



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

OCTOBER 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 Chaplain Carlos Hidalgo of Advent Health Mission and Ministry
2. Pledge of Allegiance
3. Roll Call

B. RECOGNITION AND PROCLAMATIONS

4. Manufacturing Month
5. Florida City Government Week

C. CONSENT AGENDA

6. Public Comments on Consent Agenda Items Only
7. Agenda Approval
8. Approval of Minutes
 - a. October 3, 2023 - Regular City Council Meeting
9. Bid Awards and Contract Items
 - a. Approval of Task Authorization No. 8 with Pegasus Engineering, LLC for Grant Application Development for the FEMA Flood Mitigation Assistance (FMA) Application for the Elevation of 6 Flood-Prone Homes
 - b. Approval of Task Authorization No. 9 with Pegasus Engineering, LLC for grant application development for the FEMA Flood Mitigation Assistance (FMA) Application for the Acquisition and Demolition of 1 Flood-Prone Home
 - c. Approval of Task Authorization No. 10 with Pegasus Engineering, LLC for Miscellaneous Grant Support Services

- d. Approval of Task Authorization No. 5 to Dredging and Marine Consultants for the Design of a Day Dock at Riverwalk Park
- e. Approval of a Six (6) Month Extension Request for Aaron's Backflow Services Inc.

- 10. Approval and Ratification of the International Union of Police Associations (IUPA) 2024-2026 Collective Bargaining Agreement
- 11. Approval and Ratification of the International Association of Fire Fighters (IAFF) 2024-2025 Collective Bargaining Agreement
- 12. Resolution No. 23-52 - FEMA Flood Mitigation Assistance (FMA) Application to Request Funds to Elevate 6 Homes
- 13. Resolution No. 23-53 - FEMA Flood Mitigation Assistance (FMA) Application to Request Funds to Acquire and Demolish 1 Home

D. PUBLIC PARTICIPATION (Agenda)

- 14. The Sweetwater Coalition & The Spruce Creek RiverWorks re: I-95 Pioneer Trail Interchange

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

F. COUNCIL COMMENTS

- 15. Comments/Concerns from Council Members

G. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

- 16. Citizen Advisory Committee for TPO
- 17. Planning Commission Appointment

H. PUBLIC HEARING

- 18. Second Reading Ordinance No. 2023-15 - Implementing the State's Statutory Mandate to Prepare Business Impact Estimates Pursuant to Section 166.041, Florida Statutes.

I. ADDITIONAL ITEMS

- 19. City Attorney
- 20. City Manager

J. COUNCIL COMMITTEE REPORTS

- 21. City Council Committee Reports
 - a. Port Orange/South Daytona Chamber of Commerce - Mayor Donald Burnette

b. First Step Shelter - Mayor Donald Burnette

K. 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
OCTOBER 3, 2023

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 Ken Sharp of High Point Pentecostal Church

Pledge of Allegiance

Roll Call	Present:	Councilman Tracy Grubbs Councilman Drew Bastian Councilman Scott Stiltner Vice Mayor Reed Foley Mayor Donald Burnette
	Also Present:	Wayne Clark, City Manager Shannon Balmer, Assistant City Attorney Tracee Cody, Deputy City Clerk

RECOGNITION AND PROCLAMATIONS

4. Domestic Violence Awareness Month

Mayor Donald Burnette read the proclamation for Domestic Violence Awareness Month and presented it to Odetta Horruitiner, City of Port Orange Victim Advocate Coordinator.

CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only

There were none.

6. Agenda Approval

Vice Mayor Reed Foley asked to pull Item #10 from the Consent Agenda.

Motion to approve the agenda as amended was made by Vice Mayor Reed Foley and seconded by Councilman Scott Stiltner. Motion carried unanimously by voice vote.

7. Approval of Minutes
 - a. September 19, 2023 - Regular City Council Meeting
 - b. September 20, 2023 - Special City Council Meeting
8. Bid Awards and Contract Items
 - a. Approval of Task Authorization No. 3 with Pegasus Engineering, LLC for grant application development for the FEMA Hazard Mitigation Grant Program (HMGP) Application for the Elevation of 9 Flood-Prone Homes under Hurricane Nicole (DR-4680-FL)
 - b. Approval of Task Authorization No. 4 with Pegasus Engineering, LLC for grant application development for the FEMA Hazard Mitigation Grant Program (HMGP) Application for the Acquisition and Demolition of 7 Flood-Prone Homes under Hurricane Nicole (DR-4680-FL)
 - c. Approval of Task Authorization No. 5 with Pegasus Engineering, LLC for grant application development for the FEMA Hazard Mitigation Grant Program (HMGP) Application for the Elevation of 5 Flood-Prone homes under Hurricane Nicole (DR-4680-FL)
 - d. Approval of Task Authorization No. 6 with Pegasus Engineering, LLC for grant application development for the FEMA Hazard Mitigation Grant Program (HMGP) Application for the Demolition and Reconstruction of 1 Flood-Prone Home under Hurricane Nicole (DR-4680-FL)
 - e. Approval of Task Authorization No. 7 with Pegasus Engineering, LLC for grant application development for the FEMA Hazard Mitigation Grant Program (HMGP) Application for the Acquisition and Demolition of 1 Flood-Prone Home under Hurricane Nicole (DR-4680-FL)
9. Approval of Major Special Event Request for The Doghouse Bar and Grill Biketoberfest 2023 Event at 3400 S. Nova Road
10. Approval of Major Special Event Request for the Daytona's Original First Turn Biketoberfest 2023 Event at 5164, 5204, and 5236 South Ridgewood Avenue
11. Resolution No. 23-44 - Ratification of Actions Taken During Hurricane Idalia
12. Resolution No. 23-45 - Reimbursement Resolution for Public Safety Equipment
13. Resolution No. 23-46 – Hurricane Nicole Hazard Mitigation Grant Program (HMGP) Application to Request Funds to Elevate 9 Flood-Prone Homes
14. Resolution No. 23-47 – Hurricane Nicole Hazard Mitigation Grant Program (HMGP) Application to Request Funds to Acquire and Demolish 7 Flood-Prone Homes
15. Resolution No. 23-48 – Hurricane Nicole Hazard Mitigation Grant Program (HMGP) Application to Request Funds to Elevate 5 Flood-Prone Homes
16. Resolution No. 23-49 – Hurricane Nicole Hazard Mitigation Grant Program (HMGP) Application to Request Funds to Demolish and Reconstruct 1 Flood-Prone Home
17. Resolution No. 23-50 – Hurricane Nicole Hazard Mitigation Grant Program (HMGP) Application to Request Funds to Acquire and Demolish 1 Flood-Prone Home

Motion to approve the Consent Agenda
Items #7-9 and #11-17 was made by
Vice Mayor Reed Foley and seconded

by Councilman Scott Stiltner. Motion
carried unanimously by roll call vote.

Item #10 - Approval of Major Special Event Request for the Daytona's Original First
Turn Biketoberfest 2023 Event at 5164, 5204, and 5236 South Ridgewood Avenue

Motion to approve Item #10 was made
by Councilman Scott Stiltner and
seconded by Councilman Drew Bastian.

Vice Mayor Reed Foley abstained from the vote due to a conflict of interest as he does
business with Daytona's Original First Turn.

Motion carried 4-0-1 by roll call vote with
Vice Mayor Reed Foley abstaining.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Frank Rampino, President of the Briarwood Estates Homeowner's Association,
commented on the canal on Normandy not being maintained and flooding in the area.
Israel Rivas, Vice President of Briarwood Estates HOA, further commented about
speeding, lighting, and issues with porch thieves in their community.

COUNCIL COMMENTS

18. Comments/Concerns from Council Members

Councilman Tracy Grubbs commented on the upcoming Parks & Rec Bond initiative
and possible projects.

Vice Mayor Reed Foley commented on another city's Parks & Rec app for notifications
and his interest in seeing if Port Orange Parks & Rec could do something similar. He
also expressed his disappointment about an unknown resident who tampered with a
Public Works pump and stressed that tampering with city equipment is a criminal
offense and that staff is working very hard on solutions.

Councilman Scott Stiltner spoke to the Briarwood Estates HOA concerns and believes
that a lot of the canals in their area are actually owned by the County and not the city.

Councilman Drew Bastian offered his condolences to former Planning Commissioners
and community volunteers, Rich Barker and Frank Crooks, who passed away.

Mayor Donald Burnette reminded the public about the Family Days event happening
October 12-15.

19. Report from KemperSports on the Cypress Head Golf

Jeff Dayton, General Manager of KemperSports, provided an overview of the Cypress Head Golf Course financials and the golf course conditions.

20. State of Florida PACE Program by Will Roberts, Volusia County Tax Collector

Will Roberts, Volusia County Tax Collector, provided information on the State of Florida PACE Program. Mayor Donald Burnette directed staff to bring forth language on a future agenda to revoke predatory practices in our ordinances.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

21. Environmental Advisory Board Appointment

Motion to nominate Eric Gregory to be appointed to his first term was made by Councilman Tracy Grubbs and seconded by Councilman Scott Stiltner.

Eric Gregory, new applicant for the Environmental Advisory Board, introduced himself.

Motion carried unanimously by voice vote.

22. Police Pension Board Appointment

Motion to re-appoint Brian Cobb to the Police Pension Board as a Resident Trustee, was made by Councilman Scott Stiltner and seconded by Councilman Drew Bastian. Motion carried unanimously by voice vote.

PUBLIC HEARING

23. Second Reading - Ordinance No. 2023-13 - 4th Amendment to the Master Development Agreement and Conceptual Development Plan for the Pavilion at Port Orange Planned Commercial Development (CASE NO. PRZA-23-0005)

Mayor Donald Burnette read Ordinance No. 2023-13.

ORDINANCE NO. 2023-13

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE FOURTH AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE PAVILION AT PORT ORANGE PLANNED COMMERCIAL DEVELOPMENT (PCD) AND CONCEPTUAL DEVELOPMENT PLAN; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2023-13 was made by Vice Mayor Reed Foley and seconded by Councilman Scott Stiltner. Motion carried unanimously by roll call vote.

24. First Reading Ordinance No. 2023-15 - Implementing the State's Statutory Mandate to Prepare Business Impact Estimates Pursuant to Section 166.041, Florida Statutes

Mayor Donald Burnette read Ordinance No. 2023-15.

ORDINANCE NO. 2023-15

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, CREATING SECTION 2-4 TO IMPLEMENT THE STATE'S STATUTORY MANDATE TO PREPARE BUSINESS IMPACT ESTIMATES PRIOR TO ADOPTION OF PROPOSED ORDINANCES PURSUANT TO SECTION 166.041(4), FLORIDA STATUTES; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SCRIVNERS ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2023-15 was made by Vice Mayor Reed Foley and seconded by Councilman Scott Stiltner.

Wayne Clark, City Manager, explained the proposed Ordinance and how it will be implemented.

Motion carried unanimously by roll call vote.

25. Resolution No. 23-51 - Opposition to the Proposed Construction of the Belvedere Fuel Farm

Mayor Donald Burnette read Resolution No. 23-51.

RESOLUTION NO. 23-51

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, IN OPPOSITION TO THE PROPOSED CONSTRUCTION OF THE BELVEDERE FUEL FARM NEAR ORMOND BEACH IN THE UNINCORPORATED AREA OF VOLUSIA COUNTY AT, OR ABOUT 874 HULL ROAD, ORMOND BEACH, FLORIDA.

Motion to approve Resolution No. 23-51 was made by Councilman Scott Stiltner and seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

26. Discussion on Legislative Priorities for 2024

Robin Fenwick, Assistant City Manager, provided an overview of Legislative priorities and appropriation requests to the State. Tom DiEulio, Public Works Director, answered questions from Council regarding pipe lining projects.

ADDITIONAL ITEMS

27. City Attorney

There was nothing further.

28. City Manager

Mr. Clark recommended to Council that the former ArtHaus building be demolished as it would outweigh maintenance costs of upkeep on the structure. The demolition costs are within his authorization but wanted consensus from Council. Council all agreed with the choice to demolish it, clear the lot, and reseed it.

COUNCIL COMMITTEE REPORTS

29. City Council Committee Reports

Mayor Burnette asked Barbara Ann Heegan, President & CEO of the Port

Regular City Council Meeting

October 3, 2023

Page 7 of 7

Orange/South Daytona Chamber of Commerce, to introduce the Port Orange/South Daytona Chamber of Commerce 2023 leadership class that was in attendance.

a. River to Sea TPO - Vice Mayor Reed Foley

Vice Mayor Reed Foley was unable to attend the meeting.

b. Arthaus - Vice Mayor Reed Foley

Vice Mayor Reed Foley provided details from their recent meeting.

ADJOURNMENT – 7:44 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, MMC
City Clerk

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME Foley, Reed	NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE City Council
MAILING ADDRESS Horseman	THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF: ☒ CITY ☐ COUNTY ☐ OTHER LOCAL AGENCY
CITY Port Orange COUNTY Volusia	NAME OF POLITICAL SUBDIVISION: Port Orange
DATE ON WHICH VOTE OCCURRED 10/3/2023	MY POSITION IS: ☒ ELECTIVE ☐ APPOINTEE

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, Reed Foley, hereby disclose that on October 3rd, 20 23:

(a) A measure came or will come before my agency which (check one or more)

- ☒ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☐ inured to the special gain or loss of _____, which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

Item 10 - First Turn Special Event

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

10/3/23
Date Filed

[Signature]
Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (C9a) Approval of Task Authorization No. 8 with Pegasus Engineering, LLC for Grant Application Development for the FEMA Flood Mitigation Assistance (FMA) Application for the Elevation of 6 Flood-Prone Homes

DEPARTMENT: Community Development

GOAL: 1 - Public Safety; 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Task Authorization No. 8 with Pegasus Engineering, LLC and authorize the Mayor and City Clerk to execute the associated documents.

SUMMARY: Pegasus Engineering, LLC has an existing contract with the City to provide assistance in preparing and submitting FEMA Flood Mitigation Assistance (FMA) applications. Staff is requesting the services of Pegasus Engineering, LLC to prepare and submit a FEMA Flood Mitigation Assistance (FMA) application to the State of Florida Division of Emergency Management (FDEM) in order to secure FEMA funding to offset the costs associated with the implementation of the proposed elevation of 6 flood-prone homes with a high risk of repetitive flooding. The locations of the 6 homes are shown on the attached location map.

Task Authorization No. 8 corresponds with FMA Resolution No. 23-52 to elevate 6 flood-prone homes on the 10/17/2023 City Council agenda. Task Authorization No. 8 will not exceed \$34,735. Upon being selected for FMA funding, the Pegasus fee will be eligible for reimbursement from FEMA as a pre-award cost under a Sub-Recipient Management Cost allocation (100% Federal match).

FMA funding for structure elevation is a cost reimbursement grant that has a 75% federal / 25% non-federal, 90% federal / 10% non-federal or 100% federal / 0% non-federal cost share depending on the quantity and amount of flood claims for each structure. According to FEMA categorizations, three of the addresses may receive up to 90% federal cost share and three of the addresses may receive up to 100% federal cost share. The homeowners who are voluntarily participating in this grant application will be responsible for the non-federal cost share of the construction costs.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Pegasus Engineering LLC RFSQ 23-11 Task Authorization No. 8	Pegasus Engineering LLC RFSQ 23-11 Task Authorization No. 8.pdf
2.	6-home Elevation 2023 FMA Grant Application Services Pegasus Proposal (09-12-2023)	6-home Elevation 2023 FMA Grant Application Services Pegasus Proposal (09-12-2023).pdf
3.	Pegasus Master Contract CA8124	Pegasus Master Contract CA8124.pdf
4.	Pegasus COI expires 09 18 2024	Pegasus COI expires 09 18 2024.pdf
5.	FMA - Elevation Location Map	FMA - Elevation Location Map.pdf

Margaret Tomlinson

Created/Initiated - 9/28/2023

Tim Burman

Approved - 9/28/2023

John McKinney

Approved - 9/28/2023

Shannon Balmer

Approved - 10/5/2023

Wayne Clark

Approved - 10/5/2023

Tracee Cody

Final Approval - 10/6/2023

TASK AUTHORIZATION NO. 8
Contract for Services dated May 16, 2023
Between the City of Port Orange, Florida and Pegasus Engineering, LLC

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **PEGASUS ENGINEERING, LLC** ("Contractor"), a Florida limited liability corporation with its principal place of business at 301 West State Road 434, Suite 309, Winter Springs, Florida 32708, and hereinafter collectively referred to as the "Parties," and is to that certain Contract for Services dated as specified above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to Grant Application Development for the elevation of six (6) flood-prone homes as part of the 2023 Flood Mitigation Assistance ("FMA") Program, and as more particularly described in Contractor's Proposal, attached hereto and incorporated herein as Task Authorization Exhibit "1."
3. Contractor shall complete the services to be provided herein within two (2) years of the date of written notice by the City to the Contractor.
4. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1" attached hereto and made a part hereof for all purposes, subject to a limit not to exceed \$34,735.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
5. Truth-in-Negotiations.
 - a. For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
 - b. Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that

Architect has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

6. Compliance with Other Federal Standards.

(a) Remedies. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See Paragraph 8 - Termination for Default in the Contract, a draft of which is attached hereto and made apart hereof by reference.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, in the Contract, a draft of which is attached hereto and made apart hereof by reference. Termination for non-appropriation of funds is set forth in Paragraph 11 of the contract, a draft of which is attached hereto and made apart hereof by reference.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(iv) The Contractor will send to each labor union or representative of workers with which

he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or [contract](#) modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.**

When required by the federal program legislation, prime construction contracts over \$2,000 awarded by the City require the Contractor to comply with the following provisions from 29 C.F.R. § 5.5(a)(1)-(10), and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of

the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice,

trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall

provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or

cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees.

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less

than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements.

All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include

disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1).”

(e) Copeland Anti Kick Back Act: Compliance with the Copeland “Anti-Kickback” Act.

Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

For all contracts over \$100,000 that involve the employment of mechanics, laborers, and construction work:

(i) Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to

such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(ii) Further Compliance with the Contract Work Hours and Safety Standards Act.

In addition to the clauses contained in subparagraphs (i)(1) thru (4), hereinabove, in any applicable contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5.1, the Contractor shall comply with the following provisions and insert the same in any applicable contracts with subcontractors:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal

Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) Rights to Inventions Made Under a Contract or Agreement.

(1) Stafford Act Disaster Grants. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

(2) If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

(3) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387) as amended.

For contracts exceeding \$150,000.00, the following provisions apply:

“Clean Air Act”

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

“Federal Water Pollution Control Act”

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

(i) Suspension and Debarment: This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(k) Procurement of Recovered Materials: Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

A. In the performance of this contract, the Contractor shall make maximum use of products

containing recovered materials that are EPA-designated items unless the product cannot be acquired.

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(I) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(i) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(ii) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system;
- or

d Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(iii) Exceptions.

- (1) This clause does not prohibit Contractors from providing—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 1. Are *not used* as a substantial or essential component of any system; *and*
 2. Are *not used* as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(iv) Reporting requirement.

- (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.
- (2) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:
 - a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer

part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(v) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (v), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope

of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained herein above.

(p) DHS Seal, LOGO, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, FEMA policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R.

§200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(aa) Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

7. If applicable to this Contract, for FEMA financial assistance programs subject to BABAA, Contractor and subcontractors must sign and submit a certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).
8. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.

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

Witnesses:

PEGASUS ENGINEERING, LLC

Printed Name: _____ By: _____
Fursan Munjed, Managing Member

Date: _____

Printed Name: _____

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: _____

ATTEST:

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

Date: _____

EXHIBIT “1”

Contractor's Quote

Consisting of 6 Pages



September 12, 2023

P-229796

Ms. Margaret Tomlinson, RLA, LEED AP
Construction & Engineering Manager
Community Development
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

**Re: Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage
Improvements Project Continuing Contract
Contract No. RFSQ #23-11**

**Subj: Grant Application Development for the Elevation of 6 Flood-Prone Homes as part of the
2023 Flood Mitigation Assistance (FMA) Program**

Dear Ms. Tomlinson:

As requested, we are pleased to submit this proposal to the City of Port Orange to perform grant services associated with the Grant Application Development for the Elevation of 6 Flood-Prone Homes as part of the 2023 Flood Mitigation Assistance (FMA) Program.

In essence, the City of Port Orange's Flood Mitigation Program encompass three distinct flood mitigation categories the City is interested in participating: typical elevation project, mitigation reconstruction project, which entails the demolition and reconstruction of homes that are not feasible for elevation, and acquisition demolition. This proposal specifically encompasses the preparation of a FMA grant application for the typical elevation of 6 homes with a high risk of repetitive flooding.

Upon the successful FMA funding obligation of the FMA grant projects by the State and FEMA, and upon a request by the City of Port Orange, Pegasus Engineering would be pleased to submit a separate proposal to provide grant administration services (i.e., quarterly reports, reimbursement requests, close-out documents).

Under this contract, Pegasus Engineering will be responsible for the performance of the following tasks, at a minimum:

"Engineering a Higher Standard"

301 West State Road 434, Suite 309, Winter Springs, FL 32708 • 407-992-9160 • Fax 407-358-5155

1. Review various e-mail correspondence from the City and the homeowners documenting the reported flooding associated with Hurricanes Ian, Nicole, and prior storm events.
2. Attend coordination meetings with City of Port Orange staff to discuss observed and claimed flooding extent and steps to follow in consideration of the removal of structures from harm's way.
3. Coordinate with City staff to prepare for and conduct one-on-one meetings with the homeowners in order to address specific mitigation questions as well as to address the homeowners' concerns.
4. Review available flood loss history, elevation certificates, flood insurance declaration documents, and elevation proposals provided by City of Port Orange officials and the homeowners.
5. Perform a field assessment of the homes that will be part of the FMA application.
6. Coordinate with City of Port Orange staff regarding the finished floor elevations, elevation certificates, photographs of each structure, and required signatures from homeowners on FEMA specific forms, as deemed necessary. Pre-bidding coordination with City of Port Orange staff is also anticipated.
7. Coordinate with City of Port Orange and different mitigation contractors regarding the mitigation proposals, proposed mitigation costs, and implementation associated with each structure.
8. Collect the supporting technical documentation associated with the various structures to be mitigated for the preparation of the Benefit Cost Analysis.
9. Prepare a preliminary Benefit Cost Analysis of the structures that participate in the flood mitigation project.
10. Prepare a draft FEMA 2023 FMA application package.
11. Prepare and submit a final FEMA FMA application package to FDEM via the online portal on or before the deadline for submission as established by FEMA.

12. Address Requests for Information (RFI) from DEM staff during the programmatic, engineering and environmental reviews of the FMA application. These efforts will include direct coordination with FDEM representatives during the review of the FMA application.
13. As part of FDEM's technical review process, Pegasus will coordinate with City staff to update and/or revise specific sections of the grant application, as necessary, to incorporate FDEM's review comments.
14. Coordinate closely with the homeowners and address their questions and concerns related to the flood mitigation under elevation category, as needed.
15. Attend City Commission Meetings with scheduled agenda items encompassing discussions related to this mitigation project, as needed.

The above described services will be performed for an hourly not-to-exceed fee amount of **\$34,735** in accordance with attached manhour and fee estimate (refer to Attachment "A").

We appreciate the opportunity to serve the City of Port Orange on this important assignment. If you have any questions, please contact me directly at 407-992-9160, extension 309, or by email at david@pegasusengineering.net.

Respectfully,

PEGASUS ENGINEERING, LLC

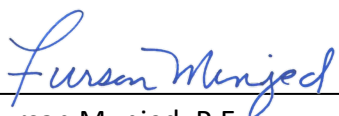
David W. Hamstra, P.E., CFM
Stormwater Department Manager

cc: Debra Neher, City of Port Orange
Valerie Duhl, City of Port Orange
Leylah Saavedra, Pegasus Engineering

**Grant Management Services for FEMA HMGP/FMA
Stormwater & Drainage Improvement Project Continuing Contract
Contract No. RFSQ #23-11**

**Grant Application Development for the Elevation of 6 Flood-Prone Homes
as part of the 2023 Flood Mitigation Assistance (FMA) Program**

Approved for Pegasus Engineering, LLC



Fursan Munjed, P.E.

Principal
Officer's Title

September 12, 2023
Date

This proposal is hereby accepted and authorization to proceed is hereby given.
(Please return one executed copy of this proposal for our Pegasus Engineering records).

See Task Authorization No. 8, Page 21

Authorized Signature

Officer's Title

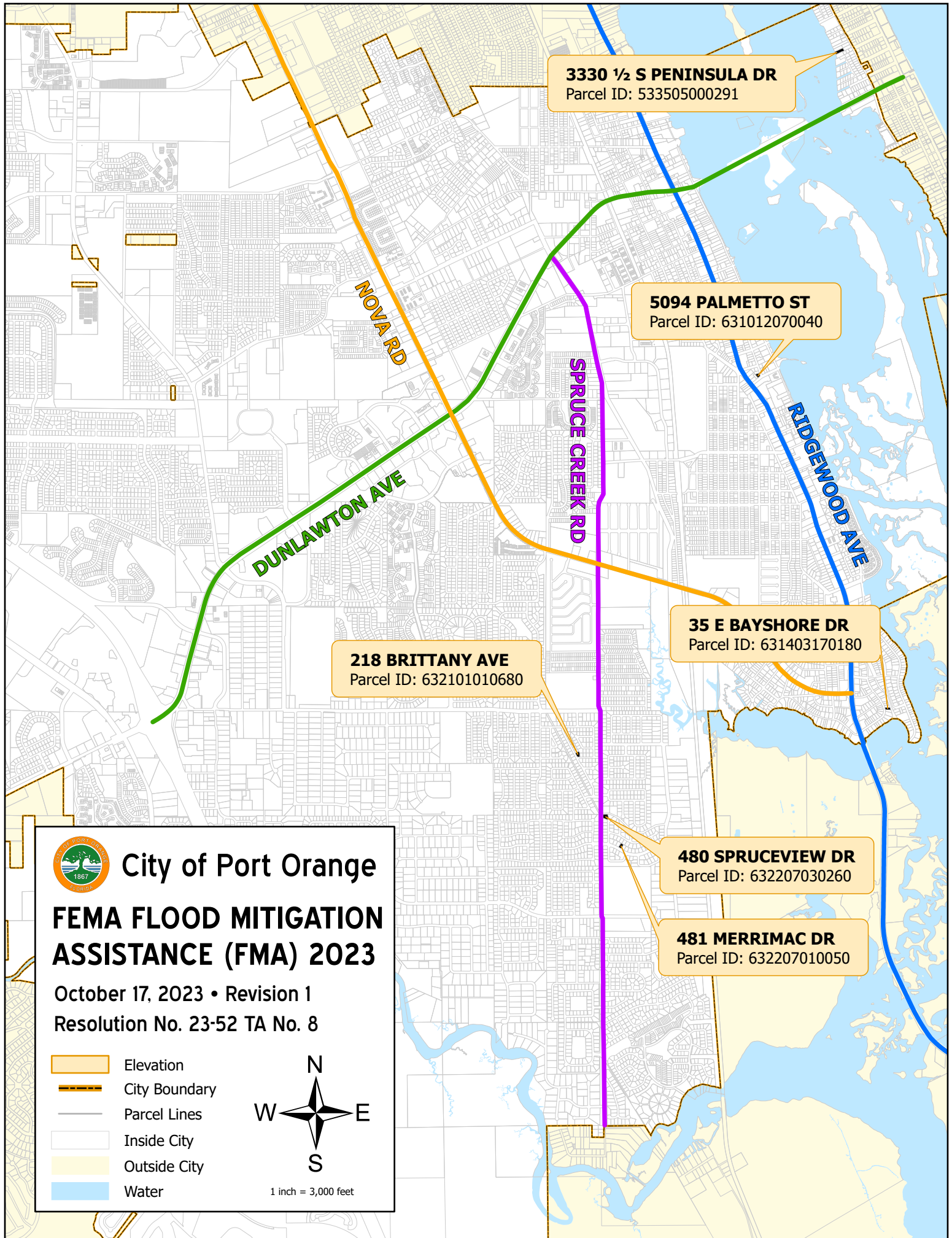
Date

EXHIBIT "A"
Manhour and Fee Estimate
for the

**GRANT APPLICATION DEVELOPMENT FOR THE ELEVATION OF 6 FLOOD-PRONE HOMES
AS PART OF THE 2023 FLOOD MITIGATION ASSISTANCE (FMA) PROGRAM**



Task Description	Grant Program Manager (Hamstra, P.E.)	Grant Project Manager (Saavedra, P.E.)	Grant Management Specialist (Whikehart, P.E.)	Sr. Designer/ GIS Technician (Greenough)	Administrative Assistant (Villanueva)	Task Hours	Task Fees
Standard Hourly Rates	\$195.00	\$185.00	\$150.00	\$120.00	\$85.00		
Review various e-mail correspondence from the City and the homeowners documenting the reported flooding		4	4		2	10	\$1,510.00
Attend coordination meetings with City staff to discuss project specifics	4	4				8	\$1,520.00
Conduct one-on-one meetings with the homeowners in order to address specific mitigation questions	2	6	4		2	14	\$2,270.00
Review available flood loss history, elevation certificates, flood insurance declaration documents, etc.		6	6		3	15	\$2,265.00
Perform a field assessment of the homes that will be part of the FMA application	9	9			2	20	\$3,590.00
Coordinate with City staff regarding the finished floor elevations, photographs, pre-bidding coordination, etc.		4	2			6	\$1,040.00
Coordinate with mitigation contractors regarding the proposed mitigation costs		2			1	3	\$455.00
Summarize in a database the supporting technical documentation per structure to be mitigated		4	4			8	\$1,340.00
Prepare a preliminary Benefit Cost Analysis of the structures that participate in the flood mitigation project	4	8				12	\$2,260.00
Prepare a draft FEMA FMA application packet, including figures and relevant supporting documentation	2	24	12	18	2	58	\$8,960.00
Prepare and submit a final FEMA FMA application package to FDEM via the online portal		4			4	8	\$1,080.00
Address Requests for Information (RFI) from DEM staff during the programmatic, engineering and environmental reviews	2	12	6	3	2	25	\$4,040.00
Follow up with the homeowners to address their questions and concerns related to the elevation project		4	2		2	8	\$1,210.00
Prepare for and attend City Commission Meetings regarding the mitigation project, as needed	4	4				8	\$1,520.00
Project Administration (Status Reports via Monthly Invoices)	6				3	9	\$1,425.00
TASK HOURS	33	95	40	21	23	212	
TASK LABOR COSTS	\$6,435.00	\$17,575.00	\$6,000.00	\$2,520.00	\$1,955.00	\$34,485.00	\$34,485.00
PERCENT BREAKDOWN	18.7%	51.0%	17.4%	7.3%	5.7%	100.0%	
 Breakdown in Fees (1) Labor Costs (2) Reimbursable Expenses = = \$34,485.00 \$250.00							
TOTAL HOURLY NOT TO EXCEED AMOUNT						=	\$34,735.00



3330 ½ S PENINSULA DR
Parcel ID: 533505000291

5094 PALMETTO ST
Parcel ID: 631012070040

35 E BAYSHORE DR
Parcel ID: 631403170180

218 BRITTANY AVE
Parcel ID: 632101010680

480 SPRUCEVIEW DR
Parcel ID: 632207030260

481 MERRIMAC DR
Parcel ID: 632207010050

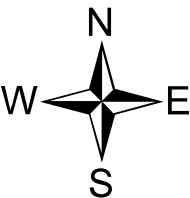


City of Port Orange

FEMA FLOOD MITIGATION ASSISTANCE (FMA) 2023

October 17, 2023 • Revision 1
Resolution No. 23-52 TA No. 8

- Elevation
- City Boundary
- Parcel Lines
- Inside City
- Outside City
- Water



1 inch = 3,000 feet



September 12, 2023

P-229796

Ms. Margaret Tomlinson, RLA, LEED AP
Construction & Engineering Manager
Community Development
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

**Re: Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage
Improvements Project Continuing Contract
Contract No. RFSQ #23-11**

**Subj: Grant Application Development for the Elevation of 6 Flood-Prone Homes as part of the
2023 Flood Mitigation Assistance (FMA) Program**

Dear Ms. Tomlinson:

As requested, we are pleased to submit this proposal to the City of Port Orange to perform grant services associated with the Grant Application Development for the Elevation of 6 Flood-Prone Homes as part of the 2023 Flood Mitigation Assistance (FMA) Program.

In essence, the City of Port Orange's Flood Mitigation Program encompass three distinct flood mitigation categories the City is interested in participating: typical elevation project, mitigation reconstruction project, which entails the demolition and reconstruction of homes that are not feasible for elevation, and acquisition demolition. This proposal specifically encompasses the preparation of a FMA grant application for the typical elevation of 6 homes with a high risk of repetitive flooding.

Upon the successful FMA funding obligation of the FMA grant projects by the State and FEMA, and upon a request by the City of Port Orange, Pegasus Engineering would be pleased to submit a separate proposal to provide grant administration services (i.e., quarterly reports, reimbursement requests, close-out documents).

Under this contract, Pegasus Engineering will be responsible for the performance of the following tasks, at a minimum:

"Engineering a Higher Standard"

301 West State Road 434, Suite 309, Winter Springs, FL 32708 • 407-992-9160 • Fax 407-358-5155

1. Review various e-mail correspondence from the City and the homeowners documenting the reported flooding associated with Hurricanes Ian, Nicole, and prior storm events.
2. Attend coordination meetings with City of Port Orange staff to discuss observed and claimed flooding extent and steps to follow in consideration of the removal of structures from harm's way.
3. Coordinate with City staff to prepare for and conduct one-on-one meetings with the homeowners in order to address specific mitigation questions as well as to address the homeowners' concerns.
4. Review available flood loss history, elevation certificates, flood insurance declaration documents, and elevation proposals provided by City of Port Orange officials and the homeowners.
5. Perform a field assessment of the homes that will be part of the FMA application.
6. Coordinate with City of Port Orange staff regarding the finished floor elevations, elevation certificates, photographs of each structure, and required signatures from homeowners on FEMA specific forms, as deemed necessary. Pre-bidding coordination with City of Port Orange staff is also anticipated.
7. Coordinate with City of Port Orange and different mitigation contractors regarding the mitigation proposals, proposed mitigation costs, and implementation associated with each structure.
8. Collect the supporting technical documentation associated with the various structures to be mitigated for the preparation of the Benefit Cost Analysis.
9. Prepare a preliminary Benefit Cost Analysis of the structures that participate in the flood mitigation project.
10. Prepare a draft FEMA 2023 FMA application package.
11. Prepare and submit a final FEMA FMA application package to FDEM via the online portal on or before the deadline for submission as established by FEMA.

12. Address Requests for Information (RFI) from DEM staff during the programmatic, engineering and environmental reviews of the FMA application. These efforts will include direct coordination with FDEM representatives during the review of the FMA application.
13. As part of FDEM's technical review process, Pegasus will coordinate with City staff to update and/or revise specific sections of the grant application, as necessary, to incorporate FDEM's review comments.
14. Coordinate closely with the homeowners and address their questions and concerns related to the flood mitigation under elevation category, as needed.
15. Attend City Commission Meetings with scheduled agenda items encompassing discussions related to this mitigation project, as needed.

The above described services will be performed for an hourly not-to-exceed fee amount of **\$34,735** in accordance with attached manhour and fee estimate (refer to Attachment "A").

We appreciate the opportunity to serve the City of Port Orange on this important assignment. If you have any questions, please contact me directly at 407-992-9160, extension 309, or by email at david@pegasusengineering.net.

Respectfully,

PEGASUS ENGINEERING, LLC

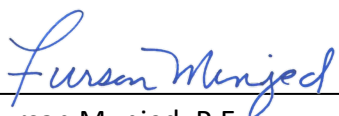
David W. Hamstra, P.E., CFM
Stormwater Department Manager

cc: Debra Neher, City of Port Orange
Valerie Duhl, City of Port Orange
Leylah Saavedra, Pegasus Engineering

**Grant Management Services for FEMA HMGP/FMA
Stormwater & Drainage Improvement Project Continuing Contract
Contract No. RFSQ #23-11**

**Grant Application Development for the Elevation of 6 Flood-Prone Homes
as part of the 2023 Flood Mitigation Assistance (FMA) Program**

Approved for Pegasus Engineering, LLC


Fursan Munjed, P.E.

Principal
Officer's Title

September 12, 2023
Date

This proposal is hereby accepted and authorization to proceed is hereby given.
(Please return one executed copy of this proposal for our Pegasus Engineering records).

Authorized Signature

Officer's Title

Date

EXHIBIT "A"
Manhour and Fee Estimate
for the

**GRANT APPLICATION DEVELOPMENT FOR THE ELEVATION OF 6 FLOOD-PRONE HOMES
AS PART OF THE 2023 FLOOD MITIGATION ASSISTANCE (FMA) PROGRAM**



Task Description	Grant Program Manager (Hamstra, P.E.)	Grant Project Manager (Saavedra, P.E.)	Grant Management Specialist (Whikehart, P.E.)	Sr. Designer/ GIS Technician (Greenough)	Administrative Assistant (Villanueva)	Task Hours	Task Fees
Standard Hourly Rates	\$195.00	\$185.00	\$150.00	\$120.00	\$85.00		
Review various e-mail correspondence from the City and the homeowners documenting the reported flooding		4	4		2	10	\$1,510.00
Attend coordination meetings with City staff to discuss project specifics	4	4				8	\$1,520.00
Conduct one-on-one meetings with the homeowners in order to address specific mitigation questions	2	6	4		2	14	\$2,270.00
Review available flood loss history, elevation certificates, flood insurance declaration documents, etc.		6	6		3	15	\$2,265.00
Perform a field assessment of the homes that will be part of the FMA application	9	9			2	20	\$3,590.00
Coordinate with City staff regarding the finished floor elevations, photographs, pre-bidding coordination, etc.		4	2			6	\$1,040.00
Coordinate with mitigation contractors regarding the proposed mitigation costs		2			1	3	\$455.00
Summarize in a database the supporting technical documentation per structure to be mitigated		4	4			8	\$1,340.00
Prepare a preliminary Benefit Cost Analysis of the structures that participate in the flood mitigation project	4	8				12	\$2,260.00
Prepare a draft FEMA FMA application packet, including figures and relevant supporting documentation	2	24	12	18	2	58	\$8,960.00
Prepare and submit a final FEMA FMA application package to FDEM via the online portal		4			4	8	\$1,080.00
Address Requests for Information (RFI) from DEM staff during the programmatic, engineering and environmental reviews	2	12	6	3	2	25	\$4,040.00
Follow up with the homeowners to address their questions and concerns related to the elevation project		4	2		2	8	\$1,210.00
Prepare for and attend City Commission Meetings regarding the mitigation project, as needed	4	4				8	\$1,520.00
Project Administration (Status Reports via Monthly Invoices)	6				3	9	\$1,425.00
TASK HOURS	33	95	40	21	23	212	
TASK LABOR COSTS	\$6,435.00	\$17,575.00	\$6,000.00	\$2,520.00	\$1,955.00	\$34,485.00	\$34,485.00
PERCENT BREAKDOWN	18.7%	51.0%	17.4%	7.3%	5.7%	100.0%	



CITY OF PORT ORANGE CONTRACT FOR SERVICES (with FEMA required provisions)

This Standard Contract for Services ("Contract") is entered into this 16 day of May, 2023, 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 **PEGASUS ENGINEERING, LLC** ("Contractor"), a Florida limited liability corporation whose principal address is 301 West State Road 434, Suite 309, Winter Springs, Florida 32708. The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

(a) The Contractor hereby agrees to provide Grant Management Services for Federal Emergency Management Agency ("FEMA") Hazard Mitigation Grant Program ("HMGP"), in accordance with Consultants Competitive Negotiation Act, and as more specifically described in Request for Statement of Qualifications 23-11 ("RFSQ 23-11"). This Contract together with RFSQ 23-11, Addendum No. 1, Exhibit "1," and Contractor's proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference shall constitute the formal written Contract between the City and Contractor. For convenience, Section 3 Scope of Services and Requirements, Addendum No 1 of RFSQ 23-11 and negotiated rate schedule are attached hereto as Exhibit "1." A complete copy of RFSQ 23-11 is available in the Office of the City Clerk. Contractor represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall commence on the date this Contract is signed by the Parties, and shall continue for a period of five (5) years (the "Term").

Renewals: Upon written agreement of the Parties, appropriation by City Council, and City Manager approval, this Contract may be renewed for one (1) five-year period.

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

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

Authorization for Services: This Contract standing alone does not authorize the performance of any work or services to be provided but the Contractor or require the City to place any orders for work or service. Authorization for performance of services by the Contractor under this Contract shall be in the form of written Task Authorization(s) ("Task Authorization") issued and executed by the City and signed by the Contractor. A sample Task Authorization is attached hereto as Exhibit "2."

(a) All Task Authorization(s) issued under this Contract shall terminate at the expiration of the term of the Task Authorization, unless amended in writing by the Parties. If a Task Authorization issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion of Services under said Task Authorization, including any Amendments thereto, and after all work or services under the Task Authorization have been approved and accepted by

the City's Contract Administrator. The obligations entered herein by both Parties under this Contract and said Task Authorization(s) shall remain in full force and effect until completion of all work or services performed under this Contract and/or the Task Authorization(s).

- (b) No new or additional Task Authorization(s) shall be issued after the original expiration date of this Contract. The extension to this Contract to coincide with the completion of an existing Task Authorization(s) issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the City or the Contractor to enter into a new or additional Task Authorization(s) after the original expiration date of this Contract, unless this Contract is renewed prior to entering into a Contract for a new or additional Task Authorization(s).

2. City Obligations. In return for the services identified above, the City agrees to compensate the Contractor at the pricing set forth in Task Authorization(s); and reserves the right to utilize lump sum or hourly rate compensation, in amounts 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. The Contractor shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization.

3. Contract Administration. The Community Development Director, Tim Burman, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

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

5. Termination for Convenience of the City

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

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

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

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

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

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

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

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

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 25 of this contract concerning disputes.

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

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

8. Examination of Records

(a) The Contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after closeout of the FEMA grant, 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 closeout of the FEMA grant under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such

contractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

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

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

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

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

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

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

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

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

10. Termination for Non-Appropriation of Funds

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

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

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

Compensation Exemptions Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City’s Leased Employee Affidavit Form Exhibit. Policies for Workers’ Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Policies other than Workers’ Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of “A-” in the “Best Key Rating Guide” published by A.M. Best & Company, Inc. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

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

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

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

<i>Standard Insurance Requirements</i>			
	Insurance	Standards	Additional Requirements

☒	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<u>Contract Amount 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.
☒	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	
<u>Additional Insurance Requirements</u>			
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☒	Professional Liability	<u>Limits:</u> Coverage - \$1,000,000	
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ To be determined.	
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000	

☐	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage – \$ <u>To be determined.</u>	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to 100% of the amount established by a Task Authorization issued pursuant to the Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$200,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods.		
☐			

12. A Contract for the purchase of supplies shall be governed by the City of Port Orange Code of Ordinances, as amended, and such supplies shall be deemed "goods," as defined therein.

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

14. Modifications or Changes to this Contract

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

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

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

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

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

16. Warranties. Contractor warrants that (1) the supplies to be provided to the City pursuant to this Contract are fit and sufficient for the purpose intended; (2) the supplies are merchantable, of good quality, and free from defects,

whether patent or latent, in material or workmanship, and (3) the supplies sold to the City pursuant to this Contract conform to the standards required by this Contract.

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

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

18. *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.

19. *Liability for Loss or Damage.*

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

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's

fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

23. 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.

24. 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 sub-contractors 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 sub-contractor during the term of this Contract.

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

265. 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.

27. 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.**

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

29. Compliance with Other Federal Standards.

(a) Remedies. This Contract addresses administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See above Paragraph 8 - Termination for Default.

(b) Termination for Cause and Convenience. This Contract addresses termination for cause and for convenience by the City, including how it will be carried out and the basis for settlement. See above Paragraph 6 - Termination for Convenience of the City, Paragraph 8 – Termination for Default and Paragraph 11 - Termination for Non-Appropriation of Funds.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish

information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect

to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract was conditioned upon the acceptance of the Department of Labor Wage Determination.

If applicable, the City included the provisions at 29 C.F.R. § 5.5(a)(1)-(10) in full below, and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

"(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the

labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or

(C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program

described in section 1(b)(2)(B) of the Davis–Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or

cash equivalents for the classification of work performed, as specified in the applicable wage determination

incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)

(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no

longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1)."

(e) Copeland Anti Kick Back Act: Compliance with the Copeland "Anti-Kickback" Act.

Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

(i) Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of

forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section

(ii) Further Compliance with the Contract Work Hours and Safety Standards Act. This provision is required for contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Contractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387) as amended.

"Clean Air Act"

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

"Federal Water Pollution Control Act"

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Recipient (if applicable), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

(i) Suspension and Debarment: This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(k) Procurement of Recovered Materials: Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired

Competitively within a timeframe providing for compliance with the contract performance schedule;

Meeting contract performance requirements; or

At a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(l) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(i) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(ii) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- d. Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(iii) *Exceptions.*

(1) This clause does not prohibit Contractors from providing—

- a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- a. Covered telecommunications equipment or services that:
 - 1. Are *not used* as a substantial or essential component of any system; *and*
 - 2. Are *not used* as critical technology of any system.
- b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(i) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall

report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(v) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (v), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under a FEMA grant or cooperative agreement award, the cost of any Contract change, modification, amendment, addendum, Change Order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms. See above Paragraph 15 - Modifications or Changes to this Contract.

(p) DHS Seal, LOGO, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, FEMA policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law

involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R. §200.334 and retained in compliance with 2 C.F.R. §200.334. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

30. Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

If applicable to this Contract, for FEMA financial assistance programs subject to BABAA, Contractor and subcontractors must sign and submit a certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).

31. 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.

32. 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: Tim Burman, Community Development Director 1395 Dunlawton Avenue

Port Orange, Florida 32129
(386) 506-5615

Contractor: Pegasus Engineering, LLC
Attention: Fursan Munjed, Managing Member
301 West State Road 434
Suite 309
Winter Springs, Florida 32708
(407) 992-9160 Ext. 309 - Telephone
david@pegasusengineering.net - E-Mail

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.

33. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Architect has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

34. 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.

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

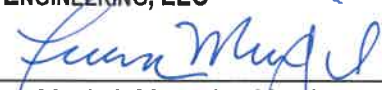
[Remainder of this page intentionally left blank]

Witnesses:


Printed Name: SEAN BECK

P. Villanueva
Printed Name: Priscilla Villanueva

PEGASUS ENGINEERING, LLC

By: 
Fursan Munjed, Managing Member

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

Date 5.9.2023

CITY OF PORT ORANGE

By:

Donald O. Burnette, Mayor

Date: May 16, 2023



ATTEST:

By:

Robin L. Fenwick, MMC, City Clerk

Date: May 16, 2023

EXHIBIT “1”

Contractor's Negotiated Rate Schedule, RFSQ 23-11 Section 3,
and Addendum No.1 of RFSQ 23-11

Consisting of 4 Pages

Cost Proposal

Project Position or Classification (Function to be Performed)	Hourly Rate
Grant Program Manager	\$195.00
Grant Manager	\$185.00
Grant Management Specialist	\$150.00
Senior Designer	\$120.00
Designer/CADD Technician	\$100.00
Administrative Assistant	\$85.00

***NOTE:** The Hourly Rate Schedule presented above pertains solely to Pegasus Engineering staff. No sub-consultants are envisioned under this contract. However, if the unforeseen need to retain a sub-consultant arises, Pegasus Engineering will obtain City staff's pre-approval.

STATEMENTS MAY BE REJECTED AND/OR RESPONDENT(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 Statements or the awarding of contracts. Evidence that the Respondent 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.
- (e) 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 Respondent must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in the possession of the Respondent 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.

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

The purpose of this RFSQ is to establish a master agreement for Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects in the City of Port Orange in accordance with Florida Statue 287.055, known as the "Consultants' Competitive Negotiation Act" (the "CCNA").

Authorization for Services under the contract shall be in the form of written Task Authorization issued and executed by the City and signed by the awarded engineering firm authorized representative. Each Task Authorization shall describe the services required, state the date of the commencement and completion of work, and establish the amount and method of payment. The City makes no covenant or promise as to the number of available projects during the life of this Contract.

DESCRIPTION OF WORK

The City of Port Orange is seeking a professional firm that has extensive knowledge with FEMA Flood Mitigation Assistance (FMA) and Hazard Mitigation Grant Program (HMGP) programs specific to structure elevation, demolition/reconstruction, acquisition, and stormwater and drainage improvement projects. Experience should include working knowledge of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and the related statutory authority, the ability to perform FEMA Benefit Cost Analysis calculations and familiarity with the City of Port Orange landscape including the unique needs of the community. The City seeks extensive knowledge in community engagement, drainage and stormwater projects in residential neighborhoods.

BACKGROUND

The City of Port Orange will be applying for multiple FEMA grants. Projects include community wide drainage improvements, stormwater improvements, residential elevation and residential acquisition and demolition. Due to the highly complex nature of mitigation grants, there is an identified need to obtain professional services for grant management.

SECTION 4 – STANDARD PURCHASING DEFINITIONS

The City will use the following definitions in instructions to respondents, 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



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5740
purchdiv@port-orange.org

ADDENDUM NO. # 1

April 19, 2023

RFSQ #23-11 GRANT MANAGEMENT SERVICES FOR FEMA HMGP/FMA STORMWATER & DRAINAGE IMPROVEMENT PROJECTS

To All Submitters:

The following changes, clarifications and additions are hereby made part of the RFSQ for the above referenced project dated April 10, 2023 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 the submitter to confirm that all addenda have been received prior to submitting a Statement of Qualifications and acknowledge such in the RFSQ documents.

A. CLARIFICATIONS:

None

B. CHANGES TO RFSQ DOCUMENT:

On p. 42, TAB D – APPROACH TO PROJECT/UNDERSTANDING in paragraph 2, strike the language 'especially SRC projects' as this does not apply to the City of Port Orange.

C. QUESTIONS AND ANSWERS:

Question #1

Tab B: Company Profile – History and Qualifications lists page maximums for the first two bullets. Does the City have required page limits for the last two bullets in this section?

Answer #1

No

Question #2

Tab D: Approach to Project/Understanding – Does the City have a required page limit for this section?

Answer #2

No

Question #3

Is there an incumbent currently performing the same, or substantially similar work to the scope of services being solicited in this RFSQ?

Answer #3

No

Question #4

Tab D: Approach to Project/Understanding uses the term "SRC projects". Could the City please clarify what "SRC" stands for in this context?

Answer #4

See Letter B above.

Question #5

In Section 6 – Special Conditions, requirements include that the submitting firm must have been incorporated, organized and/or established for a period of at least three (3) years prior to firm's submittal. Would the City be willing to consider a firm that was established in October, 2020, but meets all other requirements and can full demonstrate its staff have the adequate experience in FEMA HMGP and FMA programs necessary to provide the services requested?

Answer #5

No. The requirements outlined in the RFSQ document remain unchanged.

Jill Poolman, CPPO, CPPB, FCCM/Purchasing Manager

jpoolman@port-orange.org

In all other respects, except as specifically stated herein, the subject RFSQ #23-11 Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects remains unchanged.

END OF ADDENDUM NO. #1

EXHIBIT "2"

Sample Task Authorization for Services

Consisting of 21 Pages

TASK AUTHORIZATION NO. ____
Contract for Services dated _____
Between the City of Port Orange, Florida and Pegasus Engineering, LLC

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **PEGASUS ENGINEERING, LLC** ("Contractor"), a Florida limited liability corporation with its principal place of business at 301 West State Road 434, Suite 309, Winter Springs, Florida 32708, and hereinafter collectively referred to as the "Parties," and is to that certain Contract for Services dated as specified above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to _____ as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."
3. Contractor shall complete the services to be provided herein within _____ days of the date of written notice by the City to the Contractor.
4. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "____" attached hereto and made a part hereof for all purposes, subject to a limit not to exceed \$ _____. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
5. Truth-in-Negotiations.
 - a. For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
 - b. Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Architect has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

6. Compliance with Other Federal Standards.

(a) Remedies. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See Paragraph 8 - Termination for Default in the Contract, a draft of which is attached hereto and made apart hereof by reference.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, in the Contract, a draft of which is attached hereto and made apart hereof by reference. Termination for non-appropriation of funds is set forth in Paragraph 11 of the contract, a draft of which is attached hereto and made apart hereof by reference.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be

provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors

with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.**

When required by the federal program legislation, prime construction contracts over \$2,000 awarded by the City require the Contractor to comply with the following provisions from 29 C.F.R. § 5.5(a)(1)-(10), and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the

contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or

owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or

audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or

cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State

Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees.

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements.

All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1)."

(e) Copeland Anti Kick Back Act: Compliance with the Copeland "Anti-Kickback" Act.

Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

For all contracts over \$100,000 that involve the employment of mechanics, laborers, and construction work:

(i) Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its

own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(ii) **Further Compliance with the Contract Work Hours and Safety Standards Act.**

In addition to the clauses contained in subparagraphs (i)(1) thru (4), hereinabove, in any applicable contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5.1, the Contractor shall comply with the following provisions and insert the same in any applicable contracts with subcontractors:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) **Rights to Inventions Made Under a Contract or Agreement.**

(1) Stafford Act Disaster Grants. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs

Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

(2) If the FEMA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

(3) The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387) as amended.

For contracts exceeding \$150,000.00, the following provisions apply:

"Clean Air Act"

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

"Federal Water Pollution Control Act"

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

(i) Suspension and Debarment: This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(k) Procurement of Recovered Materials: Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired.
 - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2. Meeting contract performance requirements; or
 - 3. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- C. The Contractor also agrees to comply with all other applicable requirements of Section

6002 of the Solid Waste Disposal Act.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(I) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(i) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(ii) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

d Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(iii) Exceptions.

(1) This clause does not prohibit Contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such

equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

1. Are *not used* as a substantial or essential component of any system; *and*
2. Are *not used* as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(iv) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(v) *Subcontracts.* The Contractor shall insert the substance of this clause, including this

paragraph (v), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained herein above.

(p) DHS Seal, LOGO, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, FEMA policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R. §200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(aa) Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act

("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

7. If applicable to this Contract, for FEMA financial assistance programs subject to BABAA, Contractor and subcontractors must sign and submit a certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).
8. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.

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

Witnesses:

PEGASUS ENGINEERING, LLC

Printed Name: _____

By: _____
Printed Name: _____
Title: _____

Printed Name: _____

Date: _____

CITY OF PORT ORANGE

By: _____
Wayne Clerk, City Manager **OR**
Donald O. Burnette, Mayor

Date: _____

ATTEST:

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

Date: _____



PEGAENG-01

ASOSTENUTO

CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
5/1/2023

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
JCJ Insurance Agency, LLC
2208 Hillcrest Street
Orlando, FL 32803

CONTACT
NAME:
PHONE
(A/C, No, Ext): (321) 445-1117 FAX
(A/C, No): (321) 445-1076
E-MAIL
ADDRESS: certs@jcj-insurance.com

INSURED

Pegasus Engineering LLC
301 W. SR 434, Suite 309
Winter Springs, FL 32708

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : Phoenix Insurance Co. (Travelers)

25623

INSURER B : Travelers Property & Casualty of America

25674

INSURER C : Travelers Casualty & Surety Co

19038

INSURER D : Berkley Insurance Company

32603

INSURER E :

INSURER F :

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY ☒ PROJECT ☐ LOC OTHER:	X	X	6802H633696	9/18/2022	9/18/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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
A	☒ AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	6802H633696	9/18/2022	9/18/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	X	X	CUP5D257010	9/18/2022	9/18/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB5J589774	9/18/2022	9/18/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	☒ Professional Liab			AEC-9058882-05	9/18/2022	9/18/2023	Per Claim/Aggregate 2,000,000

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

RE: Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects; RFSQ #23-11

Certificate Holder is an Additional Insureds with regards to General, Auto and Umbrella Liability when required by written contract. Coverage is Primary & Non-Contributory with respect to all policies. A Waiver of Subrogation for all policies applies when required by written contract. 30 Day Notice of Cancellation, except for 10 days for non-payment.

CERTIFICATE HOLDER

CITY OF PORT ORANGE, FLORIDA
1000 City Center Circle
Port Orange, FL 32129

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



PEGAENG-01

BBROWN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/20/2023

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 JCJ Insurance Agency, LLC 2208 Hillcrest Street Orlando, FL 32803	CONTACT NAME:	
	PHONE (A/C, No, Ext): (321) 445-1117	FAX (A/C, No): (321) 445-1076
	E-MAIL ADDRESS: certs@jcj-insurance.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Phoenix Insurance Co. (Travelers)	25623
INSURED Pegasus Engineering LLC 301 W. SR 434, Suite 309 Winter Springs, FL 32708	INSURER B : Travelers Property & Casualty of America	25674
	INSURER C : Travelers Casualty & Surety Co	19038
	INSURER D : Berkley Insurance Company	32603
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	X	X	6802H633696	9/18/2023	9/18/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	6802H633696	9/18/2023	9/18/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	X	X	CUP5D257010	9/18/2023	9/18/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N / A	X	UB5J589774	9/18/2023	9/18/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liab			AEC-9070599-06	9/18/2023	9/18/2024	Per Claim/Aggregate 2,000,000

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

RE: Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects; RFSQ #23-11

Certificate Holder is an Additional Insureds with regards to General, Auto and Umbrella Liability when required by written contract. Coverage is Primary & Non-Contributory with respect to all policies. A Waiver of Subrogation for all policies applies when required by written contract. 30 Day Notice of Cancellation, except for 10 days for non-payment.

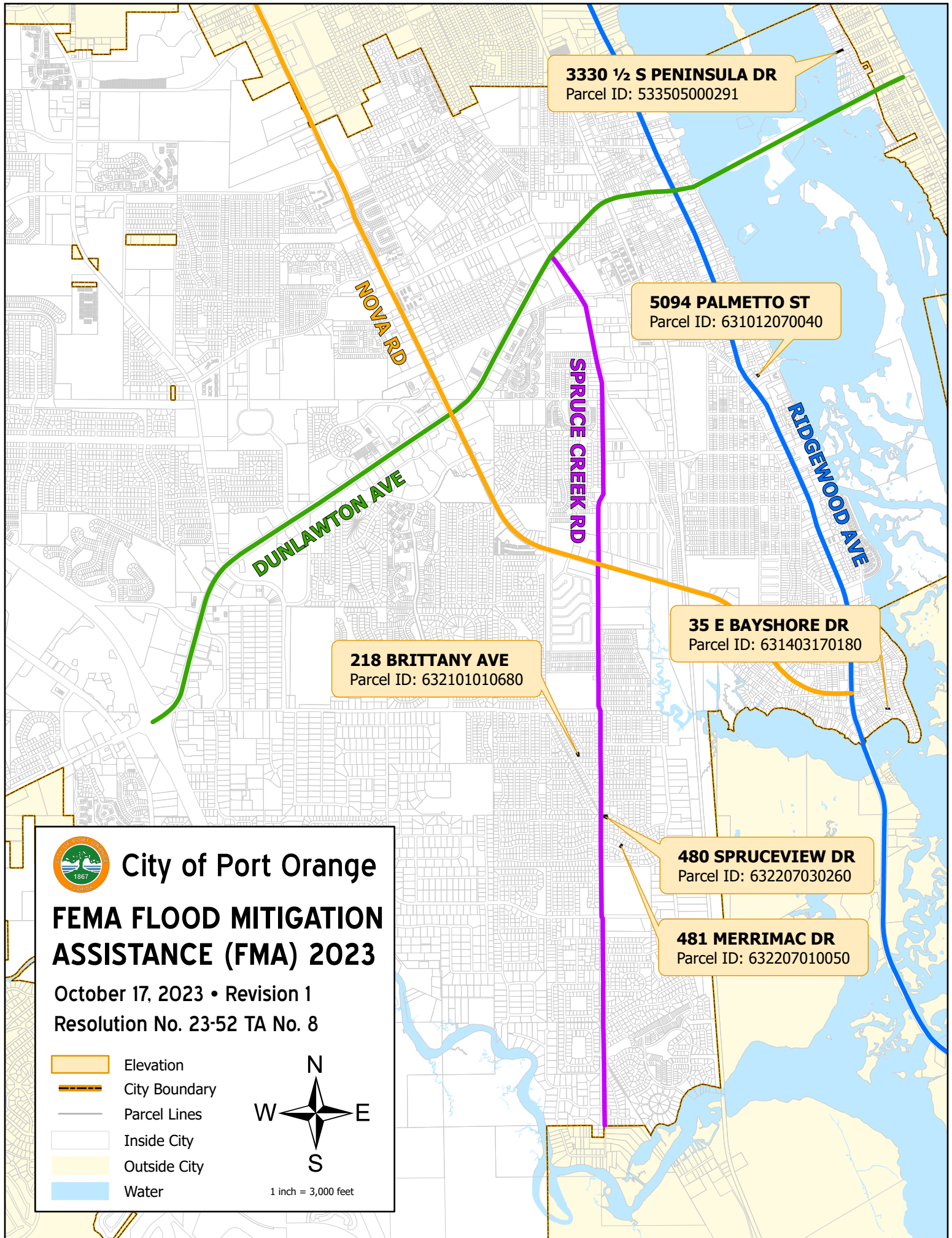
CERTIFICATE HOLDER

CANCELLATION

CITY OF PORT ORANGE, FLORIDA
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



3330 1/2 S PENINSULA DR
Parcel ID: 533505000291

5094 PALMETTO ST
Parcel ID: 631012070040

35 E BAYSHORE DR
Parcel ID: 631403170180

218 BRITTANY AVE
Parcel ID: 632101010680

480 SPRUCEVIEW DR
Parcel ID: 632207030260

481 MERRIMAC DR
Parcel ID: 632207010050

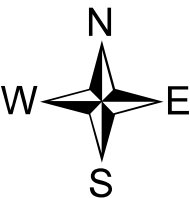


City of Port Orange

FEMA FLOOD MITIGATION ASSISTANCE (FMA) 2023

October 17, 2023 • Revision 1
Resolution No. 23-52 TA No. 8

- Elevation
- City Boundary
- Parcel Lines
- Inside City
- Outside City
- Water



1 inch = 3,000 feet



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (C9b) Approval of Task Authorization No. 9 with Pegasus Engineering, LLC for grant application development for the FEMA Flood Mitigation Assistance (FMA) Application for the Acquisition and Demolition of 1 Flood-Prone Home

DEPARTMENT: Community Development

GOAL: 1 - Public Safety; 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Task Authorization No. 9 with Pegasus Engineering, LLC and authorize the Mayor and City Clerk to execute the associated documents.

SUMMARY: Pegasus Engineering, LLC has an existing contract with the City to provide assistance in preparing and submitting FEMA Flood Mitigation Assistance (FMA) applications. Staff is requesting the services of Pegasus Engineering, LLC to prepare and submit a FEMA Flood Mitigation Assistance (FMA) application to the State of Florida Division of Emergency Management (FDEM) in order to secure FEMA funding to offset the costs associated with the implementation of the proposed acquisition and demolition of 1 flood-prone home with a high risk of repetitive flooding. The location of the home is shown on the attached location map.

Task Authorization No. 9 corresponds with FMA Resolution No. 23-53 to acquire and demolish 1 flood-prone home on the 10/17/2023 City Council agenda. Task Authorization No. 9 will not exceed \$19,140. Upon being selected for FMA funding, the Pegasus fee will be eligible for reimbursement from FEMA as a pre-award cost under a Sub-Recipient Management Cost allocation (100% Federal match).

FMA funding for acquisition and demolition is a cost reimbursement grant that has a 75% federal / 25% non-federal, 90% federal / 10% non-federal or 100% federal / 0% non-federal cost share depending on the quantity and amount of flood claims for the structure. This home has been identified by FEMA as a FMA Repetitive Loss structure and is expected to fall into the 90% federal / 10% non-federal cost share category. The total estimated cost to acquire the home is \$300,000 of which the City match is \$30,000. If approved, staff will make the necessary designation of fund balance for the acquisition.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Pegasus Engineering LLC RFSQ 23-11 Task Authorization No. 9	Pegasus Engineering LLC RFSQ 23-11 Task Authorization No. 9.pdf
2.	Pegasus Master Contract CA8124	Pegasus Master Contract CA8124.pdf
3.	Acquisition Demolition of a Flood Prone Home 2023 FMA Grant Application Pegasus Proposal (09-12-2023)	Acquisition Demolition of a Flood Prone Home 2023 FMA Grant Application Pegasus Proposal (09-12-2023).pdf
4.	Pegasus COI expires 09 18 2024	Pegasus COI expires 09 18 2024.pdf
5.	FMA Acquisition Location Map	FMA Acquisition Location Map.pdf

Margaret Tomlinson	Created/Initiated - 9/28/2023
Tim Burman	Approved - 9/28/2023
John McKinney	Approved - 10/2/2023
Shannon Balmer	Approved - 10/5/2023
Wayne Clark	Approved - 10/5/2023
Tracee Cody	Final Approval - 10/6/2023

TASK AUTHORIZATION NO. 9
Contract for Services dated May 16, 2023
Between the City of Port Orange, Florida and Pegasus Engineering, LLC

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **PEGASUS ENGINEERING, LLC** ("Contractor"), a Florida limited liability corporation with its principal place of business at 301 West State Road 434, Suite 309, Winter Springs, Florida 32708, and hereinafter collectively referred to as the "Parties," and is to that certain Contract for Services dated as specified above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to the acquisition and demolition of a flood-prone home as part of the 2023 Flood Mitigation Assistance (FMA) Program, and as more particularly described in Contractor's Proposal, attached hereto and incorporated herein as Task Authorization Exhibit "1."
3. Contractor shall complete the services to be provided herein within two (2) years of the date of written notice by the City to the Contractor.
4. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1" attached hereto and made a part hereof for all purposes, subject to a limit not to exceed \$19,140.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
5. Truth-in-Negotiations.
 - a. For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
 - b. Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Architect has disclosed all debts or fees owed to or that are pending before the City prior to the

execution of this Contract of Task Authorization.

6. Compliance with Other Federal Standards.

(a) Remedies. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See Paragraph 8 - Termination for Default in the Contract, a draft of which is attached hereto and made apart hereof by reference.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, in the Contract, a draft of which is attached hereto and made apart hereof by reference. Termination for non-appropriation of funds is set forth in Paragraph 11 of the contract, a draft of which is attached hereto and made apart hereof by reference.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be

provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency

and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or [contract](#) modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.**

When required by the federal program legislation, prime construction contracts over \$2,000 awarded by the City require the Contractor to comply with the following provisions from 29 C.F.R. § 5.5(a)(1)-(10), and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of

the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice,

trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall

provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or

cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees.

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less

than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements.

All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include

disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1).”

(e) Copeland Anti Kick Back Act: Compliance with the Copeland “Anti-Kickback” Act.

Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

For all contracts over \$100,000 that involve the employment of mechanics, laborers, and construction work:

(i) Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to

such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(ii) Further Compliance with the Contract Work Hours and Safety Standards Act.

In addition to the clauses contained in subparagraphs (i)(1) thru (4), hereinabove, in any applicable contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5.1, the Contractor shall comply with the following provisions and insert the same in any applicable contracts with subcontractors:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal

Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) Rights to Inventions Made Under a Contract or Agreement.

(1) Stafford Act Disaster Grants. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

(2) If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

(3) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387) as amended.

For contracts exceeding \$150,000.00, the following provisions apply:

“Clean Air Act”

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

“Federal Water Pollution Control Act”

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

(i) Suspension and Debarment: This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(k) Procurement of Recovered Materials: Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

A. In the performance of this contract, the Contractor shall make maximum use of products

containing recovered materials that are EPA-designated items unless the product cannot be acquired.

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(I) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(i) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(ii) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system;
- or

d Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(iii) Exceptions.

- (1) This clause does not prohibit Contractors from providing—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 1. Are *not used* as a substantial or essential component of any system; *and*
 2. Are *not used* as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(iv) Reporting requirement.

- (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.
- (2) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:
 - a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer

part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(v) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (v), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope

of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained herein above.

(p) DHS Seal, LOGO, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, FEMA policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R.

§200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(aa) Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

7. If applicable to this Contract, for FEMA financial assistance programs subject to BABAA, Contractor and subcontractors must sign and submit a certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).
8. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.

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

Witnesses:

PEGASUS ENGINEERING, LLC

Printed Name: _____ By: _____
Fursan Munjed, Managing Member

Date: _____

Printed Name: _____

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: _____

ATTEST:

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

Date: _____

EXHIBIT “1”

Contractor's Quote

Consisting of 6 Pages



September 12, 2023

P-229795

Ms. Margaret Tomlinson, RLA, LEED AP
Construction & Engineering Manager
Community Development
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

**Re: Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage
Improvements Project Continuing Contract
Contract No. RFSQ #23-11**

**Subj: Grant Application Development for the Acquisition and Demolition of a Flood-Prone
Home as part of the 2023 Flood Mitigation Assistance (FMA) Program**

Dear Ms. Tomlinson:

As requested, we are pleased to submit this proposal to the City of Port Orange to perform grant services associated with the Grant Application Development for the Acquisition and Demolition of a Flood-Prone Home as part of the 2023 Flood Mitigation Assistance (FMA) Program.

In essence, the City of Port Orange's Flood Mitigation Program encompass three distinct flood mitigation categories the City is interested in participating: typical elevation project, mitigation reconstruction project, which entails the demolition and reconstruction of homes that are not feasible for elevation, and acquisition demolition. This proposal specifically encompasses the preparation of a FMA grant application for the acquisition and demolition of a single family home with a high risk of repetitive flooding.

Upon the successful FMA funding obligation of the FMA grant projects by the State and FEMA, and upon a request by the City of Port Orange, Pegasus Engineering would be pleased to submit a separate proposal to provide grant administration services (i.e., quarterly reports, reimbursement requests, close-out documents).

Under this contract, Pegasus Engineering will be responsible for the performance of the following tasks, at a minimum:

"Engineering a Higher Standard"

301 West State Road 434, Suite 309, Winter Springs, FL 32708 • 407-992-9160 • Fax 407-358-5155

1. Review various e-mail correspondence from the City and the homeowners documenting the reported flooding associated with Hurricanes Ian, Nicole, and prior storm events.
2. Attend coordination meetings with City of Port Orange staff to discuss observed and claimed flooding extent and steps to follow in consideration of the removal of structures from harm's way.
3. Coordinate with City staff to prepare for and conduct an one-on-one meeting with the homeowner in order to address specific mitigation questions as well as to address the homeowner's concerns.
4. Review available flood loss history, elevation certificate, flood insurance declaration documents, and appraisal provided by City of Port Orange officials and the homeowner.
5. Perform a field assessment of the home that will be part of the FMA application.
6. Coordinate with City of Port Orange staff regarding the finished floor elevation, photographs of the structure, and required FEMA documentation, as deemed necessary.
7. Coordinate with City of Port Orange and different demolition contractors regarding the demolition proposal, and proposed acquisition costs associated with the structure.
8. Collect the supporting technical documentation associated with the structure to be acquired for the preparation of the Benefit Cost Analysis.
9. Prepare a preliminary Benefit Cost Analysis of the structure that will participate in the flood mitigation project.
10. Prepare a draft FEMA 2023 FMA application package.
11. Prepare and submit a final FEMA FMA application package to FDEM via the online portal on or before the deadline for submission as established by FEMA.
12. Address Requests for Information (RFI) from DEM staff during the programmatic, engineering and environmental reviews of the FMA application. These efforts will include direct coordination with FDEM representatives during the review of the FMA application.

13. As part of FDEM's technical review process, Pegasus will coordinate with City staff to update and/or revise specific sections of the grant application, as necessary, to incorporate FDEM's review comments.
14. Coordinate closely with the homeowner and address any questions and concerns related to the flood mitigation project, as needed.
15. Attend City Commission Meetings with scheduled agenda items encompassing discussions related to this mitigation project, as needed.

The above-described services will be performed for an hourly not-to-exceed fee amount of **\$19,140** in accordance with attached manhour and fee estimate (refer to Attachment "A").

We appreciate the opportunity to serve the City of Port Orange on this important assignment. If you have any questions, please contact me directly at 407-992-9160, extension 309, or by email at david@pegasusengineering.net.

Respectfully,

PEGASUS ENGINEERING, LLC

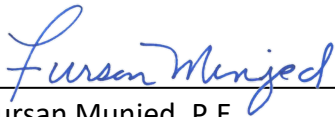
David W. Hamstra, P.E., CFM
Stormwater Department Manager

cc: Debra Neher, City of Port Orange
Valerie Duhl, City of Port Orange
Leylah Saavedra, Pegasus Engineering

**Grant Management Services for FEMA HMGP/FMA
Stormwater & Drainage Improvement Project Continuing Contract
Contract No. RFSQ #23-11**

**Grant Application Development for the Acquisition and Demolition of a
Flood-Prone Home as part of the
2023 Flood Mitigation Assistance (FMA) Program**

Approved for Pegasus Engineering, LLC

	Principal	September 12, 2023
Fursan Munjed, P.E.	Officer's Title	Date

This proposal is hereby accepted and authorization to proceed is hereby given.
(Please return one executed copy of this proposal for our Pegasus Engineering records).

See Task Authorization No. 9, Page 21		
_____	_____	_____
Authorized Signature	Officer's Title	Date

EXHIBIT "A"
Manhour and Fee Estimate
for the

**GRANT APPLICATION DEVELOPMENT FOR THE ACQUISITION AND DEMOLITION OF A FLOOD-PRONE HOME
AS PART OF THE 2023 FLOOD MITIGATION ASSISTANCE (FMA) PROGRAM**



Task Description	Grant Program Manager (Hamstra, P.E.)	Grant Project Manager (Saavedra, P.E.)	Grant Management Specialist (Whikehart, P.E.)	Sr. Designer/ GIS Technician (Greenough)	Administrative Assistant (Villanueva)	Task Hours	Task Fees
Standard Hourly Rates	\$195.00	\$185.00	\$150.00	\$120.00	\$85.00		
Review various e-mail correspondence from the City and the homeowner documenting the reported flooding		2	2		2	6	\$840.00
Attend coordination meetings with City staff to discuss project specifics	2	2				4	\$760.00
Conduct a one-on-one meeting with the homeowner in order to address specific mitigation questions	2	2	1		2	7	\$1,080.00
Review available flood loss history, elevation certificate, flood insurance declaration documents, etc.		2	2		1	5	\$755.00
Perform a field assessment of the home that will be part of the HMGP application	2	2			2	6	\$930.00
Coordinate with City staff regarding the finished floor elevation, photographs, etc.		2	1			3	\$520.00
Coordinate with mitigation contractors regarding the proposed mitigation costs		2			1	3	\$455.00
Summarize in a database the supporting technical documentation for the structure to be mitigated		2	2			4	\$670.00
Prepare a preliminary Benefit Cost Analysis of the structure that participates in the flood mitigation project	2	4				6	\$1,130.00
Prepare a draft FEMA HMGP application packet, including figures and relevant supporting documentation	2	12	6	4	2	26	\$4,160.00
Prepare and submit a final FEMA HMGP application package to FDEM via the online portal		4			4	8	\$1,080.00
Address Requests for Information (RFI) from DEM staff during the programmatic, engineering and environmental reviews	2	4	6	2	2	16	\$2,440.00
Follow up with the homeowners to address their questions and concerns related to the Mitigation Reconstruction Project		4	2		2	8	\$1,210.00
Prepare for and attend City Commission Meetings regarding the mitigation project, as needed	4	4				8	\$1,520.00
Project Administration (Status Reports via Monthly Invoices)	6				3	9	\$1,425.00
TASK HOURS	22	48	22	6	21	119	
TASK LABOR COSTS	\$4,290.00	\$8,880.00	\$3,300.00	\$720.00	\$1,785.00	\$18,975.00	\$18,975.00
PERCENT BREAKDOWN	22.6%	46.8%	17.4%	3.8%	9.4%	100.0%	
Breakdown in Fees							
						(1) Labor Costs =	\$18,975.00
						(2) Reimbursable Expenses =	\$165.00
TOTAL HOURLY NOT TO EXCEED AMOUNT						=	\$19,140.00

DUNLAWTON AVE

NOVA RD

SPRUCE CREEK RD

RIDGEWOOD AVE

241 BRITTANY AVE
Parcel ID: 632101020170

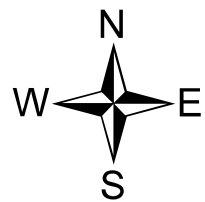


City of Port Orange

FEMA FLOOD MITIGATION ASSISTANCE (FMA) 2023

October 17, 2023 • Revision 1
Resolution No. 23-53 TA No. 9

- Acquisition
- City Boundary
- Parcel Lines
- Inside City
- Outside City
- Water



1 inch = 3,000 feet



CITY OF PORT ORANGE CONTRACT FOR SERVICES (with FEMA required provisions)

This Standard Contract for Services ("Contract") is entered into this 16 day of May, 2023, 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 **PEGASUS ENGINEERING, LLC** ("Contractor"), a Florida limited liability corporation whose principal address is 301 West State Road 434, Suite 309, Winter Springs, Florida 32708. The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

(a) The Contractor hereby agrees to provide Grant Management Services for Federal Emergency Management Agency ("FEMA") Hazard Mitigation Grant Program ("HMGP"), in accordance with Consultants Competitive Negotiation Act, and as more specifically described in Request for Statement of Qualifications 23-11 ("RFSQ 23-11"). This Contract together with RFSQ 23-11, Addendum No. 1, Exhibit "1," and Contractor's proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference shall constitute the formal written Contract between the City and Contractor. For convenience, Section 3 Scope of Services and Requirements, Addendum No 1 of RFSQ 23-11 and negotiated rate schedule are attached hereto as Exhibit "1." A complete copy of RFSQ 23-11 is available in the Office of the City Clerk. Contractor represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall commence on the date this Contract is signed by the Parties, and shall continue for a period of five (5) years (the "Term").

Renewals: Upon written agreement of the Parties, appropriation by City Council, and City Manager approval, this Contract may be renewed for one (1) five-year period.

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

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

Authorization for Services: This Contract standing alone does not authorize the performance of any work or services to be provided but the Contractor or require the City to place any orders for work or service. Authorization for performance of services by the Contractor under this Contract shall be in the form of written Task Authorization(s) ("Task Authorization") issued and executed by the City and signed by the Contractor. A sample Task Authorization is attached hereto as Exhibit "2."

(a) All Task Authorization(s) issued under this Contract shall terminate at the expiration of the term of the Task Authorization, unless amended in writing by the Parties. If a Task Authorization issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion of Services under said Task Authorization, including any Amendments thereto, and after all work or services under the Task Authorization have been approved and accepted by

the City's Contract Administrator. The obligations entered herein by both Parties under this Contract and said Task Authorization(s) shall remain in full force and effect until completion of all work or services performed under this Contract and/or the Task Authorization(s).

- (b) No new or additional Task Authorization(s) shall be issued after the original expiration date of this Contract. The extension to this Contract to coincide with the completion of an existing Task Authorization(s) issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the City or the Contractor to enter into a new or additional Task Authorization(s) after the original expiration date of this Contract, unless this Contract is renewed prior to entering into a Contract for a new or additional Task Authorization(s).

2. City Obligations. In return for the services identified above, the City agrees to compensate the Contractor at the pricing set forth in Task Authorization(s); and reserves the right to utilize lump sum or hourly rate compensation, in amounts 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. The Contractor shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization.

3. Contract Administration. The Community Development Director, Tim Burman, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

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

5. Termination for Convenience of the City

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

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

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

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

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

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

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

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

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 25 of this contract concerning disputes.

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

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

8. Examination of Records

(a) The Contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after closeout of the FEMA grant, 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 closeout of the FEMA grant under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such

contractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

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

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

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

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

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

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

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

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

10. Termination for Non-Appropriation of Funds

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

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

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

Compensation Exemptions Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City’s Leased Employee Affidavit Form Exhibit. Policies for Workers’ Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Policies other than Workers’ Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of “A-” in the “Best Key Rating Guide” published by A.M. Best & Company, Inc. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

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

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

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

<i>Standard Insurance Requirements</i>			
	Insurance	Standards	Additional Requirements

☒	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<u>Contract Amount 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.
☒	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	
<i>Additional Insurance Requirements</i>			
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☒	Professional Liability	<u>Limits:</u> Coverage - \$1,000,000	
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ To be determined.	
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000	

☐	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage – \$ <u>To be determined.</u>	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to 100% of the amount established by a Task Authorization issued pursuant to the Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$200,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods.		
☐			

12. A Contract for the purchase of supplies shall be governed by the City of Port Orange Code of Ordinances, as amended, and such supplies shall be deemed "goods," as defined therein.

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

14. Modifications or Changes to this Contract

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

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

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

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

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

16. Warranties. Contractor warrants that (1) the supplies to be provided to the City pursuant to this Contract are fit and sufficient for the purpose intended; (2) the supplies are merchantable, of good quality, and free from defects,

whether patent or latent, in material or workmanship, and (3) the supplies sold to the City pursuant to this Contract conform to the standards required by this Contract.

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

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

18. *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.

19. *Liability for Loss or Damage.*

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

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's

fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

23. 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.

24. 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 sub-contractors 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 sub-contractor during the term of this Contract.

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

265. 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.

27. 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.**

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

29. Compliance with Other Federal Standards.

(a) Remedies. This Contract addresses administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See above Paragraph 8 - Termination for Default.

(b) Termination for Cause and Convenience. This Contract addresses termination for cause and for convenience by the City, including how it will be carried out and the basis for settlement. See above Paragraph 6 - Termination for Convenience of the City, Paragraph 8 – Termination for Default and Paragraph 11 - Termination for Non-Appropriation of Funds.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish

information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect

to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract was conditioned upon the acceptance of the Department of Labor Wage Determination.

If applicable, the City included the provisions at 29 C.F.R. § 5.5(a)(1)-(10) in full below, and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

"(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the

labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or

(C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program

described in section 1(b)(2)(B) of the Davis–Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or

cash equivalents for the classification of work performed, as specified in the applicable wage determination

incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)

(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no

longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1)."

(e) Copeland Anti Kick Back Act: Compliance with the Copeland "Anti-Kickback" Act.

Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

(i) Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of

forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section

(ii) Further Compliance with the Contract Work Hours and Safety Standards Act. This provision is required for contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Contractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387) as amended.

"Clean Air Act"

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

"Federal Water Pollution Control Act"

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Recipient (if applicable), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

(i) Suspension and Debarment: This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(k) Procurement of Recovered Materials: Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired

Competitively within a timeframe providing for compliance with the contract performance schedule;

Meeting contract performance requirements; or

At a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(l) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(i) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(ii) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- d. Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(iii) *Exceptions.*

(1) This clause does not prohibit Contractors from providing—

- a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- a. Covered telecommunications equipment or services that:
 - 1. Are *not used* as a substantial or essential component of any system; *and*
 - 2. Are *not used* as critical technology of any system.
- b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(i) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall

report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(v) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (v), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under a FEMA grant or cooperative agreement award, the cost of any Contract change, modification, amendment, addendum, Change Order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms. See above Paragraph 15 - Modifications or Changes to this Contract.

(p) DHS Seal, LOGO, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, FEMA policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law

involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R. §200.334 and retained in compliance with 2 C.F.R. §200.334. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

30. Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

If applicable to this Contract, for FEMA financial assistance programs subject to BABAA, Contractor and subcontractors must sign and submit a certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).

31. 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.

32. 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: Tim Burman, Community Development Director 1395 Dunlawton Avenue

Port Orange, Florida 32129
(386) 506-5615

Contractor: Pegasus Engineering, LLC
Attention: Fursan Munjed, Managing Member
301 West State Road 434
Suite 309
Winter Springs, Florida 32708
(407) 992-9160 Ext. 309 - Telephone
david@pegasusengineering.net - E-Mail

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.

33. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Architect has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

34. 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.

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

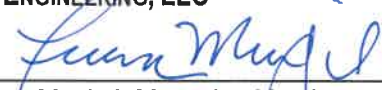
[Remainder of this page intentionally left blank]

Witnesses:


Printed Name: SEAN BECK

P. Villanueva
Printed Name: Priscilla Villanueva

PEGASUS ENGINEERING, LLC

By: 
Fursan Munjed, Managing Member

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

Date 5.9.2023

CITY OF PORT ORANGE

By: 

Donald O. Burnette, Mayor

Date: May 16, 2023



ATTEST:

By: 

Robin L. Fenwick, MMC, City Clerk

Date: May 16, 2023

EXHIBIT “1”

Contractor's Negotiated Rate Schedule, RFSQ 23-11 Section 3,
and Addendum No.1 of RFSQ 23-11

Consisting of 4 Pages

Cost Proposal

Project Position or Classification (Function to be Performed)	Hourly Rate
Grant Program Manager	\$195.00
Grant Manager	\$185.00
Grant Management Specialist	\$150.00
Senior Designer	\$120.00
Designer/CADD Technician	\$100.00
Administrative Assistant	\$85.00

***NOTE:** The Hourly Rate Schedule presented above pertains solely to Pegasus Engineering staff. No sub-consultants are envisioned under this contract. However, if the unforeseen need to retain a sub-consultant arises, Pegasus Engineering will obtain City staff's pre-approval.

STATEMENTS MAY BE REJECTED AND/OR RESPONDENT(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 Statements or the awarding of contracts. Evidence that the Respondent 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.
- (e) 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 Respondent must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in the possession of the Respondent 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.

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

The purpose of this RFSQ is to establish a master agreement for Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects in the City of Port Orange in accordance with Florida Statue 287.055, known as the "Consultants' Competitive Negotiation Act" (the "CCNA").

Authorization for Services under the contract shall be in the form of written Task Authorization issued and executed by the City and signed by the awarded engineering firm authorized representative. Each Task Authorization shall describe the services required, state the date of the commencement and completion of work, and establish the amount and method of payment. The City makes no covenant or promise as to the number of available projects during the life of this Contract.

DESCRIPTION OF WORK

The City of Port Orange is seeking a professional firm that has extensive knowledge with FEMA Flood Mitigation Assistance (FMA) and Hazard Mitigation Grant Program (HMGP) programs specific to structure elevation, demolition/reconstruction, acquisition, and stormwater and drainage improvement projects. Experience should include working knowledge of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and the related statutory authority, the ability to perform FEMA Benefit Cost Analysis calculations and familiarity with the City of Port Orange landscape including the unique needs of the community. The City seeks extensive knowledge in community engagement, drainage and stormwater projects in residential neighborhoods.

BACKGROUND

The City of Port Orange will be applying for multiple FEMA grants. Projects include community wide drainage improvements, stormwater improvements, residential elevation and residential acquisition and demolition. Due to the highly complex nature of mitigation grants, there is an identified need to obtain professional services for grant management.

SECTION 4 – STANDARD PURCHASING DEFINITIONS

The City will use the following definitions in instructions to respondents, 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



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5740
purchdiv@port-orange.org

ADDENDUM NO. # 1

April 19, 2023

RFSQ #23-11 GRANT MANAGEMENT SERVICES FOR FEMA HMGP/FMA STORMWATER & DRAINAGE IMPROVEMENT PROJECTS

To All Submitters:

The following changes, clarifications and additions are hereby made part of the RFSQ for the above referenced project dated April 10, 2023 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 the submitter to confirm that all addenda have been received prior to submitting a Statement of Qualifications and acknowledge such in the RFSQ documents.

A. CLARIFICATIONS:

None

B. CHANGES TO RFSQ DOCUMENT:

On p. 42, TAB D – APPROACH TO PROJECT/UNDERSTANDING in paragraph 2, strike the language '*especially SRC projects*' as this does not apply to the City of Port Orange.

C. QUESTIONS AND ANSWERS:

Question #1

Tab B: Company Profile – History and Qualifications lists page maximums for the first two bullets. Does the City have required page limits for the last two bullets in this section?

Answer #1

No

Question #2

Tab D: Approach to Project/Understanding – Does the City have a required page limit for this section?

Answer #2

No

Question #3

Is there an incumbent currently performing the same, or substantially similar work to the scope of services being solicited in this RFSQ?

Answer #3

No

Question #4

Tab D: Approach to Project/Understanding uses the term "SRC projects". Could the City please clarify what "SRC" stands for in this context?

Answer #4

See Letter B above.

Question #5

In Section 6 – Special Conditions, requirements include that the submitting firm must have been incorporated, organized and/or established for a period of at least three (3) years prior to firm's submittal. Would the City be willing to consider a firm that was established in October, 2020, but meets all other requirements and can full demonstrate its staff have the adequate experience in FEMA HMGP and FMA programs necessary to provide the services requested?

Answer #5

No. The requirements outlined in the RFSQ document remain unchanged.

Jill Poolman, CPPO, CPPB, FCCM/Purchasing Manager

jpoolman@port-orange.org

In all other respects, except as specifically stated herein, the subject RFSQ #23-11 Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects remains unchanged.

END OF ADDENDUM NO. #1

EXHIBIT "2"

Sample Task Authorization for Services

Consisting of 21 Pages

TASK AUTHORIZATION NO. ____
Contract for Services dated _____
Between the City of Port Orange, Florida and Pegasus Engineering, LLC

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **PEGASUS ENGINEERING, LLC** ("Contractor"), a Florida limited liability corporation with its principal place of business at 301 West State Road 434, Suite 309, Winter Springs, Florida 32708, and hereinafter collectively referred to as the "Parties," and is to that certain Contract for Services dated as specified above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to _____ as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."
3. Contractor shall complete the services to be provided herein within _____ days of the date of written notice by the City to the Contractor.
4. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "____" attached hereto and made a part hereof for all purposes, subject to a limit not to exceed \$ _____. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
5. Truth-in-Negotiations.
 - a. For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
 - b. Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Architect has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

6. Compliance with Other Federal Standards.

(a) Remedies. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See Paragraph 8 - Termination for Default in the Contract, a draft of which is attached hereto and made apart hereof by reference.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, in the Contract, a draft of which is attached hereto and made apart hereof by reference. Termination for non-appropriation of funds is set forth in Paragraph 11 of the contract, a draft of which is attached hereto and made apart hereof by reference.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be

provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors

with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.**

When required by the federal program legislation, prime construction contracts over \$2,000 awarded by the City require the Contractor to comply with the following provisions from 29 C.F.R. § 5.5(a)(1)-(10), and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the

contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or

owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or

audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or

cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State

Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees.

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements.

All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1)."

(e) Copeland Anti Kick Back Act: Compliance with the Copeland "Anti-Kickback" Act.

Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

For all contracts over \$100,000 that involve the employment of mechanics, laborers, and construction work:

(i) Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its

own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(ii) **Further Compliance with the Contract Work Hours and Safety Standards Act.**

In addition to the clauses contained in subparagraphs (i)(1) thru (4), hereinabove, in any applicable contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5.1, the Contractor shall comply with the following provisions and insert the same in any applicable contracts with subcontractors:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) **Rights to Inventions Made Under a Contract or Agreement.**

(1) **Stafford Act Disaster Grants.** This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs

Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

(2) If the FEMA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

(3) The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387) as amended.

For contracts exceeding \$150,000.00, the following provisions apply:

"Clean Air Act"

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

"Federal Water Pollution Control Act"

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

(i) Suspension and Debarment: This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(k) Procurement of Recovered Materials: Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired.
 - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2. Meeting contract performance requirements; or
 - 3. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- C. The Contractor also agrees to comply with all other applicable requirements of Section

6002 of the Solid Waste Disposal Act.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(I) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(i) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(ii) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

d Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(iii) Exceptions.

(1) This clause does not prohibit Contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such

equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

1. Are *not used* as a substantial or essential component of any system; *and*
2. Are *not used* as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(iv) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(v) *Subcontracts.* The Contractor shall insert the substance of this clause, including this

paragraph (v), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained herein above.

(p) DHS Seal, LOGO, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, FEMA policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R. §200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(aa) Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act

("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

7. If applicable to this Contract, for FEMA financial assistance programs subject to BABAA, Contractor and subcontractors must sign and submit a certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).
8. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.

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

Witnesses:

PEGASUS ENGINEERING, LLC

Printed Name: _____

By: _____
Printed Name: _____
Title: _____

Printed Name: _____

Date: _____

CITY OF PORT ORANGE

By: _____
Wayne Clerk, City Manager **OR**
Donald O. Burnette, Mayor

Date: _____

ATTEST:

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

Date: _____



PEGAENG-01

ASOSTENUTO

CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
5/1/2023

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
JCJ Insurance Agency, LLC
2208 Hillcrest Street
Orlando, FL 32803

CONTACT
NAME:
PHONE
(A/C, No, Ext): (321) 445-1117 FAX
(A/C, No): (321) 445-1076
E-MAIL
ADDRESS: certs@jcj-insurance.com

INSURED

Pegasus Engineering LLC
301 W. SR 434, Suite 309
Winter Springs, FL 32708

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : Phoenix Insurance Co. (Travelers)

25623

INSURER B : Travelers Property & Casualty of America

25674

INSURER C : Travelers Casualty & Surety Co

19038

INSURER D : Berkley Insurance Company

32603

INSURER E :

INSURER F :

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY ☒ PROJECT ☐ LOC OTHER:	X	X	6802H633696	9/18/2022	9/18/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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
A	☒ AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	6802H633696	9/18/2022	9/18/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	X	X	CUP5D257010	9/18/2022	9/18/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB5J589774	9/18/2022	9/18/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	☒ Professional Liab			AEC-9058882-05	9/18/2022	9/18/2023	Per Claim/Aggregate 2,000,000

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

RE: Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects; RFSQ #23-11

Certificate Holder is an Additional Insureds with regards to General, Auto and Umbrella Liability when required by written contract. Coverage is Primary & Non-Contributory with respect to all policies. A Waiver of Subrogation for all policies applies when required by written contract. 30 Day Notice of Cancellation, except for 10 days for non-payment.

CERTIFICATE HOLDER

CITY OF PORT ORANGE, FLORIDA
1000 City Center Circle
Port Orange, FL 32129

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



September 12, 2023

P-229795

Ms. Margaret Tomlinson, RLA, LEED AP
Construction & Engineering Manager
Community Development
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

**Re: Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage
Improvements Project Continuing Contract
Contract No. RFSQ #23-11**

**Subj: Grant Application Development for the Acquisition and Demolition of a Flood-Prone
Home as part of the 2023 Flood Mitigation Assistance (FMA) Program**

Dear Ms. Tomlinson:

As requested, we are pleased to submit this proposal to the City of Port Orange to perform grant services associated with the Grant Application Development for the Acquisition and Demolition of a Flood-Prone Home as part of the 2023 Flood Mitigation Assistance (FMA) Program.

In essence, the City of Port Orange's Flood Mitigation Program encompass three distinct flood mitigation categories the City is interested in participating: typical elevation project, mitigation reconstruction project, which entails the demolition and reconstruction of homes that are not feasible for elevation, and acquisition demolition. This proposal specifically encompasses the preparation of a FMA grant application for the acquisition and demolition of a single family home with a high risk of repetitive flooding.

Upon the successful FMA funding obligation of the FMA grant projects by the State and FEMA, and upon a request by the City of Port Orange, Pegasus Engineering would be pleased to submit a separate proposal to provide grant administration services (i.e., quarterly reports, reimbursement requests, close-out documents).

Under this contract, Pegasus Engineering will be responsible for the performance of the following tasks, at a minimum:

"Engineering a Higher Standard"

301 West State Road 434, Suite 309, Winter Springs, FL 32708 • 407-992-9160 • Fax 407-358-5155

1. Review various e-mail correspondence from the City and the homeowners documenting the reported flooding associated with Hurricanes Ian, Nicole, and prior storm events.
2. Attend coordination meetings with City of Port Orange staff to discuss observed and claimed flooding extent and steps to follow in consideration of the removal of structures from harm's way.
3. Coordinate with City staff to prepare for and conduct an one-on-one meeting with the homeowner in order to address specific mitigation questions as well as to address the homeowner's concerns.
4. Review available flood loss history, elevation certificate, flood insurance declaration documents, and appraisal provided by City of Port Orange officials and the homeowner.
5. Perform a field assessment of the home that will be part of the FMA application.
6. Coordinate with City of Port Orange staff regarding the finished floor elevation, photographs of the structure, and required FEMA documentation, as deemed necessary.
7. Coordinate with City of Port Orange and different demolition contractors regarding the demolition proposal, and proposed acquisition costs associated with the structure.
8. Collect the supporting technical documentation associated with the structure to be acquired for the preparation of the Benefit Cost Analysis.
9. Prepare a preliminary Benefit Cost Analysis of the structure that will participate in the flood mitigation project.
10. Prepare a draft FEMA 2023 FMA application package.
11. Prepare and submit a final FEMA FMA application package to FDEM via the online portal on or before the deadline for submission as established by FEMA.
12. Address Requests for Information (RFI) from DEM staff during the programmatic, engineering and environmental reviews of the FMA application. These efforts will include direct coordination with FDEM representatives during the review of the FMA application.

13. As part of FDEM's technical review process, Pegasus will coordinate with City staff to update and/or revise specific sections of the grant application, as necessary, to incorporate FDEM's review comments.
14. Coordinate closely with the homeowner and address any questions and concerns related to the flood mitigation project, as needed.
15. Attend City Commission Meetings with scheduled agenda items encompassing discussions related to this mitigation project, as needed.

The above-described services will be performed for an hourly not-to-exceed fee amount of **\$19,140** in accordance with attached manhour and fee estimate (refer to Attachment "A").

We appreciate the opportunity to serve the City of Port Orange on this important assignment. If you have any questions, please contact me directly at 407-992-9160, extension 309, or by email at david@pegasusengineering.net.

Respectfully,

PEGASUS ENGINEERING, LLC

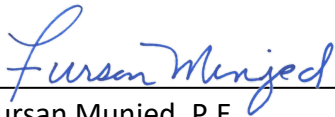
David W. Hamstra, P.E., CFM
Stormwater Department Manager

cc: Debra Neher, City of Port Orange
Valerie Duhl, City of Port Orange
Leylah Saavedra, Pegasus Engineering

**Grant Management Services for FEMA HMGP/FMA
Stormwater & Drainage Improvement Project Continuing Contract
Contract No. RFSQ #23-11**

**Grant Application Development for the Acquisition and Demolition of a
Flood-Prone Home as part of the
2023 Flood Mitigation Assistance (FMA) Program**

Approved for Pegasus Engineering, LLC


Fursan Munjed, P.E.

Principal
Officer's Title

September 12, 2023
Date

This proposal is hereby accepted and authorization to proceed is hereby given.
(Please return one executed copy of this proposal for our Pegasus Engineering records).

Authorized Signature

Officer's Title

Date

EXHIBIT "A"
Manhour and Fee Estimate
for the

**GRANT APPLICATION DEVELOPMENT FOR THE ACQUISITION AND DEMOLITION OF A FLOOD-PRONE HOME
AS PART OF THE 2023 FLOOD MITIGATION ASSISTANCE (FMA) PROGRAM**



Task Description	Grant Program Manager (Hamstra, P.E.)	Grant Project Manager (Saavedra, P.E.)	Grant Management Specialist (Whikehart, P.E.)	Sr. Designer/ GIS Technician (Greenough)	Administrative Assistant (Villanueva)	Task Hours	Task Fees
Standard Hourly Rates	\$195.00	\$185.00	\$150.00	\$120.00	\$85.00		
Review various e-mail correspondence from the City and the homeowner documenting the reported flooding		2	2		2	6	\$840.00
Attend coordination meetings with City staff to discuss project specifics	2	2				4	\$760.00
Conduct a one-on-one meeting with the homeowner in order to address specific mitigation questions	2	2	1		2	7	\$1,080.00
Review available flood loss history, elevation certificate, flood insurance declaration documents, etc.		2	2		1	5	\$755.00
Perform a field assessment of the home that will be part of the HMGP application	2	2			2	6	\$930.00
Coordinate with City staff regarding the finished floor elevation, photographs, etc.		2	1			3	\$520.00
Coordinate with mitigation contractors regarding the proposed mitigation costs		2			1	3	\$455.00
Summarize in a database the supporting technical documentation for the structure to be mitigated		2	2			4	\$670.00
Prepare a preliminary Benefit Cost Analysis of the structure that participates in the flood mitigation project	2	4				6	\$1,130.00
Prepare a draft FEMA HMGP application packet, including figures and relevant supporting documentation	2	12	6	4	2	26	\$4,160.00
Prepare and submit a final FEMA HMGP application package to FDEM via the online portal		4			4	8	\$1,080.00
Address Requests for Information (RFI) from DEM staff during the programmatic, engineering and environmental reviews	2	4	6	2	2	16	\$2,440.00
Follow up with the homeowners to address their questions and concerns related to the Mitigation Reconstruction Project		4	2		2	8	\$1,210.00
Prepare for and attend City Commission Meetings regarding the mitigation project, as needed	4	4				8	\$1,520.00
Project Administration (Status Reports via Monthly Invoices)	6				3	9	\$1,425.00
TASK HOURS	22	48	22	6	21	119	
TASK LABOR COSTS	\$4,290.00	\$8,880.00	\$3,300.00	\$720.00	\$1,785.00	\$18,975.00	\$18,975.00
PERCENT BREAKDOWN	22.6%	46.8%	17.4%	3.8%	9.4%	100.0%	
Breakdown in Fees							
						(1) Labor Costs =	\$18,975.00
						(2) Reimbursable Expenses =	\$165.00
TOTAL HOURLY NOT TO EXCEED AMOUNT						=	\$19,140.00



PEGAENG-01

BBROWN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/20/2023

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 JCJ Insurance Agency, LLC 2208 Hillcrest Street Orlando, FL 32803	CONTACT NAME:	
	PHONE (A/C, No, Ext): (321) 445-1117	FAX (A/C, No): (321) 445-1076
	E-MAIL ADDRESS: certs@jcj-insurance.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Phoenix Insurance Co. (Travelers)	25623
INSURED Pegasus Engineering LLC 301 W. SR 434, Suite 309 Winter Springs, FL 32708	INSURER B : Travelers Property & Casualty of America	25674
	INSURER C : Travelers Casualty & Surety Co	19038
	INSURER D : Berkley Insurance Company	32603
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	X	X	6802H633696	9/18/2023	9/18/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	6802H633696	9/18/2023	9/18/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	X	X	CUP5D257010	9/18/2023	9/18/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	UB5J589774	9/18/2023	9/18/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	☒ Professional Liab			AEC-9070599-06	9/18/2023	9/18/2024	Per Claim/Aggregate 2,000,000

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

RE: Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects; RFSQ #23-11

Certificate Holder is an Additional Insureds with regards to General, Auto and Umbrella Liability when required by written contract. Coverage is Primary & Non-Contributory with respect to all policies. A Waiver of Subrogation for all policies applies when required by written contract. 30 Day Notice of Cancellation, except for 10 days for non-payment.

CERTIFICATE HOLDER

CANCELLATION

CITY OF PORT ORANGE, FLORIDA
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

DUNLAWTON AVE

NOVA RD

SPRUCE CREEK RD

RIDGEWOOD AVE

241 BRITTANY AVE
Parcel ID: 632101020170

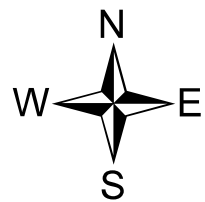


City of Port Orange

FEMA FLOOD MITIGATION ASSISTANCE (FMA) 2023

October 17, 2023 • Revision 1
Resolution No. 23-53 TA No. 9

- Acquisition
- City Boundary
- Parcel Lines
- Inside City
- Outside City
- Water



1 inch = 3,000 feet



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (C9c) Approval of Task Authorization No. 10 with Pegasus Engineering, LLC for Miscellaneous Grant Support Services

DEPARTMENT: Community Development

GOAL: 1 - Public Safety; 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Task Authorization No. 10 with Pegasus Engineering, LLC and authorize the Mayor and City Clerk to execute the associated documents.

SUMMARY: Pegasus Engineering, LLC has an existing contract with the City to provide grant support services. Staff is requesting the services of Pegasus Engineering, LLC to perform general grant-related services, including assistance with the identification of potential flood mitigation projects, which may include properties acquired by the City through FEMA Hazard Mitigation Grant Program (HGMP) and Flood Mitigation Assistance (FMA) grants, performance of field reviews (as needed), guidance related to FEMA's HMGP and FMA grant application process, prepare for and conduct public presentations to educate residents and city leaders on flood and stormwater initiatives, prepare and submit Project Initiatives to the Volusia County Local Mitigation Strategy (LMS) Working Group, perform preliminary Benefit Cost Analysis (BCA), coordination with the City and Florida Department of Emergency Management (FDEM) staff as needed, and coordination with City staff regarding immediate needs for grant management services to benefit the City of Port Orange and its residents.

Most of the services under this task authorization are related to current and future FEMA HMGP/FMA applications; however, Pegasus is prepared to assist staff with other grants that may become available.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Pegasus Engineering LLC RFSQ 23-11 Task Authorization No. 10 - Miscellaneous Grant Support Services	Pegasus Engineering LLC RFSQ 23-11 Task Authorization No. 10 - Miscellaneous Grant Support Services.pdf
2.	Pegasus Master Contract CA8124	Pegasus Master Contract CA8124.pdf

3.	Pegasus COI expires 09 18 2024	Pegasus COI expires 09 18 2024.pdf
4.	Grant Mgmt Services for FEMA Application Dev - Misc Grant Support	Grant Mgmt Services for FEMA Application Dev - Misc Grant Support.pdf

Margaret Tomlinson	Created/Initiated - 9/28/2023
Tim Burman	Approved - 9/28/2023
John McKinney	Approved - 10/2/2023
Shannon Balmer	Approved - 10/5/2023
Wayne Clark	Approved - 10/6/2023
Tracee Cody	Final Approval - 10/6/2023

TASK AUTHORIZATION NO. 10
Contract for Services dated May 16, 2023
Between the City of Port Orange, Florida and Pegasus Engineering, LLC

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **PEGASUS ENGINEERING, LLC** ("Contractor"), a Florida limited liability corporation with its principal place of business at 301 West State Road 434, Suite 309, Winter Springs, Florida 32708, and hereinafter collectively referred to as the "Parties," and is to that certain Contract for Services dated as specified above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to miscellaneous Grant Support Services, and as more particularly described in Contractor's Proposal, attached hereto and incorporated herein as Task Authorization Exhibit "1."
3. Contractor shall complete the services to be provided herein within two (2) years of the date of written notice by the City to the Contractor.
4. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1" attached hereto and made a part hereof for all purposes, subject to a limit not to exceed \$15,000.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
5. Truth-in-Negotiations.
 - a. For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
 - b. Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Architect has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

6. Compliance with Other Federal Standards.

(a) Remedies. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See Paragraph 8 - Termination for Default in the Contract, a draft of which is attached hereto and made apart hereof by reference.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, in the Contract, a draft of which is attached hereto and made apart hereof by reference. Termination for non-appropriation of funds is set forth in Paragraph 11 of the contract, a draft of which is attached hereto and made apart hereof by reference.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's

commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors

with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or [contract](#) modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.**

When required by the federal program legislation, prime construction contracts over \$2,000 awarded by the City require the Contractor to comply with the following provisions from 29 C.F.R. § 5.5(a)(1)-(10), and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree

on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction

or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis–Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis–Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the

contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees.

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress,

expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis–Bacon and Related Act requirements.

All rulings and interpretations of the Davis–Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include

disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1).”

(e) Copeland Anti Kick Back Act: Compliance with the Copeland “Anti-Kickback” Act.

Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

For all contracts over \$100,000 that involve the employment of mechanics, laborers, and construction work:

(i) Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to

such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(ii) Further Compliance with the Contract Work Hours and Safety Standards Act.

In addition to the clauses contained in subparagraphs (i)(1) thru (4), hereinabove, in any applicable contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5.1, the Contractor shall comply with the following provisions and insert the same in any applicable contracts with subcontractors:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal

Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) Rights to Inventions Made Under a Contract or Agreement.

(1) Stafford Act Disaster Grants. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

(2) If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

(3) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387) as amended.

For contracts exceeding \$150,000.00, the following provisions apply:

“Clean Air Act”

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

“Federal Water Pollution Control Act”

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

(i) Suspension and Debarment: This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(k) Procurement of Recovered Materials: Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

A. In the performance of this contract, the Contractor shall make maximum use of products

containing recovered materials that are EPA-designated items unless the product cannot be acquired.

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(I) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(i) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(ii) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system;
- or

d Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(iii) Exceptions.

- (1) This clause does not prohibit Contractors from providing—
 - a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
 - a. Covered telecommunications equipment or services that:
 1. Are *not used* as a substantial or essential component of any system; *and*
 2. Are *not used* as critical technology of any system.
 - b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(iv) Reporting requirement.

- (1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.
- (2) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:
 - a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer

part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(v) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (v), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope

of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained herein above.

(p) DHS Seal, LOGO, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, FEMA policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R.

§200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(aa) Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

7. If applicable to this Contract, for FEMA financial assistance programs subject to BABAA, Contractor and subcontractors must sign and submit a certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).
8. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.

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

Witnesses:

PEGASUS ENGINEERING, LLC

Printed Name: _____ By: _____
Fursan Munjed, Managing Member

Date: _____

Printed Name: _____

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: _____

ATTEST:

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

Date: _____

EXHIBIT “1”

Contractor's Quote

Consisting of 3 Pages



September 13, 2023

P-229747

Ms. Margaret Tomlinson, RLA, LEED AP
Construction & Engineering Manager
Community Development
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

**Re: Grant Management Services for FEMA Application Development
Contract No. RFSQ #23-11**

Subj: Miscellaneous Grant Support Services

Dear Ms. Tomlinson:

Per the City's request, Pegasus Engineering is pleased to provide this letter proposal to request authorization to provide initial grant support services to the City associated with the above referenced contract.

From our understanding, the City of Port Orange experienced considerable flooding occurrences at several locations throughout the City. Consequently, the City is in the process of identifying flood mitigation improvements geared to removing affected homes and existing infrastructure from harm's way as a product of torrential rainfall and storm surge.

This proposal seeks authorization to perform general grant-related services, including assistance with the identification of potential flood mitigation projects, performance of field reviews (as needed), guidance related to FEMA's grant application process, prepare for and conduct public presentations, prepare and submit Project Initiatives to the Volusia County Local Mitigation Strategy (LMS) Working Group, perform preliminary Benefit Cost Analysis (BCA), coordination with the City and FDEM staff as needed, and coordination with City staff regarding immediate needs for grant management services to benefit the City of Port Orange and its residents.

The above-described services will be performed for an hourly not-to-exceed fee amount of **\$15,000.00**. It is understood that once the initial authorization is exhausted, additional authorizations may be requested, depending on the City's needs for additional grant management support services.

Ms. Margaret Tomlinson, RLA, LEED AP

September 13, 2023

Page 2

We appreciate the opportunity to provide you our letter proposal associated with the Grant Management Services for FEMA Application Development. If you have any questions, please do not hesitate to contact me directly at 407-992-9160, extension 309, or 407-247-0003 (mobile), or by email at david@pegasusengineering.net.

PEGASUS ENGINEERING, LLC

Respectfully,



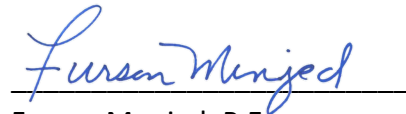
David W. Hamstra, P.E., CFM
Stormwater Department Manager

cc: Debra Neher, City of Port Orange
Valerie Duhl, City of Port Orange
Leylah Saavedra, Pegasus Engineering

**Grant Management Services for FEMA Application Development
Contract No. RFSQ #23-11**

Miscellaneous Grant Support Services

Approved for Pegasus Engineering, LLC

 Fursan Munjed, P.E.	<u>Principal</u> Officer's Title	<u>September 13, 2023</u> Date
--	-------------------------------------	-----------------------------------

This proposal is hereby accepted and authorization to proceed is hereby given
(Please return one executed copy of this proposal for our Pegasus Engineering records).

See Task Authorization No. 10, Page 21

_____ Authorized Signature	_____ Officer's Title	_____ Date
-------------------------------	--------------------------	---------------



CITY OF PORT ORANGE CONTRACT FOR SERVICES (with FEMA required provisions)

This Standard Contract for Services ("Contract") is entered into this 16 day of May, 2023, 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 **PEGASUS ENGINEERING, LLC** ("Contractor"), a Florida limited liability corporation whose principal address is 301 West State Road 434, Suite 309, Winter Springs, Florida 32708. The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

(a) The Contractor hereby agrees to provide Grant Management Services for Federal Emergency Management Agency ("FEMA") Hazard Mitigation Grant Program ("HMGP"), in accordance with Consultants Competitive Negotiation Act, and as more specifically described in Request for Statement of Qualifications 23-11 ("RFSQ 23-11"). This Contract together with RFSQ 23-11, Addendum No. 1, Exhibit "1," and Contractor's proposal, all of which may be referred to as the "Contract" and all of which are made a part hereof by reference shall constitute the formal written Contract between the City and Contractor. For convenience, Section 3 Scope of Services and Requirements, Addendum No 1 of RFSQ 23-11 and negotiated rate schedule are attached hereto as Exhibit "1." A complete copy of RFSQ 23-11 is available in the Office of the City Clerk. Contractor represents that they are familiar with the documents that make up the Contract, as referenced hereinabove.

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

Term: The term of this Contract shall commence on the date this Contract is signed by the Parties, and shall continue for a period of five (5) years (the "Term").

Renewals: Upon written agreement of the Parties, appropriation by City Council, and City Manager approval, this Contract may be renewed for one (1) five-year period.

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

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

Authorization for Services: This Contract standing alone does not authorize the performance of any work or services to be provided but the Contractor or require the City to place any orders for work or service. Authorization for performance of services by the Contractor under this Contract shall be in the form of written Task Authorization(s) ("Task Authorization") issued and executed by the City and signed by the Contractor. A sample Task Authorization is attached hereto as Exhibit "2."

(a) All Task Authorization(s) issued under this Contract shall terminate at the expiration of the term of the Task Authorization, unless amended in writing by the Parties. If a Task Authorization issued before the expiration of this Contract cannot be completed until after the expiration of this Contract, then this Contract shall expire on the Completion of Services under said Task Authorization, including any Amendments thereto, and after all work or services under the Task Authorization have been approved and accepted by

the City's Contract Administrator. The obligations entered herein by both Parties under this Contract and said Task Authorization(s) shall remain in full force and effect until completion of all work or services performed under this Contract and/or the Task Authorization(s).

- (b) No new or additional Task Authorization(s) shall be issued after the original expiration date of this Contract. The extension to this Contract to coincide with the completion of an existing Task Authorization(s) issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the City or the Contractor to enter into a new or additional Task Authorization(s) after the original expiration date of this Contract, unless this Contract is renewed prior to entering into a Contract for a new or additional Task Authorization(s).

2. City Obligations. In return for the services identified above, the City agrees to compensate the Contractor at the pricing set forth in Task Authorization(s); and reserves the right to utilize lump sum or hourly rate compensation, in amounts 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. The Contractor shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization.

3. Contract Administration. The Community Development Director, Tim Burman, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

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

5. Termination for Convenience of the City

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

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

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

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

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

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

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

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

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 25 of this contract concerning disputes.

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

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

8. Examination of Records

(a) The Contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after closeout of the FEMA grant, 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 closeout of the FEMA grant under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such

contractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

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

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

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

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

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

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

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

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

10. Termination for Non-Appropriation of Funds

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

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

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

Compensation Exemptions Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City’s Leased Employee Affidavit Form Exhibit. Policies for Workers’ Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Policies other than Workers’ Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of “A-” in the “Best Key Rating Guide” published by A.M. Best & Company, Inc. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

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

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

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

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

<i>Standard Insurance Requirements</i>			
	Insurance	Standards	Additional Requirements

☒	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<u>Contract Amount 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.
☒	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	
<i>Additional Insurance Requirements</i>			
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	<u>Limits:</u> Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☒	Professional Liability	<u>Limits:</u> Coverage - \$1,000,000	
☐	Installation Floater (IT)	<u>Limits:</u> Coverage - \$ To be determined.	
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000	

☐	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage – \$ <u>To be determined.</u>	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to 100% of the amount established by a Task Authorization issued pursuant to the Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$200,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance for FOB goods.		
☐			

12. A Contract for the purchase of supplies shall be governed by the City of Port Orange Code of Ordinances, as amended, and such supplies shall be deemed "goods," as defined therein.

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

14. Modifications or Changes to this Contract

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

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

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

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

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

16. Warranties. Contractor warrants that (1) the supplies to be provided to the City pursuant to this Contract are fit and sufficient for the purpose intended; (2) the supplies are merchantable, of good quality, and free from defects,

whether patent or latent, in material or workmanship, and (3) the supplies sold to the City pursuant to this Contract conform to the standards required by this Contract.

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

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

18. *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.

19. *Liability for Loss or Damage.*

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

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's

fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

23. 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.

24. 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 sub-contractors 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 sub-contractor during the term of this Contract.

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

265. 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.

27. 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.**

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

29. Compliance with Other Federal Standards.

(a) Remedies. This Contract addresses administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See above Paragraph 8 - Termination for Default.

(b) Termination for Cause and Convenience. This Contract addresses termination for cause and for convenience by the City, including how it will be carried out and the basis for settlement. See above Paragraph 6 - Termination for Convenience of the City, Paragraph 8 – Termination for Default and Paragraph 11 - Termination for Non-Appropriation of Funds.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish

information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect

to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract was conditioned upon the acceptance of the Department of Labor Wage Determination.

If applicable, the City included the provisions at 29 C.F.R. § 5.5(a)(1)-(10) in full below, and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

"(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the

labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis–Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis–Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or

(C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program

described in section 1(b)(2)(B) of the Davis–Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or

cash equivalents for the classification of work performed, as specified in the applicable wage determination

incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)

(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no

longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis–Bacon Act or 29 CFR 5.12(a)(1)."

(e) Copeland Anti Kick Back Act: Compliance with the Copeland "Anti-Kickback" Act.

Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

(i) Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of

forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section

(ii) Further Compliance with the Contract Work Hours and Safety Standards Act. This provision is required for contracts that are only subject to Contract Work Hours and Safety Standards Act and are not subject to the other statutes in 29 C.F.R. § 5.1 where an additional contract provision is required:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Contractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387) as amended.

"Clean Air Act"

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

"Federal Water Pollution Control Act"

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Recipient (if applicable), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

(i) Suspension and Debarment: This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.

The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(k) Procurement of Recovered Materials: Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired

Competitively within a timeframe providing for compliance with the contract performance schedule;

Meeting contract performance requirements; or

At a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(l) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(i) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(ii) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- d. Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(iii) *Exceptions.*

(1) This clause does not prohibit Contractors from providing—

- a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- a. Covered telecommunications equipment or services that:
 - 1. Are *not used* as a substantial or essential component of any system; *and*
 - 2. Are *not used* as critical technology of any system.
- b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(i) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall

report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(v) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (v), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under a FEMA grant or cooperative agreement award, the cost of any Contract change, modification, amendment, addendum, Change Order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms. See above Paragraph 15 - Modifications or Changes to this Contract.

(p) DHS Seal, LOGO, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, FEMA policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law

involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R. §200.334 and retained in compliance with 2 C.F.R. §200.334. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

30. Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act ("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

If applicable to this Contract, for FEMA financial assistance programs subject to BABAA, Contractor and subcontractors must sign and submit a certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).

31. 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.

32. 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: Tim Burman, Community Development Director 1395 Dunlawton Avenue

Port Orange, Florida 32129
(386) 506-5615

Contractor: Pegasus Engineering, LLC
Attention: Fursan Munjed, Managing Member
301 West State Road 434
Suite 309
Winter Springs, Florida 32708
(407) 992-9160 Ext. 309 - Telephone
david@pegasusengineering.net - E-Mail

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.

33. Truth-in-Negotiations

(a) For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.

(b) Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Architect has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

34. 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.

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

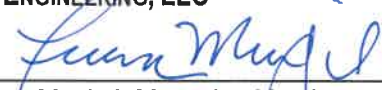
[Remainder of this page intentionally left blank]

Witnesses:


Printed Name: SEAN BECK

P. Villanueva
Printed Name: Priscilla Villanueva

PEGASUS ENGINEERING, LLC

By: 
Fursan Munjed, Managing Member

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

Date 5.9.2023

CITY OF PORT ORANGE

By: 

Donald O. Burnette, Mayor

Date: May 16, 2023



ATTEST:

By: 

Robin L. Fenwick, MMC, City Clerk

Date: May 16, 2023

EXHIBIT “1”

Contractor's Negotiated Rate Schedule, RFSQ 23-11 Section 3,
and Addendum No.1 of RFSQ 23-11

Consisting of 4 Pages

Cost Proposal

Project Position or Classification (Function to be Performed)	Hourly Rate
Grant Program Manager	\$195.00
Grant Manager	\$185.00
Grant Management Specialist	\$150.00
Senior Designer	\$120.00
Designer/CADD Technician	\$100.00
Administrative Assistant	\$85.00

***NOTE:** The Hourly Rate Schedule presented above pertains solely to Pegasus Engineering staff. No sub-consultants are envisioned under this contract. However, if the unforeseen need to retain a sub-consultant arises, Pegasus Engineering will obtain City staff's pre-approval.

STATEMENTS MAY BE REJECTED AND/OR RESPONDENT(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 Statements or the awarding of contracts. Evidence that the Respondent 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.
- (e) 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 Respondent must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in the possession of the Respondent 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.

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

The purpose of this RFSQ is to establish a master agreement for Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects in the City of Port Orange in accordance with Florida Statue 287.055, known as the "Consultants' Competitive Negotiation Act" (the "CCNA").

Authorization for Services under the contract shall be in the form of written Task Authorization issued and executed by the City and signed by the awarded engineering firm authorized representative. Each Task Authorization shall describe the services required, state the date of the commencement and completion of work, and establish the amount and method of payment. The City makes no covenant or promise as to the number of available projects during the life of this Contract.

DESCRIPTION OF WORK

The City of Port Orange is seeking a professional firm that has extensive knowledge with FEMA Flood Mitigation Assistance (FMA) and Hazard Mitigation Grant Program (HMGP) programs specific to structure elevation, demolition/reconstruction, acquisition, and stormwater and drainage improvement projects. Experience should include working knowledge of the Robert T. Stafford Disaster Relief and Emergency Assistance Act and the related statutory authority, the ability to perform FEMA Benefit Cost Analysis calculations and familiarity with the City of Port Orange landscape including the unique needs of the community. The City seeks extensive knowledge in community engagement, drainage and stormwater projects in residential neighborhoods.

BACKGROUND

The City of Port Orange will be applying for multiple FEMA grants. Projects include community wide drainage improvements, stormwater improvements, residential elevation and residential acquisition and demolition. Due to the highly complex nature of mitigation grants, there is an identified need to obtain professional services for grant management.

SECTION 4 – STANDARD PURCHASING DEFINITIONS

The City will use the following definitions in instructions to respondents, 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



CITY OF PORT ORANGE

PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5740
purchdiv@port-orange.org

ADDENDUM NO. # 1

April 19, 2023

RFSQ #23-11 GRANT MANAGEMENT SERVICES FOR FEMA HMGP/FMA STORMWATER & DRAINAGE IMPROVEMENT PROJECTS

To All Submitters:

The following changes, clarifications and additions are hereby made part of the RFSQ for the above referenced project dated April 10, 2023 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 the submitter to confirm that all addenda have been received prior to submitting a Statement of Qualifications and acknowledge such in the RFSQ documents.

A. CLARIFICATIONS:

None

B. CHANGES TO RFSQ DOCUMENT:

On p. 42, TAB D – APPROACH TO PROJECT/UNDERSTANDING in paragraph 2, strike the language ‘*especially SRC projects*’ as this does not apply to the City of Port Orange.

C. QUESTIONS AND ANSWERS:

Question #1

Tab B: Company Profile – History and Qualifications lists page maximums for the first two bullets. Does the City have required page limits for the last two bullets in this section?

Answer #1

No

Question #2

Tab D: Approach to Project/Understanding – Does the City have a required page limit for this section?

Answer #2

No

Question #3

Is there an incumbent currently performing the same, or substantially similar work to the scope of services being solicited in this RFSQ?

Answer #3

No

Question #4

Tab D: Approach to Project/Understanding uses the term “SRC projects”. Could the City please clarify what “SRC” stands for in this context?

Answer #4

See Letter B above.

Question #5

In Section 6 – Special Conditions, requirements include that the submitting firm must have been incorporated, organized and/or established for a period of at least three (3) years prior to firm's submittal. Would the City be willing to consider a firm that was established in October, 2020, but meets all other requirements and can full demonstrate its staff have the adequate experience in FEMA HMGP and FMA programs necessary to provide the services requested?

Answer #5

No. The requirements outlined in the RFSQ document remain unchanged.

Jill Poolman, CPPO, CPPB, FCCM/Purchasing Manager

jpoolman@port-orange.org

In all other respects, except as specifically stated herein, the subject RFSQ #23-11 Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects remains unchanged.

END OF ADDENDUM NO. #1

EXHIBIT "2"

Sample Task Authorization for Services

Consisting of 21 Pages

TASK AUTHORIZATION NO. ____
Contract for Services dated _____
Between the City of Port Orange, Florida and Pegasus Engineering, LLC

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **PEGASUS ENGINEERING, LLC** ("Contractor"), a Florida limited liability corporation with its principal place of business at 301 West State Road 434, Suite 309, Winter Springs, Florida 32708, and hereinafter collectively referred to as the "Parties," and is to that certain Contract for Services dated as specified above, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to _____ as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."
3. Contractor shall complete the services to be provided herein within _____ days of the date of written notice by the City to the Contractor.
4. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "____" attached hereto and made a part hereof for all purposes, subject to a limit not to exceed \$ _____. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
5. Truth-in-Negotiations.
 - a. For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
 - b. Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and current at the time of contract. The certification shall also constitute an affirmation that Architect has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

6. Compliance with Other Federal Standards.

(a) Remedies. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms. See Paragraph 8 - Termination for Default in the Contract, a draft of which is attached hereto and made apart hereof by reference.

(b) Termination for Convenience and Non-Appropriation of Funds. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Paragraph 6, in the Contract, a draft of which is attached hereto and made apart hereof by reference. Termination for non-appropriation of funds is set forth in Paragraph 11 of the contract, a draft of which is attached hereto and made apart hereof by reference.

(c) Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees as follows:

(i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be

provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Contractors and subcontractors

with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(d) Davis-Bacon Act: If applicable to this Contract, the Contractor agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractor must be required to pay wages not less than once a week. This Contract is conditioned upon the acceptance of the Department of Labor Wage Determination. **In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback" Act.**

When required by the federal program legislation, prime construction contracts over \$2,000 awarded by the City require the Contractor to comply with the following provisions from 29 C.F.R. § 5.5(a)(1)-(10), and Contractor must include these provisions in full in any subcontracts:

29 C.F.R. § 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein:

Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the

contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding.

The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or

owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a) (1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or

audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or

cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH- 347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii) (B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees.

(i) Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State

Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees.

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the

corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1)."

(e) Copeland Anti Kick Back Act: Compliance with the Copeland "Anti-Kickback" Act.

Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this contract.

Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

Breach. A breach of the Contract clauses above may be grounds for termination of the Contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(f) Contract Work Hours and Safety Standards Act:

For all contracts over \$100,000 that involve the employment of mechanics, laborers, and construction work:

(i) Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The City shall upon its

own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(ii) **Further Compliance with the Contract Work Hours and Safety Standards Act.**

In addition to the clauses contained in subparagraphs (i)(1) thru (4), hereinabove, in any applicable contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5.1, the Contractor shall comply with the following provisions and insert the same in any applicable contracts with subcontractors:

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(2) Records to be maintained under this provision shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(g) **Rights to Inventions Made Under a Contract or Agreement.**

(1) **Stafford Act Disaster Grants.** This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs

Assistance Grant Program, as FEMA awards under these programs do not meet the definition of "funding agreement."

(2) If the FEMA award meets the definition of "funding agreement" under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

(3) The regulation at 37 C.F.R. § 401.2(a) currently defines "funding agreement" as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

(h) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251– 1387) as amended.

For contracts exceeding \$150,000.00, the following provisions apply:

"Clean Air Act"

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

"Federal Water Pollution Control Act"

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the City and understands and agrees that the City, in turn, report each violation as required to assure notification to the Florida Division of Emergency Management ("FDEM"), Federal Emergency Management Agency (FEMA), and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

(i) Suspension and Debarment: This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by City. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

The Contractor agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(j) Byrd Anti-Lobbying Amendment 31 U.S.C. § 1352 (as amended): Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(k) Procurement of Recovered Materials: Requirements: The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired.
 - 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 - 2. Meeting contract performance requirements; or
 - 3. At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- C. The Contractor also agrees to comply with all other applicable requirements of Section

6002 of the Solid Waste Disposal Act.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(I) Prohibition on Contracting for Covered Telecommunications Equipment or Services.

(i) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(ii) Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (iii) of this clause applies, the Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

a. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

d Provide, as part of its performance of this Contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(iii) Exceptions.

(1) This clause does not prohibit Contractors from providing—

a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such

equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

a. Covered telecommunications equipment or services that:

1. Are *not used* as a substantial or essential component of any system; *and*
2. Are *not used* as critical technology of any system.

b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(iv) Reporting requirement.

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (iv)(2) of this clause to the recipient or subrecipient, unless elsewhere in this Contract are established procedures for reporting the information.

(2) The Contractor shall report the following information pursuant to paragraph (iv)(1) of this clause:

a. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b. Within 10 business days of submitting the information in paragraph (iv)(2)(a) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(v) *Subcontracts.* The Contractor shall insert the substance of this clause, including this

paragraph (v), in all subcontracts and other contractual instruments.

(m) Domestic Preference for Procurements. As appropriate, and to the extent consistent with law, the Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(n) Access to Records and Reports:

The Contractor agrees to provide City, Recipient (if applicable), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

In compliance with section 1225 of the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under a FEMA grant or cooperative agreement award, the cost of any contract change, modification, amendment, addendum, change order, or constructive change must be necessary, allocable, within the scope of the grant or cooperative agreement, reasonable for the scope of work, and otherwise allowable. This Contract addresses any potential requests for modifications or changes to the Contract terms as contained herein above.

(p) DHS Seal, LOGO, and Flags. The Contractor shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

(q) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, and Executive Orders, FEMA policies, procedures, and directives. The Contractor shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. Contractor shall ensure that all subcontracts comply with the same.

(r) No Obligation by Federal Government. The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to the City, Contractor, or any other party pertaining to any matter resulting from the Contract.

(s) Program Fraud and False or Fraudulent or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractors' actions pertaining to this Contract.

(t) Affirmative Socioeconomic Steps. If subcontracts are to be let, the prime Contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(u) Copyright and Data Rights. License and Delivery of Works Subject to Copyright and Data Rights. The Contractor grants to the City, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the City or acquires on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the City data first produced in the performance of this contract and data required by the contract but not first produced in the performance of this contract in formats acceptable by the City.

(v) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All Contractors entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The Contractor shall comply with this requirement.

(w) Mandatory Disclosures: The Contractor must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(x) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the FEMA grant, beginning on a date as described in 2 C.F.R. §200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

(y) Federal Changes: Contractor shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the Contract.

(z) Safeguarding Personal Identifiable Information: Contractor will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(aa) Build America, Buy America Act. If applicable to this Contract, the Contractor shall comply with Build America, Buy America Act ("BABAA"), as part of the Infrastructure Investment and Jobs Act

("IIJA") (Pub. L. 117-58) and BABA provisions of the Act, 41 U.S.C. 8301, unless covered by a waiver.

Contractors and their subcontractors who apply or bid for an award for an infrastructure project subject to the domestic preference requirement in the BABAA shall file the required certification to the non-federal entity with each bid or offer for an infrastructure project, unless a domestic preference requirement is waived by FEMA.

Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. BABAA, Pub. L. No. 117-58, §§ 70901-52. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABAA domestic preference requirement. Such disclosures shall be forwarded to the grant recipient who in turn will forward the disclosures to FEMA, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to FEMA.

7. If applicable to this Contract, for FEMA financial assistance programs subject to BABAA, Contractor and subcontractors must sign and submit a certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).
8. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.

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

Witnesses:

PEGASUS ENGINEERING, LLC

_____	By: _____
Printed Name: _____	Printed Name: _____
	Title: _____

Printed Name: _____	Date: _____

CITY OF PORT ORANGE

By: _____
Wayne Clerk, City Manager **OR**
Donald O. Burnette, Mayor

Date: _____

ATTEST:

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

Date: _____



PEGAENG-01

ASOSTENUTO

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/1/2023

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
JCJ Insurance Agency, LLC
2208 Hillcrest Street
Orlando, FL 32803

CONTACT
NAME:
PHONE
(A/C, No, Ext): (321) 445-1117 FAX
(A/C, No): (321) 445-1076
E-MAIL
ADDRESS: certs@jcj-insurance.com

INSURED

Pegasus Engineering LLC
301 W. SR 434, Suite 309
Winter Springs, FL 32708

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Phoenix Insurance Co. (Travelers)	25623
INSURER B : Travelers Property & Casualty of America	25674
INSURER C : Travelers Casualty & Surety Co	19038
INSURER D : Berkley Insurance Company	32603
INSURER E :	
INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY ☒ PROJECT ☐ LOC OTHER:	X	X	6802H633696	9/18/2022	9/18/2023	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	6802H633696	9/18/2022	9/18/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	X	X	CUP5D257010	9/18/2022	9/18/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y/N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	UB5J589774	9/18/2022	9/18/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	☒ Professional Liab			AEC-9058882-05	9/18/2022	9/18/2023	Per Claim/Aggregate 2,000,000

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

RE: Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects; RFSQ #23-11

Certificate Holder is an Additional Insureds with regards to General, Auto and Umbrella Liability when required by written contract. Coverage is Primary & Non-Contributory with respect to all policies. A Waiver of Subrogation for all policies applies when required by written contract. 30 Day Notice of Cancellation, except for 10 days for non-payment.

CERTIFICATE HOLDER

CITY OF PORT ORANGE, FLORIDA
1000 City Center Circle
Port Orange, FL 32129

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



PEGAENG-01

BBROWN

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/20/2023

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 JCJ Insurance Agency, LLC 2208 Hillcrest Street Orlando, FL 32803	CONTACT NAME:	
	PHONE (A/C, No, Ext): (321) 445-1117	FAX (A/C, No): (321) 445-1076
	E-MAIL ADDRESS: certs@jcj-insurance.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Phoenix Insurance Co. (Travelers)	25623
INSURED Pegasus Engineering LLC 301 W. SR 434, Suite 309 Winter Springs, FL 32708	INSURER B : Travelers Property & Casualty of America	25674
	INSURER C : Travelers Casualty & Surety Co	19038
	INSURER D : Berkley Insurance Company	32603
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PROJECT ☐ LOC OTHER:	X	X	6802H633696	9/18/2023	9/18/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 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
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	X	X	6802H633696	9/18/2023	9/18/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000	X	X	CUP5D257010	9/18/2023	9/18/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
C	☒ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y / N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	X	UB5J589774	9/18/2023	9/18/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional Liab			AEC-9070599-06	9/18/2023	9/18/2024	Per Claim/Aggregate 2,000,000

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

RE: Grant Management Services for FEMA HMGP/FMA Stormwater & Drainage Improvement Projects; RFSQ #23-11

Certificate Holder is an Additional Insureds with regards to General, Auto and Umbrella Liability when required by written contract. Coverage is Primary & Non-Contributory with respect to all policies. A Waiver of Subrogation for all policies applies when required by written contract. 30 Day Notice of Cancellation, except for 10 days for non-payment.

CERTIFICATE HOLDER

CANCELLATION

CITY OF PORT ORANGE, FLORIDA
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



September 13, 2023

P-229747

Ms. Margaret Tomlinson, RLA, LEED AP
Construction & Engineering Manager
Community Development
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

**Re: Grant Management Services for FEMA Application Development
Contract No. RFSQ #23-11**

Subj: Miscellaneous Grant Support Services

Dear Ms. Tomlinson:

Per the City's request, Pegasus Engineering is pleased to provide this letter proposal to request authorization to provide initial grant support services to the City associated with the above referenced contract.

From our understanding, the City of Port Orange experienced considerable flooding occurrences at several locations throughout the City. Consequently, the City is in the process of identifying flood mitigation improvements geared to removing affected homes and existing infrastructure from harm's way as a product of torrential rainfall and storm surge.

This proposal seeks authorization to perform general grant-related services, including assistance with the identification of potential flood mitigation projects, performance of field reviews (as needed), guidance related to FEMA's grant application process, prepare for and conduct public presentations, prepare and submit Project Initiatives to the Volusia County Local Mitigation Strategy (LMS) Working Group, perform preliminary Benefit Cost Analysis (BCA), coordination with the City and FDEM staff as needed, and coordination with City staff regarding immediate needs for grant management services to benefit the City of Port Orange and its residents.

The above-described services will be performed for an hourly not-to-exceed fee amount of **\$15,000.00**. It is understood that once the initial authorization is exhausted, additional authorizations may be requested, depending on the City's needs for additional grant management support services.

Ms. Margaret Tomlinson, RLA, LEED AP

September 13, 2023

Page 2

We appreciate the opportunity to provide you our letter proposal associated with the Grant Management Services for FEMA Application Development. If you have any questions, please do not hesitate to contact me directly at 407-992-9160, extension 309, or 407-247-0003 (mobile), or by email at david@pegasusengineering.net.

PEGASUS ENGINEERING, LLC

Respectfully,



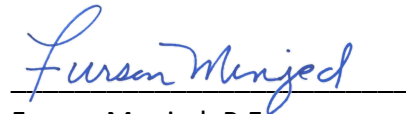
David W. Hamstra, P.E., CFM
Stormwater Department Manager

cc: Debra Neher, City of Port Orange
Valerie Duhl, City of Port Orange
Leylah Saavedra, Pegasus Engineering

**Grant Management Services for FEMA Application Development
Contract No. RFSQ #23-11**

Miscellaneous Grant Support Services

Approved for Pegasus Engineering, LLC


Fursan Munjed, P.E.

Principal
Officer's Title

September 13, 2023
Date

This proposal is hereby accepted and authorization to proceed is hereby given
(Please return one executed copy of this proposal for our Pegasus Engineering records).

Authorized Signature

Officer's Title

Date



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (C9d) Approval of Task Authorization No. 5 to Dredging and Marine Consultants for the Design of a Day Dock at Riverwalk Park

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

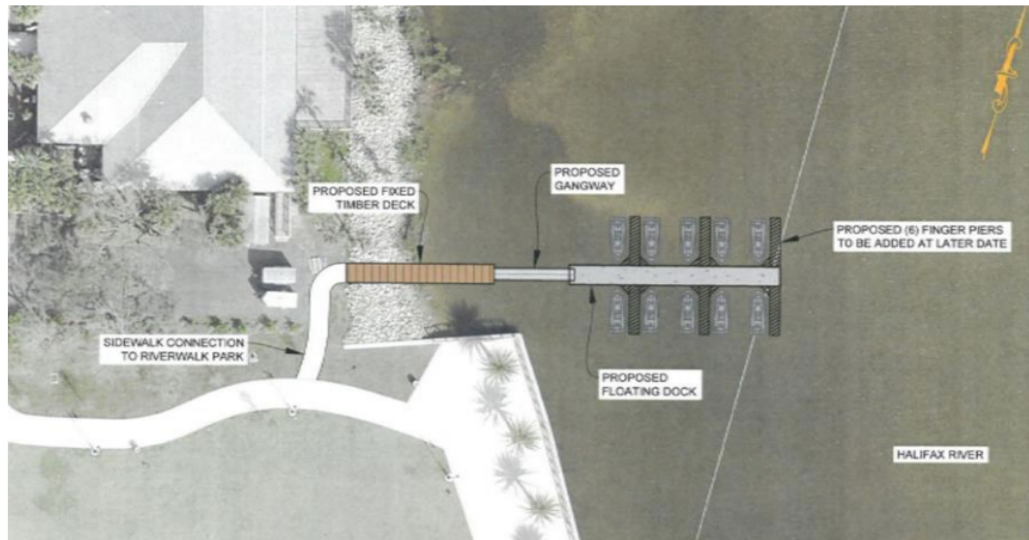
RECOMMENDED MOTION: Move to approve Task Authorization No. 5 with Dredging & Marine Consultants, LLC for the design and permitting of a Day Dock at Riverwalk Park for an amount not to exceed \$184,000.00; authorizing the Mayor and City Clerk to execute all necessary documents.

SUMMARY: The Community Development Department is requesting approval of Task Authorization No. 5 under the Master Contract for Engineering Services with Dredging & Marine Consultants, LLC (DMC) CA5672 in the amount of \$184,000.00 for the design and permitting of a day dock at Riverwalk Park. See Exhibit A for the general location of the day dock within the Riverwalk area.

On March 21, 2023, the Council approved Resolution No. 23-13 authorizing the application for assistance under the Florida Inland Navigation District (FIND) Waterways Assistance Program to fund 50% of the design and permitting costs for the day dock at Riverwalk Park. On September 21, 2023, FIND announced the award of \$92,000 to the City (see attached award notice).

Design and permitting are proposed to include a dock along the shoreline for mooring of up to ten (10) vessels with the potential to add more slips as demand increases. The design will include a survey of significant areas of the waterways to identify a navigational access channel between the day dock facility and the Intracoastal Waterway (ICW) and will evaluate any dredging requirements to meet a minimum depth of -5 ft Mean Low Water. The day docks will be available for daytime-only mooring of boats.

Staff anticipates applying for a separate FIND grant next Spring for construction funding. In future years, staff also plans to apply for FIND grants for design, permitting, and construction funds for other waterway improvement projects in the Riverwalk and Down Under areas of the Port Orange Town Center CRA, such as a boardwalk along the north side of the Dunlawton Bridge from Halifax Drive to the west end of Causeway Park and a day dock for boats and future water taxi service in the Down Under area (Exhibit A).



Proposed concept of day dock at Riverwalk Park

PRESENTER: Tim Burman

ATTACHMENTS:

1.	DMC Task Authorization No 5 -Design & Permitting of Riverwalk Day Dock	DMC Task Authorization No 5 -Design & Permitting of Riverwalk Day Dock.pdf
2.	Exhibit A - Location Map of Day Dock and Future FIND Projects	Exhibit A - Location Map of Day Dock and Future FIND Projects.docx
3.	DMC Riverfront Day (Transient) Dockage Proposal8-4-2023	DMC Riverfront Day (Transient) Dockage Proposal8-4-2023.pdf
4.	Day dock concept exhibit	Day dock concept exhibit.pdf
5.	2023 WAP CAP Final Grant Awards	2023 WAP CAP Final Grant Awards.pdf
6.	CA5672 2022-2024 DMC Renewal	CA5672 2022-2024 DMC Renewal.pdf
7.	CA5672 DMC Master Contract	CA5672 DMC Master Contract.pdf
8.	DMC COI_ expires 11 07 2023	DMC COI_ expires 11 07 2023.pdf

Margaret Tomlinson
Tim Burman
John McKinney
Shannon Balmer
Wayne Clark
Tracee Cody

Created/Initiated - 9/27/2023
Approved - 9/28/2023
Approved - 9/28/2023
Approved - 10/5/2023
Approved - 10/6/2023
Final Approval - 10/6/2023

TASK AUTHORIZATION NO. 5
Standard Contract for Services dated February 14, 2017
Between the City of Port Orange, Florida and Dredging & Marine Consultants, LLC

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **DREDGING & MARINE CONSULTANTS, LLC**, a Florida corporation with its principal place of business at 4643 South Clyde Morris Boulevard, Port Orange, Florida 32129 ("Contractor"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated February 14, 2017, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. In addition to all other terms and conditions contained in the Contract, Contractor shall provide Design and Permitting Services for a Day Dock at Riverwalk Park, and as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "1."
3. Contractor shall commence services upon issuance of a written Notice to Proceed issued and executed by the City to the Contractor, and shall continue until the final constructed project has been accepted by the City.
4. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "1" attached hereto and made a part hereof for all purposes, subject to a limit not to exceed \$184,000.00. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
5. Truth-in-Negotiations.
 - a. For any fixed fee, cost-plus-a-fixed-fee or guaranteed maximum-not-to-exceed compensation professional service contract or compensation in a Task Authorization over \$150,000.00, Architect shall execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract or Task Authorization under which such certificate is required must contain a provision that the original contract price or compensation and any additions thereto will be adjusted to exclude any significant sums by which the City determines the contract price or compensation was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract or compensation adjustments must be made within one (1) year following the end of the Contract. Otherwise, such adjustments shall be deemed waived by the Architect and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Architect shall act as the execution of a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation of this Contract are accurate, complete, and current at the time of contracting.
 - b. Architect's signature on this Contract or a Task Authorization shall act as execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract or a Task Authorization are accurate, complete, and

current at the time of contract. The certification shall also constitute an affirmation that Architect has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract of Task Authorization.

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

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

Witnesses:

DREDGING & MARINE CONSULTANTS, LLC

Printed Name: _____ By: _____
Shailesh K. Patel, Managing Member

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

Printed Name: _____ Date: _____

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: _____

ATTEST:

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

Date: _____

/

EXHIBIT “1”

Contractor's Quote

Consisting of 5 Pages

August 4 , 2023

Margaret Tomlinson
Construction and Engineering Manager
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

**RE: Engineering and Permitting Services for the Riverfront Day (Transient)
Dockage Scope, Budget and Schedule**

Ms. Tomlinson:

Dredging & Marine Consultants, LLC (DMC) is pleased to submit the following proposal to provide marine and engineering services for the Riverfront Day (transient) Dockage as part of our Continuing Services Contract 2006-21 with the City of Port Orange (CITY) based on the following project understanding:

Project Understanding: As part of the comprehensive Riverfront Park development, enhancement and public access, the City of Port Orange (CITY) is seeking to build a Day (transient) Docking facility. The intent of this Day Dock facility is to provide recreational boaters access to the CITY's landward park amenities. The Day Docks are to be used as daytime only mooring for Volusia County residents and those who utilize the Intracoastal Waterway (ICW), which abuts the Day Dock facility location. The following proposal is intended to provide navigational access from the ICW navigation channel to this facility. The current intent is to develop a phased approach that will ultimately allow the CITY to have at least up to 35-foot boat vessels. We will establish a dock parallel to the shoreline for mooring of up to ten (10) vessels with a potential to add more slips as demand increases. We will survey significant area of the waterways to identify a navigational access channel to the day dockage facility and will evaluate any dredging needs to meet a minimum depth of -5 ft Mean Low Water. The following tasks are proposed to provide safe navigational access and to design the Day (transient) Dock system:

Scope of Services: DMC will assist the City of Port Orange with the following tasks as indicated below:

Task 1: Site Investigations & Grant Assistance:

- Assist CITY with matching other grant applications such as FWC Boating Infrastructure Grant Program, and grant reporting.
- Conduct a document search for historical design and survey at this location the CITY may have in its archives that will benefit the design and environmental work.
- Conduct up to three Standard Penetrating Test borings to a depth of 40 feet below sediment surface.
- Collect and test up to five sediment and water column samples for physical and chemical parameters for material dredging and disposal options. Chemical parameters will include the typical total metals, petroleum and oil and any other testing recommended by the regulatory agencies.
- Conduct hydrographic survey from ICW channel to proposed location of day dockage facility.
- Coordinate with Florida Inland Navigation District (FIND) to identify their channel location and right-of-way limits.
- Coordinate with local and state agencies with regards to resources of concern and any existing Sovereign Submerged Land Lease information.
- Coordinate site ownership, boundary survey, hydrographic and topographic land surveys of the project area that may have been recently completed so that additional surveys can be determined.
- Conduct resources survey.

Task 2 – Engineering:

- DMC staff will conduct a site visit to determine visual water marks and erosional features, tidal influence and any visible shoaling, resources and their condition.
- Design the dockage to meet the minimum CITY criteria for wind.
- Evaluate safety features.
- Design an estimated 8 to 10-foot wide dock, easily accessible and usable for boaters.
- Determine appropriate live loading to withstand usage and for maintenance and operations.
- Docks will be ADA accessible and compliant and hand-railing will be designed as determined by the CITY.
- Landward connection to existing sidewalk will be either wood or concrete to match the existing sidewalk design.
- Identify and design shoreline protection options that may be used to off-set any impacts.
- Shoreline grading and minor landscaping will be designed with City staff input.
- Identify best option for access channel location and depth of dredging, recommended option for hydraulic or mechanical dredging, temporary off-load sites and permanent disposal site.
- Design lighting of dock structure, if desired by CITY.
- Conduct a 30%, 60% and 90% review with the CITY staff.
- Generate a construction ready set of plans and technical specifications for bidding.
- Provide an Engineer's Probable cost for Construction of project.

Task 3 – Permitting

- Conduct a pre-application meeting with both State and Federal regulatory agencies to determine the necessary field testing, resource impacts and any mitigation requirements that could affect the design.
- Complete and submit an Environmental Resource Permit (ERP) application.
- Develop a mitigation plan if required by the permitting process, our objective will be to minimize and avoid the need for mitigation, where possible.
- Conduct all site land and water resource surveys for the project to utilize for permit submittal.
- DMC will respond to any additional Request for Additional Information (RAIs) from the State and Federal regulatory agencies until permits are secured.
- Conduct a flushing study, as may be required by the regulatory agencies.
- **Permit fees will be paid directly by the CITY to the regulatory agencies;** however, DMC will assist in coordinating this effort.

Task 4 – Bidding & Construction Inspection Management

- This task is not included in this scope, however the CITY retains the option to utilize DMC services with regards to bid preparation, bidding and assistance to conduct pre-bid meetings, respond to Contractor Request For Information during the bidding process and assist the City with Construction Management and Grant management and close-out. It is anticipated that these services will be part of the Construction phase and incorporated into future grants and funding.

Budget: This work will be completed for a not-to-exceed lump sum fee of **\$184,000**. If any additional work is required, the additional services and cost will be discussed with the Client and provided on the agreed hourly rates. The costs per task are as follows:

- 1. Site Investigations & Grant Assistance – \$59,160.00**
- 2. Engineering – \$68,320.00**
- 3. Permitting – \$56,520.00**

Schedule: These services will be completed within 300 days from the date of Notice-to-Proceed; however, regulatory agency timeline and request for information may delay final design deliverable.

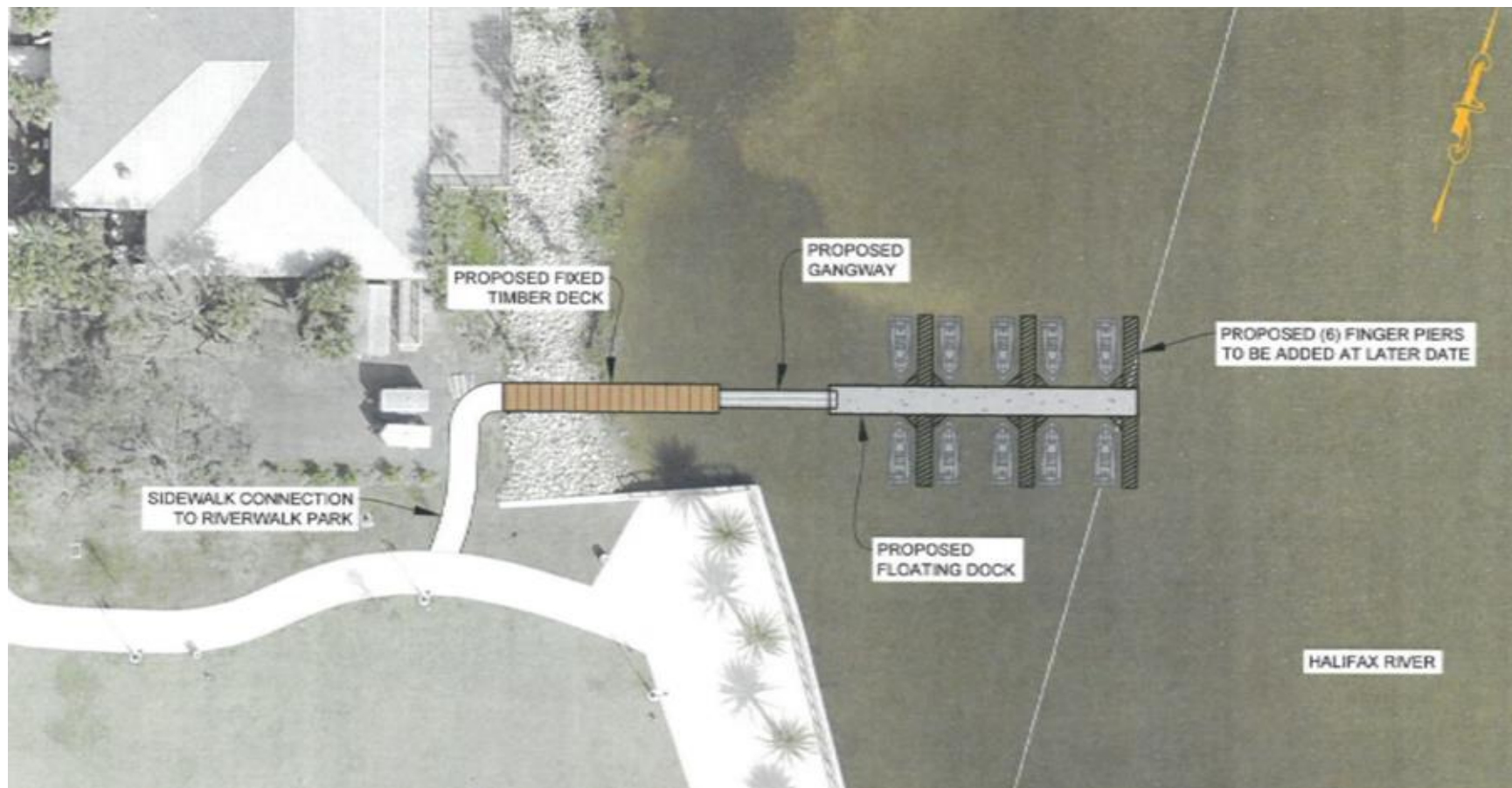
Should you have any further questions please call 386-304-6505. We look forward to your authorization (Notice-to-Proceed) and to working with you on this project. Thank you.

Respectfully,

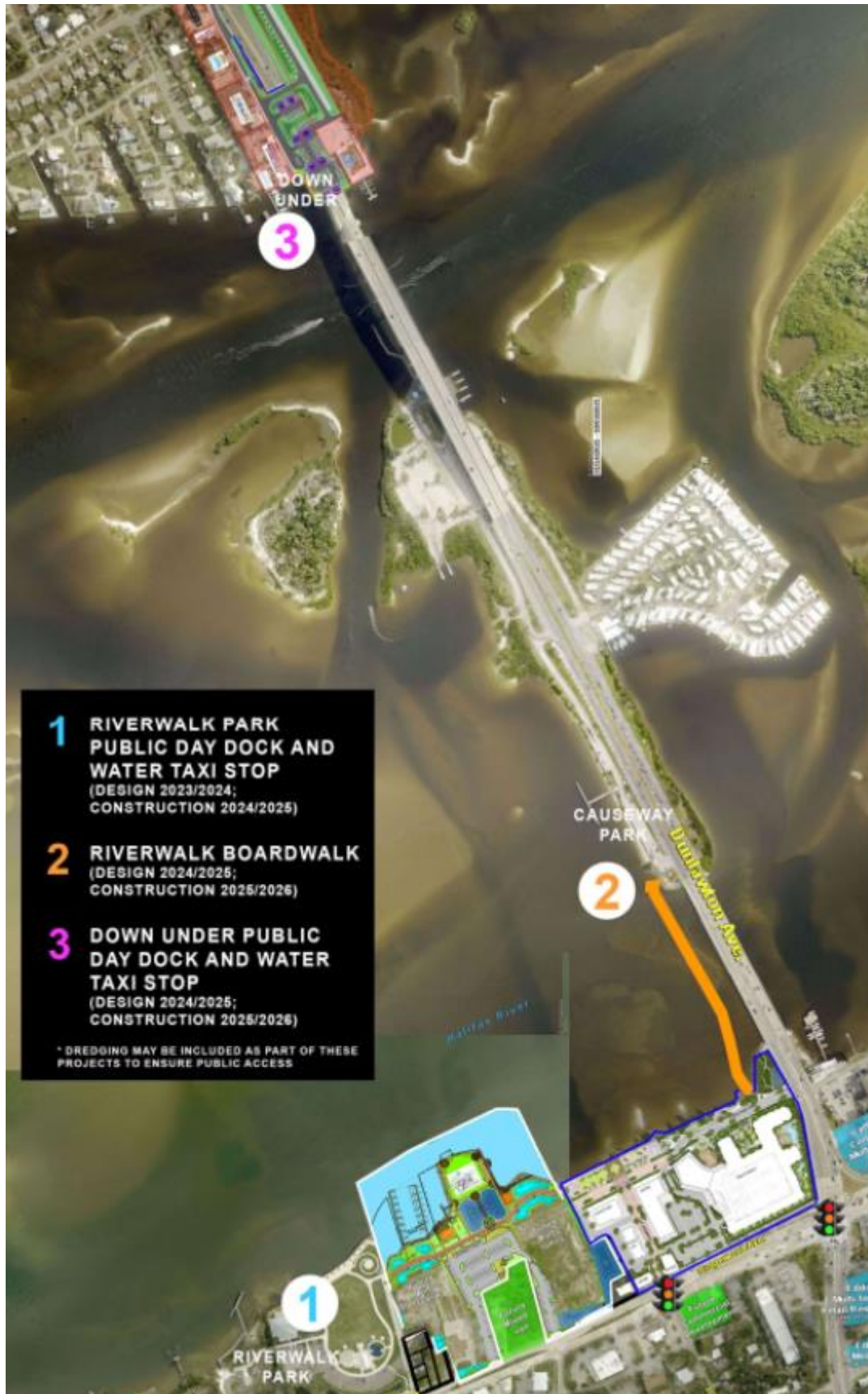
Dredging and Marine Consultants, LLC



Shailesh K. Patel, M.Sc., CPSSc.
Senior Project Manager



Proposed concept of day dock at Riverwalk Park





August 4 , 2023

Margaret Tomlinson
Construction and Engineering Manager
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129

**RE: Engineering and Permitting Services for the Riverfront Day (Transient)
Dockage Scope, Budget and Schedule**

Ms. Tomlinson:

Dredging & Marine Consultants, LLC (DMC) is pleased to submit the following proposal to provide marine and engineering services for the Riverfront Day (transient) Dockage as part of our Continuing Services Contract 2006-21 with the City of Port Orange (CITY) based on the following project understanding:

Project Understanding: As part of the comprehensive Riverfront Park development, enhancement and public access, the City of Port Orange (CITY) is seeking to build a Day (transient) Docking facility. The intent of this Day Dock facility is to provide recreational boaters access to the CITY's landward park amenities. The Day Docks are to be used as daytime only mooring for Volusia County residents and those who utilize the Intracoastal Waterway (ICW), which abuts the Day Dock facility location. The following proposal is intended to provide navigational access from the ICW navigation channel to this facility. The current intent is to develop a phased approach that will ultimately allow the CITY to have at least up to 35-foot boat vessels. We will establish a dock parallel to the shoreline for mooring of up to ten (10) vessels with a potential to add more slips as demand increases. We will survey significant area of the waterways to identify a navigational access channel to the day dockage facility and will evaluate any dredging needs to meet a minimum depth of -5 ft Mean Low Water. The following tasks are proposed to provide safe navigational access and to design the Day (transient) Dock system:

Scope of Services: DMC will assist the City of Port Orange with the following tasks as indicated below:

Task 1: Site Investigations & Grant Assistance:

- Assist CITY with matching other grant applications such as FWC Boating Infrastructure Grant Program, and grant reporting.
- Conduct a document search for historical design and survey at this location the CITY may have in its archives that will benefit the design and environmental work.
- Conduct up to three Standard Penetrating Test borings to a depth of 40 feet below sediment surface.
- Collect and test up to five sediment and water column samples for physical and chemical parameters for material dredging and disposal options. Chemical parameters will include the typical total metals, petroleum and oil and any other testing recommended by the regulatory agencies.
- Conduct hydrographic survey from ICW channel to proposed location of day dockage facility.
- Coordinate with Florida Inland Navigation District (FIND) to identify their channel location and right-of-way limits.
- Coordinate with local and state agencies with regards to resources of concern and any existing Sovereign Submerged Land Lease information.
- Coordinate site ownership, boundary survey, hydrographic and topographic land surveys of the project area that may have been recently completed so that additional surveys can be determined.
- Conduct resources survey.

Task 2 – Engineering:

- DMC staff will conduct a site visit to determine visual water marks and erosional features, tidal influence and any visible shoaling, resources and their condition.
- Design the dockage to meet the minimum CITY criteria for wind.
- Evaluate safety features.
- Design an estimated 8 to 10-foot wide dock, easily accessible and usable for boaters.
- Determine appropriate live loading to withstand usage and for maintenance and operations.
- Docks will be ADA accessible and compliant and hand-railing will be designed as determined by the CITY.
- Landward connection to existing sidewalk will be either wood or concrete to match the existing sidewalk design.
- Identify and design shoreline protection options that may be used to off-set any impacts.
- Shoreline grading and minor landscaping will be designed with City staff input.
- Identify best option for access channel location and depth of dredging, recommended option for hydraulic or mechanical dredging, temporary off-load sites and permanent disposal site.
- Design lighting of dock structure, if desired by CITY.
- Conduct a 30%, 60% and 90% review with the CITY staff.
- Generate a construction ready set of plans and technical specifications for bidding.
- Provide an Engineer's Probable cost for Construction of project.

Task 3 – Permitting

- Conduct a pre-application meeting with both State and Federal regulatory agencies to determine the necessary field testing, resource impacts and any mitigation requirements that could affect the design.
- Complete and submit an Environmental Resource Permit (ERP) application.
- Develop a mitigation plan if required by the permitting process, our objective will be to minimize and avoid the need for mitigation, where possible.
- Conduct all site land and water resource surveys for the project to utilize for permit submittal.
- DMC will respond to any additional Request for Additional Information (RAIs) from the State and Federal regulatory agencies until permits are secured.
- Conduct a flushing study, as may be required by the regulatory agencies.
- **Permit fees will be paid directly by the CITY to the regulatory agencies;** however, DMC will assist in coordinating this effort.

Task 4 – Bidding & Construction Inspection Management

- This task is not included in this scope, however the CITY retains the option to utilize DMC services with regards to bid preparation, bidding and assistance to conduct pre-bid meetings, respond to Contractor Request For Information during the bidding process and assist the City with Construction Management and Grant management and close-out. It is anticipated that these services will be part of the Construction phase and incorporated into future grants and funding.

Budget: This work will be completed for a not-to-exceed lump sum fee of **\$184,000**. If any additional work is required, the additional services and cost will be discussed with the Client and provided on the agreed hourly rates. The costs per task are as follows:

- 1. Site Investigations & Grant Assistance – \$59,160.00**
- 2. Engineering – \$68,320.00**
- 3. Permitting – \$56,520.00**

Schedule: These services will be completed within 300 days from the date of Notice-to-Proceed; however, regulatory agency timeline and request for information may delay final design deliverable.

Should you have any further questions please call 386-304-6505. We look forward to your authorization (Notice-to-Proceed) and to working with you on this project. Thank you.

Respectfully,

Dredging and Marine Consultants, LLC



Shailesh K. Patel, M.Sc., CPSSc.
Senior Project Manager



Dredging & Marine Consultants
DMC
 ENGINEERS • SCIENTISTS
 4643 S. Clyde Morris Blvd
 Unit 302
 Port Orange, FL 32129
 Phone: (386) 304-6505
 Fax: (386) 304-6506
www.dmc.es.com

PROJECT NAME:
**DAY DOCK AT RIVERWALK PARK
 DESIGN AND PERMITTING, PH. 1**

APPLICANT:
CITY OF PORT ORANGE

DRAWING:
SITE DEVELOPMENT MAP

DMC JOB NO. -

DRAWN -	CAD	C3D	DRAWING NO.
CHECKED -	SCALE AS SHOWN		-
APPROVED -	DATE 03-24-2023		-

2023-2024 ASSISTANCE PROGRAM APPLICATIONS BY COUNTY

COUNTY	PROJECT SPONSOR	PROJECT TITLE	Total Cost	Assistance Requested	Amount Awarded
CAP					
	Bureau of Land Management	Jupiter Inlet Lighthouse ONA Shoreline Stabilization Part 1 Upland	\$6,000,000	\$3,000,000	\$3,000,000
			\$6,000,000	\$3,000,000	\$3,000,000
Nassau					
	City of Fernandina Beach	Fernandina Marina 2023 Dredging	\$800,000	\$400,000	\$326,000
		TOTAL	\$800,000	\$400,000	\$326,000
Duval					
	City of Jacksonville	Downtown Dredging Phase I	\$500,000	\$250,000	\$250,000
	City of Jacksonville	Sisters Creek Transient Facilities Phase I	\$700,000	\$350,000	\$350,000
	City of Jacksonville	St. Johns Marina Boardwalk	\$1,200,000	\$600,000	\$600,000
	City of Jacksonville	Oak Harbor Boat Ramp Bulkhead Phase II	\$1,600,000	\$800,000	\$800,000
		TOTAL	\$4,000,000	\$2,000,000	\$2,000,000
St. Johns					
	St. Johns County	Genovar Land Acquisition	\$17,000,000	\$2,000,000	\$1,055,500
		TOTAL	\$17,000,000	\$2,000,000	\$1,055,500
Flagler					
	Flagler County	Marine LE Search and Rescue Vessel	\$79,137	\$38,568	\$38,568
	City of Palm Coast	Waterfront Park Phase IIC	\$1,048,529	\$360,000	\$286,032
		TOTAL	\$1,127,666	\$398,568	\$324,600
Volusia					
	City of Daytona Beach	City Island Shoreline Enhancement Phase I	\$196,000	\$98,000	\$98,000
	City of New Smyrna Beach	North Causeway Boat Ramp Dock & Amenity Phase II	\$1,120,000	\$560,000	\$560,000
	City of Port Orange	Day Dock at Riverwalk Park Phase I	\$184,000	\$92,000	\$92,000
		TOTAL	\$1,316,000	\$658,000	\$750,000

2023-2024 ASSISTANCE PROGRAM APPLICATIONS BY COUNTY

COUNTY	PROJECT SPONSOR	PROJECT TITLE	Total Cost	Assistance Requested	Amount Awarded
Brevard					
	City of Cocoa	Cocoa Waterfront Public Docking and Breakwater Phase I	\$168,000	\$84,000	\$84,000
	City of Cocoa Beach	Cocoa Beach Police Vessel 2023	\$100,000	\$50,000	\$50,000
	City of Cocoa Beach	Public Channel Marker Replacement FY 2024	\$56,120	\$28,060	\$28,060
	City of Melbourne	Front Street Boat Ramp Dock Replacement Phase I	\$120,000	\$60,000	\$60,000
	City of Palm Bay	Castaways Point Park South Fishing Pier	\$200,000	\$100,000	\$100,000
TOTAL			\$644,120	\$322,060	\$322,060
Indian River					
	City of Sebastian	North County Marine Law Enforcement Facility Dock	\$100,000	\$50,000	\$50,000
	City of Sebastian	Working Waterfront Extension Phase I	\$240,000	\$120,000	\$120,000
	Indian River County	IRC Sheriff's Office Vessel	\$200,000	\$100,000	\$100,000
	Indian River County	Environmental Learning Center Dock Replacement Part 2	\$100,000	\$50,000	\$50,000
TOTAL			\$640,000	\$320,000	\$320,000
St. Lucie					
	City of Port St. Lucie	Port District Preserve Upland Trails	\$800,000	\$400,000	\$400,000
	St. Lucie County	Underwater Search and Recovery Team ROV	\$110,160	\$55,080	\$55,080
TOTAL			\$910,160	\$455,080	\$455,080
Martin					
	Martin County	Martin County 96th Street Artificial Reef Bulkhead	\$1,000,000	\$400,000	\$400,000
TOTAL			\$1,000,000	\$400,000	\$400,000
Palm Beach					
	City of Boca Raton	Spanish River Dock Rehabilitation	\$200,000	\$100,000	\$100,000
	City of Boynton Beach	Boynton Beach Fire and Police Dock and Lift Phase II	\$125,915	\$62,958	\$0
	City of West Palm Beach	Brian Chappell Park Pier Replacement	\$425,000	\$212,500	\$0
	Palm Beach County	Bert Winters Park Redevelopment Phase IIB	\$1,600,000	\$800,000	\$800,000
TOTAL			\$2,350,915	\$1,175,458	\$900,000

2023-2024 ASSISTANCE PROGRAM APPLICATIONS BY COUNTY

COUNTY	PROJECT SPONSOR	PROJECT TITLE	Total Cost	Assistance Requested	Amount Awarded
Broward					
	City of Fort Lauderdale	Cooley's Landing Marina Renovation	\$3,000,000	\$1,500,000	\$1,500,000
	City of Fort Lauderdale	Fort Lauderdale Police Dept Outboard Motor Replacement (Boat #14)	\$90,190	\$45,095	\$45,095
	City of Lighthouse Point	Lighthouse Point Vessel/Hull Replacement	\$161,083	\$75,000	\$75,000
	City of Oakland Park	Hawkins Boat Ramp Phase I	\$400,000	\$200,000	\$61,517
	City of Wilton Manors	Wilton Manors Vessel (Barge)	\$150,000	\$75,000	\$75,000
TOTAL			\$3,801,273	\$1,895,095	\$1,756,612
Miami-Dade					
	City of Miami	Miami Derelict Vessel Removal	\$104,000	\$52,000	\$52,000
	City of Miami	Miami Police Marine Vessel	\$400,155	\$100,000	\$100,000
	City of Miami	Miami Marine Stadium Mooring Field Phase I	\$290,100	\$145,050	\$145,050
	City of Miami	Morningside Park Phase II Part 1	\$9,405,340	\$4,352,670	\$4,352,670
	City of Miami	Virginia Key Boat Ramp and Trailer Parking Phase II	\$2,922,400	\$1,261,200	\$1,261,200
	City of Miami Beach	Marine Patrol Dock Improvements Phase I	\$187,800	\$93,900	\$93,900
	Indian Creek Village	ICV Marine Patrol Boat Engine Replacements	\$60,000	\$30,000	\$30,000
	Miami Shores Village	Miami Shores Village Bayfront Park Phase I	\$250,000	\$125,000	\$125,000
	Miami-Dade County	Bill Bird Marina Boat Ramp Restroom Phase I	\$321,248	\$112,430	\$112,430
	Miami-Dade County	Chapman Field Park Kayak Launch Dock Replacement Phase I	\$120,000	\$60,000	\$60,000
	Miami-Dade County	Pelican Harbor Marina Boat Ramp Restroom Phase I	\$205,000	\$102,500	\$102,500
TOTAL			\$14,162,043	\$6,382,750	\$6,434,750
OVERALL WAP TOTALS			\$47,752,177	\$16,407,011	\$15,044,602
OVERALL CAP TOTALS			\$6,000,000	\$3,000,000	\$3,000,000
total requests				\$19,407,011	\$18,044,602

Yellow highlighted = award is less than requested



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. 5672
☐ Piggyback Agreement CA No. _____
☐ Purchase Order No. _____

Term From: February 14, 2017

To: February 14, 2024

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: Dredging & Marine Consultants, LLC.

Name of Contact Person: Shailesh K. Patel

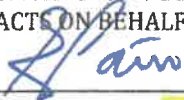
Mailing Address: 4643 S. Clyde Morris Blvd. Unit 302, Port Orange, FL 32129

Email Contact Address: spatel@dmces.com

Phone: (386) 304-6505

Fax: (386) 304-6506

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: December 17, 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: _____

City Manager: 

Date: 2/15/2022

Please return to the City of Port Orange as follows:

Department: Community Development

Telephone: 386-506-5661

Contact: Margaret Tomlinson

Fax: 386-506-5699

Email: mtomlinson@port-orange.org

Original Signed Form Must Be Returned to the City Clerk

Revised 4/1/2020



CITY OF PORT ORANGE MASTER CONTRACT FOR ENGINEERING SERVICES

This Master Contract for Engineering Services ("Contract") is entered into this 14th day of February, 2017, 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 **DREDGING & MARINE CONSULTANTS, L.L.C.** ("Contractor" or "Engineer"), a Florida limited liability corporation, whose principal address is 4643 South Clyde Morris Boulevard, Unit 302, Port Orange, Florida 32129 (collectively "the Parties").

The City and the Engineer for Ten Dollars (\$10.00) and other good and valuable consideration hereby covenant and agree as set forth below.

1. Provision of Services. These services shall be performed in accordance with Request for Statement of Qualifications No. 16-32 ("RFSQ 16-32") and Engineer's proposal in response thereto. A true and correct copy of RFSQ 16-32 and Engineer's proposal is available in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange.

(a) The Engineer hereby agrees to provide the following services to the City of Port Orange:

- (i) Civil Engineering, Traffic Engineering and Transportation Planning, Landscape Architectural, Environmental and Planning Services, Geotechnical Engineering Services and related services for the City for preparation of a variety of projects administered by various departments within the City, including but not limited to paragraph 5 and the following:
 - (1) Investigation of existing structures or sites and preparation of drawings, reports, calculations, cost estimates, schedules; coordination of special services such as testing and surveying;
 - (2) Studies and planning for construction projects, preparation of drawings, reports, calculations, cost estimates, schedules; coordination of special services such as testing and surveying;
 - (3) Engineering services required to construct a variety of projects and related site work; preparation of design, construction documents, plans, specifications, calculations, cost estimates, reports and schedules; coordination of special services such as testing and surveying; preparation of required documents and services to obtain all construction permits; assisting the City project manager with bidding and construction administration, including field visits, shop drawing review, applications for payment, punch list and certification;
 - (4) Preparation of presentation boards and electronic graphic photo/realistic renderings;
 - (5) Oral presentations and PowerPoint audio visual presentations; and

- (6) Leading project meetings, preparing and distributing meeting minutes
- (7) Projects may include City of Port Orange existing or proposed sites which require evaluation and/or site design for facilities with uses including Parks and Recreation, Fire and Police, flood control and/or stormwater treatment. Projects may also include review of development projects, traffic simulation/operations analysis models such as HCS, ARTPLAN, SYNCHRO, CUBE, and CFRPM, Traffic Impact Analysis creation and review, signal timing, traffic calming, intersection analyses, traffic improvement justification reports, Traffic Impact Analysis Methodology review, conducting traffic counts, creation and review of roadway classification and Level of Service (LOS) capacity reports.
- (8) Plans will be drawn in AutoCAD format unless otherwise directed.
- (9) All documents resulting from any project performed hereunder shall become the sole property of the City.

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

Term: The term of this Contract shall commence on the date this Contract is signed by both of the Parties, and shall continue for a period of three (3) years thereafter or until either party provides the other party written notice of its intent to terminate this Contract.

Renewals: Upon written agreement of the Parties and appropriation by City Council, this Contract may be renewed for up to two (2) additional two (2) year terms. The City reserves the right to revise rates for consistency with current market trend at least annually.

Manner and Place: The Engineer shall perform the services as outlined in each project assignment, 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. Engineer shall not deliver goods or services without a fully executed task authorization and a written purchase order, signed by an authorized agent of the City of Port Orange.

Time and Essence: Engineer acknowledges that time is of the essence in the completion of the services contemplated by this contract. Engineer shall complete all services within the timeline specified in the project, and as reflected on the Notice to Proceed.

2. Authorization for Services. This Contract standing alone does not authorize the performance of any work or services to be provided by the Engineer or require the City to place any orders for work or service. Authorization for performance of services by the Engineer under this Contract shall be in the form of written Task Authorization(s) issued and executed by the City and signed by the Engineer. A sample Task Authorization is attached hereto as Exhibit "1." The City makes no covenant or promise as to the number of orders placed, nor that the City shall place any orders for goods or services during the life of this Contract. 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. Furthermore, the City reserves the right, at its sole discretion, to utilize the Master Contract for Engineering Services entered into between the Parties on March 17, 2015 pursuant to Request for Statement of Qualifications No. 14-23, for the scope of services set forth therein, as long as the Contract remains valid.

3. City Obligations. The City reserves the right to utilize either (i) lump sum or (ii) hourly rate compensation as set forth in Exhibit "2" attached hereto. The City's obligation to pay Engineer under this Contract is limited to the

approved Contract fees and 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. The Engineer shall be paid compensation for all services, labor and material required thereby, and for all expenditures as specified in each Task Authorization. The fee shall be negotiated for each Project Task Authorization to this Contract. The Engineer shall submit a monthly statement for professional services rendered and expenses incurred to date of the statement. The statements for lump sum shall be based upon Engineer's estimate of the proportion of the total services actually completed at the time of billing to the total services to be performed. Such estimates are to be prepared by the Engineer and accompanied by such supporting data as may be required by the Contract Administrator. Compensation for any authorized cost which is not set forth in the Contract shall not exceed the actual, documented out-of-pocket cost to the Engineer plus ten (10%) percent if approved by the City. The Contract and Task Authorization(s) do not include retainer fees, nor is there a minimum fee guaranteed during the Contract period.

4. Contract Administration. The Department Head requesting service ("Contract Administrator"), shall perform contract administration of this Contract. For notice provisions, see the paragraph below entitled "Notice." The work shall be reviewed by the authorized Contract Administrator, or designee, who shall have final decision authority for pay requests on all approved phases of the work, including general direction, review, and approval of the work. Neither the Contract Administrator's review, approval or acceptance of, nor payment for, any of the services required under this contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Engineer shall be and remain liable to the City for all costs of any kind which were incurred by the City as a result of the Engineer's negligent performance of the services furnished under this Contract.

5. Additional Statement of Engineering Services. The Engineer shall:

- (a) Provide all certifications ("Engineer of Record" function) surveys, calculations, drawings, and any other documents required for special permits and authorizations from various government bodies or agencies having jurisdiction over the project;
- (b) Prepare a time scaled diagram showing the dates of completion of various design phases and scheduled completion of working drawings and specifications and submit for Contract Administrator's review and approval;
- (c) Verify and evaluate technical proposals furnished by the construction contractor if requested by the City and provide such amplifications and explanations that may be necessary to clarify the intent of the drawings and specifications;
- (d) Furnish consultation and advice as requested by the City during the construction of project, including Construction Administration Services (unless otherwise stipulated in a specific amendment attached hereto and made a part thereof);
- (e) Furnish all other engineering services including without limitation those specified hereinafter and those required for the completion of specific projects as described in amendments and task authorizations for this contract:
 - (i) Site Visits/Special Permits. The Engineer shall visit the site and shall initiate and hold such conferences with representatives of the City and other agencies, boards or government bodies having jurisdiction over the area the project covers and take such other action as may be necessary to obtain permits and authorizations; except that building construction permits shall be specifically requested in a task authorization; and provide other data upon which to develop the design and preliminary sketches showing the contemplated project.

- (ii) Preliminary Sketches and Opinion of Probable Construction Costs. The preliminary sketches shall include plans, elevations and sections developed in such detail and with such descriptive specifications as will clearly indicate the scope of work, and make possible a reasonable opinion of the construction cost and satisfy the requirements of permitting and regulatory agencies having jurisdiction. An opinion of probable construction costs shall be prepared.
- (iii) Working Drawings and Specifications. After the preliminary sketches and opinion of probable construction costs have been approved by the Contract Administrator; the Engineer shall proceed with the preparation of working drawings and specifications as required by the Contract Administrator for the construction of said project. Working drawings, specifications and estimates shall be delivered to the Contract Administrator in such sequence and at such times as required by the City such that the construction work can be initiated promptly, procurement of materials made without delay and continuous prosecution of the work promoted, all in strict accordance with the approved design schedule as provided in Paragraph 5 (b) above. Working drawings and specifications shall be revised as necessary and as required by the Contract Administrator. After working drawings and specifications have been approved by the Contract Administrator, the Engineer shall furnish such number of sets of prints of the approved working drawings and such number of sets of the approved specifications, as may be required by the Contract Administrator.
- (iv) Original Drawings - Final Plans. Upon approval of final plans the Engineer shall deliver to the City one set of original drawings, in such medium and on such materials, as may be required by the Contract Administrator, suitable for blueprinting, showing approved constructed requirements (not of "as-built" construction unless otherwise stipulated), provided, however, that should this Contract be terminated by the City, the Engineer shall deliver to the City one digital and one paper full scale set of originals as they exist at the time of termination. All plans shall be and remain the property of the City during preparation and upon delivery.
- (v) Revision of Final Drawings and Specifications. The engineer shall without additional fee correct and revise the drawings, specifications, or other materials furnished under this Contract, if the Contract Administrator finds that such revision is necessary to correct errors or deficiencies for which the Engineer is responsible.
- (vi) Bidding. The Engineer shall perform all necessary engineering services required in connection with the competitive bidding for construction of the project and the preparation of all documents required thereof, including preparation of documents for separate bid packages for multiple contractors if so required by Contract Administrator; coordination with the City Attorney and follow-up on contractor execution and delivery to the City Attorney of the original contract and original bond for recording in the public records.
- (vii) Bonding. The Engineer shall coordinate the delivery to the City Attorney of original bonds for recording. All construction contracts shall require two (2) original Bonds in the form approved by the City Attorney. Engineer shall not require duplicate original bond documents in the draft construction documents and agreement for the City.

6. Responsibility of the Engineer. The Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, and specifications; contract documentation and other work or materials

furnished by the Engineer under this contract. The Engineer shall without additional cost or fee to the City, correct or revise any errors or deficiencies in the Engineer's performance.

7. Reuse of Documents. The City shall have unlimited rights, for the benefit of the City in all drawings, designs, specifications, notes and other engineer's work produced in the performance of this contract, or in contemplation thereof, and all as-built drawings produced after completion of the work, including the right to use same on any other City work without additional cost to the City. All documents including Drawings and Specifications prepared by Engineer pursuant to this Contract are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by City or others for any other project. Reuse for another project without written verification or adaption by Engineer for the specific purpose intended will be at City's risk. Any such verification or adaption performed by Engineer shall entitle Engineer to further compensation at rates to be agreed upon by City and Engineer. A reproducible electronic and paper set of plans and specifications shall be delivered to and become the property of the City upon completion of the Project by the Engineer.

8. Expert Witness. The Engineer shall serve as an expert witness for the City in any legal proceedings regarding this project if the City so requests. The expert witness fee for Engineer shall be negotiated at the time the Engineer is called as an expert.

9. Modifications to Scope of Work/Change Orders

(a) Change Orders. The Contract Administrator, upon written approval as required by the City's finance ordinances and policies, 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 one or more of the following: the services to be performed, the contract price 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 Engineer's cost of, or time required for the performance of the work hereunder, Engineer shall notify the City requesting an equitable adjustment and the contract shall be modified in writing as mutually agreed by the Parties. Any change order shall include all costs and time extensions related to or incidental to such change.

(c) Any claim by the Engineer for adjustment under this clause shall be asserted in writing within thirty (30) days from the date of receipt by the Engineer of the notification of change unless the Contract Administrator grants a further period of time before the date of final payment under the contract. The Engineer shall proceed with the prosecution of the work as changed. Except as provided in this Contract, the Engineer shall not be entitled to payment for a charge for any extra work or material.

10. Subcontractors and Outside Associates and Consultants. Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by the Contract will be limited to such individuals or firms as are specifically identified in the task authorization amendment. Any substitution in such subcontractors, associates, or consultants shall be subject to the prior approval of the Contract Administrator.

11. Termination

(a) The performance of work under this Contract may be terminated by the City in accordance with this clause in whole, or from time to time in part, whenever the Contract Administrator shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Engineer of a Notice of Termination specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contract Administrator, the Engineer shall:

- (i) Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
- (ii) Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the work under the Contract as it is not terminated.
- (iii) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination.
- (iv) Assign to the City in the manner, at the times and to the extent directed by the Contract Administrator, all of the right, title, and interest of the Engineer under the orders and subcontracts so terminated, in which case the City shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (v) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator, to the extent the City may require which approval or ratification shall be final for all the purposes of this clause. If the City terminates the Engineer for failure to adhere to project time lines for completion of the Engineering work, then the City may deduct from amounts owed on the Engineer termination claim, the City's increased costs directly resulting from the failure of the Engineer to timely perform. The Engineer shall not be responsible for a delay in Engineering work that is beyond the Engineer's reasonable control.
- (vi) Transfer title and deliver to the City in the manner, at the times, and to the extent, if any, directed by the Contract Administrator.
 - (1) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination; and
 - (2) The completed or partially completed plans, drawings, information, and other property which, if the contract has been completed, would have been required to be furnished to the City.
- (vii) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

(c) After receipt of a Notice of Termination, the Engineer shall submit to the City's Contract Administrator its termination claim, in the form and with certification prescribed by the Contract Administrator. Such claim shall be submitted promptly but in no event later than thirty (30) days from the effective date of termination, unless one or more extensions in writing are granted by the Contract Administrator, upon request of the Engineer made in writing within such thirty (30) days period or authorized extension thereof. Upon failure of the Engineer to submit the termination claim within the time allowed, the Contract Administrator may determine on the basis of information available to them, the amount, if any, due to the Engineer by reason of the termination and shall thereupon pay to the Engineer the amount so determined, so long as all final documentation for the project has been delivered to the Contract Administrator.

(d) Subject to the provisions of Paragraph 11 (c), the Engineer and the Contract Administrator may agree upon the whole or any part of the amount or amounts to be paid the Engineer by reason of the total or partial

termination of work pursuant to this clause, the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts exclusive of settlement costs, shall not exceed the contract price for work completed that has been accepted by the Contract Administrator, as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract shall be amended accordingly and the Engineer shall be paid the agreed amount. Nothing in Paragraph 11 prescribing the amount to be paid to the Engineer, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid.

(e) In the event of the failure of the Engineer and the Contract Administrator to agree as provided in Paragraph 11 (d), upon the whole amount to be paid to the Engineer by reason of the termination of work pursuant to this subparagraph, the Contract Administrator shall pay to the Engineer the amounts determined by the Contract Administrator, but without duplication of any amounts agreed upon, as follows:

(i) For completed work and services accepted by the City, the price or prices specified in the contract for such work, less any payments previously made.

(ii) The total of:

(1) The costs incurred in the performance of the work and service terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to the work and services paid or to be paid for under Paragraph 11 (e)(i) hereof;

(2) The cost of settling and paying claims arising out of the termination of work or services under subcontracts or orders as provided in Paragraph 11 (b)(v) above, which are properly chargeable to the terminated portion of the contract exclusive of amounts paid or payable on account of work or services delivered or furnished by subcontractors prior to the effective date of termination, which amounts shall be included in the costs payable under Paragraph 11 (a) above; and

(3) A sum, as profit on Paragraph 11, determined by the Contract Administrator to be fair and reasonable, not to exceed 5% of the Task Authorization.

(iii) In the event the contract is terminated because of Engineer's default, the City may take over the work and services and complete the same by contract or otherwise, and the Engineer shall be liable to the City for any increased cost of the project.

12. Examination of Records

(a) The Engineer 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 Engineer involving transactions related to this Contract.

(b) The Engineer 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 Engineer 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.

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

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Engineer does not transfer the records to the City.
- (d) Upon completion of the Contract, Engineer shall transfer to the City, at no cost, all public records in possession of the Engineer and destroy any duplicate public records that are exempt from public records disclosure requirements. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

If Engineer does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Engineer may be subject to penalties under Section 119.10, Florida Statutes.

ENGINEER QUESTIONS RELATING TO ENGINEER'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.

14. Termination for Non-Appropriation of Funds. 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 Engineer. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination. 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.

15. Insurance

(a) Engineer shall maintain insurance during the life of this Contract. Engineer shall provide to the City a certificate of insurance identifying the City of Port Orange as an additional insured. The Engineer shall furnish policies and certificates of insurance to the City for review and approval on initial contract date and thereafter at least on each anniversary of the contract effective date. Failure of the Engineer to maintain a certificate of insurance in compliance or approval by the City of any policy of insurance shall not, relieve the Engineer from its responsibilities to provide the insurance coverage required herein. The certificates shall clearly indicate that the Engineer has obtained insurance of the type, amount and classification required by these provisions. No work shall be commenced until City has approved the policies. This Contract may be terminated by the City without penalty or expense, if policies requested hereunder are not provided to and approved by the City within thirty (30) days of the date hereof. The Engineer shall notify the City and to the City's designated insurance Risk Manager of any changes in or cancellations of coverage.

(b) 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. Engineer shall not commence work under this Agreement until the City has received a certificate or certificates of insurance and endorsement evidencing the required insurance. Engineer shall be solely responsible to provide the City written original certificate, 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 Engineer for the reasonable additional costs of increased coverage. The Engineer shall maintain the following coverages:

Required Insurance	Insurance	Standards	Comments
☒	Workers' Compensation <u>Additional Coverage:</u>	<u>Limits:</u> Coverage A - Statutory Coverage B - \$100,000 All States (Broad Form) Voluntary Compensation	If the contract requires work on or about navigable waters, require Longshoreman's and Harbor Workers' Coverage. If vessels involved, require Jones Act coverage with limits of \$500,000.
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability) <u>Limits:</u>	Combined Single Limit Bodily Injury and Property damage \$500,000 occurrence \$1,000,000 Aggregate	When the Contract work on or under Railroad rights of way or properties, the Engineer 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 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.
☒	Professional Liability (Errors & Omissions) <u>Limits:</u>	Coverage- \$1,000,000 minimum	

16. **Sovereign Immunity.** The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature

or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

17. Liability for Loss or Damage. Engineer shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Engineer, 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 Engineer, its agents, servants and employees. Engineer shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

18. Non-discrimination. During the performance of this Contract, Engineer agrees as follows:

(a) Engineer 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 Engineer. Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Engineer agrees and fully supports and complies with the Americans with Disabilities Act of 1990.

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

(c) Engineer shall be solely responsible for compliance with all federal, state and local laws, rules and regulations prohibiting discrimination of its officers, agents, employees and subcontractors. Engineer shall post notices, advertisements and solicitations in accordance with federal law, rule or regulation. Engineer shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

19. E-Verify. Engineer 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 Engineer 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.

20. Disputes. The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Engineer, shall decide disputes with respect to this Contract in the first instance. The decision 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 City Council, Engineer shall proceed diligently with the performance of this Contract in accordance with that decision.

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

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

23. Additional Provisions. This Contract includes all additional provisions as may have been outlined in Request for Statement of Qualifications identified herein and any attachments or exhibits to this Contract whether delivered herewith or subsequently approved as a part hereof.

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

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

City:	City of Port Orange Attention: City Manager 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5501
Copy to:	City of Port Orange Attention: <i>(Department Head Requesting Service)</i> 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5500
Engineer:	Dredging & Marine Consultants, L.L.C. Attention: Shailesh K. Patel, Managing Member 4643 S. Clyde Morris Blvd., Unit 302 Port Orange, Florida 32129 (386) 304-6505 spatel@dmces.com

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

26. Contract Construction

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

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

[Remainder of this page intentionally left blank]

Witnesses:

Rosalee C. Wiggins

Printed Name: Rosalee C. Wiggins

Neil C. Wiggins

Printed Name: NEIL C. WIGGINS

Dredging & Marine Consultants, L.L.C.

By: Shail

Shailesh K. Patel, Managing Member

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

Date: 2-14-2017

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 14th day of February, 2017, by Shailesh K. Patel, as Managing Member of Dredging & Marine Consultants, L.L.C., a Florida limited liability corporation, and who:

(Notary: Please select one)

☒ is personally known to me; or

☐ has produced _____ as identification.

Rosalee C. Wiggins

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



ROSALEE C. WIGGINS
MY COMMISSION # FF 928647
EXPIRES: December 25, 2019
Bonded Thru Budget Notary Services

Witnesses:

CITY OF PORT ORANGE

Cynthia K. Rivera
Printed Name: Cynthia K. Rivera

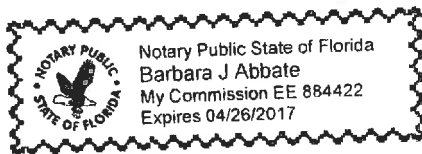
By: Donald O. Burnette
Donald O. Burnette, Mayor

Barbara J. Abbate
Printed Name: Barbara J. Abbate

Date: 2/14/17

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 14th day of February, 2017, 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.



Barbara J. Abbate
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

Witnesses:

ATTEST:

Cynthia K. Rivera
Printed Name: Cynthia K. Rivera

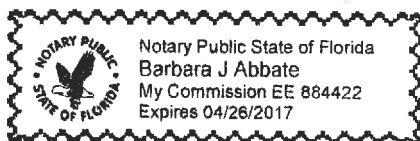
By: Robin L. Fenwick
Robin L. Fenwick, CMC, City Clerk

Barbara J. Abbate
Printed Name: Barbara J. Abbate

Date: 2/14/17

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 14th day of February, 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.



Barbara J. Abbate
Notary Public, State of Florida
Printed, typed or stamped name, commission and expiration:

[CA 5672]

EXHIBIT “1”

(Consisting of 3 pages)

TASK AUTHORIZATION NO. ____
Standard Contract for Services dated _____
Between the City of Port Orange, Florida and Dredging & Marine Consultants, LLC

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **DREDGING & MARINE CONSULTANTS, LLC**, a Florida corporation with its principal place of business at 4643 South Clyde Morris Boulevard, Port Orange, Florida 32129 ("Contractor"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated _____, and any amendments thereto, hereinafter collectively referred to as the "Contract." The Parties, in exchange for the mutual covenants contained herein and in the Contract, agree as follows:

1. This Task Authorization expressly modifies the Contract and in the event of a conflict, the terms and conditions of this Task Authorization shall prevail.
2. The Contract Administrator may be contacted as follows:
Name: _____
Address: _____
Phone: _____
Mobile: _____
E-Mail: _____
3. In addition to all other terms and conditions contained in the Contract, Contractor shall provide services relating to _____ as more particularly described in the Scope of Services attached hereto and incorporated herein as Task Authorization Exhibit "A."
4. Contractor shall complete the services to be provided herein within _____ days of the date of written notice by the City to the Contractor.
5. In return for the services identified above, the City agrees to compensate Contractor at the prices set forth in Exhibit "____" attached hereto and made a part hereof for all purposes, subject to a limit up to but not to exceed \$_____. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
6. Contractor shall provide a 100% Combination Payment and Performance Bond in accordance with Florida Statutes Section 255.05, including the Front Page and Certificate for Filing in Public Records, in a form substantially similar to the forms attached hereto as Task Authorization Exhibit "B," and acceptable to the Port Orange City Attorney, and recorded with the Clerk of Volusia County at Contractor's expense. A separate bond shall be provided from the Surety which identifies and covers the scope of work for the project stated in this Task Authorization along with all other provisions of this Task Authorization with the penal sum of such bond being not less than the contract sum described in this Task Authorization. If any surety bond furnished in connection with this Task Authorization 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 Task Authorization No. ____.

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

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

Witnesses:

DREDGING & MARINE CONSULTANTS, LLC

Printed Name: _____ By: _____
Shailesh K. Patel, Managing Member
If this Contract is signed by an individual not identified as the President of the corporation in the records of the Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into contracts on behalf of the corporation.

Printed Name: _____ Date: _____

Witnesses:

CITY OF PORT ORANGE

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

Printed Name: _____ Date: _____

Witnesses: ATTEST:

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

Printed Name: _____ Date: _____

[CA 5672]

HOURLY RATE SCHEDULE
CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES
CITY OF PORT ORANGE RFSQ # 16-32

The following schedule provides a maximum direct salary hourly rate for the disciplines, which are likely to be engaged for projects associated with the contract referenced above for the City of Port Orange.

COMPANY NAME: Dredging & Marine Consultants, LLC

<u>Category of Employee</u>	<u>Hourly Rate</u>
Principal	\$150.00
Lead Engineer & Scientist	\$135.00
Project Manager	\$120.00
Senior Professional	\$110.00
Engineering Professional	\$ 95.00
Environmental Professional	\$ 85.00
<u>Technical Support Staff</u>	
CADD Technician	\$ 75.00
Grants / Programmer / Modeler	\$ 70.00
Administrative / Accounting	\$ 55.00
<u>Construction Inspection / Administration</u>	
Construction Manager	\$ 95.00
Senior Resident Inspector	\$ 85.00
Environmental/Construction Inspector	\$ 70.00
Field Technician	\$ 65.00
<u>Expenses</u>	
Jon Boat (per day)	\$250.00
Turbidity Meter/Standards (per day)	\$50.00
Sediment Sampler (per day)	\$75.00
*Mediation, Deposition, Court Appearance (min. 4 hrs + Expenses)	1.5 x Hourly Rate



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/14/2023

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 Sihle Insurance Group, Inc. 1021 Douglas Ave. Altamonte Springs FL 32714	CONTACT NAME: Certificate Department PHONE (A/C, No, Ext): 407-869-5490 E-MAIL ADDRESS: Certificates@sihle.com	FAX (A/C, No): 407-389-3580
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Bridgefield Employers Insurance Company		10701
INSURER B : Progressive Express Insurance Company		10193
INSURER C : Underwriters at Lloyds London		15792
INSURER D :		
INSURER E :		
INSURER F :		

COVERAGES **CERTIFICATE NUMBER:** 1933954933 **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
C	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PRO-JECT ☐ LOC OTHER:	Y	Y	CSIEL00180-00	11/28/2022	11/28/2023	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY			05998976	11/7/2022	11/7/2023	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ FL PIP \$10,000
	UMBRELLA LIAB ☐ OCCUR EXCESS LIAB ☐ CLAIMS-MADE DED ☐ RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y	830-52166	12/18/2022	12/18/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	Professional Liability Retroactive Date: 11/19/2002 Pollution Liability	Y		CSIEL00180-00	11/28/2022	11/28/2023	Each Occurrence 2,000,000 Aggregate 2,000,000 Deductible 5,000

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

Re: Contract No. 5672, for Professional Engineering Services
City of Port Orange, its officers and employees are included as Additional Insured for Professional Liability and General Liability including Ongoing and Completed Operations when required by written contract or agreement. This insurance shall be Primary and Non-Contributory to any other insurance available to or maintained by the Additional Insured(s) named above. A Waiver of Subrogation applies when required by written contract or agreement to the General Liability and Workers Compensation policies in favor of City of Port Orange, its officers and employees.

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 
--	---

© 1988-2015 ACORD CORPORATION. All rights reserved.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (C9e) Approval of a Six (6) Month Extension Request for Aaron's Backflow Services Inc.

DEPARTMENT: Public Utilities

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve a six (6) month extension request for Aaron's Backflow Services, Inc.

SUMMARY: On January 9, 2020, the City entered a Standard Contract for Services (CA7036) with Aaron's Backflow Services, Inc. pursuant to ITB 19-21 Residential Backflow Testing Services. The 2nd & final renewal expires January 8, 2024. Staff is requesting a six-month extension to allow sufficient time to competitively bid the work.

Currently, there are approximately 8,500 backflow devices in use throughout the City.

The scope of work includes the testing of backflow devices as recommended in the City's Cross Control Program, Ordinance No. 2020-10, Sec. 74-243, and by the Department of Environmental Protection, Rule 62-555-360, Public Water Systems. Regular testing helps to ensure the device is operating properly and aids in the detection and prevention of inadvertently created cross connections that are hazardous and pose substantial danger to public health due to an impaired or compromised public water system.

PRESENTER: Steve Parnell

ATTACHMENTS:

1.	Aarons Backflow Extension and Amendment No 2	Aarons Backflow Extension and Amendment No 2.pdf
2.	Justification Memo - Extension - Aarons Backflow Services CA7036	Justification Memo - Extension - Aarons Backflow Services CA7036.docx
3.	Executed Contract ITB 19-21 Aarons Backflow Services Inc	Executed Contract ITB 19-21 Aarons Backflow Services Inc.pdf
4.	Aaron's Backflow, Extension Email	Aaron's Backflow, Extension Email .pdf
5.	EXECUTED CA7036 AMENDMENT NO 1 Aarons Backflow remove TA	EXECUTED CA7036 AMENDMENT NO 1 Aarons Backflow remove TA

	requirement	requirement.pdf
6.	Aaron's Backflow Renewal 2023	Aaron's Backflow Renewal 2023.pdf
7.	Aarons Backflow Services Renewal Form 2021	Aarons Backflow Services Renewal Form 2021.pdf
8.	Aaron's Backflow COI	Aaron's Backflow COI.pdf

Kelly Klausky	Created/Initiated - 9/28/2023
Steve Parnell	Approved - 9/28/2023
John McKinney	Approved - 9/28/2023
Matthew Jones	Approved - 10/6/2023
Wayne Clark	Approved - 10/6/2023
Tracee Cody	Final Approval - 10/6/2023

EXTENSION AND AMENDMENT NO. 2

THIS EXTENSION AND AMENDMENT OF AGREEMENT NO. 2 ("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 **AARON'S BACKFLOW SERVICES, INC.** ("Contractor"), a Florida corporation whose principal address is 130 Middle Street, Lake Mary, Florida 32746. The City and Contractor are collectively referred to herein as the "Parties."

WHEREAS, on the 9th day of January 2020, City and Contractor entered into Contract for Annual Residential Backflow Device Testing, pursuant to Invitation to BID No. 19-21 (the "Contract"); and

WHEREAS, the Contract provides for an initial two (2) year term with the option for two (2) subsequent one-year renewals, upon mutual written agreement of the parties, subject to review and approval of the City Manager and budget appropriation; and

WHEREAS, Contract authorizes services by a written Notice to Proceed for amounts up to \$25,000.00 by Purchase Order and amounts over \$25,000.00 by Task Authorization; and

WHEREAS, on the 19th day of January 2021, the Parties amended Paragraph 1(b) Authorization of Services, from amounts up to \$25,000.00 by Purchase Order and amounts over \$25,000.00 by Task Authorization, to authorize work by issuance of a Purchase Order; and

WHEREAS, on the 28th day of October 2021, the Parties renewed the Contract via City of Port Orange Renewal Form for a period commencing on January 9, 2022 and continuing until January 8, 2023; and

WHEREAS, on the 21st day of December 2022, the Parties renewed the Contract via City of Port Orange Renewal Form for a period commencing January 9, 2023 and continuing until January 8, 2024; and

WHEREAS, the Parties desire to extend the Contract for a six (6) month period to continue services, allowing the City to complete the procurement process, for a period commencing on January 9, 2024 and continuing until July 8, 2024; and

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

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

1. The foregoing recitals are true and correct and incorporated herein.
2. Term. The Term of this Contract as amended is hereby extended. Notwithstanding the date of execution, the Contract term shall continue for a six (6) month period commencing on January 9, 2024 and continuing until July 8, 2024.
3. Counterparts. This Extension may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Extension shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this Extension.
4. All other terms and conditions of the Contract shall remain in full force and effect.

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

Witnesses:

AARON’S BACKFLOW SERVICES, INC.

Printed Name:_____

Printed Name:_____

By:_____

Aaron A. Vaughn, President

If this Contract is signed by an individual not identified as the Managing Member of the company 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 company.

Date:_____

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: _____

ATTEST:

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

Date: _____



City of Port Orange Public Utilities Department

TO: Wayne Clark, City Manager

THRU: Steve Parnell, Public Utilities Director
Chris Wall, Deputy Director of Public Utilities
Kelly Klausky, Public Utilities Administrative Supervisor

FROM: Graeme Gardiner, Field Operations Manager

DATE: September 15, 2023

SUBJECT: **Aaron's Backflow Services Inc.**– Extension Request (CA7036)
Contract Expires January 8, 2024

REQUEST:

The Public Utilities Department requests the City Manager approve the six-month extension request for Aaron's Backflow Services Inc.

PURPOSE:

The purpose of this request is to extend the contract for residential backflow testing services required to maintain compliance with State regulations.

CONSIDERATION:

On January 9, 2020, the City entered a Standard Contract for Services (CA7036) with Aaron's Backflow Services, Inc. pursuant to *ITB 19-21 Residential Backflow Testing Services*. This is the final Renewal No.2 term that expires January 8, 2024. We are asking for a six-month extension to allow more time to go out for bid.

Currently, there are approximately 8,500 backflow devices in use throughout the City. The scope of work includes the testing of backflow devices as recommended in the City's Cross Control Program, Ordinance #2020-10, Sec. 74-243, and by the Department of Environmental Protection, Rule 62-555-360, Public Water Systems. Regular testing helps to ensure the device is operating properly and aides in the detection and prevention of inadvertently created cross connections that are hazardous and pose substantial danger to public health due to an impaired or compromised public water system.

FUNDING:

Water Sewer Distribution

Fund: 401

Fund Name: Water and Sewer System

Cost Center: Water and Sewer

Program: Water Sewer Distribution

Spend category: Other Contract Services

Budget FY2023: \$250,000.00

RECOMMENDATION:

The Public Utilities Department recommends the City Manager approve the extension to extend the contract (CA7036) with Aaron's Backflow Services Inc.

ANTICIPATED SCHEDULE:

1. Entered in Civiclerk/Contract Management: September 15, 2023
2. Executed Extension: On or before January 8, 2024

ATTACHMENTS:

1. Aaron's Backflow Email Authorizing 6 Month Extension
2. Aaron's Backflow Services, Inc. Executed Contract
3. Current COI for Aaron's Backflow Services Inc.
4. FDEP Rule and COPO Ordinance



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this 9 day of January, 2020, 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 **AARON'S BACKFLOW SERVICES, INC.** ("Contractor"), a Florida corporation whose principal address is 1458 Foxtail Court, Lake Mary, Florida 32746. The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

- (a) The Contractor hereby agrees to provide services for residential backflow devices to be tested annually. Contractor must test a minimum of 650-750 per month and shall honor unit prices quoted irrespective of actual quantities tested, and as more specifically described in Invitation to Bid 19-21 ("ITB 19-21"), 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 19-21 are attached hereto as Exhibit "1," and made a part hereof by reference. A complete copy of ITB 19-21, 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 two (2) years (the "Initial Term").

Renewals: Upon written agreement of the Parties, this Contract may be renewed for up to 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 23 of this contract concerning disputes.

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

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

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: Aaron's Backflow Services, Inc.
Attention: Aaron A. Vaughn, President
P.O. Box 5302
Winter Park, Florida 32793
(407) 829-7933 – Telephone
(407) 829-6648 – Facsimile
Aaron@aaronsbackflow.com

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

29. Contract Construction

This 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:

[Signature]

Printed Name: Fabian Virviescas

[Signature]

Printed Name: Heather Lee

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me by means of X physical presence or _____ online notarization, this 8 day of January, 2020, by Aaron A. Vaughn, as President of Aaron's Backflow Services, Inc., a Florida corporation. He is X personally known or _____ produced _____ as identification.

AARON'S BACKFLOW SERVICES, INC.

By: [Signature]

Aaron A. Vaughn, 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: January 8, 2020

Michelle Remele

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



Witnesses:

CITY OF PORT ORANGE

Ruth E. Thayne
Printed Name: RUTH E. THAYNE

By:

Donald O. Burnette, Mayor

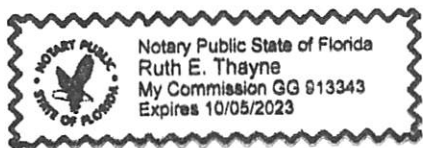
Shelby Field
Printed Name: Shelby Field

Date:

1/9/2020

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 9 day of Jan, 2020, 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.



Ruth E. Thayne

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

ATTEST:



Ruth E. Thayne
Printed Name: RUTH E. THAYNE

By:

Robin L. Fenwick, MMC, City Clerk

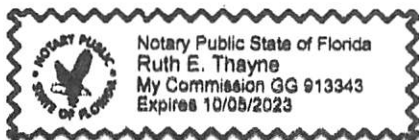
Shelby Field
Printed Name: Shelby Field

Date:

1/9/2020

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this 9 day of Jan, 2020, 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.



Ruth E. Thayne

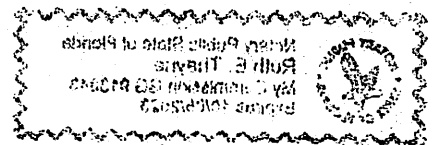
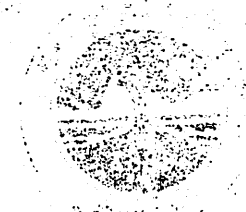
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

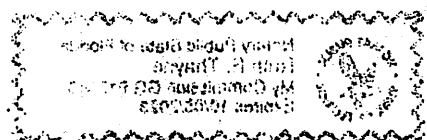
RUTH E. THAYNE

Handwritten text, possibly a name or address, located in the upper left quadrant of the page.

Handwritten text, possibly a name or address, located in the middle left quadrant of the page.



Handwritten text, possibly a name or address, located in the lower left quadrant of the page.



"ATTACHMENT 1" SCHEDULE OF UNIT PRICING

BID FORM
CITY OF PORT ORANGE
ITB # 19-21

Revised 11/20/2019

RESIDENTIAL BACKFLOW SERVICES

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

Instruction to save Attachment from DemandStar and City Port Orange website:

Perform "File Save As" and save spreadsheet to your computer. Fill in pricing in highlighted cells, preferably electronically.
 Save to your FLASH Drive in EXCEL FORMAT for your submittal

Bidders are required to complete all fields shaded in green.

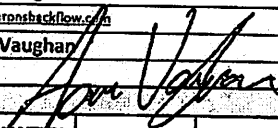
All other fields will be automatically calculated.

NAME OF BUSINESS: Aaron's Backflow Services, Inc.

CONTACT PERSON: Aaron Vaughan

EMAIL ADDRESS: aaron@aaronbackflow.com

AUTHORIZED NAME: Aaron Vaughan

AUTHORIZED SIGNATURE: **PROPOSED PRICING**

ITEM #	DESCRIPTION and SPECIFICATIONS	EST QUANTITY	UNIT	UNIT PRICE	
1	Backflow Testing (per device) 3/4"	9000	EA	\$22.00	\$198,000.00
2	Backflow Testing (per device) 1"	10	EA	\$22.00	\$220.00
3	Backflow Testing (per device) 1.5" (upon request)	5	EA	\$22.00	\$110.00
4	Backflow Testing (per device) 2" (upon request)	5	EA	\$22.00	\$110.00
				TOTAL BID AMOUNT	\$198,440.00
5	Technician normal business hours for repair		HR	\$45.00	
6	Technician after business hours for repair		HR	\$65.00	
7	Helper normal business hours for repair		HR	\$45.00	
8	Helper after business hours for repair		HR	\$65.00	

Parts for backflow device (Cost plus % option) 20% (enter % added to cost of parts)

Response time for testing requests 5 to 7 Days

Shall warrant all materials, labor and workmanship for the period of One (1) Years

AWARD: THIS BID WILL BE AWARDED TO THE LOWEST, RESPONSIVE, RESPONSIBLE BIDDER based on ITEMS 1-4.

Bidders need to completed ITEMS 5-8 to be considered

SECTION 3 – SCOPE OF WORK and TECHNICAL SPECIFICATIONS

SCOPE OF WORK - BACKFLOW DEVICE TESTING, CERTIFICATIONS, AND REPAIRS

The City of Port Orange requires residential backflow devices to be tested annually. The City of Port Orange has approximately 9,000 residential backflow devices in service. Contractor shall honor unit prices quoted irrespective of actual quantities tested. Contractor must test a minimum of 650-750 per month and shall honor unit prices quoted irrespective of actual quantities tested. The term for this contract is two (2) years with two (2) optional one-year renewals.

1.1 ELIGIBILITY

To be eligible for award of a contract in response to this solicitation, the Plumbing Contractor and must demonstrate that they have experience in successfully completion of services as specified in the Technical Specifications/Scope of Services section of this solicitation, they normally and routinely engage in performing such services, and are properly and legally licensed to perform such work.

- a) The Plumbing Contractor and must be certified as a Backflow Prevention Assembly Tester. Any such backflow device tester shall meet all requirements of the City's Cross Connection Control Policy. The Contractor shall keep current and on file with the Public Utilities department a copy of such license/certificate for each employee working on City of Port Orange devices.
- b) Contractor shall submit the following documentation to support their qualifications: Proof of Backflow Assembly Tester Certification and all of Contractors direct employees/representatives who shall be performing work under this Contract (outsourcing not permitted):
 - 1. Plumbing Contractor shall provide a current copy of Tester's Certification Card and update file as employees change or annually.
 - 2. A copy of the current Gauge Accuracy Verifications shall be filed with the City for all gauges used by the Tester and updated at least annually.
 - 3. Contractor must be licensed and listed as active on the Volusia County Contractor Connect Live site with all license and liability information up to date and available on that site. Contractor licensing information shall be listed and available within two weeks of contract execution.
 - 4. Valid Plumbing Contractor's license issued by the State of Florida throughout the full term of the Contract.
- c) All Contractors shall submit information on principal's experience, available equipment, company contact information, staffing plan and past or present contracts verifying magnitude of experience including three (3) references, preferably from current contracts, including one from a governmental agency

other than the City of Port Orange.

- d) All Contractors shall demonstrate access to pertinent equipment and vehicles and a work location suitable to conduct business with the resources necessary to complete work as scheduled.
- e) All testers shall be employees of the Contractor. Sub-contracting is prohibited.

2.1 PLUMBING CONTRACTOR RECERTIFICATION RESPONSIBILITIES

1. Plumbing Contractor shall provide backflow assembly testing services in conformance with test procedures approved by the City of Port Orange, which currently is the Florida Administrative Code 62-555.360 which includes by reference the American Water Works Association (AWWA) manual M-14, Backflow Prevention and Cross-Connection Control Recommended Practices.
2. Backflow devices scheduled for annual testing will consist of ¾" double-check, reduced pressure type. The City may require devices up to 2" to be tested upon request.
3. The City Backflow and Cross Connection Coordinator will provide the Contractor addresses of residential backflow devices with associated subdivisions.
4. The Contractor shall provide a schedule for residential backflow device testing for calendar year in which tests are performed. A schedule with the quantities of devices tested in a given timeframe shall be provided and followed. The Contractor shall notify the City of any deviations from the submitted schedule.
5. The Contractor shall perform testing, installation and repair within 7-14 days upon receipt of the City's request. Each tested backflow shall be tagged with the date of testing.
6. Contractor is responsible for notifying customers of temporary water shut off during testing process.
7. Plumbing Contractor shall deliver test reports to the Public Utilities Department located at 1395 Dunlawton Ave. Port Orange, FL 32129. Results submitted which require more information by the City of Port Orange staff shall be sent back to the Contractor via e-mail or fax. Contractor shall utilize the City test report forms as provided.
8. Plumbing Contractor shall furnish all tools and equipment necessary for the performance of this contract.
9. Plumbing Contractor shall be willing to test and repair all types and sizes of backflow assemblies in various locations (including but not limited to vaults, platforms, mechanical rooms, lift stations, etc.)
10. Plumbing Contractor qualified to perform the repairs under this Contract shall have all the available repair parts for common makes and models of two inch (2") and smaller backflow prevention assemblies. Larger repair parts or uncommon makes and models shall be available within seven (7) days for all assemblies.
11. When contacting the customer and performing any backflow tests, installations or repairs, Plumbing Contractor shall be clearly identifiable to the customer by

- wearing a professional uniform and carrying proof of identification.
12. For all backflow tests, Contractor shall attempt to notify resident of his/her intent to test when arriving at a property by knocking on the door. If there is no response, Contractor may proceed with testing. For testing of assemblies requiring special access such as in crawl space, garage, or locked back yard, Contractor shall coordinate access with the City.
 13. A test shall consist of initial test and retest after cleaning or repairs as necessary. The Contractor shall visually inspect the device and notify the City of any unusual conditions (missing meter, meter box lid, jumper, leaks, etc.)
 14. The Contractor shall notify the City of any location(s) that have a dual check backflow device where reclaimed water is present, locations that are missing a backflow device, or where a non-potable water source is present.
 15. Contractor shall be responsible for fully restoring private and public property to its original pre-test condition. Contractor may note landscaping nuisances on test report.
 16. If a test cock is left open causing a customer to report a leak, the Contractor shall be responsible to the customer for the lost water and may be required to reimburse customer for lost water:
 - a) Contractor shall respond to customer and/or the City within one (1) hour if water is flowing.
 17. If the Contractor fails to turn the water service on after testing:
 - a) Contractor shall return to customer site within one (1) hour following notification by customer or City.
 - b) Contractor shall be held responsible for any expenses incurred to the City due to city staff turning customer back on.

For assemblies failing the initial backflow assembly test, Contractor shall make minor repairs (such as cleaning, flushing, replacing plugs, cleaning discs, etc.) and retest the assembly. The initial test, minor repairs, and retesting are included in the base testing fee.

For assemblies that fail the retest, Contractor shall make detailed notations on the test report including recommendations for potential repair or replacement. The City shall be notified within seven (7) days and the City shall be responsible for making repair/replacement and retest arrangements.

All backflow assembly repairs shall be completed within seven (7) days of the scheduled test. When the repair cannot be completed within seven (7) days of the scheduled test, the Contractor must notify the City within twenty-four (24) hours.

LINE ITEM	DESCRIPTION AND SPECIFICATIONS	UNIT PRICE
1.	Backflow Testing (per device) $\frac{3}{4}$ " (approximately 9,000)	\$
	Backflow Testing (per device) 1" (Less than 10)	\$
	Backflow Testing (per device) 1.5" (upon request)	\$
	Backflow Testing (per device) 2" (upon request)	\$
2.	Technician normal business hours for repair	\$
3.	Technician after business hours for repair	\$
4.	Helper normal business hours for repair	\$
5.	Helper after business hours for repair	\$
6.	Response time for testing requests	Days
LINE ITEM	DESCRIPTION AND SPECIFICATIONS	
7.	Parts for backflow device (Cost plus % option)	%

Plumbing Contractor Warranty on Work

Contractor shall provide a minimum one-year warranty on all parts and labor.

Plumbing Contractor warranty applies to work provided under these Test Reports

Test reports are public documents and also serve as a legal record. Complete and accurate test reports are essential and are the Contractor's professional responsibility. A complete and accurate test report is proof that a test was performed and the assembly shall prevent backflow. Test reports that are not complete or accurate shall be returned to the Contractor and shall not be deemed acceptable until the correct information is supplied.

1. Backflow Test Report forms shall be filled out completely and submitted to the City of Port Orange within ten (10) days from the date the test was performed. This includes all tests, whether the assembly passed or failed. Incomplete forms shall be returned to the Contractor, e.g. if the information is not clear.
2. Completed Test Reports shall include:
 - a. Assembly address
 - b. Type, size, make, model, and serial number of assembly
 - c. Assembly location on the property
 - d. Test results, date completed, pressure readings, pass/fail
 - e. Tester's name and signature
 - f. Tester's certification number and gauge number with calibration date
 - g. Testing company name and telephone number
 - h. "Left as found": notes must include specific details.

- i. Improperly installed assemblies must be marked as "failed"
 - j. Improperly installed assemblies must be noted in the "Comments" section
 - k. Repairs made or needed must be noted in the comment section
 - l. Parts billed for must be listed in the comment section.
 - m. Labor time billed for must be explained in the comment section
3. The City reserves the right to randomly verify up to 10% of the test results recorded. This verification may be cause for rejection of the submitted test results and grounds for re-testing the assembly at no additional cost to the City. If 10% of retested devices fail, then the Contractor will be in violation of contract terms.
4. The test reports shall be submitted in PDF format by either e-mail method to Backflowtesting@port-orange.org or fax to 386-756-5370

End of Scope of Work

[Remainder of this page left intentionally blank]

ITB# 19-21 RESIDENTIAL BACKFLOW TESTING SERVICES

Page 16 of 77

EXHIBIT “2”

Payment and Performance Bond

Consisting of 3 Pages

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

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

BOND NO. _____

PRINCIPAL:

Developer or Contractor: Aaron's Backflow Services, Inc.
Principal Business Address: 1458 Foxtail Court
Lake Mary, Florida 32746
Contact Person: Aaron A. Vaughn, President
Phone Number: (407) 829-7933

SURETY:

Address: _____

Contact Person: _____
Phone Number: _____

OWNER:

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

Amount: \$198,440.00 City Project Number: ITB 19-21 Residential Backflow Testing Services

Description of Work: Residential Backflow Testing Services

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

Legal Description: Locations within City of Port Orange, Volusia County, Florida

Front Page

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

Aaron's Backflow Services, Inc.

ITB 19-21 Residential Backflow Testing Services

Bond No. _____

COMBINATION PAYMENT AND PERFORMANCE BOND FOR PUBLIC CONSTRUCTION

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

BY THIS BOND, We, **AARON'S BACKFLOW SERVICES, INC.**, 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 **ONE HUNDRED NINETY-EIGHT THOUSAND FOUR HUNDRED FORTY AND 00/100 DOLLARS (\$198,440.00)**, 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 Standard Contract for Services, having an effective date of _____, entered into by and between the Principal and the City, for Residential Backflow Testing Services, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and
3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

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

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

IN WITNESS WHEREOF, this performance and payment bond is executed and shall be deemed an original, this _____, day of _____, 20____.

Attest:

AARON'S BACKFLOW SERVICES, INC.
(Principal)

(As to Corporate Principal) Secretary

By: _____
Aaron A. Vaughn, President

(Witness to Principal)

(Corporate Seal)

(Surety)

(Witness to Surety)

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

(Corporate Seal)

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

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

Klausky, Kelly

From: Aaron Vaughan <aaron@aaronsbackflow.com>
Sent: Wednesday, September 13, 2023 10:50 AM
To: Klausky, Kelly
Cc: Gardiner, Graeme; Heather Lee
Subject: [EXT] Re: 6 Month Extension (CA7036)

Good morning, Kelly,
Yes, we agree to extend the current contract and pricing for the additional 6 months.
Thank you,

Aaron A. Vaughan, President
Aaron's Backflow Services, Inc.
130 Middle Street
Lake Mary, FL 32746
407-829-7933 office
800-283-3168 fax
321-228-3829 cell
www.aaronsbackflow.com

From: Klausky, Kelly <kklausky@port-orange.org>
Date: Tuesday, September 12, 2023 at 2:08 PM
To: Aaron Vaughan <aaron@aaronsbackflow.com>
Cc: Gardiner, Graeme <ggardiner@port-orange.org>
Subject: RE: 6 Month Extension (CA7036)

Good afternoon –

RE: Aaron's Backflow (CA7036)

The above contract for Aaron's Backflow is set to expire on 01/08/2024. There are no renewal options available. In order to allow enough time to go out for bid, The City of Port Orange is requesting a six (6) month extension under the current terms and conditions.

If you are in agreement, please reply to this email.

Should you need additional information, please feel free to contact me directly.

Thank you in advance for your assistance and consideration.

Sincerely,

Kelly Klausky
Administrative Supervisor
City of Port Orange | Public Utilities Department
1395 Dunlawton Avenue | Port Orange, FL 32129

AMENDMENT NO. 1

THIS AMENDMENT OF AGREEMENT NO. 1 ("Agreement") 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 **AARON'S BACKFLOW SERVICES, INC.** ("Contractor"), a Florida corporation whose principal address is 1458 Foxtail Court, Lake Mary, Florida 32746. The City and Contractor are collectively referred to herein as the "Parties."

WHEREAS, on the 9th day of January 2020, City and Contractor entered into Contract for Annual Residential Backflow Device Testing, pursuant to Invitation to BID No. 19-21 (the "Contract"); and

WHEREAS, the Contract provides for an initial two (2) year term with the option for two (2) subsequent one-year renewals, upon mutual written agreement of the parties, subject to review and approval of the City Manager and budget appropriation; and

WHEREAS, Contract authorizes services by a written Notice to Proceed for amounts up to \$25,000.00 by Purchase Order and amounts over \$25,000.00 by Task Authorization; and

WHEREAS, the Parties desire to amend Paragraph 1(b) Authorization of Services, from amounts up to \$25,000.00 by Purchase Order and amounts over \$25,000.00 by Task Authorization, to authorize work by issuance of a Purchase Order; and

WHEREAS, the Port Orange Interim City Manager has determined that the execution of this Agreement is beneficial to the citizens of the City of Port Orange.

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

1. The foregoing recitals are true and correct and incorporated herein.
2. Contract Paragraph 1(b), "Authorization for Services," is hereby amended to read as follows:

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 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. 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.

3. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The 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.

4. 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 Agreement on the day and year stated hereinafter.

Witnesses:

Hee
Printed Name: Heather Lee

Sam Vega
Printed Name: Samuel Vega Jr

AARON'S BACKFLOW SERVICES, INC.

By: [Signature]
Aaron A. Vaughn, President

If this Contract is signed by an individual not identified as the Managing Member of the company 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 company.

Date: 1/8/2021

STATE OF FLORIDA
COUNTY OF SEMINOLE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 8th day of January, 2021, by Aaron A. Vaughn, as President of Aaron's Backflow Services, Inc., a Florida corporation. He is ☒ personally known or ☐ produced as identification.



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

Witnesses:

Printed Name: Matthew Jones

Printed Name: Jamie Miller

CITY OF PORT ORANGE

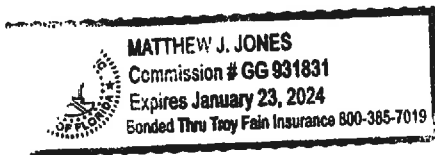
By: Donald O. Burnette

Donald O. Burnette, Mayor

Date: 1/19/2021

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 19th day of January, 2021, by Donald O. Burnette, as Mayor of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He is ☒ personally known or ☐ produced _____ as identification.



Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

Printed Name: Matthew Jones

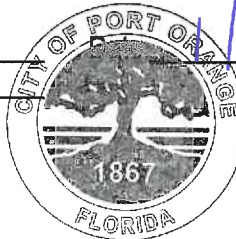
Printed Name: Jamie Miller

ATTEST:

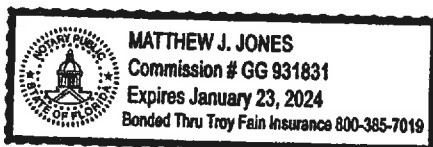
By: Robin L. Fenwick

Robin L. Fenwick, MMC, City Clerk

STATE OF FLORIDA
COUNTY OF VOLUSIA



The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 19th day of January, 2021, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. He or she is ☒ personally known or ☐ produced _____ as identification.



Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



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. CA7036 ITB 19-21 Residential Backflow Testing Services
☐ Piggyback Agreement CA No. _____
☐ Purchase Order No. _____

Term From January 9, 2023 To January 8, 2024

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: Aaron's Backflow Services, Inc.
Name of Contact Person: Aaron Vaughan, President
Mailing Address: P.O. Box 5302 Winter Park, FL 32793
Email Contact Address: Aaron@aaronsbackflow.com
Phone: 407-929-7933 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 SIG NS.

Contractor's Authorized Representative: _____

Signature

Date: 11/22/22

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: _____

City Manager: _____

Date: 12/21/2022

Please return to the City of Port Orange as follows:

Department: Dept. of Public Works & Utilities

Telephone: 386-506-5751

Contact: Julia Wiggins Public Works & Utilities Business Manager

Email: jwiggins@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 **CA7036 ITB 19-21 Residential Backflow Testing Services**
☐ Piggyback Agreement CA No. _____
☐ Purchase Order No. _____

Term From: **January 9, 2022**

To: **January 8, 2023**

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 **Aaron's Backflow Services Inc.**

Name of Contact Person: **Aaron Vaughan, President**

Mailing Address: **P.O. Box 5302, Winter Park, Florida 32793**

Email Contact Address: **Aaron@aaronbackflow.com**

Phone: **407-829-7933**

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: **10/1/21**

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: **January 8, 2023**

City Manager: _____

Date: **10/26/21**

Please return to the City of Port Orange as follows:

Department: **Public Works & Utilities**

Telephone: **(386) 506-5575**

Contact: **Kynah Cockcroft, Office Assistant**

Fax: _____

Email: **kcockcroft@port-orange.org**

Original Signed Form Must Be Returned to the City Clerk

Revised 4/1/2020



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/19/2023

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

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

PRODUCER Brown & Brown of Florida, Inc. 2290 Lucien Way, Suite 400 Maitland FL 32751	CONTACT NAME: Amy Manor CRIS PHONE (A/C, No, Ext): (407) 660-8282 FAX (A/C, No): (407) 660-2012 E-MAIL ADDRESS: Amy.Manor@bbrown.com																					
INSURED Aaron's Backflow Services, Inc 130 Middle Street Lake Mary FL 32746	<table><tr><th colspan="2">INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr><tr><td>INSURER A:</td><td>Berkley Assurance Company</td><td>39462</td></tr><tr><td>INSURER B:</td><td>Wesco Insurance Company</td><td>25011</td></tr><tr><td>INSURER C:</td><td>AIG Specialty Insurance Company</td><td>26883</td></tr><tr><td>INSURER D:</td><td>Technology Insurance Company, Inc.</td><td>42376</td></tr><tr><td>INSURER E:</td><td></td><td></td></tr><tr><td>INSURER F:</td><td></td><td></td></tr></table>	INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Berkley Assurance Company	39462	INSURER B:	Wesco Insurance Company	25011	INSURER C:	AIG Specialty Insurance Company	26883	INSURER D:	Technology Insurance Company, Inc.	42376	INSURER E:			INSURER F:		
INSURER(S) AFFORDING COVERAGE		NAIC #																				
INSURER A:	Berkley Assurance Company	39462																				
INSURER B:	Wesco Insurance Company	25011																				
INSURER C:	AIG Specialty Insurance Company	26883																				
INSURER D:	Technology Insurance Company, Inc.	42376																				
INSURER E:																						
INSURER F:																						

COVERAGES**CERTIFICATE NUMBER:** CL2391977308**REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																	
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	Y		VUMA0285691	09/18/2023	09/18/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 100,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 5,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td>PRODUCTS - COMP/OP AGG</td><td>\$ 2,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	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		\$			
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																							
	\$																							
B	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ OWNED AUTOS ONLY ☒ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y		WPP2024901-00	09/18/2023	09/18/2024	<table><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$ 1,000,000</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr><tr><td>PIP - Basic</td><td>\$ 10,000</td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$	PIP - Basic	\$ 10,000							
COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000																							
BODILY INJURY (Per person)	\$																							
BODILY INJURY (Per accident)	\$																							
PROPERTY DAMAGE (Per accident)	\$																							
PIP - Basic	\$ 10,000																							
C	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			EBU025060016	09/18/2023	09/18/2024	<table><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>AGGREGATE</td><td>\$ 1,000,000</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	AGGREGATE	\$ 1,000,000		\$											
EACH OCCURRENCE	\$ 1,000,000																							
AGGREGATE	\$ 1,000,000																							
	\$																							
D	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	TWC4322481	09/18/2023	09/18/2024	<table><tr><td>☒ PER STATUTE</td><td></td><td>OTH-ER</td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$</td><td>1,000,000</td><td></td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$</td><td>1,000,000</td><td></td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$</td><td>1,000,000</td><td></td></tr></table>	☒ PER STATUTE		OTH-ER		E.L. EACH ACCIDENT	\$	1,000,000		E.L. DISEASE - EA EMPLOYEE	\$	1,000,000		E.L. DISEASE - POLICY LIMIT	\$	1,000,000	
☒ PER STATUTE		OTH-ER																						
E.L. EACH ACCIDENT	\$	1,000,000																						
E.L. DISEASE - EA EMPLOYEE	\$	1,000,000																						
E.L. DISEASE - POLICY LIMIT	\$	1,000,000																						

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

City of Port Orange is granted additional insured status by the General Liability and Auto Liability policy with regards to the operations of the named insured when required by written contract or agreement. A waiver of subrogation is provided in favor of City of Port Orange for Workers Compensation when required by written contract or agreement.

CERTIFICATE HOLDER**CANCELLATION**

City of Port Orange Post Office Box 291759 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
---	---

© 1988-2015 ACORD CORPORATION. All rights reserved.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (C10) Approval and Ratification of the International Union of Police Associations (IUPA) 2024-2026 Collective Bargaining Agreement

DEPARTMENT: Finance

GOAL: 1 - Public Safety
5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve the 2024 - 2026 Collective Bargaining Agreement negotiated between the City of Port Orange and the International Union of Police Associations (IUPA).

SUMMARY: On September 16, 2020, the International Union of Police Associations (IUPA) was certified by PERC as the exclusive collective bargaining representative for Police Officers and Police Sergeants within the City. The current City and IUPA contract expired on September 30, 2023.

The City's negotiating team met with IUPA over the course of several in-person meetings and negotiated a new agreement. Staff and IUPA have negotiated a three-year Collective Bargaining Agreement covering the current Fiscal Year through September 30, 2026. The parties reached a tentative agreement for the entire package after the October 6, 2023 negotiation meeting.

Below is a summary of changes to the articles:

Article 12 Temporary Assignment to Another Classification:

Agreed to clarify language on when an employee working a temporary assignment is entitled to the salary pertaining to the higher rank.

Article 15 Hours of Work and Overtime:

Agreed to clarify language on when an employee will be compensated at the rate of one and one-half regular hours rate of pay from the current 80 hours to 84 hours. This is compliant with the Fair Labor Standards Act of the U.S. In addition, it clarified the language on when an employee is eligible for "called-in" pay.

Article 19 Vehicles:

Agreed to clarify language to be compliant with vehicle insurance coverage as provided for by the Florida Statute.

Article 22 Uniforms and Equipment:

Agreed to increase the detective clothing allotment by \$250 annually.

Article 28 Wages:

Agreed to the following:

1. Effective first full pay following ratification in October 2023 - an average of 7.85% increase in wages.
2. Effective first full pay in October 2024 - 5% increase in wages
3. Increased the incentive pays by an average of \$5.00 per pay period.

Article 32 Duration of Agreement:

Agreed to the following:

1. The agreement would be effective through September 30, 2026.
2. The City would bring forward an ordinance amending the Police Pension Fund to provide changes for all members who are employed and not participating in the DROP for the following three changes:
 - a. Average final compensation of the three highest years of service.
 - b. The normal retirement age would be reduced to 20 years of service versus the current 25.
 - c. DROP eligibility at the normal retirement date.
3. For Year 2, the city would consider providing a pension COLA for Tier 2 members after obtaining an independent actuarial study to review the funding impact.
4. For Year 3, the city would reopen Article 28 (Wages) and one other mutually agreed upon article.

On 10/11/2023, the City received notification that IUPA members voted in favor of this agreement. In order to ratify this agreement, the City Council must also vote in favor of the proposed changes.

PRESENTER: John McKinney

ATTACHMENTS:

1.	International Union of Police Associations	International Union of Police Associations.pdf
----	--	--

Tracee Cody	Created/Initiated - 10/11/2023
John McKinney	Approved - 10/12/2023
Matthew Jones	Approved - 10/13/2023
Wayne Clark	Approved - 10/13/2023
Tracee Cody	Final Approval - 10/13/2023

**AGREEMENT
BETWEEN
CITY OF PORT ORANGE, FLORIDA
AND
INTERNATIONAL UNION OF POLICE ASSOCIATIONS
LOCAL 6051**

PERC Certification #1983

October 1, 2023 through September 30, 2026

TABLE OF CONTENTS

Article	Subject	Page
1	AGREEMENT	3
2	ASSOCIATION RECOGNITION	4
3	MANAGEMENT RIGHTS	5
4	EMPLOYEES RIGHTS	7
5	STRIKES AND LOCKOUTS	8
6	DUES DEDUCTION	9
7	ASSOCIATION REPRESENTATIVES.....	10
8	BULLETIN BOARDS.....	11
9	SENIORITY.....	12
10	PROBATIONARY EMPLOYEES	13
11	PROMOTIONAL PROCEDURES.....	14
12	TEMPORARY ASSIGNMENT TO ANOTHER CLASSIFICATION.....	18
13	DISCIPLINARY ACTION	19
14	GRIEVANCES AND ARBITRATION PROCEDURE	22
15	HOURS OF WORK AND OVERTIME.....	25
16	HOLIDAYS	28
17	ANNUAL LEAVE	29
18	SICK LEAVE.....	32
19	OTHER LEAVE	35
20	JURY DUTY AND APPEARANCE AS A WITNESS	37
21	AUTHORIZED USE OF A PRIVATE VEHICLE.....	38
22	UNIFORMS AND EQUIPMENT	39
23	WORKERS' COMPENSATION, PHYSICAL EXAMINATIONS & HEALTH & FITNESS..	41
24	ALCOHOL AND DRUG TESTING.....	44
25	INSURANCE.....	47
26	PERSONNEL RECORDS	48
27	TRAINING AND TUITION REIMBURSEMENT.....	49
28	WAGES.....	51
29	RETIREMENT PLAN	53
30	SEVERABILITY	54
31	ENTIRE AGREEMENT	55
32	DURATION OF AGREEMENT	56

**ARTICLE 1
AGREEMENT**

THIS AGREEMENT is entered into by and between the City of Port Orange, hereinafter referred to as the "City", and the International Union of Police Associations, AFL-CIO (IUPA), hereinafter referred to as the "Association".

Whenever a male gender is used in this Agreement, it shall be construed to include male and female employees.

Whenever the phrase "in writing" is used in this Agreement, it shall be construed to include regular mail, facsimile, and electronic mail (email) as an acceptable form of written communication unless specifically stated otherwise in a particular Article.

WITNESSETH:

WHEREAS, This Agreement reduces to writing the understandings of the City and the Association to comply with the requirements contained in Chapter 447, Florida Statutes, as amended; and

WHEREAS, This Agreement is designed to provide for an equitable and feasible procedure for the resolution of differences concerning the enforcement of this Agreement in accordance with grievance procedures contained herein; and

WHEREAS, This Agreement is entered into to promote a harmonious relationship between the Association and the City and to encourage more effective employee service in the public interest; and

WHEREAS, The Association understands that the City is engaged in furnishing essential public service which affects the health, safety and welfare of the general public; and the Association recognizes the need to provide continuous and reliable service to the public; therefore, it is hereby agreed:

ARTICLE 2
ASSOCIATION RECOGNITION

- 2.1 The City recognizes the Association as the exclusive collective bargaining representative for those employees in the following bargaining unit, as defined in PERC Certification # 1983, dated October 2, 2020.

Included: Sworn full time police personnel for the following ranks: Police officer and police sergeant.

Excluded: All other classifications.

Any Amendment to the unit certified by Public Employees Relations Committee (PERC) must be accomplished by a unit clarification petition filed with and approved by PERC. Bargaining unit employees in positions formally included and approved by PERC will be entitled to the terms and benefits of this Agreement.

ARTICLE 3 MANAGEMENT RIGHTS

- 3.1 The Association recognizes that it is the function of management to determine and direct the policies, mode and method of providing its services without any interference in the management and conduct of the City's operations.
- 3.2 The City shall continue to exercise the exclusive right to take any action it deems necessary or appropriate in the management of its operations and the direction of its work force. The City expressly reserves all rights, powers and authority customarily exercised by management, including all inherent and common law management rights and functions which the City has not expressly modified or delegated by express provisions of this Agreement. Unless specifically addressed in this Agreement nothing in this Agreement shall be construed to limit or impair the right of the City to exercise its own discretion in determining whom to employ, and nothing shall be interpreted as interfering in any way with the City's right to alter, rearrange, or change, extend, limit or curtail its operations or any part thereof.
- 3.3 Without limiting the provisions of Sections 3.1 and 3.2, but in order to clarify some of the more important unilateral rights retained by management, the City shall have the following unilateral management rights, unless such rights are specifically limited and in direct conflict with this Agreement or the law:
- (a) To determine the size and composition of the work force, including the number or composition of employees assigned to any particular operation, shift or turn;
 - (b) To determine the number and type of equipment, vehicles, materials, and supplies to be used, operated, or distributed;
 - (c) To hire, rehire, promote, lay-off and recall employees;
 - (d) To evaluate, maintain, and/or improve the efficiency of employees;
 - (e) To create or abolish job classifications and the minimum qualifications for job classifications, and to determine the amount and type of work;
 - (f) To determine the assignment of work, and to schedule the hours and days to be worked on each job and each shift, unless contrary to a specific provision of this Agreement;
 - (g) To discontinue, temporarily or permanently, in whole or in part its operations and to transfer, or assign all or any part of its operation or any part thereto to new facilities;
 - (h) Should management have a reasonable basis to believe the employee is not physically capable of performing his job they may require an employee to take a physical or mental examination, given by a health service or a physician or psychiatrist selected by the City;
 - (i) To determine the location, method, means and personnel by which operations are to be conducted;
 - (j) To introduce new, different or improved methods, means and processes of conducting the operations, transportation, maintenance and service of the employer;
 - (k) To determine the work to be performed during the employees' regular workday and require that all work be performed in a satisfactory and professional manner;

- (l) To assign overtime work in accordance with the provisions of this Agreement;
- (m) To reward or reprimand, discharge or otherwise discipline an employee for just cause;
- (n) Establish, maintain and enforce, or rescind, amend or change, reasonable rules and regulations and standard operational procedures, it being understood that such rules and regulations and standard operational procedures shall not conflict with the provisions of this Agreement. If the proposed additions, deletions or changes affect the terms and conditions of employment of bargaining unit employees that are mandatory subjects of bargaining, the Association shall have the right to request bargaining over those proposed additions, deletions or changes. This request must be made in writing to the Department Head and submitted to him/her within seven (7) days of the change being published. If no request for bargaining is made by the Union during this seven (7) day period, or the proposed additions, deletions or changes do not affect terms and conditions of employment of bargaining unit members or is not a mandatory subject of bargaining, the modifications shall become effective on the date specified when published.

- 3.4 The City reserves and retains in full and completely any and all management rights, prerogatives and privileges except to the extent that such rights, prerogatives and privileges are specifically limited by some express provision of this Agreement or the law, and has no obligation to bargain over the decision to exercise such rights, prerogatives and privileges, or the effect of such decisions.
- 3.5 The City's failure to exercise any function or right hereby reserved to it, or its exercising any function or right in a particular way, shall not be deemed a waiver of this right to exercise such function or right, nor preclude the City from exercising the same in some other way not in conflict with the express provisions of this Agreement.
- 3.6 The City, subject to State law, has the sole authority to determine its purpose and mission and the amount and allocation of the budget.
- 3.7 If, in the sole discretion of the City, it is determined that civil emergency conditions exist, including but not limited to riots, pandemics, civil disorders, hurricanes or other weather conditions, or similar catastrophes the provisions of this Agreement may be suspended during the time of the declared emergency except for the grievance, disciplinary and economic provisions.
- 3.8 However, the exercise of the above rights shall not preclude employees or their representative from raising grievances or seeking other relief, should decisions on the above matters have the consequence of violating the terms and conditions of this Agreement or the law.

ARTICLE 4
EMPLOYEE RIGHTS

- 4.1 The parties hereto agree not to interfere with the right of, or discriminate against, any employee for becoming a member of the Association, being a member of the association, withdrawing from membership from the Association, or refraining from becoming a member of the Association, as defined by Florida Statute Chapter 447. Any employee who believes their statutory rights under Chapter 447 have been violated, may address such through the steps of the grievance procedure set forth in this Agreement through the City Manager, but not arbitration. If the grievant is not satisfied with the final decision of the City Manager, the grievant may proceed through the statutory mechanism set forth in Chapter 447.
- 4.2 There shall be no discrimination against any employee covered by this agreement by reason of race, color, religion, sex, sexual orientation or transgender status, pregnancy, national origin, age, handicap or marital status. Allegations of discrimination shall be handled pursuant to Police Department policy and not the grievance procedure set forth in this Agreement.
- 4.3 Nothing contained in this Agreement shall foreclose any employee covered by this Agreement from pursuing any right or remedy, not including arbitration, as defined in Article 14 available under this Agreement, without representation by the Association. Further, nothing contained in this Agreement shall foreclose any employee from discussing a non-contract problem directly with his immediate supervisor or other Departmental Official without the intervention of the Association, provided that the immediate supervisor or other Departmental Official agreed to discuss and/or attempt to resolve the matter.
- 4.4 In matters involving a formal grievance filed pursuant to the grievance Article of this Agreement, the Association shall be given the right to be present at any meeting called for the resolution of such grievance.
- 4.5 The employees and the Association expressly reserve all rights, powers, and authority customarily exercised by an employee organization or employees in a collective bargaining unit, including all inherent and common law rights and functions. Nothing in this Agreement shall be construed to be a waiver of any of these rights of the Association or the employees.

ARTICLE 5
STRIKES AND LOCKOUTS

- 5.1 The Association and bargaining unit members shall have no right to instigate, promote, sponsor, engage in, or condone any work stoppage, boycott, slow-down, strike, intentional disruption of City operations, or to withhold services for any reason. Each employee who holds a position in the Association occupies also a position of special trust and responsibility in maintaining and bringing about compliance with this Article, the strike prohibition of Section 447.505, Florida Statutes, and the Constitution of the State of Florida, Article 1, Section 6.
- 5.2 The Association, its officers, agents, and other representatives agree that it is their continuing obligation and responsibility to promote compliance with this Article and the law, including their responsibility to abide by the provision of this Article and the law by remaining at work during any interruption which may be initiated by others; and including their responsibility, in the event of breach of this Article or the law by other employees, and upon the request of the City, to encourage and direct employees violating this Article or the law to return to work, and to disavow the strike publicly.
- 5.3 In addition to the penalties set forth in Section 447.507, Florida Statutes, any and all employees who violate any provision of the law prohibiting strikes or this Article may be disciplined, up to and including discharge, by the City; provided, however, that the decision to so discipline shall be governed by Florida law and not be subject to the grievance procedure of this Agreement.
- 5.4 The circuit courts of this State shall have jurisdiction to enforce the provisions of this Section by ex parte injunction and contempt proceedings, if necessary.
- 5.5 For the purpose of this Article, it is agreed that the Association shall be responsible and liable for any action committed by any of its officers, agents, and/or representatives, which act constitutes a violation of State law, City ordinance or policy, or the provisions herein. In addition to all other rights and remedies available to the City under State law, in the event of a breach of the provisions herein, the City shall have the right, without further notice, to suspend this Collective Bargaining Agreement and withdraw recognition from the Association.
- 5.6 The City agrees that there will be no lockouts for the duration of the Agreement.

**ARTICLE 6
DUES DEDUCTION**

- 6.1 Upon receipt of a written authorization from an employee covered by this Agreement, the City will deduct from the employee's pay each pay period the amount owed to the Association by each employee for dues. No authorization shall be allowed for payment of any collections of fines, penalties or special assessments. The City shall remit monies collected to the Treasurer of the Association monthly. The City remittance will be deemed correct if the Association does not give written notice to the City within thirty (30) calendar days of a remittance, of its belief with reasons stated therefore that the remittance is incorrect. It shall be the responsibility of the Association to notify the Administrative Services Director in writing of any change in the amount of dues to be deducted at least thirty (30) days in advance of said change. The City shall provide 26 biweekly deductions, to occur each pay day. The City shall include the name of the employee, the amount deducted and for what period the deduction is for on each remittance report.
- 6.2 The Association shall indemnify the City and hold the City harmless against any and all suits, claims, demands and liabilities which arise out of or by reason of any action taken or not taken by the City for complying with any of the provisions of this Article. If there is an amount deducted in excess of what is authorized by this Agreement, the employee affected shall seek recourse with the Association and not the City.
- 6.3 An employee may revoke their authorization for deduction of dues by providing a written notice, thirty (30) calendar days prior to cancelation, to the City and the Association. Upon receipt of such notification, the City shall terminate the dues on the pay date immediately following the expiration of the thirty (30) calendar day notice.
- 6.4 No deduction shall be made from the pay of an employee for any payroll period in which the employee's net* earnings for that payroll period are less than the amount of dues to be checked off. "Net earnings" shall mean net after required deduction of federal taxes, social security, pensions, and all insurance premiums such as health, dental, and life insurance.
- 6.5 In the event the Association notifies the City of a change in dues by certified mail from the Association President or designee, or delivers additional dues authorization to the Administrative Services Director, it is agreed and understood that the City shall have thirty (30) calendar days from the date of delivery in which to commence the dues deduction procedure.

ARTICLE 7
ASSOCIATION REPRESENTATIVES

- 7.1 The Association shall be represented by its President, Business Agent, and/or their designee, collectively hereafter referred to as "Representatives". The employee organization is composed of five (5) Executive Board Members: President, Vice President, Secretary, Treasurer, and Board Member. For any matters requiring the association herein to take action or receive notice, the President and/or Business Agent will serve as the authorized parties.
- 7.2 The Association shall notify the City Administrative Services Director in writing of the name of the President or his designee, at least ten (10) working days prior to the effective date of his taking office.
- 7.3 During an investigation proceeding the employee shall be entitled to one representative of their choosing.
- 7.4 The employee or Association shall not engage in Association business of any kind, including solicitation of membership during working hours. An Employee Representative of the Association, designated in writing by the President, shall be permitted reasonable access to all Department locations at reasonable times during a working day for investigating grievances provided the City is first notified of the investigation, and provided further that such absence would not unduly hamper the operation where the officer is employed.
- 7.5 Two (2) members of the Association negotiating committee (employees of the City) shall be permitted to attend all negotiating sessions without loss of pay, as well as the City Council meeting where final action is scheduled to be taken on approval (or rejection) of this Collective Bargaining Agreement and its successor.
- 7.6 Representatives may request to utilize annual leave to attend state or local seminar functions of the Association. No compensation for expenses or travel will be allowed.

**ARTICLE 8
BULLETIN BOARDS**

8.1 The Association shall be provided with partial use of existing City bulletin boards as space permits. In lieu of the space provided on the City's current bulletin boards, the Association, if so desires, may provide a bulletin board of standard size, not to exceed two (2) square feet for its own exclusive use in keeping with the décor of the location and with the approval of the Police Chief.

8.2 The Association agrees that it shall use its space on bulletin boards to post only the following:

- (a) Notice of Association Meetings
- (b) Association Elections of Officers (not including representation elections)
- (c) Reports of Association Committees
- (d) Ruling and Policies of the Association
- (e) Recreational & Social Affairs of the Association
- (f) Notices of Meetings by Public Bodies
- (g) Notices of Ratification Meetings
- (h) Contract Administration

In no event shall the Bulletin Boards be used to post political material or controversial material which adversely reflects upon the City of Port Orange, its independent agencies, its employees, elected officials, or any labor organization among its employees.

8.3 All Association materials placed on the Bulletin Boards shall be signed by the Association representative or his designee, and copies of the material shall be sent to the Police Chief prior to posting.

8.4 Failure of the Association to follow the procedures for the proper posting of materials and notices on the Bulletin Boards shall result in the materials or notices being removed from the Bulletin Boards by the City and a suspension of all Bulletin Board privileges.

ARTICLE 9 SENIORITY

- 9.1 For the purpose of this Agreement, employees shall have three (3) types of seniority: Department Seniority, Time in Grade Seniority and City Seniority. Department Seniority is defined as the length of continuous, uninterrupted service in the Port Orange Police Department. Time in Grade Seniority is defined as the length of continuous, uninterrupted service in a specific job classification or rank in the Port Orange Police Department. City Seniority is defined as the length of continuous, uninterrupted service with the City, measured from the employee's initial or adjusted date of employment.
- 9.2 Continuous service shall be considered as having been interrupted when the employee:
- (a) Resigns;
 - (b) Is discharged;
 - (c) Takes unauthorized leave of absence leave; or
 - (d) Is absent due to a lay-off for more than twelve (12) months.
- In the event of a lay-off or elimination of a classification or rank within the Department the following factors as listed below, shall be considered by the City in determining which employees to lay-off:
- (a) Time in Grade Seniority as defined in Section 9.1;
 - (b) Department Seniority as defined in Section 9.1;
 - (c) Ability to perform work in a satisfactory manner and prior conduct
- 9.3 For the purpose of filling any employment opening in the City, the City shall give preference to previously laid off employees over new hires provided that the laid off employee meets the minimum qualifications for the position; provided that there are no other eligible laid-off employees from the Department with an opening; and provided they are otherwise eligible to be rehired by the City.
- 9.4 Under no circumstances shall any employee be entitled to accrual of seniority or any other employee benefit during the period of his lay-off.
Should an employee be hired after having been on lay-off the employee will retain his seniority only if re-hired within six (6) months of being laid off.
- 9.5 For purposes of a recall, employees shall be returned to their former position in the inverse order of lay-off. No laid-off employee shall retain recall rights beyond one (1) year from date of lay-off.
- 9.6 In the event of a layoff resulting in a Lieutenant bumping a Sergeant, the Sergeant with the least amount of time in grade will be subject to a reduction in rank to Officer and will be paid at the Officer rate based on the total sworn years of service in accordance with the wage article of this Agreement. In the event of a reduction in rank from Sergeant to Officer, those personnel affected by such move shall be given first consideration and preference if/when these positions re-open for a period of one calendar year.

ARTICLE 10
PROBATIONARY EMPLOYEES

- 10.1 All new members in the Department shall be classified as probationary employees for the first three hundred and sixty-five (365) calendar days of continuous, uninterrupted employment during which time such employees may be laid-off, , or discharged without recourse to the grievance and arbitration procedures of this Agreement. Any disciplinary action other than termination shall be subject to the disciplinary action article of this agreement up through Step III only. Shorter periods of employment shall not be cumulative but during such period, such new members shall be subject to other terms and conditions of this Agreement, except as limited in this Agreement. Provisions as to seniority shall not apply to probationary employees; rather, seniority shall date back to the initial or adjusted date of employment after an employee successfully completes his probationary period. If more than one employee is hired on the same day or has the same adjusted date of employment, seniority shall be determined by employee number.
- 10.2 All probationary employees as defined in Section 10.1 of this Article shall be entitled to the leave and holiday provisions of this Agreement.
- 10.3 The employee's starting date of employment for purposes of calculating his probationary status, longevity pay, and seniority shall be adjusted if the employee takes leave without pay. For example, should an employee take five (5) days of leave without pay, the employee's starting date of employment will be adjusted by moving the employee's original date up five (5) days. Should the employee be in his probationary period at the time he takes leave without pay, the employee's probationary period shall be extended in proportion to the days he was on such leave.
- 10.4 The City shall have the unilateral management right to extend the probationary periods set forth in Section 10.1 for 180 days in lieu of discharging the employee. The decision to extend the probationary period shall not be subject to the grievance and/or arbitration procedures of this Agreement.

ARTICLE 11
PROMOTIONAL PROCEDURES

11.1 It is the policy of the Port Orange Police Department to promote personnel based on their knowledge, skills and abilities in an equal and impartial manner, consistent with the City's rules and regulations. A promotional examination will be given when a rank position becomes open and there is no current valid eligibility list. An eligibility list will be established within 60 days of the examination and will remain in effect for a period of two (2) years from the effective date of the new eligibility list. If there is no vacancy after the list has expired, a new list will not be established until a vacancy occurs necessitating a promotion. The date of the vacancy necessitating the process will determine the eligibility cutoff for all candidates. If the eligibility list has less than three persons, a new test can be given at the City's option.

11.2 The rank of Sergeant with the Port Orange Police Department will be achieved by the process herein.

Nothing in these rules precludes the Department Head from changing departmental staffing patterns or eliminating certain ranking positions. The Department Head reserves the right to make lateral transfers at his discretion.

11.3 APPLICATION AND QUALIFICATION

To be eligible to participate in the Sergeant testing process, all candidates shall be required to be a full time Port Orange Police Officer for a minimum of four (4) years with an associate's degree or five years without a degree as of the effective date of the written test date. Any officer with a break in service is required to have two consecutive years of service as of the effective date of the new process to be eligible.

Officers who have received major or minor disciplinary actions shall be ineligible for actual promotion during set periods of time following their receipt of disciplinary actions, as specified in the following paragraphs. However, disciplinary actions against Officers shall not render them ineligible to participate in promotion testing, nor shall they affect Officers' placements on eligibility lists.

Any Officer receiving major disciplinary action (ten (10) suspension days or more) shall be ineligible for promotion for a period of two (2) years from the date of the adjudication of the offense.

Any Officer receiving major disciplinary action (four (4) to nine (9) suspension days) shall be ineligible for promotion for a period of one (1) year from the date of the adjudication of the offense.

Any Officer receiving minor disciplinary action (one (1) to three (3) suspension days) shall be ineligible for promotion for a period of six (6) months from the date of the adjudication of the offense.

The exam announcement will be posted and sent electronically to all sworn employees. The announcement shall contain the purpose of the exam, the prerequisites to be eligible for the exam, and a deadline date to sign up for the exam. It shall be the individual employee's responsibility to notify the Office of Chief of Police of their intent to take the exam via the City's online applicant tracking system. If an eligible employee does not indicate his/her intent prior to the deadline date established in the announcement, it shall be assumed that he/she is not interested in taking said exam and will not be allowed to take said exam.

Any candidate who does not follow all requirements of this policy will be excluded from the promotional process.

11.4

TESTING PROCESS

The written examination for all candidates will be conducted as soon as possible after the effective date of the vacancy necessitating the new process taking into account a reasonable study preparation period and process timeline requirements.

Participants will be notified in writing as to the amount of credit they will receive for seniority, education and/or the military.

Any issue that cannot be resolved by the Department Head is subject to resolution through Article 14 Grievance and Arbitration Procedure of this Agreement.

The exam announcement shall be at least twenty-one (21) calendar days in advance of the test date. All participants must present themselves at the time and place indicated on the testing announcement. Candidates who absent themselves from the test without justification will forfeit their right to participate until the next promotional process is held. Officers who have been excused under justifiable circumstances must take the test no later than seven (7) calendar days from the day the initial test was given.

The process for all positions shall consist of three (3) parts with relative weights as follows:

Written Test	60%
Outside Oral or Assessment	20%
Seniority	10%
Education	6%
Military Service	4%

A. Written = 60%

Officers taking the written test will be given credit for whatever score they achieve. This raw score will be multiplied by .60 to determine the written test credit.

B. Outside Oral Board or Assessment Center = 20%

Officers passing the written exam with a score of 70% or better, will be allowed to move forward to the "outside oral board or assessment center", which will count towards 20% of the overall exam grade. The outside oral board or assessment shall be administered by individuals not employed by the City of Port Orange. The Chief

shall assign a member of his/her staff to the Oral Board for Quality Assurance purposes only.

C. Seniority = 10%

Seniority is worth a total of 10% of the final test score. Eligible candidates will receive one-half (.5) point for each consecutive uninterrupted year of full-time service as a Police Officer for the Port Orange Police Department to a maximum of 10 points. An officer with a break in service will be eligible for no more than four years prior service plus consecutive newly accumulated service time as of the date of the new process. Credit for seniority will begin with the candidate's swear-in date. The candidate will receive .042 points for every full month of the partial year between the candidate's last anniversary date and date of the vacancy necessitating the new process. To receive full credit for the last partial month (if applicable) a minimum fifteen (15) day time in service period within that partial month is required. In the event of a tie score at the conclusion of the entire testing process, the senior eligible candidate will be ranked ahead of the candidate with less seniority.

D. Education = 6%

Education is worth a total of 6% of the final test score. The maximum points attainable are 6. To qualify, a degree must be conferred from an accredited institution of higher education affiliated with the Council for Higher Education Accreditation. Points for education are not cumulative and are awarded as follows:

- 6 Masters/Law Degree or Higher
- 4 Bachelor's Degree
- 2 Associates (AA or AS Degree)
- 2 Equivalent AA or AS Degree

An "EQUIVALENT" AA or AS Degree is defined as in Fla. Statute section 943.22(1)(c) "graduation from an accredited community college or successful completion of 60 semester hours or 90 quarter hours AND eligibility to receive an associate degree."

E. Military Service Credit = 4%

a) **Active Duty:** Military service is worth a total of 4% towards the final test score. The maximum points attainable are four. Points for military service are awarded for active duty as follows:

- 4 Four or more years of service
- 3 Less than four years of service but more than three
- 2 Less than three years of service but more than two
- 1 Less than two years of service but more than one

b) **Reserve/National Guard:** Military Reservist and National Guard will receive 1 year of credit for every 365 days considered active duty. Points for this time will be awarded in accordance with (a) above.

11.5

SELECTION PROCESS

The written test grade, oral board exam, seniority and college/military credit will all be compiled to determine the final score. Candidates will be listed in the order of the final score achieved. The Department Head will choose one of the eligible candidates from those with the top five final scores. No eligible candidate can be passed over more than twice in a testing period without written justification from the Department Head. An eligible candidate, however, may ask to be passed over as many times as that candidate wishes during the process period without adverse effects or loss of position or reinstated position on the list. If any candidate wishes to have their name removed from the list said candidate will not be eligible for promotion for duration of the list period.

Employees who have been promoted to Sergeant within the bargaining unit shall serve a three hundred and sixty-five (365) calendar day probationary period in the new classification. If at any time during the probationary period the promoted employee is found, by the City in its sole discretion, not to be suited for the position to which he was promoted, the employee shall be returned to his former classification, at their prior rate of pay for the former classification, adjusted for any contractual wage increases, if applicable.

When there is an opening for a Sergeant's position in any specialized unit (Motors, CID, SIU, etc.), the City agrees to post such opening for existing Sergeants to apply. The interested applicants will submit their names to the Department Head for review. The Department Head shall not be limited to the list for the appointment to specialized units.

11.6

TEST RESULTS NOTIFICATION

Candidates will be notified of their compiled test results and final eligibility ranking.

The final eligibility list of all candidates will be posted. Said notice will contain the final test scores and seniority and education/military points credited (if applicable).

ARTICLE 12
TEMPORARY ASSIGNMENT TO ANOTHER CLASSIFICATION

- 12.1 The City may select any employee from a lower classification to temporarily fill a bargaining unit position.
- 12.2 An employee who is temporarily assigned to a position of higher rank for a period of more than fourteen consecutive days shall be entitled to the salary pertaining to that rank or position for the period of time the employee is so assigned.
- 12.3 If the employee selected for a temporary position is not selected to the permanent position, this employee shall be returned to his previous classification and pay rate.
- 12.4 An employee with the least amount of time in grade may be required to perform duties in a lower classification on a temporary, incidental, or emergency basis with no change in classification or decrease in base rate of pay. Such temporary assignment shall not exceed six (6) months, unless the temporary assignment is due to an identified situation. This situation must have a specific time frame identified for resolution, which may generally not exceed a period of eighteen 18 months except in emergency circumstances. The City Manager must approve any temporary assignments beyond six (6) months in writing.

ARTICLE 13
DISCIPLINARY ACTION

13.1 Any bargaining unit employee who has achieved regular status with the City may only be disciplined or terminated for just cause. Any dispute over whether a regular status bargaining unit employee has been disciplined or terminated for just cause shall be grieved and adjudicated pursuant to the process set forth in this Article, and not the grievance procedure set forth in Article 14 of this Agreement. Furthermore, only disciplinary actions that rise to the level of suspension, demotion or terminations are subject to the procedures set forth in this Article. Disciplinary actions of written reprimands and below are not subject to grievance.

13.2 **STEP ONE**

Any bargaining unit employee that has achieved regular status with the City and who has been issued a disciplinary action, may file within seven (7) calendar days a written grievance with the appropriate Division Captain. Failure to timely file the grievance shall render the disciplinary action final and binding. The Division Captain may meet with the grievant within ten (10) calendar days of receipt of the grievance, unless such meeting has been mutually waived or such meeting has been mutually agreed to be held at a time outside of the ten (10) day period if the Division Chief requires any additional information. The Division Captain shall answer the grievance in writing within ten (10) calendar days of the meeting, or within receipt of the grievance if no meeting is held.

STEP TWO

If the grievant or the Association representative is not satisfied with the written answer of the Division Captain, or if no timely written answer is rendered by the Division Captain, the grievant or the Association representative shall submit a written appeal to the Chief of Police within ten (10) calendar days of the answer or failure of a timely answer to be rendered by the Division Captain. The Chief of Police, or their designee may meet with the grievant within ten (10) calendar days of receipt of the appeal, unless such meeting has been mutually waived or such meeting has been mutually agreed to be held at a time outside of the ten (10) day period if the Police Chief or their designee requires any additional information. The Chief of Police, or their designee shall answer the grievance in writing within ten (10) calendar days of the meeting, or within receipt of the appeal if no meeting is held.

STEP THREE

If the grievant or the Association representative is not satisfied with the written answer of the Police Chief, or if no timely written answer is rendered by the Police Chief, the grievant or the Association representative shall submit a written appeal to the City Manager within ten (10) calendar days of the answer or failure of a timely answer to be rendered by the Police Chief. The City Manager shall meet with the grievant within ten (10) calendar days of receipt of the appeal, unless such meeting has been mutually waived or such meeting has been mutually agreed to be held at a time outside of the ten (10) day period if the City Manager or their designee requires any additional information. The City Manager, or their designee shall answer the grievance in writing within ten (10) calendar days of the meeting, or within receipt of the appeal if no meeting is held.

STEP FOUR

If the Association is not satisfied with the written answer of the City Manager, or if no timely written answer is rendered by the City Manager, the Association shall submit a written request, signed also by the officer, appealing the grievance to arbitration within ten (10) calendar days of the answer or failure of a timely answer to be rendered by the City Manager. Timely delivery to the City Manager of a written notice to initiate arbitration shall satisfy the requirements of this section.

13.3 Arbitrator Selection and Proceedings

An impartial arbitrator will be selected utilizing the process defined in Article 14, Section 14.4.

- (a) Arbitration hearings shall be held at a City facility during times mutually agreed to by the parties.
- (b) The Arbitrator may fashion an appropriate remedy to resolve the grievance. The Arbitrator's hearings shall be conducted pursuant to the evidentiary standards set forth in Florida's Administrative Procedures Act, Chapter 120, Florida Statutes. Provided the decision is in accordance with their jurisdiction and authority under this Agreement, the decision shall be final and binding on the City, the Association, and the grievant; except that the decision may be reviewable to Florida's Fifth District Court of Appeal pursuant to the standards set forth in Chapter 120, Florida Statutes.
- (c) The Arbitrator shall have no authority to determine any other issue and shall refrain issuing any statement of opinion or conclusion not essential to the determination of the issue submitted.
- (d) The Arbitrator shall limit their decision strictly to the application and interpretation of the specific provisions of this Agreement and police department policy that is not inconsistent with the terms of this agreement.
- (e) In rendering its decision, the Arbitrator may take into consideration any proven violation of the Law Enforcement Officers Bill of Rights, Section 112.532, Florida Statutes, provided, however, that the alleged violation of the Law Enforcement Officer's Bill of Rights must have been specifically raised by the Association/Grievant in writing at or prior to Step two (2) of the grievance procedure set forth in this Article. No new arguments not raised by the Association/Grievant in writing at or prior to Step three (3) of the grievance procedure set forth in this Article shall be considered by the Arbitrator.
- (f) In rendering its decision, the Arbitrator may take into consideration disciplinary actions taken by the Police Department for conduct substantially similar to the conduct for which the Grievant was disciplined; however, such consideration by the Arbitrator shall be confined to disciplinary actions taken within the last five (5) years. In rendering its decision, the Arbitrator may take into consideration previous disciplinary actions in the grievant's history, however such consideration by the Arbitrator shall be confined to disciplinary actions taken within the last five (5) years.
- (g) The Arbitrator's award may include back pay to the grievant. No award for back pay shall exceed the amount of pay the employee would otherwise have earned at his or her regular rate of pay, including overtime, and such back pay shall not

be retroactive to a date earlier than the date of the occurrence of the event giving rise to the grievance under consideration and in no event more than the time limits permitted for initiation of the grievance.

- (h) The award shall not exceed the actual loss to the grievant, will not include compensatory and/or punitive damages, and will be reduced by the amount of wages earned from other sources and/or unemployment compensation received by the officer during the period of time affected by the award.
- (i) Each party shall be responsible for compensating and paying the expenses of its own representatives, attorneys, and witnesses. The impartial Arbitrator's fees and related expenses and expenses in retaining a hearing room, if any, shall be equally divided between the parties. Any party desiring a transcript of the hearing shall bear the cost of such transcript unless both parties mutually agree to share said cost;

13.4 A member of the Association shall have the option of utilizing the Civil Service appeal procedure or the grievance and arbitration procedure set forth in this Article, but such employee cannot use both the Civil Service appeal procedure and the procedure of this article. At the time that an employee initiates a written grievance, he/she shall state in the body of the grievance whether the grievance is filed under the Labor Agreement or the City's Civil Service Rules. If the employee fails to make this statement, the employee shall be deemed to have filed the grievance under the Labor Agreement. At no time following the filing of a written grievance may the employee change his/her selection of which procedure and standards the grievance shall be processed under.

13.5 For all time frames set forth in this Article, if the tenth calendar falls on a Saturday, Sunday, or City recognized holiday under this Agreement, the time frame shall be extended until 5:00 pm on the next day that is not a Saturday, Sunday, or City recognized holiday under this Agreement. Both parties may mutually agree in writing to an extension of timelines under this Article.

ARTICLE 14
GRIEVANCES AND ARBITRATION PROCEDURE

14.1 In a mutual effort to provide a harmonious working relationship between the parties to this Agreement, it is agreed and understood that there shall be a procedure for the resolution of grievances between the parties and that such procedure shall cover grievances involving the application, violation, or interpretation of this Agreement. Disciplinary actions taken against bargaining unit employees shall not be subject to this grievance procedure.

14.2 Every effort will be made by the parties to settle any grievance as expeditiously as possible. Any grievance not answered by Management within the prescribed time limits shall automatically advance to the next higher step. Should the grieving party fail to observe the time limits as set forth in the steps of this Article, the grievance shall be considered conclusively abandoned.

14.3 All grievances shall begin at Step 1, except the following grievances shall begin at Step 2:

- (1) A grievance that is general in nature, in that it applies to a number of employees, rather than a single employee, or
- (2) A grievance that is directly between the Association and the City.

The above referenced grievances shall be reduced to writing, as outlined in 14.4, Step 1, and filed within ten (10) workdays of the occurrence of the event(s).

14.4 Grievances shall be presented in the following manner:

Step 1. The employee, employee representative, or the Association shall first present his/her grievance in writing to the employee's Captain within ten (10) work days of the occurrence of the event(s) which gave rise to the grievance or from the date on which the employee becomes knowledgeable of the cause of action. If the event(s) which gave rise to the grievance occurred at a time when the employee was on annual leave, sick leave, or other compensated leave, the ten (10) workday period shall commence running immediately upon the employee's return from such compensated leave. The Captain shall answer the grievance in writing within (10) workdays of the presentation of the grievance. The answer shall be given to the employee, with a copy to the Association. All grievances must be reduced to writing and must contain the following information:

- (a) The specific article and section of the Agreement alleged to have been violated by the City;
- (b) A full statement of the grievance, giving a complete description of the facts, dates, and times of the events involved in the alleged violation, and the specific remedy desired by the grievant;
- (c) Signature of grievant and the date signed is required at Step 1. In case of a group of employees filing a single grievance, the grievants will be identified, and the association representative shall sign and date on behalf of the unit. In case of a class action grievance involving the entire bargaining union, the grievants will not need to be identified, and the Association's representative shall sign and date on behalf of the unit.

- (d) Designation of the specific association representative (must be an elected officer, representative, or steward) if the grievant requests association representation.

Unless the grievance is presented in the manner set forth in this Section, it shall be deemed not to exist.

Step 2. Any grievance which cannot be satisfactorily settled with the Division Captain shall next be presented to the Department Head or their designee. The grievance as specified in writing in Step 1 shall be submitted within ten (10) workdays after the receipt of the Step 1 answer. The Department Head or Designee may meet with the employee and his/her representative within ten (10) workdays after receipt of the grievance (or such longer period of time as is mutually agreed upon). The Department Head or Designee shall render his decision in writing and send it to the employee, with a copy to the Association, within ten (10) workdays after the grievance meeting or receipt of grievance, if no meeting is held.

Step 3. Any grievance which is not resolved at Step 2, shall next be presented to the City Manager within ten (10) workdays after the receipt of the Step 2 answer. The City Manager shall meet with the employee and his/her representative within ten (10) workdays after receipt of the grievance (or such longer period of time as mutually agreed upon). The City Manager shall render their decision in writing and send it to the employee, with a copy to the Association, within ten (10) workdays after the grievance meeting.

Step 4 - Arbitration. In the event a grievance processed through the grievance procedure has not been resolved in Step 3 the Association shall request, in writing, that the grievance be submitted to arbitration within ten (10) workdays after the City Manager renders a written decision on the grievance.

The Arbitrator may be any impartial person mutually agreed upon by and between the parties. If an impartial Arbitrator cannot be agreed upon within ten (10) work days after the date the grievance has been submitted for Arbitration, the Association shall request the Federal Mediation and Conciliation Services to furnish a panel of seven (7) Arbitrators within twenty (20) work days after the grievance is submitted to arbitration. Within ten (10) workdays of receipt of the panel, each party shall have the option to alternatively strike three (3) names from the list in alternating fashion, thus leaving the seventh (7th) which will give a neutral or impartial Arbitrator.

The City and the party requesting arbitration shall attempt to mutually agree in writing as to the statement of the grievance to be arbitrated prior to the arbitration hearing, and thereafter, the Arbitrator shall confine his decision to the particular grievance thus specified. In the event the parties fail to agree on the statement of the grievance to be submitted to the Arbitrator, the arbitrator will confine his consideration and determination to the written statement of the grievance presented in Step 2 of the grievance procedure. The Arbitrator shall fashion an appropriate remedy for violations of the provisions contained in this Agreement.

The Arbitrator shall have no authority to change, amend, add to, subtract from, or otherwise alter or supplement this Agreement or any part thereof or amendment hereto. The Arbitrator shall have no authority to consider or rule upon any matter which is stated

in this Agreement not to be subject to arbitration or which is not a grievance as defined in this Agreement; nor shall this Agreement be construed by the Arbitrator to supersede applicable laws in existence at the time of the signing of this Agreement, except to the extent as herein provided. The arbitration hearing shall be conducted in accordance with the rules of procedure promulgated by the American Arbitration Association.

Each party shall bear the expense of its own witnesses and of its own representatives for purposes of the arbitration hearing. The impartial Arbitrator's fees and related expenses and expenses in retaining a hearing room, if any, shall be equally divided between the parties. Any party desiring a transcript of the hearing shall bear the cost of such transcript unless both parties mutually agree to share said cost.

The Arbitrator's award shall be final and binding on the parties, except to the extent provided by the Florida Arbitration Act.

14.5 Consistent with the provisions of the Florida Public Employees Relation Act, Chapter 447 Florida Statutes unless amended, it is mutually acknowledged and agreed that this Agreement shall be administered within the amounts agreed to by the City Council for funding of the Agreement. Accordingly, and notwithstanding any other provision of the Agreement, the Arbitrator shall have no authority, power or jurisdiction to construe any provision of the law, statute, ordinance, resolution, rule or regulation or provision of this Agreement to result in, obligate or cause the City to have to bear any expense, debt, cost or liability which would result, directly or indirectly, in the City exceeding the amounts initially agreed to by the City council for the funding of this Agreement as agreed upon by the parties. Any such award which contravenes or is not in compliance with the provisions of this paragraph shall be null and void.

14.6 It is the mutual desire of the City and the Union that grievances shall be adjusted as quickly as possible and to that end the time limits set forth in this Article are to be strictly enforced. The time limits may only be extended by mutual written agreement. Failure of the grievant to observe the time limits for any steps in this Article without a mutually agreed written extension of time shall terminate the grievance, and any Arbitrator called upon to resolve a grievance under this Agreement shall strictly enforce the time limits. The term "workdays" as used in this article includes Monday through Friday of each work week regardless of the grievant's work schedule. Saturdays, Sundays, and holidays as set forth in this Agreement shall not be considered "workdays" even if work is assigned on these days. For the purpose of calculating time limits, the day on which a grievance, or a reply by management to a grievance is received, shall not be counted.

ARTICLE 15
HOURS OF WORK AND OVERTIME

- 15.1 The purpose of this Article is to define hours of work but nothing in this Agreement shall be construed as a guarantee or limitation of the number of hours to be worked per day, days per week, or for any other period of time, except as may be specifically provided herein.
- 15.2
- a. The basic work period for bargaining unit employees in the Administration, Detective, Traffic and Patrol Division will consist of 84 hours during a fourteen (14) day period. Hours worked in an amount less than or equal to eighty-four (84) in a fourteen (14) day work period in the Administration, Detective, Traffic and Patrol Division which are assigned by the City, shall be compensated at the regular hours rate of pay. Hours worked in excess of eighty-four (84) in a fourteen (14) day work period, which are assigned by the City, shall be compensated at the rate of one and one-half (1 ½) the employee's regular rate of pay. The City shall have the right to reduce the numbers of hours of work should it become financially necessary, or pursuant to disciplinary action or light duty assignment.
 - b. Officers in the Patrol Division will work twelve (12) hour shifts. Management has the right to schedule early and late cars at times different from the above. Officers of the Patrol Division assigned to inside desk duty will work an eighty-four (84) hour bi-weekly work week with their schedule being dictated by the Department Head or his designee.
 - c. The hours of work for employees in the Traffic Unit will be flexible taking into consideration peak traffic periods, special events, weather, hours of light and darkness.
 - d. Hours of work in the Detectives division will be flexible and based upon workload and assignments.
 - e. Employees scheduled to work during the time change in November shall receive one (1) hour of overtime pay. Employees scheduled to work during the March time change shall make up the one (1) hour of time during the pay period in which that time change occurs.
- 15.3 Should an employee voluntarily switch shifts with another employee for the employee's convenience, the shift exchange will only be permitted when the shifts are exchanged between two employees scheduled on the same shift rotations in that pay period as to preclude any overtime compensation as a result of the shift exchange. All such shift exchanges must be approved by the immediate shift supervisor prior to the shift exchange and prior to the pay period that the shift exchange has been requested.
- 15.4 Nothing in this Article shall require payment for overtime hours not worked. In calculating the amount of overtime compensation due an employee only the hours actually worked shall be counted. Such extra compensation shall be creditable toward overtime payable under the Fair Labor Standards Act. Premium payments shall not be duplicated for the

same hours worked under any of the terms of this Agreement. During pay periods in which a holiday occurs, employees who are not shift employees and who are not required to work on the holiday (Detectives and Administration) shall be paid for hours worked in excess of their normally scheduled hours, at a rate of one and one half (1 ½) their normal rate of pay.

- 15.5 An employee who is outside their normal scheduled work shift and who is “called-in” for overtime work shall receive a minimum payment of three (3) hours at one and one-half (1½) the employee’s regular rate of pay or the actual hours worked at one and one half (1½), whichever is greater. Provided that this Section shall not include scheduled overtime and shall not apply if hours worked as a result of a call in extend into the start of the employee’s regular work period.
- 15.6 Upon proof of attending court pursuant to subpoena, state attorney investigation (SAI), deposition or other court order involving a job-related case, not as a plaintiff in litigation against the City, an off-duty employee will receive pay equal to one and one-half (1½) the employee’s regular straight time hourly rate of pay for the hours he attends court, SAI, or deposition. Provided, that such employee shall receive a minimum of three (3) hours pay at the rate of one and one-half (1½) times the employee’s regular straight time hourly rate for such attendance. The City reserves the right to institute any procedure or system it deems appropriate to measure, record and/or verify attendance and duration of off-duty court appearance. The employee will sign over all subpoena and witness fees, excluding travel fees, unless City transportation is furnished, in which case such travel fee will be signed over.
- 15.7 No employee shall authorize scheduled overtime for himself but shall be entitled to work overtime as assigned or authorized by his supervisor. It is understood that the City has the right to schedule overtime work as needed, and in a manner most advantageous to the City.
- 15.8 Overtime hours shall be distributed as nearly equal as possible among employees as long as such sharing will not delay or increase the cost of the City’s operations. To ensure fairness in the distribution of mandated overtime a call-out wheel maintained by the shift Lieutenant.
- There are some specialized overtime details, such as the Christmas parade and the Fourth of July celebration etc., which cannot be run smoothly if put on a rotation detail list. Such special events require a police motorcycle for traffic control. Such events will be exempted from the rotation detail list.
- 15.9 All employees shall be required to report to work on time, shall not leave the job early, shall be prompt in reporting to their assigned duties, and shall faithfully perform their duties.
- 15.10 Except for Detectives, employees covered by this Agreement shall be given forty-eight (48) hours’ notice of any change in their regular hours of work, unless an emergency necessitates a quicker change. Whenever possible, Detectives will be given a forty-eight (48) hour notice of any change in their shift. If an employee is not notified prior to forty-

eight (48) hours of a shift change, he shall receive one and one-half (1½) times the straight time hourly rate for the first eight (8) hours of the new shift.

- 15.11 Except for Detectives, Detective Sergeants, THI, and Meth Team members there will be no telephone standby ("on call"). Employees issued pagers and/or cell phones shall be required to have those devices with them whenever possible. Detectives, Detective Sergeants, or Meth Team members will receive three (3) hours overtime pay per week when assigned as the "on call" Detective, Detective Sergeants, THI, or Meth Team member. These employees will not be placed informally on a restrictive telephone standby.

When an employee is formally designated to an "on call" status for at least a half a week, that employee will receive three (3) hours overtime pay for that week. "On Call" is defined as: Formal notification by a supervisor that while off duty, the employee is designated as "on call" for a specific period and is expected to be able to respond ready and fit for duty as expeditiously as possible.

- 15.12 There will be no duplication of premium payments and no claims that provide for "overtime on overtime".

- 15.13 The maximum number of overtime hours that can be used to calculate average final compensation for pension purposes shall be no more than three hundred (300) hours per calendar year.

- 15.14 **Voluntary Special Event Work:** Voluntary, special event work performed for a second-party employer, other than work performed for City-sponsored events, shall be paid by the second-party employer to the City and the City shall, in turn, pay these second-party wages to the Officer or Sergeant as a separate line-item on the employee's pay stub, after deducting a fifteen percent (15%) administrative per-hour fee thereof for use of City property while performing the special event work. The hourly rate charged to the second party will be determined as per City ordinance. These second-party wages will not be considered as wages paid by the City and will therefore be excluded for purposes of calculating overtime and shall not be factored into the average final compensation for pension purposes. No pension contributions or insurance payments will be withheld from payments made for work performed for a second party employer.

Officers engaged in extra-duty employment (Special Detail) are authorized to wear and use department issued uniforms and equipment. Employees shall observe their normal standards of conduct during such special event work.

Voluntary Special Event Work will be administered in accordance with Police Department Directive 22.5 related to Off Duty and Extra-Duty Employment.

ARTICLE 16 HOLIDAYS

16.1 It is recognized that the City will close its offices for twelve (12) official holidays. The City will recognize the following as paid holidays for employees:

1. New Year's Day
2. Martin Luther King Jr. Day
3. Good Friday
4. Memorial Day
5. Juneteenth
6. Independence Day
7. Labor Day
8. Veteran's Day
9. Thanksgiving Day
10. Friday after Thanksgiving Day
11. Christmas Eve
12. Christmas Day

In addition to the paid holidays above, employees shall be granted additional leave as follows:

Annual Leave in the amount equal to the number of hours in the employee's regular work shift shall be added to the employee's annual leave accruals for each of the following days: Three (3) Floating Holidays and Employee Birthday. These hours will be credited on or around the first full pay period in January. These hours are to be scheduled and utilized in the same fashion as annual leave.

In order to qualify for the four (4) annual leave accruals for the three (3) Floating Holidays and Birthday Holiday, an employee must have been employed for the entire 12 consecutive previous months.

16.2 The actual day of the holiday will be the observed day for all members of the bargaining unit.

16.3 An employee who is eligible and is not scheduled to work on one of the eight official holidays listed under 16.1 shall receive additional compensation, paid at his/her regular rate of pay, for the number of hours in his/her regular work shift.

16.4 An employee who is required to start his/her work shift on one of the official holidays listed under 16.1 shall receive payment at one and one half times his/her regular rate of pay for all hours that he/she works on that shift in addition to holiday pay, whether or not the employee's work shift extends into the following day.

ARTICLE 17
ANNUAL LEAVE

17.1 Annual leave is provided for the purpose of allowing employees time off from their work for vacation or for necessary time to attend to personal business. No employee shall be permitted to use annual leave for any period spent on unauthorized leave or participating in an unlawful work stoppage.

Annual leave shall be accrued from the most recent day of employment under the conditions hereinafter stated but no annual leave shall be granted until an employee has completed three (3) months of continuous service. An employee who is paid for less than twenty (20) hours of work in a week shall accrue no annual leave credit for such week of service. Provided, however, that the limit of twenty (20) hours shall not apply to an employee on annual leave, sick leave, or other authorized leave with pay who would otherwise have worked at least twenty (20) hours.

17.2 The following sections 17.2, A – D apply to current employees **hired before January 24, 2011**:

A. Accrual for Current Full-Time Employees - 40 Hours - Full time employees working a forty (40) hour week shall accrue annual leave at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:

<u>Length of Continuous Service</u>	<u>Hours Accrued Each Year</u>
Less than 5 years	96
5 through 7 years	112
8 through 10 years	128
11 through 15 years	144
16 through 19 years	160
More than 20 years	176

B. Accrual for Current Full-Time Employees Working Extended Shifts - 84 Hours Bi-weekly - Full time employees working extended shifts (Eighty-four [84] hours biweekly) shall accrue annual leave at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:

<u>Length of Continuous Service</u>	<u>Hours Accrued Each Year</u>
Less than 5 years	100
5 through 7 years	118
8 through 10 years	134
11 through 15 years	151
16 through 19 years	168
More than 20 years	185

- C. Maximum Accrual Carryover - Annual leave normally is to be taken in the anniversary year in which it is accrued. Unused annual leave may be accumulated to a maximum of three hundred twenty (320) hours. An employee will be paid for or have deferred into the employee's 457 Plan account, all accumulated annual leave balances in excess of 320 hours as of September 1st each fiscal year. This payment will be made by the last pay period in September of each year at the employee's regular rate of pay in effect on September 15th.
- D. Termination, Resignation, Retirement or Death - An employee who is terminated for cause or who resigns without a two (2) week notice shall not be eligible for compensation for any accumulated unused annual leave. An employee who resigns with a two (2) week notice or retires under the provisions of the City's pension plan (or in the event of death, his/her heirs) shall be compensated for all accumulated unused annual leave up to the maximum accrual as provided for in Section 17.2 (C). Pay for such accumulated leave shall be based on the regular hourly rate of pay of the employee at the time of termination. The employee may also have the option of deferring his or her accumulated unused leave into a 457 Plan account, up to the maximum provided by law. In case of death, compensation shall be paid to the surviving spouse or the employee's estate.

17.3 The following sections 17.3 A-E apply to employees **hired after January 24, 2011**:

- A. Accrual for full time employees working a forty (40) hour week hired on or after January 24, 2011 shall accrue no more than ninety-six (96) hours of Annual Leave each year.
- B. Accrual for full time employees working extended shifts – 84 hours bi-weekly hired on or after January 24, 2011 shall accrue no more than one hundred (100) hours of Annual Leave each year.
- C. Unused annual leave may be accumulated up to a maximum accrual of three hundred twenty (320) hours. Leave in excess of three hundred twenty (320) hours effective the last full pay period in September of each successive fiscal year shall be forfeited.
- D. Probationary Period - Should a new employee, as defined in Article 10.1, fail to successfully complete his probationary period or should such employee be discharged the employee shall forfeit all accrued annual leave.
- E. Termination, Resignation, Retirement or Death An employee who is terminated for cause or who resigns without a two (2) week notice shall not be eligible for compensation for any accumulated unused annual leave. An employee who resigns with a two (2) week notice or retires under the provisions of the City's pension plan (or in the event of death, his/her heirs) shall be compensated for all accumulated unused annual leave up to 220 hours. Pay for such accumulated leave shall be based on the regular hourly rate of pay of the employee at the time of termination. The employee may also have the option of deferring his or her

accumulated unused leave into a 457 Plan account, up to the maximum provided by law. In case of death, compensation shall be paid to the surviving spouse or the employee's estate.

- 17.4 Employees will be permitted to use annual leave in units of not less than one-half (1/2) hour subject to approval of their supervisor. In case of conflict, annual leave shall be granted based on seniority.

ARTICLE 18

SICK LEAVE

- 18.1 Sick leave benefits shall not be considered as a right to be used at an employee's discretion. Sick leave is an allowance granted by the City to provide employees with reasonable time off during periods of personal or family illness or injury and to attend medical appointments without loss of pay. This includes time off to recover from off-duty illness or injury that prevents an employee from being able to adequately perform their required job duties and functions. All employees desiring to utilize sick leave are required to notify their supervisor as early as possible, and at least one (1) hour in advance of their scheduled reporting time each day of their intended absence due to illness. Extenuating circumstances to the above shall be given due consideration. Such notice shall be given each day of the absence and the employee shall notify the supervisor as soon as possible of the employee's intention to return to work. Abuse of sick leave privileges shall be considered cause for disciplinary action or dismissal. The City may require a physician's certificate to authenticate an absence or to determine qualifications to resume work.
- 18.2 General Terms of Accrual - Sick leave shall be accrued from the most recent day of continuous employment under the conditions hereinafter stated. An employee who is paid for less than twenty (20) hours of work in a week shall accrue no sick leave credit for such week of service. Provided, however, that the limit of twenty (20) hours shall not apply to an employee on annual leave, sick leave, or other authorized leave with pay who would otherwise have worked at least twenty (20) hours. No employee shall be permitted to use sick leave for any period spent on unauthorized leave or participating in an unlawful work stoppage.
- Accrual for Full-Time Employees - Each full-time employee shall accrue sick leave at an equally prorated amount per pay period to yield 100.8 hours of sick leave per year. In the event an employee has worked less than a full year, the total number of accrued hours of sick leave will be reduced proportionally.
- 18.3 Accumulation of Sick Leave and Sick Leave Sell Back/Deferral
Subject to the provisions of this Agreement employees may accumulate sick leave from year to year for use in future years as needed. The maximum amount of sick leave that employees will be able to carry forward into the following year will be seven hundred fifty (750) hours. All accrued sick leave balances as of September 1st of each fiscal year in excess of the above cap shall be paid or deferred into the employee's 457 Plan account or other City adopted 457 Plan (up to the maximum amount provided by law) at the rate in effect on September 1st, by last paycheck in September.
- 18.4 Sick Leave Sell Back/Deferral
Subject to the provisions of this Agreement, an employee may exchange sick leave for pay, or at their option, deferral into a 457 Plan account up to the maximum provided by law, as provided herein. The maximum unused sick leave that may be exchanged in any one year is one hundred ninety-two (192) hours, provided each member maintains a balance of at least forty (40) hours of accumulated sick leave after the sick leave requested for exchange is deducted from their accumulation.

- a. For employees who have a minimum of ten (10) years of seniority with the City as of September 30 of the year in which the employees seek to exchange sick leave for pay or deferral, the following procedures shall apply to sick leave exchanges for pay:

All members must maintain a minimum balance of forty (40) hours of sick leave. Employees may exchange a maximum of one hundred ninety-two (192) hours of unused sick leave for pay or deferral into the employee's 457 Plan account each year. Each employee shall receive one hour of pay or deferral at his/her regular hourly rate as of September 1 of the year that the exchange is being made for each hour of unused sick leave being cashed in or deferred.

- b. For employees who have less than ten (10) years of seniority with the City as of September 30 of the year in which the employees seek to exchange sick leave for pay, the following procedures shall apply to sick leave exchange:

All members must maintain a minimum balance of forty (40) hours of sick leave. Employees may exchange a maximum of one hundred ninety-two hours of unused sick leave for pay or deferral into the employee's 457 Plan account each year. Employees who have accumulated more than forty (40) hours of sick leave but less than one hundred (100) hours which they wish to exchange may exchange that leave for pay or deferral at the rate of three (3) hours of sick leave for one (1) hour of pay or deferral.

Employees who accumulate more than one hundred (100) hours of sick leave which they wish to exchange may exchange that leave for pay or deferral at a rate of two (2) hours of sick leave for one (1) hour of pay or deferral. At all times a minimum of forty (40) hours of sick leave must be maintained in order for the employee to exchange sick leave for pay or deferral.

These payments will be processed at the employee's regular rate of pay effective on September 1. The employee must request such exchange through the Time and Absence system no later than September 1 of such fiscal year, subject to the restrictions indicated in Section 18.4. Failure to submit this form will result in an employee's accrued sick leave being "banked" for future use or pay-off as provided herein. Any sick leave taken after the filing of such request shall first be deducted from accrued sick leave "in the bank" and, secondly, from those days for which payment is sought but not yet paid.

- 18.5 All payments or deferrals for unused sick leave made under this Article shall be paid by check issued by the City on or about last paycheck received in September.
- 18.6 Employees shall not be allowed to utilize sick leave in lieu of annual leave.
- 18.7 Retirement, Resignation or Death - An employee who resigns with two (2) weeks prior notice and has a minimum of ten (10) years of service with the City, or retires under the provisions of the City's pension plan (or in the event of death, his or her heirs) shall be entitled to a lump sum payment for all unused sick leave accrued at a rate of one hour of pay for one hour of leave. The employee may also have the option of deferring his or her

payment of unused leave into a 457 Plan account, up to the maximum amount provided by law.

- 18.8 An employee who is fired, dismissed or who quits and/or separates from the City for any reason other than detailed in section 18.7 shall forfeit accrued sick leave.

ARTICLE 19
OTHER LEAVE

- 19.1 **FMLA:** The City of Port Orange will grant leave to eligible employees, in accordance with Policy, as amended from time to time, is set forth in the City's Administrative Policies Manual as Policy 1-22.
- 19.2 **Military Leave:** Bargaining unit members will be allowed military leave in accordance with Policy, as amended from time to time, is set forth in the City's Civil Service Rules and Regulations, Chapter 3, Attendance and Leave, 3.07, Military Leave.
- 19.3 **Bereavement Leave:** An employee may be granted time off with pay to arrange and/or attend funeral services in the event of death(s) in the family. Such time off shall ordinarily not exceed four (4) calendar days i.e., 48 hours for extended shift employees per event, for a maximum 96 hours annually for extended shift employees and shall not be charged as annual leave or sick leave.
- Requests for time off shall be submitted in writing to the employee's supervisor when possible. Management may require the employee to verify the employee's relationship to the deceased and to provide proof of death. In the event of the need for additional time for a death, an employee may use accrued sick or vacation leave.
- 19.4 **Compensatory Time:** In accordance with the Fair Labor Standards Act (FLSA), compensatory time may be granted in lieu of overtime to non-exempt Employees. Compensatory time shall be credited to the employee at one- and one-half hours (1 ½) hours of compensatory time for each overtime hour worked. No employee may accrue more than 50 hours of compensatory time. A non-exempt employee who has accrued compensatory time shall be encouraged to use accrued compensatory time before using any vacation or personal leave. An employee may generally request to utilize this leave under the same terms identified for scheduled leave in Article 17, Annual Leave. However, this time will be approved unless it will unduly disrupt operations as determined by their supervisor. The City will pay an employee all accrued compensatory time the second pay period of each September in order to reduce or eliminate accrued compensatory time at the employee's current rate of pay. When a non-exempt employee separates employment from the City for any reason, all unused compensatory time shall be paid to such employee at the employee's final regular rate of pay. Compensatory time will not be counted as hours worked for calculating overtime.
- 19.5 Longevity increases, if any, merit increases, if any, and any other increases, if any, for which an employee may become eligible based in whole or in part on length of service with the City shall not be credited during any period of leave of absence without pay. An employee shall return from leave of absence to the same step of his salary grade as at the time of commencement of leave of absence, except as required by law.
- 19.6 If permitted by the Retirement Plan, an employee may maintain their retirement credit during the period of an unpaid leave of absence under this Article by paying both his/her and the City's share of the Retirement Plan contributions.

- 19.7 Holidays, paid leave, and any other benefits based on time spent in the employ of the City shall not accrue (or be credited) during a leave of absence without pay. Employees shall be responsible for insurance premiums for single and dependent coverage during an unpaid leave of absence, except as required by law.
- 19.8 Any employee covered hereunder may be given educational leave for the purpose of taking courses or attending conferences and/or seminars directly related to the employee's work as determined in writing by the Department Head and the City Manager. Requests for such educational leave must be approved in writing in advance by the City Manager. The decision to grant (or not to grant) such educational leave and the determination as to whether such leave will be compensated shall be the sole and exclusive function of the City Manager and shall not be subject to the grievance and arbitration procedures of this Agreement.
- 19.8 An employee granted education leave with full pay shall be entitled to receive all City benefits in the manner as if he were on active duty during the period of the leave. Entitlement to benefits for employees on partial compensated or uncompensated educational leave shall be determined by the City Manager. Such determination shall not be subject to the grievance and arbitration procedures of this Agreement.

ARTICLE 20
JURY DUTY AND APPEARANCE AS A WITNESS

- 20.1 Any employee in the Bargaining Unit who is summoned to perform jury service during their normal working hours in any court (City, Federal, or County) shall be granted leave with pay for the time he or she is absent from work as a result of fulfilling this jury duty obligation. The employee summoned as a juror shall attach a copy of the summons to the Leave of Absence Request. An employee, who is released from jury duty prior to four (4) hours from his or her normal end of the workday, shall be required to report to their work site immediately after their release.
- 20.2 Upon proof of attending court, a deposition, or an administrative hearing during the employee's normal working hours pursuant to a subpoena or other court order involving a job-related case and not as a plaintiff or claimant in litigation against the City nor as a defendant in litigation by the City, the employee shall receive his or her regular rate of pay for such attendance. The City reserves the right to institute any procedure or system it deems appropriate to measure, record, and/or verify attendance and duration of an on-duty deposition, or court or administrative hearing appearance. The employee will sign over all subpoena and witness fees, excluding travel fees, unless City transportation is furnished in which case such travel fee will also be signed over. The employee shall provide a copy of the subpoena to his or her supervisor within twenty-four (24) hours of its service or receipt.
- 20.3 An employee subpoenaed as a witness for a court or administrative proceeding or a deposition, other than a job-related case and other than a case involving personal litigation by the employee as a plaintiff, claimant or defendant, shall be granted leave without pay to appear and testify pursuant to the subpoena. If the employee is released from the subpoena four (4) hours prior to his or her normal starting time for that workday, the employee shall be required to report to his or her work site immediately after release from such subpoena. An employee may take sick or vacation leave when subject to a subpoena under this provision. The employee shall provide a copy of the subpoena to his or her supervisor within twenty-four (24) hours of its service or receipt.
- 20.4 An employee may take vacation pay, but not sick leave, when participating in any court or administrative proceeding of a personal nature in which the employee is a claimant, plaintiff or defendant.

ARTICLE 21
VEHICLES

- 21.1 Any employee may be authorized to use their private automobile in the performance of official city duties. If authorized, the employee may be eligible for compensation if the use is in accordance with Policy 1-16, Use of Personal and City Vehicles for City Business and/or Policy 1-17, Travel.
- 21.2 A written claim for compensation under this Article must be submitted to the Department Head by the employee within five (5) scheduled working days following the date the private automobile was used.
- 21.3 The current departmental policy concerning the use of take-home vehicles by law enforcement officers is hereby incorporated by reference into this agreement. The city shall provide insurance coverage as provided for by Florida Statutes. Furthermore, the city shall provide insurance coverage to insure both the city and the officer for any use of the vehicle that is permitted by the current city take home vehicle policy, including cases where an officer makes a distinct deviation for a nonessential personal errand, as provided for by Florida Statutes.

ARTICLE 22
UNIFORMS AND EQUIPMENT

- 22.1 The City will provide to all Officers the following equipment and clothing and other items as necessary:
- 4 Trousers
 - 2 Long sleeve shirts
 - 1 Short sleeve shirt
 - 1 Winter jacket
 - 2 Collar insignias
 - 1 Tie
 - 1 Tie Clasp
 - 2 Badges
 - 1 Identification card and carrier
 - 1 Portable Radio and holder
 - Shoes as needed. Generally, not to exceed one pair/year unless authorized by the Chief.
 - 1 Rechargeable flashlight
 - 1 Concealed vest carrier
 - 1 Pair non-prescription sunglasses for employees in the Traffic Unit
 - 1 Bullet proof vest to be worn in accordance with Department policy
 - 1 External Load bearing vest to be worn in accordance with Department policy
 - 1 pair Handcuffs
 - 5 Summer shirts
 - 1 Baseball Cap
- 22.2 The City agrees to furnish all sworn Officers, at City expense, those replacement uniform items that are worn, torn, or damaged through normal wear and tear, rather than through negligence or misconduct.
- 22.3 Any employee who shall receive any breakage or damage to his personal equipment in the line of duty shall have it replaced at no cost to the employee, to a maximum of one hundred (\$100.00) dollars per item. However, if the employee is not negligent, then, in the case of loss or damage to prescription eyeglasses they will be replaced or repaired, as the case may be, without regard to the one hundred (\$100.00) dollar limitation.
- 22.4 The City agrees to provide each uniformed and non-uniformed-employee dry cleaning at City expense for all uniforms and business attire used for employment
- 22.5 The City and the Association agree that sworn Officers who are required to wear non-issue clothing in the course of their employment shall receive a clothing allotment. Upon initial assignment to Detective, Sworn Officers will be eligible to receive a one-time lump sum of \$750.00. Thereafter, after twelve (12) months of assignment to the Detective unit, sworn officers who are required to wear non-issue clothing, will be eligible to receive an annual payment of a clothing allotment of \$1,000.00 pro-rata per year. This allowance shall be paid in one installment annually paid before the last pay period in September for the preceding years' work. Upon departure from assignment, employee will be eligible to receive the prorated share for the time in the assignment in the previous year if the

amount exceeds \$150.00. If an employee works any day in a calendar month, they will be eligible for the prorated amount for that given month.

- 22.6 The City agrees to arrange to have each police vehicle maintained by a mechanic on a regular basis. The employee will be responsible for regular vehicle inspections and reporting any concerns in accordance with Department Policy.
- 22.7 City-issued uniforms and other articles of clothing are provided for wear while at work and are not to be worn for non-duty purposes.
- 22.8 The City will issue uniforms in compliance with IRS regulations pertaining to work clothes and Uniform Allowances and Reimbursements.

ARTICLE 23
WORKERS COMPENSATION, PHYSICAL EXAMINATIONS, AND HEALTH AND FITNESS

- 23.1 A bargaining unit employee who is temporarily disabled as a result of an injury sustained in the course of their employment with the City, shall be entitled to the following compensation:
- a. During such temporary, total disability, paid disability leave shall not exceed sixty (60) calendar days for any one injury. If as a direct result of the continuation of the disability involved, the employee is unable to return to work at the end of the sixty (60) calendar days, the employee shall revert to normal Workers' Compensation benefits from the Worker's Compensation Carrier.
 - b. Once an employee is receiving Worker's Compensation benefits directly from the Worker's Compensation carrier, the employee may utilize available sick and/or annual leave in order to supplement their wages for the amount not paid under the Worker's Compensation carrier. At no point shall the compensation be in excess of their normally scheduled base wage.
 - c. Leave for Worker's Compensation shall run concurrent with leave as covered under the Family Medical Leave Act (FMLA)
- 23.2 The City may direct any employee claiming disability to submit to a physical and/or mental examination conducted by a physician, psychiatrist or psychologist selected by the employee from a list of not less than three (3) physicians designated by the City. The sole purpose of such examination under this Article shall be to determine whether the employee has a physical and mental disability which impairs his effectiveness as an employee, limits his ability to perform his assigned duties, or makes his continuation in his job a danger to himself, the public, or other employees. In the event the City and a designated physician determine that a non-job-related disability does exist, the following action shall be taken:
- If the designated physician determines that the disability can be corrected, the employee shall be allowed a specified time determined by the physician to have it corrected. During this period of time and after consulting with the Department Head, the City Manager, in his discretion, may permit the employee to continue with his normal duties, or temporarily remove the employee from the City service. Should the employee be temporarily removed from the City service during the period of time specified for the correction of his disability, the employee may utilize his annual leave, sick leave, or leave without pay for the correctional period. For employees that have exhausted their paid leave prior to any exhaustion of an approved FMLA will generally be separated from service upon exhaustion of the approved FMLA leave, except as otherwise provided for by law. For employees with accrued paid leave in excess of the standard FMLA time will be able to utilize their accrued paid leave to stay in a paid status beyond the standard FMLA time, however, this period will not generally extend beyond twelve (12) months, unless an imminent return has been documented by a physician, or as otherwise provided for by law. However, if the employee fails to take the necessary steps to have the disability

corrected within the specified period of time, he shall be subject to dismissal from City service.

23.3 The City agrees that any employee injured on the job shall be paid for the employee's full schedule of hours for the day of the accident if his physician advises them that they could not or should not return to work that day. However, the City reserves the right to have the employee examined by a physician designated by the City, at no cost to the employee.

23.4 Each bargaining unit employee shall be required to complete the Physical Abilities Test (PAT) previously established by the Division of Criminal Justice Standards and Training of the Florida Department of Law Enforcement every two years. The physical abilities test measures specific physical abilities through participation in a series of job-related tasks as follows:

- A. Exiting car/enter trunk.
- B. 220 yard run.
- C. Obstacle course.
- D. Dummy drag.
- E. Obstacle course (repeat).
- F. 220 yard run (repeat).
- G. Weapon fire.
- H. Enter trunk/enter car.

The test is intended to be conducted in a continuous fashion resulting in a total composite score (i.e., time to complete the course). The test will be administered on a pass/fail basis. The employee must complete the test in 6 minutes and 30 seconds or less to pass. (Employees scoring at or above 6 minutes and 31 seconds fail.)

23.5 All bargaining unit employees shall be scheduled to take the PAT every two years.

23.6 If an employee does not pass their scheduled PAT, after a short recovery period (30 minutes), the employee will be given a chance to complete the test within the allotted time. If the employee still does not pass the test, they will be temporarily reassigned for a period not to exceed thirty (30) days to prepare and retake the test. If the employee still fails to pass the PAT, they shall be subject to discipline.

23.7 An employee who has a bona fide medical condition or injury which prevents them from taking the physical abilities test (or a portion thereof) will be dealt with on an individual basis. In all such cases, the physician conducting the annual examination under Section 23.8 below will determine the nature and extent of the employee's medical condition or injury (if such medical condition or injury is temporary); whether the test may be modified so as to accommodate the employee's medical condition while still measuring the same physical abilities; and such other medically-related issues which facilitate proper measurement of the physical abilities necessary to successfully perform the employee's job.

23.8 The parties agree that all members shall undergo an annual physical exam covered by the employee's insurance prior to the scheduling of the biennial PAT, and the doctor shall

clear the individual to take the PAT. These exams may be scheduled while the employee is on duty.

In the event that it is medically determined by a physician that an employee should undertake further test procedures as a result of the City-paid annual exam in order to return to work, the employee shall not be charged sick or annual leave for any time lost as a direct result of this need for further testing. However, this shall not apply to tests that the employee might voluntarily take which are not medically determined as a result of the annual, City-paid exam.

Employees who are instructed by a physician to undertake further testing as a result of the annual, City-paid exam shall also be required to report the results of each test to the City's Administrative Services Director and complete any documentation required by the City. Failure of an employee to comply with this requirement shall cause him/her to be charged with sick leave to cover any missed work time which results from the need for further testing. The employee will be returned to active duty upon providing a physician's statement to the City's Administrative Services Director to the effect that the employee is medically fit to return to full duty.

- 23.9 It is acknowledged and agreed by the parties hereto that a statutory presumption exists, under Section 112.18 F. S., that any condition or impairment of health of a bargaining unit member that results in a disability, or death, was accidentally suffered in the line of duty. Therefore, the parties further acknowledge and agree that the Port Orange Police Department is a tobacco-free workplace and that it is a condition of employment that each member of this bargaining unit hired on and after January 20, 2012 refrain from the use of tobacco during the period of his or her employment with the City. New employees or those offered conditional employment with this bargaining unit, shall be required to sign an affidavit attesting that they agree to be tobacco-free throughout the term of their employment.

ARTICLE 24
ALCOHOL AND DRUG TESTING

24.1 The parties agree to work together to fully comply with the Criminal Justice Standards and Training Commission Rules (11B 27.0011 et seq., F.A.C), Florida's Drug Free Workplace Program (F.S. Sections 440.101 and 440.102), and the Florida Workers' Compensation Act. Employees will be generally governed under the City's Drug Free Workplace Policy, General Administrative Policy 1-12, as amended from time to time.

24.2 **Illegal Controlled Substances**

- A. The City prohibits employees at any time, whether on or off duty or whether on or off City property, from manufacturing, selling, attempting to sell, distributing, possessing, using, being under the influence of illegal controlled substances, or having the presence of illegal controlled substances in an individual's body. Prohibited substances consist of any controlled substances as defined by applicable state and/or federal laws. For purposes of this policy, marijuana is considered a controlled substance under federal law.
- B. The City does not distinguish between marijuana and medical marijuana for its policies. The use of marijuana in any form, including but not limited to medical marijuana used pursuant to a "physician certification" that is in compliance with Section 381.986 of the Florida Statutes, is prohibited. If an employee's drug test result is positive confirmed for marijuana due to the employee's use of medical marijuana, even if such use was pursuant to a "physician certification" that is in compliance with Section 381.986 of the Florida Statutes, will be considered a positive result.
- C. For purposes of this policy, CBD products containing tetrahydrocannabinol ("THC") are considered a prohibited substance. Use of CBD products in any form, including but not limited to oils, body creams, beverages, chocolates, and gummies, that contain THC is prohibited. If an employee's drug test result is positive confirmed for marijuana due to the employee's use of CBD products containing THC, this will be treated as a positive result. An employee who chooses to use CBD products does so at their own risk. An employee's or job applicant's violation of this policy will not be excused because they were unaware that the CBD product that was used contained THC.

24.3 **Alcohol Abuse**

- A. The City prohibits employees from using or possessing alcohol while on duty, while on the City's premises, while driving or being a passenger in a City vehicle, or while operating the City's equipment; reporting to work under the influence of alcohol; reporting to work with the presence of alcohol in an individual's body; or from otherwise using alcohol in a manner at any time that adversely affects the City's business interests.

24.4 Use of Legal Drugs

- A. The term “legal drug” means (1) a controlled substance prescribed by a licensed physician for a specific medical purpose; or (2) an over-the-counter medication that has the potential to interfere with the safe and effective performance of the employee’s duties, the operation of vehicles or equipment, or the safety of employees or the general public.
- B. Employees must notify their immediate supervisor before beginning work when they are taking a legal drug that may possibly impact an employee from safely performing their duties so that the City can evaluate the impact, if any, that the employee’s use of the legal drug may have on the safe and efficient operation of the City

24.5 Testing

- A. Reasonable Suspicion (to include Post Accident Testing)
 - a. Supervisors are responsible for monitoring employees for drug and alcohol use and other policy violations and for contacting the Police Chief or the Administrative Services Director (or designee) when there is articulable reasonable suspicion that an employee is under the influence of drugs or alcohol or otherwise using drugs on or off the job or alcohol on the job. Supervisors who have reasonable suspicion must prevent the employee from further engaging in work and from leaving the work area and must notify the employee of the need for testing. The supervisor shall provide articulable facts in writing to substantiate their reasonable suspicion.
 - b. Reasonable suspicion may be based upon, but not limited to, the following:
 - i. Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of drugs or alcohol.
 - ii. Abnormal conduct or erratic behavior while at work.
 - iii. A significant deterioration in work performance.
 - iv. A report of drug or alcohol use provided by a reliable and credible source.
 - v. Evidence that an employee has tampered with a drug test during his or her employment with the City.
 - vi. Information that an employee has caused, contributed to, or been involved in an accident while at work giving rise to a reasonable suspicion of drug or alcohol use
 - vii. Evidence that an employee has used, possessed, manufactured, sold, solicited, or transferred drugs.
 - viii. Frequent absences from work without a satisfactory explanation.
 - c. In the event that the City has reasonable suspicion that an employee is under the influence of drugs or alcohol or may be in the possession of drugs or alcohol, the City reserves the right search, without employee consent, all City areas and property, including, but not limited to, an employee’s office, locker,

or workspace.

B. Follow Up Testing

- a. The City will require any employee who returns to work after successfully completing a voluntary drug or alcohol rehabilitation program to submit to drug and alcohol testing on at least a semi-annual basis for at least two (2) years as coordinated by Risk Management.

C. Random Testing

- a. Random test dates and times will not be announced and shall be spread reasonably throughout the year.
- b. Each employee in the unit shall have an equal chance of being selected for both drug and alcohol testing each and every time selections are made.
- c. The City agrees to provide the Association a list of all City employees who were selected for random testing at the end of each fiscal year upon request.

D. Testing Procedures

- a. Employees will be subject to a 10-Panel Urine Drug Screen by Immunoassay Methodology for Amphetamines, Barbiturates, Benzodiazepines, Cocaine, Methadone, Methaqualone, Opiates, Phencyclidine, Propoxyphene, and Tetrahydrocannabinol (marijuana metabolites).
- b. Procedures for testing for the presence of illegal controlled substances and alcohol shall be conducted consistent with the provisions of Section 440.102(5), (6) of the Florida Statutes and the corresponding regulations.
- c. Urine will be used for the initial test and confirmation test for controlled substances.
- d. Breath will be used as the initial test and confirmation test for alcohol.
- e. Direct observation collections, by an observer of the same gender as the employee, may be required for reasonable suspicion drug and alcohol testing.

24.6 Employees must notify their immediate supervisor, department director, or Administrative Services Director regarding any criminal drug or alcohol infraction, arrest, indictment, or conviction, as well as any resulting loss of driving privileges, within 24 hours of occurrence or as soon as reasonably possible.

24.7 Refusal to Test

A. Employees who refuse to submit to a required test will be considered insubordinate.

B. Refusal to submit to a required test may include, but is not limited to the following:

- a. Failing to show at the collection site for a required test.
- b. Inability to produce sufficient quantities of breath, saliva, or urine to be tested without a valid medical explanation.
- c. Tampering with or attempting to adulterate the specimen.

- d. Interfering with the collection procedure.
- e. Not immediately reporting to the collection site. An employee must report to the testing site immediately upon notification. Immediately is defined as within thirty (30) minutes, unless otherwise authorized.
- f. Failing to remain at the collection site until the collection process is complete.
- g. Having a test result reported by a Medical Review Officer as adulterated or substituted.
- h. Leaving the scene of the accident without a valid reason before the tests have been conducted.

ARTICLE 25
INSURANCE

- 25.1 The City will enable the employees to insure themselves under a group life insurance plan with the amount available being one times base annual salary rounded to the next higher thousand. The employer will pay the premium.
- 25.2 The City agrees to maintain a health insurance program for the employees, with the City paying the lowest “employee only” rate among all health insurance plans with a co-pay offered. Dependent coverage will be at the employee’s expense. The employee electing coverage with a plan which has a higher premium shall pay the difference in any premium charged by that carrier. Dependent coverage will also be at the employee’s expense.
- 25.3 The City will continue to provide the Department with the personal injury liability and false arrest policy.

ARTICLE 26
PERSONNEL RECORDS

- 26.1 Employees covered by this Agreement shall have the right to inspect their department and official personnel files provided, however, that such inspection shall take place during working hours at the location where the official personnel file is kept. The employee shall have the right to make duplicate copies, at his own expense, of any item contained in his official personnel file. The official personnel file is maintained in the City's Human Resources Office.
- 26.2 Employees have the right to file a written response to a letter of reprimand or other document which is placed in the employee's official personnel file, as a result of supervisory action or citizen complaint. At the employee's request, any such written response shall be included in the employee's official personnel file together with the letter of reprimand or other document against which it is directed.

ARTICLE 27
TRAINING AND TUITION REIMBURSEMENT

- 27.1 The City will make every reasonable effort to enable the employee to attend required in service training during the employee's normal working hours. When necessary to attend in-service training with schedules different from the normal work schedule, an Officer's work schedule can be adjusted with forty-eight (48) hours' notice to the Officer.
- 27.2 Where the City requires any employee to attend supervisory training and/or training in specialized police techniques and/or any other job-related training, the City will make every reasonable effort to schedule the employee attending such training during his normal working hours. When necessary to attend training classes with schedules different from the normal work schedule, an Officer's work schedule can be adjusted with forty-eight (48) hours' notice to the employee.
- For special courses, such as Basic Recruit School, employees will be required to sign an Education Agreement with the City. The Education Agreement will require an obligated length of service depending on the length and cost of the course. These classes shall be police related courses or seminars and must be approved by the City.
- 27.3 This Article shall not in any manner apply to any training required by the Florida Police Standards Board to re-obtain Police Officer certifications for purposes of employment with reinstatement to the Department in the event that such certification shall have lapsed, expired, and/or terminated.
- 27.4 Subject to budgetary constraints and availability of funds, the City agrees to reimburse the employee for tuition (excluding fees categorized as "other fees") up to two (2) approved classes per semester (fall, spring, summer). These courses may be online or in person. Employee will be reimbursed at the Daytona State College (DSC) rate. Courses will be paid on a reimbursement basis with proof of payment and grade.
- 27.5 The City will reimburse the employee for tuition (excluding fees categorized as "other fees") for graduate course work at the rate of one half (1/2) the cost of tuition for graduate course work at the University of Central Florida (UCF) rate, regardless of where the courses are taken. These courses may be online or in person. Courses will be paid on a reimbursement basis with proof of payment and grade.
- 27.6 The City will require each employee to remain in the service of the City for one (1) year after completion or termination of the most recent class paid for by the City or the employee will be required to reimburse the City for the costs of tuition unless the employee is terminated by the City. This obligation will begin on the day after the school semester is completed.
- 27.7 The decision for approval or disapproval of courses is not subject to the grievance and arbitration provisions of this Agreement. The employee shall not be reimbursed by the City if the course is not passed with a grade of "C" or better or a passing grade on a pass/fail system or if grades are not received within three (3) months after the completion of the course.

- 27.8 All employees must pre-register with the Human Resources Division regardless of where the courses are taken if the employee intends to apply for tuition reimbursement. The City maintains the option to refuse to pay for courses that are not directly related to a degree program or courses that have excessively high costs.
- 27.9 Employees must have completed twelve (12) months of service with the City to be eligible for taking courses as allowed under this article.
- 27.10 It is clearly understood that all tuition reimbursement is subject to budget constraints and availability of funds as predefined for tuition reimbursement. The funds assigned to this line item are for use City Wide and approval of funds will be based on a first come, first serve basis upon applying for reimbursement prior to the course beginning. All documentation must be complete when turned into the Human Resources division in order to be considered for tuition reimbursement. Notwithstanding the aforesaid, the Department Head may within his discretion, allocate from the various Police Department's operational funds to provide tuition reimbursement for employees.

ARTICLE 28
WAGES

28.1 Effective the first full pay period following the ratification of this agreement by both parties or following October 1, 2023, whichever is later, for fiscal year 2024 employees will be slotted into the following pay schedule:

Officers		Sergeants	
YOS	Rate / Hr.	TIG	Rate / Hr.
Prob.	\$ 24.75	Prob.	\$ 31.25
1	\$ 25.88	1	\$ 33.17
2	\$ 26.24	2	\$ 33.64
3	\$ 26.62	3	\$ 34.11
4	\$ 26.99	4	\$ 34.58
5	\$ 27.38	5	\$ 35.07
6	\$ 27.76	6	\$ 35.56
7	\$ 28.16	7	\$ 36.06
8	\$ 28.56	8	\$ 36.56
9	\$ 28.96	9	\$ 37.07
10	\$ 29.37	10	\$ 37.59
11	\$ 29.79		
12	\$ 30.21		
13	\$ 30.64		
14	\$ 31.07		
15	\$ 31.51		
16	\$ 31.96		
17	\$ 32.41		
18	\$ 32.87		
19	\$ 33.34		
20	\$ 33.81		

- A. Employees will have their hourly rate adjusted effective upon the first full pay period following ratification of the agreement by both parties, according to the above pay schedule. The Officer rate is based on Years of Service (YOS). The Sergeant Rate is based on Time in Grade (TIG).
- B. Any employee whose current rate of pay is at a level higher than the corresponding rate of pay for the equivalent YOS/TIG will not be eligible to receive any adjustment to their pay.

- 28.2 For Fiscal 2025, expiring 09/30/2025, all shift employees Officers and Sergeants will be slotted into the following pay schedule effective the first full paycheck after October 1 and every year thereafter:

Officer		Sergeants	
YOS	Rate / Hr.	TIG	Rate / Hr.
Prob.	\$ 25.00	Prob.	\$ 32.25
1	\$ 25.99	1	\$ 34.32
2	\$ 27.17	2	\$ 34.83
3	\$ 27.55	3	\$ 35.32
4	\$ 27.95	4	\$ 35.82
5	\$ 28.34	5	\$ 36.31
6	\$ 28.75	6	\$ 36.82
7	\$ 29.15	7	\$ 37.34
8	\$ 29.57	8	\$ 37.86
9	\$ 29.99	9	\$ 38.39
10	\$ 30.41	10	\$ 38.92
11	\$ 30.84		
12	\$ 31.28		
13	\$ 31.72		
14	\$ 32.17		
15	\$ 32.62		
16	\$ 33.09		
17	\$ 33.56		
18	\$ 34.03		
19	\$ 34.51		
20	\$ 35.01		

- A. Employees will have their hourly rate adjusted according to the above pay schedule. The Officer rate is based on Years of Service (YOS). The Sergeant Rate is based on Time in Grade (TIG).
- B. Any employee whose current rate of pay is at a level higher than the corresponding rate of pay for the equivalent YOS/TIG will not be eligible to receive any adjustment to their pay.

- 28.3 New hires will generally start at the minimum rate of pay established for the classification. However, if a new hire has comparable Police experience with another agency, the Police Chief may elect to bring a new hire in at a higher rate of pay commensurate with their years of experience. Any requests above YOS-5 will require concurrence by the City Manager. The city may also provide a recruitment signing bonus of up to \$5,000 for each recruit who is a sworn law enforcement officer moving from another law enforcement agency with a minimum of three years of police experience. This signing bonus is exclusive of any recruitment signing bonus amount or other incentives provided by the State of Florida.

- 28.4 The City performance evaluation system will be a satisfactory/unsatisfactory procedure. If the employee's performance for the previous year has been satisfactory, they will receive a rating of satisfactory. The employee will then undergo performance evaluations each year thereafter. Should the employee receive a rating of unsatisfactory, due to unsatisfactory work or performance, the employee will be placed under intensive management guidelines, and re-evaluated in ninety (90) days. If the employee has still not raised his/her performance level to satisfactory at the conclusion of this ninety (90) day period, additional counseling may be provided, and the employee may be re-evaluated at the conclusion of another extended rating period; or, the supervisor may initiate action to terminate the employee.
- 28.5 An officer promoted to Sergeant shall move to the corresponding pay schedule for the sergeant position (rank) with a minimum of five percent (5%) or the next highest time in grade (TIG) pay schedule detailed in 28.1.
- 28.6 In addition to wages, incentive pay, if appropriate, shall be provided in accordance with pertinent Florida Statutes or in accordance with this contract.

Specialty pay will be provided to all employees who are assigned as members of a specialized or hazardous unit (division) or other groups which are herein specified as follows:

<u>Specialty Assignment</u>	<u>Amount of Pay</u>
Canine Officer	\$75.00/pay period
Crime Suppression Team	\$75.00/pay period
Crisis Negotiation Team	\$75.00/pay period
Detective Assignment	\$110.00/pay period
Drug Recognition Expert	\$75.00/pay period
Emergency Response Team	\$75.00/pay period
Field Training Officer	\$75.00/pay period
Meth Team	\$75.00/pay period
Motorcycle Officer	\$75.00/pay period
Range Master	\$75.00/pay period
Traffic Homicide Investigator	\$75.00/pay period

- 28.7. Effective upon expiration of this Agreement on September 30, 2026 there shall be no wage increases until a successor Agreement is ratified.

ARTICLE 29
RETIREMENT

- 29.1 The parties hereto recognize that the employees in the Bargaining Unit are participants in a Retirement Plan of the City as provided for by Chapter 185, Florida Statutes. The Police Pension Fund Ordinance of the City is set forth in the Port Orange City Code. Pensions and other retirement benefits for Bargaining Unit employees not specifically set forth in this Labor Agreement are as set forth in the Police Pension Fund Ordinance.

The City of Port Orange agrees to maintain a retirement plan for Police Officers as required by City Ordinance.

The City agrees to maintain the benefits and member contributions set forth in the Police Pension Fund Ordinance.

There will be no change in the accrued benefits of Plan members.

Should an issue arise with the State Division of Retirement regarding any provisions in this Article, both parties agree to return to the table to negotiate the issues to resolve the issues in order to gain approval of Plan changes.

- 29.2 Mutual Consent Agreement:

In accordance with section 185.35(6), F.S., a defined contribution plan component ("share plan") shall be established as part of the defined benefit pension plan, to be funded exclusively with Ch. 185 premium tax revenues. However, the City and the Union have mutually agreed that no Ch. 185 premium tax revenues will be allocated to a share plan at this time. The share plan shall not be activated until Ch. 185 premium tax revenues are allocated to the share plan by mutual agreement of the parties. At such time as the City and Union agree to allocate Ch. 185 premium tax revenues to the share plan, the parties will negotiate the details of the share plan.

- A. All annual premium tax revenues received pursuant to Ch. 185 will continue to offset the City's pension contributions.
- B. All accumulated excess premium tax revenues as of 10/01/2016 will be used to offset the City's pension contributions.

ARTICLE 30
SEVERABILITY

- 30.1 In the event any Article, Section or portion of this Agreement should be held invalid and unenforceable by any court of competent jurisdiction, such holding shall apply only to the Article, Section or portion thereof specified in the court's decision; and all other Articles or Sections or portions not so invalidated shall remain in full force and effect. The parties may mutually agree in writing to renegotiate the affected Article, Section or portion specified in the court's decision.

ARTICLE 31
ENTIRE AGREEMENT

- 31.1 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.
- 31.2 Therefore, the City and the Association, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to, or covered in this Agreement, or the impact of decisions made with respect to matter not specifically referred to or covered in this agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the same time they negotiated or signed this Agreement.
- 31.3 However, no language in this Agreement shall preclude the parties from mutually agreeing in writing to re-open any of the provisions covered by this contract.

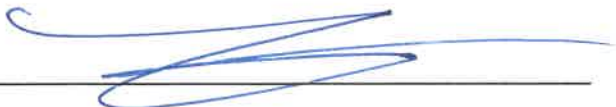
ARTICLE 32
DURATION OF AGREEMENT

- 32.1 This Agreement will be in full force and effect upon ratification by both parties and shall remain in full force and effect until midnight of the 30th day of September 2026. Upon expiration of the Agreement, it shall continue in full force and effect thereafter from year to year unless notice is given in writing by either party to the other by April 1st, of every year of intent to modify, terminate, or change the terms of this Agreement, except as provided hereinafter.
- 32.2 Notwithstanding the provisions of this Article 32 (Duration of Agreement) and Article 29 (Retirement), the parties agree that:
- (a) In year one of this Agreement (October 1, 2023 – September 30, 2024), the City will bring forward an ordinance amending the Police Pension Fund in the City's Code of Ordinances to provide the following changes for all members who are employed and not participating in the DROP on the effective date of the ordinance:
 - (1) Average final compensation shall mean one-twelfth of the average annual compensation of the three highest years of service.
 - (2) The normal retirement age shall be the date a member attains age 48 with 10 years of service, or the date a member completes 20 years of service regardless of age.
 - (3) DROP eligibility at the Normal Retirement Date.
 - (b) For year two of this Agreement (October 1, 2024 – September 30, 2025), the parties agree to reopen Article 29 (Retirement), after the City obtains an independent actuarial study to review the funding impact of providing a pension COLA for Tier 2 members (hired on or after January 31, 2011).
 - (c) For year three of this agreement (October 1, 2025 – September 30, 2026), the parties agree to reopen Article 28 (Wages) and one other mutually agreed upon article for negotiations.

No other item or provision of this Agreement shall be a proper subject for negotiation during the term of this Agreement unless it is mutually agreed by the parties in writing to renegotiate such items.

Remainder of Page is Blank

INTERNATIONAL UNION OF POLICE ASSOCIATIONS PERC CERTIFICATION #1983, IUPA, FLA:



Jarrad Alevisatos, President, Local 6051

Date: 10/13/2023

CITY OF PORT ORANGE, FLORIDA

Don Burnette, Mayor

Date: _____

Attest:

Robin Fenwick, City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (C11) Approval and Ratification of the International Association of Fire Fighters (IAFF) 2024-2025 Collective Bargaining Agreement

DEPARTMENT: Finance

GOAL: 1 - Public Safety
5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve the 2024 - 2025 Collective Bargaining Agreement negotiated between the City of Port Orange and the International Association of Fire Fighters (IAFF).

SUMMARY: On February 19, 1988, the International Association of Fire Fighters (IAFF) was certified by PERC as the exclusive collective bargaining representative for Firefighters/EMTs, Driver Engineers, Paramedics, Fire Prevention Specialists and Fire Lieutenants within the City. The current City and IAFF contract expired on September 30, 2023.

The City's negotiating team met with IAFF over the course of several in-person meetings and negotiated a new agreement. Staff and IAFF have negotiated a two-year Collective Bargaining Agreement covering the current Fiscal Year through September 30, 2025. The parties reached a tentative agreement for the entire package after the October 9, 2023 negotiation meeting.

Below is a summary of changes to the articles:

Article 9 Specialty and Education Incentive Pay:

Agreed to amend the language by moving from weekly to bi-weekly pay. This moved all specialty and education incentives to a bi-weekly amount.

Article 10 Hours of Work and Overtime:

Agreed to amend the language by moving from weekly to bi-weekly pay. Amending the pay cycle to a fourteen-day period. The membership agreed to compensate employees for overtime in accordance with the requirements of the Fair Labor Standards Act.

Article 11 Wages:

Agreed to the following:

1. Agreed to a pay schedule based on Years of Service.
2. Effective first full pay following ratification in October 2023 - an average of

9.68% increase in wages.

3. Effective first full pay in October 2024 - an average of 5.3% increase in wages

4. Fire Prevention Specialist annual increases to be tied to that received by Civil Service employees.

Article 12 Retirement Plan:

Agreed to remove language detailing pension plan benefits and to add language that the retirement plan for Firefighters will be maintained by ordinance.

Article 15 Annual Leave:

Agreed to the following:

1. At the Fire Chief's discretion, an additional employee may be allowed to take annual leave during peak times.

2. Removed language that referenced the previous twenty-one day pay cycle.

Article 16 Sick Leave:

Agreed to the following:

1. Increased the maximum allowed to accrue for all employees from 750 to 1000 hours.

2. Add language that new hires will have to have a minimum of ten years of service to be entitled to lump sum payment of accruals.

3. Removed language allowing for one-time lump sum of accruals if employee did not receive an annual wage increase.

Article 22 Wellness Hours:

Agreed to the following:

1. Clarified what employees are eligible for these hours.

2. Removed language that referenced the previous twenty-one day pay cycle.

3. Provide twenty-four hours of wellness hours for all employees who complete the annual Air Consumption Drill in under twelve minutes and thirty seconds.

Article 27 Uniforms and Equipment:

Agreed to a three-year plan of purchasing the employees a second set of turnout jacket and pants for each eligible employee.

Article 31 Health and Safety:

Agreed to provide for a physical test in compliance with NFPA1582 in accordance with the Heart and Lung Bill and the Florida Firefighter Presumptive Cancer Bill every two years.

Article 35 Authorized Use of Private Automobile:

Agreed to remove language on the requirement for automobile insurance coverage.

Article 32 Duration of Agreement:

Agreed to the following:

1. The agreement would be effective through September 30, 2025.

2. For Year 2, the city would reopen Article 12 (Retirement) and two other mutually agreed upon articles.

3. The City will maintain the dollar amounts of all incentives and education pay at the weekly level per the agreement that expired on September 30, 2023, until the

city implements the new ERP software program.

On 10/13/2023, the City received notification that IAFF members voted in favor of this agreement. In order to ratify this agreement, the City Council must also vote in favor of the proposed changes.

PRESENTER: John McKinney

ATTACHMENTS:

1.	International Association of Fire Fighters 2024-2025	International Association of Fire Fighters 2024-2025.pdf
----	--	--

Tracee Cody	Created/Initiated - 10/11/2023
John McKinney	Approved - 10/12/2023
Matthew Jones	Approved - 10/13/2023
Wayne Clark	Approved - 10/13/2023
Tracee Cody	Final Approval - 10/13/2023

**AGREEMENT
between
CITY OF PORT ORANGE
and
PORT ORANGE PROFESSIONAL
FIREFIGHTERS ASSOCIATION
IAFF**

Local 3118
PERC Certification #777

October 1, 2023, through September 30, 2025

TABLE OF CONTENTS

ARTICLE	SUBJECT	PAGE
	Agreement	5
1	Union Recognition	6
2	Management Rights.....	7
3	Employee Rights.....	8
4	Union Representatives & Activities	9
5	Rules & Regulations	11
6	Strikes.....	12
7	Dues Deductions	13
8	Bulletin Boards	14
9	Specialty & Education Incentive Pay	15
10	Hours of Work & Overtime	18
11	Wages	21
12	Retirement	24
13	Temporary Assignment to a Higher Classification	26
14	Holidays.....	28
15	Annual Leave.....	30
16	Sick Leave	34
17	Bereavement	38
18	Leave of Absence.....	39

TABLE OF CONTENTS (cont.)

ARTICLE	SUBJECT	PAGE
19	Jury Duty & Appearance as a Witness	40
20	Military Leave	41
21	Educational Leave	42
22	Wellness Hours.....	43
23	Tuition Reimbursement.....	44
24	Seniority.....	46
25	Probationary Employees.....	47
26	Vacancies & Promotions.....	48
27	Uniforms & Equipment.....	53
28	Disciplinary Action	55
29	Grievance & Arbitration Procedures	57
30	Physical Examination & Workers Compensation.....	61
31	Health & Safety.....	63
32	Light Duty	65
33	Alcohol & Drug Testing	66
34	Insurance.....	69
35	Authorize Use of Private Automobile	70
36	Separability	71

TABLE OF CONTENTS (cont.)

ARTICLE	SUBJECT	PAGE
37	Entire Agreement.....	72
38	Duration of Agreement.....	73

AGREEMENT

THIS AGREEMENT is entered into by and between the City of Port Orange, hereinafter referred to as the "City", and the Port Orange Professional Firefighters Association, Local 3118, IAFF, AFL-CIO, PFF, FLA., hereinafter referred to as the "Union".

The use of male gender in this Agreement is intended as a neutral term and it shall be construed to include both male and female employees.

WITNESSETH:

WHEREAS, This Agreement reduces to writing the understandings of the City and the Union to comply with the requirements contained in Chapter 447, Florida Statutes, as amended; and

WHEREAS, This Agreement is designed to provide for an equitable and feasible procedure for the resolution of differences concerning the enforcement of this Agreement in accordance with grievance procedures contained herein; and

WHEREAS, This Agreement is entered into to promote a harmonious relationship between the Union and the City and to encourage more effective employee service in the public interest; and

WHEREAS, The Union understands that the City is engaged in furnishing essential public service which affects the health, safety and welfare of the general public; and the Union recognizes the need to provide continuous and reliable service to the public; therefore, it is hereby agreed:

ARTICLE 1

UNION RECOGNITION

- 1.1 The City recognizes the Union as the exclusive collective bargaining representative for those employees in the following bargaining unit, as defined in PERC Certification #777, dated February 19, 1988.

Included: All Firefighter/EMT's, Driver Engineers, Paramedics, Fire Prevention Specialists and Fire Lieutenants.

Excluded: Chief, Shift Commander, Battalion Chief, Division Chief, EMS Manager/Commander, Public Education Specialist, Reserve Firefighters, Firefighter Recruits, temporary employees, and all other employees.

ARTICLE 2

MANAGEMENT RIGHTS

- 2.1 It is the right of the City to determine unilaterally the purpose of each of its constituent agencies, set standards of services to be offered to the public, and exercise control and discretion over its organization and operations. It is also the right of the City to direct its employees, take disciplinary action for just cause, and relieve its employees from duty because of lack of work or for other legitimate reasons. However, the exercise of such rights shall not preclude employees or their representatives from raising grievances, should decisions on the above matters have the practical consequence of violating the terms and conditions of any collective bargaining agreement in force or any civil or career service regulation.

ARTICLE 3

EMPLOYEE RIGHTS

- 3.1 The parties agree that there shall be no discrimination, interference, restraint, or coercion against any employee for his exercise of any rights guaranteed by Florida law.
- 3.2 The Parties agree to abide by the Firefighter's Bill of Rights, Florida Statutes Section 112.80, et seq., as amended.

When an investigatory interview occurs, the following rules apply:

Rule 1: The employee must make a clear request for Union representation before or during the interview. The employee can't be punished for making this request.

Rule 2: After the employee makes the request, the supervisor has three (3) options. S/he may either:

- a) Grant the request and delay the interview until the Union representative arrives and has had a chance to consult privately with the employee: or
- b) Deny the request and end the interview immediately; or
- c) Give the employee a choice of:
 - 1. Having the interview without representation; or
 - 2. Ending the interview

Rule 3: If the supervisor denies the request and continues to ask questions, the employee has the right to refuse to answer. The employee cannot be disciplined for such refusal but is required to sit there until the supervisor terminates the interview. Leaving before this happens may constitute punishable insubordination.

ARTICLE 4

UNION REPRESENTATIVES AND ACTIVITIES

- 4.1 The Union shall be represented by its President or his designee.
- 4.2 The Union shall notify the City Human Resources Director in writing of the name of the President or the designee, at least ten (10) working days prior to the effective date of them taking office. It shall be the responsibility of the Union to immediately notify the City's Human Resources Director and the Fire Chief in writing of any change in the designation of President or his designee.
- 4.3 The Union President or representative will be allowed to process and investigate grievances during working hours provided the City is first notified of the investigation and provided further that such investigation would not unduly hamper the operation where the employee or Union President is employed.
- 4.4 The Union President or the President's designee will be permitted to attend local and state seminar functions of the Association without a loss of pay for a maximum for forty-eight (48) hours per calendar year each without such leave being charged against leave time. No other compensation shall be allowed for expenses. No compounding of compensation shall be allowed for functions occurring on leave or holidays. This time will not be counted as hours worked for the purpose of calculating overtime.
- 4.5 The Union President and one (1) member of the Union negotiating committee (employees of the City) shall be permitted to attend, without loss of pay, the City Council meeting where final action is scheduled to be taken on approval (or rejection) of this Collective Bargaining Agreement and its successor.
- 4.6 Two (2) members of the designated Association negotiating team (employees of the City) shall be permitted to attend all negotiating sessions for a successor agreement to this Agreement without loss of pay.
- 4.7 The Department Chaplain appointed by the Fire Chief shall be allowed a minimum of twenty-four (24) hours per year to attend to Department personnel needs, including seminars for Fire Department Chaplains, family deaths, area firefighter personnel deaths, injuries, and illnesses.
- 4.8 The City and the Union agree to maintain a Leadership Committee which will meet at least monthly. The Committee shall consist of the Department Head and the Union President, with their respective designees. In the event

personnel issues are to be discussed, then the City's Director of Administrative Services shall be given at least twenty-four (24) hours' notice of the place, time, and date of the meeting to also attend.

ARTICLE 5

RULES AND REGULATIONS

- 5.1 The City shall have the right to establish, maintain and enforce, or rescind, amend, or change, reasonable rules and regulations and standard operational procedures ("SOP").
- 5.2 Failure to take corrective action against an employee for violation of these rules, regulations and/or standard operational procedures shall not affect the right of the City to discipline the same or other employees for the same or other violations.
- 5.3 Employees shall comply with all applicable policies, SOPs, and amendments thereto, which are currently in effect unless in conflict with an express or specific provision of this agreement or MOUs. In such case the negotiated provisions of this Collective Bargaining Agreement will control. Amendments shall be made in accordance with the procedures outlined in this Agreement.
- 5.4 Except in exigent circumstances as defined by law, the City will provide the Union with a copy of all proposed additions and modifications of rules, regulations, and standard operating procedures at least seven (7) days before implementing the new rule or regulation.
- 5.5 After adoption, all employees have the right to have the amendment explained to them by the Chief or his/her designee if requested.

ARTICLE 6

STRIKES

- 6.1 The Union and bargaining unit members shall have no right to instigate, promote, sponsor, engage in, or condone any work stoppage, boycott, slow-down, strike, intentional disruption of City operations, or to withhold services for any reason. Each employee who holds a position in the Union also occupies a position of special trust and responsibility in maintaining and bringing about compliance with this Article, the strike prohibition of Section 447.505, Florida Statutes, and the Constitution of the State of Florida, Article 1, Section 6.
- 6.2 The Union, its officers, agents, stewards and other representatives agree that it is their continuing obligation and responsibility to maintain compliance with this Article and the law, including their responsibility to abide by the provisions of this Article and the law by remaining at work during any interruption which may be initiated by others; and including their responsibility, in the event of breach of this Article or the law by other employees, and upon the request of the City, to encourage and direct employees violating this Article or the law to return to work, and to disavow the strike publicly.
- 6.3 In addition to the penalties set forth in Section 447.507, Florida Statutes, all employees who violate any provision of the law prohibiting strikes or this Article may be disciplined, up to and including discharge, by the City.
- 6.4 The circuit courts of this State shall have jurisdiction to enforce the provisions of this Section by ex parte injunction and contempt proceedings, if necessary.
- 6.5 For the purpose of this Article, it is agreed that the Union shall be responsible and liable for any act committed by any of their officers, agents, and/or representatives, which act constitutes a violation of State law, City ordinance, or policy or the provisions herein. In addition to all other rights and remedies available to the City under State law, in the event of a breach of the provisions herein, the City shall have the right, without further notice, to suspend this Collective Bargaining Agreement and withdraw recognition from the Union.

ARTICLE 7

DUES DEDUCTION

- 7.1 Upon receipt of a written authorization from an employee covered by this Agreement, the City will deduct from the employee's pay each pay period the amount owed to the Union by each employee for dues. No authorization shall be allowed for payment of any collection of fines penalties or special assessments. The City shall remit monies collected to the Treasurer of the Union within ten (10) days following the payday in which the deduction is made. The City remittance will be deemed correct if the Union does not give written notice to the City within thirty (30) calendar days of a remittance, of its belief with reasons stated therefore that the remittance is incorrect. It shall be the responsibility of the Union to notify the City Manager or his designee in writing of any change in the amount of dues to be deducted at least sixty (60) days in advance of said change.
- 7.2 The Union shall indemnify the City and hold the City harmless against any and all suits, claims demands and liabilities which arise out of or by reason of any action taken or not taken by the City for complying with any of the provisions of this Article. If there is an amount deducted in excess of what is authorized by this Agreement, the employee affected shall seek recourse with the Union and not the City.
- 7.3 An employee may revoke his authorization for deduction of dues provided the employee gives thirty (30) days written notice to the City and the Union. Upon receipt of such notification, the City shall terminate dues on the pay date immediately following the expiration of the thirty (30) day notice period.
- 7.4 No deduction shall be made from the pay of an employee for any payroll period in which the employee's net earnings* for that payroll period are less than the amount of dues to be checked off.
- (*) Net earnings shall mean wages owed after all pre-tax withholdings (medical, dental, retirement, etc.) taxes, and court ordered post-tax deductions (child support, garnishment, etc.) have been withheld.*
- 7.5 In the event the Union delivers additional dues authorization to the Administrative Services Director, it is agreed and understood that the City shall have thirty (30) days from the date of delivery in which to commence the dues deduction procedures.

ARTICLE 8

BULLETIN BOARDS

8.1 The City shall provide the Union with space for a Bulletin Board two (2) feet by two (2) feet in size.

8.2 The Union agrees that it shall use space on the Bulletin Board provided for in Section 8.1, for the positing of the following:

Notices of Union Meetings
Election of Officers (not including representation elections)
Reports of Union Committees
Recreational & Social Affairs of the Union
Notices of Meetings by Public Bodies
Notices of Ratification Meetings
Minutes of Meetings

In no event shall the Bulletin Board be used to post political material or controversial material which adversely reflects upon the City of Port Orange, its independent agencies, its employees, elected officials, or any labor organization among its employees.

8.3 All material or notices must bear the signature of the Union president and said signature must be dated.

8.4 Failure of the Union to follow the procedures for the proper posting of material and notices on the Bulletin Board shall result in the material or notices being removed from the Bulletin Board.

ARTICLE 9

SPECIALTY AND EDUCATION INCENTIVE PAY

- 9.1 This will establish a Specialty Payment Program within the Fire and Rescue Department whereby members of special teams and members with special assignments are to receive a Specialty Payment for their assignments to these positions. Specialty Payments will only be received for periods in which an individual is assigned to and working in the special duty:

EMS Coordinator (6 minimum)
\$50.00 per bi-weekly
EMS Assistant (10 minimum)
\$50.00 per bi-weekly
EMS Quality Assurance (Reporting) (6 minimum)
\$60.00 per bi-weekly
Training Committee Member (12 minimum)
\$50.00 per bi-weekly
Tactical Rescue Team (TRT) (18 minimum)
\$50.00 per bi-weekly
Live Fire Training Instructor (12 minimum)
\$50.00 per bi-weekly
EMS Instructor (15 minimum)
\$50.00 per bi-weekly

For EMS Instructor, one of the following categories qualifies: BLS, ACLS, ITLS/PHTLS, PEPP or PALS.

Designated members of the above teams must meet all required obligations and maintain good standing in order to be eligible for compensation. The teams must be fully functional and operational as defined by the Fire Chief in order for employees to be eligible for compensation. The total number of special duty assignments as listed above will be limited to four (4) assignments per employee.

The Fire Chief will consider the Union's input prior to his / her determination of the operational needs of the department and in determining the number of individuals receiving the specialty and educational incentive pay.

- 9.2 In accordance with State requirements, an employee covered under this Collective Bargaining Unit will be paid according to the following schedule:

A two (2) year Fire Service-related degree	\$50 per month
A four (4) year Fire Service-related degree	\$110 per month

Payments detailed in this section will be paid on a prorated basis each pay period.

- 9.3 A Firefighter or Lieutenant who meets the requirements listed in Article 13 and who completes and is cleared through Department testing shall be designated by the Fire Chief as a relief driver/pump operator and shall receive a \$50.00 a bi-weekly additional duty payment. All relief drivers must be qualified to drive all apparatus. Promotion to Driver will result in the elimination of this additional duty payment.
- 9.4 A Firefighter or Driver Engineer who meets the requirements listed in Article 13 and who has completed the department clearing process shall be designated by the Fire Chief as a relief lieutenant and shall receive additional duty pay in the amount of \$50.00 bi-weekly. Promotion to Lieutenant will result in elimination of this additional duty pay.
- 9.5 An employee who completes the requirements for, and becomes certified as a Fire Safety Inspector, will be entitled to receive a \$60.00 bi-weekly education incentive payment.
- 9.6 Any employee completing and maintaining certification for State of Florida Fire Instructor shall receive a payment of:
- | | |
|-------------------------|--------------------|
| 1. Fire Instructor I: | \$40.00 bi-weekly |
| 2. Fire Instructor II: | \$70.00 bi-weekly |
| 3. Fire Instructor III: | \$100.00 bi-weekly |
- Employees will receive payment for the highest instructor level held and maintained.
- 9.7 Employees who are certified paramedics who have been cleared by the department and medical director and eligible for paramedic specialty pay will receive \$320 bi-weekly but no more than \$8,320 annually, as long as the paramedic certification is maintained. Designated members of the above teams must meet all required obligations and maintain good standing in order to be eligible for compensation.
- 9.8 Employees will not be eligible for payments for periods in which an individual was not assigned to special duty, or where a required certification lapse.

ARTICLE 10

HOURS OF WORK AND OVERTIME

10.1 The purpose of this Article is to define hours of work but nothing in this Agreement shall be construed as a guarantee or limitation of the number of hours to be worked per day, days per pay cycle, or for any other period of time, except as may be specifically provided therein.

10.2 The basic pay cycle for bargaining unit employees (with the exception of the Fire Prevention Specialist) will consist of a fourteen (14) day pay cycle. The tour of duty will normally be 24 hours on and 48 hours off. The City shall compensate employees for overtime in accordance with the requirements of the Fair Labor Standards Act.

Employees will earn overtime compensation at the rate of time and one half (1 ½) the employee's regular rate of pay for all productive hours worked in excess of 106 hours in the 14-day pay cycle. Sick leave and holiday paid, and unpaid hours shall not count as productive hours for overtime purposes.

10.3 Should a shift employee voluntarily switch shifts with another shift employee for the employee's convenience, no overtime compensation will be payable and the hours the employee worked as a substitute shall be excluded by the City in the calculation of the hours for which the employee is entitled to overtime compensation. All such shift trading must be in accordance with Fire and Rescue Department policy concerning shift exchanges.

10.4 Nothing in this Article shall require payment for overtime hours not worked. In calculating the amount of overtime compensation due an employee only the hours actually worked shall be counted. Such extra compensation shall be creditable toward overtime payable under the Act. Premium payments shall not be duplicated for the same hours worked under any of the terms of this Agreement.

10.5 **Scheduled Overtime:** Scheduled overtime shall be defined as any hours outside an employee's regularly scheduled shift in which they receive more than 12 hours' notice. This time will be subject to the minimum required hours in the FLSA pay cycle to be eligible for compensation at time and a half.

Hold Over: Hold over shall be defined as when an individual has not left their workplace and agrees or is mandated to holdover until relief arrives for up to 4 hours. This time will be subject to the minimum required hours in the FLSA cycle to eligible for compensation at time and a half. At no time shall a holdover that is less than twenty (20) minutes change the order or position

of an employee on the mandate list. If the employee is required to work in excess of the 4-hour limit, the entire time will be addressed as Short Notice Period.

Short Notice Period: A Short Notice Period shall be defined as any hours outside an employee's regularly scheduled shift in which they have received less than 12 hours' notice. A Short Notice Period pay shall be a minimum of three (3) hours at time and one-half (1 ½) the employee's regular rate of pay or the actual hours worked at time and one half (1 ½), whichever is greater. These hours will be included in the payroll check that corresponds with the week in which the short notice period hours were actually worked. Employees will be eligible for payments qualified under this section as appropriate even if they have not worked the minimum required hours in the FSLA cycle. Mandatory Overtime, which are hours outside an employee's regularly scheduled shift, that they did not elect/volunteer to work will be assigned and paid in accordance with the Short Notice provision.

- 10.6 Any employee who works an outside detail for work performed on behalf of and paid for by outside employers/businesses who contract with the City for such purposes shall be paid at time and one half (1 ½) his/her regular rate of pay for all hours worked during the detail.
- 10.7 Upon proof of attending court, a deposition or administrative hearing pursuant to subpoena or other court order involving a job-related case, not as a plaintiff or claimant in litigation against the City nor as a defendant in litigation by the City, an off-duty employee will receive pay equal to one and one-half (1 ½) the employee's regular straight time hourly rate of pay for the hours he attends court. Provided, that such employee shall receive a minimum of three (3) hours pay at the rate of one and one-half (1 ½) times the employee's regular straight time hourly rate for such attendance. The City reserves the right to institute any procedure or system it deems appropriate to measure, record, and/or verify attendance and duration of off-duty court appearance. In the event any employee claims time not actually spent in off-duty court appearance, he may be discharged or disciplined. The employee will sign over all subpoena and witness fees, excluding travel fees, unless City transportation is furnished in which case such travel fee will be signed over.
- 10.8 No employee shall authorize overtime for himself but shall be entitled to work overtime as assigned or authorized by his supervisor. It is understood that the City has the right to schedule overtime work as needed, and in a manner most advantageous to the City.
- 10.9 Overtime hours shall be distributed as nearly equal as possible among employees as long as such sharing will not delay or increase the cost of the

City's operations.

- 10.10 All employees shall be required to report to work on time, shall not leave the job early unless otherwise approved by the Fire Chief or his designee, shall be prompt in reporting to their assigned duties, and shall faithfully perform their duties.
- 10.11 Employees covered by this Agreement shall be given twenty-four (24) hours' notice of any change in their regular hours of work or work shift, unless an unscheduled absence by another employee or any emergency necessitates a quicker change.
- 10.12 There will be no duplication of premium payments and no claims that provide for "overtime on overtime".
- 10.13 Forty-eight (48) hours will be the maximum number of consecutive hours that may be worked at one time before requiring a minimum of twelve (12) hours off before returning to duty. The forty-eight (48) hours will include all forms of work such as normal tours of duty, overtime, shift exchanges, early relief, and special details requiring emergency services. The Chief or his designee may override this provision in extraordinary circumstance.

ARTICLE 11

WAGES

11.1

Effective the first full pay period following the ratification of this agreement by both parties or following October 1, 2023, whichever is later all shift employees Firefighter/EMT's, Driver Engineers, and Fire Lieutenants will be slotted into the following pay schedule effective the first full paycheck and after their anniversary date.

FireFighter / Driver / Lieutenant Pay Scale			
	Firefighter	Driver Engineer	Lieutenant
YOS			
Step	FF	D/E	LT
New	15.00	-	-
1	15.29	-	-
2	15.59	17.15	-
3	15.89	17.48	19.23
4	16.20	17.83	19.61
5	16.52	18.17	19.99
6	16.84	18.53	20.38
7	17.17	18.89	20.78
8	17.51	19.26	21.18
9	17.85	19.63	21.60
10	18.20	20.02	22.02
11	18.55	20.41	22.45
12	18.91	20.80	22.88
13	19.28	21.21	23.33
14	19.66	21.62	23.78
15	20.04	22.04	24.25
16	20.43	22.47	24.72
17	20.83	22.91	25.20
18	21.24	23.36	25.69
19	21.65	23.81	26.20
20	22.07	24.28	26.71
21	22.50	24.75	27.23
22	22.94	25.23	27.76
23	23.39	25.73	28.30
24	23.84	26.23	28.85
25	24.31	26.74	29.41

Employees will have their hourly rate adjusted effective upon ratification of the agreement by both parties, according to the above schedule. The firefighter, driver/engineer and lieutenant rate is based on Years of Service (YOS) within the Port Orange Fire & Rescue Department

Employees who have reached the maximum pay rate for their position will receive the base increase of the starting wage as shown above for Firefighter/EMT's, Driver Engineers, and Fire Lieutenants as a lump sum or a contribution into a 457 Plan, this will be considered pensionable. This lump sum or contribution will occur the first full paycheck after October 1 and every year thereafter:

- 11.2 For Fiscal 2025, beginning October 1, 2024 and expiring September 30, 2025, all shift employees Firefighter/EMT's, Driver Engineers, and Fire Lieutenants will be slotted into the following pay schedule effective the first full paycheck and following their anniversary date and every year thereafter:

FireFighter / Driver / Lieutenant Pay Scale				
YOS	Firefighter	Driver Engineer	Lieutenant	
Step	FF	D/E	LT	
New	15.50	-	-	
1	15.80	-	-	
2	16.11	17.72	-	
3	16.42	18.07	19.87	
4	16.74	18.42	20.26	
5	17.07	18.78	20.66	
6	17.40	19.14	21.06	
7	17.74	19.52	21.47	
8	18.09	19.90	21.89	
9	18.44	20.29	22.32	
10	18.80	20.68	22.75	
11	19.17	21.09	23.19	
12	19.54	21.50	23.65	
13	19.92	21.92	24.11	
14	20.31	22.34	24.58	
15	20.71	22.78	25.06	
16	21.11	23.22	25.55	
17	21.52	23.68	26.04	
18	21.94	24.14	26.55	
19	22.37	24.61	27.07	
20	22.81	25.09	27.60	
21	23.25	25.58	28.14	
22	23.71	26.08	28.68	
23	24.17	26.58	29.24	
24	24.64	27.10	29.81	
25	25.12	27.63	30.39	

Employees will have their hourly rate adjusted effective upon ratification of the agreement by both parties, according to the above schedule. The firefighter, driver/engineer and lieutenant rate is based on Years of Service

(YOS) within the Port Orange Fire & Rescue Department

Employees who have reached the maximum pay rate for their position will receive the base increase of the starting wage as shown above for Firefighter/EMT's, Driver Engineers, and Fire Lieutenants as a lump sum or a contribution into a 457 Plan, this will be considered pensionable. This lump sum or contribution will occur the first full paycheck after October 1 and every year thereafter:

- 11.3 For all fiscal years covered by this agreement, the position of Fire Prevention Specialist shall receive the same pay increase to their base rate of pay that the civil service employees receive but in no case higher than that received by shift employees Firefighter/EMT's, Driver Engineers, and Fire Lieutenants.

City would like to see a pay range established for this position.

- 11.4 Promoted employees shall move to the corresponding category for Years of Service (YOS) of the next rank.

- 11.5 Bargaining unit employees shall receive a performance evaluation annually with the City. An employee who receives an "unsatisfactory" performance rating will be re-evaluated at the end of three (3) months. Failure to receive a "satisfactory" performance rating after the re-evaluation period will result in disciplinary action, up to and including termination. Any employee with an "unsatisfactory" rating on their last performance evaluation will not be eligible for a salary adjustment on the next October 1st, if one is granted by the City Council.

- 11.6 Employees newly hired may be started at a higher rate of pay than the minimum starting rate, upon evaluation by management. New hires with five (5) or more years of working experience in fire or EMS may only be started at a higher rate of pay not to exceed a the rate of pay for Step 2 Firefighter, upon evaluation by management.

- 11.7 The employee and City may mutually agree to provide time off as compensation for overtime. Such time off ("compensatory time") shall be accrued at the same rate as overtime pay, i.e., one and one-half (1 ½) hours of compensatory time for each hour of overtime worked. The maximum number of hours of compensatory time which will be allowed to accrue is one hundred-ninety-two (192) hours of compensatory time.

- 11.8 For the purpose of taking compensatory time off, the employee shall request in writing to be allowed to utilize his accrued hours and shall designate the day(s) he wants off. Said request should be made as far in advance as

possible. Compensatory time will be used prior to any use of annual leave and will be scheduled at the discretion of the Fire Chief, or his designee; provided that the employee will be permitted to use such time off within a reasonable period after making the request, if such does not unduly disrupt operations of the City.

- 11.9 Nothing in this Agreement shall be construed to prohibit the City from substituting cash, in whole or in part, for compensatory time off at any time; and overtime payment shall not affect subsequent granting of compensatory time off in future workweeks or work periods.
- 11.10 Upon termination of employment, an employee shall be paid for Compensatory time earned and accrued at the employee's final regular Hourly rate of pay. However, such lump sum payment shall not be included In the employee's base salary for the purpose of computing pension benefits.

ARTICLE 12

RETIREMENT PLAN

- 12.1 The parties hereto recognize that the employees in the Bargaining Unit are participants in a Retirement Plan of the City as provided for by Chapter 175, Florida Statutes, and Section 54-76, etc. of the Code of Ordinances, City of Port Orange, Florida (hereby referred to as the "Retirement Plan"). Pensions and other retirement benefits for bargaining Unit employees which are not specifically enumerated in this labor Agreement are as set forth in the Retirement Plan. The City agrees to maintain the benefits and member contributions set forth in the Retirement Plan, with the changes provided below. An employee in this bargaining Unit who enters the DROP program on and after the effective date of this contract shall be subject to all of the terms of this contract including this Article.

The City of Port Orange agrees to maintain a retirement plan for Firefighters as required by City Ordinance.

The City agrees to maintain the benefits and member contributions set forth in the Firefighters Pension Fund Ordinance.

There will be no change in the current accrued benefits of Plan members unless amended by ordinance.

- 12.2 After the Retirement Plan achieves a funded ratio of one hundred percent (100%) or greater as reflected in the current Disclosure Information prepared in accordance with Governmental Accounting Standards Board requirements, the City will make a contribution, of the higher of either the normal cost of the plan or a minimum thirteen percent (13%) towards a stabilization fund for use during economic downturns to smooth the volatility of required pension payments. This contribution shall be paid to the pension fund and shall not be used by the City or the members to acquire or fund new or additional benefits.

- 12.3 Should an issue arise with the State Division of Retirement regarding any provisions in this Article, both parties agree to work together to resolve the issues in order to gain approval of Plan changes.

- 12.4 Mutual Consent Agreement:

In compliance with section 175.351(6), F.S., a defined contribution plan component ("share plan") has been established as part of the benefit pension plan, to be funded exclusively with Ch. 175 premium tax revenues. However, the City and Union have mutually agreed that no Ch. 175

premium tax revenues will be allocated to a share plan at this time. The share plan shall not be activated until Ch. 175 premium tax revenues are allocated to the share plan by mutual agreement of the parties. At such time in which the City and Union agree to allocate Ch. 175 premium tax revenues to the share plan, the parties will negotiate the details of the share plan. All annual premium tax revenues received pursuant to Ch. 175 will continue to offset the City's pension contributions. All accumulated excess premium tax revenues as of 10/01/16 will be used to offset the City's pension contributions.

ARTICLE 13

TEMPORARY ASSIGNMENT TO A HIGHER CLASSIFICATION

- 13.1 The City may select any employee from a lower classification to temporarily fill a higher classification position, provided that the employee in the lower classification is on the eligibility list for promotion to the higher classification or has been deemed qualified through a valid process. Upon ratification of this agreement, anyone not currently qualified must meet the following requirements listed below:

Relief Driver: Successful completion of Fire Service Hydraulics, Apparatus Operations, and Aerial Operations

Ride-up Lieutenant: Successful completion of the Fire Officer 1 courses, Building construction for the fire services, Company Officer, Fire Fighting Strategy and Tactics 1, and Fire Service Course Delivery.

The Fire Chief and Union Leadership may agree to a modified requirements list for a determined period of time. This agreement will be established prior to implementation and mutually agreed upon by both parties.

- 13.2 An employee in the rank of Lieutenant who is temporarily assigned to a position of Battalion Chief for a period of two (2) hours or more shall be entitled to fifteen percent (15%) ride up pay for the period of time the employee is so assigned. This ride up pay will be computed in the pay period in which it was earned and paid to the employee in his/her regular paycheck for that period.

- 13.3 In the event an employee is temporarily selected to fill a vacant promotional position on an interim basis for two-hundred-forty (240) of the last four hundred eighty (480) hours, the employee shall receive a ten percent (10%) salary adjustment above their current base pay, but in no event shall the salary adjustment be lower than the hiring rate for the new position.

If the employee selected for a temporary position is not selected to the permanent position, this employee shall be returned to his/her previous classification and pay rate.

- 13.4 An employee who is temporarily assigned to a shift required to perform the transport function for a period of two (2) hours or more shall be entitled to \$3.00 per hour assignment pay for the period of time the employee is so assigned. The assignment pay will be computed in the pay period in which it was earned and paid to the employee in his/her regular paycheck for that period. All bargaining unit employees shall be eligible for overtime

opportunities on the transport unit(s), but an employee on overtime shall not be forced to work on the transport unit unless all other options have been exhausted.

ARTICLE 14

HOLIDAYS

14.1 It is recognized that the City will close its offices for twelve (12) official holidays. The following twelve (12) days are paid holidays under this Agreement:

1. New Year's Day
2. Martin Luther King Jr. Birthday
3. Good Friday
4. Memorial Day
5. Juneteenth
6. Independence Day
7. Labor Day
8. Veteran's Day
9. Thanksgiving Day
10. Friday after Thanksgiving Day
11. Christmas Eve
12. Christmas Day

14.2 In addition to the paid holidays above, employees shall be granted additional leave as follows:

Floating Holiday: Twenty-four (24) hours will be added to the employee's annual leave accruals for forty (40) hour employees. Thirty-six (36) hours of annual leave will be added for shift personnel. This annual leave will be added on the first pay period after the first of January for the employee to use as he or she wishes. These hours are to be scheduled in the same fashion as annual leave.

Employee Birthday: Eight (8) hours will be added to the employee's annual leave accruals for forty (40) hour employees. Twelve (12) hours of annual leave will be added for shift personnel. This annual leave will be added on the first pay period after the first of October for the employee to use as he or she wishes for his or her birthday. These hours are to be scheduled in the same fashion as annual leave.

In order to qualify for the four (4) annual leave accruals for the Floating Holidays, and Birthday Holiday, an employee must have been employed for the entire 12 consecutive previous months. After 12 consecutive months of service, employees shall be eligible to receive the additional hours added to their annual leave accruals. After new employees complete their first consecutive 12 months of service, they will receive the additional hours added to their annual leave accruals.

- 14.3 Shift employees who work the actual holiday referenced in 14.1 will be the employees who are compensated with holiday pay rather than the employees who work on the day the holiday is observed by the City.
- 14.4 If a holiday referenced in 14.1 falls on a shift employee off duty day, they shall receive twelve (12) hours holiday pay at their regular straight time rate of pay.
- 14.5 If a shift employee is required to start his/her shift of work on one of the holidays specified in 14.1, he/she shall receive payment of one and one half (1 ½) regular hours at his/her regular rate of pay for each hour worked up to twelve (12) hours worked on that shift, in addition to twelve (12) hours of holiday pay at his/her regular rate of pay. Under no circumstance will total compensation exceed two and one half (2 ½) times one day's pay at the regular rate.
- 14.6 Employees who work a forty-hour (40) work week, either by regular schedule or during a modified schedule due to Worker's Compensation assignment will be paid for such holidays specified in 14.1 in accordance with the provisions of this Section:
- A. Should a paid holiday fall on Sunday, the Monday immediately following the holiday shall be the day observed as such holiday and should such holiday fall on a Saturday the preceding Friday shall be the day observed as such holiday.
 - B. An employee who performs no work on the holiday, and who is eligible, shall receive an additional day's compensation, paid at his regular rate of pay.

ARTICLE 15

ANNUAL LEAVE

- 15.1 Annual Leave is provided for the purpose of allowing employees time off from their work for vacation or for necessary time to attend to personal business.
- 15.2 In computing annual leave time, holidays, or regular days off immediately preceding the commencement of, falling within, or following the termination of an employee's annual leave, shall be excluded from the computation of the employee's annual leave time.
- 15.3 Selection of vacations shall be on a seniority basis. Employee's vacation requests for a calendar year must be submitted in writing and received in the Fire Administration office after January 1st of the year, but not later than 5:00 p.m. by February 1st of each year. The individual employee is responsible to ensure the request is received in the Fire Administration office on the proper date and time. The City will permit a minimum of three (3) persons on any shift to take off on annual leave at the same time. At the Fire Chief's discretion, an additional employee may be allowed annual leave during peak times. (This will coincide with Volusia County School Board calendar for major breaks)
- 15.4 Notification by the City of vacation schedules shall be made in writing by March 1st of each year. Nothing in this Agreement shall restrict the City's right to reschedule vacations in the event of a disaster or emergency. The City will make every effort to accommodate scheduled requests for annual leave or a reschedule request in a situation where cancellation of annual leave is permitted, whether the request is made before or after February 1, providing such request is submitted in writing to the Department Head, or in the Department Head's absence, the Department Head's designee, and providing staffing requirements are met.
- 15.5 Any request for annual leave other than vacation selection must be submitted in writing to the Chief or the Chief's designee at least twelve (12) hours in advance of the date requested. If the request is made verbally and approved, it shall be documented in writing as soon as practicable thereafter. After the employee has reported for duty, the Chief or his designee may grant annual leave if staffing is available and overtime is not incurred.
- 15.6 Emergency Annual Leave.
- On no more than three (3) occasions per fiscal year (October 1 through

September 30), an employee may utilize annual leave with little or no advance notice ("emergency annual leave") to deal with personal or family emergency situations. In order to be granted annual leave for these purposes, an employee must request the leave verbally or in writing as far in advance of taking the leave as possible. If the employee is unable to make a written leave request prior to taking emergency annual leave, he/she must submit such a request as soon as is practicable thereafter. The employee's request for emergency annual leave must include information specifically describing the situation for which the leave is required. After emergency annual leave has been granted, the City shall have the right to require verification from the employee of the emergency circumstances which necessitated the taking of annual leave, if evidence verifying the circumstances is available. If an employee is found to have provided false information concerning his/her need to take emergency annual leave, he/she may be subject to corrective action and shall be responsible for any costs incurred by the City to provide staffing coverage for the falsified emergency leave situation.

The City shall grant an employee's request for emergency annual leave regardless of whether or not granting the leave request would require the City to pay overtime to meet minimum staffing levels. If an employee has already taken emergency annual leave on three occasions during a fiscal year and makes a request for additional emergency annual leave, the Department Head or designee may grant or deny the request at his/her discretion.

15.7 Cancellation of Requested Annual Leave.

If an employee wishes to cancel approved annual leave which was selected on or before February 1st, the employee may do so provided that he/she provides the Department Head or the Department Head's designee with notice at least twelve (12) hours prior to the start of the approved annual leave.

Should an employee have an emergency situation that causes the cancellation of scheduled annual leave, the Department Head or the Department Head's designee may approve the cancellation of annual leave and authorize the employee to return to work.

15.8

Accrual of Annual Leave:

- A. General Term of Accrual - Annual leave shall be earned and accrued from the most recent day of employment under the conditions hereinafter stated, but no annual leave shall be granted until an employee has completed six (6) months of continuous service. An employee who is paid for less than twenty (20) hours of work in a week shall accrue no annual leave credit for such week of service. Provided however, that the limit of twenty (20) hours shall not apply to an employee on annual leave, sick leave, or other authorized leave with pay who would otherwise have worked at least twenty (20) hours.
- B. Accrual for Current Full-Time Employees working a forty (40) hour week: Each employee working a 40-hour work week shall accrue annual at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:

Length of Continuous Service	Maximum Annual Accrual
less than 5 years	100
5 to 8 years	116
8 to 11 years	132
11 to 16 years	148
16 to 20 years	164
more than 20 years	180

- C. Each full-time shift employee shall earn annual leave at an equally prorated amount per pay period as follows. In the event an employee has worked less than a full year, the total number of accrued hours of annual leave will be reduced proportionately:

Length of Continuous Service	Maximum Annual Accrual
less than 7 years	148
7 to 9 years	172
9 to 16 years	208
16 to 20 years	220
More than 20 years	244

- D. Maximum Accrual for Current Employees - Annual leave normally is to be taken in the anniversary year in which it is accrued. Unused annual

leave may be accumulated to a maximum of three hundred and twenty (320) hours for bargaining unit employees working a forty (40) hour work week, and three hundred and eighty-six (386) hours for bargaining unit employees working extended shifts as set forth above.

- E. Employees will be permitted to use annual leave in accordance with Department policy in units of not less than four (4) hour increments subject to the approval of their supervisor. In case of conflict, annual leave shall be granted on the basis of seniority. For shift Firefighters, the maximum amount of accumulated annual leave which may be taken at one time, shall be ten (10) shifts of twenty-four (24) hours each, which, with the forty-eight (48) hours off duty time per shift, will permit a maximum of thirty-two (32) days away from duty. Fire administration has the right to grant more than 10 shifts of leave consecutively. Requests can be made in writing by the employee.
- F. Employees who have accrued more than the maximum accrual set forth in section 15.8.D shall receive payment, or at the employee's option, deferral into a 457 Plan account, for this unused leave.

Leave balances as of September 1st of each fiscal year shall be paid or deferred into the employee's 457 Plan account at the rate in effect on September 15, by the last pay period in September.

- 15.9 An employee who is terminated for cause (not for inline duty disability) or who resigns without a two (2) week notice shall not be eligible for compensation for any accumulated leave. An employee who resigns with a two (2) week notice, is laid off, or retires under the provisions of the City's pension plan (or in the event of death, his/her heirs) shall be compensated for all accumulated unused annual leave up to the maximum accrual as provided for in Section 15.8 (d). Pay, or at the employee's option, deferral into an 457 Plan account, for such accumulated leave shall be based on the regular hourly rate of pay of the employee at the time of termination. In the case of death, compensation shall be paid to the surviving spouse or the employee's estate.
- 15.10 Employees taking annual leave shall have their accounts charged for the actual number of scheduled hours absent because of leave.

ARTICLE 16

SICK LEAVE

- 16.1 Sick leave benefits shall not be considered as a right to be used at an employee's discretion. Sick leave is an allowance granted by the City to provide employees with reasonable time off during periods of personal or family illness or injury and to attend medical appointments without loss of pay. This includes time off to recover from off-duty illness or injury that prevents an employee from being able to adequately perform their required job duties and functions. All employees desiring to utilize sick leave are required to notify their supervisor as early as possible, and at least one (1) hour in advance of their scheduled reporting time each day of their intended absence due to illness. Extenuating circumstances to the above shall be given due consideration. Such notice shall be given each day of the absence and the employee shall notify the supervisor as soon as possible of the employee's intention to return to work. Abuse of sick leave privileges shall be considered cause for disciplinary action or dismissal. When abuse is suspected, the City may require a physician's certificate to authenticate an absence or to determine qualifications to resume work.
- 16.2 General Terms of Accrual - Sick leave shall be accrued from the most recent day of continuous uninterrupted employment under the conditions hereinafter stated.
- A. Accrual for Full-Time Employees - Each full-time employee working a forty (40) hour work week shall accrue of 96 hours of sick leave at an equally prorated amount per pay period per year. Firefighters on shift shall accrue 156 hours of sick leave at an equally prorated amount per pay period per year. In the event an employee has worked less than a full year, the total number of accrued hours of sick leave will be reduced proportionally.
- B. Accumulation and Pay-Off of Sick Leave - Subject to the provisions of this Agreement, employees may accumulate sick leave from year to year for use in future years as needed. Employees may exchange sick leave for pay, or at their option, deferral into an 457 Plan account up to the maximum amount provided by law, as provided herein. The maximum unused sick leave that may be exchanged for pay or deferral in any one year is one hundred ninety-two (192) hours, provided however, that shift employees must maintain a minimum balance of seventy-two (72) hours after the amount of sick leave requested to be sold is subtracted from their accrual. Other personnel must maintain a minimum balance of at least forty (40) hours of accumulated sick leave after the amount of sick leave

requested to be sold is subtracted from their accrual.

16.3

Accumulation of Sick Leave and Sick Leave Sell Back/Deferral

The maximum amount of sick leave that employees will be able to carry forward into the following year will be one thousand (1000) hours. Accrued sick leave balances as of September 1st each fiscal year which are in excess of the accrual cap amounts for each particular employee shall be paid off by the City at the employee's regular hourly rate in effect on September 15th for each hour of sick leave.

At the employee's option, the employee may defer this payment into an 457 Plan account up to the maximum amount provided by law.

A. Sick Leave Sell Back/Deferral

- i. For employees who have a minimum of ten (10) years of seniority with the City as of September 30 of the year in which the employees seek to exchange sick leave for pay or deferral, the following procedures shall apply to sick leave exchanges for pay:

All members must maintain a minimum balance of forty (40) hours of sick leave (or seventy-two (72) hours of sick leave for shift employees). Employees may exchange a maximum of one hundred ninety-two (192) hours of unused sick leave for pay or deferral into the employee's 457 Plan account each year. Each employee shall receive one hour of pay or deferral at his/her regular hourly rate as of September 15 of the year that the exchange is being made for each hour of unused sick leave being cashed in or deferred.

- ii. For employees who have less than ten (10) years of seniority with the City as of September 30 of the year in which the employees seek to exchange sick leave for pay, the following procedures shall apply to sick leave exchange:

All members must maintain a minimum balance of forty (40) (or seventy-two (72) hours of sick leave for shift employees).hours of sick leave. Employees may exchange a maximum of one hundred ninety-two hours of unused sick leave for pay or deferral into the employee's 457 Plan account each year. Employees who have accumulated more than the minimum hours of sick leave but less than one hundred (100) hours which they wish to exchange may exchange that leave for pay or deferral at the rate of three (3) hours of sick leave

for one (1) hour of pay or deferral.

Employees who accumulate more than one hundred (100) hours of sick leave which they wish to exchange may exchange that leave for pay or deferral at a rate of two (2) hours of sick leave for one (1) hour of pay or deferral. At all times a minimum of forty (40) hours (or seventy-two (72) hours of sick leave for shift employees) of sick leave must be maintained in order for the employee to exchange sick leave for pay or deferral.

- 16.4 Subject to the provisions of this Agreement, an employee may cash in, or at his/her option, defer into an 457 Plan account, at his/her regular rate of pay effective on September 15, his/her accumulated sick leave hours by submitting a request in the time and absence system to the Human Resources division no later than September 1st of such fiscal year, subject to the restrictions indicated in Section 16.2.B. Failure to submit this form will result in an employee's accrued sick leave bank being "banked" for future use or pay-off as provided here-in.

All payments or deferrals for unused sick leave made under this Article shall be made on or about the last pay period in September.

- 16.5 Participants receiving sick leave shall be paid and their account charged for the actual number of scheduled hours absent because of sickness.

- 16.6 Any absence for a fraction or part of a day which is chargeable to sick leave shall be charged in increments of not less than one-half (1/2) hour.

- 16.7 Resignation, Retirement, or Death – An employee who resigns with two (2) weeks prior notice or retires under the provisions of the City's pension plan (or in the event of his death, her or his heirs) shall be entitled to a lump sum payment, or a lump sum deferral into the employees' 457 Plan account up to the maximum provided by law, for all unused sick leave accrued, at their regular rate of pay. If an employee was hired after October 1, 2023 they must have a minimum of ten (10) years of service with the City to be entitled to this provision for all unused sick leave accrued lump sum payments, at their regular rate of pay at resignation or retirement.

- 16.8 An employee who is fired (other than for in line duty disability), dismissed, or who quits and/or separates from the City for any reason other than detailed in 16.7 shall forfeit accrued sick leave. Under such circumstances the accrued sick leave is forfeited and the employee shall have no claim to payment or deferral into the employee's 457 Plan account for accrued sick leave.

- 16.9 Sick Leave Donation Process - Both parties agree to work towards establishing a Sick Leave donation process to allow employees to contribute sick leave hours to other employees.

ARTICLE 17

BEREAVEMENT LEAVE

17.1 All employees may be granted time off with pay to arrange and/or attend funeral services in the event of death(s) in the family. Such time off shall ordinarily not exceed forty-eight (48) hours for extended shift employees or four (4) workdays for employees working a forty-hour work week per event, for a maximum ninety-six (96) hours per fiscal year for extended shift employees or eight (8) workdays per fiscal year for employees working a forty hour work week, and shall not be charged as annual leave or sick leave. Requests for time off shall be submitted in writing to the employee's supervisor when possible. In extraordinary circumstances, where the employee has exhausted the maximum bereavement leave provided for in this part, the Department Head may, in his discretion, grant an employee additional leave time.

In the event of the death of an immediate family member, defined as parent, spouse, child, stepchild, or sibling the employee shall be allowed to use seventy-two (72) hours for extended shift employees of consecutive time off. The maximum of ninety-six (96) hours of paid bereavement leave in a fiscal year remains.

17.2 Management may require the employee to verify the employee's relationship to the deceased and to provide proof of death.

17.3 In the event of the need for additional time for a death, an employee may use accrued sick or vacation leave.

ARTICLE 18

LEAVE OF ABSENCE

- 18.1 The City of Port Orange will grant up to twelve (12) weeks of family and medical leave during any twelve-month (12) period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA) and in accordance with the City Family and Medical Leave Act Policy. This Policy is set forth in the City's Administrative Policies Manual as Policy 1-22.
- 18.2 The City Manager shall have the sole discretion to grant or deny a leave of absence under circumstances which are not covered by the Family and Medical Leave Act. The maximum length of time for this type of leave of absence shall be twelve (12) weeks. If such a leave is granted, the employee must first use any accrued annual leave and sick leave. The remainder of the leave of absence will be unpaid. Requests for a leave of absence under this Section must be made in writing. The leave of absence request may be approved in full, modified or denied as specified in writing by the City Manager.
- 18.3 Longevity increases, merit increases, and any other increases for which an employee may become eligible based in whole or in part on length of service with the City shall not be credited during any period of leave of absence without pay. An employee shall return from leave of absence to the same step of his salary grade as at the time of commencement of leave of absence
- 18.4 If permitted by the Retirement Plan, an employee may maintain his/her retirement credit during the period of an unpaid leave of absence under this Article by paying both his/her and the City's share of the Retirement Plan contributions.

ARTICLE 19

JURY DUTY AND APPEARANCE AS A WITNESS

- 19.1 Any employee in the Bargaining Unit who is summoned to perform jury service during his normal working hours in any court (City, Federal, or County) shall be granted leave with pay for the time he is absent from work as a result of fulfilling his jury duty obligation. The employee summoned as a juror shall attach a copy of his summons to the Leave of Absence Request. An employee who is released from jury duty prior to four (4) hours from his normal end of the workday, shall be required to report to his work site immediately after his release.
- 19.2 An employee subpoenaed as a witness for a court proceeding, not involving personal litigation, shall be granted leave with pay to appear and testify pursuant to the subpoena. If the employee is released from the subpoena prior to the expiration of twelve (12) hours for shift Firefighters and four (4) hours for 40-hour employees from his normal starting time for that workday, he shall be required to report to his work site immediately after his release from such subpoena.
- 19.3 Any court proceeding of a personal nature will not be subject to this Article.

ARTICLE 20

MILITARY LEAVE

- 20.1 Bargaining unit members will be allowed military leave in accordance with conditions set forth in the Uniformed Services Employment and Reemployment Act (USERRA), and Sections 115.07, 115.09, 115.14 and 250.48, Florida Statutes and in accordance with the City's Military Leave Policy. This Policy, as amended from time to time, is set forth in the City's Civil Service Rules and Regulations, Chapter 3, Attendance and Leave, 3.07, Military Leave.
- 20.2 With respect to any bargaining unit employee whose working day consists of over twelve (12) hours, each such shift shall equal two (2) working days leave of absence.
- 20.3 During such period of leave with pay, the employee's benefits shall continue in the same manner as if he were on active duty with the City.
- 20.4 If permitted by the Retirement Plan, an employee may maintain his/her retirement credit during the period of an unpaid leave of absence under this Article by paying both his/her and the City's share of the Retirement Plan contributions.

ARTICLE 21

EDUCATIONAL LEAVE

- 21.1 Any employee covered hereunder may be given educational leave for the purpose of taking courses or attending conferences and/or seminars directly related to the employee's work as determined in writing by the Department Head. Requests for such educational leave must be approved in writing in advance by the Department Head.
- 21.2 An employee granted educational leave with full pay shall be entitled to receive all City benefits in the same manner as if he were on active duty during the period of the leave. Entitlement to benefits for employees on partially compensated or uncompensated educational leave shall be determined by the City Manager.

ARTICLE 22

WELLNESS HOURS

- 22.1 The City recognizes the high stress environments and situations that come with Fire Services. The City agrees to provide wellness hours for full-time firefighter, driver/engineer and lieutenant employees working a fourteen (14) day pay cycle.
- 22.2 All employees with the rank of Firefighter shall accrue wellness hours beginning on their 5th anniversary date of hire in the amount of fifty (50) hours per year pro-rated each pay period.
- 22.3 All employee with the rank of Driver Engineer shall accrue wellness hours in the amount of one hundred (100) hours per year pro-rated each pay period.
- 22.4 All employees with a rank of Lieutenant shall accrue wellness hours in the amount of one hundred-seventy-five (175) hours per year pro-rated each pay period.
- 22.5 The use of wellness hours shall be consistent with the requirements for annual leave set forth in Article 15.
- 22.6 Unused wellness hours may be accumulated to a maximum of five hundred (500) hours. Wellness hours in excess of five hundred (500) hours effective the last full pay period in September of each successive year shall be forfeited.
- 22.7 An employee who retires or resigns from the City in good standing after giving two weeks advanced separation of serviced shall be compensated (or request compensation be rolled to a 457 Plan) for fifty percent (50%) of all unused wellness hours accrued at the time of separation.
- 22.8 All employees who completes the annual Air Consumption Drill in under twelve minutes and thirty seconds (12:30) will receive a lump sum of 24 hours of Wellness Hours.

ARTICLE 23

TUITION REIMBURSEMENT

- 23.1 Subject to budget constraints and availability of funds, the City agrees to reimburse the employee for tuition (excluding fees) up to two (2) approved classes per semester. The employee will be reimbursed at the Daytona State College (DSC) rate.
- 23.2 The City will reimburse the employee for tuition (excluding fees) for graduate course work at the rate of one half (1/2) the cost of tuition for graduate course work at the University of Central Florida (UCF) rate, regardless of where the courses are taken. Courses will be paid on a reimbursement basis with proof of payment and grade.
- 23.3 The City will require each employee to remain in the service of the City for one (1) year after completion or termination of the most recent class paid for by the City or the employee will be required to reimburse the City for the costs of tuition unless the employee is terminated by the City. This obligation will begin on the day after the school semester is completed.
- 23.4 The employee shall not receive reimbursement by the City for any course not passed with a grade of "C" or better or a passing grade on a pass/fail system or if grades are not received within three (3) months after the completion of the course.
- 23.5 All employees must pre-register with the Human Resources Department regardless of where the courses are taken, if the employee intends to apply for tuition reimbursement. The City maintains the option to refuse to pay for courses that are not directly related to a degree program or courses that have excessively high costs.
- 23.6 The City of Port Orange will also provide reimbursement for internet and correspondence courses to the employee at the same reimbursement rates as stated in section 23.1 and 23.2 above. Employees may take internet-based certificate programs from accredited online programs for courses that would also be available through degree-seeking programs and will be reimbursed for the actual cost of the course, not to exceed the amounts outlined in 23.1 and 23.2. Employees who wish to complete internet-based courses, which are job related, but do not relate to a college degree, will be monitored by Department Directors who will approve and pay for the courses. Employees shall not be allowed to work on internet-based college courses during normal work hours (8:00 A.M.-5:00 P.M.). At a Lieutenant's discretion, an employee may be permitted to work on college courses while on shift outside of these work hours.

- 23.7 Employees must have completed twelve (12) months of service with the City to be eligible for taking courses as allowed under this article.
- 23.8 It is clearly understood that all tuition reimbursement is subject to budget constraints and availability of funds as defined in the line item for tuition reimbursement. The funds assigned to this line item are for use City Wide and approval of funds will be based on a first come, first serve basis upon applying for reimbursement prior to the course beginning. All documentation must be complete when turned into the Human Resources department in order to be considered for tuition reimbursement. Notwithstanding the aforesaid, the Department Head may within his discretion, allocate from the various Fire Department's operational funds to provide tuition reimbursement for employees.

ARTICLE 24

SENIORITY

- 24.1 For the purpose of this Agreement, seniority is defined as the length of continuous, uninterrupted service in the Fire Department. Effective the date of the ratification of this agreement, employees hired on the same day will be placed on the seniority list in the order of their ranking on the hiring eligibility list. For employees hired prior to the date of the ratification of this Agreement, employees hired on the same day have been placed on the seniority list in the order of the employee's last four digits of their social security numbers with the lowest number shall have the highest seniority for all purposes.
- 24.2 Continuous service shall be considered as having been interrupted when the employee:
- (a) Resigns;
 - (b) Is discharged;
 - (c) Takes unauthorized leave of absence leave; or
 - (d) Is absent due to a lay-off for more than one (1) year.
- 24.3 In the event of a lay-off or elimination of a classification within the Department seniority as recognized in 24.1 shall be the determining factor:
- 24.4 Employee will be recalled from a lay-off in the inverse order of their lay-off, by job classification, provided the employee is still qualified to perform his work. Provided further that recall rights shall continue for a period of one (1) year from the date of an employee's lay-off. The City shall notify the employee of all job openings in the employee's former classification during the one (1) year period. Such notification will be mailed to the employee's last known address. The laid-off employee must accept the recall option within five (5) calendar days of receipt, or the employee will be considered to have forfeited any recall right.
- 24.5 An employee on lay-off shall retain his seniority for one (1) year following his layoff but shall not accrue seniority while on lay-off. Group insurance benefits shall be continued in accordance with the Consolidated Omnibus Budget Reconciliation Act, as amended.

ARTICLE 25

PROBATIONARY EMPLOYEES

- 25.1 All new members in the Department shall be classified as probationary employees for the first three hundred and sixty-five (365) calendar days of continuous, uninterrupted employment during which time such employees may be laid-off, disciplined, or discharged at the sole discretion of the City. Shorter periods of employment shall not be cumulative. Provisions as to seniority shall not apply to probationary employees; rather, seniority shall date back to the initial or adjusted date of employment after an employee successfully completes his probationary period. If more than one employee is hired on the same day or has the same adjusted date of employment, seniority shall be determined by the ranking order of the eligibility list the employee is hired from, subject to the provisions of Article 24. Any employee who is hired who lacks the state of Florida minimum standards Firefighter certification shall have their one-year probationary period (365 calendar days) begin on the date the State of Florida minimum standards certification is received, not the date of hire.
- 25.2 Employees who have been promoted to a new classification or selected to fill a vacancy within the bargaining unit shall serve a one hundred eighty (180) calendar day probationary period in the new classification or filled position. If at any time during the probationary period the promoted employee is found not to have the aptitude or ability for the position to which they are promoted, the employee will be returned to their former classification, at their prior rate of pay, and all moves made because of their promotion shall be reversed, including the termination of newly hired employees.
- 25.3 The employee's starting date of employment for purposes of calculating his probationary status and seniority shall be adjusted if the employee takes leave without pay. For example, should an employee take five (5) days of leave without pay, the employee's starting date of employment will be adjusted by moving the employee's original date up five (5) days. Should the employee be in his probationary period at the time he takes leave without pay, the employee's probationary period shall be extended in proportion to the days he was on such leave.
- 25.4 The City shall have the right to extend the probationary periods set forth in sections 25.1 and 25.2, for a period of ninety (90) calendar days, in lieu of discharging the employee.

ARTICLE 26

VACANCIES AND PROMOTIONS

26.1 Whenever a budgeted promotional vacancy occurs in a Lieutenant or Driver Engineer classification the City shall promote an employee to fill such vacancy within thirty (30) days from an existing eligibility list. However, if the current list has less than three (3) names remaining on the list, the City may either promote from this list or retest, at the City's option. Should there be no valid list at the time a vacancy occurs, or should the City elect to retest as indicated above, the City shall initiate actions to establish a new list within thirty (30) days, provided personnel are qualified for promotion. An eligibility list will be established within fourteen (14) days following completion of the promotional process and will remain in effect for a period of two (2) years from that date. Upon certification of the new eligibility list, the budgeted vacancy shall be filled within fourteen (14) days.

26.2 The City shall provide employees with a list of the required study materials that will be utilized on the promotional exam (45) forty-five days in advance of the promotional exam date. Additionally, the City shall furnish each fire station with a hard copy of all study materials and texts or the equivalent information in electronic format for the promotional examination process.

26.3 ELIGIBILITY FOR DRIVER ENGINEER PROMOTIONAL PROCESS

In order to participate in the Driver/Engineer promotional process personnel must have successfully passed Aerial Operations, Fire Service Hydraulics and Fire Apparatus Operations for Driver Engineer promotions occurring after ratification of this contract. Personnel must also have at least three (3) years with Port Orange Fire & Rescue on the date on which phase one (1) of the test is administered. If a candidate has two (2) or more years' experience as a paid firefighter, the above-mentioned requirements will be reduced by one (1) year.

Candidates shall be required to hold State of Florida certification as a State Certified Pump Operator.

The City shall reimburse each employee for the actual cost of the class (employee must submit receipt) upon passing the State exam for Fire Service Hydraulics and Fire Apparatus/Pump Operator.

Ranking on the promotional list for Driver/Engineer will be established using the following scoring system and points as outlined in Article 26 section 26.5 under "Additional Points":

PHASE I:
Driver Engineer Written Exam 100 points

Phase I includes a comprehensive written examination of 100 multiple choice questions derived from relevant Driver Engineer texts selected by the Fire Chief. Points are awarded for each successful answer. Candidates must achieve a minimum passing score of seventy (70) percent in order to continue to Phase II of the Driver Engineer promotional process.

PHASE II:
Pump Practical Exercise 200 points

Driving Practical Exercise:
Over the Road 100 points
Cone Course 50 points
Truck Check Out 50 points
200 points total

PHASE III
Assessment Center 200 points

PHASE II: includes two separate practical exercises to include the basic functions of a Driver Engineer as well as the candidate's knowledge of the apparatus and its components. The driving practical exercise will include an over the road and cone course as well as a pumping evolution which will incorporate scenarios which may include items such as the candidate's ability to utilize water and foam operations, incoming water supply, large and small handlines and master streams. Once the City announces the promotional application process, the City shall identify the specific apparatus designated to be used for Phase II. In the event the apparatus becomes unavailable, the City shall identify an alternative apparatus. Candidates must achieve a minimum passing score of seventy (70) percent in the Pump Practical Exercise and seventy (70) percent in the Driving Practical Exercise in order to become eligible for promotion.

26.4 ELIGIBILITY FOR LIEUTENANT'S PROMOTIONAL PROCESS:

Eligibility is six (6) years of continuous service as a Port Orange career fire fighter or driver/engineer; or five (5) years of continuous service as a Port Orange career fire fighter or driver/engineer with an Associate Degree in Fire Science or Emergency Medical Service, Public or Business Administration or related field; or four (4) years of continuous service as a Port Orange career fire fighter or driver/engineer with a Bachelor Degree in Fire Science or Emergency Medical Service, Public or Business

Administration or related field. Candidates shall be required to be State of Florida certified at the Officer I level. If a candidate has two (2) or more years' experience as a paid firefighter, the above-mentioned requirements will be reduced by one (1) year. The City shall reimburse each employee for the actual cost of the class (employee must submit receipt)_upon passing the State Exam.

Ranking on the promotional list for Lieutenant will be established using the following scoring system and points as outlined in Article 26 section 26.5 under "Additional Points":

PHASE I:

Lieutenant Written Examination: 100 points

Phase I includes a comprehensive written examination of 100 multiple choice questions derived from relevant Lieutenant texts selected by the Fire Chief. Points are awarded for each successful answer. Candidates must achieve a minimum passing score of seventy (70) points to continue to Phase II of the Lieutenant promotional process.

PHASE II:

Assessment Center 100 points

A "Development Team" consisting of the Administrative Services Director, the Fire Chief, and a Fire and Rescue Department Division Chief (the latter chosen by the Administrative Services Director and the Fire Chief) shall develop an Assessment Center designed to measure the cognitive and practical skills needed by a Lieutenant to successfully perform the duties of the position. The Fire Chief and the Administrative Services Director may hire or contract with an outside consultant in developing all or part of the process.

In developing the Assessment Center exercises, the Development Team will solicit input from the Department's current Lieutenants.

26.5 ADDITIONAL POINTS – ALL PROMOTIONS

Additional points for formal education and longevity will be awarded after all scores have been tabulated. These points apply to both Driver Engineer and Lieutenant promotions. Points will be awarded as follows:

EDUCATION: (Only one (1) Degree may be counted)

Four (4) Year Fire/EMS Related Degree	2 Points
Four (4) Year Non-Fire/EMS Related Degree	1 Points

Two (2) Year Fire/EMS Related Degree 1 Points

Certifications:

Fire Officer II –	2 Points
Paramedic License cleared with Volusia County	2 Points
Municipal Fire Inspector–	1 Point

Employees who have one or more Fire Service Instructor certifications shall receive one (1) point. Only the highest level may be counted.

VETERAN'S PREFERENCE IN PROMOTIONS:

The City will award veteran's preference to eligible individuals seeking a promotion in accordance with Section 295.09 of the Florida Statutes.

LONGEVITY:

Eligible candidates will receive one quarter (.25) point for each consecutive year of Port Orange Fire Department service to a maximum of five (5) points. The closest anniversary date to the processing date will be used to determine points. In the event of a tie score at the conclusion of the entire testing process, the senior eligible candidate will be ranked ahead of the candidate with less seniority.

26.6 After testing is complete, a listing will be made of all qualified applicants. The Fire Chief then will have authority to choose one (1) of the top three (3) candidates for the vacant position. The written test grade, practical exercise, seniority, and education credit (if applicable) will all be compiled to determine the final score. Candidates will be listed in the order of the final score achieved. The Fire Chief will choose one of the eligible candidates from those with the top three final scores. No eligible candidate can be passed over more than twice. "Passing over" shall be defined as a candidate of lower position on list being selected over a higher-ranking candidate for a permanent promotion. (If candidate # 2 is selected over candidate #1 this would be a passover. If candidate #2 is selected over candidate #3, this would not be a passover for candidate #3). An eligible candidate, however, may ask to be passed over as many times as that candidate wishes during the process period without adverse effects or loss of position on the list.

26.7 Employees who have been promoted to a new classification or selected to fill a vacancy within the bargaining unit shall serve a one hundred eighty (180) calendar day probationary period in the new classification or filled

position. If at any time during the probationary period the promoted employee is found not to have the aptitude or ability for the position to which they were promoted, the employee will be returned to their former classification, and all moves made as a result of their promotion shall be reversed, including (if necessary) the termination of newly hired employees.

ARTICLE 27

UNIFORMS AND EQUIPMENT

27.1 The City will provide to all new employees the following equipment and clothing:

- 1 Class A Shirt (with appropriate patches)
- 1 Class B Shirt (with appropriate patches)
- 1 Tie
- 1 Tie clip
- 5 Polo Style Shirts
- 5 Work Style Pants (Shorts optional)
- 2 T-Shirts
- 2 Gym Shorts
- 2 Long Sleeved T-shirts
- 1 Beanie Cap
- 1 Pair of Sweatpants
- 2 Sweatshirts
- 1 Ball Cap
- 1 Pair of Boots – low or high-top style
- 1 Badge
- 1 Set of Collar Brass
- 1 Name Tag
- 1 Winter Jacket, with liner – with appropriate patches
- 1 Helmet with face shield
- 2 Turnout Jacket (Phase in over 3 years)
- 2 Turnout Pants (Phase in over 3 years)
- 1 Suspenders
- 1 Pair Turnout boots
- 1 Belt
- 1 Flashlight
- 1 Pair of Structural Firefighting Gloves
- 2 Nomex Hood
- Brush Fire Gear (1 pair pants, 1 jacket, 1 helmet, 1 pair goggles, 1 respirator, 1 mask, 1 belt, 1 pair of gloves).
- 1 Gear Bag
- 1 SCBA Mask

27.2 The City agrees to furnish all bargaining unit employees, at City expense, those replacement uniform items that are worn, torn, or damaged through normal wear and tear, rather than through negligence or misconduct. No item will be replaced without the old one being turned in. The City will not pay for the replacement of civilian clothing damaged while on duty unless approved by the Chief and the City Manager.

- 27.3 The Department Head and Union Leadership will have the discretion to agree upon the addition or removal of City provided uniform items from the list in Section 27.1, subject to budgetary limitations.
- 27.4 When the employee leaves the employ of the City, he shall return all equipment and clothing issued by the City.
- 27.5 The City will continue to provide for the cleaning of uniforms. Civilian dress will not be cleaned at the City's expense.
- 27.6 Fire service employees will be permitted to wear a pin approved by the Fire Chief no larger than collar brass, that includes the union emblem on their Class A uniform. Placement of the pin shall be in a manner which does not obstruct any other department insignia.

ARTICLE 28

DISCIPLINARY ACTION

- 28.1 In the event an employee is discharged, suspended, or demoted for just cause, the City agrees that he shall be provided with written notification of the action. This notification shall be hand delivered to the employee by a supervisor at the rank of Battalion or higher rank or sent by certified mail, return receipt requested, to the address in the City of Human Resource Department records. The City agrees that no employee shall be disciplined except for just cause (This sentence does not apply for employees serving a new hire probation).
- 28.2 Except in extraordinary circumstances, before the employee is discharged or suspended without pay for disciplinary reasons the notification described in Section 28.1 will be provided to the employee in advance of the action so as to give the affected employee an opportunity to present his position. Disciplinary action requiring a signature shall be signed by the employee or acknowledged in the electronic HR system, not in admission of the offense, but in acknowledgement that a copy of the reprimand has been delivered to the employee.
- 28.3 In the event an employee becomes the subject of a formal Departmental or City investigation arising from a complaint or allegation, the Department, or the City, whichever is appropriate, shall notify the employee of the disposition of the complaint upon the conclusion of the formal investigation.
- 28.4 Disciplinary action, except termination, shall not become effective until such time that an employee has exhausted all appeals or until such time that the time period for an appeal has expired.
- 28.5 Disciplinary action shall follow the guidelines for progressive disciplinary action set forth in the City's civil service procedures for all City employees, except that oral reprimands will only be considered active for a period of one year. Discipline shall be accomplished in a constructive, progressive manner, to rehabilitate and correct an offender, if possible.
- 28.6 Any employee violating a rule or regulation, or standard operational procedure may be subject to corrective action, including dismissal for just cause.
- Whenever an action occurs which may or may not lead to the City initiating corrective action, the City will conduct an informal, or if necessary, a formal investigation after the incident has been reported to management. The City shall allow the employee to state in writing his/her account of what occurred

and an explanation of his/her conduct, prior to the Department issuing a verbal warning or initiating a request for higher levels of corrective action. If the decision is made to discipline the employee, the employee will be so notified within four (4) work shifts after the date upon which the City Manager has authorized the corrective action, provided the employee is available for notification.

ARTICLE 29

GRIEVANCE AND ARBITRATION PROCEDURES

- 29.1 In a mutual effort to provide harmonious working relations between the parties to this Agreement, it is agreed to and understood by both parties that there shall be a procedure for the resolution of grievances.
- 29.2 For the purpose of this Agreement, a grievance is defined as a claim or complaint that an employee or group of employees may have that the City has violated a specific provision of this Agreement during the term of this Agreement.
- 29.3 Grievances may be taken up during the working time of the grievant upon mutual agreement between the City and Union.
- 29.4 All grievances must be reduced to writing in an electronic PDF format, submitted through the City's emailing system, and must contain the following information:
- (a) The specific Article and Section of the Agreement alleged to have been violated by the City;
 - (b) A statement of the grievance, giving a detailed description of the facts, dates and times of the events involved in the alleged violation, and the remedy desired by the grievant;
 - (c) The electronic signature of grievant (or the signature of all employees in the case of a group of employees filing a single grievance) and date(s) signed; and in the event that the Union is filing a "class action" grievance on behalf of its members, the grievance shall be signed by the Union President. Each step of the grievance must contain a new signature from the grievant;
 - (d) Designation of the Union representative (must be an elected officer or steward) if the grievant requests Union representation.

Unless the grievance is presented in the manner set forth in this Section, it shall be deemed not to exist.

- 29.5 It is understood that many items can and will be resolved informally by the immediate supervisor, however if an issue cannot be resolved informally, grievances shall be presented in the following manner:

Step 1 - The grievant (i.e., employee, or group of employees) and/or union

representative shall present their grievance to their immediate supervisor in writing within ten (10) working days of the occurrence of the action giving rise to the grievance. Discussions will be informal for the purpose of settling differences in the simplest and most effective manner. The immediate supervisor should discuss and make an effort to resolve all legitimate grievances with fairness and justice for both the grievant and the City. The immediate supervisor shall communicate a decision to the grievant in writing within ten (10) working days from the date the grievance was presented to them.

Step 2 - If the grievance is not settled at the first step, the grievant and/or union representative within ten (10) working days of receiving a reply from the supervisor to the grievance shall present the grievance in written form (in compliance with Section 29.4) to the next higher supervisor in the chain of command (Division Chief) with a copy to the Administrative Services Director. The supervisor or their designees, shall investigate the alleged grievance and may within ten (10) working days of receipt of the written grievance conduct a meeting with the City Representatives (if applicable), the grievant and the Union Steward if the grievant requests Union representation. This supervisor or their designee shall notify the grievant of his decision no later than ten (10) working days following the meeting, or within ten (10) working days of the receipt of the grievance if a meeting is not held.

Step 3 - If the grievance is not settled at the second step, the grievant and/or union representative within ten (10) working days from the date of that supervisor's decision shall present the written grievance to the Department Head (Fire Chief) or designee and shall immediately submit a copy to the Administrative Services Director. The Department Head or designee shall investigate the alleged grievance and may within ten (10) working days of receipt of the written grievance conduct a meeting with City representatives, if applicable, the grievant and the Union Steward if the grievant requests Union representation. The Department Head or designee shall notify the grievant in writing of their decision not later than ten (10) working days subsequent to the date the grievance was received by the Department Head, or within ten (10) working days after the meeting held with the employee/representative if one is held.

Step 4 – If the grievance is not settled at the third step, the grievant and/or union representative within ten (10) working days from the date of the Fire Chief's decision shall present the written grievance to the City Manager and shall immediately submit a copy to the Administrative Services Director. The City Manager shall investigate the alleged grievance and may within ten (10) working days of receipt of the written grievance conduct a meeting with City representatives, if applicable, the grievant, and the Union Steward if

the grievant requests representation. The City Manager shall notify the grievant of his/her decision not later than ten (10) working days after the date the grievance was received, or within ten (10) working days after the meeting held with the employee/representative if one is held.

Step 5 - Arbitration - If a grievance, as defined in this Article, has not been satisfactorily resolved within the Grievance Procedure, the Union, and not the employee, may request arbitration in writing to the Office of the Administrative Services Director no later than ten (10) working days after the response is received in Step 4 of the Grievance Procedure.

29.6 Whenever the Union requests arbitration in accordance with the provisions of Section 29.5, the parties shall within ten (10) working days following appeal to arbitration attempt to agree upon an impartial individual to act as arbitrator. If an impartial individual cannot be mutually agreed upon within ten (10) working days following appeal to arbitration the parties shall jointly request the Federal Mediation and Conciliation Service to submit a panel of seven (7) arbitrators, each of whom shall be a member of the National Academy of Arbitrators. Arbitrators shall be selected from such panel by alternately striking names from this list (the Union shall make the first strike) until the last name on the list is reached

29.7 The limitations on the powers of the Arbitrator are as follows:

(a) The Arbitrator shall not have the power to add, to subtract from, or alter the terms of this Agreement.

(b) The Arbitrator shall have no authority to consider or rule upon any matter which is not a grievance as defined in this Agreement, nor shall this Agreement be construed by the Arbitrator to supersede applicable laws in existence at the time of the signing of this Agreement. The arbitration hearing shall be conducted in accordance with the rules of procedure promulgated by the F.M.C.S.

29.8 Each party shall bear the expense of its own witnesses and of its own representatives for the purpose of the arbitration hearing. The impartial Arbitrator's fees and related expenses for retaining a hearing room, if any, shall be equally divided between the parties. Any party desiring a transcript of the hearing shall bear the cost of such transcript, unless both parties mutually agree to share said cost. The Arbitrator's award shall be final and binding on both parties.

29.9 It is the mutual desire of the City and the Union that grievances shall be adjusted as quickly as possible and to that end the time limits set forth in this Article are to be strictly enforced. The time limits may only be extended

by mutual written agreement. The term "workdays" as used in this Article includes Monday through Friday of each work week regardless of the grievant's work schedule. Saturdays, Sundays, and holidays as set forth in this Agreement shall not be considered "workdays" even if work is assigned on these days. For the purpose of calculating time limits, the day on which a grievance, or a reply by management to a grievance, is received, shall not be counted. Failure of management to observe the time limits for any step in the Grievance Procedure without a mutually agreed written extension of time shall entitle the grievant (or the Union in the case of Step 4) to the relief sought in the grievance. Failure of the grievant (or the Union in the case of Step 4) to observe the time limits for any steps in this Article without a mutually agreed written extension of time shall terminate the grievance. Extensions of timelines may be mutually agreed to by both parties but must be done in writing (or via email). Any request for an extension of time must be made in writing and communicated to the other party prior to the expiration of the original period which the party is seeking to extend.

29.10 All grievances shall begin at Step 1, except the following grievances shall begin at Step 3:

- (1) A grievance that is general in nature, in that it applies to a number of employees, rather than a single employee, or
- (2) A grievance that is directly between the IAFF and the City, or
- (3) A grievance involving a suspension, demotion, or discharge.

29.11 If a decision or resolution is proposed at any step of the process that is determined by the City to be outside of the authority of the employee providing the decision/resolution, the City may overturn this decision, proceeding the grievance to the next step in the process. Any decision to overturn the remedy is required to occur within ten (10) days of the response being issued. In the event that a remedy is overturned, the grievant and/or Union, if applicable's, timeline to proceed to the next grievance level will begin upon issuance of the decision to overturn the remedy.

If the grievance is not determined to be satisfactorily resolved, the Union and/or grievant if applicable maintains the right to request the grievance to proceed to the next step in accordance with the remainder of this article.

All other requirements regarding the content, format, and timeliness of the grievance remain.

ARTICLE 30

PHYSICAL EXAMINATION AND WORKERS' COMPENSATION

- 30.1 Any Bargaining Unit employee who is temporarily disabled as a result of an injury sustained in the course of his employment with the City shall be entitled to the following compensation.
- (a) During such temporary, total disability, the employee shall receive differential payments from the City (differential payments being the sum difference between the amount of workers' Compensation received and the employee's salary earned from the City at the time of the accident) for a period not to exceed sixty (60) calendar days for any one injury.
 - (b) Unless an extension of the sixty (60) calendar day period is granted pursuant to Subsection C, at the end of sixty (60) calendar days, the employee shall only be entitled to benefits provided by the Workers' Compensation law.
 - (c) If, as a direct result of the continuation of the disability involved, the employee is unable to return to work at the end of the sixty (60) calendar day working period, the employee may petition the City requesting that he be carried in pay status beyond the sixty (60) calendar day period. Upon receipt of such a petition, the City shall have the sole discretion to decide whether pay status should be extended.
 - (d) Once an employee is receiving Worker's Compensation benefits directly from the Worker's Compensation carrier, the employee may utilize available sick and/or annual leave to supplement their wages for the amount not paid under the Worker's Compensation carrier. At no point shall the compensation be in excess of their normally scheduled base wage.
 - (e) Leave for Worker's Compensation shall run concurrent with leave as covered under Family Medical Leave Act (FMLA).
- 30.2 The City agrees that any employee injured on the job shall be paid for the employee's full schedule of hours for the day of the accident if his physician advises him that he could not or should not return to work that day. However, the City reserves the right to have the employee examined by a physician designated by the City, at no cost to the employee.
- 30.3 Based upon having probable cause to believe that any employee may have

a physical and/or mental disability which impairs the employee's effectiveness as an employee, limits the employee's ability to perform his/her assigned duties, or makes the employee's continuation in his/her job a danger to the employee, the public, or any other employees, the City may direct the employee to submit to a physical and/or mental examination conducted by a physician, psychiatrist or psychologist designated by the City. The sole purpose of such examination under this Article shall be to determine whether the employee has a physical and/or mental disability which impairs his effectiveness as an employee, limits his ability to perform his assigned duties, or makes his continuation in his job a danger to himself, the public, or other employees. In the event the City and the designated physician determine that a non-job-related disability does exist, the following action shall be taken:

If the designated physician determines that the disability can be corrected, The employee shall be allowed a specified time to have it corrected. During This period of time and after consulting with the Department Head, the City Manager in his discretion may permit the employee to continue with his Normal duties, or temporarily remove the employee from the City service. Should the employee be temporarily removed from the City service during The period of time specified for the correction of his disability, the employee May utilize his annual leave, sick leave, or leave without pay for the Correctional period. However, if the employee fails to take the necessary Steps to have the disability corrected within the specified period of time, he shall be subject to dismissal from City service.

ARTICLE 31

HEALTH AND SAFETY

- 31.1 The purpose of this Article is to promote better physical fitness throughout the Fire and Rescue Department.
- 31.2 Management and Labor will design a mutually agreeable, validated Annual Physical Ability Assessment Program, designed to ensure a firefighter is capable of meeting the physically demanding challenges of his/her job. This shall become mandatory for all personnel. This Program will be included within the departmental standard operational guidelines. Changes to this Program must be approved by the Department Head or his/her designee.
- 31.3 Medically determined stress tests shall be provided for all employees according to the following schedule:

<u>AGE</u>	<u>FREQUENCY</u>
Under 40 years	once every three years
40 - 50 years	once every two years
over 50 years	once each year

The parties agree that all Departmental employees shall undergo an annual physical exam to be paid for by the City. These exams will be scheduled while the employee is on duty.

In the event that it is medically determined by a physician that an employee should undertake further test procedures as a result of the City-paid annual exam in order to return to work, the employee shall not be charged sick or annual leave for any time lost as a direct result of this need for further testing. However, this shall not apply to tests that the employee might voluntarily take which are not medically determined as a result of the annual, City-paid exam.

Employees who are instructed by a physician to undertake further testing as a result of the annual, City-paid exam shall also be required to report the results of each test to the City's Risk Manager and complete any documentation required by the City. Failure of an employee to comply with this requirement shall cause him/her to be charged with sick leave to cover any missed work time which results from the need for further testing. The employee will be returned to active duty upon providing a physician's statement to the City's Risk Manager to the effect that the employee is medically fit to return to full duty.

- 31.4 Every employee at 5 years or greater will receive a physical test in compliance with NFPA1582 in accordance with The Heart and Lung Bill and The Florida Firefighter Presumptive Cancer Bill every two years. The City shall pay 100% for exams for all employees eligible and willing. Employees may opt to not get this exam and continue with the City Annual Physical Exam.
- 31.5 It is acknowledged and agreed by the parties hereto that the Port Orange Fire and Rescue Department is a tobacco-free workplace, and that it is a condition of employment that each member of this bargaining unit refrain from the use of tobacco during the period of his or her employment with the City. All newly hired firefighters will be required to sign an affidavit, attesting that they have been tobacco-free for at least one (1) year in accordance with Section 633.34 (6), Florida Statutes.

ARTICLE 32

LIGHT DUTY

- 32.1 Please refer to the Fire & Rescue department standard operating guideline for light duty provisions. Change to light duty standard operating procedures shall be mutually agreed upon.

ARTICLE 33

ALCOHOL AND DRUG TESTING

- 33.1 Both the City and Union recognize that drug and alcohol abuse is a growing problem among our nation's work force. The City and the Union also recognize the tremendous cost, both in terms of efficiency and in human suffering caused by needless workplace accidents. Acknowledging the necessity for action, the following Alcohol and Drug Testing Program is hereby initiated.
- 33.2
- A. All bargaining unit employees shall be subject to drug and alcohol testing as part of their annual physical examination.
 - B. In the event the Department Head, or in his absence his designee, has a reasonable suspicion to believe that an employee is under the influence of drugs or alcohol on duty, the Department Head, or in his absence his designee, may require that the employee submit to breathalyzer test, blood tests, urinalysis, and/or other appropriate testing. Should the employee test positive to a drug test, the City will utilize a confirmatory process before instituting further action. Such confirmatory process will utilize the gas chromatography - mass spectrophotometry test.
 - C. In the event the Department Head, or in his absence his designee, requests that an employee submit to breath, blood, urine and/or other tests and the employee chooses not to submit to such test or tests, the reasonable suspicion to believe the employee was under the influence shall be grounds for discharge.
 - D. If the employee submits to the tests and the results indicate alcohol or drug use (other than as indicated in Section G), the employee shall be suspended without pay. It will be recommended that the employee utilize the EAP services. After thirty (30) days have passed, a suspended employee desiring reinstatement shall, upon written request be given the opportunity to submit to further blood or request urine drug/alcohol tests, at the employee's expense. If such tests indicate the absence of alcohol or substance abuse, the employee is reinstated. In the event forty (40) days have passed and the City has not received the written request signed by the employee to take the alcohol or substance abuse test, or the employee has failed to take such tests at a time and location designated by the City, the employee shall be discharged. An employee shall also be discharged if tested under this section twice within a two (2) year period with both test results indicating alcohol or substance abuse.

- E. An employee may be granted a one-time leave of absence without pay not to exceed sixty (60) days to undergo treatment for alcohol or substance abuse pursuant to an approved treatment program. No employee benefits shall accrue during this period except that the employee may continue health, dental and life insurance coverage by paying the employee premium and dependent premium if applicable. The request must be voluntarily made in writing prior to the institution of disciplinary measures for alcohol or substance abuse.
- F. The Department Head, or in his absence his designee, has the right to search lockers, handbags, lunchboxes, other containers, or other personal effects of employees at any time provided the Department Head, or in his absence his designee, has reasonable suspicion to believe that an employee is under the influence of drugs or alcohol. If deemed necessary by the Department Head or in his absence his designee, the employees themselves may be asked to submit to a search. At no time will any employee be searched by or in the presence of a member of the opposite sex. An employee's refusal to cooperate with or submit to a search may be treated as serious insubordination that warrants immediate discipline.
- G. All employees who must use a prescription drug that causes adverse side effects (drowsiness or impaired reflexes or reaction time) shall inform their supervisor in writing that they are taking such medication on the advice of a physician. It is the employee's responsibility to also inform their supervisor of the possible side effects of the drug on performance and expected duration of use.
- H. Except as stated in subsection D of this Article, the cost of drug and alcohol screening tests shall be paid by the City.
- I. The City retains its right to maintain discipline or invoke disciplinary measures in the case of conduct which may result from or be associated with alcohol or substance abuse.
- J. Decisions of an arbitrator under this Article shall be limited to a determination of whether or not the City had reasonable suspicion, and whether or not the employee was under the influence of alcohol or drugs, and not the disciplinary measures imposed by the City.

33.3 All members of the bargaining unit will participate in random drug and alcohol testing through the same procedures as utilized under Federal Requirements for individuals required to possess a Commercial Driver's License. Each Firefighters name shall be entered into the computer which

will then select fifty (50) percent of the Firefighters to be tested on an annual basis for illegal drugs and twenty-five (25) percent for alcohol. Testing will be done a minimum of once a quarter.

ARTICLE 34

INSURANCE

- 34.1 The City will enable the employees to insure themselves under a group life insurance plan with the amount available being one-time base annual salary rounded to the next highest thousand. The City will pay 100% of the premium.
- 34.2 The City agrees to maintain a health insurance program for the employees, with the City paying the lowest "employee only" rate among any health insurance plans with a co-pay offered. Dependent coverage will be at the employee's expense.

ARTICLE 35

AUTHORIZED USE OF PRIVATE AUTOMOBILE

- 35.1 Any employee authorized to use his private automobile in the performance of his official City duties will be compensated at the current IRS standard mileage rate. Such mileage shall be computed based on the distance between the employee's regular duty station and the place of assignment or the employee's residence and the place of assignment, whichever is shorter.
- 35.2 A written claim for compensation under this Article must be submitted to the Department Head by the employee during the week that the private automobile was used. Failure to follow this procedure will result in the claims being denied.
- 35.3 The City will not assume responsibility for any damages to employee's vehicle. The mileage reimbursement payment includes a factor for both liability and collision insurance coverage. Proof of insurance is to be provided to the City's Risk Manager on an annual basis.

ARTICLE 36

SEPARABILITY

- 36.1 In the event any Article, Section or portion of this Agreement should be held invalid and unenforceable by any court of competent jurisdiction, such holding shall apply only to the Article, Section or portion thereof specified in the court's decision; and all other Articles or Sections or portions not so invalidated shall remain in full force and effect. The parties will mutually agree in writing to renegotiate the affected Article, Section or portion specified in the court's decision.

ARTICLE 37

ENTIRE AGREEMENT

- 37.1 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties are set forth in this Agreement.
- 37.2 Therefore, the City and the Union, for the duration of this Agreement, each waives the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter not specifically referred to or covered in this Agreement.
- 37.3 However, no language in this Agreement shall preclude the parties from mutually agreeing in writing to re-open any of the provisions covered by this contract.
- 37.4 The City agrees that it will negotiate with the Union the impact of any decision that affects any monetary benefits.

ARTICLE 38

DURATION OF AGREEMENT

- 38.1 This Agreement shall commence and become effective upon ratification by both parties shall continue in full force and effect until midnight of the 30th day of September 2025.; provided however, that in year two of the Agreement (October 1, 2024 – September 30, 2025) two (2) mutually agreed upon articles shall be subject to negotiations excluding Article 11 - Wages. In addition, Article 12 – Retirement shall be subject to negotiation once upon receipt of an actuarial cost impact statement while this agreement is in effect until September 30, 2025. Upon expiration of the Agreement, it shall continue in full force and effect thereafter from year to year unless notice is given in writing by either party to the other by April 1 of intent to modify, terminate, or change this Agreement.
- 38.2 No item or provision of this Agreement shall be a proper subject for negotiation during the term of this Agreement unless it is mutually agreed by the parties in writing to renegotiate such items in negotiations.
- 38.3 The City and the membership agree to moving towards a bi-weekly pay cycle upon the implementation of the City's new ERP software program. This is anticipated to occur on or after June 1, 2024. Until the implementation of the bi-weekly pay cycle, the city will maintain the 21 day pay cycle that was part Article 10 – Hours of Work and Overtime that was in the contract that expired on September 30, 2023. All additional pays will move from weekly to bi-weekly pay as part of the implementation of the ERP software program. All articles, other than Article 11 – Wage, that indicates a bi-weekly amount shall be converted to a weekly amount until the implementation of the bi-weekly pay cycle.

Approved this

13 day of October, 2023.

PORT ORANGE PROFESSIONAL FIRE
FIGHTERS ASSOCIATION, LOCAL 3118,
IAFF, AFL-CIO, PFF, FLA.:



Joseph Hartman, President, Local 3118

Approved this

____ day of _____, 2023.

CITY OF PORT ORANGE, FLORIDA:

Donald Burnette, Mayor

Wayne Clark, City Manager

Attest

Robin Fenwick, City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (C12) Resolution No. 23-52 - FEMA Flood Mitigation Assistance (FMA)
Application to Request Funds to Elevate 6 Homes

DEPARTMENT: Community Development

GOAL: 1 - Public Safety; 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 23-52, authorizing the submission of a FEMA Flood Mitigation Assistance grant to elevate 6 homes and authorizing the City Manager to execute all necessary documents for submission of the application.

SUMMARY: FEMA Flood Mitigation Assistance (FMA) grants are available annually to help communities reduce or eliminate the risk of repetitive flood damage to buildings and structures insured under the National Flood Insurance Program (NFIP). From Fiscal Year (FY) 1996 to FY 2019, FMA obligated over 1.5 billion dollars to mitigate over 8,000 properties insured by the National Flood Insurance Program.

FMA funding is available for structure elevation projects that raise homes so potential floodwaters may flow underneath the home. FMA is a cost reimbursement grant with varying cost share percentages based on the number of times a structure has flooded. The majority of structures are categorized as NFIP Repetitive Loss Property, which qualifies for a 75% federal / 25% non-federal cost share for structure elevation projects. Twenty-one homes in Port Orange have been identified as a higher priority by FEMA and are categorized by FEMA as an FMA Repetitive Loss structure, which may receive up to 90% federal cost share for structure elevation. According to FEMA, there are ten homes in Port Orange currently identified by FEMA as an FMA Severe Repetitive Loss structure, which may receive up to 100% federal cost share for structure elevation.

Homeowners with NFIP insurance that have been identified on the FEMA Repetitive Loss list may apply through the City for FMA funds even if they didn't flood within the past year. Homeowners cannot apply directly for FMA funding, they must apply through the city. The list of structure elevation addresses was created based on feedback from Port Orange residents who have received letters from the City advising the owners of grant opportunities and some who attended Informational Workshops held mid-September 2023. To date, the city has received interest and required documentation to apply for 6 homes to be elevated through FMA. Of the 6 homes, 3 of the homes may receive up to 90% federal cost share and 3 of the homes may receive up to 100% federal cost share.

The 6 homes are located throughout the city (see Location Map). The next step of the process is to finalize the FMA application and apply to the Florida Department of Emergency Management (FDEM). Once approved by FDEM, the project application is forwarded to FEMA for consideration. If the project is selected by FEMA and the City chooses to fund the project, the project will require up to a 10% cost contribution from the homeowners. Homeowners have signed a voluntary interest form and are aware of their cost of being in the program. This action does not obligate the City to fund this project, only for staff to apply to FEMA. If this project is selected, the process is estimated to take 3-5 years.

The total estimated cost to elevate 6 homes is \$2,335,000 (average of \$389,167 per home) and the city will be requesting reimbursement of up to \$2,230,500 from FEMA at project completion and \$104,500 from the 3 homeowners (average of \$34,833 per home for 3 homes) before the start of construction. The project will be requested in the FY 25-29 Capital Improvement Plan.

Staff continues to work with affected homeowners to assist as many repetitive loss property owners as possible to apply for mitigation funding. Based on the turnout and interest received from the Informational Workshops we anticipate bringing more FMA applications forward for City Council consideration this year and then annually when the application period opens, which is typically in the fall.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution 23-52 with exhibit	Resolution 23-52 with exhibit.pdf
2.	FMA - Elevation Location Map	FMA - Elevation Location Map.pdf

Margaret Tomlinson	Created/Initiated - 9/14/2023
Tim Burman	Approved - 9/28/2023
John McKinney	Approved - 10/2/2023
Shannon Balmer	Approved - 10/6/2023
Wayne Clark	Approved - 10/6/2023
Tracee Cody	Final Approval - 10/6/2023

RESOLUTION NO. 23-52

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING SUBMISSION OF AN APPLICATION FOR FEDERAL FUNDING UNDER THE FLOOD MITIGATION ASSISTANCE GRANT PROGRAM ("FMA") FOR THE PURPOSE OF STRUCTURE ELEVATION PROJECTS FOR APPROXIMATELY SIX HOMES INSURED UNDER THE NATIONAL FLOOD INSURANCE PROGRAM ("NFIP") AND IDENTIFIED ON THE FEMA REPETITIVE LOSS LIST; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS FOR SAID APPLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City of Port Orange ("City") is participating in a hazard mitigation planning process as established under the Disaster Mitigation Act of 2000; and

WHEREAS, the Volusia County Local Mitigation Strategy Plan is a multi-jurisdictional hazard mitigation plan which includes the City of Port Orange; and

WHEREAS, the Volusia County LMS Plan is updated on a yearly basis and after any major natural disaster event; and

WHEREAS, the Federal Emergency Management Agency ("FEMA") Flood Mitigation Assistance ("FMA") grants are available annually to help communities reduce or eliminate the risk of repetitive flood damage to buildings and structures insured under the National Flood Insurance Program (NFIP); and

WHEREAS, the six homes are insured under the National Flood Insurance Program (NFIP) and have been identified on FEMA's Repetitive Loss list due to repetitive flooding events with multiple flood loss claims; and

WHEREAS, the City desires to make application through the Florida Division of Emergency Management ("FDEM") to the Federal Emergency Management Agency ("FEMA") for grant funding from the Flood Mitigation Assistance Grant Program in the amount of \$2,230,500, said amount being the reimbursable portion of the \$2,335,000 estimated total project costs; and

WHEREAS, the City recognizes this grant from FMA is a cost reimbursement grant with varying cost share percentages based on the number of times a structure has flooded; and

WHEREAS, of the six homes, three of the homes may receive up to 90% federal cost share and three of the homes may receive up to 100% federal cost share.

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 submission of the Flood Mitigation Assistance Grant Program Application for the structure elevation projects for the structures included and identified in **Exhibit "A"**, attached hereto and made a part hereof by reference.

Section 2. The City Manager is hereby authorized to execute all necessary documents for the completion and forwarding of the project application to FDEM.

Section 3. This resolution shall become effective immediately upon adoption.

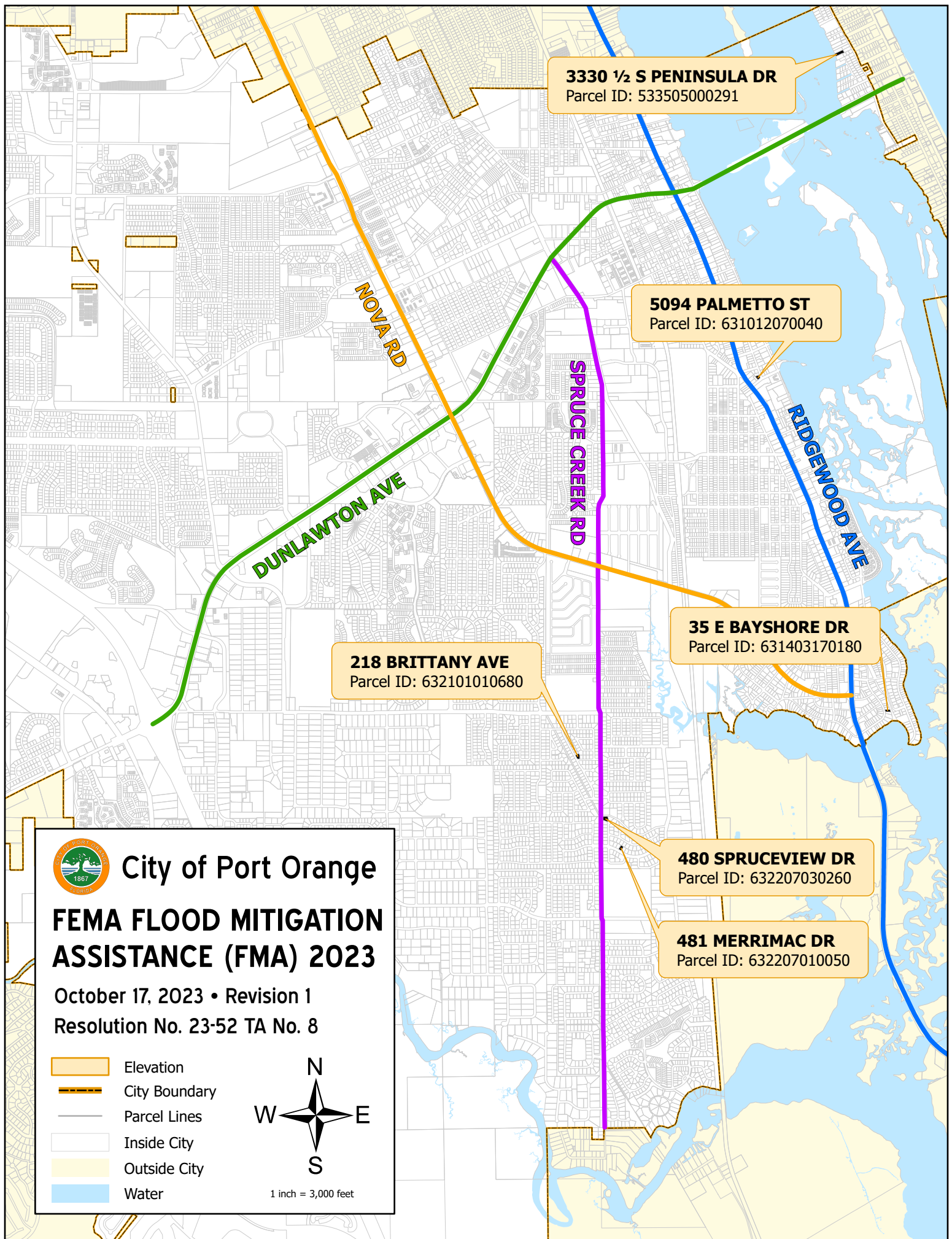
MAYOR DONALD O. BURNETTE

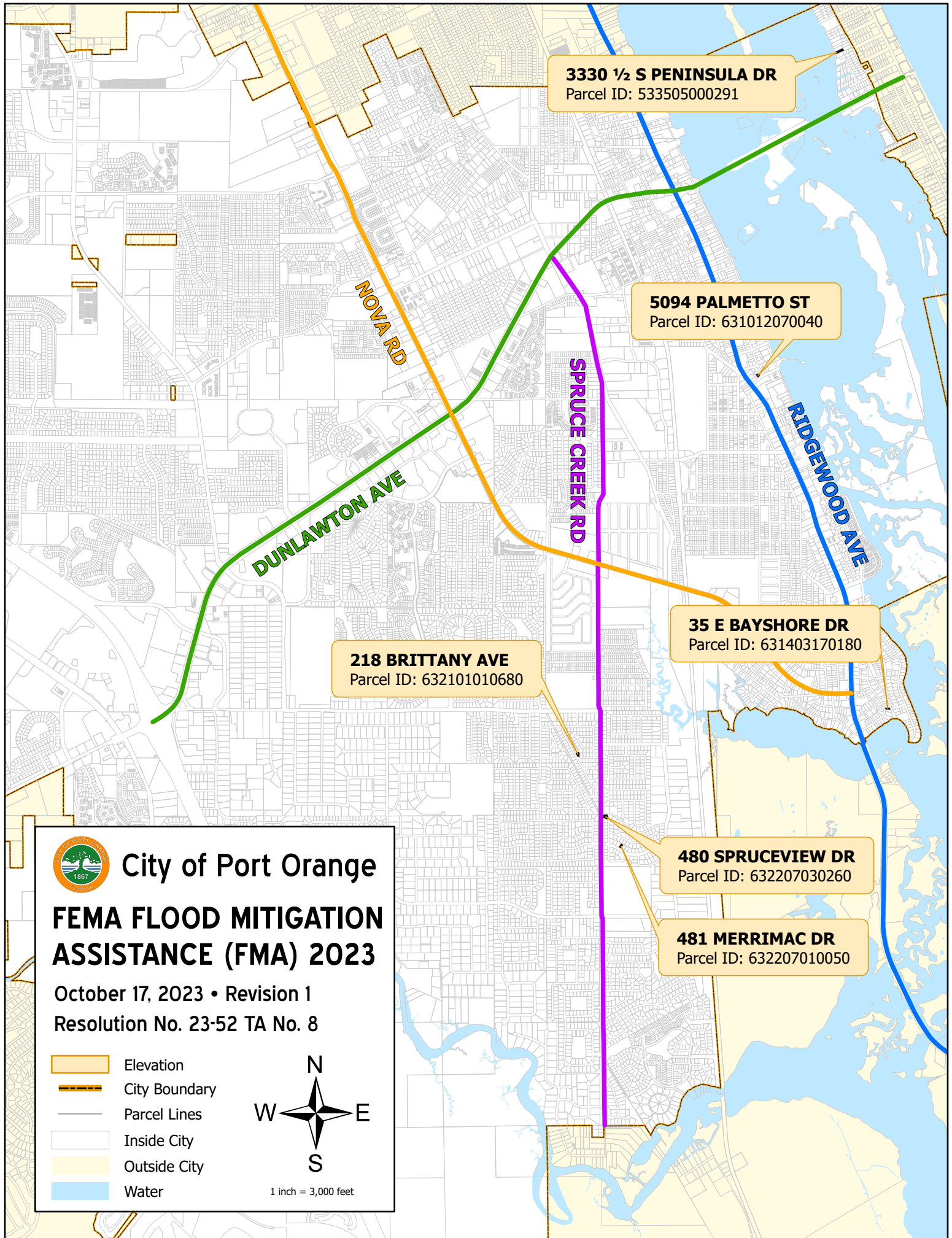
ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney





3330 1/2 S PENINSULA DR
Parcel ID: 533505000291

5094 PALMETTO ST
Parcel ID: 631012070040

35 E BAYSHORE DR
Parcel ID: 631403170180

218 BRITTANY AVE
Parcel ID: 632101010680

480 SPRUCEVIEW DR
Parcel ID: 632207030260

481 MERRIMAC DR
Parcel ID: 632207010050

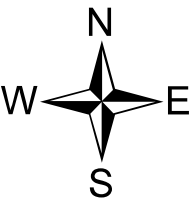


City of Port Orange

FEMA FLOOD MITIGATION ASSISTANCE (FMA) 2023

October 17, 2023 • Revision 1
Resolution No. 23-52 TA No. 8

- Elevation
- City Boundary
- Parcel Lines
- Inside City
- Outside City
- Water



1 inch = 3,000 feet



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (C13) Resolution No. 23-53 - FEMA Flood Mitigation Assistance (FMA)
Application to Request Funds to Acquire and Demolish 1 Home

DEPARTMENT: Community Development

GOAL: 1 - Public Safety; 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 23-53, authorizing the submission of a FEMA Flood Mitigation Assistance grant to acquire and demolish 1 home and authorizing the City Manager to execute all necessary documents for submission of the application.

SUMMARY: FEMA Flood Mitigation Assistance (FMA) grants are available annually to help communities reduce or eliminate the risk of repetitive flood damage to buildings and structures insured under the National Flood Insurance Program (NFIP). From Fiscal Year (FY) 1996 to FY 2019, FMA obligated over 1.5 billion dollars to mitigate over 8,000 properties insured by the National Flood Insurance Program.

FMA funding is available for structure acquisition and demolition projects. FMA is a cost reimbursement grant with varying cost share percentages based on the number of times a structure has flooded. The city has received interest from one property owner about acquisition and demolition. FEMA has identified this home as an FMA Repetitive Loss structure and is expected to fall into the 90% federal / 10% non-federal cost share category.

The next step of the process is to finalize the FMA application and apply to the Florida Department of Emergency Management (FDEM). Once approved by FDEM, the project application is forwarded to FEMA for consideration. If the project is selected by FEMA and the City chooses to fund the project, the project will require up to a 10% cost contribution from the City. This action does not obligate the City to fund this project, only for staff to apply to FEMA. If this project is selected, the process is estimated to take 1/2-2 years. The total estimated cost to acquire this home is \$300,000 of which the City match is \$30,000. If approved, staff will make the necessary designation of fund balance for the acquisition.

Once acquired, the City will be responsible for demolishing the structure, maintaining the property, and maintaining the use of the property as open space in perpetuity. FMA deed restrictions state that the property shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature preserves, unimproved

permeable parking lots and other uses consistent with FEMA guidance for open space acquisition. New structures are limited to a public facility that is open on all sides and functionally related to the open space use, a public restroom, or a structure that is compatible with the uses described above and approved by the FEMA Regional Director in writing prior to the commencement of the construction of the structure. Any structures built on the property shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.

Staff continues to work with affected homeowners to assist as many repetitive loss property owners as possible in applying for mitigation funding. Based on the turnout and interest received from the Informational Workshops, we anticipate bringing more FMA applications forward for City Council consideration this year and then annually when the application period opens, typically in the fall.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution 23-53 with exhibit	Resolution 23-53 with exhibit.pdf
2.	FMA Acquisition Location Map	FMA Acquisition Location Map.pdf

Margaret Tomlinson	Created/Initiated - 9/28/2023
Tim Burman	Approved - 9/28/2023
Shannon Balmer	Approved - 10/6/2023
John McKinney	Approved - 10/6/2023
Wayne Clark	Approved - 10/9/2023
Tracee Cody	Final Approval - 10/10/2023

RESOLUTION NO. 23-53

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING SUBMISSION OF AN APPLICATION FOR FEDERAL FUNDING UNDER THE FLOOD MITIGATION ASSISTANCE GRANT PROGRAM ("FMA") FOR THE PURPOSE OF STRUCTURE ACQUISITION AND DEMOLITION PROJECTS FOR APPROXIMATELY ONE HOME INSURED UNDER THE NATIONAL FLOOD INSURANCE PROGRAM ("NFIP") AND IDENTIFIED ON THE FEMA REPETITIVE LOSS LIST; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL NECESSARY DOCUMENTS FOR SAID APPLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City of Port Orange ("City") is participating in a hazard mitigation planning process as established under the Disaster Mitigation Act of 2000; and

WHEREAS, the Volusia County Local Mitigation Strategy Plan is a multi-jurisdictional hazard mitigation plan which includes the City of Port Orange; and

WHEREAS, the Volusia County LMS Plan is updated on a yearly basis and after any major natural disaster event; and

WHEREAS, the Federal Emergency Management Agency ("FEMA") Flood Mitigation Assistance ("FMA") grants are available annually to help communities reduce or eliminate the risk of repetitive flood damage to buildings and structures insured under the National Flood Insurance Program (NFIP); and

WHEREAS, the one home is insured under the National Flood Insurance Program (NFIP) and have been identified on FEMA's Repetitive Loss list due to repetitive flooding events over the course of years with repetitive flood loss claims; and

WHEREAS, the City desires to make application through the Florida Division of Emergency Management ("FDEM") to the Federal Emergency Management Agency ("FEMA") for grant funding from the Flood Mitigation Assistance Grant Program for the reimbursable portion of the \$300,000 estimated total project costs; and

WHEREAS, the City recognizes this grant from FMA is a cost reimbursement grant with varying cost share percentages based on the number of times a structure has flooded; and

WHEREAS, the City recognizes the project will require a cost contribution from the City.

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 submission of the Flood Mitigation Assistance Grant Program Application for the acquisition and demolition project for the structure included and identified in **Exhibit "A"**, attached hereto and made a part hereof by reference.

Section 2. The City Manager is hereby authorized to execute all necessary documents for the completion and forwarding of the project application to FDEM.

Section 3. 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

DUNLAWTON AVE

NOVA RD

SPRUCE CREEK RD

RIDGEWOOD AVE

241 BRITTANY AVE
Parcel ID: 632101020170

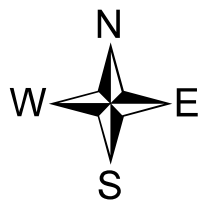


City of Port Orange

FEMA FLOOD MITIGATION ASSISTANCE (FMA) 2023

October 17, 2023 • Revision 1
Resolution No. 23-53 TA No. 9

- Acquisition
- City Boundary
- Parcel Lines
- Inside City
- Outside City
- Water



1 inch = 3,000 feet

DUNLAWTON AVE

NOVA RD

SPRUCE CREEK RD

RIDGEWOOD AVE

241 BRITTANY AVE
Parcel ID: 632101020170

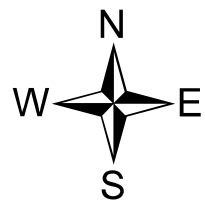


City of Port Orange

FEMA FLOOD MITIGATION ASSISTANCE (FMA) 2023

October 17, 2023 • Revision 1
Resolution No. 23-53 TA No. 9

- Acquisition
- City Boundary
- Parcel Lines
- Inside City
- Outside City
- Water



1 inch = 3,000 feet

Port Orange City Commission

Update on Impacts to the Spruce Creek
October 17, 2023

Presented by Derek LaMontagne, M.S., Ph.D Candidate
&
Lori Sandman, Esq.

WHO WE ARE/WHY WE ARE HERE

Who We ARE

We are scientists, business owners and independent citizens.

Bryon White--
Yaupon Bros. Tea
Co.

Derek
LaMontagne—
SweetWater
Coalition

Katrina/Bear
Warriors United

Lori-- Spruce Creek
RiverWorks

Why We Are HERE

- ✓ We are motivated by what we have seen in recent storm events (*big & small*)
- ✓ We are IN VIEW of the changes in weather patterns that shift the models **(local and global natural phenomenon)*
- ✓ We are deeply concerned about the impacts of paving natural drainage areas and the resulting model inaccuracies **LOCALLY**
- ✓ It is CERTAIN that the plans to build will amplify the impacts

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

BEAR WARRIORS UNITED, INC., and
THE SWEETWATER COALITION
OF VOLUSIA COUNTY, INC., and
DEREK LAMONTAGNE, an individual, and
BRYON WHITE, an individual

Petitioners,

vs.

DOAH No.: 23-001512
SJRWMD F.O.R. No. 2023-06
Permit No. 103479-2
Individual Environmental Resource Permit
Location: Volusia County

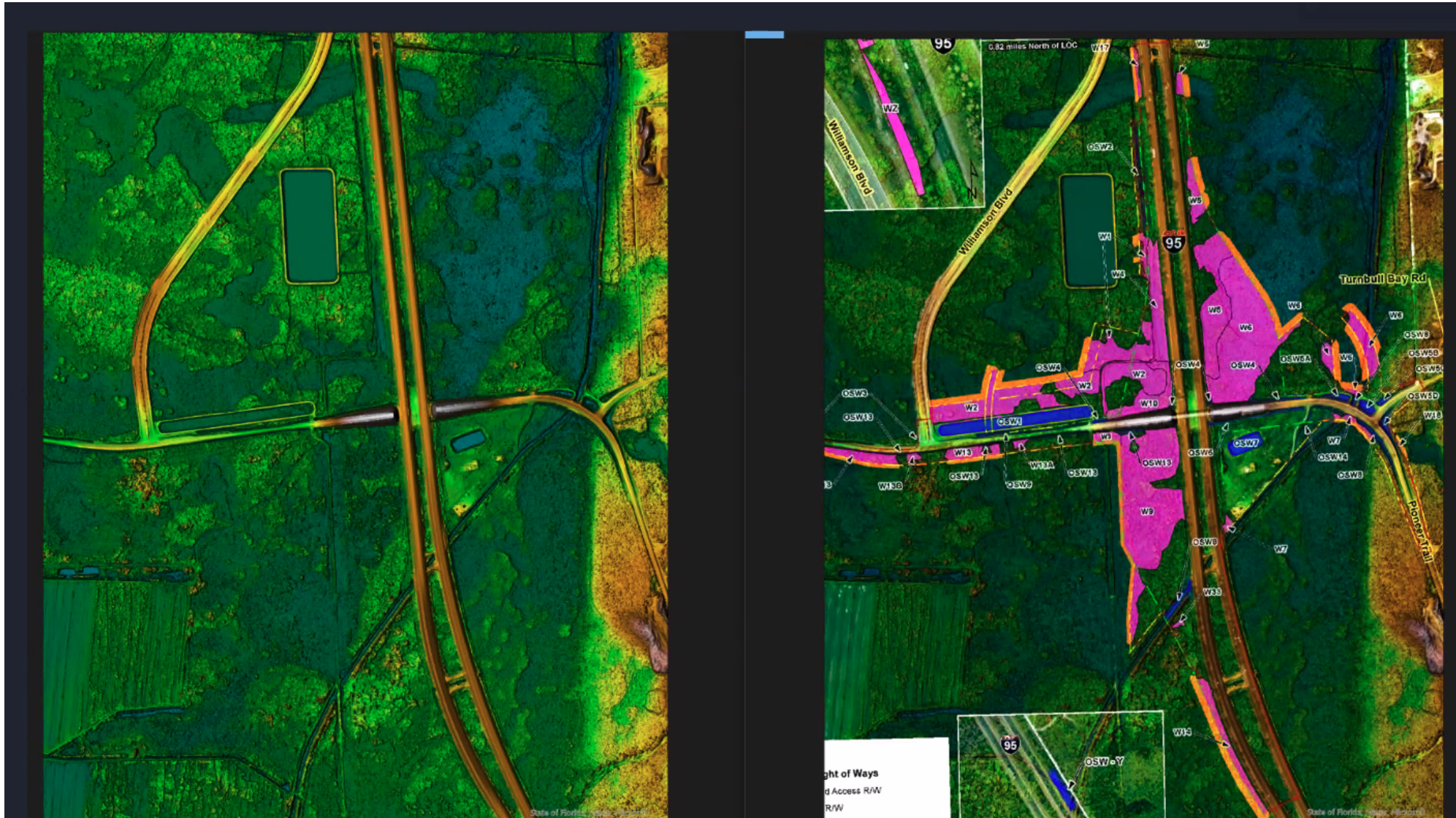
ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT and
FLORIDA DEPARTMENT OF
TRANSPORTATION,

Respondents.

FIRST AMENDED PETITION FOR ADMINISTRATIVE HEARING

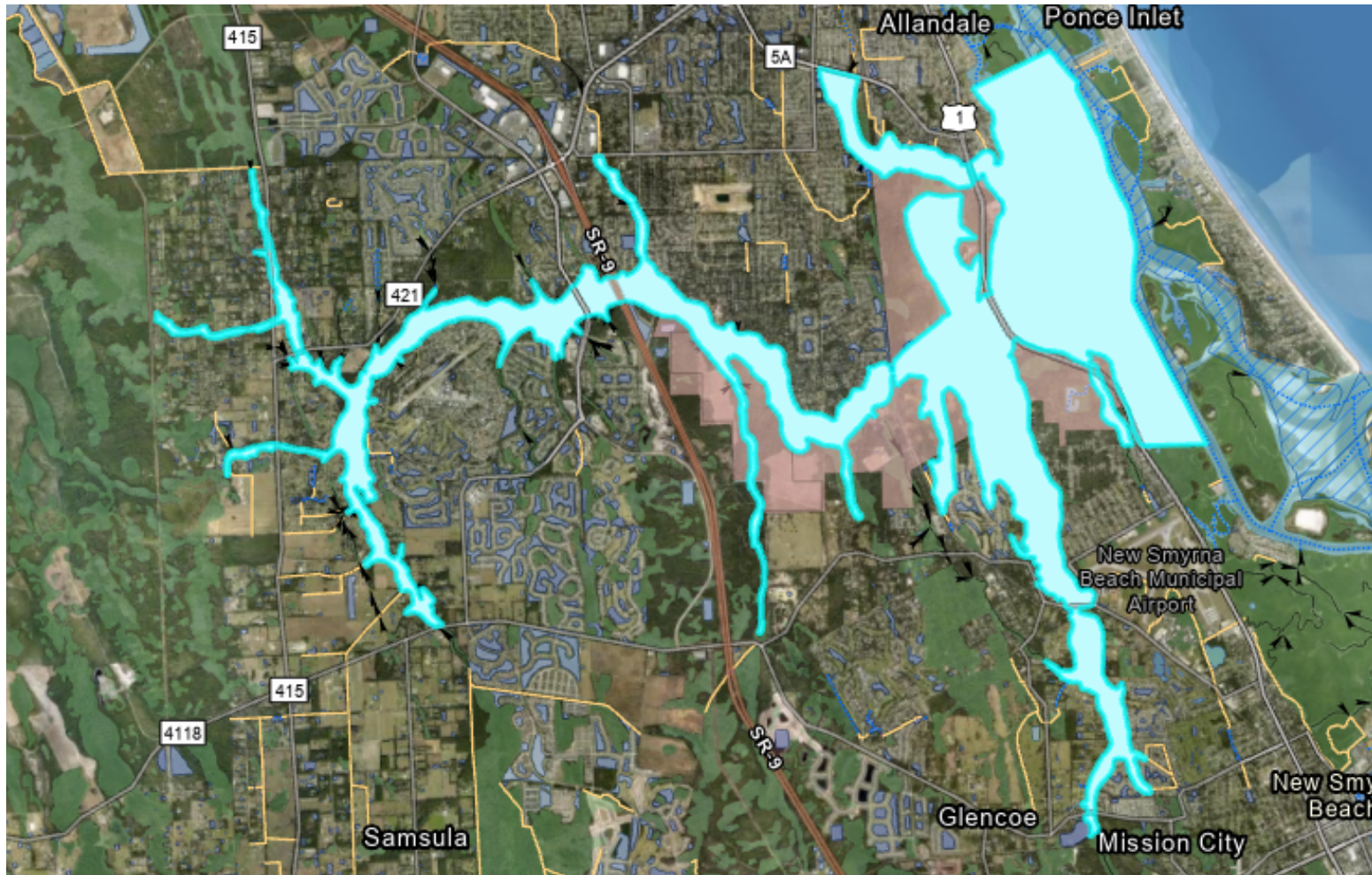
Project	Current Status
Project area: 74.13 acres Wetlands: 58.92 acres plus 3 acres of WATER	~84% of land in the proposed project is WATER or WETLAND.
The housing & commercial development that are/will be proposed around the interchange are in WETLANDS that presently serve to drain the land.	Where does the water go?? The SPRUCE CREEK WILL FLOOD.
COST OF THE PROPOSED INTERCHANGE: \$120+ million COST OF FLOOD MITIGATION AND HOMEOWNER & BUSINESS INSURANCE PREMIUMS: ???? COST TO THE ECOSYSTEM: ???	WHY BUILD IN A WETLAND?? Costs so much more Impacts are unknown Brick in the bathtub...
At least 3 parts of the project that are <i>not</i> the interchange: two road stubs and roundabout at Turnbull=never presented to the public!!	The citizens have a right to be informed about what they are paying for and the impacts it will have.

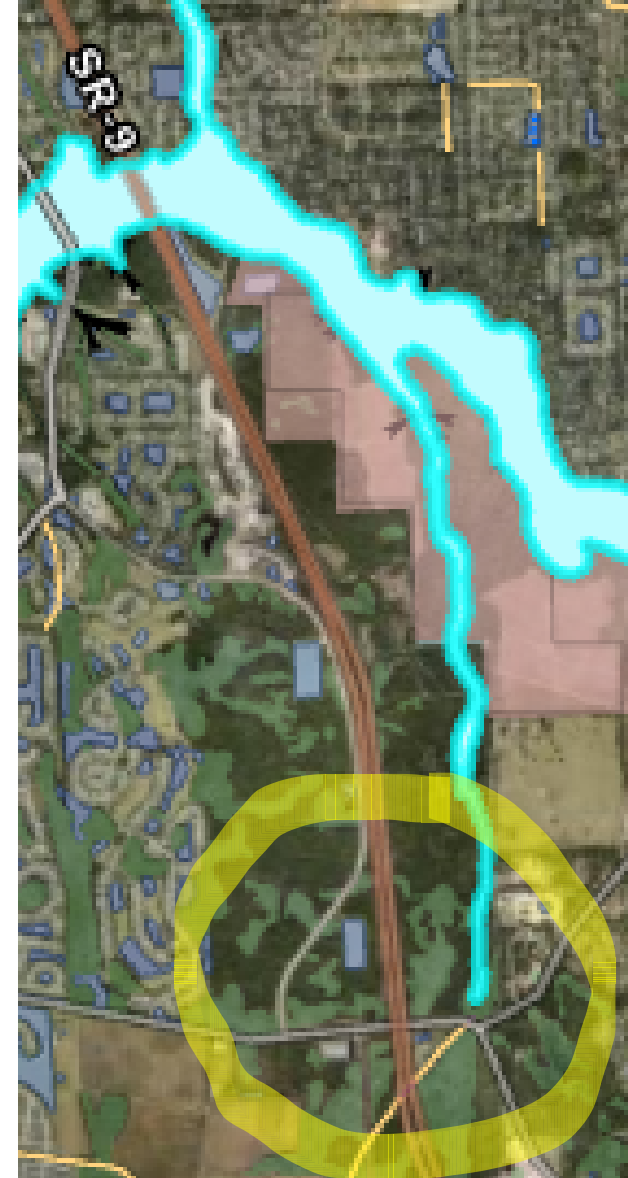
Pink and orange areas are wetlands that will be destroyed.



The Spruce Creek Special Water OFW boundaries are defined in rule under subparagraph 62-302.700(9)(i)33., F.A.C.: Spruce Creek upstream to State Road 40A, and the following tributaries:

- a. Unnamed tributary upstream to the Southern section line of Section 4, Township 17 South, Range 33 East; and,
- b. Unnamed tributary upstream to the Northern section line of Section 20, Township 16 South, Range 33 East; and,
- c. Unnamed tributary upstream to the Northern section line of Section 23, Township 16 South, Range 32 East (right fork), and to the Western line of the NE 1/4 of Section 27, Township 16 South, Range 32 East; and,
- d. Unnamed tributary upstream to the Western section line Section 35, Township 16 South, Range 32 East; and,
- e. Strickland Bay; and Turnbull Bay and Turnbull Creek upstream to the Northwestern section line of Section 43, Township 17 South, Range 33 East; and,
- f. Murray Creek upstream to the Town of Ponce Inlet municipal limits; and,
- g. Waters east from U.S. Highway 1 following the northerly and southerly municipal limits of the Town of Ponce Inlet to its intersection with the western boundary of the Intracoastal Waterway and including Rose Bay upstream to Nova Road (State Road 5A).
- h. But excluding all other tributaries (7-11-91).





Drainage in the region is influenced by the surficial geology of ridges and terraces. The Halifax River occurs on the eastern edge of the Silver Bluff Terrace, and that terrace is bounded by the Atlantic Coastal Ridge and the modern Atlantic Beach Ridge.

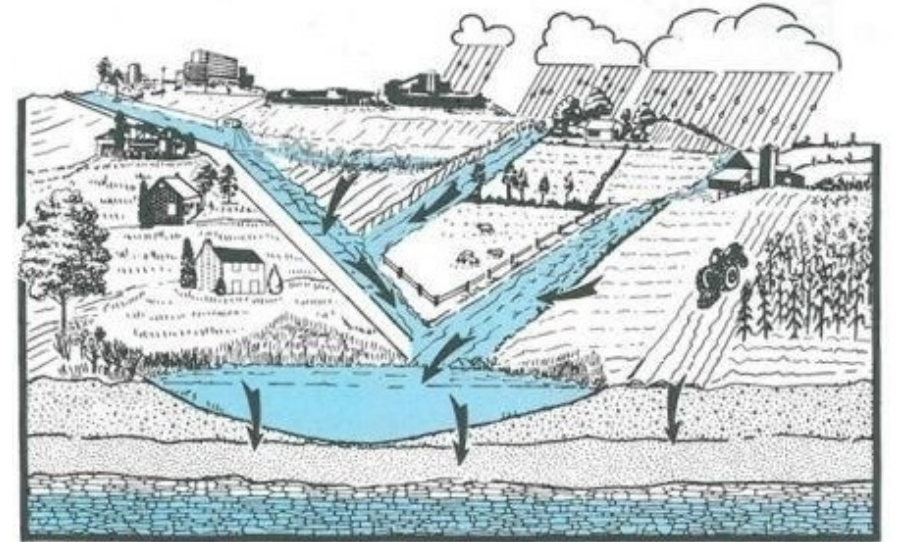
Spruce Creek forms an oxbow where it meets the Atlantic Coastal Ridge at the ANASTASIA Formation. East to west drainage is rare in the region because rivers and streams must cross higher ridges such as the Atlantic Coastal Ridge, which also happens to be associated with consolidated coquina from the Anastasia Formation. The result? POOR DRAINAGE, more runoff than calculated, FLOODING if we clear and pave the drainage lands.



Spruce Creek BMAP

Spruce Creek is an
“impaired waterbody”
according to the FDEP.

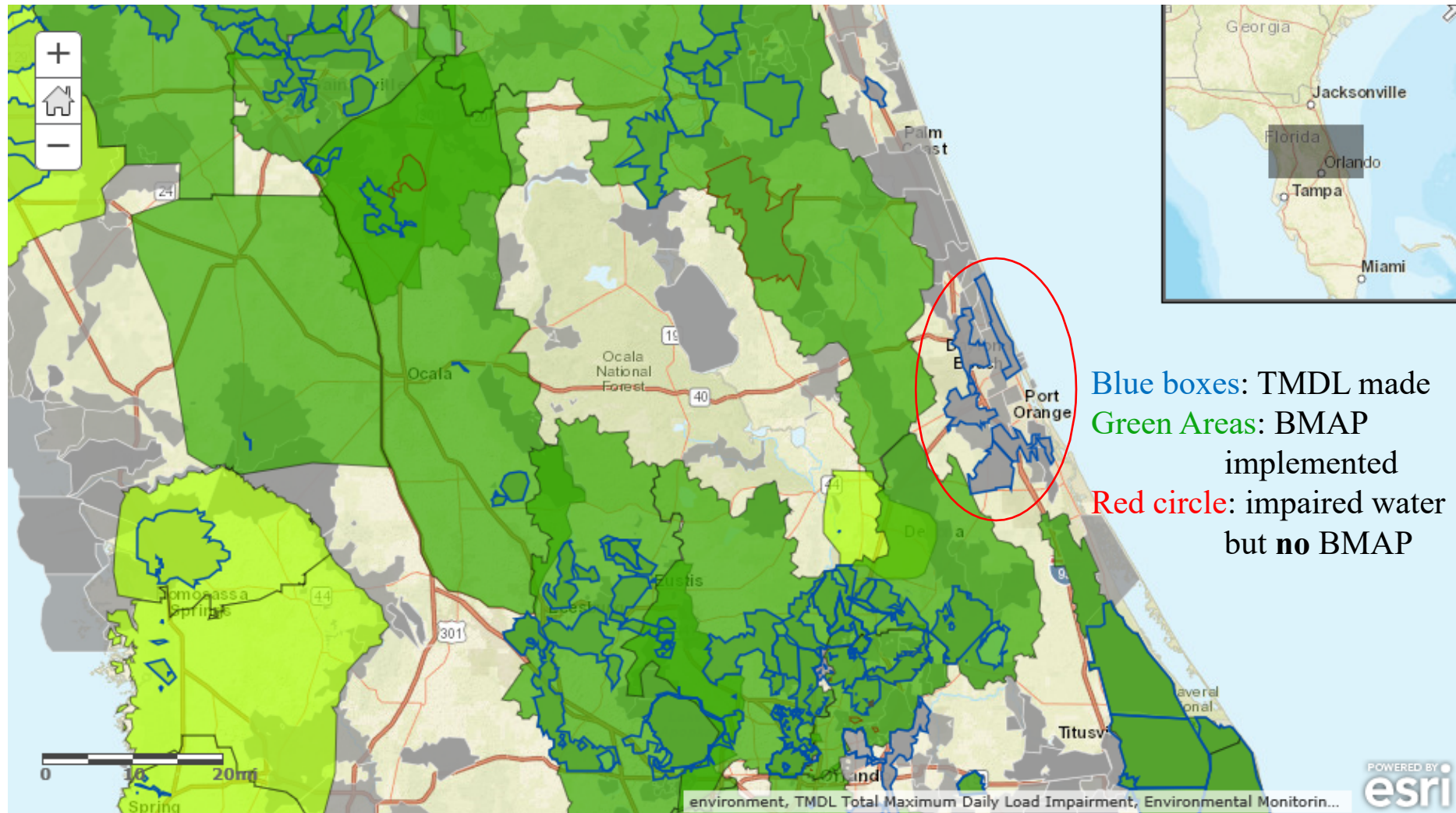
After TMDLs are made, normally BMAPs (Basin Management Action Plans) soon follow. However, none exists for Spruce Creek. Can the Council look into this?



Water flows downhill across parking lots, farms, and yards into reservoirs including ground water aquifers.

Image credit: Northwest Florida Water Management District

BMAPs Missing for our Area



<http://fdep.maps.arcgis.com/home/webmap/viewer.html?webmap=1b4f1bf4c9c3481fb2864a415fbeca77#>

BMAP = Basin Management Action Plan

**WHY IS THE
PROPOSED
PLAN FOR A
PIONEER
TRAIL/I-95
INTERCHANGE
SO HARMFUL?
KNOW THE
FACTS!**



Irreversible Environmental Damage



Extreme Cost to Taxpayers (you and me!)



Will Worsen Traffic/Harm Transportation Needs



Socioeconomic Impacts to local citizens ...look where
Pioneer Trail ends in NSB



No Transparency or Consideration of Public Input



Increased Risk of Flooding/Noise/Pollution
Decreases Quality of Life, Hurts Tourism



WHAT CAN YOU DO?

*There is still time to stop this project, but **WE NEED YOUR HELP!***

<https://savedontpavesprucecreek.com/>

- Host yard signs
- Write letters to officials and municipalities
- Sign a petition
- Attend events
- Talk to your neighbors
- Question regulatory agencies
- Make a donation

- Stand up for Spruce Creek
- Stand up for Port Orange
- STAND UP NOW!!!

- Port Orange is only going to lose...more pavement = more traffic...how do the local roads absorb it?

Here's an idea:

Re-allocate the money to...
the community...infrastructure,
hospitals, schools, community
gardens or parks that allow drainage
and reduce flooding.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (G17) Planning Commission Appointment

DEPARTMENT: Council

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to appoint two applicants to serve on the Planning Commission.

SUMMARY: Maria Mills-Benat currently serves on the Planning Commission and is up for re-appointment consideration. Ms. Mills-Benat has indicated she would like to continue serving on the Commission.

Mark Bowling is a new applicant and would like to serve on the Planning Commission to fill a recently vacated seat. Mr. Bowling's application is attached for your consideration.

Both appointments are for a two-year term. There are currently three total vacancies. No other applications have been received by the City Clerk.

PRESENTER: Robin Fenwick

ATTACHMENTS:

1.	Mark Bowling	Mark Bowling.pdf
----	--------------	------------------

Tracee Cody
Robin Fenwick
Wayne Clark

Created/Initiated - 10/11/2023
Approved - 10/11/2023
Final Approval - 10/11/2023

Field, Shelby

From: noreply@civicplus.com
Sent: Friday, January 15, 2021 9:33 AM
To: CityClerk
Subject: [EXT] Online Form Submittal: Advisory Boards and Commissions Volunteer Application

Advisory Boards and Commissions Volunteer Application

Step 1

Thank you for your interest in serving the City of Port Orange. Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for your appointment.

Please choose the Board(s) / Commission(s) for which you wish to apply. If applying for more than one Board / Commission, indicate the order of preference in the space below the list.

Check the boards you wish to apply for	Planning Commission*
--	----------------------

Pension Boards*	Field not completed.
-----------------	----------------------

Order of Preference	Planning Commission
---------------------	---------------------

All of the above boards / commissions are subject to the "Sunshine Law"

** Members of these boards / commissions are required to file financial disclosures within 30 days of date of appointment.*

Personal Information

First Name	Mark
------------	------

Last Name	Bowling
-----------	---------

Date of Birth	6/28/1962
---------------	-----------

Telephone	3863346126
-----------	------------

Email Address	mmbowling24@gmail.com
---------------	-----------------------

Business Telephone	3863228700
--------------------	------------

Are you a registered voter in Port Orange?	Yes
Address	816 Pheasant Run Ct. West
City Council District	Port Orange
How long have you been a resident of Port Orange?	30 Years
Are you currently serving on a City Board?	Yes
If yes, when and which board?	Parks & Rec Advisory Board

References

Please list three references (business and / or personal)

Reference 1	Ken Burgman 5057 Sanctuary Garden Blvd Port Orange Fl. 386-295-4267
Reference 2	Jake Johansson
Reference 3	Ray Donadio 6079 Sanctuary Garden Blvd Port Orange Fl. 386-763-5083

Education

High School	Hermiston High School
Date Graduated High School	5/18/1980
College	Shepherd University
Date Graduated College	5/5/1968
Degree	BS Arts

Additional Information

Work Experience	Suntrust Bank Sunshine State Community Bank Reunion Bank of Florida Hazen Construction
Interests / Activities	Sports Hiking Travel

Community Involvement	Parks & Recreation Advisory Board Dangerous Dog Board Youth Baseball, Soccer & Basketball Coach
Why do you desire to serve on these boards?	I am very passionate about the City of Port Orange. I would like to see responsible growth.
Resume / Additional Information	M. Mark Bowling 816 Pheasant Run Court West Port Orange, FL 32127 386-334-6126 (c) & 386-322-0260 (h) Mmbowling24@gmail.com EDUCATION Shepherd University, Shepherdstown, WV Bachelor of Arts Stonier Graduate School of Banking, University of Pennsylvania Graduate Degree LSU Graduate School of Banking, Baton Rouge, LA Graduate Degree EMPLOYMENT Hazen Construction, LLC , New Smyrna Beach, FL 2015 to present 2008-present Business Development Manager • Business Development Officer Reunion Bank of Florida, Port Orange, FL 2008-2015 2008-present Executive Vice President—COO & BSA/AML Officer • Bank Secrecy Act (BSA) Officer and Compliance Officer • Deposit Operations Officer and Audit Manager • Bank Security, OFAC and Safety Officer • Community Reinvestment Act Officer • CRCM, ACAP, & AML Certified Sunshine State Community Bank, Port Orange, FL 2000-2008 Senior Vice President • Bank Secrecy Act (BSA) Officer and Compliance Officer • Senior Lender and Loan Operations Officer SunTrust Bank, Daytona Beach, FL 1994-2000 Vice President, Community Bank President • Senior Lender / Area Manager • Branch Manager COMMUNITY INVOLVEMENT

- Rotary Club of Port Orange/South Daytona Past President / Board Member
- City of Port Orange, Parks and Recreation Board Board Chairman
- Port Orange/South Daytona Chamber of Commerce Former Board Member
- American Cancer Society Former Board Member
- American Heart Association Former Board Member
- Volusia Mental Health Association Former Board Member

REFERENCES: Available upon request

I understand the responsibilities associated with being a board member, and I have adequate time to serve if appointed.

Type your name to sign	Mark Bowling
------------------------	--------------

Date	1/15/2021
------	-----------

Note: If you have questions concerning the duties and responsibilities of any of the above Boards / Commissions, please contact the City Clerk's Office at 386-506-5563.

Email not displaying correctly? [View it in your browser.](#)



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 10/17/2023

SUBJECT: (H18) Second Reading Ordinance No. 2023-15 - Implementing the State's Statutory Mandate to Prepare Business Impact Estimates Pursuant to Section 166.041, Florida Statutes.

DEPARTMENT: City Manager

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to adopt Ordinance No. 2023-15.

SUMMARY: Earlier this year, the State of Florida amended Section 166.041, Florida Statutes, to create a new subsection requiring the City to prepare (or cause to be prepared) a business impact estimate prior to final consideration of an ordinance, subject to exemptions noted in the Law. Effective October 1, 2023, the new law requires that the business impact estimate be posted on the City's website at the time of the published notice of the City Council's final consideration of the ordinance, or ten (10) days prior to the adoption public hearing, whichever is longer. This Ordinance codifies the requirements of Section 166.041(4), Florida Statutes, mandating preparation of a Business Impact Estimate for proposed ordinances prior to adoption.

The business impact estimate must address the following:

- A statement of public purpose to be served by the proposed ordinance.
- An estimate of the direct economic impact on private, for-profit businesses.
- An estimate of the direct economic impact of a proposed ordinance on private for-profit businesses in the city, including:
 - An estimate of direct compliance costs for businesses;
 - Identification of new charges and fees; and
 - An estimate of the city's regulatory costs.
- A good faith estimate of the number of businesses impacted.

The following are exemptions as set forth in Section 166.041(4)(c), Florida Statutes, for certain specified ordinances, including:

- Ordinances required to comply with federal or state laws or regulations
- Ordinances relating to the issuance or refinancing of debt
- Ordinances relating to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget

-
- Ordinances required to implement a contract or agreement, including grants or financial assistance
 - Emergency ordinances
 - Ordinances relating to procurement
 - Ordinances enacted to Implement: Part II, Ch. 163, including land development regulations, zoning, development orders, development agreements, and development permits; Sections 190.005 and 190.046 (CDDs); the Florida Building Code; the Florida Fire Prevention Code.

PRESENTER: John McKinney

ATTACHMENTS:

1.	Ordinance No. 2023-15	Ordinance No. 2023-15.pdf
----	-----------------------	---------------------------

Tracee Cody

Created/Initiated - 10/4/2023

ORDINANCE NO. 2023-15

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, CREATING SECTION 2-4 TO IMPLEMENT THE STATE'S STATUTORY MANDATE TO PREPARE BUSINESS IMPACT ESTIMATES PRIOR TO ADOPTION OF PROPOSED ORDINANCES PURSUANT TO SECTION 166.041(4), FLORIDA STATUTES; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SCRIVNERS ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange has been conferred broad legislative powers to enact ordinances to perform governmental functions and exercise power to promote the health, welfare, safety, and quality of life of a local government's residents by both the Florida Constitution and the Florida Legislature;

WHEREAS, the procedures for adopting municipal ordinances are set forth in Section 166.041, Florida Statutes;

WHEREAS, the Florida Constitution grants cities broad authority to take actions furthering citizens' health, welfare, safety, and quality of life called "home rule," and this authority includes legislative powers to enact local laws;

WHEREAS, Florida cities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide municipal services, and exercise any power for municipal purposes, except as otherwise provided by law.

WHEREAS, the Florida Legislature adopted a statutory mandate that, beginning October 1, 2023, cities must produce a "business impact estimate" prior to passing an ordinance, subject to certain exemptions and exceptions;

WHEREAS, the statute (Chapter 2023-309, Laws of Florida, codified as Section 166.041(4), Florida Statutes) mandates that the estimate must be

published on the city's website and include certain information, such as the proposed ordinance's purpose, estimated economic impact on businesses, and compliance costs;

WHEREAS, the state has created a number of exemptions for certain specified ordinances, including:

- Ordinances required to comply with federal or state laws or regulations
- Ordinances relating to the issuance or refinancing of debt
- Ordinances relating to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget
- Ordinances required to implement a contract or agreement, including grants or financial assistance
- Emergency ordinances
- Ordinances relating to procurement
- Ordinances enacted to Implement: Part II, Ch. 163, including land development regulations, zoning, development orders, development agreements, and development permits; Sections 190.005 and 190.046 (CDDs); the Florida Building Code; the Florida Fire Prevention Code.

WHEREAS, the City Council has provided all necessary public notice and held the requisite public hearings, providing the public an opportunity to be heard for purposes of making these findings and determining to adopt this ordinance;

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

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

SECTION 1. RECITALS. The foregoing findings are incorporated herein by reference and made a part hereof.

**SECTION 2. CREATION OF SECTION 2-4, CODE OF ORDINANCES;
IMPLEMENTATION OF STATUTORY MANDATE TO PERFORM BUSINESS**

IMPACT ESTIMATES. The City Council of the City of Port Orange, Florida, hereby amends Chapter 2, Article I of the Code of Ordinances to establish a new section, 2-4 which shall read as follows:

Sec. 2-4. Implementation of Statutory Mandate to Perform Business Impact Estimates. The city council hereby implements the Florida statutory mandate contained in Section 166.041(4), Florida Statutes, to perform business impact estimates prior to the adoption of certain ordinances as specified in the statute. Prior to the enactment of a proposed ordinance, city council, by and through the city manager or their designee, shall cause to be prepared a business impact estimate in accordance with the requirements of the statute for all proposed ordinances not exempted by Section 166.041(4)(c), Florida Statutes, on a form approved by the city attorney and may in the city manager's sole discretion determine to perform a business impact statement for any ordinance that is exempt under the statute. The business impact estimate must be posted on the city's website no later than at least 10 days prior to adoption of said ordinance. Nothing contained herein is intended to create additional mandates for performing the business impact estimates of exempt ordinances or to waive any exemption.

SECTION 3. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or applications of this ordinance which can be given effect without the invalid provision or application, and to this and the provisions of this ordinance are declared severable.

SECTION 5. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 6. This ordinance shall take effect upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the _____ day of _____, 2023.

Passed and adopted on second and final reading on the _____ day of _____, 2023.

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney