



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

JANUARY 17, 2023

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 Rev. Susan McCaffrey of Grace Episcopal Church
2. Pledge of Allegiance
3. Roll Call

B. RECOGNITION AND PROCLAMATIONS

4. Arbor Day Proclamation
5. Human Trafficking Awareness Day Proclamation

C. CONSENT AGENDA

6. Public Comments on Consent Agenda Items Only
7. Agenda Approval
8. Approval of Minutes
 - a. December 13, 2022 - Regular City Council Meeting
9. Bid Awards and Contract Items
 - a. Approval of Service Agreement with Halifax Humane Society
 - b. Approval of Change Order No. 2 with Paul Culver Construction, Inc. for Ceiling & HVAC Replacement at Fire Station #74
 - c. Approval of a six (6) month extension to the Standard Contract for Services (CA7037) with Danus Utilities Inc. under ITB 19-19 Rehabilitation of Sanitary Manholes for the term of October 31, 2022 through April 30, 2023.
 - d. Approval of Agreement with Flock Safety Government Agency for Flock Falcon license plate readers

- e. Approval to Waive the Bidding Requirements and Enter into a Contract with Explosive Touch for Fireworks on July 4th

- 10. Resolution No. 23-01 - Approval of FDOT Locally Funded Agreement for 444033-1-32-01 Port Orange Sidewalk Gaps - Port Orange Project #OMI036
- 11. Resolution No. 23-02 - Approval of FDOT Locally Funded Agreement for 449770-2-32-01 Dunlawton Avenue Turn Lanes Bundle - Port Orange Project #PNC200
- 12. Resolution No. 23-03 - Approval of FDOT Locally Funded Agreement for 446285-1-32-01 Willow Run Boulevard Sidewalk from Harms Way to Clyde Morris Boulevard - Port Orange Project #OMI036
- 13. Resolution No. 23-04 - Approval of FDOT Locally Funded Agreement for 448772-1-32-01 Williamson Boulevard and Willow Run Boulevard Sidewalks - Port Orange Project #OMI036
- 14. Resolution No. 23-07 - Conveyance of the City's Mineral Rights for Land Adjacent to McDonald Road through a Quit Claim Deed
- 15. Resolution No. 23-08 - Reimbursement Resolution for Public Safety Equipment
- 16. Resolution No. 23-10 - Master Lease Purchase Agreement for Public Safety Equipment with Qualified Financial Institution
- 17. Approval to Remove a Residential Historic Tree located at 812 Kokomo Circle
- 18. Acceptance of the City Attorney's Report on Special Legal Counsel for 2023

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

E. COUNCIL COMMENTS

- 19. Comments/Concerns from Council Members

F. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

- 20. Citizen Advisory Committee for TPO
- 21. Parks & Recreation Advisory Board Report

G. PUBLIC HEARING

- 22. Second Reading - Ordinance No. 2022-32 - LDC Amendment/Chapter 20 - Ridgewood Targeted Business Program
- 23. Approval of the Flagship Commons Final Subdivision Plat (Case No. 22-50000004)

H. ADDITIONAL ITEMS

- 24. City Attorney
- 25. City Manager

I. COUNCIL COMMITTEE REPORTS

26. City Council Committee Reports

- a. First Step Shelter - Councilwoman Kat Atwood
- b. Port Orange/South Daytona Chamber of Commerce - Mayor Don Burnette

J. ADJOURNMENT

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



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



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

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

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

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

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
DECEMBER 13, 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 Pete Keirstead of Thrive Church

Pledge of Allegiance

Roll Call	Present:	Councilman Reed Foley Councilwoman Kat Atwood Councilman Drew Bastian Vice Mayor Scott Stiltner Mayor Donald Burnette
	Also Present:	City Manager Wayne Clark Assistant City Attorney Shannon Balmer Assistant City Clerk Tracee Cody

CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only

There were none.

5. Agenda Approval

There were no changes requested by Council.

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

6. Approval of Minutes

a. December 6, 2022 - Regular City Council Meeting

7. Bid Awards and Contract Items

a. Approval of Lease for Office Space for U.S. Representative Cory Mills

b. Approval of one-month extension to the Annual Service and Trap Neuter

Release (TNR) Agreement with Halifax Humane Society (HHS)

8. Resolution No. 22-46 - Financial Investment Policy

9. Approval to Reactivate the Department of Defense Surplus Equipment Program - The Florida 1033 Program

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

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

There were none.

COUNCIL COMMENTS

10. Comments/Concerns from Council Members

Councilman Reed Foley wished residents, Staff, and Council a happy holiday season. Councilwoman Kat Atwood thanked Staff for welcoming her and helping her get set up. Vice Mayor Scott Stiltner and Councilman Drew Bastian also wished everyone a happy and healthy new year, despite some challenging and unexpected events in 2022.

Mayor Don Burnette congratulated City Manager Wayne Clark for getting the reorganization well underway and is looking forward to the new Public Information Officer starting next week. Mayor Don Burnette also expressed his goal for 2023 is to be proactive and ready to serve our citizens.

PUBLIC HEARING

11. Second Reading - Ordinance No. 2022-30 - Comprehensive Plan Amendment/Annual Capital Improvements Element Update (Case No. 22-27500001)

Mayor Don Burnette read Ordinance No. 2022-30.

ORDINANCE NO 2022-30

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE COMPREHENSIVE PLAN CAPITAL IMPROVEMENT ELEMENT; PROVIDING FOR THE FY2023-2028 FIVE-YEAR SCHEDULE OF CAPITAL IMPROVEMENTS AND SUPPORTING DATA; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES AND RESOLUTIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2022-30 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Reed Foley. Motion carried unanimously

by roll call vote.

12. Approval of the Final Plat & Plans for Leila's Hammock Subdivision (Case No. 22-50000002)

Motion to approve the Final Plat & Plans for Leila's Hammock Subdivision (Case No.22-50000002) was made by Vice Mayor Scott Stiltner and Seconded by Councilwoman Kat Atwood.

Penelope Cruz, Planning Manager, spoke regarding the details of the plat & plans being proposed and answered questions from the Council.

Laurel Burchard, a homeowner on Mediation Loop, expressed her concerns regarding the traffic pattern but supports the project as a whole.

Motion carried unanimously by roll call vote.

REGULAR AGENDA

13. Update from Raftelis on Utility Rate Study - Water, Wastewater, Reclaimed Water rates, miscellaneous service charges and fees

John McKinney, Assistant City Manager, provided a brief overview of the item. Henry Thomas, Managing Partner of Raftelis, provided an update on the Utility Rate Study and proposed rate increases.

Mayor Don Burnette recommended the water usage charges be broken down to include a 2,001-6,000 gallons and a 6,001-12,000 gallons usage category. Council requested clarification from Staff regarding master meters before making a decision. Mr. McKinney informed Council that we do not have a police impact fee for police stations and vehicles and that he will provide further information for the impact fee review.

Council recessed at 7:57 p.m. and reconvened at 8:02 p.m.

14. Discussion on Legislative Priorities

Robin Fenwick, Assistant City Manager, provided an overview of legislative priorities to present to the State to request funds and answered questions from Council.

ADDITIONAL ITEMS

15. City Attorney

There was nothing further.

16. City Manager
 - a. Hurricane Update

Wayne Clark, City Manager, stated debris pickup is back to a regular schedule by WastePro and provided an update on the Cambridge wall.

Mayor Don Burnette requested Facebook posts on the Cambridge wall to update residents. He also announced that Town Hall will be held on January 19, 2023 at 7:00 pm.

COUNCIL COMMITTEE REPORTS

17. City Council Committee Reports
 - a. Port Orange/South Daytona Chamber of Commerce – Mayor Don Burnette provided details on the upcoming events and introduced Diane Charles as the new President of the Chamber.
 - b. Round Table of Elected Officials - Mayor Don Burnette provided details from their recent meeting.

ADJOURNMENT – 8:28 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, MMC
Assistant City Manager/City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C9a) Approval of Service Agreement with Halifax Humane Society

DEPARTMENT: Police Services

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the FY23 Service Agreement with Halifax Humane Society and authorize the City Manager to execute any renewals provided for therein.

SUMMARY: The Halifax Humane Society (HHS) is under new leadership and has proposed a revised service agreement with all municipalities in Volusia County who contract for services with HHS. Services include, but are not limited to, temporary impoundment, spay and neuter, vaccination, adoption, euthanasia and ear-tipping of feral cats as part of the City's Trap Neuter Release (TNR) program. The revised terms included an increase in prices for all HHS services. In support of the proposed increases, HHS cites to the rising costs of personnel and supplies. The City of Port Orange has teamed up with Daytona Beach, Holly Hill, and Ormond Beach to negotiate the new terms and provide input from the government agencies that use the services provided by HHS on a daily basis.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	HHS Service Agreement 2023 12.13.22 - CLEAN	HHS Service Agreement 2023 12.13.22 - CLEAN.pdf
2.	HHS signed 2023 contract PO	HHS signed 2023 contract PO.pdf

Beth Unruh	Created/Initiated - 11/23/2022
Manuel Marino	Approved - 11/23/2022
John McKinney	Approved - 11/28/2022
Matthew Jones	Approved - 12/1/2022
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023

AGREEMENT FOR SERVICES BETWEEN
Halifax Humane Society, Inc.
AND
City of Port Orange

This Services Agreement ("Agreement") is hereby entered into by and between the **Halifax Humane Society, Inc.**, a Florida non-profit corporation, with its principal address at 2364 LPGA Boulevard, Daytona Beach, Florida 32124 ("Humane Society"), and the **City of Port Orange**, a Florida Municipal corporation. ("Impounding Agency").

WHEREAS, in order to enforce the ordinances of the Impounding Agency and the laws of the State of Florida, the Impounding Agency desires to deliver animals to the Humane Society for the humane impoundment and humane disposition of said animals; and

WHEREAS, the Humane Society is organized for the purpose, among others, of preventing cruelty to animals and is interested in assuring that impounded animals are sheltered in a humane manner and those which must be euthanized, be so euthanized in a humane manner.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and provisions herein contained, it is expressly agreed and understood as follows:

1. **TERM:** This Agreement will take effect on the 1st day of February 2023, and will remain in full force and effect for an initial eight (8) month period ending on midnight September 30, 2023. The parties shall have the option to extend the Agreement for up to three (3) additional twelve (month) periods if agreed to by both parties in writing with a 10% increase annually of fees
2. **ANIMAL SHELTER, RETURN TO FIELD, AND TRAP, NEUTER, AND RETURN:**
 - (a) The Humane Society will maintain and operate an animal shelter ("Shelter") in a manner adequate for the confinement, remedial treatment, and, if necessary, disposal of stray dogs, cats, or other animals, which may be delivered to the Humane Society from within the jurisdictional limits of the Impounding Agency, and the Humane Society will furnish, at its sole expense, all supervision, labor, animal food, tools, supplies and other things necessary for the satisfactory performance of the services herein agreed to be provided. Remedial care will be provided for injured animals during operating hours when there is a staff veterinarian available, at the Humane Society's sole expense. The Shelter will be operated at 2364 West LPGA Blvd., Daytona Beach, Florida.
 - (b) The Humane Society will provide means to accept all stray dogs and other domesticated animals delivered to the Shelter by the Impounding Agency's law enforcement personnel, Animal Control Officers, or other designated officers appointed by the Impounding Agency for this purpose. The Humane Society will provide alternative options of Return to Field (RTF) for unsterilized community cats

following national animal welfare organization recommendations for the most humane practices with addressing cat overpopulation. The Humane Society will accept wild animals and livestock only if it has the ability and facilities to impound and control these animals, and the decision to accept or reject such animals will be solely within the discretion of the Humane Society. The Humane Society will require all persons who drop off injured or stray animals to the Shelter during the Shelter's normal operating hours to give their names, telephone number, current home and post office addresses (as verified by a government issued identification), and identify the place where the animals involved were located or picked up.

- (c) When the Impounding Agency delivers an animal to the Shelter for impoundment and such animal bears information indicating ownership of the animal, the Impounding Agency representative shall use its best efforts to attempt to return the animal to its rightful owner, when safe for the animal to do so. The Impounding Agency representative shall also provide to Halifax all owner/guardian contact information gathered and documented attempts of contact for the owner/guardian. An administrative fee of \$35 will be assessed for every animal found to have identification by means of collar with information, tag or microchip that the owner/guardian has not been attempted to contact and provided documentation of such. Regardless of the foregoing, any animal suspected of being infected with rabies or which has bitten or otherwise exposed any person to rabies, shall not be released to its owner until after such animal has been impounded for the required quarantine timeframe and the Volusia County Health Department, through its authorized representatives, has expressly approved, in writing, any such release.
- (d) When a stray domestic animal is delivered to the Shelter and is not suspected of having rabies or has not bitten or otherwise exposed any person to rabies, the Humane Society will impound the animal at the Impounding Agency's expense for a period of three (3) calendar days (unless the cat is referred to the Return to Field (RTF) program as described below). There will be a 24-hour only holding period for dogs under 6 months of age when 2 or more are impounded together and no holding period for cats under the age of 6 months provided there is no owner identification. If the owner has not retrieved the animal within the designated holding period, the Humane Society will thereafter, at its own expense, provide for the adoption or humane disposal of the animal in accordance with its routine methods and procedures.
- (e) When a stray cat is delivered to the Shelter and is not suspected of having rabies or has not bitten or otherwise exposed any person to rabies, the Humane Society will determine the eligibility of the animal for the RTF Program. After consultation with the Impounding Agency, the Humane Society will decide whether the cat will be referred for impoundment or RTF and notify the Impounding Agency. The Impounding Agency representative will expressly inform the Humane Society if a cat

is brought in as part of the Trap, Neuter, and Return Program (TNR) or Return to Field (RTF). The Humane Society will only perform feline sterilization services for cats brought to the Humane Society by an Animal Control Officer (ACO) or other Impounding Agency designated representative upon request. Cats brought to the Humane Society by any other person will not be eligible for reimbursement by the Impounding Agency. Fees for this service are listed in 3(b) under RTF/TNR Cats. The Impounding Agency will only be responsible for services or procedures that are requested and expressly included in this agreement. The Impounding Agency will not pay for any other service or procedure. The RTF/TNR Program requires the following:

- i. The Humane Society and the Impounding Agency shall mutually agree on the day(s) of the week that the Impounding Agency will bring cats to the designated Humane Society facility. Said schedule shall be subject to change by mutual agreement of the parties. The Impounding Agency shall at a minimum have one day reserved each week at a designated Humane Society facility to bring in cats for sterilization.
- ii. Surgeries may be completed at either:

Halifax Humane Society 2364 West LPGA Boulevard Daytona Beach, FL 32124

Or

HHS Redinger Clinic 600 Mason Ave #150 Daytona Beach, FL 32117

Hereafter Humane Society shall refer to both the location on LPGA Blvd. and Mason Ave.

- iii. All regular sterilizations are the same price for neuters and spays (males and females). Each surgery includes complimentary ear tipping, FVRCP and rabies vaccines, and anesthesia for a cost of \$45. Ear tipping must be completed according to Alley Cat Allies recommendations by removing at least 3/8 of an inch from the top of the left ear.
- iv. If the Impounding Agency presents a cat for sterilization and the Humane Society finds the cat has already been sterilized, the Humane Society will provide anesthesia, ear tipping, FVRCP and rabies vaccine at the normal sterilization surgery cost of \$45.
- v. The Humane Society recognizes that the Impounding agency may not have a licensed veterinarian on staff and would not have the ability to determine whether an animal should be euthanized. Therefore, upon presentation of a cat, the Humane Society, at its sole discretion, will determine if the cat is healthy enough to survive surgery and whether or not it should be euthanized. The cost

for euthanasia is \$45.

- vi. All cats being returned to the Impounding Agency staff from the Humane Society will have their ear tipped as described above. No exceptions. If a cat is returned to the Impounding Agency staff without an ear tip, or with an ear tip of less than 3/8 of an inch from the top of the left ear, the Impounding Agency cat will be returned to the Humane Society for the procedure without any additional charge to the Impounding agency.
- vii. No procedures other than those listed in this Agreement will be paid for by the Impounding agency. The Impounding agency will only reimburse for procedures that have been documented and provided to the Impounding agency. The Humane Society must provide at least the following information in order to receive reimbursement for each cat:
 - Invoice number
 - Visit Date
 - Billing Date
 - Animal Name and/or Number
 - Name and Address of Individual Dropping-Off (if other than ACO)
 - Services provided
 - Cost for each service provided
 - Total cost
- viii. The Humane Society will combine and send all invoices to the Impounding Agency, monthly.
- ix. Animal Control Officers will notify the Humane Society staff at the LPGA location whether a feline brought there is not eligible for RTF due to being confiscated, seized or under quarantine.
- x. The Humane Society will only release RTF cats to the Impounding Agency Animal Control Officer unless Impounding Agency provides permission for a 3rd party release in writing from an authorized representative of the Impounding Agency.

3. BILLING & PAYMENT:

- (a) The Humane Society shall bill the Impounding Agency pursuant to Paragraph 3(b), as applicable, for:
 - (i) each dog or cat, domesticated animal, injured animal, deceased animal, livestock animal, wild animal, or quarantined/confiscated animal delivered to the Shelter by either the Impounding Agency's designated personnel, Law Enforcement, or Animal Control Officers; and
 - (ii) each stray dog or cat, domesticated animal, injured animal, deceased animal,

livestock animal or wild animal emanating from within the jurisdictional limits of the Impounding Agency and delivered to the Shelter by a private citizen. Owner surrendered animals will only be accepted via Impounding Agency with prior Supervisor approval from Humane Society and fees for this service are listed in 3(b) under Owner Surrender – via ACO. Owner requested surrenders in the field should be referred to Halifax Humane Society directly.

- (b) In consideration of the agreements and undertakings to be performed by the Humane Society, the Impounding Agency agrees to pay the following applicable fee(s) per animal to the Humane Society on a monthly basis, in arrears:

Type of Animal	Fee
Dog or cat (if the cat is not eligible for RTF/TNR program)	
Stray Sheltering (up to 3 days)	\$120
Administrative Fee - failure to reunite/contact known owners	\$35
Owner Surrender via Animal Control Officer	\$120
Other small domesticated pets	\$100
Livestock/Wildlife	\$150
Wild animal - (Euthanasia)	\$55.00
Deceased on arrival - (Disposal)	\$25.00
Quarantined animal (e.g., Rabies)	\$100 fee plus \$30 per additional day Quarantine period determined by Florida State Statute
Confiscated animals – Due to police custody, hospitalization, owner deceased, subject to eviction, or pending court case	\$120 fee (includes up to 3 days of impoundment) \$21 for each additional day of impoundment
Fees for RTF/TNR cats	
Sterilization Surgery	\$45
Complimentary ear tipping, FVRCP, Rabies Vaccines	
Anesthesia Fee	\$45
No surgery performed, ear tipping, FVRCP vaccine, rabies vaccine	
Euthanasia	\$45
Veterinarian determined that patient cannot undergo surgery due to illness/disease	
Fees for Additional Services	Staff Support: \$25.00 per hr.
Forensic calls and staff assistance	Veterinarian Support: \$125.00 per hr.

- (c) Payment must be made to the Humane Society within forty-five (45) days of the date of a proper invoice, as required by the Florida Local Government Prompt Payment Act (Part VII, Chapter 218, Florida Statutes) (the “Prompt Payment Act”). As provided by the Prompt Payment Act, any payment that is not made by the Impounding agency within such time period shall bear interest from thirty (30) days

after the due date at a rate of one percent (1%) per month on the unpaid balance until paid in full. If the Impounding agency has a dispute about a charge on its invoice, it must contact the Humane Society's Director of Administrative Services at 386-274-4703, extension 315, within 15 days of the date of the invoice. Disputed balances shall not be considered overdue and shall not bear interest until said dispute has been resolved.

- (d) The Humane Society will submit to the Impounding Agency, with its monthly invoice, a list of all pick up addresses of stray animals charged to the Impounding Agency account for animals that were not impounded by an Impounding Agency's designated personnel, the names and addresses of all persons claiming any stray animals that are dropped off at the Shelter during normal operating hours. After hours animal drop off not permitted.
- (e) The Humane Society will use good faith efforts to try to collect from the animal's owner costs for which the Impounding Agency is otherwise liable hereunder. In the event an owner pays any fees or charges to reclaim its animal, the Impounding Agency shall be credited the full amount any such fees or charges paid. Humane Society staff is required to seek full payment of the fees by the animal owners without indicating that such payment is optional. Any time a fee is waived or reduced for an indigent animal owner, it must be authorized by a Humane Society Supervisor prior to the animal being released.

4. **RABIES QUARANTINE:** The Humane Society will provide space for the confinement, observation and care of any stray animal suspected of rabies, or any stray animal which has bitten or otherwise exposed any person to rabies for a period of the state determined time for quarantine and will accept, care for, and dispose of any such animal delivered to the Shelter. The Humane Society will notify the Volusia County Health Department of any rabies specimen animal that dies during the quarantine period, and will allow the Volusia County Health Department the opportunity to take custody of the remains of any such animal that becomes ill or dies while under confinement for such reasons. The Impounding Agency shall pay the applicable charges for quarantine service pursuant to Section 3(b) of this Agreement.

5. **CONFISCATED ANIMALS:** The Humane Society will agree to accept confiscated animals as strays or accept said animals as "confiscated" only when the provisions of Section 828.073, Florida Statutes are satisfied. The Impounding Agency shall be responsible for all charges and expenses incurred in confiscating an animal pursuant to § 828.073, Fla. Stat. The appropriate paperwork must be submitted by the Impounding Agency to the Humane Society within three (3) business days of impounding the confiscated animal. Failure to comply with this requirement will result in "confiscated" animals being deemed "stray" animals, at which point care of the animal will be charged to the Impounding Agency at the default "stray" rates provided in Section 3(b) of this Agreement. The Impounding Agency agrees to indemnify the Humane Society for any and all claims that may arise as a result of the negligent act or omission of an employee of the Impounding Agency related to the decision to submit the animal as a

stray

6. **DANGEROUS DOG LAW:** Pursuant to Sections 767.12 and 767.13, Florida Statutes, it will be the sole responsibility of the Impounding Agency's animal control authority to determine whether a dog is dangerous and to submit to the Humane Society the necessary paperwork as required by the applicable statutes. If quarantine is necessary, a dog quarantined pursuant to Chapter 767, Part II of the Florida Statutes (the "Dangerous Dog Law"), may be quarantined for ten (10) business days at a bona fide boarding kennel or veterinarian's office of the Impounding Agency's or owner's choice. Otherwise, the Humane Society will quarantine all dogs that the Impounding Agency animal control authority determines to be dangerous for a maximum of ten (10) business days. The Impounding Agency shall pay the applicable charges for such service pursuant to Section 3(b) of this Agreement. If the owner of the dog is unknown by the end of the quarantine period, the Impounding Agency may request that euthanasia be performed by the Humane Society when it is the Impounding Agency's belief that the dog poses a threat to public safety. The Impounding Agency agrees to indemnify the Humane Society for any and all claims that may arise as a result of the negligent act or omission of an employee of the Impounding Agency related to the decision to submit the animal under the Dangerous Dog Law

7. **CONFISCATED ANIMALS - OWNER OF ANIMAL IS IN CUSTODY / DECEASED / HOSPITALIZED:** All animals whose owner(s) are in police custody, deceased or hospitalized may be placed in a bona fide boarding kennel or veterinary clinic at the owner's expense. The Humane Society will accept any such animals that are seized or taken by the Impounding Agency. The Impounding Agency agrees to provide next of kin, emergency contact or any other available contact information to Humane Society within 3 days of impoundment. Failure to do so by the Impounding Agency will forfeit any hold on the animal other than the mandatory 3-day holding period for stray animals. The Impounding agency shall pay the applicable charges for such service (*i.e.*, "Confiscated Animal") pursuant to Section 3(b) of this Agreement. The Impounding Agency agrees to indemnify the Humane Society for any and all claims that may arise as a result of the negligent act or omission of an employee of the Impounding Agency related to the decision to submit the animal as Confiscated/Owner of Animal in Custody/Deceased/Hospitalized

8. **CONFISCATED ANIMALS DUE TO OWNER EVICTION:** Animals seized by the Impounding Agency as a result of an owner eviction will be held by the Humane Society for five (5) days. The Impounding Agency agrees to leave notice of impoundment at the eviction location listing the whereabouts and descriptions of the animal(s) confiscated. Impounding agency's representative will provide proof of such notice, inform of agency report or photograph of notice on the dwelling with address or writ of possession displayed. If not reclaimed by the owner, all charges accrued pursuant to Section 3(b) will be paid by the Impounding Agency.

If the Impounding Agency chooses not to have the Humane Society hold the animal for the entire reclamation period referenced above, the Impounding Agency may submit the animal to the Humane Society as a "stray," in which case the animal will be held for three (3) days prior to

disposition. The Impounding Agency agrees to indemnify the Humane Society for any and all claims that may arise as a result of the negligent act or omission of an employee of the Impounding Agency related to the decision to submit the animal as a "stray."

9. **REMEDY IN THE EVENT OF BREACH:** In the event that the Impounding Agency fails to make timely payment to the Humane Society for services rendered pursuant to this Agreement, the Humane Society, in its sole discretion, may elect to terminate this Agreement and cease providing services to the Impounding Agency. If the Humane Society exercises this option, it will provide the Impounding Agency with thirty (30) days written notice of its decision to terminate the Agreement. The Impounding Agency will remain responsible for payment for all services rendered by the Humane Society prior to and during the thirty (30) day notice period. Upon expiration of the thirty (30) day notice period, the Humane Society will no longer provide any services to the Impounding Agency.

10. **WAIVER OF BREACH:** The waiver by the Humane Society or the Impounding Agency of any breach or violation of this Agreement will not operate as or be construed to be a waiver of any subsequent breach of this Agreement.

11. **TERMINATION FOR CONVENIENCE:** The parties agree that the Impounding Agency may terminate this Agreement, or any services contracted for hereunder, either in whole or part, whenever the Impounding Agency shall determine that such termination is in the best interest of the Impounding Agency or if funds are not appropriated for the services provided hereunder. Said termination shall be noticed by letter to the Humane Society. Upon termination, no such services shall be provided by the Humane Society and Impounding Agency shall be responsible for payment for any services provided up to the date of termination as shown on a final invoice provided by Humane Society.

12. **INSURANCE:** Humane Society shall maintain insurance of sufficient amounts during the life of this Agreement. Humane Society shall provide to the Impounding Agency with a certificate of insurance endorsing the Impounding Agency as an additional named insured, upon request. All insurance coverages of the Humane Society shall be primary and non-contributory. All insurance coverages of the Humane Society shall not seek contribution from any other insurance or self-insurance available to the Impounding Agency.

Policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Insurer shall provide the Impounding Agency written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the Impounding Agency no later than 10 days after non-payment.

Minimum insurance coverages that must remain in place for the life of the Agreement are as follows:

Commercial General Liability:	Aggregate \$2,000,000 / Each Occurrence \$1,000,000
Automobile Liability:	\$1,000,000
Umbrella Liability:	\$1,000,000

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

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

14. PUBLIC RECORDS: Pursuant to section 119.0701 (2)(a), Florida Statutes, the Impounding Agency is required to provide the Humane Society with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF THE HUMANE SOCIETY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE HUMANE SOCIETY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (386) 506-5563, 1000 City Center Circle, Port Orange, Florida 32129; Email: cityclerk@port-orange.org.

By entering into this Agreement, the Humane Society acknowledges and agrees that some records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Agreement are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any contractor entering into a contract for services with the Impounding Agency, including the Humane Society, is required to comply with the following with respect to the applicable public records:

- a) Keep and maintain public records required by the Impounding Agency to perform the services and work provided pursuant to this Agreement.
- b) Upon request from the Impounding Agency's custodian of public records, provide the Impounding 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 Chapter 119, Florida Statutes, or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Impounding Agency.
- d) Upon completion of the contract, transfer, at no cost, to the Impounding Agency all public records in the possession of the contractor or keep and maintain public records required by the Impounding Agency to perform the service. If the contractor transfers all public records to the Impounding 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 Impounding Agency, upon request from the Impounding Agency's custodian of public records, in a format that is compatible with the information technology systems of the Impounding Agency.
- e) Requests to inspect or copy public records relating to the Impounding Agency's contract for services must be made directly to the Impounding Agency. If contractor receives any such request, contractor shall instruct the requestor to contact the Impounding Agency. If the Impounding Agency does not possess the records requested, the Impounding Agency shall immediately notify the contractor of such request, and the contractor must provide the records to the Impounding Agency or otherwise allow the records to be inspected or copied within a reasonable time.

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

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

15. **MEDIATION:** Any dispute arising from this Agreement, including, but not limited to, disputes over fees for services, will be mediated prior to a lawsuit being filed. Mediation will occur within sixty (60) days of written request by either party to mediate unless agreed to otherwise. The written request must be delivered in accordance with the provisions of Paragraph 19, below, of this Agreement. The cost of the mediator's fee will be borne equally by the parties.

16. **ATTORNEY'S FEES:** Both parties agree to bear the cost of their own attorneys' fees with respect to any disputes, lawsuits, or claims arising under this Agreement, except unless otherwise specifically allowed elsewhere in this Agreement or in the event of an action to recover amounts due under Part VII, Chapter 218, Florida Statutes, in which case, the court shall award court costs and reasonable attorney's fees, including fees incurred through appeal, to the prevailing party.

17. **GOVERNING LAW AND VENUE:** The parties further agree that this Agreement will be governed by the laws of the State of Florida and that venue for any and all suits arising out of or otherwise attributable to this Agreement will lie exclusively in the courts of Volusia County, Florida, unless the matter at issue is solely cognizable in federal court, in which case, venue shall be in the Middle District of Florida, Orlando Division.

18. **SEVERABILITY:** If any provision of this Agreement or any part of any provision of this Agreement is found to be invalid by a court of competent jurisdiction, such will not affect the validity of any other provision, or part thereof, of this Agreement.

19. **ENTIRE AGREEMENT:** This Agreement constitutes the entire and final understanding and agreement with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements, or representations concerning all matters directly or indirectly, collaterally related to the subject matter of this Agreement. This Agreement supersedes and replaces in the entirety the Agreement for Services dated _____. All other agreements or understandings made by and between the Impounding Agency and Humane Society prior to this Agreement are null and void.

20. **AMENDMENTS:** This Agreement cannot be amended or modified except by writing executed by both of the parties hereto or their respective administrators, trustees, personal representatives, and successors.

21. **NOTICES:** Any written notice required to be given under this Agreement is to be mailed by registered or certified mail, postage prepaid, to the party's business address or any other address designated for that purpose by written notice and sent to the attention of the City Manager with respect to the Impounding Agency and to the attention of the CEO with respect to the Humane Society.

IN WITNESS WHEREOF, the Humane Society and the Impounding agency have executed this Agreement for Services between Halifax Humane Society Inc. and the City of Port Orange, effective on the date and year as set forth above.

HALIFAX HUMANE SOCIETY, INC.

CITY OF PORT ORANGE

By: _____
Name: Pam Clayton
Title: Chief Executive Officer
Date: _____

By: _____
Name: Donald O. Burnett
Title: Mayor
Date: _____

ATTEST:

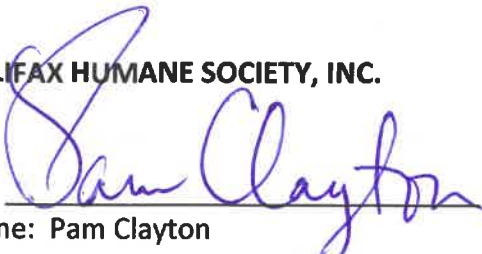
ATTEST:

By: _____
Name: Christina Sutherin
Title: Chief Operating Officer
Date: _____

By: _____
Name: Robin L. Fenwick, MMC
Title: City Clerk
Date: _____

IN WITNESS WHEREOF, the Humane Society and the Impounding agency have executed this Agreement for Services between Halifax Humane Society Inc. and the City of Port Orange, effective on the date and year as set forth above.

HALIFAX HUMANE SOCIETY, INC.

By: 
Name: Pam Clayton
Title: Chief Executive Officer
Date: 12/20/2022

CITY OF PORT ORANGE

By: _____
Name: Donald O. Burnett
Title: Mayor
Date: _____

ATTEST:

By: 
Name: Christina Sutherin
Title: Chief Operating Officer
Date: 12/20/22

ATTEST:

By: _____
Name: Robin L. Fenwick, MMC
Title: City Clerk
Date: _____



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C9b) Approval of Change Order No. 2 with Paul Culver Construction, Inc. for Ceiling & HVAC Replacement at Fire Station #74

DEPARTMENT: Public Works

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Change Order No. 2 to AIA Agreement CA7874 with Paul Culver Construction, Inc. relating to Fire Station #74 - Ceiling & HVAC Replacement ITB #22-08 in the amount not to exceed \$113,854 for a revised agreement amount of \$511,854.00.

SUMMARY: The Public Works & Utilities Department is requesting City Council approval of Change Order No. 2 to the AIA Agreement CA7874 – ITB 22-08 with Paul Culver Construction, Inc. for ITB 22-08 Fire Station #74 Ceiling & HVAC Replacement in the amount of \$113,854 for a revised agreement amount of \$511,854.

Bid proposals for this project were submitted in April 2022. On July 19, 2022, the City entered into an AIA Agreement CA7874 with Paul Culver Construction, Inc. for services relating to ITB 22-08 for Fire Station #74 Ceiling and HVAC Replacement project in the amount of \$398,000 with an additional \$10,000 for unforeseen conditions. The purchase order was issued for \$408,000 for this project.

On October 5, 2022, during the equipment submittal process, Paul Culver Construction advised the city that the HVAC required in the bid was no longer in production due to new HVAC regulations. In addition, they notified the city that the electrical subcontractor could no longer maintain their pricing due to new wage requirements.

On November 1, staff, the design engineer, and the purchasing department met with the contractor to discuss these items. Staff received the pricing increases requested and reviewed them with the design engineer. Three options were proposed and Option #2 is recommended. Option #1 provided for a Lennox brand unit which was determined by the design engineer to be inferior to the specified unit. Option #2 provided for a unit that met the specifications and is recommended by the design engineer. Option #3 was eliminated because the coastal coating on the condenser is required in the specification as a factory application and this option provided for a third-party coating application.

After reviewing the revised options, staff is in agreement that it is in the best interest of the City to choose Option #2 with an additional cost of \$113,854. Upon review of the US Bureau of Labor Statistics, Services Less Energy, for the southern region, labor costs

have increased 19.5% between March and November 2022. The price of the unit has also increased over the out of production model. Therefore, staff believes these increased costs are justifiable.

The contract term has a substantial completion of 365 days from the Notice to Proceed (NTP) with an additional 30 days for final completion. These dates will be assigned when the NTP is fully executed. Currently, the delivery of the unit is estimated to be 31 weeks. This request does not require any additional time and there is no change in scope from the original bid specifications.

PRESENTER: Lynn Stevens

ATTACHMENTS:

1.	Paul Culver Construction, Inc. Change Order 2 - ITB 22-08 Fire Station #74 HVAC and Ceiling Replacement	Paul Culver Construction, Inc. Change Order 2 - ITB 22-08 Fire Station #74 HVAC and Ceiling Replacement.pdf
2.	Fire Station #74_2nd REVISION_11.23.2022_kbf	Fire Station #74_2nd REVISION_11.23.2022_kbf.pdf
3.	EXECUTED Paul Culver Construction A1A Contract	EXECUTED Paul Culver Construction A1A Contract.pdf
4.	RECORDED Paul Culver Construction Inc. ITB 22-08 Payment and Performance Bond	RECORDED Paul Culver Construction Inc. ITB 22-08 Payment and Performance Bond.pdf
5.	Dept Justification Memo - Paul Culver CO2 - FS74 HVAC and Ceiling 2	Dept Justification Memo - Paul Culver CO2 - FS74 HVAC and Ceiling 2.pdf

Julia Wiggins	Created/Initiated - 12/15/2022
Ronny Buttrum	Approved - 12/15/2022
Lynn Stevens	Approved - 12/15/2022
Joe Wulfing	Approved - 12/16/2022
Jill Poolman	Approved - 12/27/2022
John McKinney	Approved - 12/28/2022
Matthew Jones	Approved - 1/3/2023
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023

CHANGE ORDER NO. 2
To the AIA Agreement dated July 19, 2022
PAUL CULVER CONSTRUCTION, INC. Contractor

Project: ITB 22-08 Fire Station #74 HVAC and Ceiling Replacement

The following changes are hereby made to the Contract Documents:

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: \$398,000.00	Original Contract Times: Substantial Completion: 365 days Final Completion: 395 days (NTP PENDING)
Net changes from previous Change Order : Change Order No. 1 was an internal Finance/Accounting Change Order <i>and did not affect the Project Contract Price</i>	Changes in contract time from previous Change Orders: N/A - Change Order No. 1 was an internal Finance/Accounting Change Order <i>and did not affect the Project Time</i>
Contract Price prior to this Change Order No. 2: \$398,000.00	Contract Completion Date prior to this Change Order No. 2: N/A
Net Increase (decrease) of this Change Order No. 2: No. 1 Internal Finance/Accounting CO No. 2 \$113,854.00	Changes in contract time requested this Change Order No. 2: No. 1 N/A Internal Finance/Accounting CO No. 2: N/A - NTP not issued yet
Contract Price with all approved Change Orders: \$511,854.00	Contract Times with all approved Change Orders: N/A NTP not issued yet

CHANGES ORDERED:

- I. GENERAL: This Change Order is necessary to cover changes in the work to be performed under the AIA Agreement between the City of Port Orange and Paul Culver Construction, Inc. entered into by and between the parties on July 19, 2022.
- II. REQUIRED CHANGES: Change Order. Change order is necessary to provide additional funding due to unforeseen supply issues. No goods shall be delivered, nor services commenced hereunder until this Change Order has been fully executed by all parties.
- III. JUSTIFICATION: Change Order No 2 is needed due to the HVAC unit that was originally quoted can no longer be provided. Change order will include the updated equipment and labor necessary to complete the project.
- IV. PAYMENT: Payment for this Change Order shall be made in accordance with the terms of the AIA Agreement subject to a limit not to exceed \$113,854.00, for a revised agreement amount of \$511,854.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Florida Statutes Section 218.70 through 218.79, as amended.
- V. This Change Order may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Change Order shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Change Order.

Acknowledgments:

The aforementioned change, and work affected thereby, is subject to all provisions of the original contract not specifically changed by this Change Order;

It is expressly understood and agreed that the approval of the Change Order shall have no effect on the original contract other than matters expressly provided herein;

The prices quoted are fair and reasonable and in proper ratio to the cost of the original work contracted for under competitive bidding; and,

The change in price and/or delivery date described is considered to be fair and reasonable and has been mutually agreed upon in full agreement and final settlement of all claims arising out of this modification including all claims for delays and disruptions resulting from, caused by, or incident to such modifications and change orders.

RECOMMENDED BY:
PUBLIC WORKS & UTILITIES DIRECTOR

ACCEPTED BY:
PAUL CULVER CONSTRUCTION, INC.
Contractor

By: _____
Lynn Stevens, Public Works & Utilities Director

By: _____
Paul K. Culver, President

Date Signed: _____

Date Signed: _____

RECOMMENDED BY:
N/A
City's Representative

RECOMMENDED BY:
N/A
Engineer of Record

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

Date Signed: _____

Date Signed: _____

APPROVED BY:
CITY OF PORT ORANGE
Department Head

By: _____
Lynn Stevens, Public Works & Utilities
Director

Date Signed: _____

City Manager

By: _____
Wayne Clark, City Manager

Date Signed: _____

If Council approval is required:

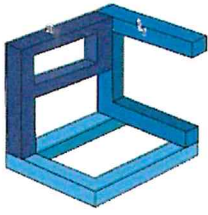
Affirmed:

By: _____
Donald O. Burnette, Mayor

Robin L. Fenwick, MMC, City Clerk

Date Signed: _____

Date Signed: _____



PAUL CULVER CONSTRUCTION, INC.

QUALITY WORK BY SKILLED CRAFTSMEN. EST 2005.

License # CGC 059149

November 23, 2022

2nd REVISION

Attn: Lynn Stevens
Public Works & Utilities Director
City of Port Orange
407 Virginia Avenue
Port Orange, FL 32127

lstevens@port-orange.org

**RE: Fire Station #74 - Ceiling & HVAC Replacement
6701 Airport Road**

Dear Lynn:

Thank you for extending an opportunity to Paul Culver Construction, Inc. to work with you completing the referenced project.

We have visited the site to familiarize ourselves with the existing conditions and reviewed the Revised Drawings by DJ Design dated 10/20/2022. In accordance with the above, we are pleased to submit this breakdown of our Original Proposal to provide all Labor, Material, Equipment, Tools, Taxes, Insurance & Permits necessary to complete construction of the referenced project for a lump sum price of **THREE HUNDRED NINETY-EIGHT THOUSAND DOLLARS & 00/100's (\$398,000.00)** as follows:

General Conditions

\$ 66,745

- Supervision
- Project Management
- General Liability & Workers Compensation Insurance
- Dumpsters & Portolets
- Equipment & Tools
- Temporary Storage Containers
- Site Safety/PPE/First Aid
- Daily Clean-Up
- Final Clean-up
- Permitting

Demolition

\$ 16,660

- Complete demolition in accordance with the plans

Framing, Drywall, Acoustical & EIFS

\$ 39,795

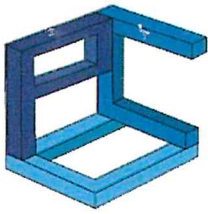
- Install 3-5/8 20-gage 16" on center metal stud framing at men's & woman's locker / restrooms, with one (1) layer of 5/8 type-x drywall finished to a level-4 smooth ready for paint. *(Mechanical room is not included.)*
- Where ceiling demo occurs, install minor touch up of the existing drywall finished to a level-4 smooth, ready for paint.
- Provide USG #2310 Radar 2 x 4 and USG #2110 Radar 2 x 2 all square edge tiles with standard white 15/16 grid.
- Exterior Soffits - at all sides of building, install 7/8 18-gage 16" on center metal hat channel with one layer of 5/8 dens-glass with control joints with Dryvits back stop moister / vapor barrier with direct applied standard mesh with base coat with fine sand finish with color. *(Vents are not included.)*

Painting

\$ 7,250

- Complete painting as required





PAUL CULVER CONSTRUCTION, INC.

QUALITY WORK BY SKILLED CRAFTSMEN. EST 2005.

License # CGC 059149

L. Stevens
11/23/2022
Page 2

Roofing & Insulation

\$ 34,769

- Seal all existing off ridge vents per plans
- Provide Closed Cell Spray Foam Insulation applied at 4.5" (R30) to roof above conditioned space With Thermal Barrier applied to foam

Fire Protection

\$ 9,517

- Modify existing Fire Protection as required

HVAC

\$ 125,000

- Demolition of (2) Carrier Split Systems, (1) Carrier Split System, Copper with Armoflex, PVC drain lines, UV Light, (8) VAVs, (1) Smoke Duct Detectors, (2) SS Motorized Dampers, Flex Duct, (39) Grilles, (1) Galvanized Motorized RA Damper, (1) Backdraft Damper, Metal Duct with R6 Wrap, Taps with Dampers, TAB & Controls. Condenser coil to be coated by 3rd party; AHU UV Light to be Field installed.

Electrical

\$ 55,500

- We propose to furnish all labor and materials necessary to provide the electrical installation for the above referenced project. Unless specifically stated otherwise in this scope of work, the installation is limited to our interpretation of the electrical design and work specifically covered by the electrical drawings and specifications, including Sales Tax; Normal working hours of 7:00 am - 3:30pm, M-F; Professional Project Management; Safe Site Safety Compliance Program Including Site Inspections; Employee Badging; Submittals & Mobilization; Lighting Fixtures & Controls per plans; Disconnect Switches per plans; New Circuit Breakers & Modified Panel Loads; Removal/Reinstallation per plans; Conduit & Wiring (where shown on plans); Inspections & Testing; Fire Alarm System device removal & reinstallation (smoke detectors).

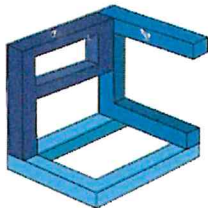
Sub-Total:	\$ 355,236
Overhead & Profit:	\$ 38,239
Sub-Total:	\$ 393,475
Bonds:	\$ 4,525
GRAND TOTAL:	\$ 398,000

We appreciate the opportunity to submit this Revised Proposal and look forward to a successful project.

Respectfully,

Kevin B. Flynn

Kevin B. Flynn
Project Manager



PAUL CULVER CONSTRUCTION, INC.

QUALITY WORK BY SKILLED CRAFTSMEN. EST 2005.

License # CGC 059149

L. Stevens

11/23/2022

Page 2

The proposal outlined above is our original quote which included the Carrier Unit that would require 3rd party coating, which was rejected at our meeting. I have included three (3) options below to use Trane, Lennox or Carrier with the 3rd party coating as additional options. All three Options will require an increase to our Base bid in the amount of \$398,000 as follows to include the increases from our HVAC and Electrical Contractors:

OPTION #1

1. Provide Lennox Unit in lieu of Carrier with factory coating with UV Light field installed:	\$ 17,000
2. Increase in cost from Giles Electric from \$55,500 to \$91,500:	\$ 36,000
3. PCC Overhead & Profit:	\$ 4,300
4. Increase in Bond:	\$ 645

Total Increase to utilize Lennox Unit: \$ 57,945

OPTION #2

1. Provide Trane Unit in lieu of Carrier with factory coating with UV Light field installed:	\$ 65,975
2. Increase in cost from Giles Electric from \$55,500 to \$91,500:	\$ 36,000
3. PCC Overhead & Profit:	\$ 10,197
4. Increase in Bond:	\$ 1,682

Total Increase to utilize Trane Unit: \$ 113,854

OPTION #3

1. Proceed with Carrier & 3 rd party Coating with UV Light field installed:	\$ 2,750
2. Increase in cost from Giles Electric from \$55,500 to \$91,500:	\$ 36,000
3. PCC Overhead & Profit:	\$ 3,875
4. Increase in Bond:	\$ 640

Total Increase to utilize Carrier Unit: \$ 43,265





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www.dgmeyer.com

Fla. St. License • #CM C057027 • #CM C1250369 • #CS C1110320
Ga. St. License #CN 007951 • Electrical License #EC 13005098

To: Paul Culver Construction
Attn: pm@paulculverconstruction.com

Date: 11/11/2022

REVISED

TO WHOM IT MAY CONCERN:

D. G. Meyer, Inc proposes to furnish and install Heating, Ventilation and Air Conditioning (HVAC) System in Port Orange Fire Station 74 in accordance with plan sheets (M001, MD100, M100, M500, M600, M700) dated: 10/27/2021 and specification sections (Division 23) as applicable to HVAC), with the following clarifications:

- 1) **Revisions** received 0.
- 2) **Addendums** received 3.
- 3) This proposal is based on an unaltered A1A subcontract agreement. NOTE: We do NOT relinquish our lien right against the owner. Additional insured clauses, bonds and permits incur additional charges.
- 4) We pledge to pay our suppliers and subcontractors within 5 days of receipt of payment from contractor, not necessarily before.
- 5) Since our bid is based on numerous 30-day quotations, we need your acceptance within 28 days of today to be certain we can hold this price.
- 6) Where the price of material, equipment, or energy increase significantly during the term of the contract due to catastrophic events that are not foreseen by the Contractor, the contract sum shall be equitably adjusted by change order as provided for in the General Conditions of this Agreement. A significant price increase means a change in price from the date of the contract execution to the date of performance by an amount exceeding two (2) percent. Such price increases shall be documented by vendor quotes, invoices, catalogs, receipts or other documents of commercial use. Quote is based on standard 40-hour work week)
- 7) **Clarifications:** Demo (2) Carrier split systems. (1) Split system, copper w/armoflex, pvc drain lines, UV light, (8) VAVs, (39) grilles, (1) smoke duct detector, (2) SS motorized damper, (1) galv. motorized RA damper, (1) **Backdraft damper**, metal duct w/R6 wrap, taps w/dampers, flex duct, and certified test and balance. Controls. **Condenser coil to be coated by 3rd party. AHU UV light to be field installed. Lennox condenser has factory coating on coil, UV light would be field installed. Trane unit has factory condenser coil coating, UV light is field installed.**
- 8) **Exclusions:** Permit costs, condenser pad, drywell, door undercut, structural steel, roofing, concrete pouring, cutting & patching, weather proofing, caulking, roof penetrations, asbestos testing & abatement, painting.

TOTAL INSTALLED PRICE \$ 190,975.00

Carrier in lieu of Trane.....**TOTAL \$127,750.00**

- 9) **Lennox w/controls.....TOTAL \$142,000.00** If you have any questions, please feel to give me a call (386) 253-7774.

Proposed this 11th day of November 2022, by Steven Longfritz, for seller.

In consideration of the sale, delivery or installation of the above-described materials, the Undersigned personally guarantees payment of the amounts contained herein.

Accepted this _____ day of _____, 2022, by/for _____

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Ga. St. License #CN 007951 • Electrical License #EC 13005098

To: Paul Culver Construction
Attn: pm@paulculverconstruction.com

Date: 4/27/2022

REVISED
TO WHOM IT MAY CONCERN:

D. G. Meyer, Inc proposes to furnish and install Heating, Ventilation and Air Conditioning (HVAC) System in **Port Orange Fire Station 74** in accordance with plan sheets **(M001, MD100, M100, M500, M600, M700) dated: 10/27/2021** and specification sections **(Division 23)** as applicable to HVAC), with the following clarifications:

- 1) **Revisions** received 0.
- 2) **Addendums** received 2.
- 3) This proposal based on an unaltered A1A subcontract agreement. NOTE: We do NOT relinquish our lien right against the owner. Additional insured clauses, bonds and permit incur additional charges.
- 4) We pledge to pay our suppliers and subcontractors within 5 days of receipt of payment from contractor, not necessarily before.
- 5) Since our bid is based on numerous 30-day quotations, we need your acceptance within 28 days of today to be certain we can hold this price.
- 6) Where the price of material, equipment, or energy increase significantly during the term of the contract due to catastrophic events that are not foreseen by the Contractor, the contract sum shall be equitably adjusted by change order as provided for in the General Conditions of this Agreement. A significant price increase means a change in price from the date of the contract execution to the date of performance by an amount exceeding two (2) percent. Such price increases shall be documented by vendor quotes, invoices, catalogs, receipts or other documents of commercial use. Quote is based on standard 40-hour work week)
- 7) **Clarifications:** Demo (2) Carrier split systems. (1) Split system, copper w/armoflex, pvc drain lines, UV light, (8) VAVs, (41) grilles, (1) smoke duct detector, (2) SS motorized damper, (1) galv. motorized RA damper, metal duct w/R6 wrap, taps w/dampers, flex duct, and certified test and balance. Controls.
- 8) **Exclusions:** Permit costs, condenser pad, drywell, door undercut, structural steel, roofing, concrete pouring, cutting & patching, weather proofing, caulking, roof penetrations, asbestos testing & abatement, painting.

TOTAL INSTALLED PRICE..... \$167,975.00
Carrier in lieu of Trane.....TOTAL \$125,000.00

If you have any questions, please feel to give me a call (386) 253-7774.

Proposed this 27th day of April 2022, by Steven Longfritz, for seller.

Steven Longfritz Project Manager

In consideration of the sale, delivery or installation of the above-described materials, the Undersigned personally guarantees payment of the amounts contained herein.

Accepted this _____ day of _____, 2022, by/for _____



Electric Company, Inc.

— Commercial, Residential, Industrial Wiring —

952 Big Tree Road
South Daytona, FL 32119
Phone 386-767-5895
Fax 386-767-6260
EC00001538
www.GilesElectricCompany.com

PROPOSAL

Date: 11/1/2022
Project: Port Orange Fire Station 74
To: Paul Culver Construction
Attn: Kevin Flynn

From: Zachary Yankovich
Title: Project Manager
Email: zach.yankovich@gileselectriccompany.com
Phone: (386) 547-4600

We propose to furnish all labor and materials necessary to provide the electrical installation for the above referenced project. Unless specifically stated otherwise in this scope of work, the installation is limited to our interpretation of the electrical design and work specifically covered by the electrical drawings and specifications.

PRICING (REVISED)

Drawings Used: E-001, E-100, E-200, E-600, ED100, ED200, RCP
Drawings By: Cape Design Engineering Co. (L. Beck)
Engineer: Cape Design Engineering Co. (P. Czutrin)
Specifications: Per Plans (General Notes)
Amendment Received: 1-2

BASE BID: \$91,500

The following is **included**:

- Sales Tax.
- Normal working hours of 7-3:30pm, M-F.
- Professional Project Management.
- Safe Site Safety Compliance Program Including Site Inspections.
- Employee Badging.
- Submittals & Mobilization.
- Lighting Fixtures & Controls per plans.
- Disconnect Switches per plans.
- New Circuit Breakers & Modified Panel Loads.
- Demolition & Removal/Reinstallation per plans.
- Conduit & Wiring (where shown on plans).
- Inspections & Testing.
- Fire Alarm system device removal & reinstallation (smoke detectors).

The following is specifically **excluded**:

- Bid bond.
- Payment & Performance Bond.
- Permit Fees.



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- Engineering/Coordination Study.
- Surveying.
- Cutting and patching of asphalt and concrete.
- Directional Boring & Drilling (nothing on drawings).
- Painting and patching of walls and ceilings.
- Patch panels and patch cords.
- Feeders.
- Branch Conduit & Circuitry (reuse existing circuits per plans).
- Network electronics.
- Fire Alarm permit, signed, sealed drawings, etc. (system is not being impacted).
- Fire Alarm system (nothing on drawings).
- Public Address system, speakers, cabling, etc. (nothing on drawings).
- Premise Distribution system (nothing on drawings).

STATEMENT

This installation proposal takes precedence over and supersedes any prior proposals, correspondence, and oral agreements or representations relating to the work set forth in the scope of work. This installation proposal commences on the start date as specified by the contract and/or the attached scope of work and represents the agreement between Giles and Customer.

This proposal is contingent on an acceptable project schedule being made a part of the contract. If the schedule is not available, then the proposal is based on a 40-hour workweek in conformance with NECA industry average manpower consumption graphs for this type of project. This proposal is based on the issuance of an AGC, AIA, or some other mutually acceptable contract and acceptable credit.

It is a pleasure to submit this scope of work. We look forward to the opportunity of working with you.

Sincerely,

Zachary Yankovich
Estimator

APPROVAL

Name: _____

Signature: _____

Title: _____

Date: _____



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South Daytona, FL 32119
Phone 386-767-5895
Fax 386-767-6260
EC00001538
www.GilesElectricCompany.com

PROPOSAL

Date: 4/28/2022
Project: Port Orange Fire Station 74
To: Paul Culver Construction
Attn: Kevin Flynn

From: Zachary Yankovich
Title: Project Manager
Email: zach.yankovich@gileselectriccompany.com
Phone: (386) 547-4600

We propose to furnish all labor and materials necessary to provide the electrical installation for the above referenced project. Unless specifically stated otherwise in this scope of work, the installation is limited to our interpretation of the electrical design and work specifically covered by the electrical drawings and specifications.

PRICING

Drawings Used: E-001, E-100, E-200, E-600, ED100, ED200, RCP
Drawings By: Cape Design Engineering Co. (L. Beck)
Engineer: Cape Design Engineering Co. (P. Czutrin)
Specifications: Per Plans (General Notes)
Amendment Received: 1-2

BASE BID: \$55,500

The following is **included**:

- Sales Tax.
- Normal working hours of 7-3:30pm, M-F.
- Professional Project Management.
- Safe Site Safety Compliance Program Including Site Inspections.
- Employee Badging.
- Submittals & Mobilization.
- Lighting Fixtures & Controls per plans.
- Disconnect Switches per plans.
- New Circuit Breakers & Modified Panel Loads.
- Demolition & Removal/Reinstallation per plans.
- Conduit & Wiring (where necessary).
- Inspections & Testing.
- Fire Alarm system device removal & reinstallation (smoke detectors).

The following is specifically **excluded**:

- Bid bond.
- Payment & Performance Bond.
- Permit Fees.

VOID



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— Commercial, Residential, Industrial Wiring —

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- Engineering/Coordination Study.
- Surveying.
- Cutting and patching of asphalt and concrete.
- Directional Boring & Drilling (nothing on drawings).
- Painting and patching of walls and ceilings.
- Patch panels and patch cords.
- Feeders.
- Branch Conduit & Circuitry (reuse existing circuits per plans).
- Network electronics.
- Fire Alarm permit, signed, sealed drawings, etc. (system is not being impacted).
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- Public Address system, speakers, cabling, etc. (nothing on drawings).
- Premise Distribution system (nothing on drawings).

STATEMENT

This installation proposal takes precedence over and supersedes any prior proposals, correspondence, and oral agreements or representations relating to the work set forth in the scope of work. This installation proposal commences on the start date as specified by the contract and/or the attached scope of work and represents the agreement between Giles and Customer.

This proposal is contingent on an acceptable project schedule being made a part of the contract. If the schedule is not available, then the proposal is based on a 40-hour workweek in conformance with NECA industry average manpower consumption graphs for this type of project. This proposal is based on the issuance of an AGC, AIA, or some other mutually acceptable contract and acceptable credit.

It is a pleasure to submit this scope of work. We look forward to the opportunity of working with you.

Sincerely,

Zachary Yankovich
Estimator

APPROVAL

Name: _____

Signature: _____

Title: _____

Date: _____

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year 2022

(Paragraph deleted)

BETWEEN the Owner:

City of Port Orange, a Florida municipal corporation
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

and the Contractor:

Paul Culver Construction, Inc.
1301 Beville Road #6
Daytona Beach, Florida 32119
(386) 763-4190

for the following Project:

ITB 22-08 Fire Station #74 HVAC and Ceiling Replacement
Limited interior repairs at Fire Station 74 including replacement of the existing ceiling and HVAC system

The Architect:

(Name, legal status, address and other information)

DJ Design Services, Inc., a Florida corporation
913 North Nova Road
Holly Hill, Florida 32117
(386) 255-6987

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☒ A date set forth in a notice to proceed issued by the Owner.
- ☐ Established as follows:

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Paragraph deleted)

- ☐ Not later than () calendar days from the date of commencement of the Work.

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User Notes:

(961244233)

[X] By the following date: Contractor shall achieve Substantial Completion of the work not later than 365 days from the issuance of a written Notice to Proceed issued by the City, with final completion 30 days thereafter.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
N/A	N/A

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Three Hundred Ninety-Eight Thousand and 00/100 Dollars (\$398,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
N/A	N/A

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
N/A	N/A	N/A

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
N/A	N/A

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A	N/A	N/A

§ 4.5 Liquidated damages, if any:

\$0.00 per day

§ 4.6 Other:
(Paragraph deleted)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, and the Contractor obtains Architect's certification of the application for payment within 10 days thereafter, then the Owner shall make payment of the amount certified to the Contractor not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, and the Contractor obtains Architect's certification of the application for payment within 10 days thereafter, then payment of the amount certified shall be made by the Owner not later than 30 days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

Five Percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Paragraph deleted)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(Paragraph deleted)

No reduction of retainage below five percent (5%).

§ 5.1.7.3

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Deleted in its entirety

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(Paragraphs deleted)

Architect's actions, subject to recommendation to Owner, and Owner approval prior to action,

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☒ Litigation in a court of competent

(Paragraphs deleted)

jurisdiction. If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims shall be resolved by litigation, and shall have its venue located exclusively in the Circuit Court of Volusia County, Florida, and the Parties hereby expressly consent and submit themselves to the personal jurisdiction and venue of the Court.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017, as modified by Owner.

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§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:
(Paragraph deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017, as modified by the Owner.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

Lynn Stevens, Public Works and Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5750
lstevens@port-orange.org

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

Paul Culver Construction, Inc.
1301 Beville Road #6
Daytona Beach, Florida 32119
paul@paulculverconstruction.com
(386) 763-4190 - Telephone
(386) 322-0007 - Facsimile

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(Paragraph deleted)

§ 8.7 Other provisions:

§8.7.1 PUBLIC RECORD 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 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; and (d) meet all

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User Notes:

(961244233)

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.

§ 8.7.2 RECORDS

The design, permits and all other records prepared by the Contractor, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Contractor shall be retained by the Contractor for the requisite time set forth in Florida Administration Code Rule 1 b-24

<http://dos.myflorida.com/library-archives/records-management/>. Contractor may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. Contractor agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney.

§ 8.7.3 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.

§ 8.7.4 CONTRACT CONSTRUCTION

This Contract may be executed in one or more counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Contract shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until both Parties have signed this Contract.

§ 8.7.5 FINANCIAL DISCLOSURES

During the term of this Contract, Contractor covenants and agrees that it will keep adequate books and records of accounts in accordance with Generally Accepted Accounting Principles (GAAP). Contractor further covenants and agrees that in the event the Contractor becomes insolvent and/or fails to pay its current obligations when they become due, Contractor shall so advise Owner of such situation and, upon request from the Owner, Contractor shall provide to Owner financial statements of Contractor, including current income and expense statements of Contractor, consolidated balance sheets signed by a financial officer of Contractor, and audited reports provided by Contractor to Contractor's Surety, audited financial statements certified by a Certified Public Accountant concerning the financial affairs of the Contractor and all affiliates of Contractor, and such other financial information requested by Owner. All such financial information shall comply with GAAP.

In the event that Contractor becomes insolvent and/or fails to pay its obligations when they become due, Contractor hereby authorized its sureties, lenders, financial institutions and other third parties to release Owner financial information requested by Owner, including, but not limited to, the financial information described in the preceding paragraph.

§ 8.7.6 WAIVER OF JURY TRIAL

All parties hereby waive any and all right to any trial by jury in any action or proceeding arising directly or indirectly hereunder.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, as modified by Owner with attached Exhibits "A" through "F," all of which are made a part hereof by this reference.
- .2 Exhibit A, Insurance and Bonds: AIA Document A101™-2017
- .3 Exhibit B, ITB 22-08
- .4 Exhibit C, Contractor's Proposal
- .5 Exhibit D, Applications for Payment
- .6 Exhibit E, Forms
- .7 Exhibit F, Contractors Completion Checklist

Init.

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User Notes:

(961244233)

.8 Addenda:

Title	Date	Pages
Addendum No. 1	April 12, 2022	1
Addendum No. 2	April 21, 2022	2

(Paragraphs deleted)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.9 General Conditions of the Contract for Construction: AIA Document A201™-2017

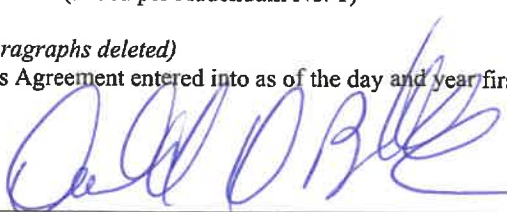
(Paragraphs deleted)

.10 ITB 22-08 Drawings, Specifications, and Requirements

Title	Date	Pages
Attachment "A" – Port Orange Fire Station 74 Upgrades	October 27, 2021	15
Attachment "B" – FS74 Remodel Plan	August 5, 2013	5
Attachment "C" - Specifications		96
Attachment "D" – Port Orange Fire Station 74 Upgrades (added per Addendum No. 1)	November 2, 2021	3

(Paragraphs deleted)

This Agreement entered into as of the day and year first written above.


OWNER
CITY OF PORT ORANGE


CONTRACTOR
PAUL CULVER CONSTRUCTION, INC.

(Signature)
Donald O. Burnette, Mayor

DATE:
(Row deleted)

(Signature)
Paul K. Culver, President
DATE: 7-18-22

Int.

Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:52:27 ET on 07/08/2022.

PAGE 1

AGREEMENT made as of the day of in the year 2022
(In words, indicate day, month and year.)

...

(Name, legal status, address and other information)
City of Port Orange, a Florida municipal corporation
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

...

(Name, legal status, address and other information)
Paul Culver Construction, Inc.
1301 Beville Road #6
Daytona Beach, Florida 32119
(386) 763-4190

...

(Name, location and detailed description)
ITB 22-08 Fire Station #74 HVAC and Ceiling Replacement
Limited interior repairs at Fire Station 74 including replacement of the existing ceiling and HVAC system

...

DJ Design Services, Inc., a Florida corporation
913 North Nova Road
Holly Hill, Florida 32117
(386) 255-6987

PAGE 2

☒ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

...

(Check one of the following boxes and complete the necessary information.)

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PAGE 3

[X] By the following date: Contractor shall achieve Substantial Completion of the work not later than 365 days from the issuance of a written Notice to Proceed issued by the City, with final completion 30 days thereafter.

...

N/A

N/A

...

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be ~~(\$—)~~; Three Hundred Ninety-Eight Thousand and 00/100 Dollars (\$398,000.00), subject to additions and deductions as provided in the Contract Documents.

...

N/A

N/A

...

N/A

N/A

N/A

...

N/A

N/A

...

N/A

N/A

N/A

...

~~(Insert terms and conditions for liquidated damages, if any.)~~
\$0.00 per day

...

~~(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)~~

PAGE 4

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 1st day of a month, and the Contractor obtains Architect's certification of the application for payment within 10 days thereafter, then the Owner shall make payment of the amount certified to the Contractor not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, and the Contractor obtains Architect's certification of the application for payment within 10 days thereafter, then payment of the amount certified shall be made by the Owner not later than ~~(—)~~ 30 days after the Architect receives the Application for Payment.

~~(Federal, state or local laws may require payment within a certain period of time.)~~

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to

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substantiate its accuracy, as the Architect may require. ~~This schedule of values schedule, unless objected to by the Architect,~~ shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

~~(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)~~
Five Percent (5%)

...

~~(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)~~

...

~~(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)~~

No reduction of retainage below five percent (5%).

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

~~(Insert any other conditions for release of retainage upon Substantial Completion.)~~

Deleted in its entirety

PAGE 5

~~(Insert rate of interest agreed upon, if any.)~~ All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

—%

...

~~(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)~~

Architect's actions, subject to recommendation to Owner, and Owner approval prior to action.

...

☒ [X] Litigation in a court of competent jurisdiction

☐ [] Other (Specify)

jurisdiction. If the Owner and Contractor do not select a method of binding dispute resolution, or do not

subsequently agree in writing to a binding dispute resolution method other than litigation, Claims ~~will be resolved by litigation in a court of competent jurisdiction.~~ shall be resolved by litigation, and shall have its venue located exclusively in the Circuit Court of Volusia County, Florida, and the Parties hereby expressly consent and submit themselves to the personal jurisdiction and venue of the Court.

...

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017, ~~A201-2017~~, as modified by Owner.

PAGE 6

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

...

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017, ~~A201-2017~~, as modified by the Owner.

...

Lynn Stevens, Public Works and Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5750
lstevens@port-orange.org

...

Paul Culver Construction, Inc.
1301 Beville Road #6
Daytona Beach, Florida 32119
paul@paulculverconstruction.com
(386) 763-4190 - Telephone
(386) 322-0007 - Facsimile

...

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

...

§8.7.1 PUBLIC RECORD 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 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; and (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

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(961244233)

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.

§ 8.7.2 RECORDS

The design, permits and all other records prepared by the Contractor, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Contractor shall be retained by the Contractor for the requisite time set forth in Florida Administration Code Rule 1 b-24

<http://dos.myflorida.com/library-archives/records-management/>. Contractor may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. Contractor agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney.

§ 8.7.3 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.

§ 8.7.4 CONTRACT CONSTRUCTION

This Contract may be executed in one or more counterparts, each of which shall be deemed an original but all of which together constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Contract shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until both Parties have signed this Contract.

§ 8.7.5 FINANCIAL DISCLOSURES

During the term of this Contract, Contractor covenants and agrees that it will keep adequate books and records of accounts in accordance with Generally Accepted Accounting Principles (GAAP). Contractor further covenants and agrees that in the event the Contractor becomes insolvent and/or fails to pay its current obligations when they become due, Contractor shall so advise Owner of such situation and, upon request from the Owner, Contractor shall provide to Owner financial statements of Contractor, including current income and expense statements of Contractor, consolidated balance sheets signed by a financial officer of Contractor, and audited reports provided by Contractor to Contractor's Surety, audited financial statements certified by a Certified Public Accountant concerning the financial affairs of the Contractor and all affiliates of Contractor, and such other financial information requested by Owner. All such financial information shall comply with GAAP.

In the event that Contractor becomes insolvent and/or fails to pay its obligations when they become due, Contractor hereby authorized its sureties, lenders, financial institutions and other third parties to release Owner financial information requested by Owner, including, but not limited to, the financial information described in the preceding paragraph.

§ 8.7.6 WAIVER OF JURY TRIAL

All parties hereby waive any and all right to any trial by jury in any action or proceeding arising directly or indirectly hereunder.
PAGE 7

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, as modified by Owner with attached Exhibits "A" through "F," all of which are made a part hereof by this reference.
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds-Bonds: AIA Document A101™-2017
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction Exhibit B, ITB 22-08
- .4 Exhibit C, Contractor's Proposal
- .5 Exhibit D, Applications for Payment
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below;.6 Exhibit E, Forms
(Insert the date of the E203-2013 incorporated into this Agreement);.7 Exhibit F, Contractors Completion Checklist
- .5 Drawings;.8 Addenda;

<u>Number</u>	<u>Title</u>	<u>Date</u>	<u>Pages</u>
<u>Addendum No. 1</u>	<u>Addendum No. 1</u>	<u>April 12, 2022</u>	<u>1</u>
<u>Addendum No. 2</u>	<u>Addendum No. 2</u>	<u>April 21, 2022</u>	<u>2</u>

~~.6~~ — Specifications

<u>Section</u>	<u>Title</u>	<u>Date</u>	<u>Pages</u>
----------------	--------------	-------------	--------------

~~.7~~ — Addenda, if any:

<u>Number</u>	<u>Date</u>	<u>Pages</u>
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PAGE 8

~~.8~~ — Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ — AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below: 9 General Conditions of the Contract for Construction: AIA Document A201™-2017
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ — The Sustainability Plan: 10 ITB 22-08 Drawings, Specifications, and Requirements

...

<u>Attachment "A" – Port Orange Fire Station 74 Upgrades</u>	<u>October 27, 2021</u>	<u>15</u>
<u>Attachment "B" – FS74 Remodel Plan</u>	<u>August 5, 2013</u>	<u>5</u>
<u>Attachment "C" - Specifications</u>		<u>96</u>
<u>Attachment "D" – Port Orange Fire Station 74 Upgrades</u>	<u>November 2, 2021</u>	<u>3</u>
<u>(added per Addendum No. 1)</u>		

☐ — Supplementary and other Conditions of the Contract:

<u>Document</u>	<u>Title</u>	<u>Date</u>	<u>Pages</u>
-----------------	--------------	-------------	--------------

~~.9~~ — Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™ 2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

OWNER
CITY OF PORT ORANGE

CONTRACTOR
PAUL CULVER CONSTRUCTION, INC.

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User Notes:

(961244233)

6

(Signature)

Donald O. Burnette, Mayor

DATE:

(Printed name and title)

(Signature)

Paul K. Culver, President

DATE: 7/18/2022

(Printed name and title)

.8 Addenda:

Title	Date	Pages
Addendum No. 1	April 12, 2022	1
Addendum No. 2	April 21, 2022	2

(Paragraphs deleted)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.9 General Conditions of the Contract for Construction: AIA Document A201™-2017

(Paragraphs deleted)

.10 ITB 22-08 Drawings, Specifications, and Requirements

Title	Date	Pages
Attachment "A" – Port Orange Fire Station 74 Upgrades	October 27, 2021	15
Attachment "B" – FS74 Remodel Plan	August 5, 2013	5
Attachment "C" – Specifications		96
Attachment "D" – Port Orange Fire Station 74 Upgrades (added per Addendum No. 1)	November 2, 2021	3

(Paragraphs deleted)

This Agreement entered into as of the day and year first written above.

OWNER
CITY OF PORT ORANGE

CONTRACTOR
PAUL CULVER CONSTRUCTION, INC.

(Signature)
Donald O. Burnette, Mayor

DATE:
(Row deleted)

(Signature)
Paul K. Culver, President

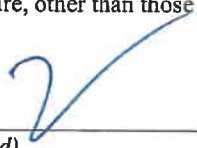
DATE: 7/18/22

Init.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:52:27 ET on 07/08/2022 under Order No. 2114278940 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)


(Title)


(Dated)

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

Notice and Time Limitations Must Be In Accordance
With Section 255.05(2), (8) and (10), Florida Statutes**BOND NO.** GM202719**PRINCIPAL:**

Developer or Contractor: Paul Culver Construction, Inc.
 Principal Business Address: 201 Osecola Ave
 Daytona Beach, FL 32114
 Contact Person: Paul K. Culver, President
 Phone Number: (386) 763-4190

SURETY:

Address: Great Midwest Insurance Company
800 Gessner, Suite 600
Houston, Texas 77024
 Contact Person: Julie Ratliff
 Phone Number: (713) 935-0226

OWNER:

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

Amount: \$398,000.00 **City Case/Project No.** ITB 22-08 Fire Station #74 HVAC and Ceiling Replacement**Description of Work:** ITB 22-08 Fire Station #74 HVAC and Ceiling Replacement**Project Location:** City of Port Orange Fire Station 74, 6701 Airport Road, Port Orange, Volusia County, Florida 32128**Legal Description:** Portions of Parcel ID#: 6307-00-00-0012
See Attached Exhibit "A"Front Page

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

ITB 22-08
 (07/21/22)

**City of Port Orange Fire Station 74
6701 Airport Road, Port Orange, FL 32128**

Parcel ID:
633100000025

Legal Description:
A portion of the Parcel ID listed above.

EXHIBIT "A"

Paul Culver Construction, Inc.

ITB 22-08 Fire Station #74 HVAC and Ceiling Replacement

Bond No. GM202719

**COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION**

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

BY THIS BOND, We, PAUL CULVER CONSTRUCTION, INC. as Principal, and Great Midwest Insurance Company, a corporation, as Surety, are bound to CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of THREE HUNDRED NINETY-EIGHT THOUSAND AND 00/100 DOLLARS (\$398,000.00), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain AIA Contract for Services, having an effective date of July 19, 2022, entered into by and between the Principal and the City, for Fire Station #74 HVAC and Ceiling Replacement, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and
3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

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

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

IN WITNESS WHEREOF, this performance and payment bond is executed and shall be deemed an original, this
19th, day of July, 2022.

Attest:

PAUL CULVER CONSTRUCTION, INC.

[Signature]
 (As to Corporate Principal) Secretary

By: [Signature]
 Paul K. Culver, President

[Signature]
 ARLENE Pacholsky (Witness to Principal)

(Corporate Seal)

Great Midwest Insurance Company
 (Surety)

[Signature]
 Natalie C. Demers (Witness to Surety)

By: [Signature]
 Name: Donald Bramlage, Attorney-In-Fact & Licensed FL Agent
 (Attorney-in-Fact) Inquiries: 407-330-3990

(Corporate Seal)

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

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

POWER OF ATTORNEY**Great Midwest Insurance Company**

KNOW ALL MEN BY THESE PRESENTS, that **GREAT MIDWEST INSURANCE COMPANY**, a Texas Corporation, with its principal office in Houston, TX, does hereby constitute and appoint:

Dale A. Belis, Marilyn Ann Blome, Donald Bramlage, Edward M. Clark, Christian Collins, F. Danny Gann, David R. Hoover, Jarrett Merlucci, Laura D. Mosholder, Charles J. Nielson, Jessica P. Reno, Audria R. Ward, Edward T. Ward, Kevin Wojtowicz, Richard Zimmerman, Charles D. Nielson, Brett M. Rosenhaus

its true and lawful Attorney(s)-In-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of **GREAT MIDWEST INSURANCE COMPANY**, on the 1st day of October, 2018 as follows:

Resolved, that the President, or any officer, be and hereby is, authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed Ten Million dollars (\$10,000,000.00), which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed in the Company's sole discretion and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, **GREAT MIDWEST INSURANCE COMPANY**, has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 11th day of February, 2021.

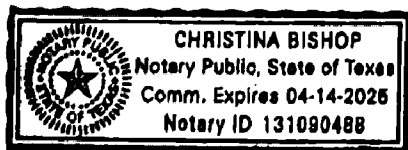
**GREAT MIDWEST INSURANCE COMPANY**

BY

Mark W. Haushill
President

ACKNOWLEDGEMENT

On this 11th day of February, 2021, before me, personally came Mark W. Haushill to me known, who being duly sworn, did depose and say that he is the President of **GREAT MIDWEST INSURANCE COMPANY**, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



BY

Christina Bishop
Notary Public

CERTIFICATE

I, the undersigned, Secretary of **GREAT MIDWEST INSURANCE COMPANY**, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the foregoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Sealed at Houston, TX this 19th Day of July, 2022.



BY

Leslie K. Shaunty
Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.



City of Port Orange Public Works & Utilities Department

TO: Wayne Clark, City Manager

THRU: Lynn Stevens, Public Works & Utilities Director
Ronny Buttrum, Public Works Deputy Director

FROM: Julia Wiggins, Public Works & Utilities Business Manager

DATE: December 15, 2022

SUBJECT: **Paul Culver Construction, Inc** – Change Order No 2 to AIA Agreement
CA7874 – ITB 22-08 F/S #74 Ceiling & HVAC Replacement

REQUEST:

The Public Works & Utilities Department is requesting City Council approve Change Order No 2 to AIA Agreement CA7874 – ITB 22-08 with Paul Culver Construction, Inc. for ITB 22-08 Fire Station #74 Ceiling & HVAC Replacement in the amount of \$113,854 for a revised agreement amount of \$511,854.

PURPOSE:

The purpose of the request is to provide additional spending authorization necessary to complete the project.

CONSIDERATION:

The Public Works & Utilities Department is requesting City Council approval of Change Order No. 2 to the AIA Agreement CA7874 – ITB 22-08 with Paul Culver Construction, Inc. for ITB 22-08 Fire Station #74 Ceiling & HVAC Replacement in the amount of \$113,854 for a revised agreement amount of \$511,854.

Bid proposals for this project were submitted on April 28, 2022. On July 19, 2022, the City entered into an AIA Agreement CA7874 with Paul Culver Construction, Inc. for services relating to ITB 22-08 for Fire Station #74 Ceiling and HVAC Replacement project in the amount of \$398,000 with an additional \$10,000 for unforeseen conditions. The purchase order was issued for \$408,000 for this project.

On October 5, 2022, during the equipment submittal process, Paul Culver Construction advised the city that the HVAC required in the bid was no longer in production due to new HVAC regulations. In addition, they notified the city that the electrical subcontractor could no longer maintain their pricing due to new wage requirements. On November 1, staff,

the design engineer, and the purchasing department met with the contractor to discuss these items. Staff received the pricing increases requested and reviewed them with the design engineer. Three options were proposed and Option #2 is recommended. Option #1 provided for a Lennox brand unit which was determined by the design engineer to be inferior to the specified unit. Option #2 provided for a unit that met the specifications and is recommended by the design engineer. Option #3 was eliminated because the coastal coating on the condenser is required in the specification as a factory application and this option provided for a third-party coating application. After reviewing the revised options, staff is in agreement that it is in the best interest of the City to choose Option #2 for an additional cost of \$113,854. Upon review of the US Bureau of Labor Statistics, Services Less Energy, for the southern region has increased 19.5% between March and November 2022. Therefore, staff believes these increased costs are justifiable.

The contract term has a substantial completion of 365 days from the Notice to Proceed (NTP) with an additional 30 days for final completion. These dates will be assigned when the NTP is fully executed. Currently, the delivery of the unit is estimated to be 31 weeks. This request does not require any additional time and there is no change in scope from the original bid specifications.

FUNDING:

Fund: 317

Fund Name: General Fund Capital Projects

Cost Center: Building Maintenance

Program: None

Spend Category: Building – Capital Repair and Maintenance

Actual: \$113,854

RECOMMENDATION:

The Public Works & Utilities Department recommends Council to approve Change Order No 2 to AIA Agreement CA7874 – ITB 22-08 with Paul Culver Construction, Inc. for ITB 22-08 Fire Station #74 Ceiling & HVAC Replacement in the amount of \$113,854 for a revised agreement amount of \$511,854.

ANTICIPATED SCHEDULE:

- a.) Council Approval – January 17, 2023
- b.) Executed Change Order - On or before January 30, 2023

ATTACHMENTS:

- a.) Paul Culver Construction, Inc Proposal dated 11/23/2022
- b.) Executed AIA Agreement
- c.) Recorded Bond



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C9c) Approval of a six (6) month extension to the Standard Contract for Services (CA7037) with Danus Utilities Inc. under ITB 19-19 Rehabilitation of Sanitary Manholes for the term of October 31, 2022 through April 30, 2023.

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve a six (6) month extension to the Standard Contract for Services (CA7037) with Danus Utilities Inc. under ITB #19-19 Rehabilitation of Sanitary Manholes for the term of October 31, 2022 through March 30, 2023.

SUMMARY: The Public Works & Utilities Department requests the Council to approve a six (6) month extension request to the Standard Contract for Services (CA7037) with Danus Utilities Inc. under ITB #19-19 Rehabilitation of Sanitary Manholes for the term of October 31, 2022 through April 30, 2023.

Inflow and infiltration (I&I) are terms used to describe ways that groundwater and stormwater enter a sanitary sewer system. Inflow occurs when stormwater enters through a direct connection with the sanitary sewer system. Infiltration occurs when groundwater seeps into the city sewer system through cracks in the pipes and manholes. As infrastructure ages and the ground shifts (due to rain, vibrations, construction activities, etc.), the underground pipes move. This movement can cause cracks or separation of joints in sewer piping and cracks in the manholes. These cracks allow groundwater into the sewer systems. There are approximately 6,680 sanitary manholes located in the Port Orange sewer collection system.

This extra water due to I&I leads to higher operating costs at the wastewater treatment plant. During periods of heavy rain, the wastewater plant flows can increase by over 3 million gallons per day due to I&I. I&I causes an increase in lift station energy costs and an increased potential of sanitary sewer overflows due to the increased volume of water in the system.

In 2015, an I&I study was conducted by Wade Trim to identify major I&I areas in the sewer collection system. The study included an evaluation of the sewer laterals, mains, and manholes where rain and groundwater were entering into the system. Repairs include either complete manhole replacement, spot repairs, or "lining" the existing manhole with either a brushed-on epoxy-based liner, a fiber reinforced plastic liner or a special "cured in place" lining. Once the liner system is cured, it becomes part of the manhole structure. The advantages of the rehabilitation process are that no costly

excavation or disturbance to the customers occurs.

The City has exhausted all the renewal options. The staff is currently working on updating specifications and plans to bid out by March 2023. There are several areas within the city that are in need of repair. The Contractor has agreed to extend the current contract under the same terms and conditions for an additional six (6) months; October 31, 2022 through April 30, 2023. The annual spending authority is limited to the budgeted amount as approved by Port Orange City Council for the then-current fiscal year.

PRESENTER: Lynn Stevens

ATTACHMENTS:

1.	Danus Utilities, Inc Amendment and Extension to Standard Contract for Services Dated October 31, 2019	Danus Utilities, Inc Amendment and Extension to Standard Contract for Services Dated October 31, 2019.pdf
2.	Dept Justification Memo - Danus Utl Extension	Dept Justification Memo - Danus Utl Extension.docx
3.	Danus Utilities CA7037	Danus Utilities CA7037.pdf
4.	Danus Utl Bond for CA7037	Danus Utl Bond for CA7037.pdf
5.	COI 7.2.2023	COI 7.2.2023.pdf
6.	19 19 Rehabilitation of Sanitary Sewer Manholes BID PKG released July 2 2019	19 19 Rehabilitation of Sanitary Sewer Manholes BID PKG released July 2 2019.pdf
7.	Addendum 1 ITB 19-19 Rehabilitation of Sanitary Sewer Manholes 07.30.2019	Addendum 1 ITB 19-19 Rehabilitation of Sanitary Sewer Manholes 07.30.2019.pdf
8.	Addendum 2 ITB 19-19 Rehabilitation of Sanitary Sewer Manholes 08.02.2019	Addendum 2 ITB 19-19 Rehabilitation of Sanitary Sewer Manholes 08.02.2019.pdf
9.	Addendum-1-ITB-19-19-Rehabilitation-of-Sanitary-Sewer-Manholes-07302019	Addendum-1-ITB-19-19-Rehabilitation-of-Sanitary-Sewer-Manholes-07302019.pdf
10.	Addendum-2 of 2-ITB-19-19-Rehabilitation-of-Sanitary-Sewer-Manholes-08022019	Addendum-2 of 2-ITB-19-19-Rehabilitation-of-Sanitary-Sewer-Manholes-08022019.pdf
11.	EXECUTED Renewal Form 2020 to 2021 Danus Utilities CA7037 rehab sanitary sewer manholes	EXECUTED Renewal Form 2020 to 2021 Danus Utilities CA7037 rehab sanitary sewer manholes.pdf
12.	EXECUTED Renewal Form 2021 to 2022 Danus Utilities CA7037 rehab sanitary sewer manholes	EXECUTED Renewal Form 2021 to 2022 Danus Utilities CA7037 rehab sanitary sewer manholes.pdf

Julia Wiggins
Kelly Klausky
Richard Colby
Junos Reed

Created/Initiated - 12/21/2022
Approved - 12/21/2022
Approved - 12/21/2022
Approved - 12/21/2022

Steve Parnell	Approved - 12/21/2022
Lynn Stevens	Approved - 12/27/2022
Jill Poolman	Approved - 12/27/2022
John McKinney	Approved - 12/28/2022
Matthew Jones	Approved - 1/4/2023
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023

**AMENDMENT AND EXTENSION
TO STANDARD CONTRACT FOR SERVICES DATED October 31, 2019**

THIS AMENDMENT AND EXTENSION ("Amendment and Extension") is made and entered into the day and year set forth hereinafter by and between the **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located at 1000 City Center Circle, Port Orange, Volusia County, Florida 32129-4144 (the "City"), and **DANUS UTILITIES, INC.** ("Contractor"), a Florida corporation, whose principal address is 2320 Beardall Avenue, Sanford, Florida 32771. The City and the Contractor are collectively referred to herein as the "Parties."

WHEREAS, on the 31st day of October 2019, the City and the Contractor entered into a Standard Contract for Services, pursuant to Invitation to Bid 19-19 ("ITB 19-19") for rehabilitation of sanitary sewer manholes ("Contract"), with an initial term commencing on October 31, 2019 and continuing until October 30, 2020, with the option for two (2) one-year renewals subject to review and approval of the City Manager and budget appropriation; and

WHEREAS, on the 23rd day of September 2020, the Parties utilized the first renewal option via the City of Port Orange Renewal Form, for a period commencing on October 31, 2020 and continuing until October 30, 2021; and

WHEREAS, on the 24th day of August 2021, the Parties utilized the second and final renewal option via the City of Port Orange Renewal Form, for a period commencing on October 31, 2021 and continuing until October 30, 2022; and

WHEREAS, the Parties desire to amend and extend the Contract period, notwithstanding the date of execution, to commence on October 31, 2022 and continue for a period of six (6) months, to allow the City to commence the bidding process; and

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

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

The foregoing recitals are true and correct and incorporated herein.

1. **Term.** The Term of this Contract as amended is hereby extended. Notwithstanding the date of execution, the Contract term shall continue for a period commencing of October 31, 2022 and continuing for a period of six (6) months.

2. **Counterparts.** This Amendment and Extension may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Amendment and Extension shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this Amendment and Extension.

3. All other terms and conditions of the Contract shall remain in full force and effect.

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

Witnesses:

DANUS UTILITIES, INC.

Printed Name: _____

Printed Name: _____

By: _____
Dan J. Pardus, President

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

Date: _____

CITY OF PORT ORANGE

By: _____
Wayne Clark, City Manager

Date: _____

ATTEST:

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

Date: _____



City of Port Orange Public Utilities Department

TO: Wayne Clark, City Manager

THRU: Lynn Stevens, Public Works & Utilities Director
Steve Parnell, Deputy Director of Public Utilities
Junos Reed, Construction & Engineering Manager
Richard Colby, Project Manager

FROM: Julia Wiggins, Public Works & Utilities Business Manager

DATE: December 21, 2022

SUBJECT: Danus Utilities – Amendment & Extension of Standard Contract for Services CA7037 – ITB 19-19, Rehabilitation of Sanitary Manholes

REQUEST:

The Public Works & Utilities Department requests the Council to approve a six (6) month extension request to the Standard Contract for Services (CA7037) with Danus Utilities Inc. under ITB 19-19 Rehabilitation of Sanitary Manholes for the term of October 31, 2022 and continue through April 30, 2023.

PURPOSE:

The purpose of this request is to continue the City's infrastructure maintenance programs to extend the full life of capital investments.

CONSIDERATION:

On October 31, 2019, the City entered a Standard Contract for Services with Danus Utilities Inc. pursuant to ITB #19-19, Rehabilitation of Sanitary Sewer Manholes. The initial term was October 31, 2019 to October 30, 2020 with two (2), one-year terms. The final term was October 31, 2021 to October 30, 2022.

Inflow and infiltration (I&I) are terms used to describe ways that groundwater and stormwater enter a sanitary sewer system. Inflow occurs when stormwater enters through a direct connection with the sanitary sewer system. Infiltration occurs when groundwater seeps into the city sewer system through cracks in the pipes and manholes. As infrastructure ages and the ground shifts (due to rain, vibrations, construction activities, etc.), the underground pipes move. This movement can cause cracks or separation of joints in sewer piping and cracks in the manholes. These cracks allow groundwater into

the sewer systems. There are approximately 6,680 sanitary manholes located in the Port Orange sewer collection system.

This extra water due to I&I leads to higher operating costs at the wastewater treatment plant. During periods of heavy rain, the wastewater plant flows can increase over 3 million gallons per day due to I&I. I&I increases lift station energy costs and an increased potential of a sanitary sewer overflows due to the increased volume of water in the system. In 2015, an I&I study was conducted by Wade Trim to identify major I&I areas in the sewer collection systems. The study included evaluation of the sewer laterals, mains, and manholes where rain and ground water was entering into the system. Repairs include either complete manhole replacement, spot repairs, or “lining” the existing manhole with either a brushed-on epoxy-based liner, a fiber reinforced plastic liner or a special “cured in place” lining. Once the liner system is cured, it becomes part of the manhole structure. Advantages to the rehabilitation process is that no costly excavation or disturbance to the customers occur.

The City has exhausted all the renewal options. Staff is currently working on updating specifications and plans to bid out by March 2023. There are several areas within the City that are in need of urgent repairs. The Contractor has agreed to extend the current contract under the same terms and conditions for an additional six (6) months; October 31, 2022 through April 30, 2023. The annual spending authority is limited to the budgeted amount as approved by Port Orange City Council for the then-current fiscal year.

FUNDING:

Fund: 403

Fund Name: Water & Sewer R&R

Cost Center: Water and Sewer

Program: Water/Sewer Distribution

Spend Category: Sewage / Capital

Project No.: URH001

Current Budget: \$2,357,400

RECOMMENDATION:

The Public Works & Utilities Department recommends Council to approve a six (6) month extension request to the Standard Contract for Services (CA7037) with Danus Utilities Inc. under ITB 19-19 Rehabilitation of Sanitary Manholes for the term of October 31, 2022 and continue through April 30, 2023.

ANTICIPATED SCHEDULE:

a.) Council Approval – January 17, 2023

b.) Executed Amendment & Extension – As soon as possible

ATTACHMENTS:

1. Contract Docs CA7037
2. Certificate of Insurance



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this 31st day of October, 2019, by and between the CITY OF PORT ORANGE, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and DANUS UTILITIES, INC. ("Contractor"), a Florida corporation whose principal address is 2320 Beardall Avenue, Sanford, Florida 32771. The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

- (a) The Contractor hereby agrees to provide all aspects of rehabilitation of manholes and wet wells, which shall include all types of repair, methods of repair, materials and equipment, and as more specifically described in Invitation to Bid 19-19 ("ITB 19-19"), Addendum No. 1 and Addendum No. 2 which are made a part hereof by reference. Contractor's Schedule of Unit Pricing and Scope of Services referenced in ITB 19-19 are attached hereto as Exhibit "1," and made a part hereof by reference. A complete copy of ITB 19-19, Addendum No. 1 and Addendum No. 2 is available in the Office of the City Clerk.

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

Initial Term: The initial term of this Contract shall become effective on the last date the Contract is signed by the Parties and shall continue for a period of One (1) year (the "Initial Term").

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

Manner and Place: The work shall be performed in accordance with and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances.

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

Authorization for Services: This Contract standing alone does not authorize the purchase of any goods or services or require the City to place any orders for goods or service. Authorization for the purchase of goods or services from Contractor under this Contract shall be upon issuance of a written Purchase Order or Task Authorization issued and executed by the City Manager, or his designee, and shall be limited to the Contractor's total extended unit prices during the initial term and subsequent authorized renewals. The extended unit prices are set forth in Exhibit "2," attached hereto. Written Notice to Proceed(s) shall be issued by the Contract Administrator. Purchase Orders shall be issued for project amounts up to \$25,000.00 and Task Authorizations for project amounts over \$25,000.00. The City reserves the right to contract with other parties for the goods and services contemplated by this Contract, as determined in the City's sole and absolute discretion.

2. City Obligations. In return for the services identified above, the City agrees to compensate the Contractor at the prices set forth in Exhibit "1." The City's obligation to pay Contractor under this Contract is limited to an amount not to exceed the budget appropriation for each fiscal year. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

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

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

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

5. Contract Administration. The Public Works and Utility Director, Lynn Stevens, shall perform contract administration of this Contract. The City may change the contract administration, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

6. Termination for Convenience of the City

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

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

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

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

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

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

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

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

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 21 of this contract concerning disputes.

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

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

9. Examination of Records

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

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

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

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

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

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119.0701, Florida Statutes, or as otherwise provided by law.

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

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

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

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

11. Termination for Non-Appropriation of Funds

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

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

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

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

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

[Remainder of this page intentionally left blank]

Standard Insurance Requirements			
	Insurance	Standards	Additional Requirements
☒	Workers' Compensation <u>Additional Coverage:</u>	<u>Limits:</u> Coverage A - Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000 Aggregate	☐ When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.
☒	Comprehensive Business, Automobile Liability to include all automobiles. <u>Additional Coverage:</u>	<u>Limits:</u> Auto Liability Bodily Injury: \$200,000 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

Additional Insurance Requirements			
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If 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	<u>Limits:</u> Coverage - \$1,000,000 minimum.	
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$ <u>1,000,000.00.</u>	
☐	Errors and Omissions	<u>Limits:</u> Coverage - \$1,000,000.00 minimum.	
☒	Payment and Performance Bond Required	<u>Limits:</u> Coverage - Equal to amount of Contract.	
☐	Department Head waives Payment and Performance Bond for work under \$25,000.00.		

- | | |
|--------------------------|---|
| ☐ | Unless otherwise required by law, Department Head waives Insurance for work described as follows:
(check at least one)
☐ under \$25,000.00
☐ including goods F.O.B. the place of destination |
|--------------------------|---|

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

14. Modifications or Changes to this Contract

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

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

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

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

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

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

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

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

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

19. Inspection

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

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

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

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

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

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

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

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

22. E-Verify. Contractor 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 Contractor during the term of this Contract and shall expressly require any subcontractor performing services pursuant to this 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 this Contract.

23. Disputes. The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Contractor, shall decide disputes with respect to this Contract. The decision by the City Manager shall be final and binding unless, within five (5) business days from the date of delivery of the decision of the City Manager, appeal is made to the City Council in writing and delivered to the City Clerk, Robin L. Fenwick, CMC. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence.

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

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

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

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

28. Notice. For purposes of this Contract, notices shall be sent as follows:

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

Copy to: City of Port Orange
Attention: Lynn Stevens, Public Works and Utilities Director
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5575

Contractor: Danus Utilities, Inc.
Attention: Dan J. Pardus, President
P.O. Box 291671
Port Orange, Florida 32129
(386) 233-5588 – Telephone
danus2@cfl.rr.com

2320 Beardall Avenue
Sanford, Florida 32771

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

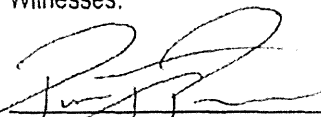
29. Contract Construction

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Contract shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this Contract.

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

[Remainder of this page intentionally left blank]

Witnesses:

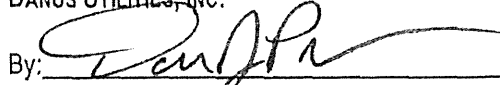


Printed Name: Preston Pardus



Printed Name: Andrew Darling

DANUS UTILITIES, INC.

By: 

Dan Pardus, President

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

Date: 10/29/2019

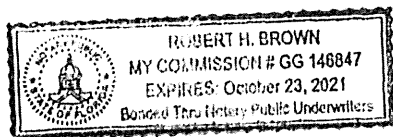
STATE OF FLORIDA
COUNTY OF SEMINOLE

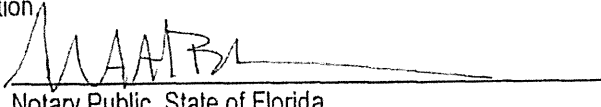
The foregoing instrument was acknowledged before me this 29 day of October, 2019, by Dan J. Pardus, as President of Danus Utilities, Inc., a Florida corporation, and who:

(Notary: Please select one)

☒ is personally known to me; or

☐ has produced _____ as identification





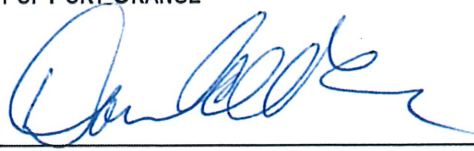
Notary Public, State of Florida

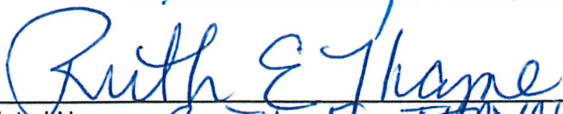
Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE


Printed Name: ANDRA SYLVESTER

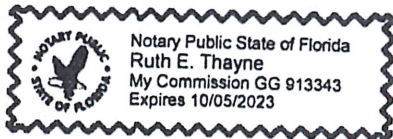
By: 
Donald O. Burnette, Mayor


Printed Name: RUTH E. THAYNE

Date: 10-31-2019

STATE OF FLORIDA
COUNTY OF VOLUSIA

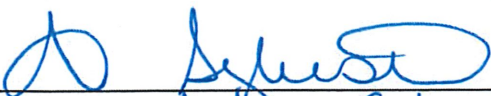
The foregoing instrument was acknowledged before me this 31st day of Oct., 2019, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.



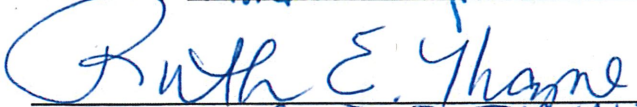

Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

Witnesses:

ATTEST: RUTH E. THAYNE


Printed Name: ANDRA SYLVESTER

By: 
Robin L. Fenwick, MMC, City Clerk


Printed Name: RUTH E. THAYNE

Date: Ruth E. Thayne

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 31st day of Oct., 2019, 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:
RUTH E. THAYNE

195-2-28

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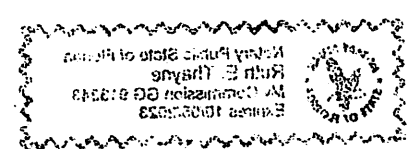
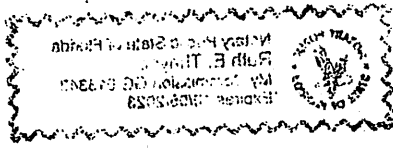


EXHIBIT "1"

"ATTACHMENT 1" SCHEDULE OF UNIT PRICING
BID FORM
CITY OF PORT ORANGE
ITB # 19-19

Revised 8/1/2019

REHABILITATION OF SANITARY SEWER MANHOLES

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.
 Annual estimated quantities of work are provided on Attachment 1 Schedule of Unit Pricing. The quantities provided in Attachment 1 are estimates only, the City does not guarantee the amount of work will equal the quantities in Attachment 1

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

NAME OF BUSINESS: Danus Utilities Inc CONTACT PERSON: Dan Pardus EMAIL ADDRESS: dan@dpuutilities.com AUTHORIZED NAME: Dan Pardus AUTHORIZED SIGNATURE:				
ITEM #	DESCRIPTION	ANNUAL ESTIMATED QUANTITIES	UNIT	UNIT PRICE
GENERAL				
1	Mobilization	10	EA	\$1,000.00
2	Maintenance of Traffic	10	EA	\$400.00
				\$1,400.00
CONSTRUCTION				
1	Lining of Manholes/Wet Wells using Urethane/Epoxy-Based Lining	2000	SF	\$22.50
2	Lining of Manholes/Wet Wells using Cured in Place Lining System - Single Layer	1000	SF	\$40.00
3	Lining of Manholes/Wet Wells using Cured in Place Lining System - Multiple Layers	500	SF	\$51.00
4	Replacement of Manhole Ring and Cover in Grass	10	EA	\$1,000.00
5	Replacement of Manhole Ring and Cover in Pavement	10	EA	\$1,500.00
6	Salvaging Manhole Ring and Cover	10	EA	\$1.00
7	Raising of Existing Manhole Ring and Cover	20	EA	\$300.00
8	Inflow Dish HDPE	10	EA	\$100.00
9	Inflow Dish Stainless Steel	10	EA	\$300.00
10	Chimney Seal	20	EA	\$300.00
11	Manholes Lacking Benches and Inverts	20	EA	\$500.00
12	Lining of Manholes/Wet Wells using Fiberglass Manhole Liners			
a	FRP Liner 42-in Diameter	200	VF	\$850.00
b	FRP Liner 48-in Diameter	200	VF	\$650.00
c	FRP Liner 54-in Diameter	100	VF	\$750.00
d	FRP Liner 60-in Diameter	50	VF	\$750.00
e	FRP Liner 72-in Diameter	20	VF	\$850.00
f	FRP Liner 96-in Diameter	20	VF	\$1,000.00
				\$8,764.50
				\$1,400.00
				\$8,764.50
				\$10,164.50
				\$1,016.45
AWARD: THIS BID WILL BE AWARDED TO THE LOWEST, RESPONSIVE, RESPONSIBLE BIDDER				

SECTION 3 – SCOPE OF WORK and PROJECT TIME LINE
REHABILITATION OF SANITARY SEWER MANHOLES & WET WELLS

A. 1 SCOPE OF WORK

The Contractor shall include the cost(s) for permits and fees in his proposal.

The Contractor shall include the cost(s) for a 100% performance and payment bond.

It is the intent of this Specification to cover all aspects of rehabilitation of manholes and wet wells including types of repair, methods of repair, materials and equipment.

Sanitary sewer manhole and wet well rehabilitation covers the following type of repairs:

- A. Lining and sealing of manholes and wet wells.
- B. Replacement of manhole ring and cover.
- C. Raising of existing manhole ring and cover to existing or above grade.
- D. Manhole Inflow Dish.
- E. Manhole Chimney Seal.

B.1 LINING OF MANHOLES USING URETHANE/EPOXY-BASED LINING

A. General: The work consists of applying with a brush, roller, airless or air-assisted spray a urethane/epoxy-based material to the walls, inverts, and benches of manholes and wet wells, resulting in a monolithic liner of a minimum 1/4 inches (250 mils) in thickness or more, as determined by the manufacturer for the specific depth and water table. Greater urethane/epoxy-based line thicknesses may be required on specified structures as directed by the City. The applicator shall furnish all labor, equipment and materials for installing the lining over pre-cast concrete, concrete block, masonry block manholes or other structures exposed to a sanitary sewer environment, new or used, using approved equipment. The installation shall be in accordance with the following Contract Specifications along with manufacturer's recommendations.

- B. A Project Manager or Project Supervisor, representing the Contractor shall always be present while the work is being performed by either Contractor or Subcontractors.
- C. Materials
 - 1. Mixture: A proprietary urethane/epoxy-based material specifically designed for manhole applications shall be Raven 405 as manufactured by Raven Lining Systems or City Engineer approved equal. The product shall be corrosion resistant to the ingredient of the sanitary sewer environment and shall be designed to bond to wet (not running) surfaces.
 - 2. Water: Shall be clean and potable.
 - 3. Other Materials: No material shall be used with or added to mixture without prior approval by the City Engineer.

D. Properties

- 1. Physical:**
 - a. Tensile stress, ASTM D-638 - 7,600 psi
 - b. Tensile Ultimate Elongation ASTM D638 – 1.5%
 - c. Compressive Strength ASTM D 695 – 18,000 psi
 - d. Flexural strength, ASTM D-790 – 13,000 psi
 - e. Flexural modulus, ASTM D-790 – 550,000 psi
- 2. Liner Mix shall be made with manufacturer's recommendations for manhole applications.**

E. Application

- 1. Preparation:**
 - a. Place covers over invert before prepping.
 - b. All foreign materials shall be removed from the manhole walls and bench using high-pressure water spray (minimum 5,500 psi). loose and protruding brick, mortar and concrete shall be removed using a mason hammer and chisel. All non-leaking voids shall be filled with non-shrink cement-based material containing hydraulic cement, as approved and directed by the city.
 - c. Active leaks shall be stopped using products specifically for that purpose and according to manufacturer's recommendations. Chemical Grouting with Avanti 202 or approved equal shall be used to cease inflow into manholes.
 - d. Excessively leaking manholes shall be drilled through the manhole wall and injected with grout sealant. Payment for this item of work shall be at the unit price bid only if normal active leak stoppage methods are not effective and said work is approved by the city.
 - e. All loose material shall be removed following the completion of preparation work.
 - f. The sanitary sewer flow shall be diverted as necessary to perform the required manhole rehabilitation.
- 2. Spray Application of the Liner:**
 - a. Prior to spraying, surfaces to be rehabilitated shall be damp without noticeable free water droplets or running water. Material shall be spray applied to a minimum uniform thickness to ensure that all voids and crevices are filled smooth.
 - b. The application of the liner shall provide a monolithic liner having a minimum total average thickness of 250 mils (.25 inches or thicker as directed by the city. The finished liner shall have an equal total average thickness throughout the structure to be rehabilitated. If the manufacturer's recommendations require a greater minimum total average thickness due to hydrostatic loading caused by the water table,

the manufacturer's recommendations shall control. The liner shall be applied to the invert, bench, vertical also, cone section, and all other surfaces made of brick, tile, pre-cast concrete, or concrete block within the structure's interior. Within rehabilitated manholes, the invert and bench shall be smooth and sloped in the direction of the flow. The manhole bench shall have a gradual slope to the invert. The invert transition to the pipe shall be smooth and shall not impair the flow.

- c. No application shall be made when ambient temperatures are less than 40°F and when freezing is expected within 24 hours unless specific recommendations are made by the manufacturer.
- d. A minimum of 30 minutes cure time or more as required by the product manufacturer shall be allowed before returning to active flow.

B.2 LINING OF MANHOLES USING CURED-IN-PLACE LINING SYSTEMS

Manholes constructed with brick or tile which are structurally compromised as determined by the City or Engineer will be repaired using a cured-in-place lining system.

- A. General: The work consists of installing a resin impregnated custom fabricated liner by means of air inflation into an existing manhole, wet well, pump station, or catch basin. The liner is installed from the top of the casting to the top of the channel which includes; shim rings, casting chimney interface, chimney, cone, wall and bench. The channel can be included as directed by the owner. When cured, the liner will provide a durable monolithic chemical resistant barrier that will protect the existing substrate from further deterioration. The finished liner will also stop any water from either entering or exiting from the lined surfaces of the original substrate.
- B. A Project Manager or Project Supervisor, representing the Contractor shall always be present while work is being performed by either the Contractor or Subcontractors.
- C. Materials
 - a. LINER
 - i. The Liner shall be composed in one of the following two configurations;
 - 1. Single Layer - Non-Porous Membrane
 - a. Non-Porous Membrane is to be a gas and liquid impermeable membrane of special non-porous materials with felt mechanically embedded on both sides. Membrane is to be custom fabricated to fit to the inside dimensions of each structure.
 - 2. Multiple Layers - Non-Porous Membrane and fiberglass.
 - a. Non-Porous Membrane is to be a gas and liquid impermeable membrane of special non-porous materials with felt mechanically embedded on both sides. Membrane is to be custom fabricated to fit to the inside dimensions of each structure.
 - b. Fiberglass shall be a coated woven roving style to allow for resin adherence. The weight of the fiberglass and

number of layers required shall be based on the manufactured published data and the stamped design for minimum wall thickness.

b. RESIN SYSTEM

- i. Resin shall be 100% solids epoxy formulated to withstand a typical domestic wastewater sewer system including high sulfide areas near force mains and wet wells. The resin must be compatible with both the non-porous membrane and the fiberglass. The resin must have a minimum of 250psi bond strength to wet or dry brick and concrete surfaces.

D. PREPARATORY PROCEDURES

- a. PH of the original substrate shall be determined.
- b. Contractor will perform preliminary cleaning of the structure with high-pressure water-blasting at a minimum of 4000psi and 4gpm to obtain the desired concrete surface profile (CSP) of 3 or greater.
- c. If the desired CSP is not achieved by high-pressure water-blasting other methods of obtaining the surface profile such as abrasive blasting and acid etching shall be used.
- d. The Contractor shall remove all the existing manhole steps. The metal portion of all steps will be removed to within ½" of the manhole interior wall surface. The remaining protruding metal portion of the step shall be covered with a cementitious material to provide a smooth surface on and around the protrusion for the liner to bond.
- e. All open joints, voids, holes, cracks, and missing bricks larger than 3 inches in diameter or equivalent shall be patched with a cementitious material to provide a smooth surface for the liner to bond. All loose, cracked or disintegrated material shall be removed from the area to be patched exposing a sound substrate. The cementitious patch material shall be allowed to cure according to the manufacturer's specifications before continuing with the Liner installation process.
- f. Bench shall be sloped so that water will flow back into channel.
- g. All active water leakage shall be stopped for a minimum of 30 minutes prior to installation to allow time to insert and pressurize the Liner. This prevents resin washout and allows proper curing and bonding. Leaks may be stopped with fast setting cement or chemical grout injection.
- h. When the channel is required to be lined the Contractor shall plug the inlet pipe, inspect for infiltration leaks around the inlet and outlet pipes and in the channel. All leaks present shall be stopped using chemical grout injection and/or using fast-setting cement.
- i. Contractor shall remove any incoming pipes to within 2 inches of the wall. The pipe outside circumference shall be cemented with an approximate 60° taper, forming a filet between the structure wall and the pipe making a smooth transition for the liner to bond.
- j. The final prepared surface shall have a concrete surface profile of 3 or greater and have a smooth uniform appearance.
- k. After the above-mentioned procedures the surface shall be cleaned with degreaser or other solvents, as needed, to remove any film, grease, loose

patching material, chemical grout or residue on the surface. Structure shall then be pressure rinsed with water.

E. GENERAL INSTALLATION PROCESS

- a. Contractor shall verify that the liner intended for the structure matches the dimensions of the structure by measuring the dimensions of the structure and the liner prior to installation.
- b. All resin intended for the liner shall be mixed properly.
- c. Contractor shall apply mixed resin evenly onto both the inside and outside of the entire liner with rollers. There shall be no white spots (dry Liner) on either side of the Liner including seams and bottom disk(s). Areas of heavily saturated resin shall be spread out to cover areas that are deficient of resin.
- d. Liner can be installed to include or omit the structure channel depending upon the intention of the owner.
- e. For Liner installation that does not include the channel, a temporary subfloor shall be constructed to keep liner from inflating into the channel and to allow the sewer to flow unobstructed without bypass pumping. A saturated bottom disk or disks are installed onto the subfloor, bench, and up the wall about 6 inches.
- f. For channel lining the incoming and outgoing pipes are plugged. This may require bypass pumping. Two or more bottom disks are placed into the channel, onto the bench, and 6 inches up the wall.
- g. Resin saturated Liner is lowered into the structure and positioned properly to line up any offsets.
- h. Liner is pressurized with air or water to a minimum of 3psi. Contractor shall verify proper position of the liner from the inspection portal located on the installation canister. If Liner is not positioned properly the Liner can be raised, lowered or rotated to desired position. In some cases, it may be necessary to enter the structure to hand position portions of the liner.
- i. The liner is cured with steam, hot water, or ambiently. Cure times vary according to, cure method, Liner thickness, structure size, ambient temperatures, and resin formulation. Typically, curing takes about an hour with steam. Contractor may use the exposed portion of the Liner above the frame as an indicator. When steam is used a cool down period is needed equaling about 25% of cure time.
- j. Liner shall be cut and trimmed to allow for all incoming and outgoing pipe to flow without obstruction. If channel is unlined the subfloor shall be removed.
- k. All cut edges shall be sealed with an epoxy mastic material that is compatible with the Liner System.

F. FINISHED LINER

- a. The finished CIP Liner System shall be continuous over the entire length of the structure from the cover seat to the top of the channel or shall include the channel as required. The Liner shall be smooth with minimal wrinkling.
- b. Liner shall be bonded to the structure, as required by design, and in such a way as to not allow any water to flow behind the liner and enter back into the waste stream.

G. PAYMENT

- a. Payment for the lining of manholes and wet wells with Cured-in-Place Lining System will be per square foot of surface area lined and shall include any cost associated with the installation of the liner as outlined in this section.

A.4 REPLACEMENT OF MANHOLE RING AND COVER

- A. General: This section deals with the replacement of existing manhole rings and covers when new manhole rings and covers are required.

1. New Manhole Ring and Cover: Existing manhole ring and covers shall be cleaned and reinstalled where directed by the City. Where required, the existing manhole ring and cover shall be removed and salvaged and a new manhole ring and cover installed and adjusted by the Contractor as directed by the City. Removing and replacement of pavement shall conform to the City Standards.

New manhole rings and covers shall be provided by the Contractor. The Contractor shall confirm the desired manhole ring and cover model, design and markings with the City prior to ordering. Rings and covers shall be made of clean, even grain, cast iron. The quality of iron in the castings shall conform to the current ASTM Specification A-48 for Class 30 iron Castings. The castings shall be smooth, true to pattern and free from projections, sand holes or defects. The portion of the ring and cover which forms the cover seat shall be machined so that no rocking of the cover is possible.

On paved streets, the ring and cover shall be set flush with the finished grade and in the plane of the paved surface. In other locations, they shall be set to the grades determined in the field by the City.

A.5 SALVAGING MANHOLE RING AND COVER

All existing undamaged manhole rings and covers removed from the manholes shall be considered as salvaged rings and covers. These salvaged rings and covers shall always remain the property of the City after removal and delivered to the City.

Reasonable care shall be exercised to prevent unnecessary damage to the salvaged rings and covers.

The Contractor shall, upon removal of ring and cover, remove all grout from the salvaged ring and cover. The cover shall then be tied to the ring using a minimum of two (2) or more pieces of six (6) gauge wire and provided to the City.

A.6 RAISING OF EXISTING MANHOLE RING AND COVER

Existing manholes below grade shall be raised to grade using either a cast iron riser ring, concrete "donut" riser, or manhole riser section as directed by an Engineer or the City.

When adjusting with brick, a maximum of 16 inches adjustment will be allowed. The mortar shall be troweled to a smooth finish.

A.7 INFLOW DISH

An inflow dish shall be installed when required by the Engineer or the City in specified manholes to prevent excessive rainwater from entering the manhole cover. Inflow dishes shall be "Rainstopper" type, or an Engineer-approved equal. Inflow dishes and components shall be manufactured of material resistant to corrosion from atmospheres containing hydrogen sulfide and dilute sulfuric acid. The inflow dish shall allow venting of sewer gasses. The inflow dish shall be constructed HDEP material or 316 stainless steel and shall be anchored to the manhole by a tether. Installation shall be in accordance with the manufacturer's recommendations and shall not impede the proper seating of the manhole cover.

A.8 CHIMNEY SEAL

A chimney seal shall be installed when required by an Engineer or the City in specified new or existing manholes to stop inflow in the chimney area. Chimney seals shall be "Flex-Seal" as manufactured by Sealing Systems, Inc., or "Ring Seal" as manufactured by Southwestern Packing and Seals, Inc. or "Internal Manhole Chimney Seal" as manufactured by Cretex Specialty Products. The chimney seal shall be secured to the manhole cone and the cover ring. The chimney seal shall have a design life of at least 25 years. The chimney seal shall be installed in the manhole in accordance with the manufacturer's recommendations.

A.9 MANHOLES LACKING BENCHES AND INVERTS

Manholes lacking benches and invert shall require building of the bench and invert prior to performing any rehabilitation. Measurement and payment shall be determined by the cubic yards of concrete used to complete the bench and invert.

A.10 WARRANTY

All lining installations shall be warranted to be free from defects in materials and workmanship for a period of five (5) years from the date of project acceptance. Should a defect occur during this five (5) year period that is attributable to the lining installation or materials, then this defect shall be repaired within four (4) weeks from the date of defect notification to the contractor at no additional cost to the City.

The Contractor shall be responsible for all required repair costs associated with a lining failure during the warranty period including all cost associated with backups and all other property damage.

2) PROJECT TIME LINE

- A. Notice of Award: after bid opening and complete review of submitted bid information
- B. Notice to Proceed: after Pre-construction Meeting
- C. Start Time: after Pre-construction Meeting

Initial contract will be for one (1) year from date of Notice to Proceed. Contract will be renewable for up to two (2) one (1) year renewal periods, upon agreement of both parties. Renewal will be approved by the City Manager and the budget will be approved by City Council.

3) Annual estimated quantities of work are provided on Attachment 1 Schedule of Unit Pricing. The quantities provided in Attachment 1 are estimates only, the City does not guarantee the amount of work will equal the quantities in Attachment 1

End of Scope of Work

EXHIBIT “2”

(Consisting of 1 page)

OPENING DATE/TIME: 8/13/2019 2:30 P.M. BID Tabulation FORM ITB # 19-19 REHABILITATION OF SANITARY SEWER MANHOLES							
				Roland Inc		Darus Utilities	
				Pinellas Park, FL		Sanford, FL	
ITEM #	DESCRIPTION	Annual Est Qty	UNIT	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
A	GENERAL BASE BID						
1	Mobilization	10	EA	\$100.00	\$1,000.00	\$1,000.00	\$10,000.00
2	Maintenance of Traffic	10	EA	\$100.00	\$1,000.00	\$400.00	\$4,000.00
	Subtotal - GENERAL BASE BID:			\$200.00	\$2,000.00	\$1,400.00	\$14,000.00
B	CONSTRUCTION BASE BID						
1	Lining of Manholes/Wet Wells using Urethane/Epoxy-Based Lining	2000	SF	\$31.00	\$62,000.00	\$22.50	\$45,000.00
2	Lining of Manholes/Wet Wells using Cured In Place Lining System - Single Layer	1000	SF	\$34.00	\$34,000.00	\$40.00	\$40,000.00
3	Lining of Manholes/Wet Wells using Cured In Place Lining System - Multiple Layers	500	SF	\$38.00	\$19,000.00	\$51.00	\$25,500.00
4	Replacement of Manhole Ring and Cover in Grass	10	EA	\$650.00	\$6,500.00	\$1,000.00	\$10,000.00
5	Replacement of Manhole Ring and Cover in Pavement	10	EA	\$1,050.00	\$10,500.00	\$1,500.00	\$15,000.00
6	Salvaging Manhole Ring and Cover	10	EA	\$50.00	\$500.00	\$1.00	\$10.00
7	Raising of Existing Manhole Ring and Cover	20	EA	\$250.00	\$5,000.00	\$300.00	\$6,000.00
8	Inflow Dish HDPE	10	EA	\$100.00	\$1,000.00	\$100.00	\$1,000.00
9	Inflow Dish Stainless Steel	10	EA	\$220.00	\$2,200.00	\$300.00	\$3,000.00
10	Chimney Seal	20	EA	\$1,200.00	\$24,000.00	\$300.00	\$6,000.00
11	Manholes Lacking Benches and Inverts	20	EA	\$350.00	\$7,000.00	\$500.00	\$10,000.00
12	Lining of Manholes/Wet Wells using Fiberglass Manhole Liners						
a	FRP Liner 42-in Diameter	200	VF	\$600.00	\$120,000.00	\$650.00	\$130,000.00
b	FRP Liner 48-in Diameter	200	VF	\$650.00	\$130,000.00	\$650.00	\$130,000.00
c	FRP Liner 54-in Diameter	100	VF	\$725.00	\$72,500.00	\$750.00	\$75,000.00
d	FRP Liner 60-in Diameter	50	VF	\$800.00	\$40,000.00	\$750.00	\$37,500.00
e	FRP Liner 72-in Diameter	20	VF	\$1,280.00	\$25,600.00	\$850.00	\$17,000.00
f	FRP Liner 96-in Diameter	20	VF	\$1,450.00	\$29,000.00	\$1,000.00	\$20,000.00
	Subtotal - CONSTRUCTION BASE BID:				\$588,800.00		\$571,010.00
	Subtotal - GENERAL BASE BID				\$2,000.00		\$14,000.00
	Subtotal - CONSTRUCTION BASE BID				\$588,800.00		\$571,010.00
	Total - GENERAL & CONSTRUCTION BASE BIDS				\$590,800.00		\$585,010.00
	CONTINGENCY (10%)				\$59,080.00		\$58,501.00
	GENERAL and CONSTRUCTION Base Bids						
	Required Forms Submitted:			Yes		Yes	
	Bid Bond Submitted:			Yes		Yes	
	Responsive & Responsible Bidder:			Yes		Yes	
DISCLAIMER: THIS BID TABULATION INDICATES ONLY THE BIDS AS RECEIVED. ALL BIDS ARE SUBJECT TO VERIFICATION FOR ACCURACY, AND FOR SPECIFICATION AND CONTRACT COMPLIANCE. NO CONCLUSIONS ABOUT CONTRACT AWARDS SHOULD BE DRAWN FROM THESE PRELIMINARY TABULATIONS							

EXHIBIT “3”

(Consisting of 3 pages)

FRONT PAGE FOR BOND REQUIRED BY SECTION 255.05, F.S.**PAYMENT AND PERFORMANCE BOND****(Public Works)**Notice and Time Limitations Must Be In Accordance
With Section 255.05(2), (8) and (10), Florida Statutes**BOND NO. 2295652, Executed in 4 Counterparts****PRINCIPAL:**

Developer or Contractor: **Danus Utilities, Inc.**
 Principal Business Address: **2320 Beardall Avenue**
Sanford, Florida 32771
 Contact Person: **Dan J. Pardus, President**
 Phone Number: **(386) 233-5588**

SURETY:

Address: **North American Specialty Insurance Company**
1200 Main Street, Suite 800
Kansas City, MO 64105
 Contact Person: **Sean Friend**
 Phone Number: **(913) 676-5200**

OWNER:

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

Amount: \$100,000.00**City Project Number: ITB 19-19 Rehabilitation of Sanitary Sewer Manholes****Description of Work:** Rehabilitation of Sanitary Sewer Manholes**Project Location:** Various locations in and around Port Orange, Volusia County, Florida**Legal Description:** Locations within City of Port Orange, Volusia County, Florida for all public works identified in ITB 19-19**Front Page**

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

Danus Utilities, Inc.

ITB 19-19 Rehabilitation of Sanitary Sewer Manholes

Bond No. 2295652, Executed in 4 Counterparts

COMBINATION PAYMENT AND PERFORMANCE BOND FOR PUBLIC CONSTRUCTION

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

BY THIS BOND, We, Danus Utilities, Inc., as Principal, and North American Specialty Insurance *, a corporation, as Surety, are bound to CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

* Company

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain Standard Contract for Services, having an effective date of October 31, 2019, entered into by and between the Principal and the City, for Rehabilitation of Sanitary Sewer Manholes, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and
3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.02(2), (8) and (10), Florida Statutes.

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

IN WITNESS WHEREOF, this performance and payment bond is executed and shall be deemed an original, this 31 day of October, 2019.

Attest:

DANUS UTILITIES, INC.
(Principal)

Alice M. Pardus
(As to Corporate Principal) Secretary

By: Dan J. Pardus
Dan J. Pardus, President

MAAIBA
(Witness to Principal)

(Corporate Seal)

North American Specialty Insurance Company
(Surety)

Sarah Drinnan
(Witness to Surety)

Sarah Drinnan

By: Lisa Roseland
Name: Lisa Roseland, Attorney-in-Fact & FL Licensed Resident
Agent (Attorney-in-Fact)
Inquiries: (407) 786-7770

(Corporate Seal)

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

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

SWISS RE CORPORATE SOLUTIONS

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY
WESTPORT INSURANCE CORPORATION

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Overland Park, Kansas and Washington International Insurance Company a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Overland Park, Kansas, and Westport Insurance Corporation, organized under the laws of the State of Missouri, and having its principal office in the City of Overland Park, Kansas each does hereby make, constitute and appoint:

JEFFREY W. REICH, SUSAN L. REICH, KIM E. NIV, TERESA L. DURHAM, GLORIA A. RICHARDS, CHERYL FOLEY, LISA ROSELAND, SONJA AMANDA FLOREE HARRIS, ROBERT P. O'LINN and SARAH K. O'LINN JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

ONE HUNDRED TWENTY FIVE MILLION (\$125,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on March 24, 2000 and Westport Insurance Corporation by written consent of its Executive Committee dated July 18, 2011.

"RESOLVED, that any two of the President, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By [Signature]
Steven P. Anderson, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company
& Senior Vice President of Westport Insurance Corporation

By [Signature]
Michael A. Ito, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company
& Senior Vice President of Westport Insurance Corporation



IN WITNESS WHEREOF, North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 22nd day of February, 2018.

North American Specialty Insurance Company
Washington International Insurance Company
Westport Insurance Corporation

State of Illinois
County of Cook ss:

On this 22nd day of February, 2018, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of

Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and Senior Vice President of Westport Insurance Corporation and Michael A. Ito Senior Vice President of Washington International Insurance Company and Senior Vice President

of North American Specialty Insurance Company and Senior Vice President of Westport Insurance Corporation, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



[Signature]
M. Kenny, Notary Public

I, Jeffrey Goldberg, the duly elected Vice President and Assistant Secretary of North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company, Washington International Insurance Company and Westport Insurance Corporation which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 31st day of October, 2019.

[Signature]
Jeffrey Goldberg, Vice President & Assistant Secretary of Washington International Insurance Company & Vice President & Assistant Secretary of Westport Insurance Corporation



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
06/15/2022

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

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

PRODUCER Caton-Hosey Insurance 3731 Nova Rd. Port Orange FL 32129		CONTACT NAME: Melissa Adrian, CPSR PHONE (A/C, No, Ext): (386) 767-3161 FAX (A/C, No): (386) 760-1770 E-MAIL ADDRESS: melissa@catonhosey.com	
INSURED Danus Utilities, Inc 4133 Saddle Club Dr New Smyrna Beach FL 32168		INSURER(S) AFFORDING COVERAGE INSURER A: National Builders (Vinings) NAIC # 16632 INSURER B: Auto-Owners Ins 18988 INSURER C: Travelers Property & Casualty Company 36161 INSURER D: Federal Insurance Company 20281 INSURER E: INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** CL2261528605 **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.

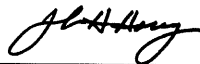
INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR ☒ Contractual Liability ☒ XCU Included GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:	Y		PKG-0197186-04	07/02/2022	07/02/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ HIRED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS ONLY	Y		4806741403	07/02/2022	07/02/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP-Basic \$ 10,000
	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			CUP-2S131915-22-NF	07/02/2022	07/02/2023	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
	☒ 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	N/A	Y	WCV 0264441 06	07/02/2022	07/02/2023
D	Rented & Leased Equipment			45471710	06/24/2022	06/24/2023	Limit \$350,000 Deductible \$1,000

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

City of Port Orange is included as an Additional Insured for General Liability and Automobile Liability with respects to operations of the Named Insured and as required by written contract. Coverage is primary and non-contributory. Waiver of Subrogation applies with respect to Workers Compensation as required by written contract.

CERTIFICATE HOLDER

CANCELLATION

City of Port Orange 1000 City Center Circle Port Orange FL 32129	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
--	--

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CITY OF PORT ORANGE, FLORIDA
INVITATION TO BID
REHABILITATION OF SANITARY SEWER MANHOLES
ITB #19-19



City of Port Orange Purchasing Division
Prepared by: David Van Valkenburgh Purchasing Agent
Release Date: July 2, 2019

Bid Due Date and Time: August 13, 2019 at 2:30 P.M.

City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129
(386) 506-5704

purchdiv@port-orange.org

www.port-orange.org



Legal Notice to Proposers

ITB #19-19

REHABILITATION OF SANITARY SEWER MANHOLES

Notice is hereby given that the City of Port Orange is soliciting bids for ITB #19-19 REHABILITATION OF SANITARY SEWER MANHOLES. Bids will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 P.M. on August 13, 2019** which may be amended by addendum issued by the City. All untimely Bids will not be considered and will be returned to the Bidder unopened. All Bids will be evaluated to ensure they contain all required forms in order to deem the Bidder responsive or non-responsive. Bids will be opened and read aloud at 2:30 P.M. in Council Chambers.

There will be a Non-Mandatory Pre-Bid Conference and site visit for the project at **10:00 A.M.** (local time) on **July 16, 2019** at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the Pre-Bid Conference must sign in. The representative of each Bidder shall be an authorized employee of the Bidder and shall sign in accordingly. **Bidders are urged to obtain Bid documents and familiarize themselves with the documents prior to the Pre-Bid meeting.**

There will be a Pre-Construction meeting scheduled after the award of contract. The location will be at City Hall location, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, Florida 32129 and the time and date TBD.

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

DESCRIPTION: *The City of Port Orange is soliciting sealed Bids for the purpose of rehabilitation of manholes and wet wells including types of repair, methods of repair, materials and equipment.*

Bidders must be a commercial entity licensed to do business in the State of Florida and perform the services identified herein.

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

Copies of the Bid documents, requirements, the scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from Onvia the City of Port Orange website at www.port-orange.org/bids.aspx and (DemandStar) via their website at www.demandstar.com. All questions shall be directed **in writing** to the Agent, David Van Valkenburgh, dvanvalkenburgh@port-orange.org or purchdiv@port-orange.org and reference **"Questions on ITB# 19-19 REHABILITATION OF SANITARY SEWER MANHOLES AND WET WELLS"** in the subject line. Last day for questions will be **July 30, 2019 at 5:00 P.M.**

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

NO bid shall be withdrawn for a period of ninety (90) days subsequent to the bid opening without the consent of the City of Port Orange, Florida. Upon award, the successful bidder will also be required to furnish and pay for a satisfactory contract one hundred percent (100%) Payment and Performance Bond to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida and to enter into a contract for services with the City of Port Orange.

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

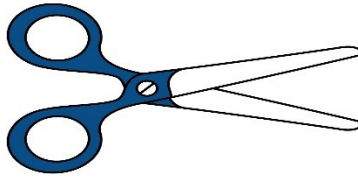
Bids shall be **submitted to the City Clerk's office** with one (1) original and one (1) identical digital (CD or flash drive) version in pdf format, addressed to David VanValkenburgh, Purchasing Agent, Finance Department, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 in a **SEALED ENVELOPE/PACKAGE**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

David Van Valkenburgh – Purchasing Agent

Legal Ad - One Time – **July 2, 2019**

[Remainder of this page left intentionally blank]

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



SEALED BID • DO NOT OPEN	
SEALED BID NO.	ITB #19-19 _____
BID TITLE:	REHABILITATION OF SANITARY SEWER MANHOLES _____
DUE DATE/TIME:	August 13, 2019 at 2:30 P.M. _____
SUBMITTED BY:	_____ (Name of Company)
DELIVER TO:	City of Port Orange City Clerk's Office Attn: David Van Valkenburgh Purchasing Agent Finance Department 1000 City Center Circle Port Orange, Florida 32129

Contents

SECTION 1 – PURPOSE AND OVERVIEW	6
SECTION 2 – INSTRUCTIONS TO BIDDERS	7
SECTION 3 – SCOPE OF WORK AND PROJECT CONTRACT	12
SECTION 4 – STANDARD PURCHASE DEFINITIONS.....	19
SECTION 5 – GENERAL TERMS AND CONDITIONS	22
SECTION 6 – SPECIAL CONDITIONS	49
SECTION 7 – REQUIRED FORMS.....	49
FORM 7.1 – BID SUBMITTAL CHECKLIST	49
FORM 7.2 – VENDOR’S ACKNOWLEDGEMENT FORM	50
FORM 7.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT	51
FORM 7.4 – DRUG FREE PREFERENCE STATEMENT	52
FORM 7.5 – SWORN STATEMENT UNDER SECTION 287.133(3)(A), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES.....	53
FORM 7.6 – ANTI-COLLUSION FORM.....	54
FORM 7.7 – AUTHORIZED SIGNATURES/NEGOTIATORS.....	55
FORM 7.8 – STATEMENT OF VENDOR’S QUALIFICATIONS	56
FORM 7.9 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE	58
FORM 7.10 – LISTING OF SUBCONTRACTORS	59
FORM 7.12 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY	60
FORM 7.13 – CERTIFICATE AS TO CORPORATE PRINCIPAL	62
ATTACHMENT 1 – BID PROPOSAL.....	63
BID BOND.....	64
PERFORMANCE & PAYMENT BOND.....	66
STANDARD CITY OF PORT ORANGE CONTRACT DOCUMENTS (FOR INFORMATIONAL PURPOSES ONLY)	68

SECTION 1 – PURPOSE AND OVERVIEW

The purpose of this Invitation to Bid (ITB) is to solicit competitive sealed bids from Firms or Companies (Vendors) for the provision of building the Reclamation Sewer and Manhole and Wet Wells. **Bidders must be a commercial entity licensed to do business in the State of Florida and perform the services identified herein.**

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

[Remainder of this page left intentionally blank]

SECTION 2 – INSTRUCTIONS TO BIDDERS

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

TIMELINE (Local Time):

The City reserves the right to alter dates as needed.

Date of Distribution:July 2, 2019

Non-Mandatory Pre-Bid Conference July 16, 2019 at 10:00 A.M.

Deadline for Questions: July 30, 2019 by 5:00 P.M.

Final Addendum Posting:August 6, 2019 by 5:00 P.M.

Bids Due: August 13, 2019 by 2:30 P.M.

City Council Meeting for Approval of Recommendation of AwardTo Be Determined

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

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

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

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

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

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

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

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

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

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

PRE-BID CONFERENCE/SITE VISIT:

There will be a Non-Mandatory Pre-Bid Conference 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 attendees to the Non-Mandatory Pre-Bid Conference must sign in. The representative of each Vendor shall be an authorized employee of the Vendor and shall sign in accordingly.

QUESTIONS REGARDING THIS ITB:

All questions shall reference "ITB #19-19 REHABILITATION OF SANITARY SEWER MANHOLES" in the subject line. All questions concerning this ITB shall be submitted in writing no later than the date and time referenced in the Timeline above to:

David Van Valkenburgh

Purchasing Agent

1000 City Center Circle

Port Orange, FL 32129

dvanvalkenburgh@port-orange.org or purchdiv@port-orange.org

ADDENDA REGARDING THE INVITATION TO BID:

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

Written responses, in the form of an addendum, will be provided via the City website

www.port-orange.org/bids.aspx and Demand Star websites. www.demandstar.com.

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

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

CLARIFICATIONS:

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

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

MINIMUM QUALIFICATIONS:

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

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

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

NO LOBBYING:

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

PRICING SHEETS:

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

EXCEPTIONS TO SPECIFICATIONS:

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

BID SUBMISSION AND WITHDRAWAL:

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

CORRECTION OF BIDS:

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

WITHDRAWAL OF BIDS:

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

OPENING OF BIDS:

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

LITIGATION HISTORY:

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

DEBARMENT HISTORY:

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

REJECTION OF BIDS:

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

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

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

OWNERSHIP OF DOCUMENTS:

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

AMERICANS WITH DISABILITIES ACT (ADA):

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

[Remainder of this page left intentionally blank]

SECTION 3 – SCOPE OF WORK and PROJECT TIME LINE
REHABILITATION OF SANITARY SEWER MANHOLES & WET WELLS

A. 1 SCOPE OF WORK

The Contractor shall include the cost(s) for permits and fees in his proposal.

The Contractor shall include the cost(s) for a 100% performance and payment bond.

It is the intent of this Specification to cover all aspects of rehabilitation of manholes and wet wells including types of repair, methods of repair, materials and equipment.

Sanitary sewer manhole and wet well rehabilitation covers the following type of repairs:

- A. Lining and sealing of manholes and wet wells.
- B. Replacement of manhole ring and cover.
- C. Raising of existing manhole ring and cover to existing or above grade.
- D. Manhole Inflow Dish.
- E. Manhole Chimney Seal.

B.1 LINING OF MANHOLES USING URETHANE/EPOXY-BASED LINING

A. General: The work consists of applying with a brush, roller, airless or air-assisted spray a urethane/epoxy-based material to the walls, inverts, and benches of manholes and wet wells, resulting in a monolithic liner of a minimum 1/4 inches (250 mils) in thickness or more, as determined by the manufacturer for the specific depth and water table. Greater urethane/epoxy-based line thicknesses may be required on specified structures as directed by the City. The applicator shall furnish all labor, equipment and materials for installing the lining over pre-cast concrete, concrete block, masonry block manholes or other structures exposed to a sanitary sewer environment, new or used, using approved equipment. The installation shall be in accordance with the following Contract Specifications along with manufacturer's recommendations.

B. A Project Manager or Project Supervisor, representing the Contractor shall always be present while the work is being performed by either Contractor or Subcontractors.

C. Materials

- 1. Mixture: A proprietary urethane/epoxy-based material specifically designed for manhole applications shall be Raven 405 as manufactured by Raven Lining Systems or City Engineer approved equal. The product shall be corrosion resistant to the ingredient of the sanitary sewer environment and shall be designed to bond to wet (not running) surfaces.
- 2. Water: Shall be clean and potable.
- 3. Other Materials: No material shall be used with or added to mixture without prior approval by the City Engineer.

D. Properties

1. Physical:
 - a. Tensile stress, ASTM D-638 - 7,600 psi
 - b. Tensile Ultimate Elongation ASTM D638 – 1.5%
 - c. Compressive Strength ASTM D 695 – 18,000 psi
 - d. Flexural strength, ASTM D-790 – 13,000 psi
 - e. Flexural modulus, ASTM D-790 – 550,000 psi
2. Liner Mix shall be made with manufacturer's recommendations for manhole applications.

E. Application

1. Preparation:
 - a. Place covers over invert before prepping.
 - b. All foreign materials shall be removed from the manhole walls and bench using high-pressure water spray (minimum 5,500 psi). loose and protruding brick, mortar and concrete shall be removed using a mason hammer and chisel. All non-leaking voids shall be filled with non-shrink cement-based material containing hydraulic cement, as approved and directed by the city.
 - c. Active leaks shall be stopped using products specifically for that purpose and according to manufacturer's recommendations. Chemical Grouting with Avanti 202 or approved equal shall be used to cease inflow into manholes.
 - d. Excessively leaking manholes shall be drilled through the manhole wall and injected with grout sealant. Payment for this item of work shall be at the unit price bid only if normal active leak stoppage methods are not effective and said work is approved by the city.
 - e. All loose material shall be removed following the completion of preparation work.
 - f. The sanitary sewer flow shall be diverted as necessary to perform the required manhole rehabilitation.
2. Spray Application of the Liner:
 - a. Prior to spraying, surfaces to be rehabilitated shall be damp without noticeable free water droplets or running water. Material shall be spray applied to a minimum uniform thickness to ensure that all voids and crevices are filled smooth.
 - b. The application of the liner shall provide a monolithic liner having a minimum total average thickness of 250 mils (.25 inches or thicker as directed by the city. The finished liner shall have an equal total average thickness throughout the structure to be rehabilitated. If the manufacturer's recommendations require a greater minimum total average thickness due to hydrostatic loading caused by the water table,

the manufacturer's recommendations shall control. The liner shall be applied to the invert, bench, vertical also, cone section, and all other surfaces made of brick, tile, pre-cast concrete, or concrete block within the structure's interior. Within rehabilitated manholes, the invert and bench shall be smooth and sloped in the direction of the flow. The manhole bench shall have a gradual slope to the invert. The invert transition to the pipe shall be smooth and shall not impair the flow.

- c. No application shall be made when ambient temperatures are less than 40°F and when freezing is expected within 24 hours unless specific recommendations are made by the manufacturer.
- d. A minimum of 30 minutes cure time or more as required by the product manufacturer shall be allowed before returning to active flow.

B.2 LINING OF MANHOLES USING CURED-IN-PLACE LINING SYSTEMS

Manholes constructed with brick or tile which are structurally compromised as determined by the City or Engineer will be repaired using a cured-in-place lining system.

- A. General: The work consists of installing a resin impregnated custom fabricated liner by means of air inflation into an existing manhole, wet well, pump station, or catch basin. The liner is installed from the top of the casting to the top of the channel which includes; shim rings, casting chimney interface, chimney, cone, wall and bench. The channel can be included as directed by the owner. When cured, the liner will provide a durable monolithic chemical resistant barrier that will protect the existing substrate from further deterioration. The finished liner will also stop any water from either entering or exiting from the lined surfaces of the original substrate.
- B. A Project Manager or Project Supervisor, representing the Contractor shall always be present while work is being performed by either the Contractor or Subcontractors.
- C. Materials
 - a. LINER
 - i. The Liner shall be composed in one of the following two configurations;
 - 1. Single Layer - Non-Porous Membrane
 - a. Non-Porous Membrane is to be a gas and liquid impermeable membrane of special non-porous materials with felt mechanically embedded on both sides. Membrane is to be custom fabricated to fit to the inside dimensions of each structure.
 - 2. Multiple Layers - Non-Porous Membrane and fiberglass.
 - a. Non-Porous Membrane is to be a gas and liquid impermeable membrane of special non-porous materials with felt mechanically embedded on both sides. Membrane is to be custom fabricated to fit to the inside dimensions of each structure.
 - b. Fiberglass shall be a coated woven roving style to allow for resin adherence. The weight of the fiberglass and

number of layers required shall be based on the manufactured published data and the stamped design for minimum wall thickness.

b. RESIN SYSTEM

- i. Resin shall be 100% solids epoxy formulated to withstand a typical domestic wastewater sewer system including high sulfide areas near force mains and wet wells. The resin must be compatible with both the non-porous membrane and the fiberglass. The resin must have a minimum of 250psi bond strength to wet or dry brick and concrete surfaces.

D. PREPARATORY PROCEDURES

- a. PH of the original substrate shall be determined.
- b. Contractor will perform preliminary cleaning of the structure with high-pressure water-blasting at a minimum of 4000psi and 4gpm to obtain the desired concrete surface profile (CSP) of 3 or greater.
- c. If the desired CSP is not achieved by high-pressure water-blasting other methods of obtaining the surface profile such as abrasive blasting and acid etching shall be used.
- d. The Contractor shall remove all the existing manhole steps. The metal portion of all steps will be removed to within ½" of the manhole interior wall surface. The remaining protruding metal portion of the step shall be covered with a cementitious material to provide a smooth surface on and around the protrusion for the liner to bond.
- e. All open joints, voids, holes, cracks, and missing bricks larger than 3 inches in diameter or equivalent shall be patched with a cementitious material to provide a smooth surface for the liner to bond. All loose, cracked or disintegrated material shall be removed from the area to be patched exposing a sound substrate. The cementitious patch material shall be allowed to cure according to the manufacturer's specifications before continuing with the Liner installation process.
- f. Bench shall be sloped so that water will flow back into channel.
- g. All active water leakage shall be stopped for a minimum of 30 minutes prior to installation to allow time to insert and pressurize the Liner. This prevents resin washout and allows proper curing and bonding. Leaks may be stopped with fast setting cement or chemical grout injection.
- h. When the channel is required to be lined the Contractor shall plug the inlet pipe, inspect for infiltration leaks around the inlet and outlet pipes and in the channel. All leaks present shall be stopped using chemical grout injection and/or using fast-setting cement.
- i. Contractor shall remove any incoming pipes to within 2 inches of the wall. The pipe outside circumference shall be cemented with an approximate 60° taper, forming a filet between the structure wall and the pipe making a smooth transition for the liner to bond.
- j. The final prepared surface shall have a concrete surface profile of 3 or greater and have a smooth uniform appearance.
- k. After the above-mentioned procedures the surface shall be cleaned with degreaser or other solvents, as needed, to remove any film, grease, loose

patching material, chemical grout or residue on the surface. Structure shall then be pressure rinsed with water.

E. GENERAL INSTALLATION PROCESS

- a. Contractor shall verify that the liner intended for the structure matches the dimensions of the structure by measuring the dimensions of the structure and the liner prior to installation.
- b. All resin intended for the liner shall be mixed properly.
- c. Contractor shall apply mixed resin evenly onto both the inside and outside of the entire liner with rollers. There shall be no white spots (dry Liner) on either side of the Liner including seams and bottom disk(s). Areas of heavily saturated resin shall be spread out to cover areas that are deficient of resin.
- d. Liner can be installed to include or omit the structure channel depending upon the intention of the owner.
- e. For Liner installation that does not include the channel, a temporary subfloor shall be constructed to keep liner from inflating into the channel and to allow the sewer to flow unobstructed without bypass pumping. A saturated bottom disk or disks are installed onto the subfloor, bench, and up the wall about 6 inches.
- f. For channel lining the incoming and outgoing pipes are plugged. This may require bypass pumping. Two or more bottom disks are placed into the channel, onto the bench, and 6 inches up the wall.
- g. Resin saturated Liner is lowered into the structure and positioned properly to line up any offsets.
- h. Liner is pressurized with air or water to a minimum of 3psi. Contractor shall verify proper position of the liner from the inspection portal located on the installation canister. If Liner is not positioned properly the Liner can be raised, lowered or rotated to desired position. In some cases, it may be necessary to enter the structure to hand position portions of the liner.
- i. The liner is cured with steam, hot water, or ambiently. Cure times vary according to, cure method, Liner thickness, structure size, ambient temperatures, and resin formulation. Typically, curing takes about an hour with steam. Contractor may use the exposed portion of the Liner above the frame as an indicator. When steam is used a cool down period is needed equaling about 25% of cure time.
- j. Liner shall be cut and trimmed to allow for all incoming and outgoing pipe to flow without obstruction. If channel is unlined the subfloor shall be removed.
- k. All cut edges shall be sealed with an epoxy mastic material that is compatible with the Liner System.

F. FINISHED LINER

- a. The finished CIP Liner System shall be continuous over the entire length of the structure from the cover seat to the top of the channel or shall include the channel as required. The Liner shall be smooth with minimal wrinkling.
- b. Liner shall be bonded to the structure, as required by design, and in such a way as to not allow any water to flow behind the liner and enter back into the waste stream.

G. PAYMENT

- a. Payment for the lining of manholes and wet wells with Cured-in-Place Lining System will be per square foot of surface area lined and shall include any cost associated with the installation of the liner as outlined in this section.

A.4 REPLACEMENT OF MANHOLE RING AND COVER

A. General: This section deals with the replacement of existing manhole rings and covers when new manhole rings and covers are required.

1. New Manhole Ring and Cover: Existing manhole ring and covers shall be cleaned and reinstalled where directed by the City. Where required, the existing manhole ring and cover shall be removed and salvaged and a new manhole ring and cover installed and adjusted by the Contractor as directed by the City. Removing and replacement of pavement shall conform to the City Standards.

New manhole rings and covers shall be provided by the Contractor. The Contractor shall confirm the desired manhole ring and cover model, design and markings with the City prior to ordering. Rings and covers shall be made of clean, even grain, cast iron. The quality of iron in the castings shall conform to the current ASTM Specification A-48 for Class 30 iron Castings. The castings shall be smooth, true to pattern and free from projections, sand holes or defects. The portion of the ring and cover which forms the cover seat shall be machined so that no rocking of the cover is possible.

On paved streets, the ring and cover shall be set flush with the finished grade and in the plane of the paved surface. In other locations, they shall be set to the grades determined in the field by the City.

A.5 SALVAGING MANHOLE RING AND COVER

All existing undamaged manhole rings and covers removed from the manholes shall be considered as salvaged rings and covers. These salvaged rings and covers shall always remain the property of the City after removal and delivered to the City.

Reasonable care shall be exercised to prevent unnecessary damage to the salvaged rings and covers.

The Contractor shall, upon removal of ring and cover, remove all grout from the salvaged ring and cover. The cover shall then be tied to the ring using a minimum of two (2) or more pieces of six (6) gauge wire and provided to the City.

A.6 RAISING OF EXISTING MANHOLE RING AND COVER

Existing manholes below grade shall be raised to grade using either a cast iron riser ring, concrete "donut" riser, or manhole riser section as directed by an Engineer or the City.

When adjusting with brick, a maximum of 16 inches adjustment will be allowed. The mortar shall be troweled to a smooth finish.

A.7 INFLOW DISH

An inflow dish shall be installed when required by the Engineer or the City in specified manholes to prevent excessive rainwater from entering the manhole cover. Inflow dishes shall be "Rainstopper" type, or an Engineer-approved equal. Inflow dishes and components shall be manufactured of material resistant to corrosion from atmospheres containing hydrogen sulfide and dilute sulfuric acid. The inflow dish shall allow venting of sewer gasses. The inflow dish shall be constructed HDEP material or 316 stainless steel and shall be anchored to the manhole by a tether. Installation shall be in accordance with the manufacturer's recommendations and shall not impede the proper seating of the manhole cover.

A.8 CHIMNEY SEAL

A chimney seal shall be installed when required by an Engineer or the City in specified new or existing manholes to stop inflow in the chimney area. Chimney seals shall be "Flex-Seal" as manufactured by Sealing Systems, Inc., or "Ring Seal" as manufactured by Southwestern Packing and Seals, Inc. or "Internal Manhole Chimney Seal" as manufactured by Cretex Specialty Products. The chimney seal shall be secured to the manhole cone and the cover ring. The chimney seal shall have a design life of at least 25 years. The chimney seal shall be installed in the manhole in accordance with the manufacturer's recommendations.

A.9 MANHOLES LACKING BENCHES AND INVERTS

Manholes lacking benches and inverts shall require building of the bench and invert prior to performing any rehabilitation. Measurement and payment shall be determined by the cubic yards of concrete used to complete the bench and invert.

A.10 WARRANTY

All lining installations shall be warranted to be free from defects in materials and workmanship for a period of five (5) years from the date of project acceptance. Should a defect occur during this five (5) year period that is attributable to the lining installation or materials, then this defect shall be repaired within four (4) weeks from the date of defect notification to the contractor at no additional cost to the City.

The Contractor shall be responsible for all required repair costs associated with a lining failure during the warranty period including all cost associated with backups and all other property damage.

2) **PROJECT TIME LINE**

- A. **Notice of Award:** after bid opening and complete review of submitted bid information
- B. **Notice to Proceed:** after Pre-construction Meeting
- C. **Start Time:** after Pre-construction Meeting

Initial contract will be for one (1) year from date of Notice to Proceed. Contract will be renewable for up to two (2) one (1) year renewal periods, upon agreement of both parties. Renewal will be approved by the City Manager and the budget will be approved by City Council.

3) **Annual estimated quantities** of work are provided on Attachment 1 Schedule of Unit Pricing. The quantities provided in Attachment 1 are estimates only, the City does not guarantee the amount of work will equal the quantities in Attachment 1

End of Scope of Work

SECTION 4 – STANDARD PURCHASE DEFINITIONS

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

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

20. **Evaluator** is a member of the evaluation committee/team.
21. **Goods** are supplies, materials, or equipment.
22. **Intent to Award** is a document, published on Onvia/DemandStar, that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
23. **Invitation to Bid (ITB) or Bid** means a formal request to prospective vendors requesting pricing for a specified Good or Service which has been advertised for Bid in a newspaper.
24. **Invitation to Negotiate (ITN)** means a formal request to prospective vendors requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.
25. **Issues** means points, matters, or concerns to be addressed during negotiations.
26. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the "driver of change" and seeks alternatives/options.
27. **Lowest Responsible Bid means the responsive Bid** meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.
28. **Lowest Responsible Bidder** means the Bidder submitting Lowest Responsible Bid.
29. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).
30. **Negotiator** is a member of the negotiation team.
31. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a Bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
33. **Onvia/DemandStar** is the official online repository for all City competitive solicitations.
34. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
35. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Vendors to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
36. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
37. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
38. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.
39. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.

40. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Vendor to perform the resultant Contract.
41. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.
42. **Request for Proposal (RFP)** means a formal request to prospective vendors requesting qualifications of the vendor and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
43. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective vendors requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.
44. **Respondent** means an entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.
45. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.
46. **Responsible (Vendor)** is a vendor who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
47. **Responsive (Vendor)** is a vendor that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
48. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
49. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a vendor must execute in terms of delivering specific commodities or in performance of contractual services.
50. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
51. **Solicitation** means a formal request, as applicable, for prospective vendors to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.
52. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.
53. **Stakeholder** means an individual, who is not likely to become a vendor, who has an interest in the commodities/contractual services needed.
54. **Subcontractor** means a person, firm or entity providing goods or services to a Vendor to be used in the performance of the Vendor's obligations under the Contract.
55. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.
56. **Unbalanced Bid** means a Bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.
57. **Vendor** is a person, firm, or entity that provides commodities or services and submits a Response to a Solicitation. Any Vendor may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status. (Also called "Bidder" or "Proposer".)

SECTION 5 – GENERAL TERMS AND CONDITIONS

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

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

1) **ACCEPTANCE BY CITY**

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

2) **ADDENDUM**

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

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

3) **ADDITIONAL GOODS**

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

4) **ANTI-COLLUSION STATEMENT**

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

5) **APPLICABLE LAWS**

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

6) **ASSIGNMENT**

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

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

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

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

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

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

8) **AWARDS**

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

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

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

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

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

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

10) **BID RETURNS**

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

11) **BID PROTEST**

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

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

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

12) **BID/PROPOSAL TABULATION**

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

13) **BONDS**

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

14) **CERTIFICATE OF INSURANCE**

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

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

15) **CHANGE ORDERS**

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

16) **CHANGE ORDER REQUEST NOTIFICATION**

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

17) **CLEAN UP**

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

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

18) **CONDUCT OF VENDORS**

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

19) **CONE OF SILENCE**

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

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

Exceptions to the Cone of Silence:

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

20) **CONFLICT OF INTEREST**

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

21) **CONFLICT OF INSTRUCTIONS**

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

22) **CONTRACT**

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

23) **CONTRACT OBLIGATION**

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

24) **CONTRACT RENEWALS**

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

25) **COOPERATIVE PURCHASING**

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

26) **COPYRIGHT AND PATENT RIGHTS**

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

27) **COST INCURRED BY VENDOR**

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

28) **DAMAGE**

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

29) **DEBARMENT HISTORY**

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

30) **DEFAULT PROVISIONS**

In the event of default by the Vendor, the City reserves the right to procure the item(s) bid from other sources and hold the Vendor responsible for excess costs incurred as a result. If a contractor

defaults on a City contract the City Council may elect to refrain from doing business with the Vendor for a period of 36 months from the date of default.

31) **DELIVERY OF GOODS/SERVICES**

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

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

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

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

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

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

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

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

33) **DISCLOSURE OF CONFLICTS**

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

34) **DISQUALIFICATION OF BIDDER/PROPOSER**

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

35) **EVALUATION**

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

36) **EXCEPTIONS TO SPECIFICATIONS**

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

37) **E-VERIFY**

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

38) **FACILITIES**

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

39) **FAILURE TO RESPOND**

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

40) **FINANCIAL STABILITY**

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

41) **FORCE MAJEURE**

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

42) **GOVERNING FORMS**

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

43) **GOVERNING LAW**

Vendors shall comply with all applicable federal, state and local laws and regulations. All Responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port

Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all Responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com.

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

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

44) **GRANT FUNDING**

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

45) **HIPAA COMPLIANCE**

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

46) **IDENTICAL TIE BIDS**

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

47) **INDEMNIFICATION/HOLD HARMLESS**

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

48) **INDEPENDENT CONTRACTOR**

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

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

49) **INSPECTIONS AND TESTING**

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

50) **INSURANCE**

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

51) **INSURANCE CANCELLATION**

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

52) **INSURANCE REQUIREMENTS**

If required, the Vendor shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. For workers' compensation coverage, the Vendor's insurance certificate shall include the insurer's waiver of subrogation in lieu of naming the city as an additional insured for workers' compensation.

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

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

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

53) **INVOICES AND PAYMENTS**

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

54) **IRREVOCABILITY OF RESPONSES**

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

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

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

56) **LEGAL REQUIREMENTS**

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

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

57) **LICENSES, PERMITS AND TAXES**

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

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

If no brand, model or make is specified, Vendors shall submit descriptive literature and technical data, fully detailing all features, designs, construction, appointments, finishes and the like not

covered in the specifications, necessary to fully describe the equipment, material, and/or services he proposes to furnish.

59) **LOCAL PREFERENCE**

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

(a) **Competitive Bids**

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

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

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

Volusia County Business means a business having its headquarters and principal place of business within the County of Volusia, and not within the City of Port Orange, at least twelve (12) months prior to the bid or proposal opening date, as evidenced by a valid business tax

receipt or such other documentation, to the City's satisfaction, demonstrating the physical business presence of the firm within the limits of Volusia County.

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

60) **MAINTENANCE**

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

61) **NAME BRANDS**

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

62) **NON-DISCRIMINATION**

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

63) **NON-EXCLUSIVITY OF CONTRACT**

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

64) **NON-PERFORMANCE:**

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

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

65) **NOTICE TO CONTRACTOR**

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

66) **OPTIONAL CONTRACT USAGE**

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

67) **OTHER AGENCIES**

- (a) All Vendors awarded contracts from this Bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices, terms, and conditions, if agreed to by both parties.
- (b) It is understood that at no time will any city, municipality, or other agency be obligated for placing an order for any other city, municipality, or agency; nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further, it is understood that each agency will issue its own purchase order to the awarded Vendor(s).

68) **PATENTS/COPYRIGHTS**

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

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

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

70) **PREPARATION OF RESPONSES**

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

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

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

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

72) **PRICING**

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

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

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

73) **PRODUCTS/ESTIMATES:**

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

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

74) **PROPRIETY INFORMATION**

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

75) **PROTECTION**

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

76) **PUBLIC ENTITY CRIMES**

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

77) **PUBLIC RECORDS COMPLIANCE**

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

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

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

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

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

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

79) **PURCHASE ORDER AND DELIVERY**

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

80) **QUALITY**

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

81) **QUESTIONS, INTERPRETATIONS**

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

82) **RECORDS/AUDIT**

The Vendor shall maintain records sufficient to document their completion of the scope of services as a public record and as a requirement of the Contract. At all reasonable times, these

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

83) **RECYCLED MATERIALS**

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

84) **REJECTING OF RESPONSES, REBIDDING**

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

85) **REQUEST FOR ADDITIONAL INFORMATION**

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

86) **REVIEW OF RESPONSES/SUBMISSIONS**

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

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

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

88) **RIGHT OF WITHDRAWAL**

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

89) **RIGHTS TO SOLICITATION SUBMITTED MATERIAL**

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

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

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

91) **SAMPLES**

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

92) **SEPARATION AND DISTRIBUTION**

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

93) **SEVERABILITY**

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

94) **SIGNATURE REQUIRED**

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

95) **SIGNED RESPONSE CONSIDERED AN OFFER**

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

96) **SILENCE OF SPECIFICATIONS**

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

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

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

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

98) **STATE LICENSING REQUIREMENTS**

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

99) **SUBCONTRACTING**

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

100) **SUPPLEMENTAL MATERIALS**

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

101) **TAXES**

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

102) **TERM CONTRACTS**

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

103) **TERMINATION**

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

104) **TERMINATION - NOTICE**

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

105) **TITLE TRANSFER**

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

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

106) **UNBALANCED BID**

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

107) **USE OF SOLICITATION FORMS**

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

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

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

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

108) **VARIANCES**

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

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

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

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

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

110) **WAIVER OF IRREGULARITIES**

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

111) **WARRANTIES**

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

[Remainder of this page left intentionally blank]

SECTION 6 – SPECIAL CONDITIONS

PERIOD OF OFFER VALIDITY:

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

CONTRACT TERM and DURATION

Contract Time and Renewal and CPI Rate Adjustment: Initial contract will be for one (1) year from date of Notice to Proceed. Contract will be renewable for up to two (2) one (1) year renewal periods, upon agreement of both parties. Renewal will be approved by the City Manager and the budget will be approved by City Council.

No subcontractor is allowed with written approval from the City of Port Orange.

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.

ELIGIBILITY OF VENDOR:

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

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

BID BONDS

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

PAYMENT & PERFORMANCE BONDS

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

[Remainder of this page left intentionally blank]

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- _____ Form 7.2 – Vendor’s Acknowledgement
- _____ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- _____ Form 7.4 – Drug Free/Tie Preference Statement
- _____ Form 7.5 – Public Entity Crimes Statement
- _____ Form 7.6 – Affidavit of Anti-Collusion
- _____ Form 7.7 – Authorized Signatures/Negotiators
- _____ Form 7.8– Statement of Vendor’s Qualifications
- _____ Form 7.9 – Professional References for Previous Experience
- _____ Form 7.10 – Listing of Subcontractors
- _____ Form 7.12 – Local Business Affidavit of Eligibility
- _____ Form 7.13 – Certificate as to Corporate Principal
- _____ Attachment 1 – Bid Proposal
- _____ Copy of License (Contractor, Sunbiz, etc.)
- _____ Bid Bond
- _____ Submission of one (1) original marked “ORIGINAL” and one (1) digital (CD or flash drive) version in PDF format.

BY: _____

Name of Business

Authorized Signature

Date

This document must be completed and returned with your Submittal

FORM 7.2 – VENDOR’S ACKNOWLEDGEMENT FORM

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

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

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

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

NAME OF BUSINESS	MAILING ADDRESS
AUTHORIZED SIGNATURE	CITY, STATE & ZIP CODE
NAME, TITLE, TYPED	TELEPHONE NUMBER / FAX NUMBER
FEDERAL IDENTIFICATION #	E-MAIL ADDRESS
STATE OF _____ COUNTY OF _____	

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

My Commission Expires: _____
Notary Public

This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM and CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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)

and who:

(NAME OF ORGANIZATION)

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.4 – DRUG FREE PREFERENCE STATEMENT

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

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

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

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

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

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

(NAME)

(TITLE)

_____ and who:

(NAME OF ORGANIZATION)

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

This document must be completed and returned with your Submittal

Printed, typed or stamped name, commission and expiration:

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

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

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

The business address of _____ (name of Offeror or business) is _____

1. My relationship to _____ (name of Offeror or business) is _____ (relationship such as sole proprietor, partner, president, vice president).
2. 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.
3. 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.
4. 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.
5. 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.)
6. There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted vendor list. The name of the convicted person or affiliate is _____. A copy of the order of the Division of Administrative Hearings is attached to this statement. **(Draw a line through paragraph 7 if paragraph 6 above applies.)**

Name of Business

By: _____

Printed Name: _____

Title: _____

STATE OF _____

COUNTY OF _____

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

_____ and who:

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification. _____

Notary Public, State of _____

This document must be completed and returned with your Submittal

Printed, typed or stamped name, commission and expiration:

FORM 7.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

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

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

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

NAME OF FIRM: _____

SIGNED BY: _____

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

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY: ____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____ FAX: _____

COMPLETION TIME: _____

F.E.I.N. NUMBER: _____

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

NO BID (REASON): _____

This document must be completed and returned with your Submittal

FORM 7.7 – AUTHORIZED SIGNATURES/NEGOTIATORS

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

<u>Name</u>	<u>Title</u>	<u>Phone #</u>

(Authorized Signature)

(Print Name of Authorized Signature)

This document must be completed and returned with your Submittal

FORM 7.8 – STATEMENT OF VENDOR'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.8 is complete, true, and correct to the best of their knowledge and belief. If necessary, questions may be answered on separate paper and attached, with any additional information that may be pertinent.

- A. Name of Vendor.
- B. Permanent main office address.
- C. Date organized.
- D. If a corporation, where incorporated.
- E. How many years have you been engaged in the contracting business under your present firm or trade name?
- F. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion.)
- G. General character of work performed by your company.
- H.⁽¹⁾ Have you ever failed to complete any work awarded to you? If so, where and why?
- H.⁽²⁾ Provide list of any lawsuits or judgments filed by or against your company in the last three years, indicating the nature and outcome.
- I. Have you ever defaulted on a contract? If so, where and why?
- J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed.
- K. List your major equipment currently owned or leased.
- L. Experience in work similar to this type of project.
- M. Background and experience of the principal members of your organization, including the officers.
- N. Credit currently available: \$_____
- O. Give bank reference: _____
- P. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner?
- Q. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the Owner in verification of the recitals comprising this Statement of Vendor's Qualifications.

Name of Business

By: _____

Printed Name: _____

Title: _____

(FORM 7.8 – STATEMENT OF VENDOR’S QUALIFICATIONS– Page 2)

STATE OF _____

COUNTY OF _____

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

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission
and expiration:

This document must be completed and returned with your Submittal

FORM 7.9 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

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

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

(Do not include the City of Port Orange)

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

This document must be completed and returned with your Submittal.

FORM 7.10 – LISTING OF SUBCONTRACTORS

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

Subcontractor No. 1

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 2

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 3

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 4

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

Subcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: Yes/No _____

This document must be completed and returned with your Submittal

FORM 7.12 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

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

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

BUSINESS NAME: _____

CONTACT PERSON/TITLE: _____

MAILING ADDRESS: _____

CITY-STATE-ZIP: _____

Length of Time at Address Provided: _____

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

FEIN (Federal Employer Identification Number): _____

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

PHONE NUMBER: _____ FAX: _____

EMAIL: _____

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

ATTESTATION – I understand that:

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

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

(Form 7.12 – Local Business Affidavit of Eligibility – Page 2)

SWORN AND SUBSCRIBED BEFORE ME

SIGNATURE OF NOTARY PUBLIC
THIS _____ DAY OF _____, 20____
My Commission Expires: _____

NOTARY SEAL

SIGNATURE OF AFFIANT DATE

PRINTED NAME OF AFFIANT / TITLE

COMPANY

This document must be completed and returned with your Submittal

FORM 7.13 – CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ secretary of the corporation named as Principal in the within Bid Bond; that _____, who signed the said Bid Bond on behalf of the Principal, was then of said corporation; that I know his signature, and his signature thereto is genuine; and that said Bid Bond was duly signed, sealed and attested for in behalf of said corporation by authority of its governing body.

Signature

AFFIX CORPORATE SEAL

This document must be completed and returned with your Submittal

BID COST/FEE PROPOSAL

"Attachment 1" Schedule of Unit Pricing

"ATTACHMENT 1" SCHEDULE OF UNIT PRICING				
BID FORM				
CITY OF PORT ORANGE				
ITB # 19-19				
REHABILITATION OF SANITARY SEWER MANHOLES				
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. Annual estimated quantities of work are provided on Attachment 1 Schedule of Unit Pricing. The quantities provided in Attachment 1 are estimates only, the City does not guarantee the amount of work will equal the quantities in Attachment 1				
Bidders are required to complete all fields shaded in green. All other fields will be automatically calculated.				
NAME OF BUSINESS:				
CONTACT PERSON:				
EMAIL ADDRESS:				
AUTHORIZED NAME:				
AUTHORIZED SIGNATURE:				
PROPOSED PRICING				
ITEM #	DESCRIPTION	ANNUAL ESTIMATED QUANTITIES	UNIT	UNIT PRICE
A	GENERAL			
1	Mobilization	10	EA	\$0.00
2	Maintenance of Traffic	10	EA	\$0.00
				\$0.00
				TOTAL GENERAL BASE BID:
B	CONSTRUCTION			
1	Lining of Manholes/Wet Wells using Urethane/Epoxy-Based Lining	2000	SF	\$0.00
2	Lining of Manholes/Wet Wells using Cured in Place Lining System - Single Layer	1000	SF	\$0.00
3	Lining of Manholes/Wet Wells using Cured in Place Lining System - Multiple Layers	500	SF	\$0.00
4	Replacement of Manhole Ring and Cover in Grass	10	EA	\$0.00
5	Replacement of Manhole Ring and Cover in Pavement	10	EA	\$0.00
6	Salvaging Manhole Ring and Cover	10	EA	\$0.00
7	Raising of Existing Manhole Ring and Cover	20	EA	\$0.00
8	Inflow Dish HDPE	10	EA	\$0.00
9	Inflow Dish Stainless Steel	10	EA	\$0.00
10	Chimney Seal	20	EA	\$0.00
11	Manholes Lacking Benches and Inverts	20	EA	\$0.00
				\$0.00
				TOTAL CONSTRUCTION BASE BID:
				\$0.00
				Subtotal - GENERAL BASE BID
				\$0.00
				Subtotal - CONSTRUCTION BASE BID
				\$0.00
				Total - GENERAL & CONSTRUCTION BASE BIDS
				\$0.00
				CONTINGENCY (10%)
				GENERAL and CONSTRUCTION Base Bids
AWARD: THIS BID WILL BE AWARDED TO THE LOWEST, RESPONSIVE, RESPONSIBLE BIDDER				

Annual estimated quantities of work are provided on Attachment 1 Schedule of Unit Pricing. The quantities provided in Attachment 1 are estimates only, the City does not guarantee the amount of work will equal the quantities in Attachment 1

This document must be completed and returned with your Submittal

BID BOND

BID BOND

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that _____, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____, (hereinafter called "PRINCIPAL"), and _____, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____ (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel.: (386) 506-5501, (hereinafter called "OBLIGEE" or "CITY"), in the penal sum of _____ dollars and (____)/100 (\$____), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated _____, 20____, for:

Project Name / Bid No.:

Project Address:

Legal Description: See Attached

Description of Work:

NOW, THEREFORE,

A. If the principal shall not withdraw said bid within one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies, if the latter amount be in excess of the former, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this _____ day of _____, A.D. 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to original bid bond and financial statement of Surety Company).

PRINCIPAL:

Signature

Corporate Officer & Title

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

WITNESSES:

SURETY:

Attorney-in-Fact (signature)

Name & Title

Name of Local Resident Agent

City, State, Zip

Telephone:
A.M. Best No.: _____ NAIC No. : _____

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

STATE OF _____
COUNTY OF _____

Before me this day personally appeared _____ (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the _____ (corporate surety) and that this person has been authorized by _____ (corporate surety) to execute the forgoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant

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

NOTARY PUBLIC – STATE OF

Type or print name: _____

Commission No.: _____

Commission Expires: _____

(Seal)

.....
END OF BID BOND

This document must be completed and returned with your Submittal

PERFORMANCE & PAYMENT BOND

RETURN RECORDED DOCUMENT TO:

City Clerk
1000 City Center Circle
Port Orange, Florida 32129-4144

Name of Project

City Project No. _____

Bond No. _____

Space Reserved for Recording Data

**COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION**

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

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

THE CONDITION OF THIS BOND is that if Principal:

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

Notice of Nonpayment and Time Limitations

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.02(2), (8) and (10), Florida Statutes.

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

(Capital Projects)
[MTR/sal 2016-02-26]

Page 1 of 2
Public Construction Bond

IN WITNESS WHEREOF, this performance and payment bond is executed in duplicate originals, each of which shall be deemed an original, this _____, day of _____, 20__.

Attest:

(Name of Principal)

(As to Corporate Principal) Secretary

By: _____
Name/Title: _____

(Witness to Principal)

(Corporate Seal)

(Surety)

(Witness to Surety)

By: _____
Name: _____

(Attorney-in-Fact)

(Corporate Seal)

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

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



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

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

1. Provision of Services

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

(i) _____

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

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

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

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

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

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

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

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

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

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

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

6. Termination for Convenience of the City

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

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

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

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

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

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

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

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

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

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

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

9. Examination of Records

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

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

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

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

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

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

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

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

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

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

11. Termination for Non-Appropriation of Funds

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

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

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

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

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

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

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

14. Modifications or Changes to this Contract

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

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

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

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

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

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

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

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

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

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

19. **Inspection**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Contractor: _____
Attention: _____

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

28. Contract Construction

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of

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

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

[Remainder of this page intentionally left blank]

SAMPLE

Witnesses: _____

Printed Name: _____

Printed Name: _____

By: _____

Printed Name: _____

Title: _____

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

Date: _____

STATE OF _____

COUNTY OF _____

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

[Notary: Please select one]

☐ is personally known to me; or

☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

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

Date: _____
Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

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

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

Witnesses:

ATTEST:

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

Date: _____
Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

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

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



End of Solicitation Documents



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5718
FAX 386-506-5711

ADDENDUM NO. # 1

July 30, 2019

purchdiv@port-orange.org

ITB 19-19 Rehabilitation of Sanitary Sewer Manholes

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated July 2, 2019 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

A. CLARIFICATIONS:

N/a

B. CHANGES TO SPECIFICATIONS:

N/a

C. QUESTIONS AND ANSWERS:

Question 1. Will you please provide us with the estimated annual expenditure for the above-mentioned project?

Answer: The estimated annual budget is \$200,000, and is based on the quantity of work needed to be performed. This is based on the anticipated current amount of work expected, There is no guarantee of this amount.

Question 2. GML Coatings is submitting specifics to be considered as an alternate for lining materials. Materials used are multiple layers and are being submitted for comparison for urethane/epoxy-based lining and cured in place lining systems, (single and multiple layers). GML Coatings has prior manholes lined for the City of Port Orange.

Answer: GML is an acceptable alternate for the lining material.

Question 3. Please advise if the City would consider an alternate for the coating of the manholes. Intercounty is a qualified installer of Sewpercoat from Kerneos.

Answer: Sewpercoat is **not** an acceptable alternate for the lining material.

Question 4. This is regarding the above referenced project. Could you please provide a copy of bid tabulation with unit price breakdown for any past bid similar work?

Answer: We do not have any relevant bids in reference to this type of project in Port Orange You can find our open and closed bids on City of Port Orange website
<https://www.port-orange.org/bids.aspx>

Question 5. Please consider of Mainstay Composite Liner System for the manhole bid. This system has been installed in Central and South Florida for over 20 years. It has a 10 warranty

Answer: The product is **not** an acceptable alternate.

Question 6. Are the manhole inserts tethered necessary that you definitely want or are you accepting any alternatives?

Answer: If there is going to be an alternative proposed, we would like to see the alternative, we do not need an official sample, we are only requiring to see the technical specifications and data you have and we will respond.

Question 7. Is the \$200K budget over 3 years or 1 year?

Answer: The estimated annual budget is \$200,000, see question #1

Question 8. Is there a minimum amount of quantity being issued? Is there an intent to get a certain amount done?

Answer: The intent is to identify and line manholes up to that estimated amount and in the ITB it states that it is an estimate not a guarantee of an amount, the intent is to get a certain amount per year completed.

Question 9. May SpectraShield be added as an approved lining system for the above project (Rehabilitation of Sanitary Sewer Manholes)?

Answer: Spectra Shield **is** an approved lining system.

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

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

END OF ADDENDUM NO. #1



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5718
FAX 386-506-5711

ADDENDUM NO. # 2

August 5, 2019

purchdiv@port-orange.org

ITB 19-19 Rehabilitation of Sanitary Sewer Manholes

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated July 2, 2019 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

A. CLARIFICATIONS:

- 1) 7/31/2019 Revised "ATTACHMENT 1" SCHEDULE OF UNIT PRICING form– added extended pricing column to form. Revised form “ATTACHMENT 1 SCHEDULE OF UNIT PRICING ITB 19-19 REHABILITATION OF SANITARY SEWER MANHOLES Revised FINAL 07.31.2019” added to Demand Star and City Website
- 2) 8/01/2019 Revised “ATTACHMENT 1" SCHEDULE OF UNIT PRICING form-revised form “**ATTACHMENT 1 SCHEDULE OF UNIT PRICING ITB 19-19 REHABILITATION OF SANITARY SEWER MANHOLES PRICING BID FORM revised 08.01.2019**”

B. CHANGES TO SPECIFICATIONS:

N/a

C. QUESTIONS AND ANSWERS:

Question 1. Will you please provide us with the estimated annual expenditure for the above-mentioned project?

Answer: The estimated annual budget is \$200,000, and is based on the quantity of work needed to be performed. This is based on the anticipated current amount of work expected, There is no guarantee of this amount.

Question 2. GML Coatings is submitting specifics to be considered as an alternate for lining materials. Materials used are multiple layers and are being submitted for comparison for urethane/epoxy-based lining and cured in place lining systems, (single and multiple layers). GML Coatings has prior manholes lined for the City of Port Orange.

Answer: GML is an acceptable alternate for the lining material.

Question 3. Please advise if the City would consider an alternate for the coating of the manholes. Intercounty is a qualified installer of Sewpercoat from Kerneos.

Answer: Sewpercoat is **not** an acceptable alternate for the lining material.

Question 4. This is regarding the above referenced project. Could you please provide a copy of bid tabulation with unit price breakdown for any past bid similar work?

Answer: We do not have any relevant bids in reference to this type of project in Port Orange. You can find our open and closed bids on City of Port Orange website

<https://www.port-orange.org/bids.aspx>

Question 5. Please consider of Mainstay Composite Liner System for the manhole bid. This system has been installed in Central and South Florida for over 20 years. It has a 10 warranty

Answer: The product is **not** an acceptable alternate.

Question 6. Are the manhole inserts tethered necessary that you definitely want or are you accepting any alternatives?

Answer: If there is going to be an alternative proposed, we would like to see the alternative, we do not need an official sample, we are only requiring to see the technical specifications and data you have and we will respond.

Question 7. Is the \$200K budget over 3 years or 1 year?

Answer: The estimated annual budget is \$200,000, see question #1

Question 8. Is there a minimum amount of quantity being issued? Is there an intent to get a certain amount done?

Answer: The intent is to identify and line manholes up to that estimated amount and in the ITB it states that it is an estimate not a guarantee of an amount, the intent is to get a certain amount per year completed.

Question 9. May SpectraShield be added as an approved lining system for the above project (Rehabilitation of Sanitary Sewer Manholes)?

Answer: Spectra Shield **is** an approved lining system.

Question 10. Will the city consider that One-piece Fiberglass manhole inserts Min 1/2 Thick be added to your bid package?

Answer: Fiberglass Manhole Liners produced by LFM FRP Specialists, Associated Fiberglass Enterprises and Mainstay Composite Liner Fiber both acceptable as alternates for Sanitary Sewer Manhole lining.

Question 11. Please consider our Mainstay Composite Liner Fiberglass Reinforced System for this bid.

Answer: Mainstay Composite Liner Fiberglass Reinforced System **is not** and acceptable alternate for Sanitary Sewer Manhole lining

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

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

END OF ADDENDUM NO. #2



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5718
FAX 386-506-5711

ADDENDUM NO. # 1

July 30, 2019

purchdiv@port-orange.org

ITB 19-19 Rehabilitation of Sanitary Sewer Manholes

To All Bidders:

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A. CLARIFICATIONS:

N/a

B. CHANGES TO SPECIFICATIONS:

N/a

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Question 1. Will you please provide us with the estimated annual expenditure for the above-mentioned project?

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Answer: Spectra Shield **is** an approved lining system.

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

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

END OF ADDENDUM NO. #1



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5718
FAX 386-506-5711

ADDENDUM NO. # 2

August 5, 2019

purchdiv@port-orange.org

ITB 19-19 Rehabilitation of Sanitary Sewer Manholes

To All Bidders:

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B. CHANGES TO SPECIFICATIONS:

N/a

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Answer: Fiberglass Manhole Liners produced by LFM FRP Specialists, Associated Fiberglass Enterprises and Mainstay Composite Liner Fiber both acceptable as alternates for Sanitary Sewer Manhole lining.

Question 11. Please consider our Mainstay Composite Liner Fiberglass Reinforced System for this bid.

Answer: Mainstay Composite Liner Fiberglass Reinforced System **is not** and acceptable alternate for Sanitary Sewer Manhole lining

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

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

END OF ADDENDUM NO. #2



City of Port Orange

Agreement

RENEWAL FORM

*****THIS FORM IS VALID IF EXECUTED PRIOR TO THE ORIGINAL AGREEMENT/CONTRACT EXPIRATION DATE.*****

To be completed by Contractor:

YES ☒

We desire to renew this agreement for another term at the same price, requirements, specifications, and conditions as the previous term as per the following:

- ☒ Standard Contract for Service CA No. CA7037 pursuant to ITB 19 19 Rehabilitation Sanitary Sewer Manholes
☐ Piggyback Agreement CA No. _____
☐ Purchase Order No. _____

Term From: October 31, 2020

To: October 30, 2021

Provided to City:

- ☐ Updated Bond ☒ Insurance Certificate/City as additional insured and Waiver of Subrogation for WC

NO _____ We do not desire to renew this agreement for another term.

Verify your records by providing the following information:

Name of Company / Organization: Danus Utilities Inc.

Name of Contact Person: Dan J. Pardus, President

Mailing Address: P.O. Box 291671, Port Orange, FL 32129

Email Contact Address: dan@danusutilities.com

Phone: (386) 233-5588

Fax: _____

IF THIS RENEWAL IS NOT SIGNED BY THE CONTRACTOR'S LEGALLY AUTHORIZED PERSON, THEN ATTACH WRITTEN AUTHORIZATION TO ENTER INTO CONTRACTS ON BEHALF OF THE CONTRACTOR FOR THE PERSON WHO SIGNS.

Contractor's Authorized Representative: _____

Signature

Date: 9/16/2020

For City Use Only:

Department completes the following:

- ☒ Renewal Accepted by the Department ☐ Bond received by the Department
☒ Insurance Certificate received by the Department OR ☐ Insurance waived by City Manager

Agreement Expiration: October 30, 2021

City Manager: M. H. J.

Date: 9.23.2020

Please return to the City of Port Orange as follows:

Department: Public Works & Utilities

Telephone: (386) 506-5575

Contact: Kynah Cockcroft, Office Assistant

Fax: _____

Email: kcockcroft@port-orange.org

Original Signed Form Must Be Returned to the City Clerk

Revised 4/1/2020



City of Port Orange

Agreement

RENEWAL FORM

*****THIS FORM IS VALID IF EXECUTED PRIOR TO THE ORIGINAL AGREEMENT/CONTRACT EXPIRATION DATE.*****

To be completed by Contractor:

YES ☒ We desire to renew this agreement for another term at the same price, requirements, specifications, and conditions as the previous term as per the following:

- ☒ Standard Contract for Service CA No. **CA7037** pursuant to ITB 19 19 Rehabilitation Sanitary Sewer Manholes
☐ Piggyback Agreement CA No.
☐ Purchase Order No. _____

Term From: October 31, 2021

To: October 30, 2022

Provided to City:

☐ Updated Bond

☒ Insurance Certificate/City as additional insured and Waiver of Subrogation for WC

NO _____ We do not desire to renew this agreement for another term.

Verify your records by providing the following information:

Name of Company / Organization: Danus Utilities Inc.

Name of Contact Person: Dan J. Pardus, President

Mailing Address: P.O. Box 291671, Port Orange, FL 32129

Email Contact Address: dan@danusutilities.com

Phone: (386) 233-5588

Fax: _____

IF THIS RENEWAL IS NOT SIGNED BY THE CONTRACTOR'S LEGALLY AUTHORIZED PERSON, THEN ATTACH WRITTEN AUTHORIZATION TO ENTER INTO CONTRACTS ON BEHALF OF THE CONTRACTOR FOR THE PERSON WHO SIGNS.

Contractor's Authorized Representative: _____

Signature

Date: 5/16/2021

For City Use Only:

Department completes the following:

- ☒ Renewal Accepted by the Department ☐ Bond received by the Department
☒ Insurance Certificate received by the Department OR ☐ Insurance waived by City Manager

Agreement Expiration: October 30, 2022

City Manager: _____

Date: 8/24/21

Please return to the City of Port Orange as follows:

Department: Public Works & Utilities

Telephone: (386) 506-5575

Contact: Kynah Cockcroft, Office Assistant

Fax: 407-878-1254

Email: kcockcroft@port-orange.org

Original Signed Form Must Be Returned to the City Clerk

Revised 4/1/2020



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C9d) Approval of Agreement with Flock Safety Government Agency for Flock Falcon license plate readers

DEPARTMENT: Police Services

GOAL: 1 - Public Safety; 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve the agreement with Flock Safety Government Agency for nine Flock Falcon license plate readers.

SUMMARY: The police department is partnering with Flock Safety to install nine (9) Flock Falcon license plate readers throughout the city. These cameras capture vehicle images and license plates, providing officers with critical information to help solve various types of cases. Flock provides the license plate readers through a lease program, and they are solar-powered and connect wirelessly to the server.

The Flock system has a patented vehicle fingerprint technology that uses image analytics to identify vehicles, not just license plate information. The investigative leads generated from this technology help officers solve many types of cases—for example, missing persons, stolen vehicles, and hit-and-run crashes.

The initial term of the lease agreement will begin as soon as the readers are installed and operational and end on September 30, 2024. The lease agreement has three (3) annual contract renewals. Flock provides and installs all the equipment for the license plate readers. The cameras do not require any infrastructure because they are solar-powered and connect wirelessly to the Flock server. The readers can be mounted on poles similar to the department's speed signs or to traffic control mast arms because they are not permanently attached. The versatility of these cameras allows us to choose their locations based on where we need them.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	FL - Port Orange Police Department Signed Agreement 12-21-2022	FL - Port Orange Police Department Signed Agreement 12-21-2022.pdf
2.	Signed sole source form	Signed sole source form.pdf

William Proctor	Created/Initiated - 12/22/2022
Manuel Marino	Approved - 12/22/2022
Jill Poolman	Approved - 1/3/2023
John McKinney	Approved - 1/4/2023
Matthew Jones	Approved - 1/9/2023
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023



FLOCK GROUP INC.
SERVICES AGREEMENT
ORDER FORM

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. (“**Flock**”) and the customer identified below (“**Customer**”) (each of Flock and Customer, a ”**Party**”). This order form (“**Order Form**”) hereby incorporates and includes the “GOVERNMENT AGENCY CUSTOMER AGREEMENT” attached (the “**Terms**”) which describe and set forth the general legal terms governing the relationship (collectively, the "**Agreement**"). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the “**Effective Date**”).

Customer: FL - Port Orange PD	Contact Name: Bill Proctor
Address: 4545 S Clyde Morris Blvd Port Orange, Florida 32129	Phone: (386) 506-5870 E-Mail: williamp@port-orange.org
Expected Payment Method:	Billing Contact: (if different than above)

Initial Term: 24.00 Months Renewal Term: 24 Months	Pilot period: First 30 days of Initial Term; option to cancel contract at no cost. Initial Term invoice due after Pilot period. Billing Term: Annual payment due Net 45 per terms and conditions
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Name	Price	QTY	Subtotal
Falcon Camera	\$2,500.00	9.00	\$22,500.00
Professional Services - Falcon, Standard Implementation	\$350.00	9.00	\$3,150.00
Flock Safety Advanced Search <25 Falcons	\$2,500.00	1.00	\$2,500.00

(Includes one-time fees)

Year 1 Total: \$28,150.00
Recurring Total: \$25,000.00

flock safety

Special Terms: The Initial Term will be prorated through September 30, 2024 and the Renewal Term shall commence on September 30, 2024.

By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

Flock Group Inc	Customer:
By: DocuSigned by: Mark Smith AC5C931454C24F3...	By:
Name: Mark Smith	Name: Donald O. Burnette
	Title: Mayor
	ATTEST:
Title: General Counsel and Corporate Secretary	NAME: Robin L. Fenwick, MMC
Date: 12/21/2022	Date:

flock safety

GOVERNMENT AGENCY AGREEMENT

This Government Agency Agreement (this “**Agreement**”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 (“**Flock**”) and the police department or government agency identified in the signature block of the order form (“**Agency**”) (each a “**Party**,” and together, the “**Parties**”).

RECITALS

WHEREAS, Flock offers a software and hardware solution for automatic license plate detection through Flock’s technology platform (the “**Flock Service**”), and upon detection, the Flock Services are capable of capturing audio, image, and recordings data of suspected vehicles (“**Footage**”) and can provide notifications to Agency upon the instructions of Non-Agency End User (“**Notifications**”);

WHEREAS, Agency desires access to the Flock Service on existing cameras, provided by Agency, or Flock provided Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, including those from non-Agency users of the Flock Service (where there is an investigative or bona fide lawful purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

WHEREAS, Flock deletes all Footage on a rolling thirty (30) day basis, Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

WHEREAS, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations by police departments, and archiving for evidence gathering (“**Purpose**”).

AGREEMENT

NOW, THEREFORE, Flock and Agency agree as follows and further agree to incorporate the Recitals into this Agreement.

1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 "**Agency Data**" will mean the data, media and content provided by Agency through the Services. For the avoidance of doubt, the Agency Data will include the Footage.

1.2. "**Agency Hardware**" shall mean the third-party camera owned or provided by Agency and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services. The term "**Agency Hardware**" excludes the Embedded Software

1.3 "**Authorized End User(s)**" shall mean any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.

1.4 "**Documentation**" will mean text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.

1.5 "**Embedded Software**" will mean the software and/or firmware embedded or preinstalled on the Agency Hardware.

1.6 "**Flock IP**" will mean the Services, the Documentation, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.

1.7 "**Footage**" means still images captured by the Agency Hardware in the course of and provided via the Services.

1.8 "**Hardware**" or "**Flock Hardware**" shall mean the Flock cameras or device, pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services. The term "**Hardware**" excludes the Embedded Software.

1.9 "**Implementation Fee(s)**" means the monetary fees associated with the Installation Services, as defined in Section 1.10 below.

1.10 "**Installation Services**" means the services provided by Flock including any applicable installation of Embedded Software on Agency Hardware.

1.11 "**Non-Agency End User(s)**" shall mean any individual, entity, or derivative therefrom, authorized to use the Services through the Web Interface, under the rights granted to pursuant to the terms (or to those materially similar) of this Agreement.

1.12 "**Services**" or "**Flock Services**" means the provision, via the Web Interface, of Flock's software application for automatic license plate detection, searching image records, and sharing Footage.

1.13 "**Support Services**" shall mean Monitoring Services, as defined in Section 2.9 below.

1.14 "**Unit(s)**" shall mean the Agency Hardware together with the Embedded Software.

1.15 "**Usage Fee**" means the subscription fees to be paid by the Agency for ongoing access to Services.

1.16 "**Web Interface**" means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services in accordance with the terms of this Agreement.

2. SERVICES AND SUPPORT

2.1 **Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Service Term (as defined in Section 6.1 below), solely for the Authorized End Users. The Footage will be available for

Agency's designated administrator, listed on the order form, and any Authorized End Users to access via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account and select a password and username ("**User ID**"). Flock will also provide Agency with the Documentation to be used in accessing and using the Services. Agency shall be responsible for all acts and omissions of Authorized End Users if occurring within the course and scope of their employment, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User's use of the Services, and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, including without limitation using a third party to host the Web Interface which makes the Services available to Agency and Authorized End Users.. Agency agrees to comply with any acceptable use policies that are provided or otherwise made available to Agency from time to time.

2.2 Embedded Software License. Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Hardware or Agency Hardware; in each case, solely as necessary for Agency to use the Services.

2.3 Documentation License. Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Service Term to Agency's in connection with its use of the Services as contemplated herein, and under Section 2.4 below.

2.4 Usage Restrictions.

a. Flock IP. The purpose for usage of the Unit, Documentation, Services, support, and Flock IP are solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency and not for tracking activities that the system is not designed to capture ("**Permitted Purpose**"). Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP, or attempt to do any of the foregoing, and Agency acknowledges that nothing in this Agreement will be construed to grant Agency any right to obtain or use such source code; (iii) modify, alter, tamper with or repair any of the Flock IP, or create any derivative product from any of the foregoing, or attempt to do any of the foregoing, except with the prior written consent of Flock; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Services or Flock IP; (vi) use the Services, support, Unit, Documentation or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent or otherwise transfer or convey, or pledge as security or otherwise encumber, Agency's rights under Sections 2.1, 2.2, or 2.3.

b. Flock Hardware. Agency understands that all Flock Hardware is owned exclusively by Flock, and that title to any Flock Hardware does not pass to Agency upon execution of this Agreement. Agency is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Notwithstanding the notice and cure period set for in Section 6.3, Agency agrees and understands that in the event Agency is found to engage in any of the restricted actions of this Section 2.4(b), all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination (without opportunity to cure) for material breach by Agency.

2.5 Retained Rights; Ownership. As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.

2.6 Suspension. Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency's and any Authorized End User's access to any portion or all of the Flock IP or Flock Hardware if (i) Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP; (b) Agency's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other Agency or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Flock's provision of the Services to Agency or any Authorized End User is prohibited by applicable law; (e) any vendor of Flock has suspended or terminated Flock's access to or use of any third party services or products required to enable Agency to access the Flock IP; or (f) Agency has violated any term of this provision, including, but not limited to, utilizing the Services for anything other than the Permitted Purpose (each such suspension, in accordance with this Section 2.6, a "**Service Suspension**"). Flock will make commercially reasonable efforts, circumstances permitting, to provide written notice of any Service Suspension to Agency (including notices sent to Flock's registered email address) and to provide updates regarding resumption of access to the Flock IP following any Service Suspension. Flock will use commercially reasonable efforts to resume providing access to the Service as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Agency or any Authorized End User may incur as a result of a Service Suspension. To the extent that the Service Suspension is not caused by Agency's direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of any suspension (for any continuous suspension lasting at least one full day) prorated for the proportion of cameras on the Agency's account that have been impacted.

2.7 Installation Services.

2.7.1 Designated Locations. For installation of Flock Hardware, prior to performing the physical installation of the Units, Flock shall advise Agency on the location and positioning of the Units for optimal license plate image capture, as conditions and location allow. Flock may consider input from Agency regarding location, position and angle of the Units (each Unit location so designated by Agency, a "**Designated Location**"). Flock shall have final

discretion on location of Units within each Designated Location. Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency's delay in confirming Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready, if necessary. The deployment plan will confirm the Designated Location. After installation, any subsequent changes to the deployment plan ("**Reinstalls**") will incur a charge for Flock's then-current list price for Reinstalls, as listed in the then-current Reinstall Policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment charges. These changes include but are not limited to camera re-positioning, adjusting of camera mounting, re-angling, removing foliage, camera replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like. Flock Safety shall have full discretion on decision to reinstall Flock Hardware, if necessary.

2.7.2 Agency Installation Obligations. Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. Although the Units are designed to utilize solar power, certain Designated Locations may require a reliable source of 120V AC power, as described in the deployment plan. In the event adequate solar exposure is not available, Agency shall have the option of providing a reliable power source and, if the option is exercised, shall be solely responsible for providing said reliable source of 120V AC power to the Units. Agency shall authorize Flock to apply for and obtain any permits necessary to install Flock Hardware on property or in rights-of-way not owned and controlled by the City of Port Orange. Agency shall furnish Flock with all necessary information requested by the permitting agency necessary to acquire the permit for installation of Flock Hardware. In the event that a Designated Location for a Unit requires permits, Flock will provide the Agency with a temporary alternate location for installation pending the permitting process. Once the required permits are obtained, Flock will relocate the Units from the temporary alternate location to the permitted location at no additional cost. Flock will provide options to supply power at each Designated Location. If Agency refuses alternative power supply options, Agency agrees and understands that Agency will not be subject to any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar. Flock will make all reasonable efforts within their control to minimize suspension of Flock Services. Agency represents and warrants that it has, or will acquire by permit, all necessary authority and hereby authorizes, pending permitting, Flock to install the Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation. Flock is not responsible for installation of Agency Hardware.

2.7.3 Flock's Obligations. Installation of any Flock Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within ninety (90) days from the time that the Designated Locations are confirmed and permitted. Following the initial installation of the Hardware and any subsequent Reinstalls or maintenance operations, Flock's obligation to perform installation work shall cease; however, for the sole purpose of validating installation, Flock will continue to monitor the performance of the Units for the length of the Term and will receive access to the Footage for a period of three (3) business days after the initial installation in order to monitor performance and provide any necessary maintenance solely as a measure

of quality control. Agency understands and agrees that the Flock Services will not function without the Hardware. Labor may be provided by Flock or a third party. Flock is not obligated to install, reinstall, or provide physical maintenance to Agency Hardware.

2.7.4 *Security Interest.* Flock Hardware shall remain the personal property of Flock and will be removed upon the natural expiration of this Agreement at no additional cost to Agency. Agency shall not perform any acts which would interfere with the retention of title of the Hardware by Flock. Should Agency default on any payment of the Flock Services, Flock may remove Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right.

2.8 **Hazardous Conditions.** Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless.

2.9 **Support Services.** Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("**Monitoring Services**"). Subject to the terms hereof, Flock will provide Agency with reasonable technical and on-site support and maintenance services ("**On-Site Services**") in-person or by email at support@flocksafety.com. Flock will use commercially reasonable efforts to respond to requests for support.

2.10 **Special Terms.** From time to time, Flock may offer certain "Special Terms" related to guarantees, service and support which are indicated in the proposal and on the order form and will become part of this Agreement, upon Agency's consent. To the extent that any terms of this agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

2.11 **Changes to Platform.** Flock may, in its sole discretion, make any changes to any system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock's products or services to its Agency s, (b) the competitive strength of, or market for, Flock's products or services, (c) such platform or system's cost efficiency or performance, or (ii) to comply with applicable law.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 **Agency Obligations.** Flock will assist Agency end-users in the creation of a User ID. Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name

that Agency does not have the right to use, or another person's name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency will not share its account or password with anyone, and must protect the security of its account and password. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel, to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

3.2 Agency Representations and Warranties. Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

4. CONFIDENTIALITY; AGENCY DATA

4.1 Confidentiality. To the extent allowable by applicable FOIA and state-specific Public Records Acts, each Party (the "**Receiving Party**") understands that the other Party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Agency includes non-public data provided by Agency to Flock or collected by Flock via the Unit, including the Footage, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors built into the Units ("**Agency Data**"). The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Agency alerts, such as when a car exits Agency's neighborhood, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief

that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Agency hereby expressly grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the term hereof) to disclose the Agency Data (inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. Flock may store deleted Footage in order to comply with certain legal obligations but such retained Footage will not be retrievable without a valid court order.

4.2 Agency Data.. As between Flock and Agency, all right, title and interest in the Agency Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to use the Agency Data and perform all acts with respect to the Agency Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.9 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Agency Data as a part of the Aggregated Data (as defined in Section 4.4 below). As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion.

4.3 Feedback. If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

4.4 Aggregated Data. Notwithstanding anything in this Agreement to the contrary, Flock shall have the right to collect and analyze data that does not refer to or identify Agency or any individuals or de-identifies such data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Agency Data and data derived therefrom). For the sake of clarity, Aggregated Data is compiled anonymous data which has been stripped of any personal identifying information. Agency acknowledges that Flock will be compiling anonymized and/or aggregated data based on Agency Data input into the Services (the “**Aggregated Data**”). Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right and license (during and after the Service Term hereof) to (i) use and distribute such Aggregated Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts, and (ii) disclose the Agency Data (both inclusive of any Footage) to enable law enforcement monitoring against law enforcement hotlists as well as provide Footage search access to law enforcement for investigative purposes only. No rights or licenses are granted except as expressly set forth herein. Flock shall not sell Agency Data or Aggregated Data.

5. PAYMENT OF FEES

5.1a **Wing Fees.** For Wing products, the Agency will pay Flock the first Usage Fee and the Implementation Fee (as described on the Order Form attached hereto, together the “**Initial Fees**”) as set forth on the Order Form on or before the 45th day following the Effective Date of this Agreement. Flock shall have no liability resulting from any delay by the Agency in installing the Embedded Software on the Agency Hardware. If applicable, Agency shall pay the ongoing Usage Fees set forth on the Order Form with such Usage Fees due and payable thirty (45) days of each payment period. All payments will be made by either ACH, check, or credit card.

5.1b **Falcon Fees.** For Falcon products during the Initial Term, Agency will pay Flock fifty percent (50%) of the first Usage Fee, the Implementation Fee and any fee for Hardware (as described on the Order Form attached hereto, together the “Initial Fees”) as set forth on the Order Form on or before the 30th day following receipt of initial invoice after Effective Date. Upon commencement of installation, Flock will issue an invoice for twenty-five percent (25%) of the Initial Fees, and Agency shall pay on or before 45th day following receipt of invoice. Upon completion of installation, Flock will issue an invoice for the remaining balance and Agency shall pay on or before 45th day following receipt of final invoice. Flock is not obligated to commence the Installation Services unless and until the first payment has been made and shall have no liability resulting from any delay related thereto. For a Renewal Term, as defined below, Agency shall pay the entire invoice on or before the 45th day following receipt of invoice.

5.2 **Changes to Fees.** Flock reserves the right to change the fees or applicable charges and to institute new charges and fees at the end of the Initial Term or any Renewal Term, upon sixty (60) days’ notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email). If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than one (1) year after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Flock’s Agency support department. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

5.3 **Invoicing, Late Fees; Taxes.** Flock may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Flock thirty (45) days after the mailing date of the invoice. If Agency is a non-tax exempt entity, Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock’s net income.

6. TERM AND TERMINATION

6.1a **Wing Term.** Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Initial Term**”). The Term shall commence upon execution of this Agreement. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement may be renewed for three (3) successive one (1) year renewal terms* (each, a “**Renewal Term**”, and together with the Initial Term, the “**Service Term**”).

6.1b Falcon Term. Subject to earlier termination as provided below, the initial term of this Agreement shall be for the period of time set forth on the Order Form (the “**Initial Term**”). The Term shall commence upon first installation and validation of a Unit. *Following the Initial Term, unless otherwise indicated on the Order Form, this Agreement may be renewed for three (3) successive one (1) year renewal terms* (each, a “**Renewal Term**”, and together with the Initial Term, the “**Service Term**”).

6.2 Termination for Convenience. At any time during the agreed upon Term, an Agency not fully satisfied with the service may self-elect to terminate this Agreement for convenience. Termination for convenience will result in a one-time fee of \$500 per Flock Hardware. Upon termination for convenience, a refund will be provided for Falcon Cameras, prorated for any fees for the remaining Term length set forth previously. Agency will remain liable to pay the full outstanding fees for any Wing product on the effective date of termination of that Order Form.. Termination for convenience of the Agreement by the Agency will be effective immediately. Flock will provide advanced written notice and remove all Flock Hardware at Flock’s own convenience, within ninety (90) days upon termination.

6.3 Termination. Notwithstanding the termination provisions in Section 2.4(b), in the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Service Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty (30) day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business. Upon termination for Flock’s material breach, Flock will refund to Agency a pro-rata portion of the pre-paid fees for Services not received due to such termination.

6.5 No-Fee Term. For the Term of this Agreement, Flock will provide Agency with complimentary access to ‘hot-list’ alerts, which may include ‘hot tags’, stolen vehicles, Amber Alerts, etc. (“**No-Fee Term**”). In the event a Non-Agency End User grants Agency access to Footage and/or Notifications from a Non-Agency End User Unit, Agency will have access to Non-Agency End User Footage and/or Notifications until deletion, subject to the thirty (30) day retention policy. Non-Agency End Users and Flock may, in their sole discretion, leave access open. The No-Fee Term will survive the Term of this Agreement. Flock, in its sole discretion, can determine not to provide additional No-Fee Terms or can impose a price per No-Fee Term upon thirty (30) days’ notice. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon thirty (30) days’ notice.

6.6 Survival. The following Sections will survive termination: 2.4, 2.5, 3, 4, 5 (with respect to any accrued rights to payment), 5.4, 6.5, 7.4, 8.1, 8.2, 8.3, 8.4, 9.1 and 10.5.

7. REMEDY; WARRANTY AND DISCLAIMER

7.1 Remedy. Upon a malfunction or failure of Flock Hardware or Embedded Software (a “**Defect**”), Agency must notify Flock’s technical support as described in Section 2.9 above. If Flock is unable to correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of

remedy for a Defect until after it has inspected and tested the affected Unit provided that such inspection and test shall occur within seventy-two (72) hours after Agency notifies the Flock of a known Defect. In the event of a Defect, Flock will repair or replace the defective Unit at no additional cost. In the event that a Unit is lost, stolen, or damaged, Agency may request that Flock replace the Unit at a fee according to the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Units, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen Units and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted. Flock is under no obligation to replace or repair Hardware.

7.2 Exclusions. Flock will not provide the remedy described in Section 7.1 if Agency is found to have misused the Flock Hardware, Agency Hardware or Embedded Software in any manner.

7.3 Warranty. Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Upon completion of any installation or repair, Flock shall clean and leave the area in good condition. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

7.4 Disclaimer. THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY 'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE EMBEDDED SOFTWARE. THE FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6, OR IF NO STATE IS MENTIONED IN SECTION 10.6, BY THE LAW OF THE STATE OF GEORGIA.

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

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

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

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

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

[REMAINDER OF PAGE LEFT BLANK]

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

7.6 **Force Majeure.** Flock is not responsible nor liable for any delays or failures in performance from any cause beyond its control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, weather conditions or acts of hackers, internet service providers or any other third party or acts or omissions of Agency or any Authorized End User.

8. LIMITATION OF LIABILITY; NO FEE TERM

8.1 **Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT

LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT OF AN EMERGENCY, AGENCY SHOULD CONTACT 911 AND SHOULD NOT RELY ON THE SERVICES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE OF FLORIDA.

8.2 Additional No-Fee Term Requirements. IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.5 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Parties acknowledge and agree that the essential purpose of this Section 8.2 is to allocate the risks under the No-Fee Term described in Section 6.5 and limit potential liability given the aforementioned complimentary service, which would have been substantially higher if Flock were to assume any further liability other than as set forth herein. Flock has relied on these limitations in determining whether to provide the complimentary No-Fee Term. The limitations set forth in this Section 8.2 shall not apply to claims or damages resulting from Flock's other obligations under this Agreement.

8.3 Responsibility. Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees that occur within the scope of their official duties.

9. RECORD RETENTION

9.1 Data Preservation. The Agency agrees to store Agency Data in compliance with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules. As part of Agency's consideration for paid access and no-fee access to the Flock System, to the extent that Flock is required by local, state or federal law to preserve the Agency Data, Flock will notify Agency of the requirement and applicable

retention period, and Agency agrees to preserve and securely store this data on Flock's behalf so that should Flock be legally compelled by judicial or government order, Flock may retrieve the data from Agency upon demand.

10. MISCELLANEOUS

10.1 **Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.2 **Assignment.** This Agreement is not assignable, transferable or sublicensable by Agency except with Flock's prior written consent. Flock may transfer and assign any of its rights and obligations, in whole or in part, under this Agreement with consent which shall not be unreasonably withheld.

10.3 **Entire Agreement.** This Agreement, together with the Order Form(s), the then-current Reinstall Policy (<https://www.flocksafety.com/reinstall-fee-schedule>), and Deployment Plan(s), are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected.

10.4 **Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever.

10.5 **Governing Law; Venue.** This Agreement shall be governed by the laws of the State in which the Agency is located. The parties hereto agree that venue would be proper in the chosen courts of the State of which the Agency is located. The parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

10.6 **Publicity.** Upon prior consent from Agency, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.

10.7 **Export.** Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Services,

the Hardware, the Embedded Software and Documentation are “commercial items” and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10.8 Headings. The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated Sections.

10.09 Authority. Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the organizations and individuals they are representing.

10.10 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.



EXHIBIT A

Statement of Work

Installation of Flock Camera on existing pole or Flock-supplied pole if required



SOLE SOURCE/SOLE BRAND REQUEST

(Waiver of Competitive Quotes / Bids)

I. REQUEST: Provide a description of the features of the product/service or Scope of Work.

Please see attached memorandum.

II. JUSTIFICATION: Please check all boxes that describe your reason(s) for determining that only one source or brand is reasonably available.

Only Sole Source/ Uniqueness

- ☒ **Proprietary Item** - this vendor/source has the only rights to provide this service or commodity. A letter from the manufacturer or authorizing entity is included in this request.
- ☐ **Technology Improvements** - updates or upgrades to an existing system, software, software as a service hardware purchases.
- ☒ **Patented, copyright or unique design restrictions.**
- ☐ **Only Qualified Supplier** - reliability and maintainability of the product or service would be degraded unless specified supplier is used; may void warranty. This request includes a copy of the current warranty information.
- ☒ **Other/or Additional information** - the City requires this sole source, sole brand purchase for the following reasons:

Business Case (One/Most Reasonable Source or One/Most Reasonable Brand)

- ☐ **Operational Compatibility** - replacement parts from alternate suppliers are not interchangeable with original part and causes equipment incompatibility. Previous findings and/or documentation is included with this request.
- ☐ **Ease of Maintenance** - maintenance or retooling prohibits competition. Section III, Comparative Market Research includes estimated costs associated with changing current source and/or brand.
- ☐ **Follow-On** - potential for continued development or enhancement with same supplier and eliminates costs incurred by using different supplier. Section III, Comparative Market Research includes estimated costs for replacing current or existing system.
- ☐ **Complies with existing community and safety standards, and other laws, rules, and regulations.**
- ☐ **Exempted from the Competition** - per City Purchasing Manual.
- ☐ **Other/or additional information** - using this sole source, sole brand purchase benefits the City for the following reasons:

III. COMPARATIVE MARKET RESEARCH: Provide a detailed source or market analysis for justification of sole source/brand or most reasonable source (attach extra sheets as needed).

Estimated project value: _____ Contract length (if applicable): _____

Expenses to date: _____

Has this commodity or service been previously provided to the City? ☐ Yes ☐ No

If yes, when and by whom? _____

How was item/service procured? () Piggyback () Competitive Bid () Sole Source

What is the current contract or purchase order number? _____

If this is a sole brand, is there an "authorized" dealers list? ☐ Yes ☐ No

Cost/Benefit Analysis: What would the cost be to utilize an alternate vendor or source? This explanation should include the savings and/or additional costs to the City by not using the preferred vendor or source. Attach additional sheets if needed.

Please see attached.

CERTIFICATION: I have thoroughly researched the sole source or sole brand justification and fully understand the implications of Section 838.22 of the Florida Statutes:

(2) "It is unlawful for a public servant, with corrupt intent to obtain a benefit for any person or to cause unlawful harm to another, to circumvent a competitive bidding process required by law or rule by using a sole source contract for commodities or services."

(5) "Any person who violates this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084"

The undersigned requests that competitive procurement be waived and that the vendor identified as the supplier of the service or material described in this single/sole source justification be authorized as single/sole source for the service or material. **Purchasing approval required prior to submitting for City Manager approval.**

Department Head Approval (Print Name): MANUEL MARINO

Department Head Approval Signature: Chief M. Marino Date: 5/13/2022

Software or hardware purchases only:

IT Approval (Print Name): James Hicks - Interim IT Director

IT Approval Signature: [Signature] Date: 12/22/2022

Purchasing Manager Approval Signature: [Signature] Date: 12-28-22

CITY MANAGER APPROVAL:

City Manager Approval: _____ Date: _____

Wayne Clark, City Manager

Revised 5/12/21 [MH]

For 2022
Sole Source
Posting



PORT ORANGE POLICE DEPARTMENT

MEMORANDUM



TO: Chief Marino

FILE: WWP0522M.002

FROM: Assistant Chief Wm. Proctor 2649 

DATE: May 13, 2022

SUBJECT: Flock Safety License Plate Reader

It has been a long-term goal to deploy license plate readers (LPRs) in the city. Flock Safety is the sole source provider chosen to provide the LPR service. Flock Safety is a company based out of Georgia and has a national distribution of LPRs. Locally, Volusia County has twenty-five (25) Flock Safety cameras, Daytona Beach PD has five (5), and Holly Hill has six (6) deployed. Flock Safety LPRs are affordable, versatile units that can be deployed to make the most impact on crime.

I. **REQUEST:** Provide a description of the features of the product.

The Flock Safety Falcon is an automatic license plate recognition (ALPR) camera with software, data, cloud storage, and access to a network of cameras. The Flock Safety Falcon is infrastructure-free using solar power, LTE connectivity, and DOT breakaway poles and is operational in just a few weeks. Flock Safety's ALPRs do not just read a vehicle's license plate but also produce a high-quality picture of cars in the travel lane. These images are used to build a vehicle fingerprint, through patented technology, that can be searched to develop leads to solve crimes.

Cost/Benefit Analysis

The Flock Safety is the only ALPR provider to officially partner with AXON to be natively and directly integrated into Evidence.com. The police department uses AXON body-worn cameras, and the BWC videos and other digital evidence are stored on Evidence.com. Officers can hold evidence from Flock Safety from the system to Evidence.com with a push of a button and free of storage fees because of the partnership. POPD is under contract with AXON until 2025.

I have included the following documents with this sole source request:

1. Sole Source Letter for Flock Safety ALPR Cameras and Solution, signed by Flock Safety CEO Garrett Langley
2. Flock Safety Falcon ALPR Overview
3. AXON Flock Evidence.com Integration JPEG
4. Advanced Search and AVL Software Package

The quote provided by Flock Safety breaks down by camera. Each Falcon camera includes solar power and LTE, license plate recognition with Vehicle Fingerprint technology, and real-time alerts for unlimited users and will cost \$2,500. In this first phase of the ALPR program, we are ordering a subscription from 06/01/2022 through 09/30/2023 (486 days) for seven (7) cameras for \$26,660. Thereafter the annual subscription is estimated to be \$17,500. The



PORT ORANGE POLICE DEPARTMENT

MEMORANDUM



proposal includes a 30-Day Out Clause, which will start once the cameras are installed and operational.

Second, each camera will require a Professional Services – Falcon, Standard Implementation, including site and safety assessment, camera setup and testing, and shipping and handling. This is a one-time expense of \$350 for each camera for a line-item total of \$2,450.

The total initial purchase and setup will cost \$29,110.

Finally, we are purchasing a software upgrade, Flock Safety Advanced Search, to assist with investigations. This program will cost \$2,500 annually.

cc: file



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C9e) Approval to Waive the Bidding Requirements and Enter into a Contract with Explosive Touch for Fireworks on July 4th

DEPARTMENT: Parks & Recreation

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve the waiver of bidding requirements, authorizing the City Manager and City Attorney to finalize the terms of the contract and authorizing the City Manager and City Clerk to execute the contract.

SUMMARY: The Parks and Recreation Department is requesting the bidding requirements be waived in order to enter into an agreement with a company to provide fireworks for the annual 4th of July Spectacular.

With the recent supply chain shortages and demand for firework shows, it is becoming more and more difficult to receive bids from multiple companies. This makes it extremely important to secure a firework company as soon as possible.

Parks and Recreation Staff reached out to four vendors by email on October 7, 2022, requesting quotes for a 2-year contract with two optional 1-year renewals. They were all given a deadline of 10/28/22 to respond. Parks and Recreation Staff followed up on 10/26/22 with a reminder of the deadline.

One company (Explosive Touch) responded with a quote. Two companies (Pyroproductions and Santore) responded initially but did not submit a quote. One company (Kynexplosives) responded quickly that they were unable to submit a bid.

Attached is the email correspondence with each company. Explosive Touch is the company we used for last year's show. They are currently a registered vendor and will provide an updated insurance certificate per the contract.

Staff is recommending approval of this item.

PRESENTER: Susan Lovallo

ATTACHMENTS:

1.	ETE AUD City of Port Orange 2023-	ETE AUD City of Port Orange 2023-2024
----	-----------------------------------	---------------------------------------

	2024 + 2 (1y) renewals Fireworks Proposal	+ 2 (1y) renewals Fireworks Proposal.pdf
2.	kynexplosives	kynexplosives.png
3.	pyroproductions	pyroproductions.png
4.	Fireworks by Santore	Fireworks by Santore.png

Peter Ferreira
Susan Lovallo
John McKinney
Matthew Jones
Wayne Clark
Robin Fenwick

Created/Initiated - 1/3/2023
Approved - 1/3/2023
Approved - 1/4/2023
Approved - 1/6/2023
Approved - 1/12/2023
Final Approval - 1/12/2023



A Spectacular Division of...

EXPLOSIVE
TOUCH ENTERPRISES

WE CREATE BLASTING IMPRESSIONS!

City of

Port Orange

Fireworks Display

7-4-23 & 7-4-24 (+2y)

About Angry Unicorn Displays:

Angry Unicorn Displays was established in 2018 and is a sister company of Explosive Touch Enterprises. It is branded to coincide with ETE's Import Company Angry Unicorn Imports and evolved from the experience of a decade old fireworks company that originated in the Theme Park Entertainment Capital of the World, Orlando, FL.

Angry Unicorn Displays will be your direct source of fireworks and special effect entertainment especially with our sister company Angry Unicorn Imports supplying all of our High Quality Fireworks.

We have experience with all types of events which range from small backyard type displays to Major Professional Aerial Productions. To achieve success with all of our events, we use state of the art digital electronic firing systems and design software that gives us the availability to produce world class displays using the most brilliant and unique effects the industry has to offer. From large sky filling displays, to concise choreographed pyro-musicals... we can do it all!

In closing, Angry Unicorn Displays offers our (AIS) All-Inclusive solution in producing the fireworks and special effects elements of your show or event. All of our events include site inspections, display permits, Coast Guard permits (if necessary), FAA clearance (if necessary) \$1,000,000.00 in General and \$5M Auto Liability Insurance, Fire Marshal Fire Watch fees, Fire Truck Standby Fee (If Required), all travel costs, professional and trained pyrotechnics crew, and of course cleanup.



The Diamond - Richmond, VA



Wild Adventures Theme Park - Valdosta, GA

Our Displays

Our pyrotechnic displays include over 100 different types of pyrotechnic effects and patterns. We have the highest selection of premium products from all over the world including, but not limited to Europe, Asia, and the United States. We combine the pyrotechnic effects from these countries to provide you with the best possible design or synchronization to reflect the musical score of your show.

We have the newest and most technologically advanced computerized digital firing systems to ensure the effects are perfectly and safely fired or choreographed to any genre of live or pre-recorded music.



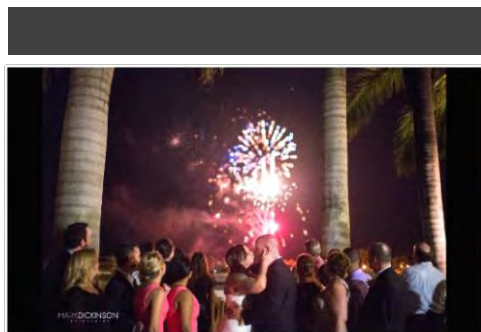
Featured Manufacturers:

1.3G Display Fireworks:



1.4G UN0431 Articles Pyrotechnics:





The Westin Resort Cape Coral, FL
Wedding Fireworks



*First Baptist Orlando 2017 Singing
Christmas Trees*

Indoor Airbursts



Titusville, FL Air Show

Our Team and Crews

The leadership at Angry Unicorn Displays has over 50 combined years of experience working with fireworks and special effects for some of the largest entertainment companies and venues in the world. We ensure that our technicians are educated annually on all applicable safety standards including new ATF regulations, NFPA Codes, DOT standards and more, ensuring that your show will meet and exceed all safety standards.

EJ Weppel - CEO and President

EJ is the founder of Angry Unicorn Displays. He began his career working for a major theme park in Orlando, FL. When he left there, he continued his path to pyrotechnic greatness working with a large competing company. From there, he decided to branch out on his own and Angry Unicorn Displays was born.

Pyrotechnic Crew

Angry Unicorn Displays has a vast pool of pyrotechnicians that work with us on a regular basis. Senior Shooters have been with the company since the beginning and have been trained and certified each year. Most of them have other full-time jobs for some of the biggest names in the Entertainment Industry and shoot their shows regularly. All our show site assistants are 100% trained in the company policies of safe handling of materials and under the direction of the onsite shooter. Assistants have a wide range of skill sets and most are working toward being full fledged pyrotechnic shooters within the company.





Technician Fireworks Display Proposal

Opener: _____ 202 _____ Total Display Shells

100 : 1" - 2.5" Premium single shot and multi shot cake effects
50 : 3" Premium Fireworks variety of effects
40 : 4" Premium Fireworks variety of effects
12 : 5" Premium Fireworks variety of effects
_____ : 6" Premium Fireworks variety of effects
_____ : 7" Premium Fireworks variety of effects
_____ : 8" Premium Fireworks variety of effects
_____ : 10" Premium Fireworks variety of effects

Main Body: _____ 1,874 _____ Total Display Shells

1,000 : 1" - 2.5" Premium single shot and multi shot cake effects
500 : 3" Premium Fireworks variety of effects
350 : 4" Premium Fireworks variety of effects
24 : 5" Premium Fireworks variety of effects
_____ : 6" Premium Fireworks variety of effects
_____ : 7" Premium Fireworks variety of effects
_____ : 8" Premium Fireworks variety of effects
_____ : 10" Premium Fireworks variety of effects

Grand Finale: _____ 875 _____ Total Display Shells

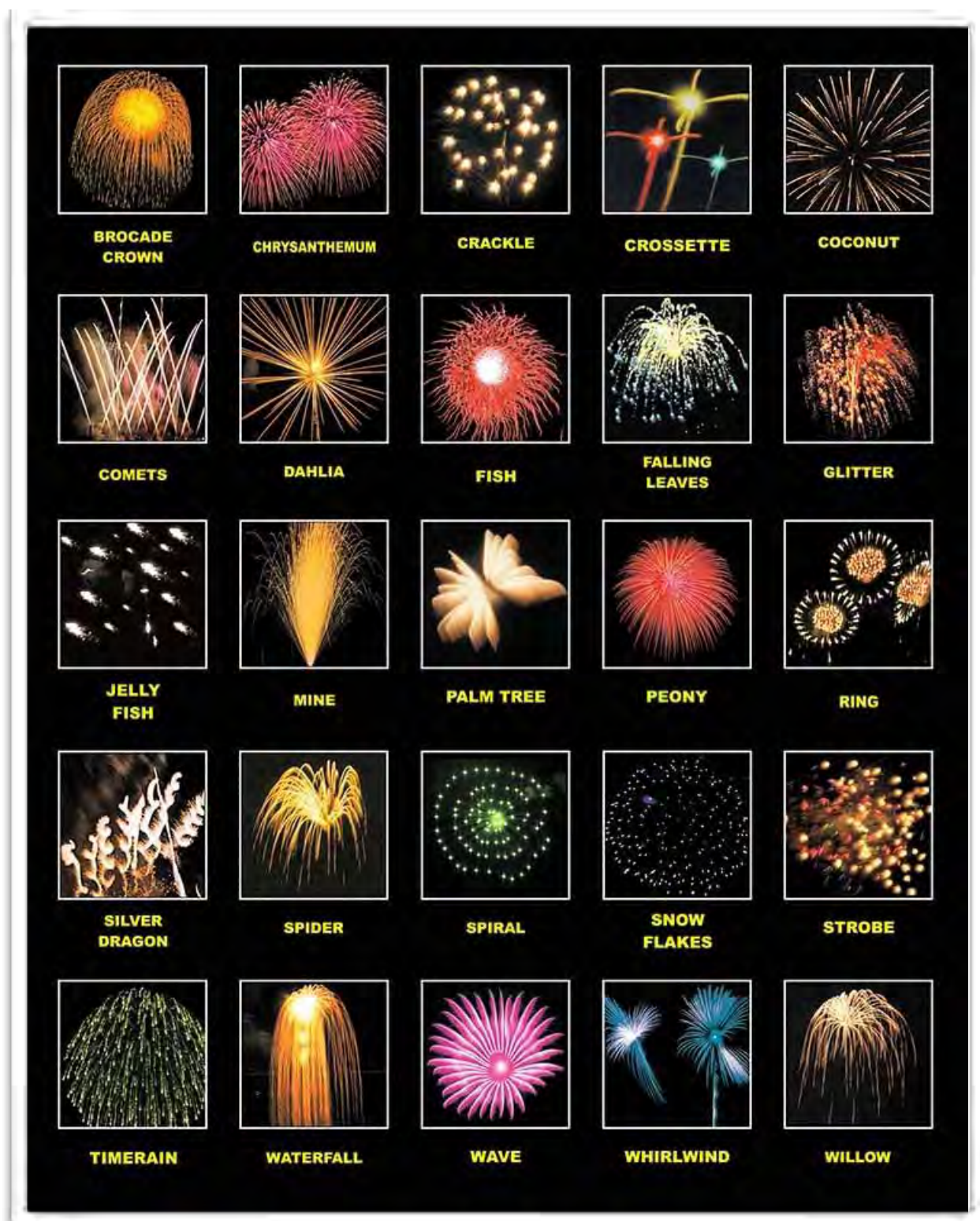
500 : 1" - 2.5" Premium single shot and multi shot cake effects
300 : 3" Premium Fireworks variety of effects
60 : 4" Premium Fireworks variety of effects
15 : 5" Premium Fireworks variety of effects
_____ : 6" Premium Fireworks variety of effects
_____ : 7" Premium Fireworks variety of effects
_____ : 8" Premium Fireworks variety of effects
_____ : 10" Premium Fireworks variety of effects

2,951 **TOTAL SHELL COUNT**
15 Minutes **Duration of Fireworks Display**

*** All Fireworks/Effects will be fired 100% electronically. We do not hand fire any of your display which provides you with non-stop action***



Our most commonly used effects inventory used to create a unique display keeping your audience excited and craving more!



Pyrotechnic Effect Definitions

Brocade – A spider like effect in the sky, much like fine lace. The brocade effect is generally a golden tail effect, and is brighter than the willow or tiger tail effect. Most brocade effects use glitter to produce the long brocade tails.

Chrysanthemum – A flower-like aerial pattern, usually resulting from a cake or mortar.

Comet – A type of star that leaves a long trail of sparks as it flies through the air.

Crossette – A type of comet that breaks into multiple comets, usually forming a cross shape.

Pearls – Bright balls of color that fly through the sky and burn themselves out after reaching maximum height.

Dragon Eggs – A delayed crackle effect displayed in egg-shaped patterns with loud crackle near the end.

Waterfall – Glowing embers that fall slowly in the air, creating a willow or waterfall effect.

Flying Fish – An aerial effect that looks like a swarm of objects squirming through the air. This effect usually lasts only a few seconds. Fish are a type of fuse that propels itself through the air, creating a swimming effect.

Palm Tree – An aerial effect that produces a gold or silver stem as the shell rises into the sky (known as a rising tail), followed by a brocade or willow effect that creates palm fronds. It resembles a gold or silver palm tree in the sky.

Peony – An aerial effect that looks like a spherical ball of colored lights in the sky. A very common aerial effect on most fireworks displays.

Ghost - An aerial effect that creates a disappearing and re-appearing color trail new to the fireworks industry.

Rising Tail – A rising tail is a gold or silver tail effect that is created when a shell is shot into the sky, similar to the trunk of a tree. Commonly used with palm tree shells.



Strobe – A strobe is a blinking effect. When used in a shell with hundreds of strobe stars, the strobe effect looks like shimmering water in the sky. Strobes can be a variety of colors, including white, green, blue, and orange.

Tourbillion – Another name for a serpent. A tourbillion is a type of star that spins in the sky and gives off large quantities of gold, silver, or white light.

Willow – An aerial effect that looks like a giant gold willow tree in the sky. A true willow effect has delicate golden trails that hang in the sky ten seconds or more.

Pattern - An aerial effect including but not limited to Smiles, Hearts, Squares, Diamonds, Stars, 3D Cubes always a crowd pleaser





What is included in your All-Inclusive Package

SITE INSPECTION

FIREWORKS DISPLAY PERMIT

COAST GUARD PERMIT (IF REQUIRED)

FAA CLEARANCE (IF REQUIRED)

\$1,000,000.00 GENERAL LIABILITY INSURANCE

\$5,000,000.00 AUTO LIABILITY INSURANCE AS REQUIRED BY THE US DOT

FIRE MARSHAL FIRE WATCH FEES

FIRE TRUCK STANDBY FEE (IF REQUIRED)

ALL TRAVEL/LOGISTICS COSTS

PROFESSIONAL PYROTECHNICS CREW

100% ELECTRONICALLY FIRED DISPLAY

STRIKE/CLEAN UP



**Explosive Touch
Enterprises**

4260 Amelia Plantation Court
Vero Beach, FL 32967

Phone Number: 1-800-590-7929

Email address : info@explosivetouch.com

Please make check payable to: Explosive Touch Enterprises, LLC.

City of Port Orange

ESTIMATE

Client name: Teresa Wiggins

Address: 1395 Dunlawton Avenue Port Orange, FL 32129

Phone: 386.506.5868

E-mail: twiggins@port-orange.org

Invoice Number

NA

Invoice Date

NA

CUSTOMER REGION

VALID UNTIL

Port Orange, FL

NA

ITEM NO.	DESCRIPTION	Unit Cost	QTY	Total
FWD	July 4th, 2023 Fireworks Display	\$37,500.00	1	\$37,500.00
FWD	July 4th, 2024 Fireworks Display	\$37,500.00	1	\$37,500.00
FWD	July 4th, 2025 Fireworks Display	\$37,500.00	1	\$37,500.00
FWD	July 4th, 2026 Fireworks Display	\$41,250.00	1	\$41,250.00
Subtotal:				\$153,750.00
Grand Total:				\$153,750.00

Payment Details: 50% Dep./ 50% Bal.

Payment Methods: Check, ACH, WIRE

Notes: July 4th, 2025 & July 4th, 2026 are OPTIONAL years with a 10% increase provided for the 4th year for increased costs.

Thank You For Your Business!

FileMessageHelp

 Ignore

 Delete

 Junk

 Archive

 Reply

 Reply All

 Forward

 IM

 More

 Meeting

 More

 Move

 Rules

 Actions

 Mark Unread

 Categorize

 Follow Up

 Find

 Related

 Select

 Read Aloud

 Immersive Reader

 Translate

 Zoom

[EXT] Re: Port Orange 4th of July Fireworks



James Kyne <james@kynexplosives.com>

To Wiggins, Teresa



 Reply

 Reply All

 Forward



Tue 10/11/2022 11:13 AM

 You replied to this message on 10/11/2022 11:28 AM.
Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Good morning Teresa,

Thank you for doing this early, at this point we are not accepting any new shows, we are pretty much booked for July 4 weekend.

On Fri, Oct 7, 2022 at 8:42 AM Wiggins, Teresa <twiggins@port-orange.org> wrote:

Good Morning James,

In an effort to get ahead of the game, the City of Port Orange is requesting quotes for the fireworks display at our annual 4th of July Spectacular.

We are requesting a quote for a 2 year contract with 2 optional 1-year renewals.

The show will be at City Center Park, 1000 City Center Circle in Port Orange, on July 4th each year of the contract. The show will start at 9:00 pm sharp.

We are requesting a 15 minute show with the following shell counts:

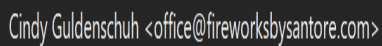
2.5" or less – 1,600

3" – 850

4" – 450

5" – 50

Wed 10/26/2022 4:58 PM



To ● Wiggins, Teresa



Teresa,

We are so busy I'm not sure if we will be able to submit a proposal by the deadline or if we half to pass. I'll let you know hopefully by end of day today.

Thanks,

Sent from my T-Mobile 5G Device

----- Original message -----

From: "Wiggins, Teresa" <twiggins@port-orange.org>

Date: 10/26/22 4:59 PM (GMT-05:00)

To: office@fireworksbyasantore.com

Subject: RE: Port Orange 4th of July Fireworks

Hi Cindy,

Please note, we are coming up on my deadline for quotes, Friday, October 28th and I have not received a full quote from you. Please let me know if you have any questions.

Have a great day,

Teresa Wiggins, MBA, MSBM, CPRP

Recreation Manager

City of Port Orange

Parks and Recreation

1395 Dunlawton Avenue



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C10) Resolution No. 23-01 - Approval of FDOT Locally Funded Agreement for 444033-1-32-01 Port Orange Sidewalk Gaps - Port Orange Project #OMI036

DEPARTMENT: Community Development

GOAL: 1 - Public Safety
3 - Quality of Life

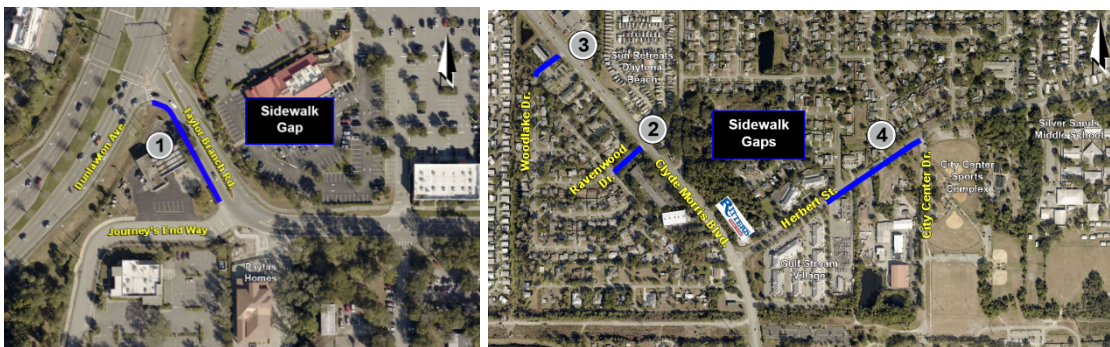
RECOMMENDED MOTION: Move to approve Resolution No. 23-01 for the FDOT Locally Funded Agreement for 444033-1-32-01 Port Orange Sidewalk Gaps design services and authorizing the Mayor and City Clerk to execute the Agreement and Resolution.

SUMMARY: The sidewalk project associated with this Florida Department of Transportation (FDOT) Locally Funded Agreement (444033-1-32-01) consists of designing sidewalks to fill sidewalk gaps along roadways in Port Orange to enhance pedestrian connectivity to schools, bus stops, parks, and retail areas. Completing these gaps will improve the safety of pedestrians that walk along these major roadway corridors by eliminating the need to use the shoulder or roadway. The sidewalk gaps associated with this Locally Funded Agreement (444033-1-32-01) are described and shown below.

1. Taylor Branch Road – Design of a 6-foot sidewalk along the west side of Taylor Branch Road and extends approximately 330 ft. from Dunlawton Avenue across Journey's End Drive along with associated improvements (drainage, crosswalks, signage, lighting, and infrastructure for compliance with the Americans with Disabilities Act (ADA)).
2. Ravenwood Drive – Design of a 5-foot sidewalk along both sides of Ravenwood Drive extending approximately 315 ft. from Clyde Morris Boulevard to Woodlake Drive, along with associated improvements (drainage, crosswalks, signage, lighting, and infrastructure for compliance with the Americans with Disabilities Act (ADA)). Ravenwood Drive is one of two access points provided for the single-family subdivision located on the western side of the segment, with approximately 95 lots. No pedestrian access from the subdivision to Clyde Morris Boulevard is provided at this time.
3. Woodlake Drive – Design of a 5-foot sidewalk along both sides of Woodlake Drive each extending approximately 340 ft. from the existing sidewalks on Clyde Morris Boulevard to the existing sidewalks along Woodlake Drive, along with associated

improvements (drainage, crosswalks, signage, lighting, and infrastructure for compliance with the Americans with Disabilities Act (ADA)). Woodlake Drive is one of two access points provided for a single-family subdivision with approximately 95 lots. No pedestrian access from the subdivision to Clyde Morris Boulevard is provided at this time.

4. Herbert Street – Design of a 5-foot sidewalk along the south side of Herbert Street that extends approximately 800 ft. from City Center Drive to the Gulfstream Village driveway, along with associated improvements (drainage, crosswalks, signage, lighting, and infrastructure for compliance with the Americans with Disabilities Act (ADA)). This sidewalk segment will provide access to the existing sidewalk network east of City Center Drive and west to Clyde Morris Boulevard to ultimately enhance pedestrian connectivity to the City Center Sports Complex and the Silver Sands Middle School.



On September 21, 2022, as part of the FY 23-28 Capital Improvements Program (CIP), the City approved the proposed budget to include 10% matching funds for the design of this sidewalk project identified in Port Orange Project #OMI036. Port Orange Project #OMI036 is a bundle of four city sidewalk projects in the current FDOT's Adopted Five Year Work Program. For this project, the City will utilize Protean Design Group, FDOT District 5's contract design consultant.

The negotiated design fee for this project is \$145,955. The City's 10% matching funds are referred to as "Federal-Aid Funding Shortfall" in the FDOT Locally Funded Agreement. FDOT agrees to provide the federal participating share of the design services, up to \$131,359.00. The City share shall be a minimum of 10% of the design fee plus any federal non-eligible items and cost overruns. The estimated City share for 100% of the funding shortfall portion of the project is \$14,596.00. The agreement stipulates that the City shall furnish the FDOT with an advance deposit in the amount of \$14,596.00 on or before February 14, 2023. Funds are budgeted and available in Project #OMI036 for this purpose. Approval of this Resolution and Locally Funded Agreement will facilitate the issuance of a Notice to Proceed to the design consultant in early 2023. It is anticipated that the design will be completed in the summer of 2024 and construction funds will be available in 2026.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 23-01	Resolution No. 23-01 .pdf
2.	Exhibit 1 to Reso 23-01 444033-1-32-01 - LAP Design LFA	Exhibit 1 to Reso 23-01 444033-1-32-01 - LAP Design LFA.pdf

Lisa Epstein	Created/Initiated - 12/19/2022
Tim Burman	Approved - 12/29/2022
John McKinney	Approved - 1/4/2023
Matthew Jones	Approved - 1/5/2023
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023

RESOLUTION NO. 23-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING A LOCAL AGENCY PROGRAM AGREEMENT FPN 444033-1-32-01; THE DESIGN OF THE PORT ORANGE SIDEWALK GAPS PROJECT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST THE AGREEMENT, RESPECTIVELY, WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation and the City of Port Orange desire to facilitate the Local Agency Program Agreement for the design of the Port Orange Sidewalk Gaps project; and

WHEREAS, the State of Florida Department of Transportation has requested the City of Port Orange to execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the aforementioned project, FPN 444033-1-32-01.

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

Section 1. The City Council of the City of Port Orange, Florida, hereby approves and authorizes the Mayor and City Clerk to make, execute, and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the project FPN 444033-1-32-01, a copy of which is attached hereto as Exhibit "1".

Section 2. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Agency: City of Port Orange Vendor No: F596000412003	Fund: LF Contract Amount: \$14,596.00	Financial Project No.: 444033-1-32-01
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF PORT ORANGE**

This **AGREEMENT**, made and entered into _____,
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter
referred to as the "DEPARTMENT") and the City of Port Orange (hereinafter referred to as the
"LOCAL GOVERNMENT"),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this
Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached
hereto, as Exhibit "B", and made apart hereof, has authorized its officers to execute this
Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year
Work Program, to undertake the Design services for the project described as: "Port Orange
Sidewalk Gaps", said project being known as Financial Project Number (FPN) 444033-1-32-01,
hereinafter referred to as the "Project"; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work
Program; and

WHEREAS, the implementation of the Project is in the interests of both the
DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious,
and economical for the LOCAL GOVERNMENT to provide a portion of the funds for the Design
services of the Project in Fiscal Year 2022/2023, said portion of the Project being known as
FPN 444033-1-32-01, and said costs hereinafter referred to as the "Federal-Aid Funding
Shortfall" and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the
Federal-Aid Funding Shortfall in a cost effective manner, the LOCAL GOVERNMENT desires to
provide funding to the DEPARTMENT to be used for the Federal-Aid Funding Shortfall, as
described in "Exhibit A".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall undertake and complete the Design services for the Project using the Federal-Aid Funding Shortfall described in Exhibit "A".

3. The DEPARTMENT shall perform the Design services for the Project. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Contribution by the LOCAL GOVERNMENT of the funds for the Design phase of the Project shall be made as follows:

(A) The LOCAL GOVERNMENT and the DEPARTMENT agree to share the cost for Design services of the Project. The LOCAL GOVERNMENT agrees to provide the Federal-Aid Funding Shortfall for the Design services and the DEPARTMENT agrees to provide the remaining federal funds for the federal participating share of the Design services, up to **\$131,359.00 (One Hundred Thirty-One Thousand Three Hundred Fifty-Nine Dollars and No/100).**

(B) The share of the LOCAL GOVERNMENT shall be, at a minimum, the stated percentage of the actual Federal-Aid Funding Shortfall for the project. However, in the event the federal government fails to provide an amount which is equal to the anticipated federal participating share, the LOCAL GOVERNMENT shall be responsible for 100% of the funds required to make up the shortfall, including cost overruns and/or supplemental agreements not paid by federal funds. The DEPARTMENT is only responsible for the stated federal participating share as described in paragraph 4(A). The Project is off the "State Highway System", therefore, in accordance with Section

339.08(1), F.S., State funding cannot be used for payments of non-participating costs on this Project.

(C) Should such shortfalls occur, due to a determination that said costs are non-participating, the LOCAL GOVERNMENT agrees to provide, without delay adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the shortfall. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent there is a shortfall; however, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation of the Federal-Aid Funding Shortfall during the project and on final accounting, as provided herein below.

(D) The estimated total cost as set forth in the DEPARTMENT'S adopted work program for this Project is **\$145,955.00 (One Hundred Forty-Five Thousand Nine Hundred Fifty-Five Dollars and No/100)**. The estimated LOCAL GOVERNMENT share for 100% of the funding shortfall portion of the project is **\$14,596.00 (Fourteen Thousand Five Hundred Ninety-Six Dollars and No/100)**.

(E) The LOCAL GOVERNMENT agrees that it will, on or before but no later than **February 14, 2023**, furnish the DEPARTMENT an advance deposit in the amount of **\$14,596.00 (Fourteen Thousand Five Hundred Ninety-Six Dollars and No/100)**. The deposit shall be the total estimated Federal-Aid Funding Shortfall.

(F) If the Federal-Aid Funding Shortfall costs are in excess of the advance deposit amount, the LOCAL GOVERNMENT will provide, without delay, an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT, so that the total deposit is equal to the Federal-Aid Funding Shortfall. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Funding Shortfall costs are in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to delay of the project.

(G) If the Federal-Aid Funding Shortfall costs are less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit

exceeds the LOCAL GOVERNMENT's share of the Federal-Aid Funding Shortfall costs if such refund is requested by the LOCAL GOVERNMENT in writing.

(H) Should project modifications occur that increase the Federal-Aid Funding Shortfall costs, the LOCAL GOVERNMENT will be notified by the District accordingly. The LOCAL GOVERNMENT agrees to provide, without delay, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Federal-Aid Funding Shortfall Costs. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Funding Shortfall Costs will overrun the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below.

(I) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three-hundred and sixty (360) calendar days of final payment to the Consultant. All project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the project. The LOCAL GOVERNMENT will be notified of the final cost. The parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three-hundred and sixty (360) calendar days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(J) In the event said final accounting of total project costs is greater than the total deposits to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes (F.S.), on any invoice not paid within the forty (40) calendar days until the invoice is paid.

(K) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached escrow agreement between LOCAL GOVERNMENT, DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury.

(L) Contact Persons:

DEPARTMENT

District 5 Local Programs
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720
(386) 943-5153
D5-LocalPrograms@dot.state.fl.us

LOCAL GOVERNMENT

Lisa Epstein
Engineering Project Manager
City of Port Orange / Community Development
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5667
Lepstein@port-orange.org

5. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

6. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

7. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

8. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

10. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

- (A) The LOCAL GOVERNMENT 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 LOCAL GOVERNMENT during the term of the contract; and
- (B) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state 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 contractor/subcontractor during the contract term.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on _____, and the DEPARTMENT has executed this Agreement on _____.

CITY OF PORT ORANGE

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Name: _____

Name: C. Jack Adkins

Title: _____

Title: Director of Transportation Development

Attest:

Attest:

Executive Secretary

Legal Review:

Legal Review:

LOCAL GOVERNMENT Attorney

DEPARTMENT Attorney

Financial Provisions Approval by
Department of Comptroller on:

October 5, 2020

EXHIBIT “A”

SCOPE OF SERVICES

The scope of the project is to design five to six-foot-wide sidewalks along four roadways in the City of Port Orange to address existing sidewalk gaps, as well as to provide improvements such as drainage, crosswalk installation, signage, and lighting. Proposed improvements shall enhance pedestrian safety and overall connectivity to the surrounding communities.

The project limits will include:

Six-foot-wide sidewalk along the west side of Taylor Branch Road from Dunlawton Avenue to just east of Journey’s End Drive. The total length is approximately 330 feet. The sidewalk will connect to the existing sidewalk in the southwest quadrant at the intersection of Dunlawton Avenue and terminates at the existing eight-foot-wide sidewalk/bicycle path east of Journey’s End Drive.

Five-foot-wide sidewalk along the north and south sides of Ravenwood Drive from Clyde Morris Boulevard to Woodlake Drive. The total length is approximately 315 feet.

Five-foot-wide sidewalk along the north and south sides of Woodlake Drive from Clyde Morris Boulevard to approximately 340 feet west of Clyde Morris Boulevard. The sidewalk will connect to existing sidewalks on the north and south side of Woodlake Drive.

Five-foot-wide sidewalk along the south side of Herbert Street from City Center Drive to the Gulfstream Village driveway. The total length is approximately 800 feet.

The City shall be responsible for the preparation and submittal of a technical memorandum providing the supporting documentation, as well as any independent reports needed, for all items on the Type 1 Categorical Exclusion (CE) Checklist. The City shall not be responsible for filling out the actual form. FDOT will prepare the checklist using the supplied information. All Principal Investigators for the archaeological, historical, and architectural sections of the Type 1 CE shall meet the minimum requirements stated in the Florida Administrative Code (Chapter 1A-46) and the Code of Federal Regulations, 36 C.F.R. 61.

All pedestrian improvements that are designed shall meet the Americans with Disabilities Act (ADA) guidelines. The design services shall include survey and utility coordination. All proposed improvements shall be within City of Port Orange and Volusia County Right of Way or easements.

The River to Sea TPO has established a 10% local match for this project. The LOCAL GOVERNMENT will be responsible for providing funds for the required 10% local match in the initial amount of **\$14,596.00**.

The remainder of this page intentionally left blank.

EXHIBIT “B”

RESOLUTION

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C11) Resolution No. 23-02 - Approval of FDOT Locally Funded Agreement for 449770-2-32-01 Dunlawton Avenue Turn Lanes Bundle - Port Orange Project #PNC200

DEPARTMENT: Community Development

GOAL: 1 - Public Safety
3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 23-02 for the FDOT Locally Funded Agreement for design consultant services for the Dunlawton Avenue Turn Lanes Bundle authorizing the Mayor and City Clerk to execute the Agreement and Resolution.

SUMMARY: The turn lane projects associated with this Florida Department of Transportation (FDOT) Locally Funded Agreement (449770-2-32-01) consists of designing four (4) new turn lanes and three (3) extensions to existing turn lanes located along the Dunlawton Avenue corridor, along with pedestrian improvements at the intersections. These turn lane improvements are anticipated to add roadway capacity at the intersection, reduce delays for traveling along Dunlawton Avenue, and reduce damage and maintenance costs for the medians.

On September 21, 2022, as part of the FY 23-28 Capital Improvements Program (CIP), the City approved the proposed budget to include 10% matching funds for the design of these turn lanes identified in Port Orange Project #PNC200. Port Orange Project #PNC200 is a bundle of seven (7) turn lane projects along Dunlawton Avenue in the current FDOT's Adopted Five Year Work Program. For this project, the City will utilize Dewberry, FDOT District 5's contract design consultant. The general location of the seven (7) turn lane projects are described and shown below.

1. Design of an eastbound right turn lane on Dunlawton Avenue at the intersection with Clyde Morris Boulevard. No additional right-of-way is anticipated for this project.
2. Design of a westbound right turn lane on Dunlawton Avenue at the intersection with City Center Parkway. No additional right-of-way is anticipated for this project.
3. Design of a westbound right turn lane on Dunlawton Avenue at the intersection with Nova Road. Additional right-of-way is needed for this project (in front of Bank of America). Once design is substantially complete, the right-of-way acquisition phase will begin. The additional right-of-way is to be obtained prior to construction being

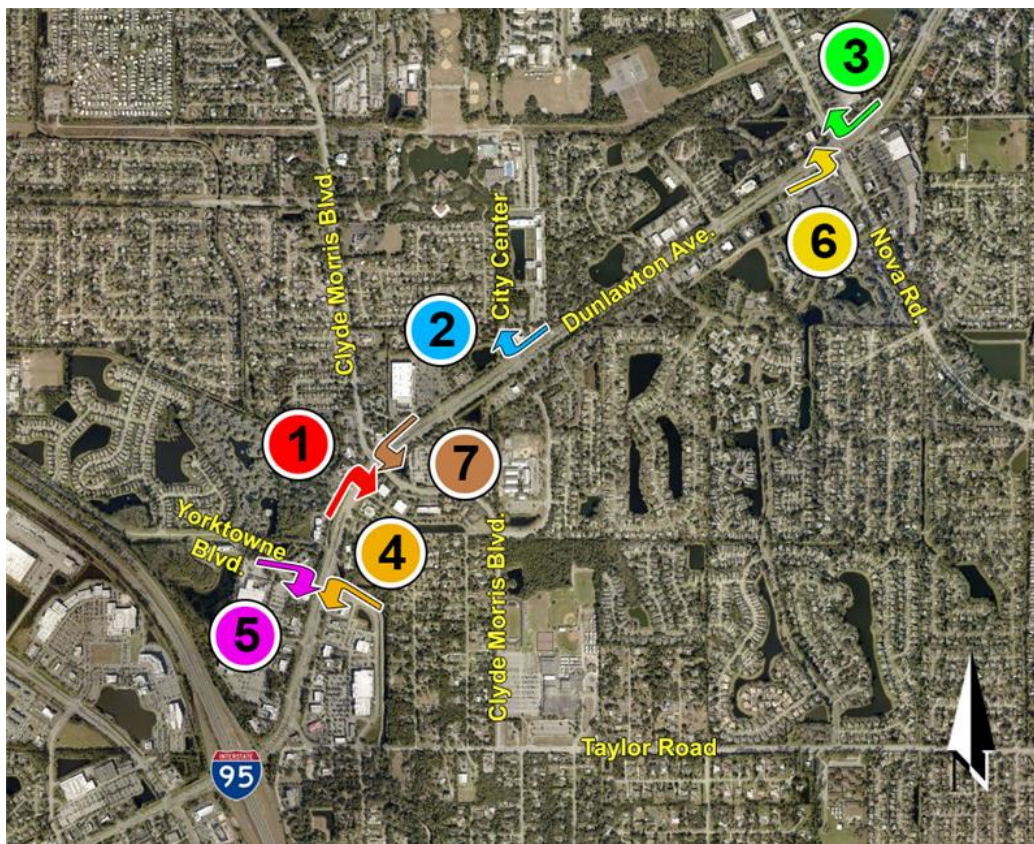
funded.

4. Design of an eastbound right-turn lane on Yorktowne Boulevard at the intersection with Dunlawton Avenue. No additional right-of-way is anticipated for this project.

5. Design of the extension of the existing westbound left-turn lane on Yorktowne Boulevard at the intersection with Dunlawton Avenue. No additional right-of-way is anticipated for this project.

6. Design of an eastbound left-turn lane extension on Dunlawton Avenue at the intersection with Nova Road. No additional right-of-way is anticipated for this project.

7. Design of a westbound left-turn lane extension on Dunlawton Avenue at the intersection with Clyde Morris Boulevard. No additional right-of-way is anticipated for this project.



The negotiated design fee for this project is \$608,880.39. The City's 10% matching funds are referred to as "Federal-Aid Funding Shortfall" in the Locally Funded Agreement. FDOT agrees to provide the federal participating share of the Design services, up to \$548,065.00. The City share shall be a minimum of 10% of the design fee plus any federal non-eligible items and cost overruns. Since Yorktowne Boulevard is not on the federal aid system, the turn lanes on Yorktowne Boulevard are not federally eligible for reimbursement and design costs associated with these two turn lanes have been added to the City's share. The estimated City share for 100% of the funding shortfall portion of the project is \$60,897.00. The agreement stipulates that the City shall provide FDOT an advance deposit in the amount of

\$60,897.00 on or before January 24, 2023. Funds are budgeted and available in Project #PNC200 for this purpose. Approval of this Resolution and Locally Funded Agreement will facilitate the issuance of a Notice to Proceed to the design consultant in January 2023. It is anticipated that the design will be completed in the summer of 2024 and construction funds will be available in 2026.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 23-02	Resolution No. 23-02.pdf
2.	Exhibit 1 to Reso 23-02 449770-2-32-01 LAP Design LFA	Exhibit 1 to Reso 23-02 449770-2-32-01 LAP Design LFA.pdf

Lisa Epstein	Created/Initiated - 12/19/2022
Tim Burman	Approved - 12/29/2022
John McKinney	Approved - 1/4/2023
Matthew Jones	Approved - 1/5/2023
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023

RESOLUTION NO. 23-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING A LOCAL AGENCY PROGRAM AGREEMENT FPN 449770-2-32-01; THE DESIGN OF THE DUNLATONW AVENUE TURNLANES BUNDLE PROJECT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST THE AGREEMENT, RESPECTIVELY, WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation and the City of Port Orange desire to facilitate the Local Agency Program Agreement for the design of the Dunlawton Avenue Turnlanes Bundle; and

WHEREAS, the State of Florida Department of Transportation has requested the City of Port Orange to execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the aforementioned project, FPN 449770-2-32-01.

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

Section 1. The City Council of the City of Port Orange, Florida, hereby approves and authorizes the Mayor and City Clerk to make, execute, and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the project FPN 449770-2-32-01, a copy of which is attached hereto as Exhibit "1".

Section 2. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Agency: City of Port Orange Vendor No: F596000412003	Fund: LF Contract Amount: \$60,897.00	Financial Project No.: 449770-2-32-01
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF PORT ORANGE**

This **AGREEMENT**, made and entered into _____,
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter referred to as the "DEPARTMENT") and the City of Port Orange (hereinafter referred to as the "LOCAL GOVERNMENT"),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached hereto, as Exhibit "B", and made apart hereof, has authorized its officers to execute this Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year Work Program, to undertake the Design services for the project described as: "Dunlawton Avenue Turn Lanes (Various Locations)", said project being known as Financial Project Number (FPN) 449770-2-32-01, hereinafter referred to as the "Project"; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work Program; and

WHEREAS, the implementation of the Project is in the interests of both the DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious, and economical for the LOCAL GOVERNMENT to provide a portion of the funds for the Design services of the Project in Fiscal Year 2022/2023, said portion of the Project being known as FPN 449770-2-32-01, and said costs hereinafter referred to as the "Federal-Aid Funding Shortfall" and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the Federal-Aid Funding Shortfall in a cost effective manner, the LOCAL GOVERNMENT desires to provide funding to the DEPARTMENT to be used for the Federal-Aid Funding Shortfall, as described in "Exhibit A".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall undertake and complete the Design services for the Project using the Federal-Aid Funding Shortfall described in Exhibit "A".

3. The DEPARTMENT shall perform the Design services for the Project. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Contribution by the LOCAL GOVERNMENT of the funds for the Design phase of the Project shall be made as follows:

(A) The LOCAL GOVERNMENT and the DEPARTMENT agree to share the cost for Design services of the Project. The LOCAL GOVERNMENT agrees to provide the Federal-Aid Funding Shortfall for the Design services and the DEPARTMENT agrees to provide the remaining federal funds for the federal participating share of the Design services, up to **\$548,065.00 (Five Hundred Forty-Eight Thousand Sixty-Five Dollars and No/100).**

(B) The share of the LOCAL GOVERNMENT shall be, at a minimum, the stated percentage of the actual Federal-Aid Funding Shortfall for the project. However, in the event the federal government fails to provide an amount which is equal to the anticipated federal participating share, the LOCAL GOVERNMENT shall be responsible for 100% of the funds required to make up the shortfall, including cost overruns and/or supplemental agreements not paid by federal funds. The DEPARTMENT is only responsible for the stated federal participating share as described in paragraph 4(A). The Project is off the "State Highway System", therefore, in accordance with Section

339.08(1), F.S., State funding cannot be used for payments of non-participating costs on this Project.

(C) Should such shortfalls occur, due to a determination that said costs are non-participating, the LOCAL GOVERNMENT agrees to provide, without delay adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the shortfall. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent there is a shortfall; however, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation of the Federal-Aid Funding Shortfall during the project and on final accounting, as provided herein below.

(D) The estimated total cost as set forth in the DEPARTMENT'S adopted work program for this Project is **\$608,962.00.00 (Six Hundred Eight Thousand Nine Hundred Sixty-Two Dollars and No/100)**. The estimated LOCAL GOVERNMENT share for 100% of the funding shortfall portion of the project is **\$60,897.00 (Sixty Thousand Eight Hundred Ninety-Seven Dollars and No/100)**.

(E) The LOCAL GOVERNMENT agrees that it will, on or before but no later than **January 24, 2023**, furnish the DEPARTMENT an advance deposit in the amount of **60,897.00 (Sixty Thousand Eight Hundred Ninety-Seven Dollars and No/100)**. The deposit shall be the total estimated Federal-Aid Funding Shortfall.

(F) If the Federal-Aid Funding Shortfall costs are in excess of the advance deposit amount, the LOCAL GOVERNMENT will provide, without delay, an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT, so that the total deposit is equal to the Federal-Aid Funding Shortfall. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Funding Shortfall costs are in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to delay of the project.

(G) If the Federal-Aid Funding Shortfall costs are less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit

exceeds the LOCAL GOVERNMENT's share of the Federal-Aid Funding Shortfall costs if such refund is requested by the LOCAL GOVERNMENT in writing.

(H) Should project modifications occur that increase the Federal-Aid Funding Shortfall costs, the LOCAL GOVERNMENT will be notified by the District accordingly. The LOCAL GOVERNMENT agrees to provide, without delay, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Federal-Aid Funding Shortfall Costs. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Funding Shortfall Costs will overrun the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below.

(I) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three-hundred and sixty (360) calendar days of final payment to the Consultant. All project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the project. The LOCAL GOVERNMENT will be notified of the final cost. The parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three-hundred and sixty (360) calendar days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(J) In the event said final accounting of total project costs is greater than the total deposits to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes (F.S.), on any invoice not paid within the forty (40) calendar days until the invoice is paid.

(K) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached escrow agreement between LOCAL GOVERNMENT, DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury.

(L) Contact Persons:

DEPARTMENT

District 5 Local Programs
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720
(386) 943-5153
D5-LocalPrograms@dot.state.fl.us

LOCAL GOVERNMENT

Lisa Epstein
Engineering Project Manager
City of Port Orange / Community Development
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5667
Lepstein@port-orange.org

5. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

6. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

7. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

8. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

10. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

- (A) The LOCAL GOVERNMENT 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 LOCAL GOVERNMENT during the term of the contract; and
- (B) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state 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 contractor/subcontractor during the contract term.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on _____, and the DEPARTMENT has executed this Agreement on _____.

CITY OF PORT ORANGE

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Name: _____

Name: C. Jack Adkins

Title: _____

Title: Director of Transportation Development

Attest:

Attest:

Executive Secretary

Legal Review:

Legal Review:

LOCAL GOVERNMENT Attorney

DEPARTMENT Attorney

Financial Provisions Approval by
Department of Comptroller on:

October 5, 2020

EXHIBIT “A”

SCOPE OF SERVICES

The City of Port Orange (Recipient) proposes to make improvements at five separate locations along Dunlawton Avenue. The first location is Dunlawton Avenue eastbound right-turn lane at Clyde Morris Boulevard and associated pedestrian intersection improvements. This location will consist of constructing a 500-ft long right-turn lane on eastbound Dunlawton Avenue at Clyde Morris Boulevard, reconfiguring drainage ditches and inlets, reconstructing sidewalk, extending the crosswalk and pavement markings improvements. Additional improvements include removal and replacement of the existing mast arm in the southwest quadrant.

The second location is Dunlawton Avenue westbound right-turn lane at City Center Parkway/Victoria Gardens Boulevard and associated pedestrian intersection improvements. This location will consist of constructing a 450-ft long right-turn lane on westbound Dunlawton Avenue at City Center Parkway and associated drainage work. Additional improvements include removal and replacement of the existing mast arm in the northeast quadrant for the northbound approach.

The third location is Dunlawton Avenue westbound right-turn lane at Nova Road and associated intersection improvements. This location will consist of constructing a 390-ft long right-turn lane on westbound Dunlawton Avenue at Nova Road and associated drainage work. Additional improvements include reconstructing sidewalk, construction of a pedestrian refuge island, extending the crosswalk and pavement markings, modification to the adjacent bank property, and modification to the existing mast arm.

The next location is left-turn lanes at Dunlawton. This location will consist of extending left-turn lanes along Dunlawton Avenue at the intersections with Nova Road (eastbound) and Clyde Morris Boulevard (westbound) an additional 250 feet and the associated improvements to pedestrian features including sidewalk and curb ramps.

The last location is a right-turn lane from eastbound Yorktowne Boulevard at Dunlawton Avenue and the left-turn lane from westbound Yorktowne Boulevard to Dunlawton Avenue and associated intersection improvements. This location will consist of creating a right-turn lane on eastbound Yorktowne Boulevard and extending the left-turn lane on westbound Yorktowne Boulevard and associated drainage work. Additional improvements include pedestrian crossing improvements and modifications to the signals.

The roadway improvements on Yorktowne Boulevard have been determined to be ineligible for Federal-aid participation since the roadway is not located on the Federal Aid System.

The City of Port Orange (Recipient) shall be responsible for the preparation and submittal of a technical memorandum providing the supporting documentation, as well as any independent reports needed, for all items on the Type 1 Categorical Exclusion (CE) Checklist. The City of Port Orange (Recipient) shall not be responsible for filling out the actual form. FDOT will prepare the checklist using the supplied information. All Principal Investigators for the

archaeological, historical, and architectural sections of the Type 1 CE shall meet the minimum requirements stated in the Florida Administrative Code (Chapter 1A-46) and the Code of Federal Regulations, 36 C.F.R. 61.

All pedestrian improvements that are designed shall meet the Americans with Disabilities Act (ADA) guidelines. The design services shall include survey and utility coordination. Right of way acquisition is anticipated at the intersection of Dunlawton Avenue and Nova Road.

The River to Sea TPO has established a 10% local match for this project. The LOCAL GOVERNMENT will be responsible for providing funds for the required 10% local match in the initial amount of **\$60,897.00**.

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EXHIBIT “B”

RESOLUTION

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C12) Resolution No. 23-03 - Approval of FDOT Locally Funded Agreement for 446285-1-32-01 Willow Run Boulevard Sidewalk from Harms Way to Clyde Morris Boulevard - Port Orange Project #OMI036

DEPARTMENT: Community Development

GOAL: 1 - Public Safety
3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 23-03 for the FDOT Locally Funded Agreement (446285-1-32-01) for design services for the Willow Run Boulevard Sidewalk from Harms Way to Clyde Morris Boulevard and authorizing the Mayor and City Clerk to execute the Agreement and Resolution.

SUMMARY: The sidewalk project associated with this Florida Department of Transportation (FDOT) Locally Funded Agreement (446285-1-32-01) consists of designing a minimum five-foot-wide sidewalk along the south side of Willow Run Boulevard from Clyde Morris Boulevard to Harms Way, a distance of 1,225 feet (0.23 miles), along with associated improvements (drainage, crosswalks, signage, lighting, and Americans with Disabilities Act (ADA) compliance). The sidewalk project is intended to improve safety for pedestrians accessing the City Center area, schools, and existing sidewalk network and eliminate the need to use the shoulder. Additional right-of-way is not anticipated for this project.



On September 21, 2022, as part of the FY 23-28 Capital Improvements Program (CIP), the City approved the proposed budget to include 10% matching funds for the design of this sidewalk project identified in Port Orange Project #OMI036. Port Orange Project #OMI036 is a bundle of three city sidewalk projects in the current FDOT's Adopted Five Year Work Program. For this project, the City will utilize Protean Design Group, FDOT District 5's contract design consultant.

The negotiated design fee for this project is \$104,028. The City's 10% matching funds are referred to as "Federal-Aid Funding Shortfall" in the Locally Funded Agreement. FDOT agrees to provide the federal participating share of the design services, up to \$93,625.00. The City share shall be a minimum of 10% of the design fee plus any federal non-eligible items and cost overruns. The estimated City share for 100% of the funding shortfall portion of the project is \$10,403.00. The agreement stipulates that the City shall provide FDOT with an advance deposit in the amount of \$10,403.00 on or before February 14, 2023. Funds are budgeted and available in Project #OMI036 for this purpose. Approval of this Resolution and Locally Funded Agreement (446285-1-32-01) will facilitate the issuance of a Notice to Proceed to the design consultant in early 2023. It is anticipated that the design will be completed in the summer of 2024 and construction funds will be available in 2026.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 23-03	Resolution No. 23-03.pdf
2.	Exhibit 1 to Reso 23-03 446285-1-32-01 LAP Design LFA	Exhibit 1 to Reso 23-03 446285-1-32-01 LAP Design LFA.pdf

Margaret Tomlinson	Created/Initiated - 12/19/2022
Tim Burman	Approved - 12/29/2022
John McKinney	Approved - 1/4/2023
Matthew Jones	Approved - 1/5/2023
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023

RESOLUTION NO. 23-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING A LOCAL AGENCY PROGRAM AGREEMENT FPN 446285-1-32-01; THE DESIGN OF THE WILLOW RUN BOULEVARD SIDEWALK FROM HARMS WAY TO CLYDE MORRIS PROJECT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST THE AGREEMENT, RESPECTIVELY, WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation and the City of Port Orange desire to facilitate the Local Agency Program Agreement for the design of the Willow Run Boulevard Sidewalk from Harms Way to Clyde Morris Boulevard; and

WHEREAS, the State of Florida Department of Transportation has requested the City of Port Orange to execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the aforementioned project, FPN 446285-1-32-01.

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

Section 1. The City Council of the City of Port Orange, Florida, hereby approves and authorizes the Mayor and City Clerk to make, execute, and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the project FPN 446285-1-32-01, a copy of which is attached hereto as Exhibit "1".

Section 2. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Agency: City of Port Orange Vendor No: F596000412003	Fund: LF Contract Amount: \$10,403.00	Financial Project No.: 446285-1-32-01
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF PORT ORANGE**

This **AGREEMENT**, made and entered into _____,
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter
referred to as the "DEPARTMENT") and the City of Port Orange (hereinafter referred to as the
"LOCAL GOVERNMENT"),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this
Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached
hereto, as Exhibit "B", and made apart hereof, has authorized its officers to execute this
Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year
Work Program, to undertake the Design services for the project described as: "Willow Run
Boulevard (from Harms Way to Clyde Morris Boulevard)", said project being known as Financial
Project Number (FPN) 446285-1-32-01, hereinafter referred to as the "Project"; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work
Program; and

WHEREAS, the implementation of the Project is in the interests of both the
DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious,
and economical for the LOCAL GOVERNMENT to provide a portion of the funds for the Design
services of the Project in Fiscal Year 2022/2023, said portion of the Project being known as
FPN 446285-1-32-01, and said costs hereinafter referred to as the "Federal-Aid Funding
Shortfall" and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the
Federal-Aid Funding Shortfall in a cost effective manner, the LOCAL GOVERNMENT desires to
provide funding to the DEPARTMENT to be used for the Federal-Aid Funding Shortfall, as
described in "Exhibit A".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall undertake and complete the Design services for the Project using the Federal-Aid Funding Shortfall described in Exhibit "A".

3. The DEPARTMENT shall perform the Design services for the Project. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Contribution by the LOCAL GOVERNMENT of the funds for the Design phase of the Project shall be made as follows:

(A) The LOCAL GOVERNMENT and the DEPARTMENT agree to share the cost for Design services of the Project. The LOCAL GOVERNMENT agrees to provide the Federal-Aid Funding Shortfall for the Design services and the DEPARTMENT agrees to provide the remaining federal funds for the federal participating share of the Design services, up to **\$93,625.00 (Ninety-Three Thousand Six Hundred Twenty-Five Dollars and No/100).**

(B) The share of the LOCAL GOVERNMENT shall be, at a minimum, the stated percentage of the actual Federal-Aid Funding Shortfall for the project. However, in the event the federal government fails to provide an amount which is equal to the anticipated federal participating share, the LOCAL GOVERNMENT shall be responsible for 100% of the funds required to make up the shortfall, including cost overruns and/or supplemental agreements not paid by federal funds. The DEPARTMENT is only responsible for the stated federal participating share as described in paragraph 4(A). The Project is off the "State Highway System", therefore, in accordance with Section

339.08(1), F.S., State funding cannot be used for payments of non-participating costs on this Project.

(C) Should such shortfalls occur, due to a determination that said costs are non-participating, the LOCAL GOVERNMENT agrees to provide, without delay adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the shortfall. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent there is a shortfall; however, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation of the Federal-Aid Funding Shortfall during the project and on final accounting, as provided herein below.

(D) The estimated total cost as set forth in the DEPARTMENT'S adopted work program for this Project is **\$104,028.00 (One Hundred Four Thousand Twenty-Eight Dollars and No/100)**. The estimated LOCAL GOVERNMENT share for 100% of the funding shortfall portion of the project is **\$10,403.00 (Ten Thousand Four Hundred Three Dollars and No/100)**.

(E) The LOCAL GOVERNMENT agrees that it will, on or before but no later than **February 14, 2023**, furnish the DEPARTMENT an advance deposit in the amount of **\$10,403.00 (Ten Thousand Four Hundred Three Dollars and No/100)**. The deposit shall be the total estimated Federal-Aid Funding Shortfall.

(F) If the Federal-Aid Funding Shortfall costs are in excess of the advance deposit amount, the LOCAL GOVERNMENT will provide, without delay, an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT, so that the total deposit is equal to the Federal-Aid Funding Shortfall. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Funding Shortfall costs are in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to delay of the project.

(G) If the Federal-Aid Funding Shortfall costs are less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit

exceeds the LOCAL GOVERNMENT's share of the Federal-Aid Funding Shortfall costs if such refund is requested by the LOCAL GOVERNMENT in writing.

(H) Should project modifications occur that increase the Federal-Aid Funding Shortfall costs, the LOCAL GOVERNMENT will be notified by the District accordingly. The LOCAL GOVERNMENT agrees to provide, without delay, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Federal-Aid Funding Shortfall Costs. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Funding Shortfall Costs will overrun the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below.

(I) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three-hundred and sixty (360) calendar days of final payment to the Consultant. All project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the project. The LOCAL GOVERNMENT will be notified of the final cost. The parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three-hundred and sixty (360) calendar days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(J) In the event said final accounting of total project costs is greater than the total deposits to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes (F.S.), on any invoice not paid within the forty (40) calendar days until the invoice is paid.

(K) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached escrow agreement between LOCAL GOVERNMENT, DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury.

(L) Contact Persons:

DEPARTMENT

District 5 Local Programs
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720
(386) 943-5153
D5-LocalPrograms@dot.state.fl.us

LOCAL GOVERNMENT

Lisa Epstein
Engineering Project Manager
City of Port Orange / Community Development
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5667
Lepstein@port-orange.org

5. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

6. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

7. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

8. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

10. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

- (A) The LOCAL GOVERNMENT 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 LOCAL GOVERNMENT during the term of the contract; and
- (B) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state 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 contractor/subcontractor during the contract term.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on _____, and the DEPARTMENT has executed this Agreement on _____.

CITY OF PORT ORANGE

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Name: _____

Name: C. Jack Adkins

Title: _____

Title: Director of Transportation Development

Attest:

Attest:

Executive Secretary

Legal Review:

Legal Review:

LOCAL GOVERNMENT Attorney

DEPARTMENT Attorney

Financial Provisions Approval by
Department of Comptroller on:

October 5, 2020

EXHIBIT "A"

SCOPE OF SERVICES

The scope of the project is to design five to eight-foot-wide sidewalks along Willow Run Boulevard in Port Orange to address an existing sidewalk gap, as well as to provide improvements such as drainage, crosswalk installation, signage, and lighting. Proposed improvements shall enhance pedestrian safety and overall connectivity to the surrounding communities.

The project limits will include new sidewalk along the south side of Willow Run Boulevard from Harms Way to Clyde Morris Boulevard. The total length is approximately 1,300 feet. The project will also include pedestrian improvements at the existing signal on Willow Run Boulevard at Clyde Morris Boulevard.

The City shall be responsible for the preparation and submittal of a technical memorandum providing the supporting documentation, as well as any independent reports needed, for all items on the Type 1 Categorical Exclusion (CE) Checklist. The City shall not be responsible for filling out the actual form. FDOT will prepare the checklist using the supplied information. All Principal Investigators for the archaeological, historical, and architectural sections of the Type 1 CE shall meet the minimum requirements stated in the Florida Administrative Code (Chapter 1A-46) and the Code of Federal Regulations, 36 C.F.R. 61.

All pedestrian improvements that are designed shall meet the Americans with Disabilities Act (ADA) guidelines. The design services shall include survey and utility coordination. All proposed improvements shall be within City of Port Orange and Volusia County Right of Way or easements.

The River to Sea TPO has established a 10% local match for this project. The LOCAL GOVERNMENT will be responsible for providing funds for the required 10% local match in the initial amount of **\$10,403.00**.

The remainder of this page intentionally left blank.

EXHIBIT “B”

RESOLUTION

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C13) Resolution No. 23-04 - Approval of FDOT Locally Funded Agreement for 448772-1-32-01 Williamson Boulevard and Willow Run Boulevard Sidewalks - Port Orange Project #OMI036

DEPARTMENT: Community Development

GOAL: 1 - Public Safety
3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 23-04 for the FDOT Locally Funded Agreement (448772-1-32-01) for design services for the Williamson Boulevard and Willow Run Boulevard Sidewalks authorizing the Mayor and City Clerk to execute the Agreement and Resolution.

SUMMARY: The sidewalk project associated with this Florida Department of Transportation (FDOT) Locally Funded Agreement (448772-1-32-01) consists of designing a minimum eight-foot-wide sidewalk along the east side of Williamson Boulevard from Town Park Subdivision to Willow Run Boulevard a distance of 1,000 feet (0.18 miles) and a minimum eight-foot-wide sidewalk along the north side of Willow Run Boulevard from Williamson Boulevard to Chardonnay Drive a distance of 1,100 feet (0.20 miles), intersection improvements for pedestrian crossings on Willow Run Boulevard at Chardonnay Drive and Hidden Lake Drive, and associated improvements (drainage, crosswalks, signage, lighting, and Americans with Disabilities Act (ADA) compliance). Additional right-of-way is not anticipated for this project.



On September 21, 2022, as part of the FY 23-28 Capital Improvements Program (CIP), the City approved the proposed budget to include 10% matching funds for the design of this sidewalk project identified in Port Orange Project #OMI036. Port Orange Project #OMI036 is a bundle of three city sidewalk projects in the current FDOT's Adopted Five Year Work Program. For this project, the City will utilize Protean Design Group, FDOT District 5's contract design consultant.

The negotiated design fee for this project is \$173,980.00. The City's 10% matching funds are referred to as "Federal-Aid Funding Shortfall" in the Locally Funded Agreement. FDOT agrees to provide the federal participating share of the Design services, up to \$156,582.00. The City share shall be a minimum of 10% of the design fee plus any federal non-eligible items and cost overruns. The estimated City share for 100% of the funding shortfall portion of the project is \$17,398.00. The agreement stipulates that the City shall provide FDOT with an advance deposit in the amount of \$17,398.00 on or before February 14, 2023. Funds are budgeted and available in Project #OMI036 for this purpose. Approval of this Resolution and Locally Funded Agreement (448772-1-32-01) will facilitate the issuance of a Notice to Proceed to the design consultant in early 2023. It is anticipated that the design will be completed in the summer of 2024 and construction funds will be available in 2026.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 23-04	Resolution No. 23-04.pdf
2.	Exhibit 1 to Reso No. 23-04 448772-1-32-01 LAP Design LFA	448772-1-32-01 LAP Design LFA.pdf

Margaret Tomlinson	Created/Initiated - 12/19/2022
Tim Burman	Approved - 12/29/2022
John McKinney	Approved - 1/4/2023
Matthew Jones	Approved - 1/5/2023
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023

RESOLUTION NO. 23-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING A LOCAL AGENCY PROGRAM AGREEMENT FPN 448772-1-32-01; THE DESIGN OF THE WILLIAMSON BOULEVARD AND WILLOW RUN BOULEVARD SIDEWALKS PROJECT; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST THE AGREEMENT, RESPECTIVELY, WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the State of Florida Department of Transportation and the City of Port Orange desire to facilitate the Local Agency Program Agreement for the design of the Williamson Boulevard and Willow Run Boulevard Sidewalks; and

WHEREAS, the State of Florida Department of Transportation has requested the City of Port Orange to execute and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the aforementioned project, FPN 448772-1-32-01.

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

Section 1. The City Council of the City of Port Orange, Florida, hereby approves and authorizes the Mayor and City Clerk to make, execute, and deliver to the State of Florida Department of Transportation the Local Agency Program Agreement for the project FPN 448772-1-32-01, a copy of which is attached hereto as Exhibit "1".

Section 2. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Agency: City of Port Orange Vendor No: F596000412003	Fund: LF Contract Amount: \$17,398.00	Financial Project No.: 448772-1-32-01
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**LOCALLY FUNDED AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF PORT ORANGE**

This **AGREEMENT**, made and entered into _____,
by and between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (hereinafter
referred to as the "DEPARTMENT") and the City of Port Orange (hereinafter referred to as the
"LOCAL GOVERNMENT"),

WITNESSETH:

WHEREAS, the Parties have been granted specific legislative authority to enter into this
Agreement pursuant to Section 339.12, Florida Statutes; and

WHEREAS, the LOCAL GOVERNMENT, by Resolution, a copy of which is attached
hereto, as Exhibit "B", and made apart hereof, has authorized its officers to execute this
Agreement on its behalf; and

WHEREAS, the DEPARTMENT is prepared, in accordance with its Adopted Five Year
Work Program, to undertake the Design services for the project described as: "Williamson
Boulevard / Willow Run Boulevard (from South of Town Park Drive to Chardonnay Drive)", said
project being known as Financial Project Number (FPN) 448772-1-32-01, hereinafter referred to
as the "Project"; and

WHEREAS, the Project is not revenue producing and is contained in the Adopted Work
Program; and

WHEREAS, the implementation of the Project is in the interests of both the
DEPARTMENT and the LOCAL GOVERNMENT and it would be most practical, expeditious,
and economical for the LOCAL GOVERNMENT to provide a portion of the funds for the Design
services of the Project in Fiscal Year 2022/2023, said portion of the Project being known as
FPN 448772-1-32-01, and said costs hereinafter referred to as the "Federal-Aid Funding
Shortfall" and

WHEREAS, in order to maintain uniformity throughout the Project and to provide for the
Federal-Aid Funding Shortfall in a cost effective manner, the LOCAL GOVERNMENT desires to
provide funding to the DEPARTMENT to be used for the Federal-Aid Funding Shortfall, as
described in "Exhibit A".

NOW, THEREFORE, in consideration of the mutual benefits to be derived from the joint participation of this Agreement, the parties agree as follows:

1. The term of this Agreement shall begin upon the date of signature of the last party to sign and shall remain in full force and effect through completion of all services required of the LOCAL GOVERNMENT. The DEPARTMENT may, at any time and at any stage, amend or terminate the Project in whole or in part if the DEPARTMENT determines that such action is in the best interests of the public.

2. The DEPARTMENT shall undertake and complete the Design services for the Project using the Federal-Aid Funding Shortfall described in Exhibit "A".

3. The DEPARTMENT shall perform the Design services for the Project. Nothing herein shall be construed as requiring the DEPARTMENT to perform any activity which is outside the scope of the Project as previously defined. Except as specifically stated otherwise in this Agreement, all such activities shall be performed by such entities, at such times, in such manner, under such conditions, and pursuant to such standards as the DEPARTMENT, in its sole discretion, deems appropriate. The LOCAL GOVERNMENT shall not have any jurisdiction or control over the DEPARTMENT'S activities, except as specifically stated in this Agreement. The LOCAL GOVERNMENT shall be entitled to be advised of the progress of the Project at reasonable intervals upon request.

4. Contribution by the LOCAL GOVERNMENT of the funds for the Design phase of the Project shall be made as follows:

(A) The LOCAL GOVERNMENT and the DEPARTMENT agree to share the cost for Design services of the Project. The LOCAL GOVERNMENT agrees to provide the Federal-Aid Funding Shortfall for the Design services and the DEPARTMENT agrees to provide the remaining federal funds for the federal participating share of the Design services, up to **\$156,582.00 (One Hundred Fifty-Six Thousand Five Hundred Eighty-Two Dollars and No/100)**.

(B) The share of the LOCAL GOVERNMENT shall be, at a minimum, the stated percentage of the actual Federal-Aid Funding Shortfall for the project. However, in the event the federal government fails to provide an amount which is equal to the anticipated federal participating share, the LOCAL GOVERNMENT shall be responsible for 100% of the funds required to make up the shortfall, including cost overruns and/or supplemental agreements not paid by federal funds. The DEPARTMENT is only responsible for the stated federal participating share as described in paragraph 4(A). The Project is off the "State Highway System", therefore, in accordance with Section

339.08(1), F.S., State funding cannot be used for payments of non-participating costs on this Project.

(C) Should such shortfalls occur, due to a determination that said costs are non-participating, the LOCAL GOVERNMENT agrees to provide, without delay adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the shortfall. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent there is a shortfall; however, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation of the Federal-Aid Funding Shortfall during the project and on final accounting, as provided herein below.

(D) The estimated total cost as set forth in the DEPARTMENT'S adopted work program for this Project is **\$173,980.00 (One Hundred Seventy-Three Thousand Nine Hundred Eighty Dollars and No/100)**. The estimated LOCAL GOVERNMENT share for 100% of the funding shortfall portion of the project is **\$17,398.00 (Seventeen Thousand Three Hundred Ninety-Eight Dollars and No/100)**.

(E) The LOCAL GOVERNMENT agrees that it will, on or before but no later than **February 14, 2023**, furnish the DEPARTMENT an advance deposit in the amount of **\$17,398.00 (Seventeen Thousand Three Hundred Ninety-Eight Dollars and No/100)**. The deposit shall be the total estimated Federal-Aid Funding Shortfall.

(F) If the Federal-Aid Funding Shortfall costs are in excess of the advance deposit amount, the LOCAL GOVERNMENT will provide, without delay, an additional deposit within fourteen (14) calendar days of notification from the DEPARTMENT, so that the total deposit is equal to the Federal-Aid Funding Shortfall. The DEPARTMENT will notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Funding Shortfall costs are in excess of the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below. If the LOCAL GOVERNMENT cannot provide the additional deposit within fourteen (14) days, a letter must be submitted to and approved by the DEPARTMENT's project manager indicating when the deposit will be made. The LOCAL GOVERNMENT understands the request and approval of the additional time could delay the project, and additional costs may be incurred due to delay of the project.

(G) If the Federal-Aid Funding Shortfall costs are less than the advance deposit amount, the DEPARTMENT will refund the amount that the advance deposit

exceeds the LOCAL GOVERNMENT's share of the Federal-Aid Funding Shortfall costs if such refund is requested by the LOCAL GOVERNMENT in writing.

(H) Should project modifications occur that increase the Federal-Aid Funding Shortfall costs, the LOCAL GOVERNMENT will be notified by the District accordingly. The LOCAL GOVERNMENT agrees to provide, without delay, adequate funds to ensure that cash on deposit with the DEPARTMENT is sufficient to fully fund the Federal-Aid Funding Shortfall Costs. The DEPARTMENT shall notify the LOCAL GOVERNMENT as soon as it becomes apparent the Federal-Aid Funding Shortfall Costs will overrun the advance deposit amount. However, failure of the DEPARTMENT to so notify the LOCAL GOVERNMENT shall not relieve the LOCAL GOVERNMENT from its obligation to pay for its full participation on final accounting as provided herein below.

(I) The DEPARTMENT intends to have its final and complete accounting of all costs incurred in connection with the work performed hereunder within three-hundred and sixty (360) calendar days of final payment to the Consultant. All project cost records and accounts shall be subject to audit by a representative of the LOCAL GOVERNMENT for a period of three (3) years after final close out of the project. The LOCAL GOVERNMENT will be notified of the final cost. The parties agree that in the event the final accounting of total project costs pursuant to the terms of this agreement is less than the total deposits to date, a refund of the excess will be made by the DEPARTMENT to the LOCAL GOVERNMENT. If the final accounting is not performed within three-hundred and sixty (360) calendar days, the LOCAL GOVERNMENT is not relieved from its obligation to pay.

(J) In the event said final accounting of total project costs is greater than the total deposits to date, the LOCAL GOVERNMENT will pay the additional amount within forty (40) calendar days from the date of the invoice. The LOCAL GOVERNMENT agrees to pay interest at a rate as established pursuant to Section 55.03, Florida Statutes (F.S.), on any invoice not paid within the forty (40) calendar days until the invoice is paid.

(K) The payment of funds under this Locally Funded Agreement will be made directly to the DEPARTMENT for deposit and as provided in the attached escrow agreement between LOCAL GOVERNMENT, DEPARTMENT and the State of Florida, Department of Financial Services, Division of Treasury.

(L) Contact Persons:

DEPARTMENT

District 5 Local Programs
719 South Woodland Boulevard, M.S. 4-520
DeLand, Florida 32720
(386) 943-5153
D5-LocalPrograms@dot.state.fl.us

LOCAL GOVERNMENT

Lisa Epstein
Engineering Project Manager
City of Port Orange / Community Development
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5667
Lepstein@port-orange.org

5. All tracings, plans, specifications, maps, models, reports, or other work product prepared or obtained under this Agreement shall be considered works made for hire for the DEPARTMENT and shall at all times be and remain the property of the DEPARTMENT without restriction or limitation on their use. The LOCAL GOVERNMENT may, however, inspect those materials upon providing reasonable advance notice to the DEPARTMENT.

6. In the event this Agreement is in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) or has a term for a period of more than one (1) year, the provisions of Chapter 339.135(6)(a), Florida Statutes, are hereby incorporated as follows:

“The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one (1) year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of \$25,000.00 and which have a term for a period of more than one (1) year.”

7. The DEPARTMENT may unilaterally cancel this Agreement for refusal by the LOCAL GOVERNMENT to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

8. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof, and incorporates and includes all proper negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement.

10. The DEPARTMENT and the LOCAL GOVERNMENT acknowledge and agree to the following:

- (A) The LOCAL GOVERNMENT 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 LOCAL GOVERNMENT during the term of the contract; and
- (B) The LOCAL GOVERNMENT shall expressly require any contractors and subcontractors performing work or providing services pursuant to the state 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 contractor/subcontractor during the contract term.

The remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the LOCAL GOVERNMENT has executed this Agreement on _____, and the DEPARTMENT has executed this Agreement on _____.

CITY OF PORT ORANGE

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

By: _____

By: _____

Name: _____

Name: C. Jack Adkins

Title: _____

Title: Director of Transportation Development

Attest:

Attest:

Executive Secretary

Legal Review:

Legal Review:

LOCAL GOVERNMENT Attorney

DEPARTMENT Attorney

Financial Provisions Approval by
Department of Comptroller on:

October 5, 2020

EXHIBIT “A”

SCOPE OF SERVICES

The scope of the project is to design a minimum eight-foot-wide sidewalk along two roadways in the City of Port Orange to address existing sidewalk gaps, as well as to provide improvements such as drainage, crosswalk installation, signage, and lighting. Proposed improvements shall enhance pedestrian safety and overall connectivity to the surrounding communities.

The project limits will include:

- New sidewalk along the east side of Williamson Boulevard from the south end of Town Park Subdivision to Willow Run Boulevard. The total length is approximately 1,000 feet. The sidewalk will connect to existing sidewalk at the south end of the subdivision and end at the signalized intersection at Willow Run Boulevard.
- New sidewalk along the north side of Willow Run Boulevard from Williamson Boulevard to Chardonay Drive. The total length is approximately 1,100 feet.
- Intersection improvements on Willow Run Boulevard at Chardonay Drive and Hidden Lake Drive to provide pedestrian accommodations and safety, such as signage and lighting.
- Rectangular Rapid-Flashing Beacon (RRFB) and associated signing and pavement markings at the intersection of Willow Run Boulevard at Hidden Lake Drive.

The City shall be responsible for the preparation and submittal of a technical memorandum providing the supporting documentation, as well as any independent reports needed, for all items on the Type 1 Categorical Exclusion (CE) Checklist. The City shall not be responsible for filling out the actual form. FDOT will prepare the checklist using the supplied information. All Principal Investigators for the archaeological, historical, and architectural sections of the Type 1 CE shall meet the minimum requirements stated in the Florida Administrative Code (Chapter 1A-46) and the Code of Federal Regulations, 36 C.F.R. 61.

All pedestrian improvements that are designed shall meet the Americans with Disabilities Act (ADA) guidelines. The design services shall include survey and utility coordination. All proposed improvements shall be within City of Port Orange and Volusia County Right of Way or easements.

The River to Sea TPO has established a 10% local match for this project. The LOCAL GOVERNMENT will be responsible for providing funds for the required 10% local match in the initial amount of **\$17,398.00**.

The remainder of this page intentionally left blank.

EXHIBIT “B”

RESOLUTION

The Resolution, or other official authorization, authorizing entry into this Agreement is attached and incorporated into this Agreement.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C14) Resolution No. 23-07 - Conveyance of the City's Mineral Rights for Land Adjacent to McDonald Road through a Quit Claim Deed

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Resolution No. 23-07.

SUMMARY: In 2007, the City of Port Orange acquired a 35,560 square-foot parcel of land located between Sugar Mill Elementary and a vacant residential property located along McDonald Road (see location map) as part of an approval for a subdivision variance. The city obtained ownership of the property. However, the applicant did not follow through with the subdivision of his land and the application has expired. The City's acquisition of the property was in anticipation of using the land for retention associated with Volusia County's planned two-lane roadway extension of Madeline Avenue from its current terminus to Ridgewood Avenue (US1). Since 2007, private development in South Daytona along with permitting the railroad crossing resulted in the Madeline Avenue extension project not being pursued.



In 2020, the City Council approved Resolution No. 20-59 which conveyed the deed for the 35,560 square-foot parcel back to the former property owner so it could be included as part of the 34.6-acre Madeline Commons Planned Unit Development (PUD) project. While the Quit Claim Deed deeded back the property, the mineral rights were not included. Therefore, the City still holds the mineral rights on the 35,560 square-foot parcel.

Staff supports transferring the mineral rights for the 35,560 square-foot parcel back to the original property owner since the intent of the property is to be developed for stormwater for the extension of Madeline Avenue within the project boundary, and the City will obtain all the required easements at the time it is developed. The residential subdivision plat is currently under staff review and will come before the City Council in early 2023.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 23-07	Resolution No. 23-07.pdf
2.	Quitclaim Deed for Mineral and	QCD for Mineral and Subsurface for Madeline

	Subsurface	Commons.pdf
3.	10-20-20 Agenda Item for Reso 20-59	10-20-20 Agenda Item for Reso 20-59.pdf
4.	Quit-Claim Deed 10-21-20	Quit-Claim Deed 10-21-20.pdf
5.	Location map for quit-claim deed	Location map for quit-claim deed.pdf

Penelope Cruz

Tim Burman

Shannon Balmer

Wayne Clark

Robin Fenwick

Created/Initiated - 12/27/2022

Approved - 12/29/2022

Approved - 1/5/2023

Approved - 1/12/2023

Final Approval - 1/12/2023

RESOLUTION NO. 23-07

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE CONVEYANCE OF THE MINERAL RIGHTS ASSOCIATED WITH A PARCEL OF LAND ADJACENT TO MCDONALD ROAD, WHERE THE PARCEL WAS PREVIOUSLY CONVEYED BACK TO THE PRIOR OWNER; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A QUIT CLAIM DEED; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 2009 Bobby Vaught (Prior Owner”) conveyed real property to the City of Port Orange by Quitclaim Deed, of record in Official Records Book 6441 Page 4694, Public Records, Volusia County, Florida, said property being more particularly described in the above-referenced quitclaim deed (“Subject Parcel”); and

WHEREAS, the Prior Owner rescinded the request for a minor subdivision and the City conveyed the real property back to the Prior Owner by Quitclaim Deed, approved by Resolution No. 20-59 and of record in Official Records Book 7930, Page 855, Public Records, Volusia County, Florida; and

WHEREAS, in the review of the current development project that includes the Subject Parcel, it was discovered the mineral rights were unintentionally reserved, and not expressly released in the above-referenced quitclaim deed, as required by Section 270.11, Florida Statutes.; and

WHEREAS, the City Council of the City of Port Orange has determined that the citizens of Port Orange will not be adversely affected by the conveyance and release of the mineral rights associated with the Subject Parcel and it is in the best interest and welfare of the City of Port Orange and the citizens thereof to convey said mineral rights associated with this parcel of land.

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

Section 1. The conveyance and release of the subsurface mineral rights, including but not limited to phosphate, minerals, metals, and petroleum, pursuant to Section 270.11, Florida Statutes, in connection with the Subject Parcel is hereby approved.

Section 2. The Mayor and City Clerk are hereby authorized and directed to execute the Mineral Quit Claim Deed upon approval by the City Attorney.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held invalid or unconstitutional by any court, such portion or application shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions or application thereof.

Section 4. That all resolutions made in conflict with this resolution are hereby repealed.

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on this _____ day of _____ 2023

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

Instrument Prepared by:
Shannon K. Balmer
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

Portion of PID No. 6337-01-13-0017

Cross-reference to Instrument No.2020202647,
Official Records Book 7930, Page 855,
Public Records, Volusia County, Florida

MINERAL QUIT CLAIM DEED

THIS MINERAL QUITCLAIM DEED, made this ____ day of _____, A.D. 2023, between the **CITY OF PORT ORANGE**, a Florida municipal corporation, of the County of Volusia in the State of Florida, whose address is 1000 City Center Circle, Port Orange, FL 32129, hereinafter “Grantor” and **MADELINE COMMONS, LLC**, a Delaware limited liability company whose address is 36 Charming Way, Lakewood, NJ 0870 hereinafter “Grantee”.

WITNESSETH

That the said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable consideration paid by the said Grantee, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release, quitclaim, and convey unto Grantee, and its successors and assigns forever, all the right, title, interest which Grantor has in and to subsurface mineral rights, including but not limited to phosphate, minerals, metals or petroleum, pursuant to Section 270.11, Florida Statutes, in connection with the land which the said Grantor previously conveyed to Grantee’s predecessor-in-interest, of record in Official Records Book 7930, Page 855, Public Records, Volusia County, Florida, said lands lying and being in the County of Volusia and State of Florida described as follows to-wit:

SEE ATTACHED EXHIBIT “A”

Together with all rights and ingress and egress to the said lands incident to Grantor’s subsurface rights herein.

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the said Grantor, either in law or equity, to the only proper use, benefit and behoof of the said Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, the said Grantor has signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

**GRANTOR: CITY OF PORT ORANGE,
A Florida municipal corporation**

1st witness: _____

By: _____
MAYOR DONALD O. BURNETTE

Printed name: _____

2nd witness: _____

Printed name: _____

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

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 _____, 2023, by Donald O. Burnette Mayor, and Robin L. Fenwick, City Clerk, both on behalf of said entity. They are personally known to me and did not take an oath.

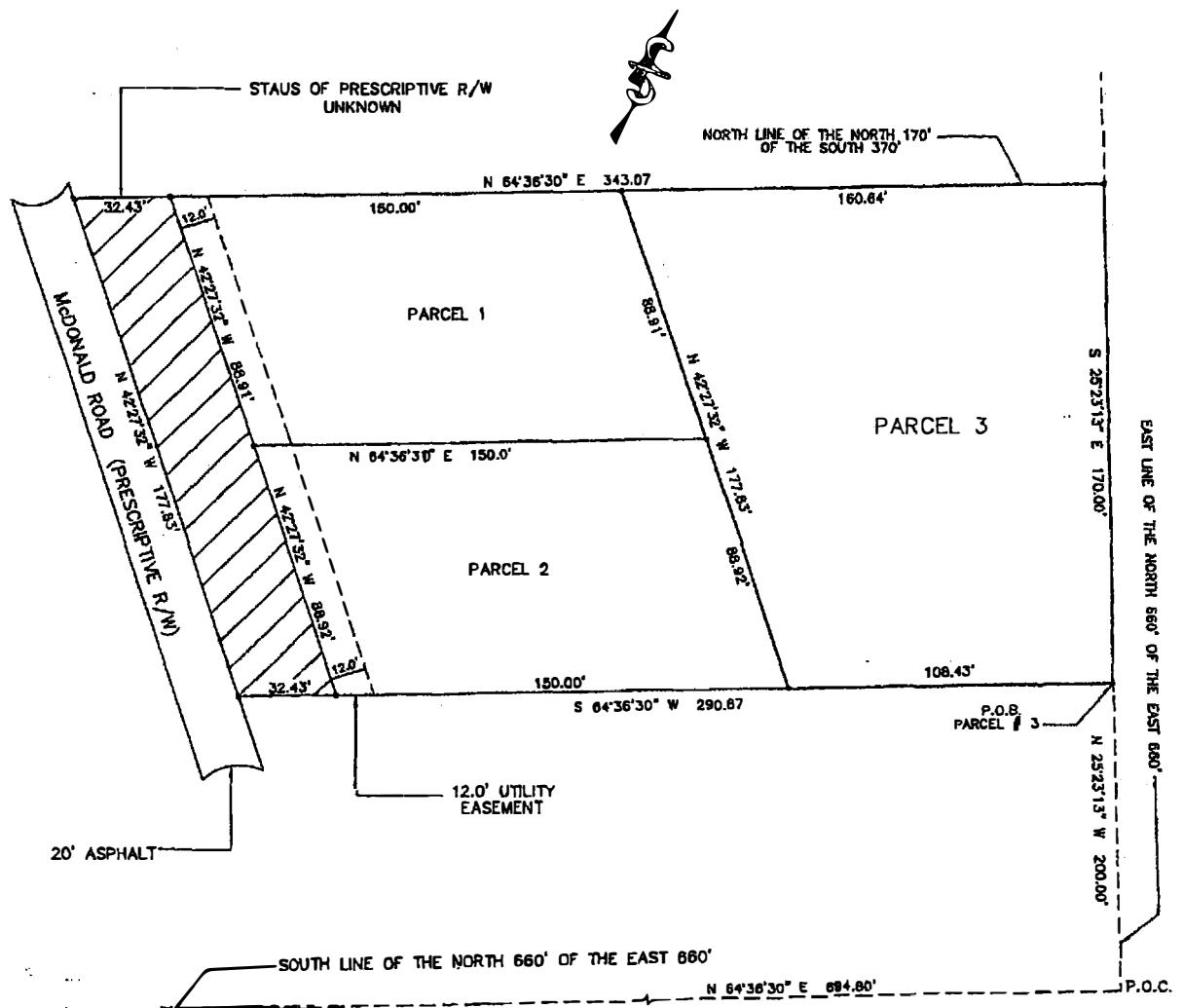
Notary Public
Commission No: _____

SPRUCE CREEK LAND SURVEYORS INC. 3869 SOUTH NOVA ROAD, PORT ORANGE, FL. 32127 PHONE - (386) 767-0740

DATE 10-26-2007	JOB NO. N/A	SCALE 1" = 40'	FIELD BOOK N/A	RECORD BY KEN	SHEET 1 OF 2
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REFERENCE; PARCEL # 3

EXHIBIT A



*ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES. PER CHAPTER 61G17-6.003, FLORIDA ADMINISTRATIVE CODE.

VALID ONLY WITH SHEET 2 OF 2

STANDARD LEGEND

L.S. L.B. R/W S/W D/W A/C RND. REC. DESO. CALC. F.M. I.P. I.P.C.	LICENSED SURVEYOR LICENSED BUSINESS RIGHT-OF-WAY SIDEWALK AIR CONDITIONER FOUND RECOVERED DESCRIPTION CALL CALCULATED FIELD MEASUREMENT IRON ROD IRON PIPE IRON ROD & CAP.	C.M. CONC. ASPH. DRAIN. UTILITY AU UG E.S. W.S. S.S. SECT. TOWNSHIP RNG.	CONCRETE MONUMENT CONCRETE ASPHALT DRAINAGE UTILITY AERIAL UTILITY LINE UNDERGROUND ELECTRIC SERVICE WATER SERVICE SEWER SERVICE SECTION TOWNSHIP RANGE	ESWT. C. RES. A R L C.B. E.L. EX. PR. E.P. S.D.C. M.H.	EASEMENT CENTER LINE RESIDENCE CENTRAL ANGLE RADIUS / RADIAL ARC DISTANCE CHORD DISTANCE CHORD BEARING ELEVATION EXISTING PROPOSED EDGE OF PAVEMENT BACK OF CURB MANHOLE	F.F.E. P.O.C. P.O.B. P.C.P. P.R.M. C.P. TYP P.C. P.T. P.R.C. P/P U.S. P.C. O.R.	FINISHED FLOOR ELEVATION POINT OF COMMENCEMENT POINT OF BEGINNING PERMANENT CONTROL POINT PERMANENT REFERENCE MONUMENT CHAIN LINK FENCE TYPICAL POINT OF CURVATURE POINT OF TANGENCY POINT OF REVERSE CURVATURE UTILITY POLE MAP BOOK PAGE OFFICIAL RECORDS
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SPRUCE CREEK LAND SURVEYORS INC.
3869 SOUTH NOVA ROAD, PORT ORANGE FLORIDA. 32127
PHONE — (386) 767-0740

GENERAL NOTES

- 1- BEARINGS REFER TO ASSUMED DATUM EAST LINE OF THE NORTH 880' OF THE EAST 660'
- 2- THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF AN ABSTRACT. THERE MAY BE ADDITIONAL EASEMENTS, RESTRICTIONS AND/OR OTHER MATTERS NOT SHOWN THAT COULD AFFECT THIS PROPERTY, THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY
- 3- THIS SURVEY IS BASED ON EXISTING FIELD MONUMENTATION.
- 4- NO UNDERGROUND UTILITIES WERE LOCATED EXCEPT AS SHOWN.
- 5- NO UNDERGROUND FOUNDATIONS WERE LOCATED.
- 6- DIMENSIONS SHOWN ARE IN FEET AND DECIMALS THEREOF.
- 7- UNLESS OTHERWISE NOTED, BEARINGS AND DISTANCES AGREE WITH DEED PROVIDED OR RECORD PLAT.
- 8- THE EXPECTED USE OF LAND AS CLASSIFIED IN THE MINIMUM TECHNICAL STANDARDS IS THE MINIMUM RELATIVE ACCURACY FOR THIS TYPE OF SURVEY IS 1 FOOT THE ACCURACY OBTAINED BY MEASUREMENT WITH AN ELECTRONIC TOTAL STATION AND CALCULATION OF A CLOSED GEOMETRIC FIGURE WAS FOUND TO EXCEED THIS REQUIREMENT.
- 9- VALID ONLY WITH ORIGINAL SIGNATURE AND RAISED SEAL OF A FLORIDA SURVEYOR AND MAPPER.
- 10- ELEVATIONS REFER TO
- 11- LANDSCAPING TO MEET REQUIREMENTS
- 12- FLOOD ZONE COMMUNITY # DATED
- 13- CERTIFIED AS MEETING THE MINIMUM TECHNICAL STANDARDS (61G17-8 F.A.C.) SET FORTH BY FLORIDA BOARD OF SURVEYORS AND MAPPERS PURSUANT TO SECTION 472-027 FLORIDA STATUTES.
- 14- LEGAL DESCRIPTION PROVIDED BY SPRUCE CREEK LAND SURVEYING

PREPARED FOR THE SOLE USE AND EXCLUSIVE BENEFIT OF THE INDIVIDUAL AND/OR ENTITIES LISTED BELOW, AND SHOULD NOT BE RELIED UPON BY ANY OTHER INDIVIDUAL OR ENTITY

CITY OF PORT ORANGE

REFERENCE: PARCEL # 3

Legal description: A portion of the North 170 feet of the South 370 feet of the North 660 feet of the East 660 feet, East of McDonald Road of Dunlawton Sugar House Reservation, as recorded in Map Book M, Page 187 of the Public Records of Volusia County, Florida and being described as follows:

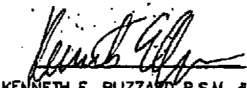
Commence at the Southeast corner of the North 660 feet of the East 660 feet of said Dunlawton Sugar House Reservation; Thence N 25° 25' 13" W along the East line of said parcel a distance of 200 feet to the Point of Beginning; Thence departing said East line S 64° 36' 30" W a distance of 108.43 feet; Thence N 42° 27' 32" W a distance of 177.83 feet to the North line of the North 170 feet of the South 370 feet; Thence along said North line N 64° 36' 30" E a distance of 160.64 feet to the East line of the North 660 feet of the East 660 feet; Thence along said East line S 25° 25' 13" E a distance of 170.00 feet to the Point of Beginning.

VALID ONLY WITH SHEET 1 OF 2

JOB NO. N/A

ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES, PER CHAPTER 61G17-8.001, FLORIDA ADMINISTRATIVE CODE

SHEET 2 OF 2

	DATE	SURVEYORS CERTIFICATE
SKETCH OF DESCRIPTION	10-26-2007	 KENNETH E. BLIZZARD P.S.M. # 3865 CORPORATE # L.B. 4567 VALID ONLY WITH EMBOSSED SEAL.
BOUNDARY SURVEY		
PROPOSED HOUSE LOCATION		
TOPOGRAPHIC SURVEY		
FOUNDATION SURVEY		
FINAL SURVEY		
RECERTIFICATION SURVEY		

C.A.C. CALCULATED F.M. FIELD MEASUREMENT I.R. IRON ROD I.P. IRON PIPE I.R.C. IRON ROD & CAP.	S.S. S.E.C.T. TYP. TOWNSHIP R.N.G. RANGE	S.E.C.T. SECTION TOWNSHIP RANGE	E.L. EXISTING P.E. PROPOSED E.P. EDGE OF PAVEMENT S.O.C. BACK OF CURB M.H. MANHOLE	P.L. POINT OF INTERSECTION P.R.C. POINT OF REVERSE CURVATURE P/P UTILITY POLE M.S. MAP BOOK P.C. PAGE O.R. OFFICIAL RECORDS
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CITY COUNCIL AGENDA ITEM

REQUESTED COUNCIL MEETING DATE 10/20/2020

Consent item: No

SUBJECT: (C10) Resolution No. 20-59 - Approving the Conveyance of a Parcel of Land Adjacent to McDonald Road and Releasing the Associated Easement through a Quit Claim Deed

DEPARTMENT: Community Development

GOAL:

RECOMMENDED MOTION: Move to approve Resolution No. 20-59.

SUMMARY: In 2007, the City of Port Orange acquired a 35,560 square-foot parcel of land located between Sugar Mill Elementary and vacant residential property along McDonald Road (see location map) as part of an approval for a subdivision variance. The City obtained the land; however, the applicant did not follow through with the subdivision of his land and the application has expired. The City's acquisition of the property was in anticipation of using the land for retention associated with Volusia County's planned two-lane roadway extension of Madeline Avenue from its current terminus to Ridgewood Avenue (US1). Since 2007, private development in South Daytona along with permitting the railroad crossing resulted in the extension project not being pursued.

The request is to deed back the 35,560 square-foot parcel to the former property owner so he can combine it with the land he currently owns that will be included as part of 34.6-acre proposed residential Planned Unit Development (PUD). As part of the proposed PUD, Madeline Avenue will be extended to the east side of PUD property as a local City roadway and according to the proposed concept plan for the PUD, the 35,560 square-foot parcel will be part of a retention area for the segment of Madeline Avenue the developer will be required to build. As with any drainage facility, a City easement will be required to allow the City to inspect the drainage facility to ensure maintenance is completed and to make necessary corrections if warranted.

Staff is in support of transferring the 35,560 square-foot parcel back to the original property owner since the intent of the property is to be developed for stormwater for the extension of Madeline Avenue within the project boundary, and the City will obtain all the required easements at the time it is developed. The proposed PUD application is currently under staff review and will come before the City Council in early 2021.

Project No.: Funding Account No.:

Presenter: Tim Burman

ATTACHMENTS:

1.	Resolution No. 20-59 with exhibit	Reso for McDonald Rd property - Madeline Commons project.pdf
2.	Quit-claim Deed	Quitclaim Deed for Resolution 20-59.pdf
3.	Location Map	Exhibit A - Location Map.docx

Melanie Schmotzer
Tim Burman
Shannon Balmer
Jamie Miller
Robin Fenwick

Created/Initiated - 10/7/2020
Approved - 10/7/2020
Approved - 10/13/2020
Approved - 10/13/2020
Final Approval - 10/13/2020

Prepared by:
Shannon K. Balmer,
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

A portion of Parcel No. **6337-01-13-0017**

Quit-Claim Deed

This Indenture, made this 21 day of October, 2020, between **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, located in Volusia County, Florida, mailing address: 1000 City Center Circle, Port Orange FL 32129, Grantor, and **BOBBY CLAY VAUGHT as Trustee of the BOBBY C. VAUGHT REVOCABLE TRUST** (hereinafter referred to as "Grantee"), such Grantee having an address of 1788 Earhart Ct., Port Orange, Volusia County, Florida.

Witnesseth: That the said Grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said Grantor, in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release, and quit claim unto the said Grantee, its successor and assigns forever, all the right, title, interest, claim and demand which Grantor has in and to the following described piece or parcel of land, situate, lying and being in the County of Volusia, State of Florida:

A portion of the North 170 feet of the South 370 feet of the North 660 feet of the East 660 feet, East of McDonald Road of Dunlawton Sugar House Reservation, as recorded in Map Book M, Page 187, of the Public Records of Volusia County, Florida; and being more specifically described as "Parcel 3" and graphically depicted on Exhibit "A" attached hereto and incorporated herein by reference.

TOGETHER WITH a permanent 20-ft. wide access, ingress, egress, and drainage easement (the "Easement Premises") from McDonald Road to the westerly boundary of the above-referenced Parcel 3, centered over the common boundary line of property described as Parcels 1 and 2, graphically depicted on the attached Exhibit "A," incorporated herein by reference.

Said property interest described herein having been previously conveyed to the City of Port Orange, FL by Warranty Deed as recorded in Official Records Book 6441, Page 4694 of the Public Records of Volusia County, Florida, and said property interest being conveyed herein having been approved by Resolution No. 20-59.

To Have and to Hold the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity and claim whatsoever of Grantor, either in law or in equity to the only proper use, benefit and behoof of Grantee forever.

In Witness Whereof, Grantor has hereunto has caused this Quit-Claim Deed to be executed under seal and on its behalf the day and year first above written.

WITNESSES:

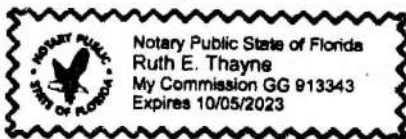
Shelly Field
Name: Shelly Field
Ruth E. Thayne
Name: RUTH E. THAYNE

CITY OF PORT ORANGE, FLORIDA
A Chartered Municipal Corporation

By: [Signature]
Donald O. Burnette, Mayor

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this 21st day of October, 2020, by Donald O. Burnette as Mayor, of the City of Port Orange, Florida, a chartered municipal corporation, who acknowledge that he is duly authorized to execute the foregoing agreement on behalf of the city. He is personally known to me.



WITNESSES:

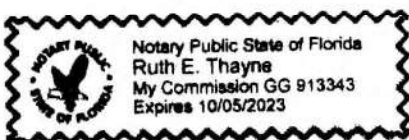
Shelly Field
Name: Shelly Field
Ruth E. Thayne
Name: RUTH E. THAYNE

Ruth E. Thayne
Notary Public, State of Florida at Large
Printed name of Notary, Commission, Seal & Expiration Date:
RUTH E. THAYNE

Attest: [Signature]
Robin L. Fenwick
City Clerk, MMC

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this 21st day of October, 2020, by Robin L. Fenwick, as City Clerk, of the City of Port Orange, Florida, a chartered municipal corporation, who acknowledge that she is duly authorized to execute the foregoing agreement on behalf of the city. She is personally known to me.



Ruth E. Thayne
Notary Public, State of Florida at Large
Printed name of Notary, Commission, Seal & Expiration Date:
RUTH E. THAYNE

SPRUCE CREEK LAND SURVEYORS INC.
3869 SOUTH NOVA ROAD, PORT ORANGE FLORIDA. 32127
PHONE - (386) 767-0740

GENERAL NOTES

- 1- BEARINGS REFER TO ASSUMED DATUM EAST LINE OF THE NORTH 880' OF THE EAST 880'
- 2- THIS SURVEY WAS DONE WITHOUT THE BENEFIT OF AN ABSTRACT. THERE MAY BE ADDITIONAL EASEMENTS, RESTRICTIONS AND/OR OTHER MATTERS NOT SHOWN THAT COULD AFFECT THIS PROPERTY, THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY
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- 6- DIMENSIONS SHOWN ARE IN FEET AND DECIMALS THEREOF.
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- 8- THE EXPECTED USE OF LAND AS CLASSIFIED IN THE MINIMUM TECHNICAL STANDARDS IS THE MINIMUM RELATIVE ACCURACY FOR THIS TYPE OF SURVEY IS 1 FOOT
 THE ACCURACY OBTAINED BY MEASUREMENT WITH AN ELECTRONIC TOTAL STATION AND CALCULATION OF A CLOSED GEOMETRIC FIGURE WAS FOUND TO EXCEED THIS REQUIREMENT.
- 9- VALID ONLY WITH ORIGINAL SIGNATURE AND RAISED SEAL OF A FLORIDA SURVEYOR AND MAPPER.
- 10- ELEVATIONS REFER TO
- 11- LANDSCAPING TO MEET REQUIREMENTS
- 12- FLOOD ZONE COMMUNITY # DATED
- 13- CERTIFIED AS MEETING THE MINIMUM TECHNICAL STANDARDS (61G17-8 F.A.C.) SET FORTH BY FLORIDA BOARD OF SURVEYORS AND MAPPERS PURSUANT TO SECTION 472-027 FLORIDA STATUTES.
- 14- LEGAL DESCRIPTION PROVIDED BY SPRUCE CREEK LAND SURVEYING

PREPARED FOR THE SOLE USE AND EXCLUSIVE BENEFIT OF THE INDIVIDUAL AND/OR ENTITIES LISTED BELOW, AND SHOULD NOT BE RELIED UPON BY ANY OTHER INDIVIDUAL OR ENTITY

CITY OF PORT ORANGE

REFERENCE: PARCEL # 3

Legal description: A portion of the North 170 feet of the South 370 feet of the North 880 feet of the East 660 feet, East of McDonald Road of Dunlawton Sugar House Reservation, as recorded in Map Book M, Page 187 of the Public Records of Volusia County, Florida and being described as follows:

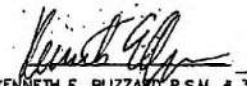
Commence at the Southeast corner of the North 880 feet of the East 660 feet of said Dunlawton Sugar House Reservation; Thence N 25° 23'13" W along the East line of said parcel a distance of 200 feet to the Point of Beginning; Thence departing said East line S 64° 36'30" W a distance of 108.43 feet; Thence N 42° 27'32" W a distance of 177.83 feet to the North line of the North 170 feet of the South 370 feet; Thence along said North line N 64° 36'30" E a distance of 160.64 feet to the East line of the North 880 feet of the East 660 feet; Thence along said East line S 25° 23'13" E a distance of 170.00 feet to the Point of Beginning.

VALID ONLY WITH SHEET 1 OF 2

JOB NO. N/A

ADDITIONS OR DELETIONS TO SURVEY MAPS OR REPORTS BY OTHER THAN SIGNING PARTY OR PARTIES IS PROHIBITED WITHOUT WRITTEN CONSENT OF THE SIGNING PARTY OR PARTIES. PER CHAPTER 61G17-6.003, FLORIDA ADMINISTRATIVE CODE.

SHEET 2 OF 2

DATE		SURVEYORS CERTIFICATE
SKETCH OF DESCRIPTION	10-26-2007	 KENNETH E. BLIZZARD P.S.M. # 3885 CORPORATE # L.B. 4567
BOUNDARY SURVEY		
PROPOSED HOUSE LOCATION		
TOPOGRAPHIC SURVEY		
FOUNDATION SURVEY		
FINAL SURVEY		
RECERTIFICATION SURVEY		
		VALID ONLY WITH EMBOSSED SEAL.

DEPT. CALC. FIELD MEASUREMENT
 F.M. IRON ROD
 I.R. IRON PIPE
 I.P. IRON ROD & CAP.

T.S. S.S. SECTION
 TYP. RANG. RANGE

EX. ELEVATION
 PR. EXISTING
 E.P. PROPOSED
 B.D.C. EDGE OF PAVEMENT
 B.D.C. BACK OF CURB
 H.L. MANHOLE

P.L. POINT OF INTERSECTION
 P.R.C. POINT OF REVERSE CURVATURE
 P/P UTILITY POLE
 M.B. MAP BOOK
 PG. PAGE
 O.R. OFFICIAL RECORDS

EXHIBIT A - LOCATION MAP





CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C15) Resolution No. 23-08 - Reimbursement Resolution for Public Safety Equipment

DEPARTMENT: Finance

GOAL: 1 - Public Safety
5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 23-08.

SUMMARY: During the budget workshops for Fiscal Year 2023, staff presented information on the need to replace certain fire apparatus that are deemed at the end of their useful life as primary and backup response vehicles. They are Engine 72, which is a 2013 Pierce Engine with 74,897 miles, and backup Transport unit 72, which is a 2004 MedTec with 155,419 miles.

Replacement Engine 72 was ordered from Pierce on September 28, 2022 at a cost of \$822,199 and is expected to be delivered within fifteen to eighteen months.

Replacement Transport Unit 72 was ordered from Rev / Wheeled Coach on November 2, 2022 at a cost of \$320,625 and is expected to be delivered by the end of January 2023.

The total requested for financing is up to \$1,142,824 and a request for quote was submitted to numerous financial institutions on Friday, January 6, 2023 as a master lease financing. The City intends to finance the costs of the replacement fire engine and ambulance with the proceeds of a capital lease to be issued in the future in one or more series, the interest on which is intended to be excludable from gross income for federal income tax purposes (the "Tax Exempt Financing").

The City expects to initially pay certain costs for the replacement fire engine and ambulance with funds other than proceeds from the Tax Exempt Financing (the "Advanced Funds").

This Resolution allows the City to reimburse itself for such expenditures with proceeds from the master capital lease when proceeds have been received. Payment of the principal and interest on this lease is not expected to occur prior to the following fiscal year.

PRESENTER: John McKinney

ATTACHMENTS:

1.	Reso No. 23-08 - Reimbursement Reso - - Public Safety Equipment	Reso No. 23-08 - Reimbursement Reso - Public Safety Equipment.pdf
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John McKinney	Created/Initiated - 1/3/2023
John McKinney	Approved - 1/5/2023
Matthew Jones	Approved - 1/11/2023
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023

RESOLUTION NO. 23-08

A RESOLUTION EXPRESSING THE INTENT OF THE CITY OF PORT ORANGE, FLORIDA TO ISSUE TAX-EXEMPT DEBT IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$1,257,106 TO REIMBURSE THE CITY FOR AMOUNTS ADVANCED BY THE CITY TO PAY THE COSTS FOR THE PURCHASE OF AN AMBULANCE AND A PUMPER FIRE TRUCK; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange, Florida (the “City”) has received quotes for the purchase of 1) an ambulance via piggyback agreement pursuant to the Florida Sheriffs Association Bid #FSA20-VEF14.01 and 2) a pumper fire truck via piggyback agreement pursuant to RFP #1905 League of Oregon Cities (the “Public Safety Equipment”);

WHEREAS, the City intends to finance the costs of such Public Safety Equipment with the proceeds of equipment leases, notes or other obligations to be issued in the future in one or more series the interest on which is intended to be excludable from gross income for federal income tax purposes (the “Tax Exempt Financing”);

WHEREAS, the City expects to initially pay certain costs of the Public Safety Equipment with funds other than proceeds of the Tax Exempt Financing (the “Advanced Funds”) and to reimburse itself for such expenditures with proceeds from the Tax Exempt Financing; and

WHEREAS, the City desires to set forth such intent in this Resolution for the purpose of compliance with United States Treasury Regulation Section 1.150-(2)(e).

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

SECTION 1. AUTHORITY. This Resolution is adopted pursuant to Chapter 166, Part II, Florida Statutes, and other applicable provisions of law (collectively, the “Act”).

SECTION 2. FINDINGS. The City Council hereby finds, determines and declares as follows:

A. The City is authorized under law, including, without limitation, the Act, to issue the Tax Exempt Financing for the valid public purpose of paying the costs of the Public Safety Equipment

B. It is necessary, desirable, convenient and in the interest of the City that the Public Safety Equipment be financed as contemplated in this Resolution.

C. The City intends to finance the Public Safety Equipment with the proceeds of its Tax Exempt Financing to be issued in the future.

D. The City expects to pay certain costs of the Public Safety Equipment with Advanced Funds before the issuance of the Tax Exempt Financing.

SECTION 3. EXPRESSION OF INTENT. The City reasonably expects to use the proceeds of the Tax Exempt Financing to reimburse itself for all expenditures described herein made with the Advanced Funds. This Resolution is a declaration of the official intent of the City in that regard, within the contemplation of Section 1.150-(2)(e) of the Income Tax Regulations promulgated by the United States Department of the Treasury.

SECTION 4. MAXIMUM AMOUNT OF REIMBURSEMENT DEBT. The maximum principal amount of the Tax Exempt Financing reasonably expected to be issued to reimburse the City for the cost of the Public Safety Equipment is \$1,257,106.

SECTION 5. FURTHER ACTION. The officers and employees of the City are hereby authorized to do all acts and things required of them by this Resolution for the full, punctual and complete performance of all the terms, covenants and agreements contained herein or necessary or convenient to the issuance of the Tax Exempt Financing as provided herein.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon its adoption.

DULY PASSED AND ADOPTED at a regular meeting this ____day of January, 2023.

CITY OF PORT ORANGE, FLORIDA

Donald O. Burnette, Mayor

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Reviewed and Approved: _____

Matthew J. Jones, City Attorney



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C16) Resolution No. 23-10 - Master Lease Purchase Agreement for Public Safety Equipment with TD Equipment Finance, Inc.

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 23-10 and authorize the Mayor and staff to execute all master lease agreement documents with TD Equipment Finance, Inc.

SUMMARY: The proposed Master Lease Agreement allows the City to utilize tax-exempt financing for the purchase of vehicles rather than outright purchases. The Master Lease Agreement will initially be used to purchase public safety equipment including a fire pumper truck and an ambulance, but may later be used for the replacement of other aging vehicles in the City's fleet of vehicles and major equipment. For example, many of the city-owned police vehicles are in need of replacement due to high mileage, age of vehicles, and difficulty in obtaining obsolete parts needed for repairs.

The City has not utilized this program in the past. However, City staff and the City's financial advisor previously, during Council workshops in 2022, explained the benefits of this program. Master Lease drawdowns are used to pay invoices or provide up-front funding for vehicles and equipment. The City is required to make lease payments to repay the principal and interest on the lease in arrears every six months.

The equipment purchased under the Master Lease Agreement will be owned and insured by the City during the term of the Master Lease Agreement, subject to the interests of the selected financial institution.

Staff submitted a request to quote with the assistance of Southeastern Investment Securities, LLC on Friday, January 6, 2023 to 32 financial institutions. The City received five quotes in accordance with our Debt Issuance policy.

Staff and Southeastern Investment Securities, LLC have reviewed all of the proposals and recommend awarding it to TD Equipment Finance, Inc Option B with a 7 year rate of 3.61% for the ambulance and a 10 year rate of 3.49% for the fire pumper truck per the attached terms for an amount not to exceed \$1,142,824.

The proposals received from the other four financial institutions are available upon

request.

PRESENTER: John McKinney

ATTACHMENTS:

1.	Reso. No. 23-10 - Master Lease Agreement	Reso. No. 23-10 - Master Lease Agreement.pdf
2.	FINAL CITY OF PORT ORANGE TD Proposal Rev1	FINAL CITY OF PORT ORANGE TD Proposal Rev1.pdf
3.	PO 2023 Capital Lease Southeastern recommendation 1.11.23	PO 2023 Capital Lease Southeastern recommendation 1.11.23.pdf
4.	Master Lease Agreement - FINAL FORM	Master Lease Agreement - FINAL FORM.pdf

John McKinney	Created/Initiated - 1/11/2023
John McKinney	Approved - 1/12/2023
Matthew Jones	Approved - 1/12/2023
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023

RESOLUTION NO. 23-10

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE MASTER LEASE AGREEMENT FORM; AUTHORIZING THE EXECUTION OF THE MASTER LEASE AGREEMENT WITH TD EQUIPMENT FINANCE, INC. SUBJECT TO THE TERMS STATED IN THIS RESOLUTION; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PORT ORANGE, FLORIDA, that:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution is enacted pursuant to the provisions of Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. APPROVING MASTER LEASE AGREEMENT FORM. The Master Lease Agreement in substantially the form submitted to this body is hereby approved and authorized.

SECTION 3. SETTING FORTH ACCEPTABLE TERMS AND AUTHORIZING EXECUTION OF MASTER LEASE AGREEMENT. The amount financed for the purchase of the two vehicles under the Master Lease Agreement (fire pumper truck and ambulance) shall not exceed \$1,142,824.00 and the acceptable annual percentage rate assessed on the amount financed shall not exceed 3.61% APR on a 7 year term or 3.49 % on a 10 year term. The Mayor is hereby authorized to execute and deliver the lease purchase agreement and any and all papers, instruments, opinions, certificate and other documents and to do and cause to be done any and all other acts and things necessary or proper implement this resolution and the lease purchase of said vehicles.

SECTION 4. REPEAL OF INCONSISTENT PROVISIONS. All resolutions or parts thereof in conflict with this Resolution are hereby repealed to the extent of such conflict.

SECTION 5. SEVERABILITY. In the event that any portion or section of this Resolution is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Resolution, which shall remain in full force and effect.

SECTION 6. 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 7. EFFECTIVE DATE. 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

From:

Maggie Morris

Vice President - Regional Manager

1101 Dunlawton Ave,

Port Orange, FL 32127

(240 938 1653)

Margaret.Morris@td.com

Equipment
financing
that works.



Turn to TD Equipment Finance for solutions that fit your needs.

Count on the professionals at TD Equipment Finance to deliver the creative financing solutions you need, along with the highly personal service you demand.

Financing Proposal For:

Ms. Jill Poolman

Purchasing Manager

City of Port Orange, FL

1000 City Center Circle

Port Orange, FL 32129-4144

1/11/2023

Dear Ms. Poolman,

TD Equipment Finance, Inc. ("TDEF") is pleased to present the following Proposal for your consideration. The structure of the transaction is outlined in the attached Proposal Exhibit which also sets forth certain terms and conditions. PLEASE NOTE THIS PROPOSAL IS SUBJECT TO CREDIT REVIEW AND UNDERWRITING IN ACCORDANCE WITH TDEF'S INTERNAL CREDIT POLICY. NOTHING IN THIS PROPOSAL SHALL BE CONSTRUED AS A COMMITMENT TO LEND. TDEF looks forward to doing business with you and hopes you find the attached Proposal acceptable. If so, please sign and date the enclosed signature page and return it to us by January 17, 2023.

Sincerely,

Maggie Morris

Vice President - Regional Manager
TD Equipment Finance, Inc.

Proposal Exhibit

Lessor:	TD Equipment Finance, Inc., its successors and assigns
Lessee:	City of Port Orange, FL, a state or a political subdivision thereof.
Equipment:	First Responder Equipment – (Ambulance & Fire Truck)
Maximum Purchase Price:	\$1,142,824.00
Commencement Date:	Subject to the terms and conditions of the Lease, the Lease shall commence upon the earlier of (a) Lessee’s acceptance of the Equipment and (b) Lessor’s deposit of the Purchase Price for the Lease in an escrow fund or similar fund as provided in the Lease, but in no event later than 1/31/2023 Lease Term: 7 Years \$320,625.00 10 Years \$822,199.00 Payment Amount: See amortization scheduled attached hereto and made a part hereof
Rental Payments:	Payments Due: Semi-annual Six (6) months following closing.
Prepayment:	OPTION A: The Lease may be prepaid at any time in whole, but not in part, subject to a prepayment premium based on the greater of Yield Maintenance or 1% of the then-outstanding principal balance of the Lease. OPTION B: The Lease may be prepaid at any time in whole, but not in part, subject to a prepayment premium based on 1% of the then- outstanding principal balance of the Lease.
Tax-exempt Interest Rate:	Option A: 7Year 3.56% 10Year 3.45% Option B: 7Year 3.61% 10Year 3.49%
Indexing:	The Tax Exempt Interest Rate quoted above based on Lessor’s cost of funds and will be held until 1/31/2023. If the Commencement Date does not occur by 1/31/2023, the interest rate will be adjusted to reflect any change in Lessor’s cost of funds. The interest rate and rental payments under the Lease will be fixed for the term of the Lease.
Structure:	The Lease will constitute a “state or local bond” with the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended (the “Code”). Lessee’s obligations under the Lease will be subject to annual appropriation of funds by Lessee’s governing body. Lessee shall use all reasonable and lawful means available to secure appropriations for each fiscal year during the term of the Lease sufficient to pay all Rental Payments coming due therein Lessor shall lease the Equipment to Lessee without representation or warranty on an AS IS BASIS. The Lease will be a “triple net lease” under which Lessee will be responsible for all expenses relating to the Equipment including, but not limited to, maintenance, insurance coverage (in an amount and in a form acceptable to Lessor), and all taxes (e.g.

sales, use and personal property). Lessee shall bear all risk of loss, damage and liability to the Equipment.

At the end of the Lease term, upon payment of all amounts payable thereunder, Lessee may purchase the Equipment for \$1.00.

Escrow Funding:

The proceeds of the Lease will be deposited in an escrow account acceptable to Lessor, and disbursements made therefrom upon request by Lessee, pursuant to an escrow agreement in form and substance satisfactory to Lessor.

Collateral Security:

To the extent permitted by applicable law, Lessee's obligations under the Lease will be secured by a first priority security interest on the Equipment and, if applicable, the escrow fund. Titles to the Equipment, if any, shall list Lessee as the owner and Lessor as lienholder.

Tax Status:

The Lease will not be a qualified tax exempt obligation under Section 265 (b)(3) of the Code. The interest portion of the rental payments under the Lease will be excludable from the gross income of Lessor for federal income taxation purposes. Upon a determination that the interest component of the rental payments under the Lease is includable in gross income of Lessor for federal income tax purposes, the interest rate on the Lease will increase to a rate sufficient to restore Lessor to its after-tax yield from and after the date such interest became includable in Lessor's gross income, and taking into account all penalties, fines, interest and additions to tax.

Legal Opinions:

Lessee's counsel shall deliver an opinion to Lessor at closing in form and substance satisfactory to Lessor which shall address, among other things, Lessee's authority to enter in to Lease and the enforceability of the Lease. Lessee will also provide an opinion of nationally recognized bond counsel with respect to the tax-exempt status of the interest payable under the Lease.

Costs & Expenses:

NONE

Documentation:

The documentation for the Lease will contain covenants, representations and warranties usual and customary for transactions of this type and others appropriate to the transaction. All documentation to be executed in connection herewith shall be in satisfactory form and substance to Lessor. Lessor shall verify the Equipment specifications including, but not limited to, model number, number of units, installation costs, year of manufacturing and maintenance contracts; and approve the final Equipment configuration, and acceptance of the financing.

LESSOR'S PROPOSAL/FINANCIAL INFORMATION:

This Proposal is subject to final credit review and approval, and not, nor should it be construed as, a commitment by Lessor or any affiliate to enter into the proposed Lease transaction. In order to complete its credit due diligence, Lessee shall furnish Lessor with the following:

- Three years most current audited annual financial statements, and shall be furnished annually thereafter, if not otherwise published on Lessee's website

- Copy of meeting minutes
- Copy of budget
- Statement of essential use
- Other supporting data as may be requested

AUTHORIZATION: Lessee acknowledges and agrees that Lessor may furnish all Lessee-presented information, financials, analysis, and related credit and review materials to its employees, counsel and agents, as well as its participants and/or assigns. Lessee authorizes Lessor to contact TD Bank, N.A. and other references of Lessee, and to order any and all credit checks and investigative reports, all as Lessor deems necessary in connection with the evaluation of the transaction.

GENERAL:

TD Equipment Finance, Inc. complies with Section 326 of the USA Patriot Act. This Act mandates that we verify certain information about Lessee while processing any Lease request.

EXPIRATION:

This Lease Proposal shall expire, if not accepted by a qualified official by 9:00 pm, on January 17, 2023.

APPROVED AND ACCEPTED:

By: _____

Print Name:

Title:

Date:



RICHARD T. WAGNER
President

MEMORANDUM

TO: John McKinney, Finance Director
CC: Wayne Clark, Matt Jones, Peter Dame

FROM: Richard T. Wagner, President Southeastern Investment Securities, LLC
(Financial Advisor to Port Orange ("City"))

RE: Capital Leases Request for financing Quotes

DATE: January 11, 2023

The City, through its Procurement office, solicited request for quotes from financial institutions for capital leases on First Responder Equipment (Ambulance in an amount not exceeding \$320,625.00 with a lease term of seven years and a Fire Truck in an amount not exceeding \$822,199.00 with a lease term of 10 years) .

Quotes were received from five banks which were all conforming to the City's Request for Quotes.

Based upon the quotes received, we recommend an award to the low and best quotes in the aggregate amount of \$ 1,142,824.00 to **TD Equipment Finance, Inc. ("TDEF")**, a division of TD Bank, N.A. at a locked in not to exceed interest rate of 3.61% for the seven-year lease term (Ambulance) and 3.49% for the ten-year lease term (Fire Truck). Both of these not to exceed interest rates are for option B under the **TDEF** Proposal allowing the leases to be prepaid at any time in whole subject to a prepayment penalty of 1% of the outstanding principal balance of each lease.

Further, together with staff, we recommend the adoption of an Authorizing Resolution and Master Lease prepared by the City's Bond Counsel, Akerman LLP, permitting the issuance and award of the two leases to **TDEF** at the City Council meeting of January 17, 2023.

Thank you.

MASTER LEASE PURCHASE AGREEMENT

This MASTER LEASE PURCHASE AGREEMENT (the “Agreement”) made and entered as of [Date], by and between the CITY OF PORT ORANGE, FLORIDA (“Lessee”) and [BANK] (“Lessor”).

RECITALS

Lessee desires to lease, purchase and acquire from Lessor certain Equipment described on each Schedule (as each such term is defined herein), subject to the terms and conditions and for the purposes set forth in each Lease; and

The relationship between the parties shall be a continuing one and items of equipment and other personal property may be financed pursuant to one or more Leases entered into from time to time in accordance with this Agreement by execution and delivery of additional Schedules by the parties hereto, subject to the terms and conditions provided herein; and.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

I. LEASE OF EQUIPMENT

1.01 Upon the execution and delivery of each Lease, Lessor hereby agrees to sell, transfer and lease to Lessee, and Lessee hereby agrees to acquire, purchase and lease from Lessor, the property described on the related Schedule, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto (the “Equipment”), upon the terms and conditions set forth in such Lease.

1.02 Upon satisfaction (or waiver by Lessor) of the conditions set forth in Section 5.01 with respect to a Lease, Lessor will make available for advance to Lessee the amount specified in the related Schedule as the amount to be financed under such Lease (the “Acquisition Amount”). The Acquisition Amount will be advanced from time to time upon written direction of Lessee to be paid (i) to the manufacturer or supplier of the Equipment as listed on the related Schedule (the “Vendor”) or (ii) to the Lessee by deposit into the account designated in writing by Lessee for such purpose. As used herein, “Commencement Date” means the date of Lessor’s initial advance of a portion of the Acquisition Amount under a Lease. Advances of the Acquisition Amount under a Lease shall be available to Lessee for the period specified in the related Schedule (the “Advance Period”). The aggregate amount of advances under a Lease shall not exceed the Acquisition Amount.

1.03 With respect to each Lease, Lessee shall order the Equipment to be acquired and financed thereunder, cause the Equipment to be delivered and/or installed at the location(s) specified in such Lease, and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith.

1.04 The Acquisition Amount shall be applied by Lessee to pay, or reimburse the Lessee for, the cost of the acquisition, delivery and/or installation of the related Equipment and to pay costs of entering into the related Lease. Lessee shall provide written notice promptly to Lessor of each

disbursement of the Acquisition Amount to the vendor, or reimbursement to Lessee, for Equipment costs and closing costs, including the amount thereof and the costs paid or reimbursed. When all or a portion of the Equipment is delivered, installed (if applicable) and accepted, Lessee shall promptly deliver to Lessor an Acceptance Certificate, executed by an authorized official of Lessee, in the form attached hereto as Exhibit D, with copies of properly completed certificates of title or certificates of origin for any vehicles acquired. The insufficiency of the Acquisition Amount to pay all costs of the related Equipment and any other costs related thereto shall not affect Lessee's obligations under the related Lease. Any portion of the Acquisition Amount not applied to the costs of the related Equipment on or before the earlier of date on which Lessee executes the final Acceptance Certificate or the end of the Advance Period under the related Lease shall be returned to Lessor and applied to prepay Rental Payments on the related Lease as provided herein.

1.05 During the Lease Term under each Lease, legal title to all Equipment shall be in Lessee, subject to Lessor's interests under the applicable Lease. Upon the occurrence of an Event of Default or upon termination of a Lease due to an Event of Nonappropriation, title shall immediately vest in Lessor, free and clear of any right, title or interest of Lessee.

1.06 Lessee acquires and leases the Equipment "AS IS." Lessee acknowledges that Lessor did not manufacture the Equipment. Lessor does not represent the manufacturer, supplier, owner or dealer, and Lessee selected the Equipment based upon Lessee's own judgment. Lessor makes no warranties, express or implied, including warranties of merchantability or fitness for a particular purpose or otherwise or as to the Equipment's value, design, condition, use, capacity or durability. Lessee agrees that regardless of cause, Lessor is not responsible for, and Lessee will not make any claim against Lessor for, any damages, whether consequential, direct, special or indirect incurred by Lessee in connection with the Equipment. Neither the manufacturer, supplier or dealer nor any salesperson, employee or agent of the manufacturer, supplier or dealer is Lessor's agent or has any authority to speak for Lessor or to bind Lessor in any way. For and during the Lease Term under each Lease, Lessor assigns to Lessee any manufacturer's or supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased in accordance with Lessee's specifications from suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or supplier's product warranties or guaranties, (d) no manufacturer or supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or supplier or any representative of said parties shall not be binding upon Lessor.

II. RENTAL PAYMENTS

2.01 Lessee agrees to pay the rental payments in the amounts (the "Rental Payments") and on the dates (each a "Payment Date") as specified in each Lease (the "Payment Schedule"). A portion of each Rental Payment is paid as interest and the balance is paid as principal, as specified in the Schedule for each Lease. All Rental Payments shall be paid to Lessor, at such place as Lessor may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments in lawful money of the United States of America from moneys legally available therefor.

2.02 The obligations of Lessee hereunder, including its obligation to pay the Rental Payments due in any fiscal year under each Lease shall constitute a current expense of Lessee for such fiscal year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State. THE RENTAL PAYMENTS ARE TO BE MADE ONLY FROM LESSEE'S LEGALLY AVAILABLE FUNDS APPROPRIATED ON AN ANNUAL BASIS, AND NEITHER LESSEE, THE STATE, NOR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE HEREUNDER FROM THE COMPELLED LEVY OF AD VALOREM OR OTHER TAXES EXCEPT FROM THOSE LEGALLY AVAILABLE FUNDS APPROPRIATED BY LESSEE ON AN ANNUAL BASIS. Nothing herein shall constitute a pledge by Lessee of the full faith and credit or taxing power of Lessee or any other governmental entity. The Lessee official in charge of preparing Lessee's budget will include in the budget request for each fiscal year the Rental Payments to become due during such fiscal year under each Lease, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all Rental Payments coming due therein. Lessor acknowledges that appropriation for Rental Payments is a governmental function which Lessee cannot contractually commit itself in advance to perform. Lessee reasonably believes, but makes no guarantee, that moneys in an amount sufficient to make all Rental Payments can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the Lease Term.

2.03 Subject to Section 3.02 hereof, (a) Lessee's obligation to make Rental Payments and any other payments under each Lease shall be absolute and unconditional; (b) Lessee shall make such payments when due and shall not withhold any of such payments pending final resolution of any disputes; and (c) Lessee shall not assert any right of set-off or counterclaim against its obligation to make the Rental Payments or other payments hereunder and such payments shall not be abated due to any accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment. disputes with the Vendor or other manufacturer(s) or operation and maintenance provider(s) of the Equipment, failure of the Vendor to deliver any Equipment or to perform any of its obligations in connection therewith for whatever reason, including bankruptcy, insolvency, reorganization or any similar event with respect to the Vendor, and (d) Lessee shall be obligated to continue to make payments required under each Lease if title to, or temporary use of, the related Equipment or any part thereof shall be taken under exercise of the power of eminent domain.

III. TERM

3.01 The term of each Lease (the "Lease Term") shall commence on the Commencement Date and shall continue until the end of the then current fiscal year of Lessee (the "Original Term"). The Lease Term for each Lease may be continued, at the option of Lessee, at the end of the Original Term or any Renewal Term of such Lease, for successive periods each having a duration of one year and a term coextensive with Lessee's fiscal year or such earlier date specified in the Payment Schedule (each a "Renewal Term"), up to the maximum Lease Term set forth in such Lease. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue each Lease for the next Renewal Term, unless sooner terminated pursuant to Section 3.02 or Section 10.02. The terms and conditions during any Renewal Term shall be the same as the terms and conditions

during the Original Term, except that the Rental Payments shall be as provided in the applicable Lease. Each Schedule signed and delivered by Lessor and Lessee pursuant to this Agreement, together with the applicable provisions of this Agreement, shall constitute a separate and independent lease and installment purchase of the Equipment therein described.

3.02 If during the then current fiscal year of Lessee, sufficient funds are not appropriated to pay the Rental Payments required under any Lease for the following fiscal year (an “Event of Nonappropriation”), Lessee shall be deemed not to have renewed such Lease for the following fiscal year, and such Lease shall terminate at the end of the then current fiscal year, and Lessee shall not be obligated to pay Rental Payments under such Lease beyond the then current fiscal year for which funds have been appropriated. Upon an Event of Nonappropriation, Lessee shall return the Equipment thereunder to Lessor in accordance with the requirements of Section 10.05. Lessee shall notify Lessor in writing no later than 30 days following any Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term. If Lessee fails to return such Equipment or otherwise comply with Section 10.05, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of an amount equal to the Rental Payments that would thereafter have come due if the applicable Lease had not been terminated and which are attributable to the number of days after which Lessee fails to comply with Lessor’s instructions and for any other loss suffered by Lessor as a result of Lessee’s failure to take such actions as required hereunder. In addition, upon an Event of Nonappropriation, Lessee will pay to Lessor any undisbursed portion of the Acquisition Amount under the applicable Lease.

3.03 Lessee intends, subject to Section 3.02, to continue the Lease Term of each Lease through the Original Term and all Renewal Terms and to pay the Rental Payments thereunder. Lessee affirms that sufficient funds are legally available for the current fiscal year, and Lessee reasonably believes that an amount sufficient to make all Rental Payments during the entire Lease Term of each Lease can be obtained from legally available funds of Lessee. Lessee further intends to do all things lawfully within its power to obtain and maintain funds sufficient and available to discharge its obligation to make Rental Payments due under each Lease, including making provision for such payments to the extent necessary in each budget or appropriation request submitted and adopted in accordance with applicable provisions of law.

IV. PURCHASE BY LESSEE

4.01 Lessee shall have the option to purchase all of the Equipment under a Lease upon the expiration of the Lease Term of such Lease and payment in full of all Rental Payments then due and all other amounts then owing under such Lease, and the payment of \$1.00 to Lessor.

4.02 Lessee shall have the option to prepay its obligations under a Lease in whole, but not in part, on any Payment Date specified in the related Payment Schedule. Lessee shall give written notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under the applicable Lease, including the Rental Payment due on the Payment Date on which the option shall be effective, and the applicable Purchase Price set forth in such Payment Schedule (the “Purchase Price”).

4.03 Any portion of the Acquisition Amount under a Lease not applied to the costs of the related Equipment on or before the date on which Lessee executes the final Acceptance Certificate, shall be applied by Lessor on any Rental Payment date to all or a portion of the Rental Payment due and owing under the applicable Lease in the succeeding twelve (12) months and any remaining amounts shall be applied by Lessor as prepayment to the remaining principal balance owing under the applicable Lease in the inverse order of the related Rental Payment dates.

V. CONDITIONS PRECEDENT

Lessor's payment of the Acquisition Amount and the performance by Lessor of any of its obligations under a Lease, are subject to the satisfaction the following conditions precedent:

5.01 Lessee shall deliver to Lessor, on or before the Commencement Date of such Lease:

- (i) A fully completed Schedule, executed by Lessee;
- (ii) a copy of the action taken by the governing body of the Lessee approving the execution and delivery of such Lease, in the form attached hereto as Exhibit C or otherwise in form acceptable to Lessor, certified as complete and correct as of the closing date;
- (iii) an incumbency certificate in respect of each of the officers who is authorized to sign this Agreement (unless previously executed), the applicable Schedule and Certificates of Acceptance on behalf of the Lessee;
- (iv) evidence of insurance coverage or self insurance as required by Article VI;
- (v) an opinion of counsel to Lessee, dated the Commencement Date and substantially in the form attached hereto as Exhibit C or otherwise satisfactory to Lessor;
- (vi) if required by Lessor, an opinion of qualified bond counsel or special tax counsel to Lessee as to the valid execution and delivery of such Lease and excludability of the interest component of the Rental Payments pursuant to such Lease from gross income for federal income tax purposes, addressed to Lessor and dated the Commencement Date of such Lease;
- (vii) a properly completed and executed IRS Form 8038-G;
- (viii) In the event that Lessee is to be reimbursed for expenditures that it has paid more than sixty days prior to the Commencement Date for the Lease then being entered into, evidence of the adoption of a reimbursement resolution or other official action covering the reimbursement of from tax exempt proceeds of expenditures incurred not more than 60 days prior to the date of such resolution; and
- (ix) such other documents, certificates and opinions as are set forth in the related Schedule or as the Lessor or its counsel shall request, all in form and substance satisfactory to the Lessor.

VI. INSURANCE; RISK OF LOSS

Lessee covenants with Lessor as follows:

6.01 Lessee shall, at its own expense, procure and maintain continuously in effect during the Lease Term of each Lease: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor and its assigns from liability in all events, with a coverage of not less than \$1,000,000 per occurrence, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Purchase Price.

6.02 All insurance policies required by Section 6.01 shall be taken out and maintained with insurance companies rated not less than "A" by A.M. Best Company and otherwise acceptable to Lessor and shall contain a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor and its assigns as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor and its assigns as lender's loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. Lessee may self-insure against the risks described in Section 5.01 with the prior written consent of Lessor.

6.03 As between Lessee and Lessor, Lessee assumes and bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part for any reason whatsoever. No loss to the Equipment shall relieve Lessee from the obligation to make any Rental Payments or to perform any other obligation under any Lease. Proceeds of any insurance recovery will be applied to Lessee's obligations under this Article VI.

6.04 If a casualty occurs to the Equipment, Lessee shall immediately notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, immediately repair the same.

6.05 If Lessor determines that any item of Equipment has suffered a casualty loss that is beyond repair, then Lessee shall either: (a) within 90 days or such longer period as agreed to by Lessor, replace such Equipment with similar equipment in good repair, condition and working order free and clear of any Liens and deliver to Lessor a purchase order, bill of sale or other evidence of sale to Lessee covering the replacement equipment, in which event such replacement equipment shall automatically be Equipment under the applicable Lease, or (b) on the next Rental Payment Date occurring not less than 90 days from the date of loss, pay Lessor (i) all amounts owed by Lessee hereunder, including the Rental Payment due on such date, plus (ii) an amount equal to the applicable Purchase Price or ratable portion thereof, as applicable. If the net proceeds of any insurance are insufficient to pay in full the cost of any repair, restoration, modification or improvement of the Equipment, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of available insurance proceeds, or (b) pay or cause to be paid to Lessor the amount of the then applicable Purchase Price or ratable portion thereof, as applicable. If Lessee makes any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article III.

6.06 Lessee shall bear the risk of loss for, shall pay directly and shall defend against any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorney's fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of Lessee shall survive any expiration or termination of the applicable Lease. Lessee shall not bear the risk of loss of, nor pay for, any claims, liabilities, proceedings, actions, expenses (including attorneys' fees), damages or losses which arise directly from events occurring after any Equipment has been returned by Lessee to Lessor in accordance with the terms of the applicable Lease or which arise directly from the gross negligence or willful misconduct of Lessor.

6.07 Lessor hereby irrevocably appoints Lessee its agent and attorney in fact during the Lease Term under each Lease, so long as no Event of Default has occurred and is then continuing under such Lease, to assert from time to time whatever claims and rights (including without limitation warranties) relating to the Equipment that Lessor may have against a Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the applicable Vendors of the Equipment and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to any Lease, including the right to receive full and timely Rental Payments and other payments under each Lease. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties relating to the Equipment.

VII. COVENANTS RELATING TO THE EQUIPMENT

Lessee covenants with Lessor as follows:

7.01 Lessee shall, at its own expense, maintain the Equipment in good condition and proper working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. The Equipment will be used by Lessee only for the purpose of performing Lessee's essential governmental functions. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation or in a manner contrary to that contemplated by the applicable Lease. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. Lessee shall have sole responsibility to maintain and repair the Equipment. Lessee shall keep (or in the case of Equipment constituting motor vehicles, house) the Equipment at the address specified in the applicable Schedule; provided that Lessee may change the location at which any Equipment is kept (or housed) with thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor access at all reasonable times to examine and inspect the Equipment and provide Lessor with such access to the Equipment as may be reasonably necessary to perform maintenance on the Equipment in the event of failure by Lessee to perform its obligations hereunder. If Lessor reasonably determines that Lessee is not maintaining any of the Equipment in accordance with this Section 7.01, Lessor may (in addition to any other remedies it may have) require Lessee to enter into maintenance contracts for such Equipment in form approved by Lessor and with approved providers.

7.02 Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any taxes or charges that may lawfully be paid in installments over a

period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term.

7.03 Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will adversely affect the originally intended value, function or use of the Equipment.

7.04 Lessee reserves the right to substitute Equipment of the same quantity and general type with the approximate equal value, utility and remaining useful life as the Equipment so replaced. Such substitution is subject to Lessor's prior written consent, which consent shall not be unreasonably withheld, and shall be reflected in an amendment to the applicable Schedule.

7.05 Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any Lien with respect to the Equipment (each, a "Lien"), other than the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such actions as may be necessary duly to discharge or remove any such Lien if the same shall arise at any time.

7.06 If Lessee shall fail to perform any of its obligations under Section 7.01 or Section 7.02, or shall fail to maintain the insurance required by Article VI, Lessor may (but shall not be required to) take such action to cure such failure, including the advancement of money, and Lessee shall be obligated to repay all such advances as additional rent for the then current Original Term or Renewal Term under the affected Lease on demand, with interest at the Default Rate (as defined herein), from the date of the advance to the date of repayment.

7.07 Lessee will comply in all material respects with all applicable federal and state laws, rules and regulations relating to the Equipment and the lease purchase thereof, and the performance of Lessee's covenants and obligations hereunder.

VIII. ADDITIONAL COVENANTS

Lessee covenants with Lessor as follows:

8.01 Not later than 180 days following the end of each fiscal year, Lessee shall provide Lessor the annual audited financial statements of Lessee audited by Lessee's certified public accountants, together with the report of such accountant. Lessee shall provide Lessor a copy of its annual budget and such additional information as Lessor may reasonably request. Such financial statements, budget and other information shall be provided in printed (rather than electronic) form unless otherwise agreed by Lessor and shall be provided without cost to Lessor.

8.02 Lessee will provide written notice to Lessor within ten business days of the occurrence of any event that does or with the passage of time would constitute an Event of Default or which constitutes a material adverse change in the financial condition of Lessee.

8.03 Lessee shall also pay to Lessor on demand any documentary stamp taxes, intangible taxes or other excise taxes payable on account of the execution, delivery or enforcement of a Lease (including any amendments hereto or thereto) or the performance of any obligations thereunder (including the payment of the Acquisition Amount), and any penalties and/or interest incurred because of the failure of Lessee to pay such taxes when due. Lessee acknowledges that it is not

relying upon Lessor or Lessor's counsel with respect to the applicability or non-applicability of any such taxes. The provisions of this paragraph shall survive payment in full and discharge of Lessee's obligations to Lessor.

8.04 Lessee covenants and agrees that it will (i) comply with all provisions of the Code and the Treasury Department regulations applicable to establishing and maintaining the excludability of the interest component of the Rental Payments from federal gross income pursuant to Section 103 of the Code; (ii) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy Internal Revenue Service ("IRS") guidelines for permitted management contracts, as the same may be amended from time to time; (iii) invest and reinvest moneys related to each Lease from time to time in a manner that will not cause such Lease to be classified as an "arbitrage bond" within the meaning of Section 148(a) of the Code; (iv) rebate an amount equal to excess earnings on invested proceeds of each Lease to the federal government if required by, and in accordance with, Section 148(f) of the Code and make the determinations and maintain the records required by the Code; and (v) complete and timely file an IRS Form 8038-G with the IRS in accordance with Section 149(e) of the Code.

8.05 If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor and reasonably acceptable to Lessee, that Lessor may not exclude the interest component of any Rental Payment from gross income for federal income tax purposes, then Lessee shall pay to Lessor, within thirty (30) days after Lessor notifies Lessee of such determination, the amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all Rental Payments due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after tax yield on the transaction related Lease (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event, it shall pay additional rent to Lessor on each succeeding Payment Date under the affected Lease an amount that will maintain such after tax yield to Lessor. Lessor's determination of the amount necessary to maintain its after-tax yield as provided in this Section 8.05 shall be conclusive (absent manifest error).

8.06 Lessee shall not file or submit, or permit the filing or submission, of all or any portion this Agreement, any document related to this Agreement, any default, event of acceleration, termination event, waiver, modification of terms or other similar events relating to this Agreement or any summary of the foregoing with the Municipal Securities Rulemaking Board ("MSRB") (or any successor to the MSRB or similar entity or service) unless such document or portion thereof has been provided to the Lessor in advance for review and redaction to the extent required by Lessor and otherwise permitted under applicable MSRB rules or federal securities law, if any. Lessor is not responsible for the Lessee's or any other entity's compliance with any continuing disclosure obligations under any applicable securities law or related agreement or undertaking.

IX. REPRESENTATIONS AND WARRANTIES

Lessee represents and warrants to Lessor that:

9.01 Lessee is a political subdivision of the State within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended (the "Code"), duly organized and existing under the Constitution and laws of the State, and is authorized under the Constitution and laws of the State to enter into this Agreement and the transactions contemplated hereby, and to perform all of its obligations under each Lease.

9.02 Lessee has the power and has taken all necessary action to authorize the execution, delivery and performance of Lessee's obligations under each Lease and each of the related documents to which it is a party in accordance with their respective terms. This Agreement has been duly executed and delivered by Lessee and is, and each of the related documents to which it is a party when executed and delivered will be, a legal, valid and binding obligation of Lessee enforceable against Lessee in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization or moratorium or other similar laws affecting creditors' rights generally applicable to Lessee or by the exercise of judicial discretion in accordance with general equitable principles.

9.03 The execution, delivery and performance by Lessee of this Agreement and each of the related documents to which it is a party do not (i) contravene, or constitute (with or without the giving of notice or lapse of time or both) a violation of any provision of applicable law, a violation of the charter or other organizational instruments of Lessee, or a default under any agreement, judgment, injunction, order, decree or other instrument binding upon or affecting Lessee, (ii) result in the creation or imposition of any lien (other than the lien created by this agreement) on any of Lessee's assets, or (iii) give cause for the acceleration of any obligations of Lessee to any other creditor.

9.04 There are no pending or threatened suits, claims or demands against Lessee that have not been disclosed to Lessor by Lessee in writing and which would, if adversely decided, have a material adverse affect on Lessee or on Lessee's obligations under any Lease.

9.05 The financial statements of Lessee for the most recent fiscal year furnished to Lessor were prepared in accordance with generally accepted accounting principles and present fairly the financial condition of Lessee as of such date and the results of its operations for the period then ended. Since the date of such financial statements, there has been no material adverse change in the financial condition, revenues, properties or operations of Lessee.

9.06 Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during Lessee's current fiscal year, and such moneys will be applied in payment of all Rental Payments due and payable during such current fiscal year.

9.07 Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the Lease Term.

9.08 (i) The estimated total costs of the Equipment and closing costs under each Lease will not be less than the Acquisition Amount; (ii) the Equipment under each Lease will have been ordered as of the Commencement Date of such Lease or expected to be ordered within six months after such Commencement Date and such Equipment will be delivered and installed, and the Vendor fully paid, within 18 months from the applicable Commencement Date; (iii) Lessee will pursue

the acquisition of the Equipment and the expenditure of the Acquisition Amount with due diligence; (iv) no sinking, debt service, reserve or similar fund will be maintained by Lessee with respect to any Rental Payments or pledged as security therefor; (v) the Equipment will not be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last Payment Date under the related Lease; (vi) no other obligations of Lessee will be sold within 15 days of the Commencement Date of any Lease or sold pursuant to the same plan of financing as any Lease, which are expected to be paid from substantially the same source of funds as any Rental Payments; (vii) with respect to any amounts to be used to reimburse Lessee with any Acquisition Amount for costs of Equipment incurred prior to the Commencement Date of the applicable Lease, the Lessee made a declaration of its intention to reimburse the costs of such Equipment to be reimbursed not later than 60 days after the date on which payment is made; (viii) the officer or official who has executes each Schedule on Lessee's behalf is familiar with Lessee's expectations regarding the use and expenditure of the related Acquisition Amount; and (ix) the facts and estimates set forth in this paragraph are accurate and the expectations of Lessee set forth in this paragraph are reasonable.

9.09 The Equipment is and shall at all times be and remain personal property and not fixtures. If any of the Equipment is or will become fixtures, Lessee will be the fee owner of the real estate where the Equipment is and will be located and has good and marketable title thereto, and there exists no Lien or other claim or encumbrance of any nature whatsoever on or with respect to such real estate.

X. EVENTS OF DEFAULT AND REMEDIES

10.01 Each of the following shall be a "Default" and an "Event of Default" under a Lease and the term "Default" or "Event of Default" shall mean, whenever such term is used in a Lease, any one or more of the following events:

- (i) Failure by Lessee to timely pay any Rental Payment or other payment required to be paid under any Lease on the date on which such is due and payable;
- (ii) Lessee's failure to maintain insurance as required herein;
- (iii) With the exception of the above clauses (i) or (ii), Lessee's failure to perform or abide by any condition, agreement or covenant under such Lease for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of time prior to its expiration; *provided that*, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;
- (iv) Any warranty, representation or other statement by Lessee or by an officer or agent of Lessee contained in any Lease or in any instrument furnished in compliance with or in reference to any Lease is false or misleading in any material respect;
- (v) A petition is filed against Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any

jurisdiction, whether now or hereafter in effect, and an order for relief is entered or such petition is not dismissed within sixty (60) days of such filing;

- (vi) Lessee files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under such law; or
- (vii) Lessee admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including without limitation a receiver, liquidator or trustee) of Lessee or any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than 60 days.

10.02 Upon the Occurrence of an Event of Default:

- (i) The Lessor may sue to protect and enforce any and all rights, including the right to the appointment of a receiver, existing under the laws of the State of Florida, of the United States of America, or granted and contained in the applicable Lease, and to enforce and compel the performance of all duties required by such Lease or by any applicable laws to be performed by Lessee, the Governing Board or by any officer thereof, and may take all steps to enforce such Lease to the full extent permitted or authorized by the laws of the State of Florida or the United States of America.
- (ii) Lessor, with or without terminating such Lease, may declare all Rental Payments payable under such Lease and all other amounts payable by Lessee under such Lease to the end of the then-current Original Term or Renewal Term to be immediately due and payable by Lessee, whereupon such Rental Payments and other amounts shall be immediately due and payable.
- (iii) To the extent permitted by law, Lessor may terminate such Lease and by written notice to Lessee direct Lessee to deliver the related Equipment in the manner provided in Section 10.03. Lessor may thereafter dispose of such Equipment. If Lessor terminates a Lease and disposes of any or all of the Equipment, Lessor shall apply the proceeds of any such disposition to pay the following items in the following order: (i) all costs and expenses (including, but not limited to, attorneys' fees) incurred in securing possession of the Equipment; (ii) all reasonable costs and expenses incurred in completing the disposition of the Equipment; (iii) any sales or transfer taxes incurred in the disposition of the Equipment; (iv) any Rental Payments payable under the applicable Lease to the end of the then-current fiscal year of Lessee; (v) the outstanding principal component of Rental Payments under such Lease; and (vi) any other amounts then due under such Lease. Any disposition proceeds remaining after the requirements of clauses (i), (ii), (iii), (iv), (v) and (vi) have been met shall be paid to Lessee. No deficiency shall be allowed against Lessee, except with respect to any unpaid Rental Payments under such Lease to the

end of the then-current fiscal year of Lessee and reasonable unpaid costs and expenses incurred by Lessor in connection with the repossession and disposition of such Equipment.

10.03 Upon termination of a Lease prior to the payment of all Rental Payments or the Purchase Price under such Lease (whether as result of an Event of Nonappropriation or Event of Default), Lessee shall, within ten (10) days after such termination, at its own expense: (a) perform any testing and repairs required to place the related Equipment in the condition required by Section 7.01; (b) if de-installation, disassembly or crating is required, cause the related Equipment to be de-installed, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to Lessor; and (c) return related Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee. In addition, Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of such legal title to Lessor and the termination of Lessee's interest therein.

10.04 Any net proceeds from the sale or re-lease of any Equipment following termination of a Lease due to non-appropriation pursuant to this Section 3.02 shall be applied as follows: first, to pay all of Lessor's costs, charges and expenses incurred in taking, holding, repairing, selling, leasing or otherwise disposing of such Equipment; then second, to the extent not previously paid by the Lessee, to pay Lessor all Rental Payments due under the applicable Lease through the termination date; then third, to pay any prepayment premium on the unpaid balance as set forth the applicable Payment Schedule; then fourth, to pay any remainder to Lessee.

10.05 With respect to any provision of any Lease Agreement requiring Lessee to return all or any portion of the Equipment to Lessor or to transfer title to all or any portion of the Equipment to Lessor, Lessee agrees to voluntarily do so. In the event that Lessee fails or refuses to return or transfer the Equipment or title thereto voluntarily as set forth above, Lessor acknowledges that the Agreement does not and shall not create a right in Lessor to involuntarily dispossess Lessee of title to or possession of all or any item of such Equipment. In lieu of such right Lessor shall be entitled to and Lessee agrees to pay to Lessor immediately, but only from legally available funds, the applicable Purchase Price, plus any Rental Payments accrued and unpaid as of the date of such payment.

10.06 To the extent permitted by applicable law, Lessee shall pay Lessor a charge on any Rental Payment or any other amount payable hereunder not paid on the date such payment is due at a rate equal to the interest rate set forth on the Payment Schedule, plus 5% per annum, or the maximum amount permitted by law, whichever is less (the "Default Rate"), from such date.

10.07 Each of the rights and remedies under any Lease is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of any Lease. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of a Lease, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

10.08 Upon the occurrence of an Event of Default under a Lease, Lessee agrees to pay to Lessor or reimburse Lessor for, in addition to all other amounts payable thereunder, all of Lessor's costs of collection, including reasonable attorneys' fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by the applicable Lease until paid, and shall bear interest at the Default Rate. In the event suit or action is instituted to enforce any of the terms of a Lease, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial and on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

10.09 In addition to all other rights contained in this Agreement, if an Event of Default occurs under a Lease and as long as the Event of Default continues, the interest component of the related Rental Payments shall be increased to equal, and all other monetary obligations of Lessee to Lessor shall bear interest at, the rate otherwise used to determine such Rental Payments plus 3% ("Default Rate").

XI. ADDITIONAL PROVISIONS

11.01 This Agreement and each Lease shall be governed by and construed in accordance with the laws of the State.

11.02 No recourse shall be had for the payment of Rental Payments or any other amounts payable under any Lease against any present or former member or officer of the governing body of Lessee or any person executing this Agreement or any Schedule.

11.03 All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

Lessee: City of Port Orange, Florida

Attention:

Lessor: South State Bank , N.A.

Attention:

Either of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

11.04 In any case where the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in a Lease, shall be a Saturday, Sunday or day on which the applicable office of Lessor is lawfully closed, then such payment or performance shall be made on the succeeding business day with the same force and effect as if done on the nominal date provided in the applicable Lease, provided that interest on any monetary obligation hereunder shall accrue at the applicable rate to and including the date of such payment. All payments received

during normal banking hours after 4:00 p.m. local time at the office of Lessor for payments shall be deemed received at the opening of the next banking day.

11.05 It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein, in no event shall any Lease require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the applicable Lease Term so that the interest is uniform through such term.

11.06 This Agreement may only be amended by a written instrument executed by Lessee and Lessor.

11.07 This Agreement shall be binding upon Lessee and Lessor and shall inure to the benefit of Lessee and Lessor and their respective successors and assigns. Lessor may assign its rights, title and interest in and to any Lease or the related Equipment, and/or may grant or assign a security interest in a Lease or the related Equipment, in whole or in part, without obtaining the consent of Lessee, but no such assignment, transfer or conveyance shall be effective as against Lessee unless and until Lessor has delivered to Lessee written notice thereof that discloses the name and address of the assignee and such assignment, transfer or conveyance shall be made only to banks, insurance companies or other financial institutions or their affiliates. LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code. Lessee agrees to acknowledge in writing any such assignments if so requested. Neither any Lease nor any of the Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

11.08 In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.

11.09 Each Lease represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

11.10 Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required to perfect, confirm, establish, reestablish, continue or complete the interests of Lessor in each Lease, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and each such Lease.

11.11 Lessee acknowledges and agrees that (i) each Lease and the transactions related thereto is an arm's-length commercial transaction between Lessor and Lessee, (ii) in connection therewith

and with the discussions, undertakings, and procedures leading up to the consummation of each lease transaction, Lessor is and has been acting solely as a principal and is not acting as the agent, advisor or fiduciary of Lessee, (iii) Lessor has not assumed an advisory or fiduciary responsibility in favor of Lessee with respect to the transactions contemplated hereby or the discussions, undertakings, and procedures leading thereto (regardless of whether Lessor or any affiliate thereof has provided other services or is currently providing other services to Lessee on other matters) and Lessor has no obligation to Lessee with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement, and (iv) Lessee has consulted its own legal, financial, and other advisors to the extent it has deemed appropriate.

11.12 Patriot Act Notice. To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include financing and loan accounts.

11.13 Waiver of Jury Trial. To the extent permitted by applicable law, each of Lessee and Lessor knowingly, voluntarily and intentionally waives any right each may have to a trial by jury in respect of any litigation based on, or arising out of, under or in connection with this Agreement or any agreement contemplated to be executed in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party with respect hereto. This provision is a material inducement to Lessor to enter into this Agreement.

11.14 This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO LEASE PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

CITY OF PORT ORANGE, FLORIDA

(SEAL)

By: _____
Mayor

ATTEST:

By: _____
Clerk

[BANK]

By: _____
Vice President

LIST OF EXHIBITS

Exhibit A	—	Form of Schedule of Property
Exhibit B	—	Form of Rental Payment Schedule
Exhibit C	—	Form of Lessee Resolution
Exhibit D	—	Form of Final Acceptance Certificate
Exhibit E	—	Form of Opinion of Lessee's Counsel

EXHIBIT A

FORM OF SCHEDULE OF PROPERTY NO. _____

Re: Master Equipment Lease/Purchase Agreement, dated as of _____, 20____,
between [Bank], as Lessor, and City of Port Orange, Florida, as Lessee

1. *Defined Terms.* All terms used herein have the meanings ascribed to them in the above-referenced Master Equipment Lease/Purchase Agreement (the “*Agreement*”).

2. *Equipment.* For purposes of the Lease created hereby, the following items of Equipment are hereby included under this Schedule together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto as provided in the Agreement.

QUANTITY	DESCRIPTION	SERIAL NO.	MODEL NO.	LOCATION
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Equipment Costs hereunder may include soft costs relating to the Equipment, which, on a cumulative basis, do not exceed ____% of the total cost of the Equipment subject to this Lease.

3. *Payment Schedule.*

(a) *Rental Payments; Commencement Date.* The Rental Payments shall be in such amounts and payable on such Rental Payment Dates as set forth in the Rental Payment Schedule attached to this Schedule as *Exhibit B* and incorporated herein by this reference, subject to adjustment upon the occurrence of certain events as provided in Section 8.05 of the Agreement. Lessee’s obligation to pay Rental Payments under the Lease created hereby shall commence on the date on which the Acquisition Amount is advanced to the Lessee for the purpose of acquiring the Equipment (such date being herein referred to as the “*Commencement Date*”).

(b) *Prepayment Price Schedule.* The Prepayment Price on each Rental Payment Date shall be the amount set forth for such Rental Payment Date in the “Prepayment Price” column of the Rental Payment Schedule attached to this Schedule. The Prepayment Price is in addition to all Rental Payments then due under this Schedule (including the Rental Payment shown on the same line in the Rental Payment Schedule).

4. *Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the Commencement Date. Lessee further represents and warrants that (a) no Event of Default has occurred and is continuing under any Lease currently in effect; (b) no Event of Non-appropriation under any Lease currently in effect is threatened; (c) no Lease has been terminated as the result of the occurrence of an Event of Default or an Event of Non-appropriation; (d) the governing body of Lessee has authorized the execution and delivery of the Agreement and the Leases pursuant to [Resolution No. _____] [Ordinance No. _____], approved on _____, 20__; (e) the Equipment listed in this Schedule is essential to the functions of Lessee or to the services Lessee provides its citizens; (f) Lessee has an immediate need for, and expects to make immediate use of, substantially all such Equipment, which will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of its authority; and (g) Lessee expects and anticipates adequate funds to be available for all future payments or rent due after the current budgetary period.

5. *The Lease.* The terms and provisions of the Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

6. *Acquisition Amount.* The Acquisition Amount for the Equipment listed in this Schedule is \$ _____. The Acquisition Amount shall be [advanced to the Lessee, which shall hold such amount in escrow pending use to acquire the Equipment] [paid to the vendor of the Equipment at the written direction of the Lessee.]

7. *Acquisition Period.* The Advance Period applicable to this Schedule shall end at the conclusion of the ____ month following the date hereof. If at the end of the Advance Period the aggregate amount of advances is less than the Acquisition Amount, the Lessor shall provide Lessee with a revised Payment Schedule.

8. *Lease Term.* The Lease Term shall consist of the Original Term and ____ consecutive Renewal Terms, with the final Renewal Term ending on _____, subject to earlier termination pursuant to the Agreement.

9. *Contract Rate; Taxable Rate.* The Default Rate for this Schedule is _____% per annum. The Taxable Rate for this Schedule is _____% per annum.

10. *Registration.* Any Equipment that is a motor vehicle is to be registered and titled in the name of Lessee as registered owner. Lessee shall be responsible for the correct titling of all Equipment leased hereunder. Lessee will cause copies of the Certificates of Title to be delivered to Lessor for retention in Lessor's files throughout the Lease Term of the Lease created hereby.

11. Lessee hereby represents and warrants for the benefit of Lessor that Lessee is the fee owner of the real estate where the Equipment is and will be located and has good and marketable title thereto, and there exists no pledge, lien, charge or other encumbrance of any nature whatsoever on or with respect to such real estate.

Dated: _____

LESSOR:
[Bank].

LESSEE:
CITY OF PORT ORANGE, FLORIDA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT B

FORM OF RENTAL PAYMENT SCHEDULE

RENTAL PAYMENT DATE	RENTAL PAYMENT AMOUNT	INTEREST PORTION	PRINCIPAL PORTION	OUTSTANDING BALANCE	PREPAYMENT PRICE [including prepayment premium, if any]
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EXHIBIT C

FORM OF LESSEE RESOLUTION

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE MASTER LEASE AGREEMENT FORM; AUTHORIZING THE EXECUTION OF THE MASTER LEASE AGREEMENT SUBJECT TO THE TERMS STATED IN THIS RESOLUTION; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF PORT ORANGE, FLORIDA, that:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution is enacted pursuant to the provisions of Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. APPROVING MASTER LEASE AGREEMENT FORM. The Master Lease Agreement in substantially the form submitted to this body is hereby approved and authorized.

SECTION 3. SETTING FORTH ACCEPTABLE TERMS AND AUTHORIZING EXECUTION OF MASTER LEASE AGREEMENT. The amount financed for the purchase of [vehicles/equipment] under the Master Lease Agreement shall not exceed XXXXXXXX and the acceptable annual percentage rate assessed on the amount financed shall not exceed XXXXXX. The Mayor is hereby authorized to execute and deliver the lease purchase agreement and any and all papers, instruments, opinions, certificate and other documents and to do and cause to be done any and all other acts and things necessary or proper implement this resolution and the lease purchase of said [vehicles/equipment].

SECTION 4. REPEAL OF INCONSISTENT PROVISIONS. All resolutions or parts thereof in conflict with this Resolution are hereby repealed to the extent of such conflict.

SECTION 5. SEVERABILITY. In the event that any portion or section of this Resolution is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Resolution, which shall remain in full force and effect.

SECTION 6. 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 7. EFFECTIVE DATE. This resolution shall become effective immediately upon adoption.

[Clerk to add customary signature blocks]

EXHIBIT D

FORM OF ACCEPTANCE CERTIFICATE

[Bank]

[Bank Address]

Re: Schedule of Property No. _____, dated _____, to Master Lease Purchase Agreement dated as of [Date] (the "Agreement") between [Bank] and the City of Port Orange, Florida ("Lessee")

Ladies and Gentlemen:

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Lessee and, with respect to the above-referenced Agreement, that:

1. The Equipment subject to the above referenced Schedule of Property (the "Schedule") has been delivered and installed, is in good working order and is fully operational and has been fully accepted by Lessee on or before the date hereof.
2. Attached hereto are true and correct copies of the manufacturers' and dealers' invoices for the Equipment.
3. Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.
4. Lessee hereby reaffirms that the representations, warranties and covenants contained in the Agreement and incorporated into the Schedule by reference are true and correct as of the date hereof.
3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Agreement during the current fiscal year of Lessee. Such moneys will be applied in payment of all such Rental Payments due and payable during such current fiscal year.
4. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists on the date hereof.

Date: _____

CITY OF PORT ORANGE, FLORIDA

By: _____

Name:

Title:

EXHIBIT E

FORM OF OPINION OF COUNSEL TO LESSEE

[Date]

[Bank]

[Lessor Address]

Re: Lease Purchase Agreement dated as of [Date] (the "Agreement") between [Bank] and the City of Port Orange, Florida ("Lessee")

Ladies and Gentlemen:

We have acted as counsel to the City of Port Orange, Florida ("Lessee") in connection with the above-referenced transaction. In such capacity, we have reviewed (a) an executed counterpart of that certain Schedule of Property No. _____, dated _____, _____, between Lessor and Lessee, which incorporates by reference the terms and provisions of Master Lease Purchase Agreement, dated as of _____, 20__ between Lessor and Lessee (the "Agreement" and together with all documents to be executed and delivered pursuant thereto, the "Financing Documents"), by and between [Bank] ("Lessor") and Lessee, which, among other things, provides for the lease of certain property described therein (the "Equipment"), (b) an ordinance or resolution of the governing body of Lessee which, among other things, authorizes Lessee to execute the Financing Documents, and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. Terms capitalized in this opinion but not defined herein shall have the meanings assigned to them in the Agreement. Based upon foregoing, we are of opinion that, under current law:

1. Lessee is a political subdivision of the State of Florida (the "State") within the meaning of Section 103(c) of the Internal Revenue Code of 1986, as amended, and is duly organized, existing and operating under the Constitution and laws of the State.

2. Lessee has the requisite power and authority to lease and acquire the Equipment and to execute and deliver the Financing Documents and to perform its obligations thereunder.

3. Each of the Financing Documents has been duly authorized, executed and delivered by and on behalf of Lessee, and is a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

4. The authorization and execution of the Financing Documents and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all applicable open meeting, public records, public bidding and all other laws, rules and regulations of the State.

5. The execution of the Agreement and the appropriation of moneys to pay the Rental Payments coming due thereunder do not and will not result in the violation of any constitutional,

statutory or other limitation relating to the manner, form or amount of indebtedness which may be incurred by Lessee.

6. There is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Financing Documents interest of Lessor or its assigns, as the case may be, in the Equipment.

This opinion may be relied upon by the addressee hereof and its successors and assignees of interests in the Agreement.

Very truly yours,



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C17) Approval to Remove a Residential Historic Tree located at 812 Kokomo Circle

DEPARTMENT: Community Development

GOAL: 1 - Public Safety
3 - Quality of Life

RECOMMENDED MOTION: Move to approve the removal of a 42" live oak located at 812 Kokomo Circle conditioned on mitigation by planting two (2) replacement shade trees.

SUMMARY: Patricia Aschman, property owner at 812 Kokomo Circle, has applied to remove a 42" diameter Live Oak tree located in the rear yard. The permit application indicates the reason for removal is that the tree is decayed.

Steve Edgar, City Forester and Certified Arborist, evaluated the tree in accordance with the International Society of Arboriculture (ISA) standards. The resulting ISA Basic Tree Risk Assessment Form is attached. Upon inspection, Mr. Edgar found the tree was struck by lightning some years ago. The tree has decayed throughout the trunk and root system due to damage inflicted by the lightning strike. The tree is approximately 80 feet tall with a fall distance of 40 feet. 812 Kokomo Circle is a duplex unit connected to 814 Kokomo Circle. The tree scored a High Risk to 812 Kokomo Circle and the adjacent home at 814 Kokomo Circle.

According to the Land Development Code (LDC), the request to remove a historic Live Oak tree on a residential lot requires approval by City Council and mitigation if removal of the tree results in fewer trees than required for the lot. In accordance with the LDC, the subject lot is required to have two (2) shade trees. The historic tree is the only shade tree on the subject residential lot. If the removal of the historic Live Oak tree from the subject lot is approved, the applicant will be required to provide 2 replacement trees.

Based on staff assessment of the tree and potential for catastrophic failure, staff is recommending approval of the request to remove the 42" historic live oak located at 812 Kokomo Circle.

PRESENTER: Margaret Tomlinson

ATTACHMENTS:

1.	812 Kokomo Circle Tree Assessment	812 Kokomo Circle Tree Assessment.pdf
2.	812 Kokomo Tree Photos	812 Kokomo Tree Photos.pdf

Margaret Tomlinson

Created/Initiated - 12/19/2022

Tim Burman

Approved - 12/22/2022

Wayne Clark

Approved - 1/12/2023

Robin Fenwick

Final Approval - 1/12/2023



Basic Tree Risk Assessment Form

Client CITY OF PORT ORANGE Date 12/3/2022 Time _____
 Address/Tree location 812 KOKOMO CIRCLE Tree no. 1 Sheet 1 of 2
 Tree species LIVE OAK dbh 42" Height 80' Crown spread dia. 66'
 Assessor(s) Steve Edgar, Port Orange City Forester Time frame _____ Tools used Std.

Target Assessment

Target number	Target description	Target zone			Occupancy rate 1 – rare 2 – occasional 3 – frequent 4 – constant	Practical to move target?	Restriction practical?
		Target within drip line	Target within 1 x Ht.	Target within 1.5 x Ht.			
1	HOME AT 812 KOKOMO	☒	☒	☒	4	NO	NO
2	HOME AT 814 KOKOMO	☒	☒	☒	4	NO	NO
3							
4							

Site Factors

History of failures YES BRANCHES DOWN FROM STORM Topography Flat ☒ Slope ☐ _____ % Aspect _____
 Site changes None ☐ Grade change ☒ Site clearing ☒ Changed soil hydrology ☒ Root cuts ☒ Describe HISTORIC HOME CONSTRUCTION
 Soil conditions Limited volume ☐ Saturated ☐ Shallow ☐ Compacted ☐ Pavement over roots ☐ _____ % Describe _____
 Prevailing wind direction _____ Common weather Strong winds ☒ Ice ☐ Snow ☐ Heavy rain ☒ Describe _____

Tree Health and Species Profile

Vigor Low ☐ Normal ☒ High ☐ Foliage None (seasonal) ☐ None (dead) ☐ Normal 99 % Chlorotic _____ % Necrotic _____ %
 Pests _____ Abiotic _____
 Species failure profile Branches ☐ Trunk ☐ Roots ☐ Describe LIVE OAK IS RESISTANT TO DECAY WITH STRONG WOOD

Load Factors

Wind exposure Protected ☐ Partial ☐ Full ☒ Wind funneling ☐ _____ Relative crown size Small ☐ Medium ☐ Large ☐
 Crown density Sparse ☐ Normal ☒ Dense ☐ Interior branches Few ☒ Normal ☐ Dense ☐ Vines/Mistletoe/Moss ☐ _____
 Recent or planned change in load factors _____

Tree Defects and Conditions Affecting the Likelihood of Failure

— Crown and Branches —

Unbalanced crown ☒ LCR 40 %
 Dead twigs/branches ☒ 5 % overall Max. dia. 2"
 Broken/Hangers Number _____ Max. dia. _____
 Over-extended branches ☐
 Pruning history
 Crown cleaned ☐ Thinned ☐ Raised ☐
 Reduced ☐ Topped ☐ Lion-tailed ☐
 Flush cuts ☐ Other LOWER BRANCHES OVER
 Cracks ☒ _____ Lightning damage ☒
 Codominant ☐ _____ Included bark ☐
 Weak attachments ☐ _____ Cavity/Nest hole _____ % circ.
 Previous branch failures ☒ _____ Similar branches present ☒
 Dead/Missing bark ☒ Cankers/Galls/Burls ☐ Sapwood damage/decay ☒
 Conks ☐ Heartwood decay ☒
 Response growth SLOW AND POOR
 Main concern(s) HEARTWOOD DECAY IN SCAFFOLDING BRANCHES AND ATTACHMENT POINTS

Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☒
 Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

— Trunk —

Dead/Missing bark ☒ Abnormal bark texture/color ☒
 Codominant stems ☐ Included bark ☐ Cracks ☒
 Sapwood damage/decay ☒ Cankers/Galls/Burls ☐ Sap ooze ☐
 Lightning damage ☒ Heartwood decay ☒ Conks/Mushrooms ☐
 Cavity/Nest hole _____ % circ. Depth ??? Poor taper ☐
 Lean _____ ° Corrected? _____
 Response growth POOR
 Main concern(s) DECAY AT SCAFFOLDING BRANCH LEADING TO CATASTROPHIC FAILURE
 Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☒
 Likelihood of failure Improbable ☐ Possible ☐ Probable ☒ Imminent ☐

— Roots and Root Collar —

Collar buried/Not visible ☐ Depth _____ Stem girdling ☐
 Dead ☐ Decay ☒ Conks/Mushrooms ☐
 Ooze ☐ Cavity ☐ _____ % circ.
 Cracks ☐ Cut/Damaged roots ☐ Distance from trunk _____
 Root plate lifting ☐ Soil weakness ☐
 Response growth _____
 Main concern(s) DECAY FROM ROOT DAMAGE BY LIGHTNING
 Load on defect N/A ☐ Minor ☐ Moderate ☐ Significant ☐
 Likelihood of failure Improbable ☐ Possible ☒ Probable ☐ Imminent ☐

Risk Categorization																											
Condition number	Tree part	Conditions of concern	Part size	Fall distance	Target number	Target protection	Likelihood																Consequences				Risk rating of part (from Matrix 2)
							Failure				Impact				Failure & Impact (from Matrix 1)												
							Improbable	Possible	Probable	Imminent	Very low	Low	Medium	High	Unlikely	Somewhat	Likely	Very likely	Negligible	Minor	Significant	Severe					
1	CROWN	HEARTWOOD DECAY	25"	40'	1	YES																	MODER				
					2	YES																	MODER				
2	TRUNK	HEARTWOOD DECAY	42"	40'	1	YES																	HIGH				
					2	YES																	HIGH				
3	ROOTS	DECAY	42"	40'	1	YES																	MODER				
					2	YES																	MODER				
4																											

Matrix 1. Likelihood matrix.

Likelihood of Failure	Likelihood of Impacting Target			
	Very low	Low	Medium	High
Imminent	Unlikely	Somewhat likely	Likely	Very likely
Probable	Unlikely	Unlikely	Somewhat likely	Likely
Possible	Unlikely	Unlikely	Unlikely	Somewhat likely
Improbable	Unlikely	Unlikely	Unlikely	Unlikely

Matrix 2. Risk rating matrix.

Likelihood of Failure & Impact	Consequences of Failure			
	Negligible	Minor	Significant	Severe
Very likely	Low	Moderate	High	Extreme
Likely	Low	Moderate	High	High
Somewhat likely	Low	Low	Moderate	Moderate
Unlikely	Low	Low	Low	Low

Notes, explanations, descriptions THIS LIVE OAK WAS STRUCK BY LIGHTNING SOME YEARS AGO. THE DECAY FROM THE STRIKE HAS REACHED THE HEARTWOOD AT MAJOR BRANCH ATTACHMENTS AND EXTENDS ON BOTH SIDES OF THE TRUNK TO THE ROOT SYSTEM.

Mitigation options

NONE POSSIBLE

Residual risk

Residual risk

Residual risk

Residual risk

Overall tree risk rating

Low

Moderate

High

Extreme

Work priority

1

2

3

4

Recommended inspection interval

Data

Final

Preliminary

Advanced assessment needed

No

Yes-Type/Reason

Inspection limitations

None

Visibility

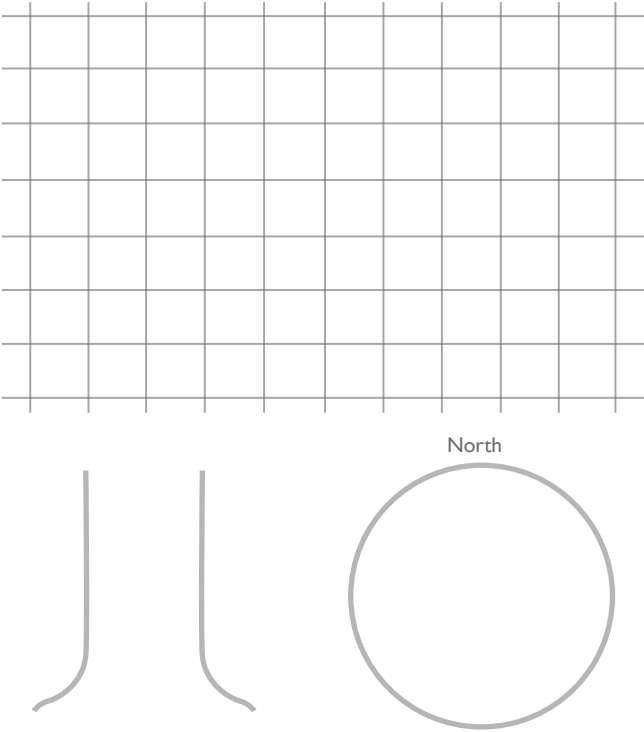
Access

Vines

Root collar buried

Describe

ROOT DAMAGE IS NOT VISIBLE





View of 42" diameter Live Oak from the street



Close up view of old lightning strike scar at the base of the trunk



View of lightning strike along the upper trunk and major branch attachments



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (C18) Acceptance of the City Attorney's Report on Special Legal Counsel for 2023

DEPARTMENT: City Attorney

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to accept the report as presented.

SUMMARY: In anticipation of the demand for Special Legal Counsel, the City Attorney has planned for the various services that may be needed. The individual firms and/or attorneys shown on the attached list will be utilized when required by the city's need for specialized legal expertise or to bolster the capacity of the current legal staff.

One or more of the listed firms may be engaged as Special Legal Counsel during FY 2023 for the specified type of work. The legal work will be initiated, as needed, and supervised directly by the City Attorney. Estimated funding requirements have been appropriated in the FY 2023 budget.

PRESENTER: Matthew Jones

ATTACHMENTS:

1.	CA Special Counsel Services 2023	CA Special Counsel Services 2023.pdf
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Matthew Jones	Created/Initiated - 12/16/2022
Matthew Jones	Approved - 12/16/2022
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023

CITY ATTORNEY SPECIAL LEGAL COUNSEL SERVICES - 2023

Allen Norton & Blue, P.A.

Ford & Harrison, LLP

Personnel, labor and employment law involving labor contract negotiations, grievances and arbitrations, Fair Labor Standards, policy reviews and other similar matters.

Kinsey Vincent & Pyle, P.L.

Construction bond and contract litigation, complex construction contracting matters, American Institute of Architect Contract Licensing, and other litigation or prosecutorial matters.

Lewis Longman & Walker, P.A.

Pension Law for fire, police, general employees and other administrative and state regulatory matters.

Dean Ringers Morgan & Lawton, P.A.

Walker Revels Greninger & Netcher, P.A.

Civil litigation defense, policy development, personal injury, workers compensation, law enforcement liability and other general litigation coverage.

Korey Sweet McKinnon & Simpson, P.A.

Real property, escrow and litigation services.

Rutledge Ecenia, P.A.

Services related to State of Florida Licensing for alcoholic beverages and other specialized licensure matters.

Bryant Miller Olive, P.A.

Impact fee, special assessments and other fee ordinance implementation or amendments; and public private partnerships.

Gray Robinson, P.A.

Communications related services including development reviews, lease preparation and negotiations, and regulatory implementation and amendments.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (G22) Second Reading - Ordinance No. 2022-32 - LDC
Amendment/Chapter 20 - Ridgewood Targeted Business Program

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2022-32, amending Chapter 20 of the Land Development Code.

SUMMARY: Planning Commission Action (11-17-22): Recommended Approval 6-0

In December 2017, City Council approved a three-year pilot program for targeted businesses within the Ridgewood Corridor that waived the requirement for a site development plan and site improvements that are not required to meet accessibility, Building, and Fire Code requirements if there is no increase in the area of the principal building. This program was extended for an additional two (2) years by the City Council in January 2020 and will currently end on January 31, 2023. The proposed amendment is to make the current pilot Targeted Business Site Improvement Waiver Program a permanent redevelopment incentive in the Land Development Code by removing the expiration date. There are no proposed changes to the list of Targeted Businesses that would qualify as part of this amendment and the list of Targeted Businesses can be found on Page 3 of the attached staff report.

The intent of the Targeted Business Site Improvement Waiver Program is to encourage redevelopment of the Ridgewood Corridor by allowing smaller “mom-and-pop” and local businesses to get started without a substantial amount of upfront costs. Some communities have successfully encouraged redevelopment by allowing some site upgrades to be deferred until the areas have been transformed and there is enough private market interest to drive a higher level of improvement. There is a risk that site improvements may never be made, but the standard regulatory environment has not been successful at encouraging reinvestment in this area, and it is not anticipated that this will change in the near future.

The number of new targeted businesses each year since the program started has averaged around 8 per year. According to the targeted business owners that have redeveloped along the corridor, they would not have been able to have a business located in Port Orange if it was not for the Ridgewood Targeted Business Program, because their business was able to get started without a substantial amount of upfront costs.

The Staff Report is attached for more information.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2022-32	12-6 Ord. No. 2022-32 LDC Amendments Ch 20 Targeted Business.pdf
2.	Staff Report	Staff Report .pdf

Penelope Cruz
Robin Fenwick

Created/Initiated - 12/8/2022
Final Approval - 12/12/2022

ORDINANCE NO. 2022-32

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA AMENDING THE LAND
DEVELOPMENT CODE CHAPTER 20 RELATING TO
RIDGEWOOD CORRIDOR TARGETED BUSINESSES
RELATING TO ADDITIONAL DEVELOPMENT
INCENTIVES; PROVIDING FOR REPEAL OF
CONFLICTING ORDINANCES; PROVIDING FOR
SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in December of 2017, City Council approved Ordinance No. 2017-31 implementing a pilot program for targeted businesses within the Ridgewood Corridor waiving the requirement for a site development plan and site improvements that are not required to meet accessibility, Building, and Fire Code requirements if there is no increase in the area of the principal building; and

WHEREAS, City Council extended this program for an additional three (3) years in January of 2020 with the said program set to expire in January of 2023; and

WHEREAS, City Council desires to continue to encourage development in the Ridgewood Corridor with development incentives; and

WHEREAS, City Council desires to make the current pilot Targeted Business Site Improvement Waiver Program a permanent redevelopment incentive; and

WHEREAS, the Planning Commission has recommended amendments to the Land Development Code; and

WHEREAS, the proposed amendments are necessary to improve the content of the existing Land Development Code ("Code") as part of an ongoing maintenance effort to make the Code and the development review process more efficient and consistent in its application.

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

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

SECTION 1: The City Council of the City of Port Orange hereby amends Chapter 20, Section 2 of the Land Development Code, to read as follows:

Chapter 20 - ECONOMIC DEVELOPMENT INCENTIVES

Sec. 2: - Overview of available city incentives.

[No changes to sections (a) – (e)]

(f) *Waiver of required site improvements for Ridgewood Corridor Targeted Business.* ~~As a pilot program, d~~Developers of all Ridgewood Corridor targeted businesses, as identified in subsection (k)(2), with direct frontage on Ridgewood Avenue south of Dunlawton Avenue (regardless of zoning) may request a waiver of required site improvements other than those improvements related to screening of outdoor storage and equipment, accessibility, building code, and fire code so long as there is no increase in the area of the principal structure and no increase in impervious area that would require drainage improvements. ~~shall terminate and expire on January 31, 2023, unless terminated earlier or extended by city council action.~~

[No changes to sections (g) – (k)]

SECTION 2: All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 3: The provisions of this Ordinance shall become and be made a part of the Land Development Code of the City of Port Orange and the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 4: 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: This Ordinance shall take effect immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney



STAFF REPORT

CASE NO. 22-25000006

LDC Amendment/Chapter 20 - Ridgewood Targeted Business Program

REQUEST:	Amendment to Chapter 20 of the Land Development Code (LDC), regarding the Ridgewood Targeted Business Program.
APPLICANT:	City of Port Orange
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
PLANNING COMMISSION:	Recommended Approval 6-0 (November 17, 2022)
CITY COUNCIL:	December 13, 2022

Introduction

The proposed amendment to the Land Development Code is to make the Ridgewood Corridor Targeted Business Site Improvement Waiver Program a permanent program to encourage the redevelopment of targeted businesses within the Ridgewood Corridor (Figure 1 on page 2). If approved, the Targeted Business Site Improvement Waiver Program would be a permanent incentive program that can continue to be used to assist in the redevelopment of the Ridgewood Corridor. The program is consistent with the existing Ridgewood Corridor Plan (RCP) Long Term Strategy #1 to encourage redevelopment and improve the corridor by making it more attractive, improving its economic position, and minimizing activities that discourage investment.

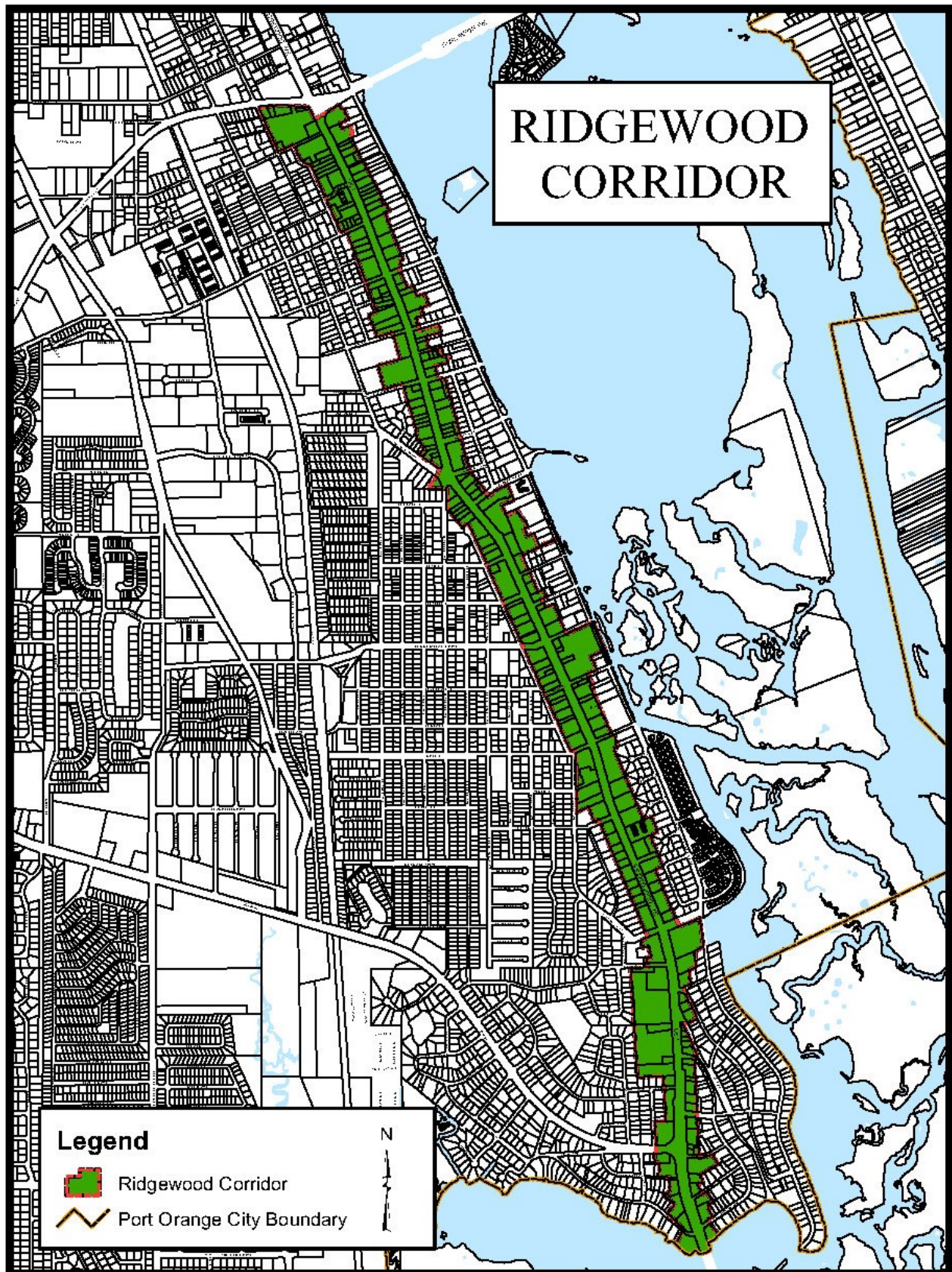
Summary of Proposed Amendments to LDC - Chapter 20

Remove the expiration date for the Targeted Business Site Improvement Waiver Program:

In December 2017, City Council approved a three-year pilot program for targeted businesses within the Ridgewood Corridor that waived the requirement for a site development plan and site improvements that are not required to meet accessibility, Building, and Fire Code requirements if there is no increase in the area of the principal building. This program was extended for an additional two (2) years by City Council in January 2020 and will currently end on January 31, 2023. The proposed amendment is to make the current pilot Targeted Business Site Improvement Waiver Program permanent requirements in the LDC by removing the expiration date.

The intent of the Targeted Business Site Improvement Waiver Program is to encourage redevelopment of the Ridgewood Corridor by allowing smaller “mom-and-pop” and local businesses to get started without a substantial amount of upfront costs. Some communities have successfully encouraged redevelopment by allowing some site upgrades to be deferred until the areas have transformed and there is enough private market interest to drive a higher level of improvements. There is a risk that site improvements may never be made, but the standard regulatory environment has not been successful at encouraging reinvestment in this area, and it is not anticipated that this will change in the near future.

Figure 1. Ridgewood Corridor Map



The following businesses have been designated by City Council as Ridgewood Corridor Targeted Businesses and as part of the amendment, no uses are proposed to be added or removed.

1. Restaurants
2. Professional offices
3. Developments that assemble land to create a connection from Ridgewood to the riverfront
4. Water-based businesses (e.g., watersports sales and rentals, such as kayaks, jet skis, paddle boards, etc., water taxis, boat tours, fish markets, bait, and tackle shops)
5. Eco-tourism (e.g., guided tours)
6. Grocery store
7. Craft food and beverage producer
8. Microbrewery
9. Adult/vocational education
10. Appliance/electronic repair shops
11. Business service
12. Convenience stores without fuel operations
13. Financial services
14. Fleet-based services
15. Health/exercise club
16. Laboratory, research, and development
17. Manufacturing (craftsman shop and limited)
18. Personal services
19. Retail home building materials
20. Any other enterprise/project with an anticipated socio-economic benefit and supported by the city council

According to the targeted business owners that have redeveloped along the corridor, they would not have been able to have a business located in Port Orange if it was not for the Ridgewood Targeted Business Program because their business was able to get started without a substantial amount of upfront costs. Staff believes making the program permanent is necessary to continue the redevelopment and reinvestment in the City's oldest commercial corridor. The number of new targeted businesses each year since the targeted business program started has averaged around 8 targeted businesses per year. There is a risk that the improvements may never get done, but the standard regulatory environment for these businesses has not been successful at encouraging reinvestment in this area.

Since the start of the pilot program in December 2017, there have been forty-seven (47) targeted businesses added to the Ridgewood Corridor, with an average of eight (8) businesses added each year.

Figure 2. Examples of Targeted Businesses Added Since December 2017

Riley's Coney House Restaurant - 5901 Ridgewood Ave.



Water's Edge Dental – 4410 Ridgewood Ave.



E & J Bait & Tackle – 5253 Ridgewood Ave.



Rossi's Heat & Air Conditioning – 215 Church St.



Port Orange Bait and Tackle – 4751 Ridgewood Ave.

Recommendation

Approval of the amendment to Chapter 20 of the Land Development Code, subject to review by the City Attorney as to legal form and content.

Attachments

Exhibit 1 - Proposed LDC Amendments to Chapter 20 (See Ordinance Exhibit)



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 1/17/2023

SUBJECT: (G23) Approval of the Flagship Commons Final Subdivision Plat (Case No. 22-50000004)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Final Plat for the Flagship Commons Subdivision

SUMMARY: Planning Commission Action (12/15/22): Recommended Approval 6-0

The applicant requests approval of the Flagship Commons Subdivision Plat. If approved, the applicant intends to subdivide a ±8.3-acre property into two (2) commercial lots along with tracts for stormwater drainage, tree preservation, and vehicular access. The subject property is located at the southeast corner of Madeline Avenue and Nova Road. The subject property is zoned Community Commercial (CC), and has a Future Land Use designation of *Commercial*. In August 2022, City Council approved a rezoning request that rezoned the subject property from Multi-Family Residential (R-3M) to Community Commercial (CC).



The subdivision plat to subdivide the subject property has been reviewed by the Staff Development Review Committee (SDRC) and determined to be designed according to the lot dimensional requirements of the CC zoning district and the technical criteria in the Land Development Code (LDC) for subdivision of land. The required infrastructure and easements to serve the two (2) proposed commercial lots will be constructed or provided as part of the site plan for the Extra Space Storage Facility (Lot 1) and will include:

- Utility infrastructure to serve the two (2) lots.
- Full-access driveway at the east end of the property on Madeline Avenue
- Right-in-only driveway at the west end of the property on Madeline Avenue.
- Right-in/right-out driveway at the south end of the property on Nova Road.
- Stormwater ponds and compensating storage area that will provide retention for both lots.
- Required access, drainage, and utility easements over the shared subdivision infrastructure that serves both lots.
- A cross-access driveway and easement between lots for vehicles and pedestrians.
- Sidewalks along Madeline Avenue and Jackson Street;

-
- A two-foot non-vehicular access easement to restrict driveways from being constructed on Jackson Street and Sweetgum Lane; and
 - Required tree preservation areas for the two (2) lots.

With the required infrastructure to serve the two (2) proposed commercial lots being constructed as part of the site improvements for the Extra Space Storage Facility (Lot 1), subdivision infrastructure plans are not required with the subdivision plat. All required subdivision infrastructure improvements and easements will be built and accepted as part of the Extra Space Storage Facility (Lot 1) site plan prior to the subdivision plat being recorded.

Flagship Companies Group, LLC, developer of the proposed Lot 1, has submitted a site plan for the Extra Space Storage Facility to be built on Lot 1. The Extra Space Storage Facility development is designed to comply with the lot configuration of the proposed subdivision. There are currently no end users identified for the commercial lot (Lot 2) located at the southeast corner of Nova Road and Madeline Avenue.

Review of subdivision plats is a ministerial review, in that the approving body must only consider the technical criteria of the LDC. The plat will be approved if the technical requirements are met.

The Staff Report is attached for more information.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Staff Report Flagship Commons Plat	Staff Report Flagship Commons Plat.pdf
2.	Flagship Commons Subdivision Plat	Flagship Commons Subdivision Plat.pdf

Penelope Cruz	Created/Initiated - 12/15/2022
Tim Burman	Approved - 12/29/2022
Shannon Balmer	Approved - 1/4/2023
Wayne Clark	Approved - 1/12/2023
Robin Fenwick	Final Approval - 1/12/2023



STAFF REPORT

SUBDIVISION PLAT / FLAGSHIP COMMONS

CASE NO. 22-50000004

REQUEST:	To subdivide ± 8.35 acres into two (2) commercial lots
LOCATION:	Southeast corner of Nova Road and Madeline Avenue
OWNER:	T & T 950 Madeline, LLC
APPLICANT:	Philip C. Hollis, Flagship Companies Group LLC
STAFF RECOMMENDATION:	Approval
STAFF CONTACT:	Gwen Perney, Principal Planner (386) 506-5673
PLANNING COMMISSION:	Recommended Approval (6-0) December 15, 2022
CITY COUNCIL:	January 17, 2023

DISCUSSION

The applicant is requesting to subdivide ± 8.35 acres located at the southeast corner of Nova Road and Madeline Avenue (Figure 1) into two (2) commercial lots. The subject property is zoned Community Commercial (CC), and the subdivision plat (Exhibit A) has been designed according to the lot dimensional requirements of the CC zoning district and the technical criteria in the Land Development Code (LDC) for subdivision of land. The review of a subdivision plat is a ministerial review, in that the approving body must only consider the technical criteria and lot dimensional requirements in the LDC. The proposed subdivision plat will create a ± 5.79 -acre lot (Lot 1) for the proposed Extra Space Storage Facility, which is currently under staff review, a ± 2.17 -acre lot (Lot 2) vacant commercial outparcel (no end-user identified), and ± 0.38 -acre of right-of-way dedication.

Figure 1. Location Map



The subject property is currently zoned Community Commercial (CC). According to the Land Development Code (LDC), this zoning district supports uses such as banks, business services, convenience stores with or without fuel operations, self-storage, financial services, fleet-based services, health/exercise clubs, medical offices, motor vehicle service stations, offices, personal services, restaurants, retail sales and services, and veterinary clinics.

In August 2022, City Council approved a rezoning request (Case No. 22-60000004) that rezoned the subject property from Multi-Family Residential (R-3M) to Community Commercial (CC) and approved a special exception to allow the mini-warehouses use on the subject property (Case No. 22-70000001).

Flagship Companies Group, LLC, developer of the proposed Lot 1, has submitted a site plan for the Extra Space Storage Facility to be built on Lot 1. The Extra Space Storage Facility development is designed to comply with the lot configuration of the proposed subdivision. There are currently no end users identified for the commercial lot (Lot 2) located at the southeast corner of Nova Road and Madeline Avenue (Figure 2).

Figure 2. Flagship Commons Subdivision Plat



The subdivision plat to subdivide the subject property has been reviewed by the Staff Development Review Committee (SDRC) and determined to be designed according to the requirements and dimensional standards of the City's Land Development Code (LDC). The required infrastructure and easements to serve the two (2) proposed lots will be constructed or provided as part of the site plan for the Extra Space Storage Facility (Lot 1) and will include:

- Utility infrastructure to serve the two (2) lots.
- Full-access driveway at the east end of the property on Madeline Avenue
- Right-in-only driveway at the west end of the property on Madeline Avenue.
- Right-in/right-out driveway at the south end of the property on Nova Road.
- Stormwater ponds and compensating storage area that will provide retention for both lots.
- Required access, drainage, and utility easements over the shared subdivision infrastructure that serves both lots.
- A cross-access driveway and easement between lots for vehicles and pedestrians.
- Sidewalks along Madeline Avenue and Jackson Street;
- A two-foot non-vehicular access easement to restrict driveways from being constructed on Jackson Street and Sweetgum Lane; and
- Required tree preservation areas on Lots 1 and 2 for both lots.

With the required infrastructure to serve the two (2) proposed lots being constructed as part of the site improvements for the Extra Space Storage Facility (Lot 1), subdivision infrastructure plans are not required with the subdivision plat. All required subdivision infrastructure improvements and easements will be built and accepted as part of the Extra Space Storage Facility (Lot 1) site plan prior to the subdivision plat being recorded.

The design of the stormwater drainage system will be required to comply with the stormwater requirements in the City's Land Development Code and the St. Johns River Water Management District (SJRWMD) Environmental Resource Permit (ERP) for a site that discharges stormwater into the Nova Canal. Per the City's Land Development Code, the applicant will be required to construct on-site stormwater facilities, designed to accommodate, and treat the 25 year, 24-hour storm event, without causing flooding to adjacent properties or polluting the receiving water bodies. The drainage system design for the redevelopment of the subject property will consist of onsite stormwater retention ponds and the stormwater held in these ponds will discharge into the Nova Canal and then eventually discharge into the Halifax River. The Nova Canal is maintained by FDOT and Volusia County.

The subdivision plat includes dedication of land (0.38 acres) for the ultimate 100-foot right-of-way width for Madeline Avenue and dedication of land (0.006 acres) for the ultimate 50-foot right-of-way width for Jackson Street. The dedication will allow for future right-of-way improvement such as turn lanes and sidewalks.

Lot 2 will remain vacant until it is developed. Prior to development on Lot 2, a site plan will need to be submitted to the city and approved by the Staff Development Review Committee (SDRC). Any development on Lot 2 will be required to meet the standard commercial site requirements (landscape buffers, screening, tree preservation, architecture, traffic concurrency, drainage and other infrastructure, parking, etc.) in the City's Land Development Code. A specific use for Lot 2 is not known at this time.

CONCURRENCY REVIEW

Public facilities and services are currently available to serve the proposed two (2) commercial lots. Concurrency reviews for water, sewer, and stormwater drainage were completed during site plan review for Lot 1. Transportation Concurrency will be evaluated as part of the site plan review for Lot 1 and the developer of Lot 1 may be required to enter into a Transportation Concurrency Fair Share Agreement with the City and Volusia County for proposed impacts to the adjacent roadway network, prior to approval of the site plan for Lot 1. Any proposed development on Lot 2 will be required to provide a traffic analysis at the time a site plan is submitted to determine the impacts by the development on the roadway network.

CONSISTENCY WITH COMPREHENSIVE PLAN

The proposed commercial subdivision is generally consistent with the Goals, Objectives, and Policies of the Comprehensive Plan and the *Commercial* Future Land Use designation of the subject property. The City's Comprehensive Plan states that the *Commercial* Future Land Use designation is generally characterized by uses that provide for the retail sale of items and provision of services to the general public. The subject property is also located in a Community Commercial node as designated in the City's Comprehensive Plan. A Community Commercial node is generally designed to serve the general shopping needs of areas within a ± 2 -mile radius. The proposed subdivision provides the necessary infrastructure and buildable land to support the uses projected to be developed at this location.

RECOMMENDATION

A review of a subdivision plat is a ministerial review, in that the approving body must consider the technical criteria of the Land Development Code (LDC). The plat will be approved if the technical requirements are met. Staff recommends approval of the Subdivision Plat for Flagship Commons, as all technical requirements in the LDC are met.

ATTACHMENTS

1. Exhibit A – Flagship Commons Plat
2. Exhibit B – Dimensional Requirements and list of Permitted Uses for the CC zoning district

Exhibit A
Flagship Commons
Subdivision Plat

Exhibit B

Dimensional Requirements and Permitted Uses Community Commercial Zoning

District	Minimum Living Area/D.U. (Sq. Ft.)	Minimum Lot Area (Sq. Ft.)	Minimum Lot Width (Ft.)	Maximum Building Coverage	Minimum Open Space	Minimum Building Setback (Ft.)			Maximum Height (Ft.)
						Front	Side	Rear	
CC		22,500	150	35%	30%	D	15*	25*	45

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

Community Commercial (LDC, Chapter 17, Section 21)

Permitted uses.

- (1) Adult/vocational education.
- (2) Appliance/electronic repair shops.
- (3) Banks.
- (4) Business services.
- (5) Clubs, lodges, and fraternal organizations.
- (6) Convenience stores with or without fuel operations.
- (7) Financial services.
- (8) Fleet-based services.
- (9) Funeral homes.
- (10) Furniture and appliance stores.
- (11) Health/exercise clubs.
- (12) Medical offices/clinics.
- (13) Motor vehicle service stations.
- (14) Offices.
- (15) Office supplies.
- (16) Personal services.
- (17) Restaurants.
- (18) Retail home building materials.
- (19) Retail nurseries and garden supplies.
- (20) Retail sales and services.
- (21) Veterinary clinics.

Permitted uses with special development requirements.

- (1) Athletic/sports facilities (subsection 2).
- (2) Brewery (subsection 3.7).
- (3) Child care centers (subsection 4).
- (4) Craft food and beverage producer (subsection 5.15).
- (5) Community gardens (subsection 5.1).
- (6) Microbrewery (subsection 9.57).
- (7) Theaters (subsection 17).

Special exception uses.

- (1) Bars, lounges, and night clubs (subsection 3).
- (2) Fortune tellers, astrologers, and palm readers (subsection 6).
- (3) Game/recreation facilities (subsection 7).
- (4) Marina, recreational (subsection 9.6).
- (5) Mini-warehouses (subsection 10).
- (6) Motor vehicle and boat storage facilities (subsection 12).

FLAGSHIP COMMONS

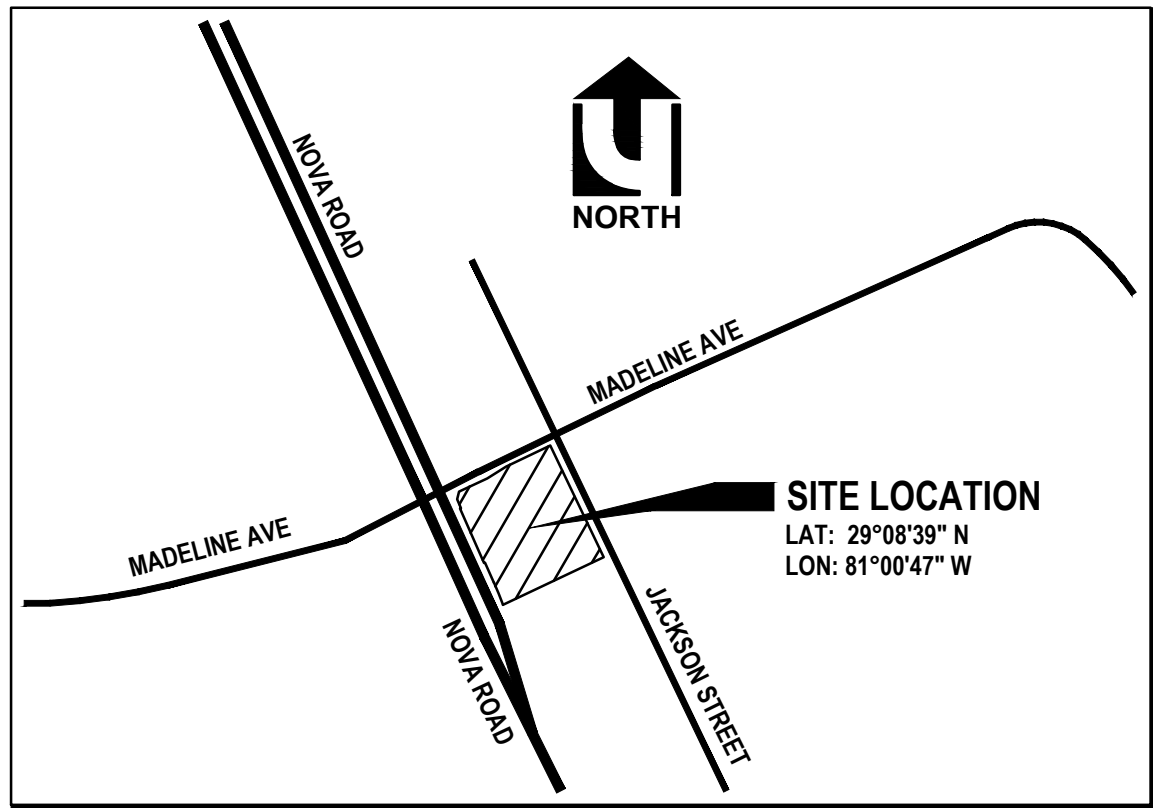
A REPLAT OF A PORTION OF LOT 2, BLOCK 16, MAP OF DUNLAWTON, DEED BOOK M, PAGE 187, VOLUSIA COUNTY, FLORIDA, BEING WITHIN SECTION 37, TOWNSHIP 16 SOUTH, RANGE 33 EAST, CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA.

DESCRIPTION:

LOT 2, BLOCK 16, DUNLAWTON, ACCORDING TO THE MAP OR PLAT THEREOF AS RECORDED IN DEED BOOK M, PAGE 187, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LESS AND EXCEPT THAT PART CONVEYED BY WARRANTY DEED RECORDED IN OFFICIAL RECORD BOOK 3917, PAGE 1427, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE SOUTHEAST CORNER OF SAID LOT 2, ALSO BEING THE NORTHEAST CORNER OF SWEETGUM LANE, AS SHOWN ON PLAT OF SPRINGWOOD VILLAGE UNIT-1, PER MAP BOOK 34, PAGE 167, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, THENCE ALONG THE NORTHWESTERLY RIGHT-OF-WAY OF SWEETGUM LANE, RUN S64°37'22"W FOR A DISTANCE OF 581.11 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY OF S. NOVA ROAD, ALSO KNOWN AS STATE ROAD NO. 5A, BEING A RIGHT-OF-WAY THAT VARIES IN WIDTH, SAID POINT ALSO BEING A POINT ON A CURVE, SAID CURVE BEING CONCAVE SOUTHWESTERLY AND TO THE LEFT, HAVING A CENTRAL ANGLE OF 03°02'04" AND A RADIUS OF 2346.83 FEET; HAVING A CHORD BEARING N22°13'29"W FOR A DISTANCE OF 124.28 FEET; THENCE ALONG THE ARC OF SAID CURVE AND THE SAID EASTERLY RIGHT-OF-WAY LINE FOR A DISTANCE OF 124.29 FEET TO A POINT OF TANGENT THEREOF; THENCE CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE, N23°44'31"W FOR A DISTANCE OF 115.07 FEET; THENCE S66°15'29"W FOR A DISTANCE OF 6.08 FEET; THENCE N23°44'31"W FOR A DISTANCE OF 309.95 FEET; THENCE N66°15'29"E FOR A DISTANCE OF 6.08 FEET; THENCE N23°44'31"W FOR A DISTANCE OF 50.50 FEET; THENCE N14°02'14"E FOR A DISTANCE OF 41.33 FEET TO A POINT ON SOUTHEASTERLY RIGHT-OF-WAY OF MADELINE AVENUE, AS NOW LAID OUT; THENCE DEPARTING THE EASTERLY RIGHT-OF-WAY OF S. NOVA ROAD AND ALONG THE SAID SOUTHEASTERLY RIGHT-OF-WAY OF MADELINE AVENUE, N64°53'52"E FOR A DISTANCE OF 162.34 FEET; THENCE N57°46'23"E FOR A DISTANCE OF 115.77 FEET; THENCE N64°39'26"E FOR A DISTANCE OF 255.15 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF JACKSON STREET; THENCE DEPARTING THE SOUTHEASTERLY RIGHT-OF-WAY OF MADELINE AVENUE AND ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF JACKSON STREET, S25°33'31"E FOR A DISTANCE OF 644.22 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIPTION CONTAINS 8.357 ACRES MORE OR LESS.



LOCATION MAP
SCALE 1" = 1000'

LEGEND:

- SET 4" CONCRETE MONUMENT "PRM" LB 3612
- SET 5/8" IRON ROD & CAP LB 3612
- SET PARKER KALON NAIL & DISK "PRM" LB 3612
- FOUND NAIL&DISC LS 2027 (INSIDE ASPHALT CUT)
- RIGHT-OF-WAY LINE
- ORIGINAL R/W LINE
- EASEMENT LINE
- HATCH DENOTES DRAINAGE MAINTENANCE EASEMENT
- HATCH DENOTES TREE CONSERVATION EASEMENT

CA	CENTRAL ANGLE	No.	NUMBER
CH	CHORD LENGTH	NR	NON-RADIAL
CHB	CHORD BEARING	ORB	OFFICIAL RECORDS BOOK
FD	FOUND	PG	PAGE
INC	INCORPORATED	PKD	PARKER KALON NAIL & DISK
L	LENGTH	PRM	PERMANENT REFERENCE MONUMENT
LB	LICENSED BUSINESS	PSM	PROFESSIONAL SURVEYOR & MAPPER
LC	LICENSED CORPORATION	R	RADIUS
MB	MAP BOOK	R/W	RIGHT-OF-WAY

GENERAL NOTES:

- ACCURACY: THE BOUNDARY LINEAR ERROR OF CLOSURE DOES NOT EXCEED 1:10,000. THE BOUNDARY ANGULAR ERROR OF CLOSURE DOES NOT EXCEED 15 SECONDS MULTIPLIED BY THE SQUARE ROOT OF THE NUMBER OF ANGLES TURNED.
- ALL MEASUREMENTS ON THIS PLAT IS IN U.S. FOOT AND DECIMALS THEREOF. ALL MEASUREMENTS REFER TO HORIZONTAL PLANE IN ACCORDANCE WITH THE DEFINITION OF THE UNITED STATES SURVEY FOOT OR METER ADOPTED BY THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY. ALL MEASUREMENTS SHALL USE THE 39.3712-3.2808333333 EQUATION FOR CONVERSION FROM A U.S. FOOT TO METERS.
- BEARINGS SHOWN HEREON ARE BASED ON THE STATE PLANE COORDINATE SYSTEM EAST ZONE NORTH AMERICAN DATUM OF 1983 (NAD83) WITH 2011 ADJUSTMENT AS DERIVED FROM THE LENSEMANN NETWORK (A TOPNET GNSS NETWORK). AS A REFERENCE FOR THIS SURVEY, ALONG THE RIGHT-OF-WAY LINE OF JACKSON STREET HAVING A BEARING OF (S 25°33'31" E).
- THIS PLAT, AS RECORDED IN ITS GRAPHIC FORM, IS THE OFFICIAL DEPICTION OF THE SUBDIVIDED LANDS DESCRIBED HEREIN AND WILL IN NO CIRCUMSTANCES BE SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.
- UTILITIES INCLUDE BUT ARE NOT LIMITED TO SANITARY SEWER, POTABLE WATER, RECLAIMED WATER, STORM DRAINAGE, ELECTRIC, TELEPHONE, CABLE TELEVISION, TELECOMMUNICATIONS, FIBER OPTIC, SECURITY, AND NATURAL GAS.
- ALL PLATTED UTILITY EASEMENTS SHOWN ON THIS PLAT INCLUDE EASEMENTS FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES; PROVIDED, HOWEVER, NO SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES SHALL INTERFERE WITH THE FACILITIES AND SERVICES OF AN ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY. IN THE EVENT A CABLE TELEVISION COMPANY DAMAGES THE FACILITIES OF A PUBLIC UTILITY, IT SHALL BE SOLELY RESPONSIBLE FOR THE DAMAGES. THIS SECTION SHALL NOT APPLY TO THOSE PRIVATE EASEMENTS GRANTED TO OR OBTAINED BY A PARTICULAR ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY. SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE AND OPERATION SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE AS ADOPTED BY THE FLORIDA PUBLIC SERVICE COMMISSION.
- ALL OTHER EASEMENTS ARE SUBORDINATE TO ANY CONSERVATION EASEMENTS DEDICATED HEREON, THERE SHALL BE NO REMOVAL OR DISTURBANCE OF ANY VEGETATION WITHIN SUCH CONSERVATION EASEMENTS ANY PROPOSED CONSTRUCTION OR OTHER USE WITHIN A CONSERVATION EASEMENT MUST BE REVIEWED AND APPROVED BY THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE CONSERVATION EASEMENT.
- MONUMENTS SHALL BE SET AT ALL LOT CORNERS, POINTS OF INTERSECTION, AND CHANGES OF DIRECTION OF LINES WITHIN THE SUBDIVISION WHICH DO NOT REQUIRE A "P.R.M." OR "P.C.P." IN ACCORDANCE WITH FLORIDA STATUTES CHAPTER 177.091(9).
- THE PROPERTY IS SUBJECT TO THE DECLARATION OF COVENANTS, RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENTS AS RECORDED IN OFFICIAL RECORDS BOOK _____ PAGE _____.
- OPERATION AND MAINTENANCE RESPONSIBILITIES OF THE INDIVIDUAL LOTS, EXCLUDING ANY EASEMENT AREAS, SHALL BE THE RESPONSIBILITY OF THE RESPECTIVE LANDOWNER(S), THEIR SUCCESSORS AND ASSIGN IN INTEREST AS FURTHER DESCRIBED IN THE DECLARATION OF COVENANTS, RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENTS.
- PRIVATE UTILITIES AS SHOWN ON THE PLAT ARE TO BE OWNED AND MAINTAINED BY RESPECTIVE PROPERTY OWNERS OF LOT 1 AND LOT 2. ADDITIONAL INFORMATION REGARDING OPERATION AND MAINTENANCE RESPONSIBILITIES IS DESCRIBED IN SECTION _____ OF THE DECLARATION OF COVENANTS, RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENTS.
- THE ACCESS EASEMENT OVER THE PORTIONS OF LOTS 1 AND 2 IS FOR THE COLLECTIVE BENEFIT OF LOTS 1 AND 2, FOR THE USE OF, AND UNIMPEDED ACCESS TO AND FROM LOTS 1 AND 2.
- TOTAL NUMBER OF LOTS = 2
- THIS PLAT IS SUBJECT TO ALL EASEMENTS OF RECORD AND RESERVATIONS OF EASEMENTS, INCLUDING BUT NOT LIMITED TO DRAINAGE, SIDEWALK, UTILITY, AND ACCESS EASEMENTS GRANTED HEREON WHICH SHALL BE LOCATED AS FOLLOWS.
- THE TREE CONSERVATION EASEMENT AREAS GRANTED ON THE PLAT ARE INTENDED TO MEET THE TREE PRESERVATION REQUIREMENTS OF THE CITY OF PORT ORANGE LAND DEVELOPMENT CODE FOR BOTH LOTS 1 AND 2 AS A WHOLE. TREE CONSERVATION EASEMENT AS DEFINED ON THIS PLAT IS FOR THE EXPRESS PURPOSE OF THE PRESERVATION AND LONGEVITY OF THE TREES THEREIN. ACTIONS DETRIMENTAL TO TREE HEALTH SURVIVAL WITHIN THE BOUNDARIES OF THE DRIPLINE ARE PROHIBITED WITHOUT THE EXPRESS PERMISSION OF THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE TREE CONSERVATION EASEMENT. NOTHING HEREIN SHALL, HOWEVER, BE CONSTRUED TO PREVENT NATURAL VEGETATION WITHIN THE EASEMENT AREA FROM BEING CLEARED BY HAND TO PROVIDE A NEAT, MANICURED APPEARANCE. IN ADDITION, NOTHING HEREIN SHALL BE CONSTRUED TO PREVENT THE PLACEMENT OF FLOOD COMPENSATORY AREA, SANITARY SEWER LATERAL, SOD, IRRIGATION AND LANDSCAPE PLANTS OR TO PREVENT NORMAL LAWN MAINTENANCE SUCH AS MOWING, EDGING AND WEEDING NOT HARMFUL TO THE OBJECTIVE OF TREE PRESERVATION WITH THE EASEMENT AREA. ANY PROPOSED CONSTRUCTION OR OTHER USE WITHIN THE TREE CONSERVATION EASEMENT MUST BE REVIEWED AND APPROVED BY THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE TREE CONSERVATION EASEMENT.
- THE LANDOWNER OF LOT 1, THEIR SUCCESSORS, AND ASSIGNS IN INTEREST SHALL BE RESPONSIBLE FOR THE OPERATION AND MAINTENANCE OF THE DRAINAGE IMPROVEMENTS WITHIN THE BOUNDARIES OF THIS PLAT, AS DEPICTED ON THE STORMWATER MANAGEMENT PLAN APPROVED FOR DEVELOPMENT BY THE CITY OF PORT ORANGE. SHOULD THE LANDOWNER OF LOT 1 FAIL TO PERFORM MAINTENANCE OF THE DRAINAGE AND STORMWATER MANAGEMENT SYSTEM, THE CITY OF PORT ORANGE SHALL BE ENTITLED, BUT NOT OBLIGATED, TO ENTER UPON THE DESIGNATED DRAINAGE EASEMENT AREAS TO PERFORM MAINTENANCE, REPAIR, OR REPLACE THE FACILITIES; AND SHALL HAVE THE RIGHT TO LIEN ALL OWNERS OF RECORD IN THE PROPERTY FOR THE COST OF SUCH MAINTENANCE, REPAIR, AND REPLACEMENT, AS DEEMED BY THE CITY TO BE NECESSARY. IN THE EVENT OF TERMINATION, DISSOLUTION, OR FINAL LIQUIDATION OF ALL THE ENTITIES/ LANDOWNER(S), THE WATER MANAGEMENT SYSTEM WILL BE TRANSFERRED TO AND ACCEPTED BY AN ENTITY WHICH COMPLIES WITH SECTION 40C-42.027 F.A.C. AND APPROVED BY THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT PRIOR TO SUCH TERMINATION, DISSOLUTION, OR LIQUIDATION.
- THE FLOODPLAIN CONSERVATION EASEMENT AND FLOODPLAIN COMPENSATORY STORAGE EASEMENT DEFINED ON THIS PLAT IS FOR THE EXPRESS PURPOSE OF THE PRESERVATION OF THE FLOODPLAIN. ACTIONS DETRIMENTAL TO THE FLOODPLAIN ARE RESTRICTED AS FOLLOWS (I) NO NEW STRUCTURE, PAVING, OR OTHER IMPROVEMENTS SHALL BE CONSTRUCTED ON, AND NO NEW MODIFICATIONS OR LANDSCAPING ACTIVITIES (EXCEPT FOR MINOR GRUBBING, CLEARING OF DEBRIS, PRUNING, SODDING OR SEEDING, OR OTHER SIMILAR ACTIVITIES) SHALL BE CARRIED OUT WITHIN THE FLOODPLAIN; AND (II) THE USE OF THE FLOODPLAIN SHALL BE LIMITED SOLELY TO PASSIVE OPEN OR GREEN SPACE. ANY PROPOSED CONSTRUCTION OR OTHER USE WITHIN A FLOODPLAIN EASEMENT MUST BE REVIEWED AND APPROVED BY THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE FLOODPLAIN.
- NO RIGHT OF ACCESS BY THE GENERAL PUBLIC TO ANY PORTION OF THE PLATTED LANDS IS CONVEYED BY THE EASEMENTS GRANTED HEREON TO THE CITY OF PORT ORANGE.

CERTIFICATE OF CLERK

I HEREBY CERTIFY THAT I HAVE EXAMINED THE FOREGOING PLAT AND FIND IT COMPLIES IN FORM WITH ALL THE REQUIREMENTS OF CHAPTER 177, FLORIDA STATUTES, AND IT WAS FILED FOR RECORD ON _____

AT _____

FILE NO.:

CLERK OF THE CIRCUIT COURT
IN AND FOR VOLUSIA COUNTY, FLORIDA

REVIEW BY SURVEYOR AND MAPPER FOR THE CITY

I HEREBY CERTIFY THAT I HAVE REVIEWED THE ATTACHED PLAT FOR COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 177, PART 1, FLORIDA STATUTES, AND THAT I HAVE PROVIDED BOTH THE CITY AND THE SURVEYOR OF RECORD A LIST OF DEVIATIONS, IF ANY, FROM SUCH REQUIREMENTS.

SIGNED: _____

PRINT: _____ PSM No: _____ DATE: _____

SHEET 1 OF 2

MAP BOOK:

PAGE:

DEDICATION

KNOWN ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED BEING THE OWNER IN FEE SIMPLE, OF THE LANDS SHOWN AND DESCRIBED HEREON AS THE PLAT ENTITLED "FLAGSHIP COMMONS", LOCATED IN THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA HEREBY DEDICATES THE SAID LANDS AND PLAT FOR THE USES AND PURPOSES HEREON EXPRESSED. ALL DRAINAGE, DRAINAGE MAINTENANCE ACCESS, PUBLIC UTILITY AND DRAINAGE, NON-VEHICULAR, SIDEWALK, FLOODPLAIN COMPENSATORY STORAGE, AND TREE CONSERVATION EASEMENTS SHOWN OR DESCRIBED ON THE PLAT ARE, UNLESS OTHERWISE INDICATED, GRANTED TO THE CITY OF PORT ORANGE, FLORIDA. ALL DRAINAGE AND DRAINAGE MAINTENANCE ACCESS EASEMENTS SHOWN OR DESCRIBED ON THE PLAT ARE ALSO GRANTED TO THE OWNERS OF ANY PORTION OF THE PLAT, THEIR RESPECTIVE SUCCESSORS, AND ASSIGNS FOR THE PURPOSES DESCRIBED IN THE GENERAL NOTES. ACCESS EASEMENTS FOR INGRESS AND EGRESS SHOWN OR DESCRIBED ON THE PLAT ARE HEREBY GRANTED TO THE CITY OF PORT ORANGE FOR EMERGENCY VEHICLES AND GOVERNMENT SERVICES. ACCESS EASEMENTS FOR INGRESS AND EGRESS SHOWN OR DESCRIBED ON THE PLAT ARE HEREBY GRANTED TO THE OWNERS OF ANY PORTION OF THE PLAT AND THEIR RESPECTIVE AGENTS, ASSIGNS, INITEES AND SUCCESSORS. TRACT A AND TRACT B ARE HEREBY DEDICATED TO THE CITY OF PORT ORANGE FOR PUBLIC RIGHT-OF-WAY PURPOSES.

IN WITNESS THEREOF, THE UNDERSIGNED OWNER(S) HERETO SET THEIR HAND AND SEAL ON _____.

WITNESSES:

OWNER: ESS-FLAGSHIP MADELINE FL SUB LLC,
A DELAWARE LIMITED LIABILITY COMPANY

BY: _____

NAME: _____

BY: _____

THEODORE A. BOLIN
MANAGER

BY: _____

NAME: _____

STATE OF FLORIDA, COUNTY OF _____

THE FOREGOING DEDICATION WAS ACKNOWLEDGED BEFORE ME, AN OFFICER DULY AUTHORIZED TO TAKE ACKNOWLEDGEMENTS IN THE STATE AND COUNTY AFORESAID, BY MEANS OF [] PHYSICAL APPEARANCE OR [] ONLINE NOTARIZATION,

ON THIS _____ DAY OF _____, 2023, BY _____

AS _____

OF ESS-FLAGSHIP MADELINE FL SUB LLC, A DELAWARE LIMITED

LIABILITY COMPANY

HE / SHE (IS PERSONALLY KNOWN TO ME) OR (HAS PRODUCED _____ AS IDENTIFICATION) AND (DID) OR (DID NOT) TAKE AN OATH.

NOTARY PUBLIC

NAME: _____

COMMISSION No: _____

MY COMMISSION EXPIRES: _____

MORTGAGEE'S CONSENT AND JOINDER

THE UNDERSIGNED HEREBY CERTIFIES THAT IT IS THE HOLDER OF A MORTGAGE, LIEN OR OTHER ENCUMBRANCE UPON PART OF THE PROPERTY DESCRIBED HEREON AND THAT THE UNDERSIGNED HEREBY JOINS IN AND CONSENTS TO THE DEDICATION OF THE LANDS DESCRIBED ABOVE BY THE OWNER THEREOF, AND AGREES THAT ITS MORTGAGES, LIENS OR OTHER ENCUMBRANCES ARE RECORDED IN OFFICIAL RECORDS BOOK _____ PAGE _____ OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, SHALL BE SUBORDINATED TO THE DEDICATION SHOWN HEREON.

IN WITNESS WHEREOF, _____ HAS CAUSED THESE PRESENTS TO BE SIGNED BY THE

AUTHORITY OF ITS BOARD OF DIRECTORS THIS _____ DAY OF _____, 2023.

BY: _____

PRINTED NAME: _____

TITLE: EXECUTIVE VICE PRESIDENT

(SEAL)

WITNESS: _____

WITNESS: _____

PRINTED NAME: _____

PRINTED NAME: _____

STATE OF _____, COUNTY OF _____

THIS IS TO CERTIFY, THAT ON _____, 2023, BEFORE ME BY MEANS OF [] PHYSICAL APPEARANCE OR [] ONLINE NOTARIZATION, AN OFFICER DULY AUTHORIZED TO TAKE ACKNOWLEDGEMENTS IN THE STATE AND COUNTY AFORESAID,

PERSONALLY APPEARED _____ HE / SHE (IS PERSONALLY KNOWN TO ME) OR (HAS PRODUCED _____ AS IDENTIFICATION), OF THE NAMED CORPORATION INCORPORATED UNDER THE LAWS OF THE STATE OF _____ AND OFFICERS DESCRIBED ON AND WHO EXECUTED THE FOREGOING DEDICATION AND SEVERALLY ACKNOWLEDGED THE EXECUTION THEREOF TO BE KNOWN TO BE THEIR FREE ACT AND DEED AS SUCH OFFICERS THEREUNTO DULY AUTHORIZED, THAT THE OFFICIAL SEAL OF SAID CORPORATION IS DULY AFFIXED THERETO; AND THAT THE SAID DEDICATION IS THE ACT AND DEED OF SAID CORPORATION.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL ON THE ABOVE DATE.

NOTARY PUBLIC

NAME: _____

COMMISSION # _____

MY COMMISSION EXPIRES: _____

PLANNING COMMISSION CERTIFICATE OF APPROVAL

THIS STATEMENT HEREBY CERTIFIES THAT THE PLAT ENTITLED "FLAGSHIP COMMONS", WAS APPROVED BY THE PORT ORANGE PLANNING COMMISSION ON _____.

BY: _____

CHAIRMAN, PORT ORANGE
PLANNING COMMISSION

DATE: _____

CITY COUNCIL CERTIFICATE OF APPROVAL

THIS STATEMENT HEREBY CERTIFIES THAT THE PLAT ENTITLED "FLAGSHIP COMMONS", WAS APPROVED BY THE PORT ORANGE CITY COUNCIL ON _____.

BY: _____

MAYOR OF THE CITY OF PORT ORANGE

ATTEST: _____

CITY CLERK OF THE CITY OF PORT ORANGE

CERTIFICATE OF SURVEYOR AND MAPPER

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED, BEING A LICENSED AND PROFESSIONAL SURVEYOR AND MAPPER, DOES HEREBY CERTIFY THAT THE PLAT SHOWN AND DESCRIBED HEREON, ENTITLED "FLAGSHIP COMMONS", WAS PREPARED UNDER MY DIRECTION AND SUPERVISION, THAT THE PLAT COMPLIES WITH ALL OF THE SURVEY REQUIREMENTS OF CHAPTER 177, FLORIDA STATUTES, AND THAT ALL MONUMENTATION SHOWN HEREON OR REQUIRED PER CHAPTER 177, FLORIDA STATUTES, HAS BEEN PROPERLY PLACED.

UPHAM, INC.
265 KENILWORTH AVENUE
ORMOND BEACH, FLORIDA 32174
www.uphaminc.com

PHONE: (386) 672-9515
LICENSED BUSINESS No. 3612
meawad@uphaminc.com

SIGNED: _____

MICHAEL E. AWAD (LICENSE No. 5574)
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER FIRM CERTIFICATE AUTHORIZATION NUMBER LB 3612

DATE: _____



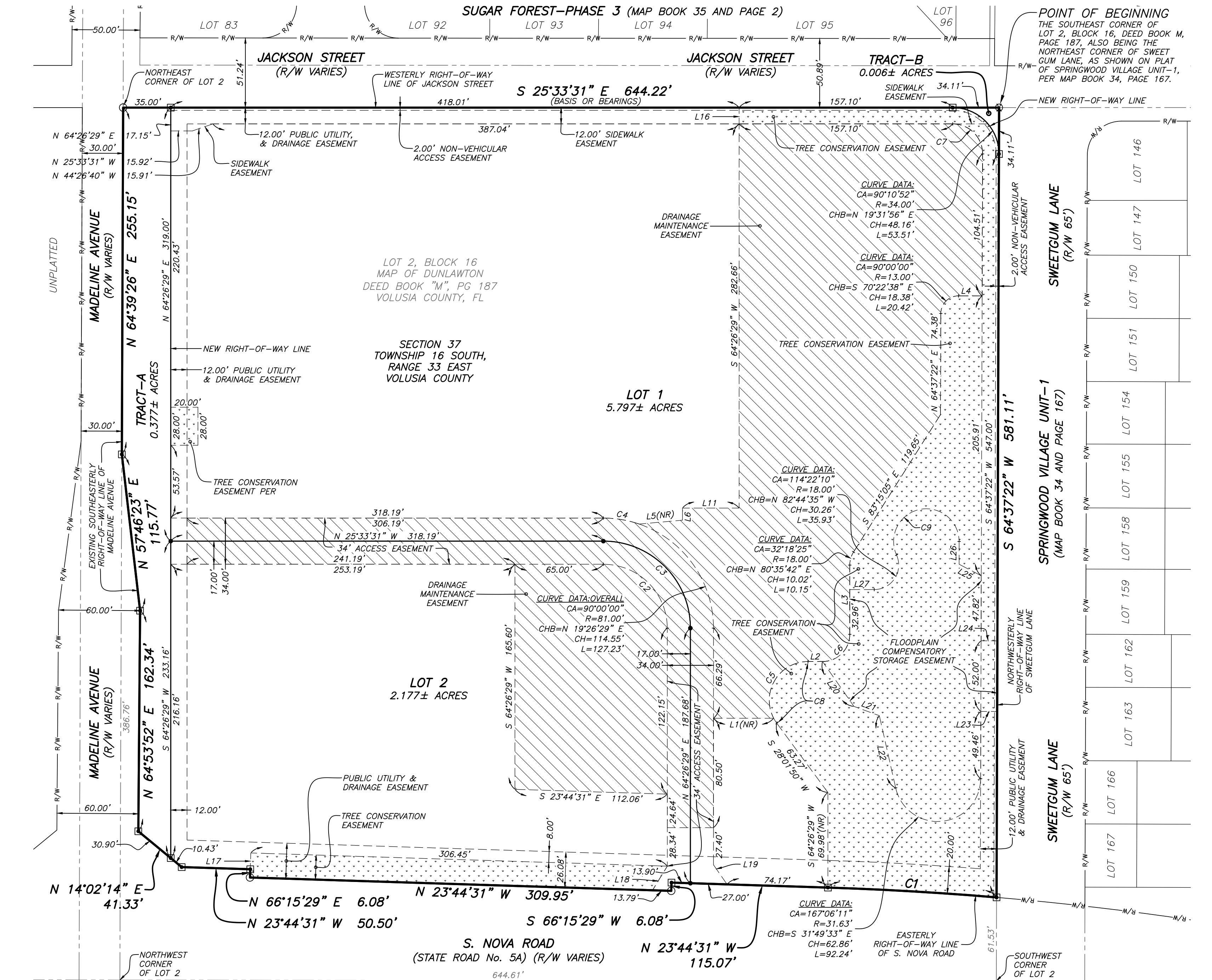
CIVIL ENGINEERING • SURVEYING • LANDSCAPE ARCHITECTURE
265 Kenilworth Avenue • Ormond Beach • Florida 32174
Voice: 386.672.9515 • Fax: 386.673.6554 • uphaminc.com
LB # 0003612 LC # 0000357

FLAGSHIP COMMONS

A REPLAT OF A PORTION OF LOT 2, BLOCK 16, MAP OF DUNLAWTON, DEED BOOK M, PAGE 187, VOLUSIA COUNTY, FLORIDA,
BEING WITHIN SECTION 37, TOWNSHIP 16 SOUTH, RANGE 33 EAST, CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA.

GENERAL NOTES:

- ACCURACY: THE BOUNDARY LINEAR ERROR OF CLOSURE DOES NOT EXCEED 1:10,000. THE BOUNDARY ANGULAR ERROR OF CLOSURE DOES NOT EXCEED 15 SECONDS MULTIPLIED BY THE SQUARE ROOT OF THE NUMBER OF ANGLES TURNED.
- ALL MEASUREMENTS ON THIS PLAT IS IN U.S. FOOT AND DECIMALS THEREOF. ALL MEASUREMENTS REFER TO HORIZONTAL PLANE IN ACCORDANCE WITH THE DEFINITION OF THE UNITED STATES SURVEY FOOT OR METER ADOPTED BY THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY. ALL MEASUREMENTS SHALL USE THE 38.3712-2.2885333333 EQUATION FOR CONVERSION FROM A U.S. FOOT TO METERS.
- BEARINGS SHOWN HEREON ARE BASED ON THE STATE PLANE COORDINATE SYSTEM EAST ZONE NORTH AMERICAN DATUM OF 1983 (NAD83) WITH 2011 ADJUSTMENT AS DERIVED FROM THE LENGEMANN NETWORK (A TOPNET GNS NETWORK), AS A REFERENCE FOR THIS SURVEY, ALONG THE RIGHT-OF-WAY LINE OF JACKSON STREET HAVING A BEARING OF (S 25°33'31" E).
- THIS PLAT, AS RECORDED IN ITS GRAPHIC FORM, IS THE OFFICIAL DEPICTION OF THE SUBDIVIDED LANDS DESCRIBED HEREIN AND WILL, IN NO CIRCUMSTANCES BE SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.
- UTILITIES INCLUDE BUT ARE NOT LIMITED TO SANITARY SEWER, POTABLE WATER, RECLAIMED WATER, STORM DRAINAGE, ELECTRIC, TELEPHONE, CABLE TELEVISION, TELECOMMUNICATIONS, FIBER OPTIC, SECURITY, AND NATURAL GAS.
- ALL PLATTED UTILITY EASEMENTS SHOWN ON THIS PLAT INCLUDE EASEMENTS FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES; PROVIDED, HOWEVER, NO SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES SHALL INTERFERE WITH THE FACILITIES AND SERVICES OF AN ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY. IN THE EVENT A CABLE TELEVISION COMPANY DAMAGES THE FACILITIES OF A PUBLIC UTILITY, IT SHALL BE SOLELY RESPONSIBLE FOR THE DAMAGES. THIS SECTION SHALL NOT APPLY TO THOSE PRIVATE EASEMENTS GRANTED TO OR OBTAINED BY A PARTICULAR ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY. SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE AND OPERATION SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE AS ADOPTED BY THE FLORIDA PUBLIC SERVICE COMMISSION.
- ALL OTHER EASEMENTS ARE SUBORDINATE TO ANY CONSERVATION EASEMENTS DEDICATED HEREON, THERE SHALL BE NO REMOVAL OR DISTURBANCE OF ANY VEGETATION WITHIN SUCH CONSERVATION EASEMENTS ANY PROPOSED CONSTRUCTION OR OTHER USE WITHIN A CONSERVATION EASEMENT MUST BE REVIEWED AND APPROVED BY THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE CONSERVATION EASEMENT.
- MONUMENTS SHALL BE SET AT ALL LOT CORNERS, POINTS OF INTERSECTION, AND CHANGES OF DIRECTION OF LINES WITHIN THE SUBDIVISION WHICH DO NOT REQUIRE A "P.R.M." OR "P.C.P." IN ACCORDANCE WITH FLORIDA STATUTES CHAPTER 177.09(18).
- THE PROPERTY IS SUBJECT TO THE DECLARATION OF COVENANTS, RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENTS AS RECORDED IN OFFICIAL RECORDS BOOK _____ PAGE _____.
- OPERATION AND MAINTENANCE RESPONSIBILITIES OF THE INDIVIDUAL LOTS, EXCLUDING ANY EASEMENT AREAS, SHALL BE THE RESPONSIBILITY OF THE RESPECTIVE LANDOWNER(S), THEIR SUCCESSORS AND ASSIGN IN INTEREST AS FURTHER DESCRIBED IN THE DECLARATION OF COVENANTS, RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENTS.
- PRIVATE UTILITIES AS SHOWN ON THE PLAT ARE TO BE OWNED AND MAINTAINED BY RESPECTIVE PROPERTY OWNERS OF LOT 1 AND LOT 2. ADDITIONAL INFORMATION REGARDING OPERATION AND MAINTENANCE RESPONSIBILITIES IS DESCRIBED IN SECTION _____ OF THE DECLARATION OF COVENANTS, RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENTS.
- THE ACCESS EASEMENT OVER THE PORTIONS OF LOTS 1 AND 2 IS FOR THE COLLECTIVE BENEFIT OF LOTS 1 AND 2, FOR THE USE OF, AND UNIMPEDED ACCESS TO AND FROM LOTS 1 AND 2.
- TOTAL NUMBER OF LOTS = 2
- THIS PLAT IS SUBJECT TO ALL EASEMENTS OF RECORD AND RESERVATIONS OF EASEMENTS, INCLUDING BUT NOT LIMITED TO DRAINAGE, SIDEWALK, UTILITY, AND ACCESS EASEMENTS GRANTED HEREON WHICH SHALL BE LOCATED AS FOLLOWS.
- THE TREE CONSERVATION EASEMENT AREAS GRANTED ON THE PLAT ARE INTENDED TO MEET THE TREE PRESERVATION REQUIREMENTS OF THE CITY OF PORT ORANGE LAND DEVELOPMENT CODE FOR BOTH LOTS 1 AND 2 AS A WHOLE. TREE CONSERVATION EASEMENT AS DEFINED ON THIS PLAT IS FOR THE EXPRESS PURPOSE OF THE PRESERVATION AND LONGEVITY OF THE TREES THEREIN. ACTIONS DETRIMENTAL TO TREE HEALTH SURVIVAL WITHIN THE BOUNDARIES OF THE DRIPLINE ARE PROHIBITED WITHOUT THE EXPRESS PERMISSION OF THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE TREE CONSERVATION EASEMENT. NOTHING HEREIN SHALL, HOWEVER, BE CONSTRUED TO PREVENT NATURAL VEGETATION WITHIN THE EASEMENT AREA FROM BEING CLEARED BY HAND TO PROVIDE A NEAT, MANICURED APPEARANCE. IN ADDITION, NOTHING HEREIN SHALL BE CONSTRUED TO PREVENT THE PLACEMENT OF FLOOD COMPENSATORY AREA, SANITARY SEWER LATERAL, SOD, IRRIGATION AND LANDSCAPE PLANTS OR TO PREVENT NORMAL LAWN MAINTENANCE SUCH AS MOWING, EDGING AND WEEDING NOT HARMFUL TO THE OBJECTIVE OF TREE PRESERVATION WITH THE EASEMENT AREA. ANY PROPOSED CONSTRUCTION OR OTHER USE WITHIN THE TREE CONSERVATION EASEMENT MUST BE REVIEWED AND APPROVED BY THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE TREE CONSERVATION EASEMENT.
- THE LANDOWNER OF LOT 1, THEIR SUCCESSORS, AND ASSIGNS IN INTEREST SHALL BE RESPONSIBLE FOR THE OPERATION AND MAINTENANCE OF THE DRAINAGE IMPROVEMENTS WITHIN THE BOUNDARIES OF THIS PLAT, AS DEPICTED ON THE STORMWATER MANAGEMENT PLAN APPROVED FOR DEVELOPMENT BY THE CITY OF PORT ORANGE. SHOULD THE LANDOWNER OF LOT 1 FAIL TO PERFORM MAINTENANCE OF THE DRAINAGE AND STORMWATER MANAGEMENT SYSTEM, THE CITY OF PORT ORANGE SHALL BE ENTITLED, BUT NOT OBLIGATED, TO ENTER UPON THE DESIGNATED DRAINAGE EASEMENT AREAS TO PERFORM MAINTENANCE, REPAIR, OR REPLACE THE FACILITIES; AND SHALL HAVE THE RIGHT TO LIEN ALL OWNERS OF RECORD IN THE PROPERTY FOR THE COST OF SUCH MAINTENANCE, REPAIR, AND REPLACEMENT, AS DEEMED BY THE CITY TO BE NECESSARY IN THE EVENT OF TERMINATION, DISSOLUTION, OR FINAL LIQUIDATION OF ALL THE ENTITIES LANDOWNERS, THE WATER MANAGEMENT SYSTEM WILL BE TRANSFERRED TO AND ACCEPTED BY AN ENTITY WHICH COMPLIES WITH SECTION 40C-42.027, F.A.C. AND APPROVED BY THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT PRIOR TO SUCH TERMINATION, DISSOLUTION, OR LIQUIDATION.
- THE FLOODPLAIN CONSERVATION EASEMENT AND FLOODPLAIN COMPENSATORY STORAGE EASEMENT DEFINED ON THIS PLAT IS FOR THE EXPRESS PURPOSE OF THE PRESERVATION OF THE FLOODPLAIN. ACTIONS DETRIMENTAL TO THE FLOODPLAIN ARE RESTRICTED AS FOLLOWS (I) NO NEW STRUCTURE, PAVING, OR OTHER IMPROVEMENTS SHALL BE CONSTRUCTED ON, AND NO NEW MODIFICATIONS OR LANDSCAPING ACTIVITIES (EXCEPT FOR MINOR GRUBBING, CLEARING OF DEBRIS, PRUNING, SODDING OR SEEDING, OR OTHER SIMILAR ACTIVITIES) SHALL BE CARRIED OUT WITHIN THE FLOODPLAIN; AND (II) THE USE OF THE FLOODPLAIN SHALL BE LIMITED SOLELY TO PASSIVE OPEN OR GREEN SPACE. ANY PROPOSED CONSTRUCTION OR OTHER USE WITHIN A FLOODPLAIN EASEMENT MUST BE REVIEWED AND APPROVED BY THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE FLOODPLAIN.
- NO RIGHT OF ACCESS BY THE GENERAL PUBLIC TO ANY PORTION OF THE PLATTED LANDS IS CONVEYED BY THE EASEMENTS GRANTED HEREON TO THE CITY OF PORT ORANGE.



LEGEND:

- SET 4" CONCRETE MONUMENT "PRM" LB 3612
- SET 5/8" IRON ROD & CAP LB 3612
- SET PARKER KALON NAIL & DISK "PRM" LB 3612
- FOUND NAIL&DISC LS 2027 (INSIDE ASPHALT CUT)
- R/W RIGHT-OF-WAY LINE
- ORIGINAL R/W LINE
- EASEMENT LINE
- CA CENTRAL ANGLE
- CH CHORD LENGTH
- CHB CHORD BEARING
- FD FOUND
- INC INCORPORATED
- L LENGTH
- LB LICENSED BUSINESS
- LC LICENSED CORPORATION
- MB MAP BOOK
- NO NUMBER
- NR NON-RADIAL
- ORB OFFICIAL RECORDS BOOK
- PG PAGE
- PKD PARKER KALON NAIL & DISK
- PRM PERMANENT REFERENCE MONUMENT
- PSM PROFESSIONAL SURVEYOR & MAPPER
- R RADIUS
- RW RIGHT-OF-WAY
- HATCH DENOTES DRAINAGE MAINTENANCE EASEMENT
- HATCH DENOTES TREE CONSERVATION EASEMENT

LINE TABLE					
LINE #	BEARING	DISTANCE	LINE #	BEARING	DISTANCE
L1	S25°33'31"E	44.26'	L10	N29°35'01"E	17.48'
L2	S25°33'31"E	10.71'	L11	S25°33'31"E	41.66'
L3	N64°26'29"E	50.96'	L12	S05°32'07"E	19.86'
L4	S25°22'38"E	17.37'	L13	S51°43'33"W	54.57'
L5	S30°40'25"E	31.91'	L14	S25°22'38"E	12.00'
L6	N64°26'29"E	8.91'	L15	N25°22'38"W	12.00'
L7			L16	N64°26'29"E	12.00'
L8			L17	N66°15'29"E	12.00'
L9			L18	N84°05'40"W	20.80'
			L19	N29°35'01"E	17.48'
			L20	S29°27'35"W	40.30'
			L21	S05°32'07"E	19.86'
			L22	S51°43'33"W	54.57'
			L23	S25°22'38"E	12.00'
			L24	N25°22'38"W	12.00'
			L25	N01°55'45"E	18.38'
			L26	N64°26'29"E	16.76'
			L27	N25°33'31"W	18.00'

CURVE TABLE					
No.	CA	R	CHB	CH	ARC
C1	3°02'04"	2346.83'	N22°13'29"W	124.28'	124.29'
C2	90°00'00"	47.00'	N19°26'29"E	66.47'	73.83'
C3	90°00'00"	64.00'	N19°26'29"E	90.51'	100.53'
C4	19°00'23"	81.00'	S16°03'19"E	26.75'	26.87'
C5	117°38'30"	28.50'	S84°22'45"E	48.77'	58.52'
C6	90°00'00"	20.00'	S70°33'31"E	28.28'	31.42'
C7	90°10'52"	22.00'	N19°31'56"E	31.16'	34.63'
C8	126°24'39"	28.50'	S88°45'50"E	50.88'	62.88'
C9	204°22'10"	24.09'	N37°44'35"W	47.08'	85.91'

UPHAM
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