extenuating circumstances will be considered. Abuse of PL privileges shall be considered cause for disciplinary action or dismissal. Unscheduled Personal Leave Time is leave that is not approved in advance in accordance with Article 17.3. Requests for unscheduled Personal Leave which is not related to an illness or other emergency may be denied by the employee's Supervisor. Generally, the City will not require a doctor's certificate for single occurrences of unscheduled PL. However, the City may request medical certifications related to FMLA, requests under the ADA to determine qualifications or ability to return to work after an absence, or to substantiate unscheduled absences. The decision to require a doctor's certificate shall not be subject to grievance or arbitration procedures of this agreement.

17.5 Personal Leave banks cannot exceed 675 hours as of September 30th, of each year. Hours in excess of 675 each September 30th will be automatically forfeited. Exceptions to this automatic forfeiture include unique circumstances approved in advance by the employee's department director and the Administrative Services Director.

17.6 An employee may exchange personal leave hours for an equivalent amount of pay or request it be deferred into the employee's ICMA-RC 457 account as follows:

- Those employees with at least 225 hours of Personal Leave (PL) may exchange up to 40 hours
- Those employees with at least 450 hours of Personal Leave (PL) may exchange up to 80 hours
- Those employees with at least 675 hours of Personal Leave (PL) may exchange up to 120 hours.

In general, requests must be made to the Human Resources Division at least two weeks in advance of the desired payment date. Every attempt will be made to process the payments by the requested date, except in extenuating circumstances. All hours paid under this section will be deducted from the employee's banks as of the date payment is made.

17.7 An employee leaving the municipal in good standing after giving two weeks advanced notice of separation of service shall be compensated (or request compensation be deferred to the ICMA-RC 457 plan) for all accumulated unused personal leave up to a maximum accrual as provided in Section 17.5.

An employee who fails to give two weeks' advance notice of separating service or is terminated from the City for cause shall forfeit all accrued personal leave. Personal Leave shall not be used as any part of the required two weeks' notice or to extend service. An employee may use personal leave once they have submitted their notice to separate service provided, they still physically work a minimum of two (2) weeks prior to their last day.

In the event of a death, the employee's estate or the employee's designated beneficiary shall be entitled to a lump-sum payment of all accrued Personal Leave.

17.8 Both parties agree to work towards establishing a Personal Leave donation process to allow employees who have exhausted or are about to exhaust his/her personal leave accruals. The donation of leave time is designed to assist employees and their families during times of distress. Participation in a leave donation process is voluntary. The City shall be responsible for the donation or lack of donated leave time to an employee.

ARTICLE 18

LEAVE OF ABSENCE

18.1 Family Medical Leave - The City of Port Orange will grant leave to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA) and in accordance with the City General Administrative Policies Policy 1-22.

18.2 An employee may request a Leave of Absence, without pay, when all paid time off has been exhausted. Leave of Absence may be granted at the sole discretion of the City, in periods not to exceed thirty (30) day increments.

18.3 Holidays, personal 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. Employee shall be responsible for insurance premiums for single and dependent coverage during unpaid leave of absence. If permitted by the Retirement Plan, the employee may maintain his retirement credit by paying both his and the City's share of the Retirement Plan premiums.

18.4 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 pay rate as at the time of commencement of leave of absence.

ARTICLE 19

JURY DUTY AND APPEARANCE AS A WITNESS

19.1 Any employee covered by this Agreement who is summoned to perform jury service during his/her 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 their supervisor, to be provided to payroll. 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. All fees, excluding travel fees, will be signed over to the City.

19.2 An employee subpoenaed as a witness for a court proceeding during his/her normal working hours, not involving personal litigation, shall be granted leave with pay to appear and testify pursuant to the subpoena. An employee who is released from the subpoena prior to four (4) hours from his normal end of the workday, shall be required to report to his work site immediately after his/her release. All fees, excluding travel fees (unless a City vehicle was utilized), will be signed over to the City. The employee shall provide a copy of the subpoena to his/her supervisor within twenty-four (24) hours of its service or receipt.

19.3 Any court proceedings of a personal nature will not be subject to this article.

ARTICLE 20

BEREAVEMENT LEAVE

20.1 All permanent employees may be granted time-off with pay to arrange and/or attend funeral services in the event of a death in the employee's immediate family or member of the same household. Such time-off may be granted as required to a limit of up to three (3) days off with pay. At no time will an employee be granted more than sixty-four (64) hours in a given fiscal year.

20.2 Management may, upon request and at its sole discretion, require the employee to verify the employee's relationship to the deceased, and to provide proof of death.

20.3 In the event of the need for additional time for a death, an employee may request to use accrued personal leave time provide the Department Head is notified in advance of such leave.

ARTICLE 21
MILITARY LEAVE

21.1 Military Leave For Active Duty - Any regular or contract employee who leaves the service of the City to join the military forces of the United States or is called to active duty for service or training shall be placed on military leave in accordance with conditions set forth in the Uniformed Services Employment and Reemployment Rights Act (USERRA) and Florida Statutes 115.09, 115.14 and 250.48. These laws currently protect employees' job rights and provide those employees who are called to active-duty military service shall be placed on a fully paid military leave of absence for a period not to exceed 30 calendar days per activation.

21.2 National Guard or Military Reserve - Any regular or contract employee who is a commissioned reserve officer or reserve enlisted personnel or a member of the National Guard shall be placed on military leave in accordance with conditions set forth in USERRA and Florida Statutes 115.07, 115.14 and 250.48. Such leaves of absence shall not exceed 240 working hours during any one calendar year beginning January 1 for purposes of drill or annual training.

21.3 All such leaves of absence as described in either Article 21.1 or 21.2 above shall be verified by official orders or appropriate military certification by the Department Head within 3 days after receipt by the employee. During periods of military leave, the employee shall continue to receive City benefits so long as the employee's portion of benefit payments is maintained during this period. While on military leave, the employee shall not accrue personal leave and shall not receive holiday pay except for during the 30 calendar days of the active-duty military leave or the 240 working hours of annual training. The employee shall be paid at his/her base salary or pay rate for the amount of paid leave as stated above in a. and b. Leaves of absence for additional or longer periods of time for assignment to active duty or annual training shall be without pay or charged as annual leave as requested by the employee. Such leave will be granted without loss of time or seniority in accordance with USERRA and Florida Statutes, Chapter 115.07, 115.09, 115.14 and 250.48.

ARTICLE 22

AUTHORIZED USE OF PRIVATE AUTOMOBILES

22.1 Any employee authorized to use his private automobile in the performance of his official City duties will be compensated at the approved City rate corresponding to the most current "standard mileage rate" as set by the I.R.S. for business miles driven. 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.

22.2 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.

22.3 Those personal vehicles are required to have a 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 \$25,000. The City will not assume responsibility for any damages to the 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 23

UNIFORM AND EQUIPMENT

23.1 The requirement to wear uniforms will be at the discretion of the Department Head. Employees will not be eligible for a uniform issue if the Department Head determines that uniforms are not required. The City will furnish uniforms to those employees required to wear a uniform. Cleaning of the uniform will be the responsibility of the employees. 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.

23.2 Employees shall be responsible for taking reasonable care of all issued equipment. The City agrees to furnish employees, at City expense, replacement uniform items that are worn, torn, or damaged through normal wear and tear, rather than through negligence or misconduct. Appropriate deductions will be made from the employee's paycheck(s) if items of uniforms/equipment are not surrendered upon separation of employment or are lost/damaged due to employee negligence.

23.3 The City agrees to have each City vehicle inspected by a certified mechanic.

23.4 The City will furnish safety equipment the City determines necessary to do the job, except safety footwear and prescription safety glasses, which shall be addressed below. Where safety equipment is furnished by the City, the employees must wear such safety equipment when instructed to do so and are subject to disciplinary action for failure to do so.

If requested, the city will reimburse the costs of prescription safety glasses for employees in those positions they require safety glasses, up to \$100.00 once every two years upon proof of purchase.

Employees who sustain any breakage or damage to their prescription glasses during the performance of their job duties, shall be eligible for reimbursement for repair or replacement of prescription glasses, up to a maximum of \$100.00 per item annually. The City shall have discretion to review the available facts and circumstances surrounding the damage to the prescription glasses, for the purpose of determining eligibility for reimbursement. Breakage or damage caused by neglect or carelessness by the employee shall be disqualified from the reimbursement eligibility.

23.5 The Department Head and Risk Manager shall jointly determine the work and/or safety related necessity of safety footwear for each job classification. Members in job classifications requiring safety footwear who have completed six months of employment (and each fiscal year thereafter) shall receive ~~reimbursement~~ an allowance of \$200.00 from the City each fiscal year, for the purchase of safety footwear. Employees shall submit proof of purchase for footwear that meets appropriate safety standards. Receipts must be turned into their supervisor within fifteen (15) days of purchase and no later than December 1st. Failure to submit the receipt by the due date will result in the footwear allowance being taxed as ordinary income. New hires may purchase

safety footwear and shall be reimbursed up to the amount of \$200.00 upon proof of purchase of safety footwear meeting the appropriate safety standards.

23.6 The City will issue uniforms in compliance with IRS regulations pertaining to work clothes and Uniform Allowances and Reimbursements.

ARTICLE 24

PHYSICAL EXAMINATION AND WORKERS' COMPENSATION

24.1 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. At the end of sixty (60) calendar days, the employee shall only be entitled to benefits provided by the Workers' Compensation law. However, the employee may request to utilize available paid time off in order to receive compensation for the amount not paid under the Worker's Compensation carrier. At no point shall the compensation be in excess of their normally scheduled amount

C. Leave for Workers' Compensation shall run concurrent with leave as covered under Family Medical Leave Act (FMLA).

D. If, in the City's opinion, this benefit is being abused, this Article will be subject to renegotiation at that time and prior to the expiration of this contract.

24.2 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 an examination under this Article shall be to determine whether the employee has a physical 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 determined by the physician to have it corrected. During this period of time and after consulting with the Administrative Services Director, the City Manager, at his/her 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 their disability, the employee may utilize available paid time off, 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 the City service.

24.3 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 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.

ARTICLE 25

ALCOHOL AND DRUG TESTING

25.1 The City of Port Orange recognizes that drug and alcohol abuse is a growing problem within our nation's work force. The City also recognizes the tremendous costs, both in terms of efficiency and in human suffering, which drug and alcohol abuse may cause. Substance and alcohol abuse by employees of the City may have an adverse impact on City government, operations, and the health, welfare, and safety of City employees and the general public. Acknowledging the necessity for action, the following Alcohol and Drug Testing Program is hereby initiated for all employees.

A. Applicants for certain positions will be required to submit to testing for alcohol or substance abuse as a condition of accepting employment, in accordance with General Administrative Policy 1-55, Pre-Employment Security Checks

B. All applicants shall be required to sign a certification prior to commencing employment which contains the following language:

I declare that I am not currently taking any controlled narcotic substance and do not use illegal drugs, including but not limited to, marijuana or cocaine. I understand that I am subject to screening for drugs, alcohol, or substance abuse and that positive findings will disqualify me for employment. I further understand that in the event I am currently taking any medications prescribed by a physician, it is my obligation to so inform the City prior to testing or anytime thereafter.

C. The City prohibits all employees from:

1. Selling any drug, including alcohol or prescription drugs, while on duty, unless the employee is legally entitled to sell the substances in question under the circumstances.
2. Possessing any alcoholic beverage or unlawful drug while on-duty or on City property at any time.
3. Using any substance (including illegal drugs, prescription drugs not prescribed for the employee by a physician, alcohol, or any other substance) which may adversely affect job performance.

This may include both use while on-duty and use while off-duty which can adversely effect on-duty job performance.

D. The City shall have the authority to require employees to submit to toxicology and/or alcohol testing designed to detect the presence of any controlled substance, narcotic drug, or alcohol. The City agrees that requiring employees to submit to toxicology and/or alcohol testing shall be limited to those

circumstances which indicate that reasonable cause exists that the employee is under the influence of such substances, suffers from substance or alcohol abuse, or is in violation of the City of Port Orange Personnel Rules regarding the use or possession of such substances.

E. In the event the City has a reasonable cause to believe that an employee is under the influence of drugs or alcohol, the City may request that the employee submit to breathalyzer tests, blood tests, urinalysis, and/or other appropriate testing methods.

F. If the employee tests positive for alcohol or drugs, the City may impose disciplinary sanctions. Discipline for use on-duty may include discharge.

The City may direct an employee who has tested positive for drugs to provide a hair sample for confirmation purposes. Employees who test positive for drugs may request a hair sample confirmation test be administered within one (1) day of receiving notice of a positive test. If an employee fails or is unable to provide a hair sample within the time period specified, the employee waives his or her right to use the hair sample as a confirmation and the result of the initial drug test shall be considered final. The hair sample shall not be used to confirm a positive alcohol test.

Any employee who is arrested for selling illegal drugs while off-duty shall be subject to disciplinary actions up to and including discharge.

All employees who must use a prescription drug which may cause adverse side effects (for example, drowsiness, impaired reflexes, or reaction time) shall so inform the City that they are taking such medication on the advice of a physician. It is the employee's responsibility to inform the City of the possible side effects of the drug on his/her performance and expected duration of use.

G. In the event the City requests that an employee submit to breath, blood, urine, and/or other tests and the City employee chooses not to submit to such test or tests, then the reasonable cause to believe that the employee was under the influence shall be grounds for appropriate disciplinary action.

H. In the event the City requests that an employee submit to drug or alcohol tests, the costs of such tests shall be paid by the City.

I. Direct involvement in an accident by an employee while on-duty shall be considered an example of a reasonable cause to require the employee to take drug or alcohol tests, where it appears that such accident would not have occurred but for the possible impairment of the employee involved by drugs or alcohol.

J. Employees required to take regularly scheduled physical examinations shall have included as part of the examination a test for alcohol or drugs.

K. Employees with job performance or attendance problems shall bear the primary responsibility to seek diagnostic and appropriate treatment for such problems. In the event an employee seeks assistance and treatment for an alcohol or drug-related problem, the above-mentioned disciplinary system for violation of City Policy shall not be followed. 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. The request must be voluntarily made in writing prior to the institution of disciplinary measures for alcohol or substance abuse. City employees with job performance and attendance problems or who otherwise fail to meet the requirements of his or her job and do not seek assistance shall be subject to the disciplinary actions as set forth by City Policy.

L. The result of any drug or alcohol test shall be considered a medical report and shall be confidentially handled as if part of an internal affairs investigation of the City, and the employee involved shall be afforded a pre-disciplinary hearing which allows the employee to challenge or rebut the test findings prior to any disciplinary action being taken.

M. Decisions of an arbitrator under this Article shall be limited to a determination of whether there existed reasonable cause to activate the provisions of this Article and if this issue is determined in the employee's favor, he shall be reinstated. The question of whether or not the employee was under the influence of alcohol or drugs shall be subject to arbitration, but not the subsequent disciplinary measure imposed by the City.

N. Reasonable cause as used in this Article shall be reduced to writing and signed by the person initiating the allegation before activating the provisions of this Article.

25.2 The City shall implement an alcohol and controlled substance testing program that meets the minimum requirements of the testing procedures which are required by Section 112.0455 and Section 440.102, Florida Statutes, Rule 69L-9 and Chapter 59A-24, Florida Administrative Code, and Title 49, Code of Federal Regulations to identify employees who use illegal drugs or abuse alcohol, either on or off the job. The City specifically agrees that it shall confine any employee sanctions to disciplinary actions authorized by its Drug-Free Workplace Policy as amended. In addition, the City agrees that it shall issue consistent levels of discipline to employees who receive verified positive tests for drug or alcohol use, whether the testing is administered as part of a random test, or a test based on reasonable suspicion.

The City of Port Orange is a drug free workplace and as such shall comply with all laws, rules and regulations associated with being a drug free workplace. Additionally, the City of Port Orange requires in many of its job classifications that employees must have CDL's. The City of Port Orange and employees shall comply with all laws, rules and regulations related to drug and alcohol testing for CDL's.

First Offense is a mandatory 30 consecutive calendar day suspension without pay. Any holidays that occur during the suspension period shall not count as a day in meeting the suspension requirement. An employee who tests positive shall not accrue any personal leave time during the suspension. An employee, covered by this agreement and who tests positive for drugs and alcohol, shall be required to pay their normal employee and dependent health, dental, and life insurance premiums during the suspension period. The employee shall not be eligible to accrue or use personal leave during the suspension without pay period. The employee shall not be eligible for bereavement leave or any other type of paid leave during the suspension period with pay that may be included as part of this agreement. Prior to returning to work, an employee shall be required to take and pass a drug and alcohol test. The cost of the drug and alcohol retest shall be at the employee's expense. Any employee who tests positive for either drugs or alcohol shall be subject to 12 random drug tests during the following 12-month period at the employee's expense, or more if recommended by a Substance Abuse Professional (SAP). Failure to pass any drug and alcohol test during this 12-month period of time shall result in immediate termination and forfeiture of any personal leave hours that may have accrued to the employee. Any employee who tests positive shall enroll in mandatory counseling program as a condition of returning to work. The employee shall provide weekly treatment statements to the City by a physician, professional counselor, counseling service, EAP or any other provider of drug and alcohol counseling and rehabilitation services.

Second Offense: Automatic Termination.

25.3 As used in this Article, a positive alcohol reading, or a positive alcohol test shall mean a blood or breath alcohol level of .04 or above.

If an employee provides a valid blood or breath sample of .02 - .0399, he or she will be removed from the workplace and placed on unpaid leave until the BAC is below .02. For administrative purposes, a BAC of .02-.0399 shall not be considered a positive result.

ARTICLE 26
INSURANCE

26.1 The City agrees to maintain a hospitalization program for the employees with the City paying the lowest “employee only” rate among all health insurance plans with a copay offered. The employee will be responsible for the cost of dependent coverage. The employee who elects coverage with a carrier/plan which has a higher rate shall pay the difference in any premium charged by that carrier.

ARTICLE 27

TUITION REIMBURSEMENT AND TRAINING

27.1 Tuition Reimbursement

A. Subject to budget constraints and availability of funds, the City agrees to reimburse the employee for the cost of up to two (2) approved classes per semester (fall, spring, summer). The employee will be reimbursed actual course expenditures (excluding books and materials), not to exceed the In State per Credit Hour Baccalaureate rate at Daytona State College (DSC) rate. The City will reimburse the employee for actual course expenditures (excluding books and materials) for graduate course work at the rate of one half (1/2) the in-State Per Credit Hour Graduate rate at 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.

B. Employees must have completed twelve (12) months of service with the City to be eligible for taking courses as allowed under this article.

C. 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.

D. The employee shall not receive reimbursement 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.

E. The City will require each employee to remain in the service of the City for one (1) year after completion 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.

F. It is clearly understood that all tuition reimbursement is subject to budget constraints and availability of funds as defined in the line item 001-1000- 519.40-10. 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.

27.2 Training Reimbursement

A. If an employee is hired as an underfill into a position required to have a commercial driver's license (CDL), and does not already have this designation, upon successful completion, the City will reimburse an employee for the driver license fee to obtain the original CDL. This reimbursement will only include a reimbursement for an endorsement if required by the City. The employee may request a one-time reimbursement for the fee of a CDL skill test upon successfully obtaining their CDL. Reimbursement will only be paid at the lowest cost available found on the Florida Statewide Contracted Commercial Motor Vehicle Skill Test Sites list, with proof of payment, and is subject to availability of department funds.

B. For CDL renewals, for those employees required by the City to possess a CDL, the City will pay for the renewal of the Commercial Driver Licenses (CDL) with required endorsements.

C. Mandatory Training: Subject to departmental training budget constraints, individual departments may provide additional mandatory, job related training, certifications, or continuing education opportunities to covered members. An employee shall be compensated for time spent attending required training as provided for by law. In the event an employee fails to successfully complete the requirements of the course, the city shall not be required to further compensate the employee for additional training costs.

D. Non-Mandatory Training: The city/department director may, but has no obligation to compensate, reimburse, or provide up-front payment to employees for non-mandatory training.

27.3 All tuition reimbursement and training costs paid by the City will be administered in accordance with IRS regulations pertaining to fringe benefits.

ARTICLE 28
WAGES

28.1 The following pay adjustments will occur during this contract period:

A. Effective the first full pay period following the ratification of this agreement by both parties or following October 1, 2022, whichever is later, for fiscal year 2023, employees who have been employed with the City a minimum of six months on or before September 30, 2022 and whose base pay is below the maximum of their pay range shall receive a one dollar (\$1.00) per hour increase to their base pay up to the maximum of their pay range. Employees who have been employed by the City for less than six months on September 30, 2022, shall receive a one dollar (\$1.00) per hour increase to their base pay upon the successful completion of probation. The minimum and maximum pay range for each position will increase by one dollar (\$1.00) per hour.

B. Effective the first full pay period following April 1, 2023, employees who have been employed with the City a minimum of six months on or before September 30, 2022, and whose base pay is below the maximum of their pay range shall receive one dollar (\$1.00) per hour increase to their base pay, up to the maximum of their pay range. Employees who have been employed by the City for less than six months on April 1, 2023, shall receive a one dollar (\$1.00) per hour increase to their base pay upon their successful completion of probation. The minimum pay range for any position shall be no less than \$15.00 per hour effective April 1, 2023. The minimum and maximum pay range for each position will increase by one dollar (\$1.00) per hour.

28.2 All future wage increases beyond the term of this contract shall be subject to negotiation by the parties.

28.3 The City Manager may review and amend the pay schedule during the fiscal year as appropriate to provide for and implement new job classifications, reclassifications, title changes, or pay range changes. The City Manager shall review the pay schedule annually prior to submission of the proposed budget to the City Council and shall recommend to the City Council any amendments deemed necessary to properly maintain the pay schedule. The City may at their discretion elect to fully utilize this provision during the length of this contract to continue to address market concerns holistically or based on individual positions based on organizational need. The City will evaluate the impact of current employees within a classification when determining the appropriate course of action.

28.4 The City performance evaluation for regular full-time and regular part-time employees is a satisfactory/unsatisfactory rating system. If the employee's performance for the previous year has been satisfactory, he/she will receive a rating of satisfactory. The employee will then be scheduled for an evaluation the next year. Should the employee receive a rating of unsatisfactory, due to unsatisfactory work or

performance, the employee will be placed on a performance improvement plan and re-evaluated in a minimum of ninety (90) days. If the employee has still not raised his/her performance level to satisfactory after 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. An employee may be placed on a performance improvement plan at any time throughout the year to address performance concerns.

28.5 Rates of pay for new hires, promotions, demotions, and transfers shall be placed within the appropriate pay range in accordance with General Administrative Policy 1-33, Placement of Employees Within Pay Ranges.

28.6 On-Call Assignment - Employees serving an on-call assignment in a classification that requires 24/7 on call status for an entire week for shall receive the equivalent of two (2) hours of straight time as a non-pensionable payment added to their compensation for that week for each day on call. Employees serving an on-call assignment in a classification that requires less than a 24/7 on call status shall receive the equivalent of one (1) hour of payment at straight time as a non-pensionable payment added to their compensation for that week for each day on call. This time will not be considered "hours worked" for the purpose of calculating overtime.

A. If an employee is "called out", they will receive compensation in accordance with Article 15, Hours of Work and Overtime.

B. On Call Assignments will be made in accordance with Departmental Standard Operating Procedures

28.7 Specialty Pay - The City has determined that it is appropriate and beneficial in some circumstances to provide employees with opportunities to earn compensation in addition to their base wage or salary rates in the form of specialty pay. Specialty pay opportunities can benefit both individual City employees and the City as an organization. Employees can benefit not only through receipt of direct financial rewards for acquiring additional licenses, certifications and/or specialized training, but also through enhanced promotion and career flexibility opportunities which their attainments may provide for them. The City benefits when its employees are motivated to acquire knowledge, skills and abilities which will enable them to better serve the public. In addition, specialty pay opportunities can improve employee morale and may enhance the City's ability to attract and retain employees, especially in skilled positions which are sometimes difficult to fill. This specialty pay has been awarded to historically to employees in a variety of ways. For employees who earn a qualifying certification after the ratification of this agreement, they will be administered as follows:

A. Specialty pay under this article shall not be rolled into an employee's base pay but will be paid on their regular check each pay period as additional pay. The annual amount will be divided by the number of regular pay periods and will be awarded per that schedule.

B. Specialty pay is intended to be awarded for job related certifications in excess of the minimum qualification required for a position. Employees shall not receive certification pay for a license/certification that is a minimum requirement of their classification.

C. Any employee who is granted Specialty Pay for a function shall be obligated to perform the work in the licensed discipline, unless otherwise specified for dual licensure herein this Article. If the employee ceases to have a valid license in good standing or fails to satisfactorily perform duties assigned to them based on the scope of the license, the specialty pay for that license shall be terminated immediately. For employees who previously had specialty pay rolled into their base pay and the license is discontinued or allowed to lapse, the amount equivalent to the annual amount described herein, converted to an hourly rate, will be reduced from their base pay. If the employee then reobtains this license, they will fall under the provisions found below.

D. Building Inspectors/Plans Examiners shall be eligible for Specialty Pay in accordance with General Administrative Policy 1-31, Employee Incentive Pay Programs. The amount of the benefit covered under this Policy will not change for the duration of the contract.

E. Code Compliance Inspectors shall be eligible for Specialty Pay in accordance with General Administrative Policy 1-31, Employee Incentive Pay Programs. The amount of the benefit covered under this Policy will not change for the duration of the contract.

F. Treatment Plant Operators and Shift Supervisors shall be eligible for \$2,000.00 a year for each Water or Wastewater operator license obtained in excess of their minimum required license, up to an annual maximum of three (3) licenses (\$6,000.00), to include eligibility for dual licenses. In the event the City determines that Treatment Plant Operators holding different levels of licenses will be treated as distinct positions, this Specialty Pay may cease to be valid.

G. Employees in the Public Utilities Field Operations Division, Public Works and Utilities Engineering Division, Lift Station Mechanics, and Plant Mechanics shall be eligible for \$1,500.00 a year for each Distribution or Collections License in excess of the minimum required license for their position. Employees are not eligible to receive more than \$4,500.00 in Specialty Pay, to include eligibility for dual licensure. In the event the City determines that licensed and unlicensed Utility Systems Operators will be treated as distinct positions, this Specialty Pay may cease to be valid for the initial license. For employees in Field Operations position under this subsection who have already obtained their Water or Wastewater License Treatment Plant Operations License (TPO), the TPO License shall supersede through the top level of distribution or collection licensing and shall only be eligible for one license in the other discipline.

H. Automotive Mechanics shall be eligible for the following:

- a. \$500.00 a year for each ASE Certification, Allison Auto Transmission, or Emergency Vehicle Technician certification earned.
 - b. Automotive Mechanics are not eligible to receive more than \$4,000.00 in Specialty Pay between all certifications.
 - c. Automotive mechanics will receive a tool allowance of \$250.00 per year.
- I. The Public Utilities Director may determine the number of employees required to hold a Back Flow Prevention License. Employees who are assigned to this role and have obtained this certification shall be eligible for \$500.00 annually.
- J. The Parks and Recreation Director and Public Works Director may determine the number of employees required to hold a FDACS Pesticide Applicator License in their respective departments. Employees who are assigned to this role and have obtained this certification shall be eligible for \$500.00 annually for each level of certification obtained, not to exceed \$2,500.00 annually for any single employee.
- K. The Parks and Recreation Director may determine the number of employees required to hold a NRPA Playground Safety Inspector license. Employees who are assigned to this role and have obtained this certification shall be eligible for \$500.00 annually.
- L. The Parks and Recreation Director may determine the number of employees required to hold Department of Health Certified Pool Operator license. Employees who are assigned to this role and have obtained and have continuously maintained this certification shall be eligible for \$500.00 annually.
- M. Maintenance Workers, Equipment Operators, Heavy Equipment Operators, Crew Chiefs, and Supervisors assigned to the Roads and Streets Division of Public Works shall be eligible for \$500 a year for each level of the Sign and Pavement Marking Technician certification in excess of the minimum required license for their position. Employees are not eligible to receive more than \$1,500 in Specialty Pay.
- N. Employees in the Stormwater Division shall be eligible for \$500.00 per year for certifications in excess of the minimum required license for their position. Employees are not eligible to receive more than \$1,500.00 in specialty pay.
- o Stormwater Operator level 1
 - o Stormwater Operator level 2
 - o Monitor Storm Outflows
 - o Stormwater Management Inspector

Employees who had Specialty Pay awarded prior to this ratification of this Agreement will maintain their previous certification as awarded at the time of obtaining the license.

The City and the Union acknowledge that during the duration of this contract, additional circumstances may be identified in which the City determines it is appropriate to provide Specialty Pay to employees. These instances will be documented in Policy 1-31 to determine what employee group is eligible and the amount in order to achieve consistent application of the Specialty Pay. This additional Specialty Pay will be subject to budgetary constraints. It is understood that it is not the intent for every training course completed by an employee or certification obtained to be eligible for Specialty Pay. It is the responsibility of every employee to ensure they provide proof that each license is maintained as valid upon renewal or expiration to the Human Resources Division and their Department, and to notify accordingly if a license is lost.

28.8 Shift Differential – The following classifications will be eligible for Shift Differential in accordance with the following provisions:

A. Only classifications who are regularly and permanently assigned shifts other than first shift are eligible for this program. Effective 10/01/2022, classifications eligible for the program include Treatment Plant Operators and Shift Supervisors in the Utilities Division, Custodian, and Custodial Crew Chiefs in the Public Works Building Maintenance Division and the Parks Maintenance Divisions over the evening crew. Effective 10/01/2023 the City will evaluate the expansion of this program, which may include the classification of Recreation Coordinator and Program Specialist in Athletics, or other positions identified and determined as eligible by the City.

B. Shift differential will be paid to those employees permanently assigned to shifts other than first (1st) shift. Classifications eligible for the Shift Differential Program will be paid an additional \$0.50 per hour for all hours actually worked between the hours of 3:00pm and 11:00pm second (2nd) shift and \$1.00 per hour for all hours actually worked between the hours of 11:00pm and 7:00am third (3rd) shift.

C. The shift differential will only be paid on hours actually worked. Personal leave time and holidays not worked will be paid at the base hourly rate and will not include Shift Differential.

ARTICLE 29

RETIREMENT PLAN

29.1 The parties hereto recognize that in accordance with Chapter 54, Article III, Code of Ordinances, City of Port Orange, the employees in the Bargaining Unit are participants in a General Employees Defined Benefit Plan, an International City Management Association Retirement Corporation (ICMA-RC) Section 401a Defined Contribution Plan, or an ICMA-RC Deferred Compensation (457) Plan as their primary plan. In addition, employees may participate in the ICMA-RC Deferred Compensation (457) or Roth IRA plan currently offered by the City for additional retirement opportunities.

29.2 For those employees covered under the Defined Benefit Plan, the employee mandatory contribution as of ratification of this agreement is 7.5%. The City will contribute the amount determined appropriate by the City to keep the plan actuarially sound.

29.3 All new bargaining unit members shall only have the option of participating in the ICMA-RC Section 401a Defined Contribution Plan as their primary retirement plan.

29.4 For those employees covered under the Defined Contribution Plan, the employee will not have a mandatory contribution. The City will contribute 10% of the employee's base wage. Additionally, for employees not covered by the Defined Benefit plan, for each 1% of employee contribution, the City will contribute an additional ½ of 1% to a maximum of an additional contribution of 3% by the City.

29.5 The parties agree to amend the Retirement Plan following the adoption the Ordinance implementing this Article, with changes to benefits effective the first of the month following the adoption of the ordinance as follows:

A. For the International City Management Association Retirement Corporation (ICMA-RC) Section 401a Defined Contribution Plan only, the vesting schedule will be amended based on the schedule below.

Year Completed	1	2	3	4	5	6
Proposed Plan	0%	20%	40%	60%	80%	100%

29.6 Both parties agree to continue to explore the option of entering the Florida Retirement System.

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 decisions; and all other Articles, 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**DURATION OF AGREEMENT**

31.1 This Agreement will be in full force and effect as of the date of ratification by both the union and the City Council and shall remain in full force and effect until midnight on the 30th day of September 2025.

31.2 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 with the exception of Wages. The City and Union agree to open and negotiate wages in year 2, fiscal year 2024 and year 3, fiscal 2025.

31.3 As used in this Agreement, the term “he” or “she” shall be interpreted to be gender neutral and shall be understood to encompass both genders.

Approved and ratified this

2 day of October, 2022.

NATIONAL ASSOCIATION OF
GOVERNMENT EMPLOYEES:

Les Cantrell

NAGE Representative signature

Les Cantrell

NAGE Representative printed name

Approved and ratified this

_____ day of _____, 2022.

CITY OF PORT ORANGE,
FLORIDA:

Donald O. Burnette, Mayor
City of Port Orange

ATTEST:

Robin L. Fenwick, City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (H17) First Reading - Ordinance No. 2022-27 - Sixth Amendment to the Master Development Agreement for the Crystal Lake Planned Unit Development / Case No. 21-40000002

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance No. 2022-27, approving the Sixth Amendment to the Master Development Agreement for the Crystal Lake Planned Unit Development; authorize Mayor and City Clerk to sign all necessary documents.

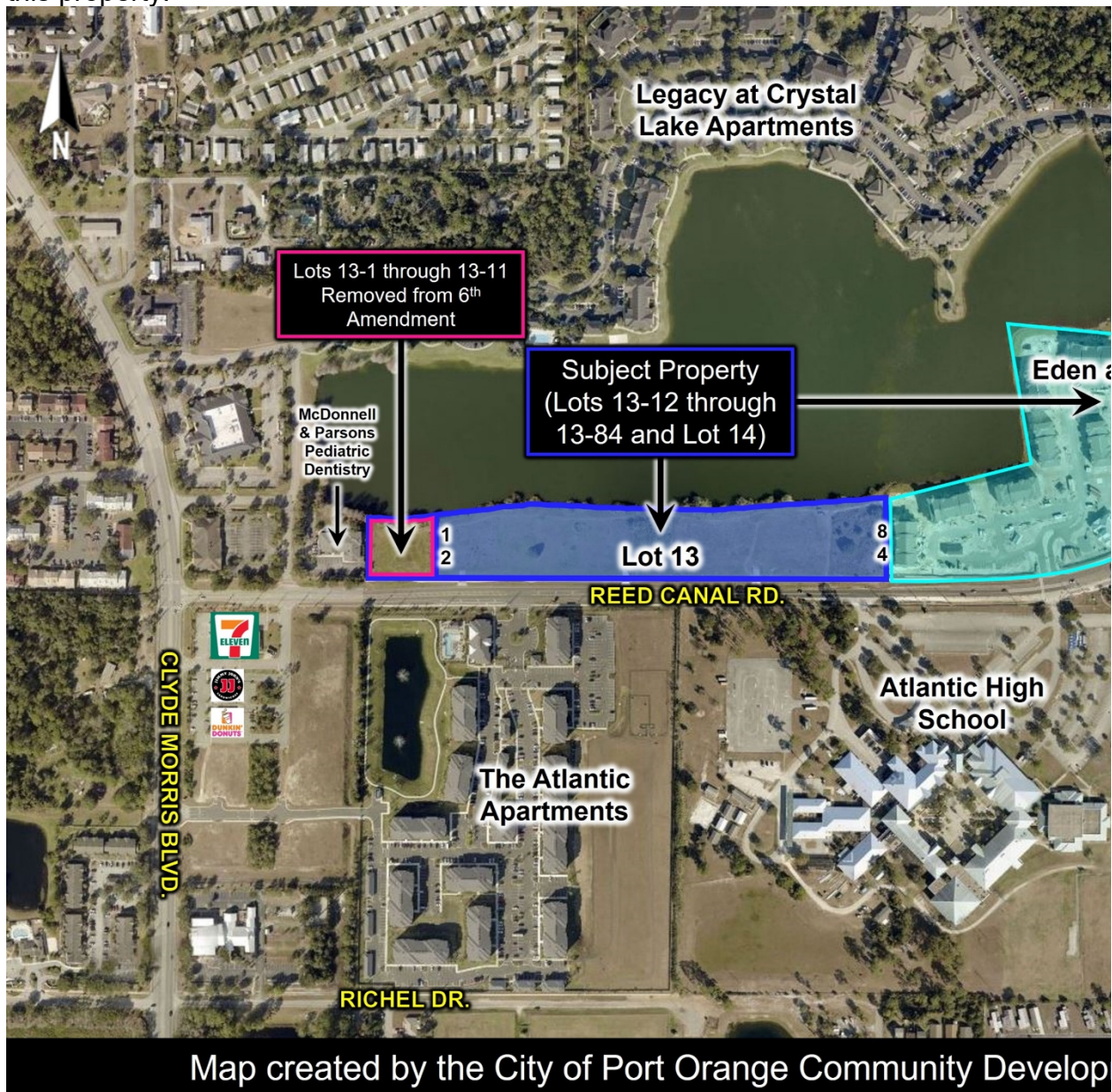
SUMMARY: At the June 21, 2022, City Council meeting, the 6th Amendment to the Crystal Lake Planned Unit Development (PUD) was approved to remove a requirement for any development on Lots 13 and 14 in the Crystal Lake PUD to install walk lights along the sidewalk located on the north side of the Reed Canal Road right-of-way. In order to record the 6th Amendment and officially remove the requirement, all of the property owners within the area covered by the 6th Amendment are required to sign the 6th Amendment.

When the application requesting staff to process the 6th Amendment was received in early 2022, six property owners signed the application to request the removal of the requirement to install walk lights along the north side of Reed Canal Road, adjacent to their property. However, after the 6th Amendment was approved by the Council in June 2022, one of the six property owners decided to withdraw his property (Lots 13-1 through 13-11) from the 6th Amendment and informed staff he would not sign the 6th Amendment. Multiple attempts to contact this property owner were made to further discuss the need for his signature but the property owner declined to further speak to staff and requested his property be removed from the 6th Amendment.

Therefore, in order to record the approved 6th Amendment, it has been determined by the City Attorney's Office that the 6th Amendment must go back before the City Council since the 6th Amendment has been revised to apply to 5 properties instead of 6 properties. The 6th Amendment has been revised to remove all references to the property owner that is no longer part of the 6th Amendment. The five property owners that have signed the amendment were notified of the revisions and had no objections to the change.

The property that has been removed from the 6th Amendment is located adjacent to the McDonnell & Parsons Pediatric Dentistry office. If this property is developed in the

future, the developer of the property will be required to install a minimum of two (2) walk lights or request an MDA amendment to remove the requirement to install walk lights on this property.



The revised Staff Report and City Council Agenda Item Report from June 21, 2022, is attached for more information.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ord. No. 2022-27 with exhibit	Ord 2022-27 6th Amendment crystal lake.pdf
2.	Revised Staff Report (10-4-22)	Staff Report.pdf

3.	June 21, 2022 Agenda Item	June 21, 2022 Agenda Item.pdf
Penelope Cruz	Created/Initiated - 9/13/2022	
Tim Burman	Approved - 9/14/2022	
Shannon Balmer	Approved - 9/23/2022	
Wayne Clark	Approved - 9/26/2022	
Robin Fenwick	Final Approval - 9/26/2022	

ORDINANCE NO. 2022-27

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROVING THE SIXTH
AMENDMENT TO THE MASTER DEVELOPMENT
AGREEMENT FOR CRYSTAL LAKE PLANNED UNIT
DEVELOPMENT (PUD); PROVIDING FOR THE REPEAL OF
CONFLICTING ORDINANCES; PROVIDING FOR
SEVERABILITY OF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Developer desire to enter into the Sixth Amendment to the Master Development Agreement for Crystal Lake Planned Unit Development (PUD) ("MDA"); (hereinafter referred to as the "Sixth Amendment"); and

WHEREAS, the Developer submitted a request to the Planning Commission to approve the Sixth Amendment; and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission has by majority vote recommended denial of the proposed Sixth Amendment; and

WHEREAS, in Ordinance 2022-4, the City Council has previously approved by a majority vote of the members present the proposed Sixth Amendment; and

WHEREAS, subsequent to said approval but prior to the recording of the Sixth Amendment, one of the owners of the property subject to the Sixth Amendment requested to withdraw their property from the Sixth Amendment; and

WHEREAS, the property subject to the Sixth Amendment has been revised to exclude that certain property owned by the party withdrawing their authorization from the Sixth Amendment; and

WHEREAS, the substantive requested amendments contained in the Sixth Amendment remain the same as first presented in Ordinance 2022-4; and

WHEREAS, the City Council has approved by a majority vote of the members present the Sixth Amendment.

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

Section 1. The City Council of the City of Port Orange does hereby approve the Sixth Amendment (attached hereto as **Exhibit “1”**).

Section 2. The Mayor and City Clerk are hereby authorized to execute said Sixth Amendment.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared severable.

Section 5. Ordinance 2022-4 is hereby repealed and superseded.

Section 6. 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 _____, 2022

Passed and adopted on second and final reading on the day of _____,
2022

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

EXHIBIT "1"

SIXTH AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE CRYSTAL LAKE PLANNED UNIT DEVELOPMENT (PUD)

THIS SIXTH AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE CRYSTAL LAKE PLANNED UNIT DEVELOPMENT (PUD) (the “**Sixth Amendment**”) is made this _____ day of _____, 2022, by and among the City of Port Orange, a political subdivision of the State of Florida (“**City**”) whose address is 1000 City Center Circle, Port Orange, Florida 32119; Crystal Lake 2004, LTD , a Florida limited partnership whose address is 600 E. Colonial, Suite 100, Orlando, FL 32803; Carrousel Acres, LLC, a Florida limited liability corporation whose address is P.O. Box 17, New Smyrna Beach, FL 32170; Kellar Development, LLC, a Florida limited liability corporation whose address is 5535 S. Williamson Blvd. Port Orange, FL 32128; J. Michael Panczyszyn, an individual whose address is 580 Hidden Creek Dr. Antioch, IL 60002 and A&G Properties, LLC, a Rhode Island limited liability corporation whose address is P.O. Box 17374 Esmond, RI 02917; EDEN GPC Port Orange Owner, LLC, a Florida limited liability corporation whose address is 2801 SW 31st Ave. Suite 2B, Miami, FL 33133 (“**Property Owners**”); collectively “**Parties**”).

WHEREAS, the City, John T. Self (together with John T. Self's wife, Barbara W. Self, who is now deceased), Robert Beatty, III, Rebecca Joyce Beatty Perkins, Elizabeth Ann Beatty Hayes and RSIII, Inc., a Florida corporation (“**RSIII, Inc.**”) (as the contract purchaser of the subject property), previously entered into an agreement and covenant to bind their successors and assigns to the terms and provisions of a development agreement entitled “Master Development Agreement For the Crystal Lake Planned Unit Development (PUD)”, recorded in Official Records Book 4517, Page 1749, public records of Volusia County, Florida (the “**Master Development Agreement**”), relating to property described therein; and

WHEREAS, the Master Development Agreement was amended by that certain First Amendment to the Crystal Lake PUD Development Agreement recorded in Official Records Book 4612, at Page 4011 (the “**First Amendment**”); and that certain Second Amendment to Crystal Lake PUD Development Agreement recorded in Official Records Book 4704, at Page 417 (the “**Second Amendment**”); and that certain Third Amendment to Master Development Agreement for Crystal Lake Planned Unit Development (“PUD”) recorded in Official Records Book 4876 at Page 1749 (the “**Third Amendment**”); and that certain Fourth Amendment to Master Development Agreement for Crystal Lake Planned Unit Development (“PUD”) recorded in Official Records Book 5078 at Page 2022 (the “**Fourth Amendment**”); and that certain Fifth Amendment to Master Development for Crystal Lake Planned Unit Development (“PUD”) recorded in Official Records Book 5204 at Page 3392 (“**Fifth Amendment**”). The Master Development Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, Fourth Amendment and Fifth Amendment is now hereinafter collectively referred to as the “Master Development Agreement”.

WHEREAS, the Property Owners are the owners of the property more particularly described in **Exhibit “A” (“Property”)**, which is the only property impacted by this Sixth Amendment.

WHEREAS, the City and Property Owners wish to further amend the Master Development Agreement as applies to the Property for the purposes as set forth herein below.

NOW, THEREFORE, the parties, in consideration of the mutual premises and covenants contained herein, and with the intent to be legally bound and to bind their successors and assigns, due hereby agree as follows:

1. The recitals and premises set forth above are true and correct, form a material part of this Sixth Amendment and are incorporated herein by reference.

2. Paragraph 7. **PUD INFRASTRUCTURE**, Section 7(d) of the Master Development Agreement as previously amended, is hereby further amended as follows:

Notwithstanding any other provision set forth in this Master Development Agreement, including but not limited to this Section 7(d), the bike path/pedestrian walkway to be constructed along the Reed Canal frontage of the PUD Property (e.g. Lots 13 and 14) (the **“Reed Canal Bike Path/Pedestrian Walkway”**) shall not be less than eight feet (8’) wide and no walkway lights shall be required along the Reed Canal Bike Path/Pedestrian Walkway.

3. This Sixth Amendment shall be effective as of the date it is executed by all parties.

4. This Sixth Amendment shall be recorded in the public records of Volusia County, Florida, at the Developer's expense.

5. The Master Development Agreement, as previously enacted and amended by the First, Second, Third, Fourth and Fifth Amendments thereto, shall remain in full force and effect except with respect to those matters specifically amended by this Sixth Amendment as applied to the .

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Sixth Amendment, by and through their duly authorized representatives, on the respective dates below:

WITNESSES:

CITY:

CITY OF PORT ORANGE, a Florida municipal Corporation

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

By: _____

MAYOR DONALD O. BURNETTE

Attest: _____

Robin L. Fenwick, MMC, City Clerk

Date: _____

STATE OF FLORIDA

COUNTY OF VOLUSIA

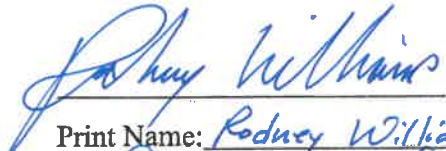
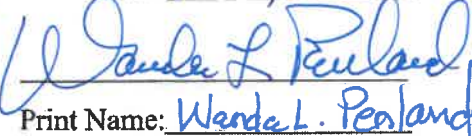
The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2022, by Donald O. Burnette, Mayor of the City of Port Orange, Florida, and by Robin L. Fenwick, City Clerk of the City of Port Orange, Florida a Florida Municipal Corporation, on behalf of the City. They are personally known to me and did not take an oath.

Print Name:
Notary Public, State of Florida
My commission expires:

IN WITNESS WHEREOF, the party has executed this Sixth Amendment, by and through its duly authorized representative, on the date below:

Crystal Lake 2004, LTD:

Crystal Lake 2004, LTD, a Florida limited partnership


Print Name: Rodney Williams

Print Name: Wanda L. Penland

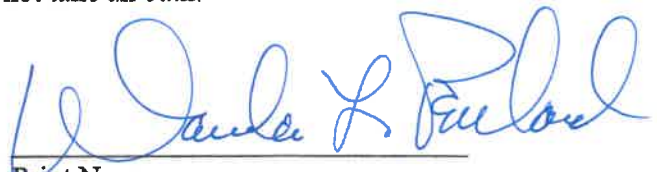
By: 
J. Steven Schrimsher, Managing Member

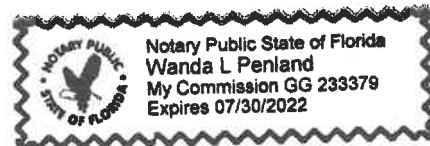
Date: 6/21/22

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this 21st day of June, 2022, by J. Steven Schrimsher, Managing Member of Crystal Lake 2004 LTD, a Florida limited partnership who is personally known to me and did not take an oath.


Print Name:
Notary Public, State of Florida
My commission expires:



IN WITNESS WHEREOF, the party has executed this Sixth Amendment, by and through its duly authorized representative, on the date below:

Carrousel Acres, LLC:

Carrousel Acres, LLC, a Florida limited liability corporation

Wendy Richards
Print Name: Wendy Richards

By: [Signature]
Louis Weaver, Managing Member

[Signature]
Print Name: Josephine
WEAVER

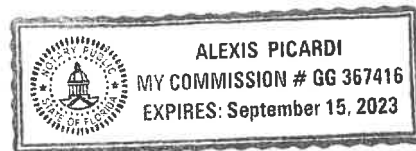
Date: 6/24/2022

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this 24 day of June, 2022, by Louis Weaver, Managing Member of Carrousel Acres, LLC, a Florida limited liability corporation who is personally known to me or has produced FIDL as identification and who did (did not) take an oath.

Alexis Picardi
Print Name:
Notary Public, State of Florida
My commission expires:



IN WITNESS WHEREOF, the party has executed this Sixth Amendment, by and through its duly authorized representative, on the date below:

Kellar Development, LLC:

Kellar Development, LLC, a Florida limited liability corporation

Lauren Buzinski
Print Name: Lauren Buzinski

Robert Kellar
Print Name: Robert Kellar

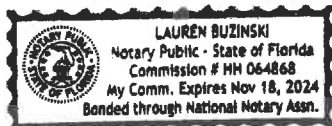
By: Robert Kellar, Jr.
Robert Kellar, Jr, Managing Member

Date: 6/20/22

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this 20th day of June, 2022, by Robert Kellar, Jr, Managing Member of Kellar Development, LLC, a Florida limited liability corporation who is personally known to me or has produced DL as identification and who did (did not) take an oath.



Lauren Buzinski
Print Name: Lauren Buzinski
Notary Public, State of Florida
My commission expires: 11/18/22

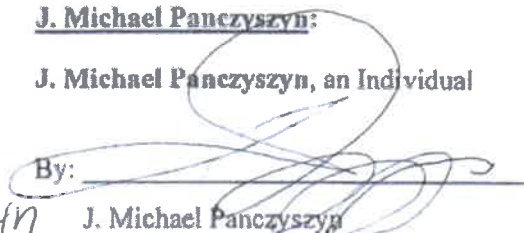
IN WITNESS WHEREOF, the party has executed this Sixth Amendment, by and through its duly authorized representative, on the date below:

J. Michael Panczyszyn:

J. Michael Panczyszyn, an Individual



Print Name: J. Michael Panczyszyn

By: 

J. Michael Panczyszyn



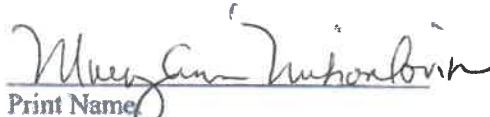
Print Name: Mary Ann Mihovilovich

Date: 6/20/22

STATE OF ILLINOIS

COUNTY OF Lake

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this 20th day of June, 2022, by J. Michael Panczyszyn, an Individual who is personally known to me or has produced Drivers License as identification and who did (did not) take an oath.



Print Name: Mary Ann Mihovilovich

Notary Public, State of Illinois

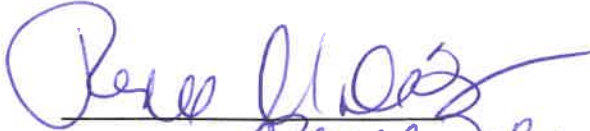
My commission expires:



IN WITNESS WHEREOF, the party has executed this Sixth Amendment, by and through its duly authorized representative, on the date below:

A&G Properties, LLC:

A&G Properties, LLC, a Rhode Island limited liability corporation


Print Name: Renee DeBarros

By: Anthony Gargaro Jr
Anthony Gargaro, Jr, Managing Member

Date: 6/27/2022

Print Name: _____

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization on this 27th day of June, 2022, by Anthony Gargaro Jr, Managing Member of A&G Properties, LLC, a Rhode Island limited liability corporation who is personally known to me or has produced _____ as identification and who did (did not) take an oath.




Print Name: BEVERLY J. BROWN
Notary Public, State of Rhode Island
My commission expires: 7/1/2023

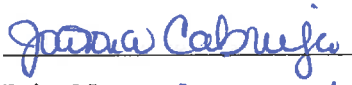
IN WITNESS WHEREOF, the party has executed this Sixth Amendment, by and through its duly authorized representative, on the date below:

EDEN GPC Port Orange Owner, LLC :

EDEN GPC Port Orange Owner, LLC, a Florida limited liability corporation


Print Name: Dang Massinman

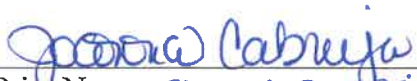
By: 
Jay Jacobson, Managing Member

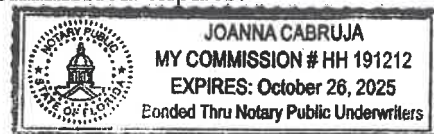

Print Name: Joanna cabruja

Date: 6.17.22

STATE OF FLORIDA
MIAMI-DADE
COUNTY OF ~~VOLUSIA~~

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this 17 day of JUNE, 2022, by Jay ~~Jackson~~ ^{JACOBSON}, Managing Member of EDEN GPC Port Orange Owner, LLC, a Florida limited liability corporation who is personally known to me or has produced _____ as identification and who did (did not) take an oath.


Print Name: JOANNA CABRUJA
Notary Public, State of Florida
My commission expires:



**EXHIBIT A
LEGAL DESCRIPTION
CRYSTAL LAKE MDA 6th AMENDMENT**

LOT 13-12 THROUGH AND INCLUSIVE TO LOT 13-84 FOR A TOTAL OF 73 LOTS OF CRYSTAL LAKE TRACT 3 AS RECORDED IN MAP BOOK 50, PAGES 171 THROUGH 173 AS RECORDED IN VOLUSIA COUNTY PUBLIC RECORDS; TOGETHER WITH LOT 14 OF CRYSTAL LAKE TRACT 2 AS RECORDED IN MAP BOOK 50, PAGES 58 AND 59 AS RECORDED IN VOLUSIA COUNTY PUBLIC RECORDS.

Prepared by:
Upham, Inc.
265 Kenilworth Avenue
Ormond Beach, FL 32174
February 1, 2022



STAFF REPORT - REVISED

6th Amendment to the Master Development Agreement for the Crystal Lake Planned Unit Development Case No. 21-40000002

REQUEST:	Amend the Master Development Agreement (MDA) for the Crystal Lake Planned Unit Development (PUD) to remove a requirement to install walk lights along the north side of Reed Canal Road
APPLICANT:	Roger Strcula, Upham, Inc.
PROPERTY OWNERS:	See Exhibit 1 for list of property owners (Revised)
STAFF RECOMMENDATION:	Approval
LOCATION:	North side of Reed Canal Road, east of Red Sail Lane (Figure 1 – Page 2)
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
PLANNING COMMISSION:	Recommended Denial 0-6 (February 24, 2022)
CITY COUNCIL:	Approved per Ord. 2022-4 (June 21, 2022)
CITY COUNCIL HEARING ON REVISED ORDINANCE:	October 4, 2022

UPDATE SINCE APPROVAL IN JUNE 2022

At the June 21, 2022, City Council meeting, the 6th Amendment to the Crystal Lake Planned Unit Development (PUD) was approved to remove a requirement for any development on Lots 13 and 14 in the Crystal Lake PUD to install walk lights along the sidewalk located on the north side of the Reed Canal Road right-of-way. In order to record the 6th amendment and officially remove the requirement, all of the property owners within the area covered by the 6th amendment are required to sign the 6th amendment.

When the application requesting staff to process the 6th amendment was received in early 2022, six property owners signed the application to request the removal of the requirement to install walk lights along the north side of Reed Canal Road, adjacent to their property. However, after the 6th amendment was approved by the Council in June 2022, one of the six property owners decided he did not want to sign the 6th amendment and have his property removed from the 6th amendment. Multiple attempts to contact this property owner were made but the property owner declined to further speak to staff and requested his property be removed from the 6th amendment.

Therefore, in order to record the approved 6th amendment, it has been determined by the City Attorney's Office that the 6th amendment must go back before City Council since the it has been revised to list the five property owners that signed the 6th amendment and the legal description for the area to be covered by the 6th amendment has been updated. The 6th amendment has been revised to remove all references to the property owner that is no longer part of the 6th amendment. The five property owners

that have signed the amendment were notified of the revisions and had no objections to the change.

The property that has been removed from the 6th amendment is located adjacent to the McDonnell & Parsons Pediatric Dentistry office. If the property that has been removed from the 6th amendment is developed, the developer of the property will be required to install a minimum of two (2) walk lights or request an MDA amendment to remove the requirement to install walklights on this property.

DEVELOPMENT PROPOSAL

The proposed 6th Amendment to the Crystal Lake Master Development Agreement (MDA) is to remove a requirement for any development on Lots 13-12 through Lots 13-84 and Lot 14 in the Crystal Lake Planned Unit Development (PUD) to install walk lights along the sidewalk located within the north side of the Reed Canal Road right-of-way.

The subject properties are currently regulated by the Crystal Lake MDA, as amended, and the Land Development Code (LDC). According to the applicant, the requested 6th Amendment is only to remove the requirement to install walk lights along the north side of Reed Canal Road on Lots 13-12 through Lots 13-84 and Lot 14 and does not change any of the permitted uses or other development requirements in the MDA.

- Lot 14 is currently being developed as the Eden Apartments, consistent with the Crystal Lake MDA.
- Lots 13-12 through Lots 13-84 are located between the Eden Apartments (Lot 14) and approximately 239 feet east of Barnes McDonnell Pediatric Dentistry. According to the MDA, this area is intended to be developed with office and incubator business uses. At this time there is no development activity planned or proposed on the subject property. Lots 13-12 through Lots 13-84 are made up of 73 25-foot-wide lots and there are currently 6 individual property owners that own property within this area of Lot 13.

Figure 1. Location Map



The Crystal Lake MDA was approved by the City Council in 2000 and established a mixed-use development with various tracts, each with a common purpose and design theme, along with the walk light requirement for the north side of Reed Canal Road. There are currently 4 walk lights on Lots 1 and 2, just west of Lot 13, but they either do not work or are located behind a dense landscape buffers and function more as site lighting than walk lights. There are currently 8 street lights along the south side and 1 street light along the north side of Reed Canal Road between Clyde Morris Boulevard and the eastern most access drive to Atlantic High School, which are located +/- 350 feet to +/- 415 feet apart, and no street lights between the eastern most access drive to Atlantic High School and Nova Road (Figure 2). There are sidewalks located on both sides of Reed Canal Road between Clyde Morris Boulevard and Nova Road with the sidewalk on the north side of Reed Canal Road being +/- 90 feet from the street lights.

Figure 2. Current Location of Walk Lights, Street Lights, and Sidewalks



In 2000, the LDC did not require walk lights to be installed along Reed Canal Road and the current LDC does not require walk lights to be installed along Reed Canal Road or other similar roadways (Madeline Avenue, Spruce Creek Road, Central Park Boulevard, Hensel Road, Herbert Street, Willow Run Boulevard, etc.).

The walk light requirement in the MDA approved in 2000 required the developers of the subject lots to install walk lights in the Reed Canal Road right-of-way as part of the site improvements for their project. In 2000, the City's standard construction detail for walk lights required the property owner to maintain the walk lights. However, the 2000 City Standard Construction Detail (SCD) that required the property owner to maintain the walk lights is **not** part of the current MDA and no language was included in the MDA to require the property owner to also maintain the walk lights. Therefore, if walk lights are installed on Lots 13 and 14, the current City SCD for walk lights would apply and require the City to maintain an estimated +30 walk lights.

There are no specific criteria to be used as a base for staff recommendation for the request to not install walk lights along this segment of Reed Canal Road as required in the original MDA. Staff recommendations on zoning matters are generally based on consideration of compatibility with adjacent uses, availability of adequate infrastructure and consistency with adopted plans (such as Comprehensive Plan, City Vision, budget, etc.). The request to not install walk lights along this segment of Reed Canal Road is

different than originally planned in the Crystal Lake MDA from 2000 and will require Planning Commission and City Council direction on whether to remove this requirement from the Crystal Lake MDA. The proposed amendment has been reviewed and approved by the Staff Development Review Committee (Community Development, Public Utilities, Public Works, Police, Fire, and City Attorney's Office). The proposed amendment has also been reviewed by staff from the Volusia County School District and no concerns with the request to not install walk lights along Reed Canal Road were raised.

According to the applicant, the request to remove the requirement to install walk lights is to minimize off-site improvements required to develop on Lots 13 and 14. The applicant further states that if walk lights are required to be installed along this segment of Reed Canal Road, it would create a non-uniform appearance as walk lights are not required to be installed on the south side of Reed Canal Road or along the segment of Reed Canal Road located in South Daytona. In addition, with multiple potential development sites in Lot 13, there could be phased installation of walk lights over multiple years which would leave a non-uniform appearance along this segment of the road.

CONSISTENCY WITH COMPREHENSIVE PLAN

On the City's Future Land Use (FLU) Map, Lot 13 is designated *Office/Residential Transition* and Lot 14 is designated *Urban Medium Density Residential* (4-8 units/acre). The original MDA was found to be consistent with the Comprehensive Plan when it was approved in 2000. The proposed 6th Amendment does not change the FLU designation for the subject property and is consistent with the general intent of the City's Comprehensive Plan.

PUBLIC NOTICE

A Public Notice sign was posted on the site on July 30, 2021. At the time this agenda item was prepared, staff received one inquiry requesting general information regarding the proposed amendment.

RECOMMENDATION

Staff recommends approval of the 6th Amendment to the Master Development Agreement for the Crystal Lake Planned Unit Development, subject to review and approval by the City Attorney's Office for legal form and content.

ATTACHMENTS

- Exhibit 1 – List of Property Owners
- Exhibit 2 – 6th Amendment to the Master Development Agreement for the Crystal Lake Planned Unit Development (See Ordinance Exhibit)

Exhibit 1 (Revised)

Property Owners

Crystal Lake 2004, LTD, a Florida limited partnership whose address is 600 E. Colonial, Suite 100, Orlando, FL 32803

Carrousel Acres, LLC, a Florida limited liability corporation whose address is P.O. Box 17, New Smyrna Beach, FL 32170

Kellar Development, LLC, a Florida limited liability corporation whose address is 5535 S. Williamson Blvd. Port Orange, FL 32128

J. Michael Panczyszyn, an individual whose address is 580 Hidden Creek Dr. Antioch, IL 60002

A&G Properties, LLC, a Rhode Island limited liability corporation whose address is P.O. Box 17374 Esmond, RI 02917

EDEN GPC Port Orange Owner, LLC, a Florida limited liability corporation whose address is 2801 SW 31st Ave. Suite 2B, Miami, FL 33133



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 6/21/2022

SUBJECT: (H15) Second Reading - Ordinance No. 2022-4 - Sixth Amendment to the Master Development Agreement for the Crystal Lake Planned Unit Development / Case No. 21-40000002

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2022-4, approving the Sixth Amendment to the Master Development Agreement for the Crystal Lake Planned Unit Development; authorize Mayor and City Clerk to sign all necessary documents.

SUMMARY: PLANNING COMMISSION ACTION (February 24, 2022): Recommended Denial (Vote 0 - 6)

The proposed 6th Amendment to the Crystal Lake Master Development Agreement (MDA) is to remove a requirement for any development on Lots 13 and 14 in the Crystal Lake Planned Unit Development (PUD) to install walk lights along the sidewalk located within the Reed Canal Road right-of-way, a Volusia County maintained roadway. The subject properties are currently regulated by the Crystal Lake MDA, as amended, and the Land Development Code (LDC). According to the applicant, the requested 6th Amendment is only to remove the requirement to install walk lights along the north side of Reed Canal Road on Lots 13 and 14 and does not change any of the permitted uses or other development requirements in the MDA.



The walk light requirement in the MDA was approved in 2000 and required the developers of the subject lots to install walk lights in the Reed Canal Road right-of-way as part of the site improvements for their project. At that time, the City's standard construction detail for walk lights required the property owner to maintain the walk lights. However, the 2000 City Standard Construction Detail (SCD) which required the property owner to maintain the walk lights is not part of the current MDA and no language was included in the MDA to require the property owner to maintain the walk lights. Therefore, if walk lights are installed on Lots 13 and 14, the current City SCD for walk lights requires the City to maintain the anticipated 32 walk lights that would be required to be installed as the subject properties develop.

The current city policy is to require developers to install FPL approved street lights to illuminate rights-of-way because FPL will maintain the street lights. If a non-approved FPL street light or walk light is installed within a public right-of-way, FPL will not maintain the street light or walk light and it becomes the City's responsibility to maintain. The LDC and SCDs require walk lights to be installed by a developer along Dunlawton Avenue and the segment of Ridgewood Avenue located within the Port Orange Town Center CRA and the city to maintain these walk lights.

In 2000, when the MDA requirement was approved, the LDC did not require walk lights to be installed along Reed Canal Road and the current LDC or City plans/documents do not require walk lights to be installed along Reed Canal Road or other similar roadways (Madeline Avenue, Spruce Creek Road, Central Park Boulevard, Hensel Road, Herbert Street, Willow Run Boulevard, etc.).

There are no specific criteria to be used as a basis for staff recommendation for the request to not install walk lights along this segment of Reed Canal Road as required in the original MDA. Staff recommendations on zoning matters are generally based on consideration of compatibility with adjacent uses, availability of adequate infrastructure and consistency with adopted plans (such as Comprehensive Plan, City Vision, budget, etc.). The request to not install walk lights along this segment of Reed Canal Road is different than originally planned in the Crystal Lake MDA from 2000 and will require Planning Commission and City Council direction on whether to remove this requirement from the Crystal Lake MDA. The proposed amendment has been reviewed and approved by the Staff Development Review Committee (Community Development, Public Utilities, Public Works, Police, Fire, and City Attorney's Office). The proposed amendment has also been reviewed by staff from the Volusia County School District and the Volusia County School District staff did not have any concerns about the request to not install walk lights along the north side of Reed Canal Road.

Currently, there are 8 street lights along the south side and 1 street light along the north side of Reed Canal Road between Clyde Morris Boulevard and the eastern most access drive to Atlantic High School, which are located +/- 350 feet to +/- 415 feet apart, and no street lights between the eastern most access drive to Atlantic High School and Nova Road. There are sidewalks located on both sides of Reed Canal Road between Clyde Morris Boulevard and Nova Road with the sidewalk on the north side of Reed Canal Road being +/- 90 feet from the street lights.



Reed Canal Road is similar to other roadways in the city (Central Park Boulevard, Hensel Road, Herbert Street, Willow Run Boulevard, etc.) with street lights on one side of the road and sidewalks on both sides of the road or a sidewalk on the opposite side of the street lights. Site lights will be installed at the entrance drive of the Eden Apartments (Lot 14) and at the access drives on Lot 13 as development occurs to illuminate the intersection of the driveway and sidewalk.

According to the applicant, the request to remove the requirement to install walk lights is to minimize off-site improvements required to develop on Lots 13 and 14. The applicant further states that if walk lights are required to be installed along this segment of Reed Canal Road, it would create a non-uniform appearance, as walk lights are not required to be installed on the south side of Reed Canal Road or along the segment of Reed Canal Road located in South Daytona. In addition, with multiple potential development sites on Lot 13, there could be phased installation of walk lights over multiple years which would leave a non-uniform appearance along this segment of the road.

Staff has prepared Exhibit A that shows where walk lights are currently located or required to be installed with future development and which ones are maintained by the city. This graphic (Exhibit A) shows the concentration of walk lights along Dunlawton Avenue and also on Ridgewood Avenue and Williamson Boulevard near the Dunlawton Avenue spine. Due to the ongoing maintenance expenses, staff has been moving to use FPL streetlights in the city to effectively and efficiently provide safe lighting. Staff does not recommend adding more walk lights in any area away from Dunlawton Avenue and staff is also developing future capital improvements to focus on the installation of streetlights maintained by FPL. As a result of this approach, staff supports the request of the applicant to not install walk lights in this area along Reed Canal Road where there are no future plans to complete a network of walk lights.

The staff report is attached for more details.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Staff Report	Staff Report.pdf
2.	Ord. No. 2022-4 with exhibit	Ord. No. 2022-4 - Sixth Amendment to Crystal Lake f.pdf
3.	Exhibit A - Current Locations of Walk Lights	Exhibit A - Current Locations of Walk Lights.pdf

Robin Fenwick

Created/Initiated - 6/6/2022



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/4/2022

SUBJECT: (I18) First Reading - Ordinance No. 2022-25 - Revising Article VI. - Peddlers, Solicitors, and Transient Merchants

DEPARTMENT: City Clerk

GOAL: 1 - Public Safety, 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance No. 2022-25.

SUMMARY: In early 2019, City Staff received complaints relating to a company that had received a solicitor's permit and was going door-to-door but not fully following the code. These complaints and a review of the solicitor's permitting process showed the ordinance needed updating. This review prompted a workshop with City Council on April 23, 2019, where Council provided Staff with direction to revise Article VI - Peddlers, Solicitors and Transient Merchants in order to update the application required to be submitted, specifically list the reasons for denial during the investigation process, and revise the enforcement process.

The City Clerk, City Attorney, and Police Chief have worked together to amend the code to address the complaints received and direction provided by Council.

Below is a brief summary of the major changes to the ordinance.

- A specific list of reasons why an application shall be denied has been added. These reasons include but are not limited to fraud, misrepresentation, or false statements contained in the application for permit; failure to register with the Florida Department of State, Division of Corporations; criminal charges; designation as a sexual predator, sexual offender, or other similar criminal designation; active gang members; or an applicant who is listed on the U.S. government's Terrorist Screening Center's No Fly List.
- The enforcement process to revoke a permit has been designated to the City Manager or his/her designee rather than the City Clerk and a clear process has been delineated to include the process to appeal a revocation.

All revisions are shown on the attached document in underlined/strike-through format to show what has been added and deleted.

PRESENTER: Robin Fenwick, Matthew Jones, Manuel Marino

ATTACHMENTS:

1.	Ord. No. 2022-25 - Solicitor Permit Ord Am	Ord. No. 2022-25 - Solicitor Permit Ord Am.pdf
----	---	---

Robin Fenwick	Created/Initiated - 9/19/2022
Manuel Marino	Approved - 9/21/2022
Matthew Jones	Approved - 9/28/2022
Wayne Clark	Approved - 9/28/2022
Robin Fenwick	Final Approval - 9/28/2022

ORDINANCE NO. 2022-25

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 18, ARTICLE VI, DIVISIONS 1 AND 2 TO MODIFY THE PERMITTING PROCESS AND REGULATIONS RELATED TO PEDDLERS, SOLICITORS, AND TRANSIENT MERCHANTS; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, peddlers, solicitors and transient merchants are not immune from regulations under the City's police powers in accordance with State law; and

WHEREAS, the City Council has a significant government interest in protecting residents' privacy and preventing fraud by requiring that peddlers, solicitors and transient merchants obtain a permit prior to engaging in soliciting activities within the City of Port Orange; and

WHEREAS, the regulations set forth herein are narrowly tailored to the City's interest in protecting residents from crime and fraud while still leaving open ample alternative channels of communication; and

WHEREAS, the City desires to maintain a safe and beautiful City; and

WHEREAS, this ordinance protects the integrity, value and character of residential neighborhoods; and

WHEREAS, it is in the best interest of the public health, safety and welfare that this ordinance be adopted; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

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

SECTION 1. The City Council of the City of Port Orange, Florida, hereby amends Chapter 18, Businesses, Article VI, Peddlers, Solicitors and Transient Merchants, Division 1. Generally, of the Code of Ordinances to read as follows:

Sec. 18-121. Definitions.

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

Canvasser or solicitor means any individual, whether a resident of the city or not, who engages in commercial activity by traveling either by foot, vehicle or other conveyance from place to place taking or attempting to take orders for the sale of goods, wares and merchandise or personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future. The canvasser or solicitor may carry or expose for sale a sample of the subject of such sale, or may collect advance payment on such sales and may be considered any person who for himself or for another person hires, leases, uses or occupies any building, structure, car, room, shop or any other place within the city for the sole purpose of exhibiting samples and taking orders for future delivery.

Peddler means any person, whether a resident of the city or not, who engages in commercial activity by traveling by foot, vehicle, or any other type of conveyance from place to place carrying or transporting goods, wares and merchandise; offering and exposing the same for sale or making sales and delivering articles purchased; or who, without traveling from place to place, shall sell or offer the same for sale from his person, or from any vehicle or conveyance.

Transient merchant, itinerant merchant or itinerant vendor means any person, whether as owner, agent, consignee or employee, whether a resident of the city or not, who engages in temporary ~~business~~ commercial activity of selling and delivering goods, wares and merchandise within the city, and who in furtherance of such purpose hires, leases, uses or occupies any building or structure, vehicle, tent, room, apartment, shop, street, alley, property, or other place within the city for the exhibition and sale of such wares or merchandise, either privately or at a public auction, provided that such definition shall not include any person who, while occupying such temporary location, does not sell from stock, but exhibits samples only for the purpose of securing orders for future delivery only. Persons so engaged shall not be relieved from complying with provisions herein by reason of temporary association with or sponsorship by any local dealer, trader, merchant or auctioneer, or by conducting such transient business with, as a part of, or in the

name of any local licensee. This definition shall not include special event temporary merchants as defined in subsection 58-51(5) of this Code.

[No changes to Section 18-122]

Sec. 18-123. Hours of operation.

It shall be unlawful for any peddler, canvasser or solicitor to engage in the business of peddling, canvassing or soliciting within the city between the hours of one-half hour before sunset and 9:00 a.m. the following morning, or at any time on Sundays or National Holidays, except by specific appointment with or invitation from the prospective customer.

Sec. 18-124. Operation in public places prohibited.

- ~~(a) No peddler, canvasser or solicitor shall be allowed to take up any space in the public streets or rights-of-way in disposing of the wares, foodstuffs or other things offered for sale, but each and every such person so engaged shall move from house to house with reasonable dispatch while upon the public streets, or other public place, and when engaged in such occupation shall be subject to the direction of the chief of police.~~
- ~~(b) The chief of police is hereby required to clear out of any public parking place all vehicles or conveyors found in the streets, rights-of-way or other public places used by peddlers and arrest all persons refusing to forthwith remove the same when commanded by the chief of police or any police officer.~~

[No changes to Sections 18-125 through 18-126]

Sec. 18-127. Entrance to premises restricted.

It shall be unlawful for any peddler, canvasser or solicitor to enter upon any private premises or residential subdivisions when the same are posted with a sign stating "No Peddlers Allowed" or "No Solicitations Allowed" or other words to such effect.

Sec. 18-128. Misrepresentation.

It shall be unlawful for any peddler, canvasser or solicitor to make false or fraudulent statements concerning the quality or nature of his goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

[No changes to Sections 18-129 through 18-145]

SECTION 2. The City Council of the City of Port Orange, Florida, hereby amends Chapter 18, Businesses, Article VI, Peddlers, Solicitors and Transient Merchants, Division 2. Permits, of the Code of Ordinances to read as follows:

[No changes to Section 18-146]

Sec. 18-147. Application.

- (a) *Application form, required information.* Applicants for permits under this division shall file with the city clerk a sworn application in writing on a form furnished by the city clerk giving the following information:
- (1) Name of the applicant.
 - (2) Permanent home address and full local address of applicant.
 - (3) A brief description of the nature of the business and the goods to be sold or services to be rendered.
 - (4) If a vehicle will be used, the applicant must identify the make, model, and color of the vehicle along with the license plate number.
 - (45) The name and address of the employer, if employed, together with credentials establishing the employment.
 - (56) The ~~length of time~~ dates and times for which the right to do business is desired.
 - (67) Whether the applicant, upon any sale or order, shall demand, accept or receive payment or deposit of money in advance of final delivery.
 - (78) The last five cities or towns wherein the applicant has worked before coming to this city.
 - (89) The names of at least two reliable property owners in the county who will certify as to the applicant's good character and business respectability, or in lieu of the names of the references, such other available evidence as to the good character and responsibility of the applicant as will enable an investigator to properly evaluate such character and business responsibility.
 - (910) A statement as to whether the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense, and the punishment or penalty assessed therefor.
 - (11) The application must be signed by a person properly authorized to bind the person, group or organization applying for a permit. The person applying must also sign a sworn statement that he has carefully read and completed the application and all of the information contained therein is true and correct.
 - (1012) Such other relevant information as may be required for the investigation of the applicant.
- (b) *Driver's license.* At the time of filing ~~his~~ an application for a permit required by this division, the applicant shall present ~~his~~ a valid driver's license or state issued identification, ~~if he has one~~, to the city clerk.

- (c) *False information.* It shall be unlawful for any person to give any false or misleading information in connection with his application for a permit required by this division.
- (d) *Fingerprints, photographs.* At the time of making application for a permit required by this division, the applicant shall submit to fingerprinting and photographing by the chief of police. Processing costs shall be as provided by resolution of the city council.

Sec. 18-148. Investigation.

- (a) ~~Upon receipt of application for permit, it shall be referred to the chief of police, who shall cause investigation of the applicant's business and moral character to be made as he deems necessary for the protection of the public good. An applicant for a permit under this division shall be subject to a thorough investigation.~~
- (b) ~~If as a result of such investigation the applicant's character or business responsibility is found to be unsatisfactory, the chief of police shall endorse on such application his disapproval and send the application to the city clerk who shall notify the applicant that his application is disapproved and that no permit will be issued. An application shall be denied if the applicant's character or business responsibility is found to be unsatisfactory. For the purposes of this section, the applicant's character and business responsibility shall be deemed to be unsatisfactory for any of the following causes:~~
 - (1) Fraud, misrepresentation, or false statement contained in the application for permit;
 - (2) Rating from the Better Business Bureau (BBB) "C" or worse;
 - (3) Failure to register with the Florida Department of State, Division of Corporations as an active business authorized to conduct business within the State of Florida;
 - (4) One (1) or more criminal charges outstanding from a court of any jurisdiction;
 - (5) The applicant has been adjudicated guilty within the past ten (10) years of a forcible felony as defined in F.S. § 776.08, has been adjudicated guilty within the past five (5) years of any felony, has been adjudicated guilty within the past three (3) years of any misdemeanor, or has been found in a violation of any municipal ordinance or governing authority involving dishonesty, fraud, deceit or adversely affecting the applicant's character or business responsibilities within the past three (3) years.
 - (6) Habitual felony offenders, violent habitual felony offenders, violent career criminals as defined in F.S. § 775.084, and declared by the State are ineligible for a permit;

- (7) Applicants who have been designated as a sexual predator, sexual offenders or other similar criminal designation involving sex offenses by a court of law are ineligible for a permit;
 - (8) Applicants who are listed on the United States government's Terrorist Screening Center's No Fly List are ineligible for a permit;
 - (9) Active gang members who are documented in the NCIC/FCIC law enforcement database are ineligible for a permit; or
 - (10) The applicant or the application does not comply with any one (1) or more of the requirements of this article.
- (c) If as a result of such investigation, the character and business responsibility of the applicant are found to be satisfactory, ~~the chief of police shall endorse on the application his approval and send the application to the city clerk.~~ the results of the investigation shall be documented and sent to the city clerk.

Sec. 18-149. Issuance; scope, conditions.

- (a) No permit shall be issued by the city clerk until the applicant has complied with all the provisions and requirements of this division.
- (b) Before any permit shall be issued under the provisions of this division the applicant shall pay ~~processing costs~~ a non-refundable permit application fee, as established by resolution of city council, at the time of the application is filed. ~~as provided by resolution of the city council.~~
- (c) Each permit issued under the provisions of this division shall be signed by the city clerk, shall be dated as of the date of its issuance and shall state the duration or term of such permit on the face thereof. Any permit not dated and signed as herein provided, or which was issued in violation of this section, shall be void.
- (d) Every permit issued under the provisions of this division shall be valid for the period of time stated therein, but in no event shall any such permit be issued for a period of time in excess of 30 ~~consecutive~~ calendar days in any given calendar year. Permits are not renewable.
- (e) No peddler's, canvasser's or solicitor's permit shall be issued to a corporation, partnership or other impersonal legal entity, but each individual person engaging in the business of peddling, canvassing or soliciting within the city shall be required to have a permit whether acting for himself or as an agent or representative of another.
- (f) Every peddler, canvasser or solicitor having a permit issued under the provisions of this division and doing business within the city shall display ~~his~~ a permit upon the request of any person and failure to do so shall be deemed ~~a misdemeanor violation of this section.~~ No permit issued under the provisions of this division shall be transferable.

Sec. 18-150. Additional solicitors under one permit.

Any permit approved and issued under this division shall be nontransferable, ~~but shall not prevent any permittee from using any number of solicitors and representatives as shall be reported to the city clerk.~~ Each person acting as a peddler, canvasser or solicitor shall be required to obtain a permit and must pay a non-refundable permit application fee, as established by resolution of city council, at the time the application is filed.

Sec. 18-151. Revocation.

~~Upon receipt of written information alleging that any individual, organization, agent or representative of any permittee under this division is misrepresenting or making untrue statements with regard to peddling, canvassing, or solicitation, transient merchant sales, solicitation by charitable organizations or has made untrue statements in the application, or that in any other way the solicitation has been conducted or is being conducted in a manner inimical to the protection of the health, life and property of the citizens of the city, and not in conformity with the intent and purpose of this article, or representing in any way that any permit granted hereunder is an endorsement of such solicitation then the city clerk shall give the permittee 24 hours' notice in writing that a hearing is to be held to determine whether there is cause to revoke the permit. If at the hearing the city clerk shall ascertain that the solicitation is not being conducted in conformity with this article, the permit may be revoked.~~

(a) The permit issued under this division may be temporarily suspended by the city manager or his or her designee for any fraud, misrepresentation, or false statement contained in the application, or for failure to observe the conditions of the permit, failure to abide by the regulations set forth in this article, or upon any subsequent conviction of any crime.

(b) Notice of such suspension shall be in writing, addressed to the applicant at the address provided in the application, setting forth the specific reason for the suspension, and the date of the hearing and the time and place thereof where the city manager shall determine whether sufficient grounds exist, as set forth in subsection (a) above, to revoke the permit. Such notice shall be given to the holder at least three days in advance of the hearing if the service is personal, and five days from the date of mailing if the notice is by mail.

(c) Appeal of revocation. The applicant may appeal a decision of the city manager revoking a permit under this division to the special magistrate. Such appeal shall be taken by filing with the city clerk, within twenty (20) days after notice of the action complained of has been mailed to such person's address as aforesaid, a written statement setting forth fully the grounds for the appeal. The city clerk shall set a time and place to hear the appeal. The decision and order of the special magistrate shall be final and conclusive.

Sec. 18-152. – Otherwise prohibited activity.

Nothing contained in this division shall be construed to permit or condone soliciting or peddling prohibited within the city by any other sections of this Code.

Secs. 18-~~152~~153—18-170. Reserved.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 5. The provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange and the sections of this ordinance may be renumbered or re-lettered to accomplish such intention. The code codifier is granted liberal authority to codify the provisions of the ordinance.

[REMAINDER OF PAGE LEFT BLANK]

SECTION 6. This ordinance shall become effective immediately upon final passage by the City Council.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of _____, 2022.

Passed and adopted on second and final reading on the day of _____, 2022.

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

[CA 5844]