



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

JULY 16, 2024

AGENDA

ALL CITIZENS DESIRING TO ADDRESS THE PORT ORANGE CITY COUNCIL DURING PUBLIC PARTICIPATION SHOULD COMPLETE THE SPEAKER CARD WHICH IS LOCATED ON THE STANDS OUTSIDE COUNCIL CHAMBERS. AFTER COMPLETING THE SPEAKER CARD, PRESENT IT TO THE CLERK.

A. OPENING

1. Invocation by Pastor Ken Sharp of High Point Pentecostal
2. Pledge of Allegiance
3. Roll Call

B. RECOGNITION AND PROCLAMATIONS

4. Parks and Recreation Month Proclamation

C. CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only
6. Agenda Approval
7. Approval of Minutes
 - a. June 18, 2024 - Regular City Council Meeting
8. Bid Awards and Contract Items
 - a. Approval to Award ITB #24-13 for Jackson & Oak Street Drainage Improvements to GPS Civil Construction, Inc.
 - b. Approval of Task Authorization No. 6 with Zev Cohen & Associates for Construction Phase Services & Community Development Block Grant (CDBG) Compliance Monitoring relating to ITB #24-13 for Jackson and Oak Street Stormwater Improvement Project
9. Designation of Voting Delegate for Florida League of Cities Conference being held August 15-17, 2024
10. Approval of Volusia County Funding Allocation for the Edward Byrne Memorial Justice Assistance Grant Countywide (JAGC) Program

11. Resolution No. 24-19 - Stormwater Drainage Utility Annual Fee Rate Increase

12. Resolution No. 24-22 - Deed of Dedication for public purposes along the north side of Charles Street, adjacent to 1101 Charles Street (Sugar Mill Elementary)

D. PUBLIC PARTICIPATION (Agenda)

13. Spruce Creek Presentation by Derek LaMontagne and Spruce Creek RiverWorks, Inc.

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

F. COUNCIL COMMENTS

14. Comments/Concerns from Council Members

G. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

15. Parks and Recreation Advisory Board Report

H. PUBLIC HEARING

16. Second Reading - Ordinance No. 2024-11 - First Amendment to the Restated Master Development Agreement for the Catfish Commons Planned Commercial (Case No. PRZA-24-0004)

17. Second Reading - Ordinance No. 2024-01 - Chapter 74 - Utilities - Article V. Stormwater

I. REGULAR AGENDA

18. First Reading - Ordinance No. 2024-10 - Amendment to Chapter 54, Article V, Police Pension Fund of the Code of Ordinances

19. Removal of Two Historic Live Oak Trees at 5005 S. Ridgewood Avenue - Port Orange Flea Market

J. ADDITIONAL ITEMS

20. City Attorney

21. City Manager

K. COUNCIL COMMITTEE REPORTS

22. City Council Committee Reports

a. First Step Shelter - Mayor Don Burnette

b. Port Orange/South Daytona Chamber of Commerce - Mayor Don Burnette

c. Arthaus - Councilman Tracy Grubbs

L. ADJOURNMENT

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



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



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

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

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

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

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
JUNE 18, 2024

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.

Silent Invocation

Pledge of Allegiance

Roll Call

Present:

Councilman Reed Foley
Councilman Tracy Grubbs
Councilman Drew Bastian
Vice Mayor Scott Stiltner
Mayor Don Burnette

Also Present:

Wayne Clark, City Manager
Matthew Jones, City Attorney
Tracee Cody, Deputy City Clerk

CONSENT AGENDA

4. Public Comments on Consent Agenda Items Only

There were none.

5. Agenda Approval

Mayor Don Burnette requested to pull Item #6 from the Consent Agenda.

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

6. Approval of Minutes

a. June 4, 2024 - Regular City Council Meeting

7. Bid Awards and Contract Items

a. Approval of Task Authorization No. 2 with CPH Consulting, LLC for Gopher Tortoise Recipient Site Management

b. Approval of Extension No. 3 of Service Agreement with Halifax Humane Society

8. Approval of Utilities Costs Recovery and Release Agreement for 258 Poinciana Avenue

9. Approval of FY 2024 Utility Billing and Accounts Receivable Accounting Adjustment

10. Approval of License Agreement with ADJ Madeline Commons LLC for Improvements in Right-of-Way

11. Approval of a Utility Cost Participation Agreement with ADJ Madeline Commons, LLC for upgrades to the residential sewer system on 5th Street

12. Ratification of a Volusia ECHO Award for the City Center Playground Improvements in the amount of \$150,000

13. Resolution No. 24-16 - Approval to apply for a Volusia ECHO Grant for the South Causeway Park Improvements Project

14. Resolution No. 24-17 - Approval to apply for a Volusia ECHO Grant Application for City Center Improvements Phase I Project

15. Resolution No. 24-18 - Establishing and Adopting Water, Wastewater, Reclaimed and Other Miscellaneous Utility Fees

16. Resolution No. 24-21 - Authorization to submit State Revolving Funds Loan Application Package to receive funding for the Water Reclamation Facility Filter Resiliency and Emergency Power Upgrades project

Motion to approve the Consent Agenda Items #7-16 was made by Vice Mayor Scott Stiltner and seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

Item #6 – Approval of Minutes

Mayor Don Burnette requested to pull Item #6 due to a minor change to the minutes that were originally posted and wanted to ensure all of Council were in favor of approving the revised minutes.

Motion to approve Item #6 was made by Vice Mayor Scott Stiltner and seconded by Councilman Drew Bastian. Motion carried unanimously by voice vote.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Robert Reinhausen, resident, commented on the 2022-2045 Comprehensive Plan in regard to the wetlands mitigation bank program and would like the City to have extra money available to buy flood prone houses.

COUNCIL COMMENTS

17. Comments/Concerns from Council Members

Councilman Tracy Grubbs shared an update on school safety that two Community Service Officers (CSOs) have been approved; one for Sugar Mill Elementary and one

for Horizon Elementary. He also spoke about the Parks Bond to inform residents on the goal of the initiative and the projects included. Lastly, he inquired why the City doesn't allow garage sale signs when residents obtain the required garage sale permit. City Manager, Wayne Clark, explained that our current ordinance is content neutral to comply with a recent supreme court ruling; however, Council can reconsider the sign language of the ordinance. City Attorney, Matt Jones, will look further into it so Council can discuss if they want to change the current ordinance.

Vice Mayor Scott Stiltner shared his thoughts on Councilman Grubbs' question that the challenge lies in these signs becoming overwhelming to traffic/drivers and residents not picking them up after the allotted time. Vice Mayor Stiltner also commented on the Mayor's golf tournament and thanked the Parks & Recreation Department and KemperSports. He also spoke on the upcoming hurricane season and how some of the City's facilities and parks, infrastructure, and assets are getting repaired but are waiting on FEMA funding. Lastly, he reminded residents of the upcoming Fourth of July event at City Center.

Councilman Drew Bastian and Councilman Reed Foley apologized for missing the Mayor's golf tournament. Councilman Foley thanked Volusia ECHO for the funding on the two projects on consent.

Mayor Don Burnette also spoke on the Mayor's golf tournament and thanked City and Cypress Head golf course staff. He also spoke on the July 4th event for residents to come out and join.

SPECIAL REPORTS

18. ArtHaus Annual update

Laurie Gomon Ring, President of ArtHaus, and Cameron Vintson, Executive Director of ArtHaus, provided details of their services, numbers, and their annual update. They offered the City a mural for the pillars under the Dunlawton Bridge. Mayor Don Burnette asked Mr. Clark to gather all of the necessary information and details of the mural to bring back to Council.

19. Report from KemperSports on the Cypress Head Golf

Jeff Dayton, General Manager of KemperSports, provided financial reports on the Cypress Head Golf Course and the course conditions.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

20. Citizen Advisory Committee for TPO

Bobby Ball, CAC for the TPO, provided details from their recent meeting.

21. Environmental Advisory Board Appointment

Motion to re-appoint Philip Klema to serve on the Environmental Advisory Board was made by Vice Mayor Scott Stiltner and seconded by Councilman Reed Foley.

Mayor Don Burnette introduced Philip Klema and Council thanked him for serving.

Motion carried unanimously by voice vote.

22. Golf Advisory Board Report

Richard Lee, chair of the Golf Advisory Board, provided details from their recent meeting and golf course conditions.

PUBLIC HEARING

23. Second Reading - Ordinance 2024-09 - Tenth Amendment to the Master Development Agreement for the Crystal Lake Planned Unit Development (Case No. PRZA-24-0002)

Mayor Don Burnette read Ordinance No. 2024-09.

ORDINANCE NO. 2024-09

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE FOURTH AMENDMENT TO TENTH AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR THE CRYSTAL LAKE PLANNED UNIT DEVELOPMENT (PUD); PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY OF; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2024-09 was made by Vice Mayor Scott Stiltner and seconded by Councilman Reed Foley. Motion carried unanimously by roll call vote.

24. First Reading - Ordinance No. 2024-11 - First Amendment to the Restated Master Development Agreement for the Catfish Commons Planned Commercial (Case No. PRZA-24-0004)

Mayor Don Burnette read Ordinance No. 2024-11.

ORDINANCE NO. 2024-11

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE FIRST AMENDMENT TO THE RESTATED MASTER DEVELOPMENT AGREEMENT FOR THE CATFISH COMMONS PLANNED COMMERCIAL DEVELOPMENT; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY OF; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2024-11 was made by Vice Mayor Scott Stiltner and seconded by Councilman Tracy Grubbs.

Penelope Cruz, Planning Manager, provided details of the amendment and proposed plans.

Councilman Foley expressed his concerns about the right hand turn onto Dunlawton Avenue from Ridgewood Avenue needing to be addressed with TPO and/or FDOT.

Brandon Galbreath, developer of Catfish Commons, agreed with Councilman Foley's comment and said the right hand turn has been an issue well before this project. He also answered questions from Council regarding tenants coming to Catfish Commons.

Mr. Clark informed Council that TPO is already assessing the right hand turn section.

Motion carried unanimously by roll call vote.

25. First Reading - Ordinance No. 2024-12 - Small-Scale Future Land Use Map Amendment - 890 Taylor Road (Case No. CPAM-24-0002)

Mayor Don Burnette opened Items #25 and #26 to be discussed together but voted on separately.

Mayor Don Burnette read Ordinance No. 2024-12.

ORDINANCE NO. 2024-12

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, RELATING TO COMPREHENSIVE PLANNING; AMENDING THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN; AMENDING THE FUTURE LAND USE DESIGNATION FOR +0.7 ACRES FROM OFFICE/RESIDENTIAL TRANSITION TO RURAL RESIDENTIAL

(0-2 UNITS/ACRE); PROVIDING FOR CONFLICTING ORDINANCES, SEVERABILITY AND AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2024-12 was made by Vice Mayor Scott Stiltner and seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

26. First Reading - Ordinance 2024-13 - Second Amendment to the Altamira Shopping Village Planned Commercial Development (PCD) and Master Development Agreement (MDA) (Case No. PRZA-24-0003)

Mayor Don Burnette read Ordinance No. 2024-13.

ORDINANCE NO. 2024-13

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE SECOND AMENDMENT TO THE MASTER DEVELOPMENT AGREEMENT FOR ALTAMIRA SHOPPING VILLAGE PLANNED COMMERCIAL DEVELOPMENT; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY OF; AND PROVIDING AN EFFECTIVE DATE.

Motion to approve Ordinance No. 2024-13 was made by Vice Mayor Scott Stiltner and seconded by Councilman Drew Bastian.

Tim Burman, Community Development Director, provided details of the Ordinances and the proposed changes. He answered questions from Council confirming the amendment reduces the maximum density available to the subject lot and doesn't affect current retention.

Motion carried unanimously by roll call vote.

27. First Reading - Ordinance No. 2024-01 - Chapter 74 - Utilities - Article V. Stormwater

Mayor Don Burnette read Ordinance No. 2024-01.

ORDINANCE NO. 2024-01

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 74, ARTICLE V, STORMWATER UTILITY; AMENDING SECTION 74-156 TO ADD A DEFINITION FOR "EQUIVALENT DWELLING UNIT" AND DELETE UNUSED TERMS; AMENDING SECTION 74-159 TO DESCRIBE THE ASSIGNMENT OF EQUIVALENT DWELLING UNITS TO DEVELOPED RESIDENTIAL AND NON-RESIDENTIAL PROPERTIES; AMENDING SECTION 74-161 TO ELIMINATE THE REQUIREMENT TO DESIGNATE BY RESOLUTION THE PERCENTAGE OF THE STORMWATER DRAINAGE UTILITY FEE INTENDED FOR CAPITAL IMPROVEMENTS, STREAMLINE THE PROVISIONS BY WHICH NON-RESIDENTIAL DEVELOPED PROPERTIES MAY RECEIVE CREDITS AGAINST THE AMOUNT OF THE STORMWATER DRAINAGE UTILITY FEE AS A RESULT OF ONSITE STORMWATER RETENTION FACILITIES, AND DESCRIBE THE AUTHORIZED USES OF STORMWATER FEE PROCEEDS; 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. 2024-01 was made by Vice Mayor Scott Stiltner and seconded by Councilman Reed Foley.

Mr. Clark provided a recap of the Raftelis study and information regarding the terminology.

Motion carried unanimously by roll call vote.

ADDITIONAL ITEMS

28. City Attorney

There was nothing further.

29. City Manager

Mr. Clark pointed out some of the items on the Consent Agenda were awards of multimillion dollars of funding (grants) and clarified what the parks bond is intended for.

COUNCIL COMMITTEE REPORTS

30. City Council Committee Reports

a. First Step Shelter - Mayor Don Burnette provided details from their recent meeting and would like Council to consider increasing their sponsorship from \$35,000 to \$60,000.

b. Port Orange/South Daytona Chamber of Commerce - Mayor Don Burnette announced City Hall offices are closed on June 19 for Juneteenth and read a proclamation declaring June 19 as Juneteenth Independence Day.

ADJOURNMENT – 7:52 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, MMC
City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (C8a) Approval to Award ITB #24-13 for Jackson & Oak Street Drainage Improvements to GPS Civil Construction, Inc.

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Award of ITB #24-13 to GPS Civil Construction, Inc. for an amount not to exceed \$2,870,815.35; authorize an unforeseen conditions allowance not to exceed \$100,000; and to authorize Mayor and City Clerk to execute all required documents.

SUMMARY: The Engineering Department is requesting approval of the award of ITB #24-13 Jackson Street & Oak Street Drainage Improvements to GPS Civil Construction, Inc. in an amount not to exceed \$2,870,815.35. In addition, staff is requesting authorization for an unforeseen conditions allowance up to \$100,000.

This project improves the stormwater infrastructure along Jackson Street from Dunlawton to Canal View and Oak Street from Jackson to Dunlawton Avenue. Both have open ditch drainage systems directly adjacent to the roadway to convey the stormwater off the street. The completed project will improve stormwater conveyance, traffic safety, and pedestrian sidewalk connectivity. Due to the age and conditions of the water and sewer infrastructure in this area, an unforeseen conditions allowance is being requested to make repairs or relocate existing utilities that may be encountered during the construction process.

On May 24, 2024, the Purchasing Manager received three (3) sealed bid responses:

- GPS Civil Construction, Inc. \$2,870,815.35
- Hazen Construction, LLC \$3,133,468.00
- Masci General Construction, Inc \$3,753,195.95

Council approved funding for this project during the FY22-23 and FY23-24 budgets. Community Development Block Grant (CDBG) funds will also be utilized.



PRESENTER: Junos Reed

ATTACHMENTS:

1.	GPS Civil Construction, Inc. EJCDC C520 Agreement - ITB 24-13 Jackson St and Oak St Drainage Improvements	GPS Civil Construction, Inc. EJCDC C520 Agreement - ITB 24-13 Jackson St and Oak St Drainage Improvements.pdf
2.	2018 General Conditions Exhibit - Clean Copy and Additions and Deletions Report	2018 General Conditions Exhibit - Clean Copy and Additions and Deletions Report.pdf
3.	ITB 24-13 Exhibit Cover Sheets	ITB 24-13 Exhibit Cover Sheets.pdf
4.	COMPLETE ITB 24-13 GPS Civil Construction Inc submittal 5.24.2024	COMPLETE ITB 24-13 GPS Civil Construction Inc submittal 5.24.2024 .pdf
5.	ITB #24-13 Bid Tabulation	ITB #24-13 Bid Tabulation.pdf
6.	ITB 24-13 Addendum No.1 FINAL (5.17.2024)	ITB 24-13 Addendum No.1 FINAL (5.17.2024).pdf
7.	ITB 24-13 Affidavits	ITB 24-13 Affidavits.pdf
8.	ITB 24-13 Jackson St. and Oak St.	ITB 24-13 Jackson St. and Oak St.

	Drainage Improvements FINAL (4.24.2024)	Drainage Improvements FINAL (4.24.2024).pdf
9.	ITB 24-13 Notice of Intent to Award	ITB 24-13 Notice of Intent to Award.pdf
10.	REVISED Attachment 1 Schedule of Unit Pricing FINAL (5.17.2024)	REVISED Attachment 1 Schedule of Unit Pricing FINAL (5.17.2024).pdf
11.	ITB 24-13 Notice of Intent to Award	ITB 24-13 Notice of Intent to Award.pdf
12.	Attachment 2 Jackson and Oak St. Improvements Bid Set 6.14	Attachment 2 Jackson and Oak St. Improvements Bid Set 6.14.pdf
13.	COI-City of Port Orange-TB #24-13	COI-City of Port Orange-TB #24-13.pdf

Julia Wiggins	Created/Initiated - 6/14/2024
Richard Colby	Approved - 6/14/2024
Junos Reed	Approved - 6/27/2024
John McKinney	Approved - 6/28/2024
Matthew Jones	Approved - 6/28/2024
Wayne Clark	Approved - 7/9/2024
Tracee Cody	Final Approval - 7/10/2024

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129** ("Owner") and **GPS Civil Construction, Inc.** ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Pipe the existing drainage ditches on the west side of Jackson Street (between Dunlawton Avenue and Canalview Boulevard) and the south side of Oak Street (between Jackson Street and Dunlawton Avenue), milling and resurfacing of Jackson Street and Oak Street, and adding new sidewalks to the west side of Jackson Street from Oak Street to Canalview Boulevard and on the north side of Oak Street from Jackson Street to Dunlawton Avenue.

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

ITB 24-13 Jackson Street and Oak Street Drainage Improvements.

ARTICLE 3—ENGINEER

- 3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, **Rober E. Ball, P.E.** ("Engineer") of **Zev Cohen & Associates, Inc.**, and shall act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 4.02 *Contract Times: Dates*

A. Deleted in its entirety.

4.03 *Contract Times: Days*

- A. The Work will be substantially complete within **330** days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.

4.04 *Milestones* – Deleted in its entirety.

4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 - 1. *Substantial Completion*: Contractor shall pay Owner \$0.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 - 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$0.00 for each day that expires after such time until the Work is completed and ready for final payment.
 - 3. Deleted in its entirety.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.
- C. Deleted in its entirety.

4.06 *Special Damages* - Deleted in its entirety.

- A. Deleted in its entirety.
- B. Deleted in its entirety.
- C. Deleted in its entirety.

ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
 - A. Deleted in its entirety.
 - B. Deleted in its entirety.
 - C. Deleted in its entirety.

D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6—PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **15th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.

a. **95%** percent of the value of the Work completed (with the balance being retainage).

1) Deleted in its entirety.

b. Deleted in its entirety.

B. Owner shall withhold Five percent (5%) of each progress payment as retainage.

6.03 Final Payment

A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 Consent of Surety

A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 Interest Deleted in its entirety.

A. Deleted in its entirety.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 Contents

A. The Contract Documents consist of all of the following:

1. This Agreement (pages 1 to 28, inclusive).

2. Bonds:
 - a. Combination Payment and Performance bond, together with power of attorney, (pages 1 to 3, inclusive).
3. General Conditions (pages 1 to 74, inclusive).
4. Deleted in its entirety.
5. Deleted in its entirety (Technical Specifications are incorporated in Bid Set Drawings).
6. Bid Set Drawings, on file with City Engineer, Junos Reed (pages 1 to 20, inclusive).
7. Addendum No. 1 (pages 1 to 2, inclusive).
8. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit No. 1 Contractor's Bid Schedule (pages 1 to 2, inclusive).
 - b. Exhibit No. 2 Contractor's Proposal (pages 1 to 58, inclusive).
 - c. Exhibit No. 3 Composite Exhibit No. 3 City's ITB 24-13 Jackson Street and Oak Street Drainage Improvements (pages 1 to 277, not attached, on file with office of the City Clerk).
 - d. Exhibit No. 4 City of Port Orange Community Development Block Grant Program ("CDBG") Operating and Procedures Manual (pages 1 to 23, inclusive).
 - e. Exhibit No 5 General Decision Number FL20240137 Davis-Bacon Wage Determination (pages 1 to 7, inclusive).
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 9—MISCELLANEOUS

9.01 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.02 *Successors and Assigns*

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.03 *Severability*

Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions and parts shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable

provision or part that comes as close as possible to expressing the intention of the stricken provision.

9.04 *No-Damage-for-Delay*

Contractor shall not be entitled to any damages (including, without limitation, expenses, costs, fees, extended field overhead and general conditions, equipment costs, home office overhead, lost productivity and inefficiency damages, additional payroll and labor costs, etc.) for any delay to its Work. Contractor's sole and exclusive remedy for a delay to its Work that is not caused by Contractor (or a person or entity performing a portion of Contractor's scope of Work) shall be an extension of time to substantially complete and finally complete the Project; provided, however, that Owner granting Contractor an extension of time is not a condition precedent to this no-damage-for-delay provision. Contractor shall also not be entitled to any damages for disruption or interference to its Work or for having to accelerate or incur additional labor or payroll costs in order to make up or overcome a delay to its Work so that it can maintain the dates for Substantial Completion and Final Completion. Contractor agrees that in determining and agreeing to the Contract Price it is considered this no-damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

9.05 *No intended Third-Party Beneficiaries*

There are no intended third-party beneficiaries to the Contract.

9.06 *Public Record Compliance*

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically: (a) keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service; (b) provide the public with access to public records on the same terms and conditions that the City would provide the records at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential 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.

9.07 *Records*

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

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

9.08 *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.

9.09 *Contract construction*

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

9.10 *Financial Disclosures*

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

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

9.11 *Waiver of Jury Trial*

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

9.12 *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.

9.13 *Compliance with Other Federal Standards*

(a) Termination for Cause. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms are set forth in Article 16 of General Conditions.

(b) Termination for Convenience. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Article 16 of General Conditions.

(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 29C.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. The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. 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.

(i) 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.

(ii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above, and also a clause requiring the subcontractors to include the clause in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor the contract clause.

(iii) 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. If applicable per the standard described above, Contractor shall comply with the following provisions from 29 C.F.R. § 5.5(b)(1)-(4), hereinbelow, and furthermore, Contractor shall include these provisions, in full, into any subcontracts.

(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.

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 recipient or subrecipient 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 recipient or subrecipient 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.

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

Clean Air Act

- (1) 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.
- (2) 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 awarding agency and the Regional Office of the Environmental Protection Agency.
- (3) The Contractor agrees to include these requirements in each subcontract

exceeding \$150,000 financed in whole or in part with federal assistance provided by HUD through Community Development Block Grant Program.

Federal Water Pollution Control Act

- (1) 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.
- (2) 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.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by HUD through Community Development Block Grant Program.

(i) Suspension and Debarment. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

- (1) 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).
- (2) 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.
- (3) This certification, included in the solicitation referenced hereinabove and made a part hereof by this reference, 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.
- (4) 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.

Required Certification: If applicable, the Contractor must sign and submit with this Agreement the following certification, *APPENDIX A, 44 C.F.R. PART 18 – Certification Regarding Lobbying*, included in the solicitation and made a part hereof by reference.

(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.

- (1) 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.
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- (2) 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>.
- (3) 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.

If applicable to the Federal awarding agency requirements:

(1) *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.

(2) *Prohibitions.*

(i) 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.

(ii) 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.

(3) *Exceptions.*

- (i) 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.
- (ii) 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.

(4) *Reporting requirement.*

- (i) 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.

(ii) 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.

(5) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (5), 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:

(1) The Contractor agrees to provide City, any pass-through entity, the State of Florida and the Recipient (if applicable), authorized representatives of the United States Department of Housing and Urban and Development (“HUD”), 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.

(2) 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.

- (3) The Contractor agrees to provide the HUD/CDBG Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) 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 HUD/CDBG Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under the Federal agency award 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 hereinabove.

(p) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that HUD and Community Development Block Grant Program ("CDBG") 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, HUD and CDBG 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.

(q) 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.

(r) 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.

(s) 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.

(t) 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.

(u) 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.

(v) 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.

(w) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the HUD and CDBG 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.

(x) 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.

(y) 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.

(z) 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 Housing and Urban Development ("HUD").

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 HUD, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to HUD.

Required Certification: Unless otherwise waived for HUD CDBG financial assistance programs that are subject to BABAA, Contractor and subcontractors must sign and submit a compliance certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Contractor: **GPS Civil Construction, Inc.**

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: Gregory Schlaffer
(typed or printed)

Title: President
(typed or printed)

(If company is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

455 Walker Street
Holly Hill, Florida 32117

Phone: (386) 872-5811

Email: Greg@gpscivil.com

License No.: CDC1523245

State: Florida

Owner:

City of Port Orange

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

Donald O. Burnette

(typed or printed)

Title:

Mayor

(typed or printed)

Attest:

Robin L. Fenwick, MMC

(individual's signature)

Title:

City Clerk

(typed or printed)

Address for giving notices:

1000 City Center Circle

Port Orange, Florida 32129

(386) 506-5500

EJCDC General Conditions

Consisting of 74 Pages

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*

- a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
 - b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
- a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
33. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
34. *Punch List* - the detailed list of incomplete, unsatisfactory or unacceptable, or defective items that Contractor is required to complete prior to final payment that is generated in accordance with Paragraph 14.06 of the General Conditions.”
34. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
- 47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
- 48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
- 49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- 50. *Emergency Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the

extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. Deleted in its entirety.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion date;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, Owner and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made

to Contractor until acceptable schedules are submitted to and approved by Engineer and Owner.

1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times and identifies Contractor's critical path sequence of scheduled activities with the earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities and latest finish date for scheduled activities. All float in the Progress Schedule shall belong to Owner in order to offset a delay attributable to Owner or its agents. Such acceptance will not impose on Engineer or Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.
5. If Contractor submits a schedule indicating an intention to achieve completion of the Work prior to contractually required dates, including milestones, no liability of the Owner to the Contractor for any failure of the Contractor to complete early shall be created, whether or not the Owner approves such schedule.
6. The Contractor acknowledges that the Owner may retain the services of a scheduling consultant at the Owner's expense. The Contractor shall cooperate with any such scheduling consultant at the Owner's direction, including without limitation, with regard to the preparation of the Project schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the

performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or could have discovered the conflict or error by careful review of the Contract Documents including pertinent figures and applicable field measurements and dimensions therein..

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
 - c. In the event there is a discrepancy or conflict in the Drawings and Specifications applicable to a particular detail or assembly of the Work, Contractor must promptly seek clarification from Engineer before proceeding with the Work. Subject to Paragraph 3.03.A.3. above, if Contractor proceeds with the Work without seeking such clarification, Contractor will be

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bound by the stricter and more expensive detail or assembly. Contractor agrees and recognizes that in agreeing to the Contract Price it has factored in the costs associated with installing the stricter and more expensive detail or assembly.

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times shall not commence to run and Contractor shall not commence the Work until Owner issues a Notice to Proceed . A Notice to Proceed may be issued by Owner at any time after the Effective Date of the Contract.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date specified in the Notice to Proceed which shall cause the Contract Times to commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.
- B. Contractor shall lay-out and verify all field dimensions and measurements at the Site before proceeding with any portion of the Work.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall only be entitled to an equitable adjustment in Contract Times.

- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Unanticipated causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions not anticipated or customary in Volusia County;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times is limited as follows:
 - 1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 - 2. Deleted in its entirety.
 - 3. Adjustments of Contract Times are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times must be supplemented by supporting data that sets forth in detail the following:
 - 1. The circumstances that form the basis for the requested adjustment;
 - 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 - 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 - 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 - 5. Deleted in its entirety.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Deleted in its entirety.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and

subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The Contractor shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell pads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
 - 3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents and shall under no circumstances relieve Contractor from visiting the Site and becoming familiar with and satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.
- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 - 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 - 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
 - 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 - 2. is of such a nature as to require a change in the Drawings or Specifications;
 - 3. differs materially from that shown or indicated in the Contract Documents; or
 - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after first becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition within 5 days. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract

Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

- c. Contractor failed to give the written notice required by Paragraph 5.04.A.
 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after first becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility within 5 days.

C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such

removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing) within 5 days of first becoming aware of the condition. Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that (i) they are attributable to the existence or location of any Hazardous Environmental Condition that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents or a report listed in the Supplemental Conditions, (ii) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the Hazardous Environmental Conditions, (iii) Contractor did not negligently, recklessly, or intentionally cause the Hazardous Environmental Condition, and (iv) Contractor notifies Owner and Engineer of such condition within 5 days after first becoming aware of such condition.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. Deleted in its entirety.
- J. Deleted in its entirety..
- K. Deleted in its entirety.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a payment and performance bond in accordance with Sec. 255.05, Florida Statutes, in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into Contractor's performance bond.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The payment and performance bonds shall be recorded in the public records of Volusia County, Florida.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in Florida, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. Prior to the date of commencement as set forth in the Notice to Proceed, if Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions. In the event of any conflict between this Paragraph 6.02 and the specific insurance requirements of Contractor set forth in Supplemental Conditions, the specific requirements in Supplemental Conditions shall govern.
- B. All insurance required by the Contract to be purchased and maintained by Contractor shall be obtained from insurance companies that are duly licensed or authorized in the State of Florida to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Deleted in its entirety.
- F. Failure of Owner to demand such certificates or other evidence of the Contractor’s full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the Contractor’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. Owner’s liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner’s liability policies for any of Contractor’s obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If Contractor does not purchase or maintain the insurance required by the Contract, Contractor shall notify the Owner in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if Contractor has failed to obtain required insurance, the Owner may elect (but is in no way obligated) to obtain equivalent insurance to protect Owner's interests at the expense of the Contractor who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable;
 5. include completed operations coverage:
 - a. Such insurance shall remain in effect for 10 years after Substantial Completion.
 - b. Contractor shall furnish Owner and each additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment.
 6. make the Contractor solely responsible for any insurance deductible or self-insured retention.
 7. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations).

The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

- B. *Property Insurance for Facilities of Owner Where Work Will Occur:* Contractor is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D. Such policy shall identify both Contractor and Owner as additional insureds. Contractor shall be solely responsible for any deductible.
- C. *Property Insurance for Substantially Complete Facilities:* Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Contractor will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Contractor's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner through Contractor will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer, and Contractor shall obtain an occupancy or use endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
 - 1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors,

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members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Deleted in its entirety.
1. Deleted in its entirety.
- C. Deleted in its entirety.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.
- D. Owner, at its sole discretion, may elect to fund the costs associated with any property insurance claim, excluding the deductible, and seek reimbursement from Contractor's policy that identifies both Contractor and Owner as named insureds. If Owner exercises this right, it shall have sole authority to settle and adjust any claim and receive reimbursement under the policy with the proceeds made payable to Owner. Contractor shall have the obligation to cooperate and comply with all terms and provisions of the policy and its failure to do so shall constitute a material breach of the Contract. If Owner does not elect this right, Contractor shall be required to fund the costs associated with any property insurance claim and seek reimbursement under the policy.

- E. In the event of any conflict between this Paragraph 6.06 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions shall govern.

ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

7.01 *Contractor’s Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor’s employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor’s own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner’s written rules and regulations regarding jobsite conduct.
- C. The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape

players, CD players, boom boxes, sound producing devices and the like are prohibited on the Project site. The Contractor shall not be permitted to use restrooms or other sanitary facilities within the Owner's existing buildings or on-site facilities.

- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For

the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination:* Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request:* If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria:* Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that

named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. Deleted in its entirety.
- C. Deleted in its entirety.

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable

at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 Record Documents

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve

Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in

accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation

thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

- c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;

5. Any review and approval of a Shop Drawing or Sample submittal;
 6. The issuance of a notice of acceptability by Engineer;
 7. The end of the correction period established in Paragraph 15.08;
 8. Any inspection, test, or approval by others; or
 9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner, and the Owner's officers, and employees, from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection .
- B. The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be \$1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.
- C. Notwithstanding the above and without monetary limitation, the Contractor hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.
- D. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.18.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation

in the performance of the Work, etc., to the extent caused by the negligence, recklessness, or intentional misconduct of Contractor and the persons or entities employed or utilized by Contractor in the performance of the Contract.

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be

set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Deleted in its entirety.*

- A. Deleted in its entirety.N/A

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On

the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, an Emergency Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with an Emergency Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of an Emergency Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Emergency Work Change Directives*

- A. An Emergency Work Change Directive may only be used in emergency situations and will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification documented by an Emergency Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Emergency Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.
- B. If Owner has issued a written Emergency Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit a Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design

concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the

basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:

1. A mutually acceptable fixed fee; or
2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a recommendation regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Recommendation on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either recommend approval of the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of

Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's recommendation is sent to the Owner who shall render a final decision. The Owner's decision is final and binding upon Contractor, unless Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS - DELETED IN ITS ENTIRETY

12.01 *Claims* - Deleted in its entirety.

- A. Deleted in its entirety.
 - 1. Deleted in its entirety.
 - 2. Deleted in its entirety.
 - 3. Deleted in its entirety.
 - 4. Deleted in its entirety.
- B. Deleted in its entirety.
- C. Deleted in its entirety.
- D. Deleted in its entirety.
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 - 3. Deleted in its entirety.
- E. Deleted in its entirety.
- F. Deleted in its entirety.
- G. Deleted in its entirety.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 - 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation,

superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any

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surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

- 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.
 - 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants,

purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. Costs due to the negligence, recklessness, or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. Contractor's Fee

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. Documentation and Audit:** Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions,

drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are estimates and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price shall be guaranteed and will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
3. by manufacturers of equipment furnished under the Contract Documents;
4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.
- B. Owner shall not be deemed to have accepted any defective work from Contractor that was not discovered by Engineer or Owner unless the defect was specifically detailed to Owner in writing by Contractor notifying Owner of the defective work and Owner notifies Contractor in writing that it will accept defective work (whether as-is, by receiving credit, or receiving other compensation, losses, or damage from Contractor as discussed above in Paragraph 14.04.A.) Contractor recognizes and understands that it shall not be relieved of responsibility or liability with performing defective work even if such defective work previously passed inspection by any inspector, including, without limitation, an inspector with the governing building department or a threshold inspector.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable

to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. The Owner shall incur no liability for delays occasioned by any stop-work order issued in accordance with this paragraph.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer and Owner. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the

provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. Contractor, on the 25th of each month, shall submit to Engineer for review an Application for Payment (in a form approved by Owner) filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after each Application for Payment is stamped as received by Engineer, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, Contractor shall make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work

- under Paragraph 13.03, and any other qualifications stated in the recommendation); and
- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Neither Engineer's review of Contractor's Work for purposes of recommending payments nor Engineer's recommendation of any payment shall relieve Contractor of responsibility or liability for defects in the Work.
 6. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

- 1. Subject to the provisions of Paragraph 15.01.E. and Section 218. 735, Florida Statutes, after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) shall be paid by Owner in accordance with Section 218.735, Florida Statutes, within 25 business days after the date on which the payment application is stamped as received by Engineer.

E. *Reductions in Payment by Owner*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

- I. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of Punch List items to be completed or corrected before final payment. Substantial Completion cannot occur before the Owner is able to begin to utilize the entire Work for the purposes for which it was intended.B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a Punch List of items to be completed or corrected before final payment Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached Punch List. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised Punch List of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the Punch List of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed Punch List items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the Punch List.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
 - 2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection – Punch List*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to, the evidence that Contractor maintains completed operations coverage for its required commercial general liability (CGL) insurance;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective final releases or waivers (satisfactory to Owner) of all Lien rights and Liens filed in connection with the Work.
3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor whereby Contractor swears that: (a) all payrolls, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid Contractor through the date of Contractor's final Application for Payment have been paid by Contractor; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay Contractor in the final Application for Payment will represent Contractor's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that Contractor will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its

option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

4. The documents and materials that Contractor is required to submit to accompany its Final Application for Payment (as set forth in this Paragraph 15.06) are conditions precedent to issuance of final payment.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within Twenty-five (25) days of the final Application for Payment being stamped as received by Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such adjacent areas;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer;
 - 5. Contractor's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or
 - 6. Contractor's failure to obtain or maintain the insurance required of it in the Contract.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 5 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 5 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the

Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 5 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

Contractor, however, cannot terminate the Contract due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph. Contractor, however, cannot stop the Work due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Deleted in its entirety.A.Deleted in its entirety.1. Deleted in its entirety.2. Deleted in its entirety.B. Deleted in its entirety.1. Deleted in its entirety.2. Deleted in its entirety.3. Deleted in its entirety.*

1. *Claims, disputes or other matters in question between the parties to this Agreement shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Completion of pre-suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of the Agreement.*
2. *Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any mediation or litigation, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.*
3. *Either party may initiate a mediation preceding by a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen or as provided in subparagraph ____, but in no event after the expiration of the applicable statute of limitations.*
4. *The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) days of the request for mediation, the Orlando office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its pool of approved mediators.*
5. *Unless otherwise mutually agreed, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, each party to bear its own fees, costs and expenses.*
6. *In the event that pre-suit mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit Courts of Volusia County Florida. The Parties, including the*

Contractor's Surety, waive Venue and Jurisdiction of any Federal Court and expressly waive Trial by Jury.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the

Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the State of Florida.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

EJCDC General Conditions
Additions and Deletions Version

Consisting of 87 pages

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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~~GUIDELINES FOR USE OF EJCDC® C-700, STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT~~

~~1.0 — PURPOSE AND INTENDED USE OF THE DOCUMENT~~

~~EJCDC® C-700, Standard General Conditions of the Construction Contract (2018), is the foundation document for the EJCDC Construction Series. The General Conditions define the basic rights, responsibilities, risk allocations, and contractual relationship of the Owner and Contractor, and establish how the Contract is to be administered.~~

~~2.0 — OTHER DOCUMENTS~~

~~EJCDC documents are intended to be used as a system and changes in one EJCDC document may require a corresponding change in other documents. Other EJCDC documents may also serve as a reference to provide insight or guidance for the preparation of this document.~~

~~These General Conditions have been prepared for use with either EJCDC® C-520, Agreement Between Owner and Contractor for Construction Contract (Stipulated Price), or EJCDC® C-525, Agreement Between Owner and Contractor for Construction Contract (Cost Plus Fee) (2018 Editions). The provisions of the General Conditions and the Agreement are interrelated, and a change in one may necessitate a change in the other.~~

~~To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018).~~

~~The full EJCDC Construction series of documents is discussed in the EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).~~

~~3.0 — ORGANIZATION OF INFORMATION~~

~~All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to confusion and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N-122/AIA® A521, Uniform Location of Subject Matter (2012 Edition) when preparing documents. EJCDC® N-122/AIA® A521 is available at no charge from the EJCDC website, www.ejcdc.org, and from the websites of EJCDC's sponsoring organizations.~~

~~If CSI MasterFormat™ is used for organizing the Project Manual, consult CSI MasterFormat™ for the appropriate document number (e.g., under 00 11 00, Advertisements and Invitations), and accordingly number the document and its pages.~~

~~4.0 — EDITING THIS DOCUMENT~~

~~Remove these Guidelines for Use. Some users may also prefer to remove the two cover pages.~~

~~Although it is permissible to revise the Standard EJCDC Text of C-700 (the content beginning at page 1 and continuing to the end), it is common practice to leave the Standard EJCDC Text of C-700 intact and unaltered, with modifications and supplementation of C-700's provisions set forth in EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018). If the Standard Text itself is revised, the~~

user must comply with the terms of the License Agreement, Paragraph 4.0, Document Specific Provisions, concerning the tracking or highlighting of revisions. The following is a summary of the relevant License Agreement provisions:

1. The term “Standard EJCDC Text” for C-700 refers to all text prepared by EJCDC in the main body of the document. Document covers, logos, footers, instructions, or copyright notices are not Standard EJCDC Text for this purpose.
2. During the drafting or negotiating process for C-700, it is important that the two contracting parties are both aware of any changes that have been made to the Standard EJCDC Text. Thus, if a draft or version of C-700 purports to be or appears to be an EJCDC document, the user must plainly show all changes to the Standard EJCDC Text, using “Track Changes” (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.
3. If C-700 has been revised or altered and is subsequently presented to third parties (such as potential bidders, grant agencies, lenders, or sureties) as an EJCDC document, then the changes to the Standard EJCDC Text must be shown, or the third parties must receive access to a version that shows the changes.
4. Once the document is ready to be finalized (and if applicable executed by the contracting parties), it is no longer necessary to continue to show changes to the Standard EJCDC Text. The user may produce a final version of the document in a format in which all changes are accepted, and the document at that point does not need to include any “Track Changes,” redline/strikeout, highlighting, or other indication of additions and deletions to the Standard EJCDC Text.

5.0 LICENSE AGREEMENT

This document is subject to the terms and conditions of the **License Agreement, 2018 EJCDC® Construction Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document, and is available for review at www.ejcdc.org and the websites of EJCDC’s sponsoring organizations.

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*

- a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
 - b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
- a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor's plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
33. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
34. *Punch List* - the detailed list of incomplete, unsatisfactory or unacceptable, or defective items that Contractor is required to complete prior to final payment that is generated in accordance with Paragraph 14.06 of the General Conditions."
343. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be ~~occupied and/or~~ utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work. ~~Substantial Completion cannot occur before the Project is issued a Certificate of Occupancy (or Completion, if applicable) by the governing building department that allows Owner to begin to utilize the entire Project for the purposes for which it was intended.~~
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
- 47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
- 48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
- 49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- 50. *Emergency Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the

extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

- C. ~~Deleted in its entirety. Evidence of Owner's Insurance: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.~~

2.02 Copies of Documents

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 Before Starting Construction

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion and Final Completion dates;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, ~~or~~ Owner and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to and approved by Engineer and Owner.
1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times and identifies Contractor's critical path sequence of scheduled activities with the earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities and latest finish date for scheduled activities. All float in the Progress Schedule shall belong to Owner in order to offset a day delay attributable to Owner or its agents. Such acceptance will not impose on Engineer or Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.
 5. If Contractor submits a schedule indicating an intention to achieve completion of the Work prior to contractually required dates, including milestones, no liability of the Owner to the Contractor for any failure of the Contractor to complete early shall be created, whether or not the Owner approves such schedule.
 6. The Contractor acknowledges that the Owner may retain the services of a scheduling consultant at the Owner's expense. The Contractor shall cooperate with any such scheduling consultant at the Owner's direction, including without limitation, with regard to the preparation of the Project schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the

performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or could have discovered the conflict or error by carefully studying and comparing careful review of the Contract Documents and checking and verifying including pertinent figures therein and all applicable field measurements and dimensions therein.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
 - c. In the event there is a discrepancy or conflict in the Drawings and Specifications applicable to a particular detail or assembly of the Work, Contractor must promptly seek clarification from Engineer before proceeding with the Work. Subject to Paragraph 3.03.A.3. above, if Contractor proceeds with the Work without seeking such clarification, Contractor will be

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bound by the stricter and more expensive detail or assembly. Contractor agrees and recognizes that in agreeing to the Contract Price it has factored in the costs associated with installing the stricter and more expensive detail or assembly.

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed* ~~*(Old 2.03)*~~

- A. The Contract Times ~~will~~shall not commence to run and Contractor shall not commence on the 30th day after the Effective Date of the Contract or, if the Work until Owner issues a Notice to

~~Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given issued by Owner at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.~~

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date ~~when specified in the Notice to Proceed~~ which shall cause the Contract Times to commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

B. Contractor shall lay-out and verify all field dimensions and measurements at the Site before proceeding with any portion of the Work.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall only be entitled to an equitable adjustment in ~~Contract Price or~~ Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption,

and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Unanticipated Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. Abnormal weather conditions not anticipated or customary in Volusia County;
 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times ~~or Contract Price~~ is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Deleted in its entirety. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times ~~or Contract Price~~ are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times ~~or Contract Price~~ must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and

5. ~~Deleted in its entirety. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.~~

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands ~~(Old 4.01)~~

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. ~~Deleted in its entirety. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.~~
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

5.02 Use of Site and Other Areas ~~(Old 6.11)~~

- A. *Limitation on Use of Site and Other Areas*
1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such

damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The Contractor shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell tower floorpads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents and shall under no circumstances relieve Contractor from visiting the Site and becoming familiar with and satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;

2. is of such a nature as to require a change in the Drawings or Specifications;
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after first becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition within 5 days. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
- 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
 - 1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 - 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 - 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after first becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility within 5 days.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing) within 5 days of first becoming aware of the condition. Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that (i) they are attributable to the existence or location of any Hazardous Environmental Condition that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents or a report listed in the Supplemental Conditions, (ii) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the Hazardous Environmental Conditions, (iii) Contractor did not negligently, recklessly, or intentionally cause the Hazardous Environmental Condition, and (iv)

Contractor notifies Owner and Engineer of such condition within 5 days after first becoming aware of such condition.

- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~
- J. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~
- K. Deleted in its entirety.~~The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.~~

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a payment and performance bond ~~and a payment bond in accordance with Sec. 255.05, Florida Statutes, each~~ in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into Contractor's performance bond.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, ~~except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury.~~ A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The payment and performance bonds shall be recorded in the public records of Volusia County, Florida.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in ~~the state or jurisdiction in which the Project is located~~ Florida, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. Prior to the date of commencement as set forth in the Notice to Proceed, ~~if~~ Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 Insurance—General Provisions

- A. ~~Owner and~~ Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions. In the event of any conflict between this Paragraph 6.02 and the specific insurance requirements of Contractor set forth in Supplemental Conditions, the specific requirements in Supplemental Conditions shall govern.
- B. All insurance required by the Contract to be purchased and maintained by ~~Owner or~~ Contractor shall be obtained from insurance companies that are duly licensed or authorized in the ~~s~~State or jurisdiction in which the Project is located of Florida to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Deleted in its entirety. ~~Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.~~
- F. Failure of Owner ~~or Contractor~~ to demand such certificates or other evidence of the ~~Contractor~~ other party’s full compliance with these insurance requirements, or failure of Owner ~~or Contractor~~ to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the ~~other party~~ Contractor’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. Owner’s liability

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policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If ~~either party~~ Contractor does not purchase or maintain the insurance required ~~of such party~~ by the Contract, ~~Contractor~~ ~~such party~~ shall notify the ~~Owner~~ ~~other party~~ in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

K. Without prejudice to any other right or remedy, if ~~Contractor~~ ~~a party~~ has failed to obtain required insurance, the ~~Owner~~ ~~other party~~ may elect (but is in no way obligated) to obtain equivalent insurance to protect ~~such other party's~~ Owner's interests at the expense of the ~~Contractor~~ ~~party~~ who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 Contractor's Insurance

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
1. include at least the specific coverages required;
 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; ~~and~~
 5. include completed operations coverage:
 - a. Such insurance shall remain in effect for 10 years after Substantial Completion.
 - b. Contractor shall furnish Owner and each additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment.
 6. make the Contractor solely responsible for any insurance deductible or self-insured retention.
 7. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and

5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur*: ~~Owner-Contractor~~ is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D. Such policy shall identify both Contractor and Owner as additional insureds. Contractor shall be solely responsible for any deductible.
- C. *Property Insurance for Substantially Complete Facilities*: Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, ~~Contractor~~Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of ~~Owner's-Contractor's~~ procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner*: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner ~~(directly, if it is the purchaser of the builder's risk policy, or through Contractor)~~ will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer, and Contractor shall obtain an occupancy or use endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or

damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by ~~Owner or Contractor~~ as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. ~~Deleted in its entirety. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.~~
1. ~~Deleted in its entirety. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.~~
- C. ~~Deleted in its entirety. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.~~
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.
- D. Owner, at its sole discretion, may elect to fund the costs associated with any property insurance claim, ~~excluding~~ the deductible, and seek reimbursement from Contractor's policy that identifies both Contractor and Owner as named insureds. If Owner exercises this right, it shall have sole authority to settle and adjust any claim and receive reimbursement under the policy with the proceeds made payable to Owner. Contractor shall have the obligation to cooperate and comply with all terms and provisions of the policy and its failure to do so shall ~~constitute~~ constitute a material breach of the Contract. If Owner does not elect this right, Contractor shall be required to fund the costs associated with any property insurance claim and seek reimbursement under the policy.
- E. In the event of any conflict between this Paragraph 6.06 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions shall govern.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing

of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding the jobsite conduct.
- C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape players, CD players, boom boxes, sound producing devices and the like are prohibited on the Project site. The Contractor shall not be permitted to use restrooms or other sanitaiysanitary facilities within the Owner's existing buildings or on-site facilities.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the

performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 "Or Equals"

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

- 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
- c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. ~~Deleted in its entirety. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.~~
- C. ~~Deleted in its entirety. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.~~

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a

negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 Record Documents

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve

Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in

accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation

thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

- c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;

5. Any review and approval of a Shop Drawing or Sample submittal;
 6. The issuance of a notice of acceptability by Engineer;
 7. The end of the correction period established in Paragraph 15.08;
 8. Any inspection, test, or approval by others; or
 9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner ~~and Engineer~~, and the Owner's officers, directors, members, partners, and employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. ~~In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts. The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be \$1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity~~

provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.

- C. Notwithstanding the above and without monetary limitation, the Contractor hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.
- D. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.18.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation in the performance of the Work, etc., to the extent caused by the negligence, recklessness, or intentional misconduct of Contractor and the persons or entities employed or utilized by Contractor in the performance of the Contract.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed

without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or

utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 ~~*Evidence of Financial Arrangements*~~

- A. ~~Deleted in its entirety. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).~~ N/A

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, an [Emergency Work Change Directive](#), or a Field Order.

- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with an [Emergency](#) Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of an [Emergency](#) Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 [Emergency](#) Work Change Directives

- A. An [Emergency](#) Work Change Directive [may only be used in emergency situations and](#) will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ~~ordered or~~ documented by an [Emergency](#) Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the [Emergency](#) Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a written Emergency Work Change Directive and:
1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit ~~any Claim seeking such a~~ Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

- B. An adjustment in the Contract Price will be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs,

Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision recommendation regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting

data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and ~~Action-Recommendation~~ on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either ~~recommend~~ approve ~~approval of~~ the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
 5. *Binding Decision:* Engineer's recommendation is sent to the Owner who shall render a final decision. The Owner's decision is final and binding upon ~~Owner and~~ Contractor, unless ~~Owner or~~ Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion:* Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS - DELETED IN ITS ENTIRETY

12.01 *Claims* - Deleted in its entirety

- A. Deleted in its entirety. ~~Claims Process:~~ The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Deleted in its entirety. ~~Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;~~
 2. Deleted in its entirety. ~~Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;~~

3. ~~Deleted in its entirety.~~ Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. ~~Deleted in its entirety.~~ Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. ~~Deleted in its entirety.~~ *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. ~~Deleted in its entirety.~~ *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. ~~Deleted in its entirety.~~ *Mediation*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 2. ~~Deleted in its entirety.~~ If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 3. ~~Deleted in its entirety.~~ Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. ~~Deleted in its entirety.~~ *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. ~~Deleted in its entirety.~~ *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal

~~of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.~~

- G. ~~Deleted in its entirety.~~ *Final and Binding Results:* ~~If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.~~

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts

will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors, ~~attorneys, and accountants~~) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price (“changed Work”), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder’s risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor’s fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
1. Payroll costs and other compensation of Contractor’s officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor’s principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor’s fee.
 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 3. Expenses of Contractor’s principal and branch offices other than Contractor’s office at the Site.
 4. Any part of Contractor’s capital expenses, including interest on Contractor’s capital employed for the Work and charges against Contractor for delinquent payments.

5. Costs due to the negligence, **recklessness, or intentional misconduct** of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 6. Expenses incurred in preparing and advancing Claims.
 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.
- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 *Allowances*

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are ~~not guaranteed estimates~~ and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price ~~shall be guaranteed and~~ will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK~~**OLD ARTICLE 13**~~

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions

in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

B. Owner shall not be deemed to have accepted any defective work from Contractor that was not discovered by Engineer or Owner unless the defect was specifically detailed to Owner in writing by Contractor notifying Owner of the defective work and Owner notifies Contractor in writing that it will accept defective work (whether as-is, by receiving credit, or receiving other compensation, losses, or damage from Contractor as discussed above in Paragraph 14.04.A.) Contractor recognizes and understands that it shall not be relieved of responsibility or liability with performing defective work even if such defective work previously passed inspection by any inspector, including, without limitation, an inspector with the governing building department or a threshold inspector.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right

of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. The Owner shall incur no liability for delays occasioned by any stop-work order issued in accordance with this paragraph.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer and Owner. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. ~~At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month),~~ Contractor, on the 25th of each month, shall submit to Engineer for review an Application for Payment (in a form approved by Owner) filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after ~~receipt of~~ each Application for Payment is stamped as received by Engineer, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor ~~within 10 days after the date on the Application for Payment is stamped as received by Engineer~~ indicating in writing Engineer's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, Contractor ~~shall~~may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Neither Engineer's review of Contractor's Work for purposes of recommending payments nor Engineer's recommendation of any payment shall relieve Contractor of responsibility or liability for defects in the Work.
6. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Payment Becomes Due

1. ~~Ten days a~~ Subject to the provisions of Paragraph 15.01.E. and Section 218. 735, Florida Statutes, after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) shall be paid by Owner in accordance with Section 218.735, Florida Statutes, within 25 business days after the date on which the payment application is stamped as received by Engineer will become due, and when due will be paid by Owner to Contractor.

E. Reductions in Payment by Owner

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the

specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of ~~P~~punch ~~I~~Llist items to be completed or corrected before final payment. Substantial Completion cannot occur before the Project is issued a Certificate of Occupancy (or Completion, if applicable) by the governing building department that allows Owner is able to begin to utilize the entire ProjectWork for the purposes for which it was intended.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion subject to Certificate of Occupancy (or Completion). Engineer shall attach to the certificate a ~~p~~Punch ~~I~~Llist of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached ~~P~~punch ~~I~~Llist. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised ~~p~~Punch ~~I~~Llist of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the ~~P~~Punch ~~L~~List of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed ~~P~~Punch ~~L~~List items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the ~~P~~Punch ~~L~~List.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
 - 2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection – Punch List*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to, the evidence that Contractor maintains completed operations coverage for its required commercial general liability (CGL) insurance; ~~insurance;~~
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective final releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and ~~of~~ Liens filed in connection with the Work.
3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor whereby Contractor swears that: (a) ~~the releases and receipts include all payrolls~~ labor, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid Contractor through the date of Contractor's final Application for Payment have been paid by Contractor ~~a Lien could be filed~~; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay Contractor in the final Application for Payment will represent Contractor's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that Contractor will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. ~~If any~~

Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

4. The documents and materials that Contractor is required to submit to accompany its Final Application for Payment (as set forth in this Paragraph 15.06) are conditions precedent to issuance of final payment.

- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within Twenty-five (25)30 days of the final Application for Payment being stamped as received by Owner's receipt of the final Application for Payment from Engineer.

15.07 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such adjacent areas;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; ~~or~~
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer; ~~or~~
 - 5. Contractor's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or
 - 6. Contractor's failure to obtain or maintain the insurance required of it in the Contract.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10-5 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7-5 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the

Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. ~~Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order.~~ When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon ~~7-5~~ days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract

and recover from Owner payment on the same terms as provided in Paragraph 16.03. Contractor, however, cannot terminate the Contract due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph. Contractor, however, cannot stop the Work due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 Deleted in its entirety. ~~Methods and Procedures~~

- A. Deleted in its entirety. ~~Disputes Subject to Final Resolution: The following disputed matters are subject to final resolution under the provisions of this article:~~

1. Deleted in its entirety. ~~A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and~~
2. Deleted in its entirety. ~~Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.~~

- B. Deleted in its entirety. ~~Final Resolution of Disputes: For any dispute subject to resolution under this article, Owner or Contractor may:~~

1. Deleted in its entirety. ~~elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;~~
2. Deleted in its entirety. ~~agree with the other party to submit the dispute to another dispute resolution process; or~~
3. Deleted in its entirety. ~~if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.~~

1. Claims, disputes or other matters in question between the parties to this Agreement shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Completion of pre-

suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of the Agreement.

2. Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any mediation or litigation, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.
3. Either party may initiate a mediation preceding by a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen, but in no event after the expiration of the applicable statute of limitations.
4. The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) days of the request for mediation, the Orlando office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its pool of approved mediators.
5. Unless otherwise mutually agreed, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, each party to bear its own fees, costs and expenses.
6. In the event that pre-suit mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit Courts of Volusia County Florida. The Parties, including the Contractor's Surety, waive Venue and Jurisdiction of any Federal Court and expressly waive Trial by Jury.

ARTICLE 18—MISCELLANEOUS

18.01 Giving Notice

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 Computation of Times

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are

otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the ~~Sstate of Florida~~ State of Florida ~~in which the Project is located.~~

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

Payment and Performance Bond
For Completion and Return to City for Recording

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: GPS Civil Construction, Inc.
Principal Business Address: 455 Walker Street
Holly Hill, Florida 32117
Contact Person: Gregory Schlaffer, President
Phone Number: (386) 872-5811

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: \$2,870,815.35 **City Case/Project No.** ITB 24-13 Jackson Street & Oak Street Drainage Improvements

Description of Work: ITB 24-13 Jackson Street & Oak Street Drainage Improvements

Project Location: Portions of Jackson Street from Dunlawton Avenue to Canalview Boulevard, and portions of Oak Street from Jackson Street to Dunlawton Avenue, Port Orange, Volusia County, Florida 32129

Legal Description: Portions of Jackson Street from Dunlawton Avenue to Canalview Boulevard, and portions of Oak Street from Jackson Street to Dunlawton Avenue, Port Orange, Volusia County, Florida 32129, and as further described in Bid Set Drawings of ITB 24-13.

Front Page

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

GPS Civil Construction, Inc.

ITB 24-13 Jackson Street and Oak Street Drainage Improvements

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, **GPS CIVIL CONSTRUCTION, 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 **TWO MILLION EIGHT HUNDRED SEVENTY THOUSAND EIGHT HUNDRED FIFTEEN AND 35/100 DOLLARS (\$2,870,815.35)**, 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 EJCDC Agreement, having an effective date of _____, entered into by and between the Principal and the City, for Jackson Street and Oak Street Drainage Improvements, 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 _____, 2024.

Attest:

GPS CIVIL CONSTRUCTION, INC.

(As to Corporate Principal) Secretary

By: _____
Gregory Schlaffer, 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.

EJCDC BID Set Drawings
on file with City Engineer, Junos Reed
Consisting of 20 Pages

EJCDC Addendum No. 1
consisting of 2 pages



CITY OF PORT ORANGE

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

ADDENDUM # 1

May 17, 2024

ITB #24-13 JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated April 26, 2024 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

REVISED (ATTACHMENT1) SCHEDULE OF UNIT PRICING

Bidders are advised they must complete **REVISED (Attachment1) Schedule of Unit Pricing**. If Bidder does not complete and include with bid submittal **REVISED (Attachment1) Schedule of Unit Pricing**, their bid will be deemed non-responsive. **REVISED (Attachment1) Schedule of Unit Pricing** is posted as a separate document on DemandStar at www.demandstar.com and the City of Port Orange Purchasing Web page at <https://www.port-orange.org/bids.aspx>.

A. REVISIONS:

None

B. CHANGES TO THE ITB:

None

C. CLARIFICATIONS:

None

D. QUESTIONS AND ANSWERS

Question #1: What is the Engineer Estimate ?

ANSWER: \$3,400,000

Question #2: Relocate existing utility pole is listed on Bid Form as pay item #8. Plans indicate relocate is to be "BY UAO (Utility/Agency Owner)"?

ANSWER: Pay item #8 is for the contractor's cost to assist and coordinate with FPL for the relocation of the utility poles.

Question #3: Retaining wall with handrail is listed on Bid Form as pay item #30 and no details are shown on drawings. Sheet C-12 states that proposed retaining wall with handrail is "BY OTHERS"?

ANSWER: Please disregard the "BY OTHERS". Retaining wall is to be per FDOT Index #400-011 SCHEME 1 with handrail per FDOT Index #515-070.

Question #4: Is this project federally funded? If so, is project subject to buy America or buy American?

ANSWER: This project does have some Federal Funding (CDBG) and is subject to Build America, Buy America (BABAA) requirements. Please refer to Section 6, Compliance with Other Federal Standards.

Question #5: Storm structure ST-32 (48" manhole) cannot be installed as flow of (2) pipes 19" x 30" ERCP converge into the same manhole perpendicular to each other. The right size should be 72". Can a pay item for 72" manhole be added to bid form?

ANSWER: The REVISED (ATTACHMENT1) SCHEDULE OF UNIT PRICING has been updated to include the following changes:

- 1) Bid Item 42a (72" Storm Manhole) for Storm Structure ST-32 has been added.
 - 2) Bid Item 41 (48" Storm Manhole) Estimated Quantity has been reduced from 3 to 2.
- Please see REVISED (ATTACHMENT1) SCHEDULE OF UNIT PRICING posted as a separate document on DemandStar and the City of Port Orange Purchasing web page.

Question #6: What type of grate is required on the storm structures? Traffic or non-traffic rated? Steel or cast iron?

ANSWER: Grates for the Ditch Bottom Inlets per FDOT Index# 425-052 shall be traffic rated cast iron grates.

In all other respects, except as specifically stated herein, the subject ITB #24-13 JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS remains the same.

END OF ADDENDUM #1

Joseph Castro
Buyer

jcastro@port-orange.org

EJCDC Exhibit No. 1
Contractor's BID Schedule
Consisting of 2 pages

REVISED (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #24-13

JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS

NAME OF BUSINESS: GPS Civil

CONTACT PERSON: Clayton Donahoo

EMAIL ADDRESS: clayton@gpscivil.com

AUTHORIZED SIGNATURE: 

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, leaving no blank cells; return completed, signed form with bid submittal and include on USB/thumb drive.

SITE PREPARATIONS

ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Mobilization	1	LS	\$ 115,000.00	\$ 115,000.00
2	Survey / As-builts	1	LS	\$ 30,000.00	\$ 30,000.00
3	Maintenance of Traffic	1	LS	\$ 42,000.00	\$ 42,000.00
4	Excavation / Grading	1	LS	\$ 225,000.00	\$ 225,000.00
5	Demo Existing RCP	1	LS	\$ 8,000.00	\$ 8,000.00
6	Demo Existing Headwall	36	EA	\$ 456.00	\$ 16,416.00
7	Tree/Shrub/Plant Removals/Remediation from Swale	1	LS	\$ 43,000.00	\$ 43,000.00
8	Relocate Existing Utility Pole	11	EA	\$ 1,500.00	\$ 16,500.00
9	Open Cut Asphalt Remediation	63	SY	\$ 368.00	\$ 23,184.00
10	Remove/Replace Existing Concrete Driveway	320	SF	\$ 17.00	\$ 5,440.00
11	Water Valve Adjustment	8	EA	\$ 365.00	\$ 2,920.00
12	Sewer Manhole Adjustment	10	EA	\$ 524.00	\$ 5,240.00
13	Storm Manhole Adjustment	1	EA	\$ 706.00	\$ 706.00
14	Existing Electric Box Relocated	1	EA	\$ 5,600.00	\$ 5,600.00
15	Existing PVC Riser Relocated	1	EA	\$ 1,400.00	\$ 1,400.00
16	Inlet Protection	7	EA	\$ 283.00	\$ 1,981.00
17	Silt Fence	6,729	LF	\$ 1.50	\$ 10,093.50
18	Sod	7,407	SY	\$ 8.00	\$ 59,256.00
SUBTOTAL ITEMS 1-18					\$ 611,736.50

ROADWAY SYSTEM

ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
19	Asphalt Planing (1")	11,027	SY	\$ 2.55	\$ 28,118.85
20	Friction Course FC-9.5 (1")	639	TN	\$ 192.00	\$ 122,688.00
21	Structural Course SP-12.5 (2")	65	TN	\$ 200.00	\$ 13,000.00
22	Optional Base Group 9 (10")	582	SY	\$ 60.00	\$ 34,920.00
23	Stabilized Subgrade (12")	1,227	SY	\$ 25.00	\$ 30,675.00
24	Type F Concrete Curb	1,936	LF	\$ 30.00	\$ 58,080.00
25	4" Sidewalk	7,102	SF	\$ 6.00	\$ 42,612.00
26	ADA Mats	16	EA	\$ 1,100.00	\$ 17,600.00
27	Thickened Edge Sidewalk	8,525	SF	\$ 10.00	\$ 85,250.00



28	Concrete Driveway	2,717	SF	\$ 13.00	\$ 35,321.00
29	Pedestrian Railing	1,794	LF	\$ 85.00	\$ 152,490.00
30	Retaining Wall w/ Handrail	42	LF	\$ 244.00	\$ 10,248.00
SUBTOTAL ITEMS 19-30					\$ 631,002.85

DRAINAGE SYSTEM					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
31	15" HDPE	97	LF	\$ 61.00	\$ 5,917.00
32	15" RCP	44	LF	\$ 160.00	\$ 7,040.00
33	18" RCP	50	LF	\$ 165.00	\$ 8,250.00
34	24" RCP	17	LF	\$ 180.00	\$ 3,060.00
35	30" RCP	677	LF	\$ 190.00	\$ 128,630.00
36	19" x 30" ERCP	1,999	LF	\$ 182.00	\$ 363,818.00
37	29" x 45" ERCP	1,936	LF	\$ 307.00	\$ 594,352.00
38	24" MES	1	EA	\$ 3,600.00	\$ 3,600.00
39	19" x 30" MES	1	EA	\$ 3,900.00	\$ 3,900.00
40	29" x 45" MES	1	EA	\$ 9,400.00	\$ 9,400.00
41	48" Storm Manhole	2	EA	\$ 5,800.00	\$ 11,600.00
42	60" Storm Manhole	2	EA	\$ 7,000.00	\$ 14,000.00
	a) 72" Storm Manhole	1	EA	\$ 8,500.00	\$ 8,500.00
43	Type C Inlet	1	EA	\$ 4,000.00	\$ 4,000.00
44	Type E Inlet	10	EA	\$ 9,400.00	\$ 94,000.00
45	Type E Inlet w/ 12" Slot	4	EA	\$ 5,400.00	\$ 21,600.00
46	Type H Inlet	2	EA	\$ 9,600.00	\$ 19,200.00
47	Type H Inlet w/ 12" Slot	5	EA	\$ 9,300.00	\$ 46,500.00
48	Type 4 Curb Inlet w/ J Bottom	18	EA	\$ 10,200.00	\$ 183,600.00
49	15" Yard Drain	18	EA	\$ 1,800.00	\$ 32,400.00
50	Connect to Existing Storm Pipe	9	EA	\$ 1,000.00	\$ 9,000.00
51	Connect to Existing Structure	2	EA	\$ 1,000.00	\$ 2,000.00
	SUBTOTAL ITEMS 31-51				\$ 1,574,367.00
STRIPING AND SIGNAGE					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
52	6" Single White	8,503	LF	\$ 2.00	\$ 17,006.00
53	6" Double Yellow	3,744	LF	\$ 4.00	\$ 14,976.00
54	24" White Stop Bar	107	LF	\$ 13.00	\$ 1,391.00
55	12" White Crosswalk	431	LF	\$ 7.00	\$ 3,017.00
56	Turn Lane Arrow Template	1	EA	\$ 152.00	\$ 152.00
57	Remove Existing Sign/Post	6	EA	\$ 84.00	\$ 504.00
58	Furnish & Install Sign/Post	22	EA	\$ 703.00	\$ 15,466.00
59	Mailbox Remove/Relocate	9	EA	\$ 133.00	\$ 1,197.00
	SUBTOTAL ITEMS 52-59				\$ 53,709.00
TOTAL PRICE				\$	2,870,815.35

LEGEND:

LS - Lump Sum

EA - Each

LF - Linear Feet

SF - Square Feet

TN - Ton

SY - Square Yard

EJCDC Exhibit No. 2
Contractor's Submittal
Consisting of 58 pages

SECTION 7 – REQUIRED FORMS



ORIGINAL

FORM 7.1 – BID SUBMITTAL CHECKLIST

- ☒ Form 7.2 – Bidder's Acknowledgement Form
- ☒ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- ☒ Form 7.4 – Drug Free Preference Statement
- ☒ Form 7.5 – Public Entity Crimes Statement
- ☒ Form 7.6 – Anti-Collusion Form
- ☒ Form 7.7 – Statement of Bidder's Qualifications
- ☒ Form 7.8 – Professional References for Previous Experience
- ☒ Form 7.9 – List of Subcontractors
- ☒ Form 7.10 – Scrutinized Companies Certification
- ☒ Form 7.11 – Local Business Affidavit of Eligibility
- ☒ Form 7.12 – E-Verify Affidavit
- ☒ Form 7.13 – Debarment, Suspension and Other Responsibility Matters
- ☒ Form 7.14 – Affidavit of Compliance With Section 287.138
- ☒ Form 7.15 – No Submittal Response Form
- ☒ Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying
- ☒ (Attachment 1) – Schedule of Unit Pricing
- ☒ Original Recorded Bid Bond
- ☒ Current Bonding Capacity Letter (as outlined in Section 6)
- ☒ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)

____ Submission of one (1) original marked "ORIGINAL" and one (1) digital (flash drive) version in PDF format

BY: GPS Civil Construction, Inc.

Name of Business



Authorized Signature

5/24/2024

Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER'S ACKNOWLEDGEMENT FORM

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the ITB at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to one-hundred-twenty (120) days in order to allow the City of Port Orange adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the ITB.

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

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

GPS Civil Construction, Inc.

Name of Business

Authorized Signature

Greg Schlaffer, President

Printed Name and Title

82-3777772

Federal Identification No.

455 Walker Street

Mailing Address

Holly Hill, FL 32117

City, State & Zip Code

386-872-5811

Telephone Number

Greg@gpscivil.com

E-mail Address

STATE OF: Florida COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this

24th day of May, 2024, by Greg Schlaffer and who:

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

Cathy A Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

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

Addendum# 01 Date: 5/17/24 Addendum# _____ Date: _____
Addendum# _____ Date: _____ Addendum# _____ Date: _____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

GPS Civil Construction, Inc.

Name of Business

[Signature]
Authorized Signature

Greg Schlaffer, President

Printed Name and Title

STATE OF: Florida COUNTY OF: Volusia

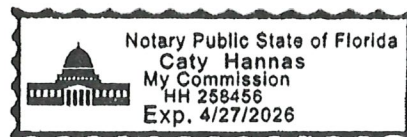
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this

24th day of May, 2024, by Greg Schlaffer and who:

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

Cathy Hannas
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

IDENTICAL TIE BIDS – Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, statements or replies are equal with respect to price, quality and service are received by the City for procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied Bidders have a drug-free workplace program.

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

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

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

GPS Civil Construction, Inc.

Name of Business

Authorized Signature

Greg Schlaffer, President

Printed Name and Title

STATE OF: Florida COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your Submittal

**FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES
UNDER SECTION 287.133(3)(A), FLORIDA STATUTES**

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

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

1. The business address of GPS Civil Construction, Inc. (name of Offeror or business) is
455 Walker Street, Holly Hill, FL 32117.
2. My relationship to GPS Civil Construction, Inc. (name of Offeror or business) is President
_____(relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. **(Draw a line through paragraph 6 if paragraph 7 below applies.)**
7. ~~There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted Bidder list. The name of the convicted person or affiliate is: _____ A copy of the order of the Division Administrative Hearing is attached.~~
(Draw a line through paragraph 7 if paragraph 6 above applies)

GPS Civil Construction, Inc.

Name of Business

Authorized Signature

Greg Schlaffer, President

Printed Name and Title

STATE OF: Florida

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

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

This document must be completed and returned with your Submittal



FORM 7.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

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

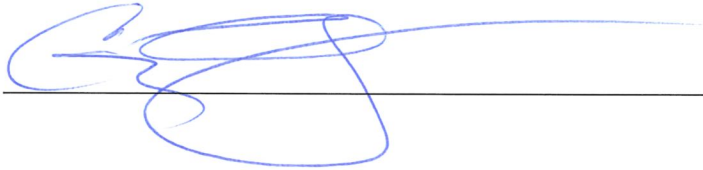
SIGN in ink in the space provided below. Unsigned bids will be considered incomplete and will be disqualified and rejected.

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

NAME OF FIRM: GPS Civil Construction, Inc.

SIGNED BY: Greg Schlaffer

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

PRINTED SIGNATURE: 

TITLE: President

ADDRESS: 455 Walker Street

CITY, STATE AND ZIP CODE: Holly Hill, FL 32117

TELEPHONE: _____

386-872-5811

FAX: _____

386-872-5822

F.E.I.N.: 82-3777772

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

- A. Name of Bidder: GPS Civil Construction, Inc.
- B. Permanent main office address: 455 Walker Street, Holly Hill, FL 32117
- C. Date organized: 12/19/2017
- D. If a corporation, where incorporated: Florida
- E. How many years have you been engaged in the business under your present firm or trade name? 6 years
- F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- G. General character of work performed by your company: Heavy Civil and Sitework
- H. Have you ever failed to complete any work awarded to you? If so, where and why? No.
- I. Have you ever defaulted on a contract? If so, where and why? No.
- J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- K. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- L. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- M. Credit currently available: \$ 700,000
- N. Give bank name, contact name and phone number: Climate First Bank - Lex Ford 689-444-5500
- O. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☒ Yes ☐ No

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals comprising the Statement of Bidder's Qualifications.

GPS Civil Construction, Inc.

Name of Business

[Signature]
Authorized Signature

Greg Schlaffer, President

Printed Name and Title

STATE OF: Florida

COUNTY OF: Volusia

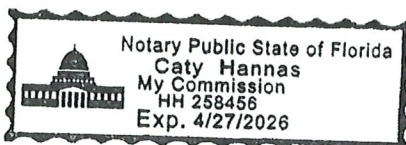
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

Cathy D. [Signature] Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal



Contracts on Hand

Job	Contract Amount
21-003 - Marriott Renaissance	\$ 787,506.00
22-005 - Ocean Club Gift Shop	\$ 577,533.00
22-008 - First Avenue Drainage	\$ 296,400.00
22-010 - Woodspring Suites - Port Orange	\$ 1,121,764.00
22-012 - Palm Coast Southern Rec Center	\$ 1,274,381.00
23-003 - Lift Station 22 Forcemain 2319	\$ 904,552.00
23-005 - Costco	\$ 2,495,766.00
23-007 - Flynn Street Ditch Repair	\$ 294,221.00
23-009 - Mullinax Ford	\$ 197,789.00
23-013 - KFC LPGA	\$ 308,515.50
23-014 - Park Ave Water Main Replacement	\$ 664,550.00
23-015 - Holiday Inn Express	\$ 125,244.00
23-019 - Hubbard & High Street Drainage	\$ 192,870.00
23-020 - T2914 US-1 Storm Drainage	\$ 1,225,295.00
23-021 - Ace Hardware LPGA	\$ 110,850.00
23-022 - Pioneer Trail & Sugar Mill Drive	\$ 2,313,571.52
23-024 - Raw Water Main Extension - WTP #3 Wellfield	\$ 268,390.00
23-026 - Greenway Trail - North Extension	\$ 2,425,979.50
23-027 - US-1 Utility Extensions	\$ 2,778,100.00
24-001 - Halifax Port Orange	\$ 1,805,237.00
24-002 - Halifax Daytona	\$ 1,494,313.00

GPS Civil Construction - Job List - Major

Job No	Job Name	Customer	Contract Amount	Start	Complete
22-006	NW Area Stormwater Improvements	City of Deltona	\$ 1,829,020.00	Aug-22	Jun-23
22-002	NSB Middle New Parent Loop Parking Lot	Volusia County Schoolboard	\$ 1,102,594.00	Jun-22	Sep-22
22-001	DeLand Airport Access Road	City of DeLand	\$ 2,498,508.00	May-22	Mar-23
21-038	ERAU Parking Garage Sitework	Hoar Construction	\$ 439,554.00	Jan-22	Aug-22
21-036	AutoZone Palm Coast Site Package	HJB Construction	\$ 267,700.00	Dec-21	Feb-22
21-032	Canal View Runoff - Road Reconstruction	City of Port Orange	\$ 492,900.00	Mar-22	Jun-22
21-030	DASERCO Site Package	Dade Service Corporation	\$ 517,581.00	Mar-22	Dec-22
21-024	The Gables	Hazen Construction	\$ 145,765.00	Aug-21	Dec-21
21-021	Dollar General Orange City	Fulcrum Construcion	\$ 220,050.00	Nov-21	Jul-22
21-020	South Pine Meadows	City of DeBary	\$ 347,485.00	Nov-21	Mar-22
21-018	Tanglewood Drainage Improvements & Road Reconstruction	Seminole County	\$ 652,488.00	Sep-21	Jul-22
21-017	Latitude Landings Parking Lot Construction	Building Management Systems	\$ 534,421.00	Jul-21	Dec-21
21-016	LPGA Scenic Thoroughfare	Florida Land Trust	\$ 305,036.00	Jul-21	Aug-21
21-010	E5X14 Roadway Repair	FDOT - D5	\$ 128,820.00	Jun-21	Aug-21
21-007	Tree Town USA - Bunnell	Halifax Paving	\$ 100,258.00	Mar-21	Apr-21
21-004	Howes Street and Orange Ave WM and Drainage	City of Port Orange	\$ 1,110,776.00	May-21	Apr-22
21-003	Marriot Renaissance Parking Lot Construction	PRM	\$ 606,705.00	Feb-21	Dec-22
21-002	27th Ave Beach Access Ramp	Volusia County	\$ 668,516.00	Feb-21	Aug-22
21-001	Beresford Ave Sidewalk	Volusia County	\$ 389,128.00	Feb-21	Apr-21
20-017	Orange City Votran Bus Depot	Volusia County	\$ 796,452.00	Oct-20	Mar-21
20-011	US-1 New Turnlane at Enclave Apts	Halifax Paving	\$ 127,751.00	July-20	Aug-20
20-009	Beach Street Sidewalk	Hazen Construction	\$ 247,204.00	June-20	Mar-21
20-003	Deltona Lakes and Spirit Elementary Neighborhood Sidewalk	City of Deltona	\$ 711,587.00	June-20	Jan-21
19-013	Bethune Point Shoreline Restoration	City of Daytona Beach	\$ 398,114.00	February-20	Jul-20
19-012	Flagler Airport Access Road	Flagler County	\$ 171,580.00	January-20	Mar-20
19-011	E5V72 - US92 Box Culvert	FDOT - D5	\$ 488,288.00	January-20	Apr-20
19-008	New Smyrna Beach Airport Apron/Taxi Construction	City of New Smyrna Beach	\$ 1,256,676.00	December-19	Sep-20
19-004	Atlantic High Drainage	Giles Electric	\$ 306,500.00	June-19	Aug-19
19-003	Tivoli Drive Intersection Improvements	City of Deltona	\$ 953,662.00	August-19	May-20
19-002	E5U82 - US-1 Concrete Panel Replacement	FDOT - D5	\$ 2,105,379.00	April-19	Feb-20
18-007	DeLand Business Farm	Dade Service Corporation	\$ 124,954.00	December-18	Jun-19
18-004	E5Z25 - SR600	FDOT - D5	\$ 1,478,900.00	October-18	Jun-19
18-003	Palm Coast Pipe Crossing	City of Palm Coast	\$ 106,954.00	June-18	Sep-18
18-001	Daytona Beach Grounds Maintenance Redevelopment	City of Daytona Beach	\$ 434,743.00	April-18	Nov-18

Equipment List (Updated 2/21/2024)

Equip #+ Description	Manufacturer	Model	Year	VIN/Serial	License Plate #	
BR001	SM300 Broom Tractor	Laymor	SM300	2014	34914	
BR002	Sweeper Ride on 8' Windrow 3 Wheel	Laymor	SM300	2015	35700	
BR003	Cat SSL/CTL Pickup Broom	Caterpillar	BU118		0P6601850	
DZ001	John Deere 450K Crawler Dozer	John Deere	450K	2020	1T0450KXELF373725	
DZ001-2	Undercarriage Replacement on JD 450K					
DZ002	John Deere 650 P-Tier Utility Dozer	John Deere	650 P-Tier	20203	1T0650PAPPLX02433	
EX002	Cat 305E Hydraulic Excavator	Caterpillar	305E	2019	H5M08733	
EX003	Link Belt Excavator	Link-Belt	145X4	2021	LBX145Q7NMHEX2049	
EX004	Link Belt Excavator	Link-Belt	145X5	2021	LBX145Q7NMHEX2290	
EX005	2022 Hitachi ZX350LC-6 Excavator SN	Hitachi	ZX350LC-6	2022	HCMDDQ60T00082178	
EX005-2	Rebuild of EX005 Hitahci ZX350					
EX006	E50 R2-Series Bobcat Compact Excavator	Bobcat	E50 R2	2022	B4GP15642	
EX007	2017 John Deere 245G FT4 Excavator	John Deere	245G	2017	1FF245GXJHF800446	
EX008	John Deere 210 P-Tier Excavator	John Deere	210 P-Tier	2023	1FF210PAKPF000704	
EX009	John Deere 35G Compact Excavator	John Deere	35G	2023	1FF035GXCPK302832	
LR001	Cat 3CY Loader	Caterpillar	926M	2018	LTE05316	
LR002	ZW 180 Wheel Loader	Hitachi	ZW180	2018	RYUPD860PH8405235	
LR003	ZW 150 Wheel Loader	Hitachi	ZW150	2021	RYUPTC60AH8505583	
LR004	Volvo L70E Loader	Volvo	L70E	2005	L70EV60853	
LR005	ZW150 Wheel Loader	Hitachi	ZW150		RYUPTC60EH8505667	
LR006	John Deere 544 P-Tier Wheel Loader	John Deere	544 P-Tier	2023	1DW544PAHPLX18785	
LR007	John Deere 544 P-Tier Wheel Loader	John Deere	545 P-Tier	2023	1DW544PAEPLX18769	
LR008	John Deere 544 P-Tier Wheel Loader	John Deere	545 P-Tier	2023	1DW544PAAPLX20629	
LR009	John Deere 331G Compact Track Loader	John Deere	331G	2023	1T0331GMTRF459909	
ME001	TP-L5B/L Pipe Laser	Topcon	TP-L5B/L	2018	RR3949	
ME003	20 FT Grade A Steel Container (Office)	Immediate Warehousing	20 FT	2019	N/A	
ME004	20 FT Grade A Steel Container (US 1)	Immediate Warehousing	20 FT	2019	N/A	
ME005	SRV116T 2TB Server	Net Works	SRV116T	N/A	N/A	
ME006	Trailer Water Tank 500 Gallon	Multiquip	WT5C	2019	54SLBM1227KL027631	CG0719
ME007	VIB Plate Reversible	Wacker	BPU 4045A	2016	10557503	
ME008	VIB Plate Reversible	Wacker	BPU 3050A	2020	11251247	
ME009	Large Rammer 2900-3600	Multiquip	MTX70HD	2021	G-4547	
ME010	TP-L6B Pipe Laser	Topcon	TP-L6B	2022	P2001828	
ME011	Pressure Pump	Wheeler-Rex	48301	2022	15771	
ME012	Dome Head Test Plug					
ME013	Godwin Skid-Mounted Water Pump	Godwin	GRL200	2018		
ME014	Magnum Trailer-Mounted Water Pump	Magnum	MTG030	2011	1114087	
ME015	PPSI Trailer-Mounted Water Pump	PPSI	4DD-TR-YD	2016	4DD-637	
ME015-2	Rebuild of ME015 PPSI Pump					
ME016	5 Cubic Yard Stone Box					
ME017	Weber MT Plate Compactor - REV -5000 -7000 LB	Weber MT	CR2		20074302	
ME018	Trench Box					
ME019	Weber Plate Compactor-REV-6800-7800 LB	Weber MT	CR3-II		20079406	
ME020	TP-L6B Pipe Laser	Topcon	TP-L6B		P2004067	
ME021	Multiquip 4 Stroke 3HP 690 BPM Rammer	Multiquip	690BPM		G-4545	
ME022	Weber Rammer SRV620-II	Weber MT	SRV620-II		20093394	
ME023	Menegotti Mortar Mixer 7-9 CU FT	Menegotti	Mortar9CF		M09508	
ME024	Weber Plate Compactor-REV-9000-10000 LB	Weber	CR5-II		20095410	
ME025	Titan 5 Plus 8 x 20 Trenchbox	Titan				
ME026	Dome Head Plug					
ME027	11 GPM 550 PSI Triple Diaphragm Pump				61549	

Abbreviation	Description
BR	Broom
CM	Curb Machine
EX	Excavator
LR	Loader
DZ	Dozer
RL	Roller
SK	Skid Steer
TC	Tractor
TA	Trailer
TR	Truck
ME	Miscellaneous Equipment
MG	Motor Grader
MX	Mixer
OT	Off-Road Truck

GREG SCHLAFFER

EDUCATION:

Master of Science, Building Construction	2009
University of Florida Rinker School of Building Construction	
Bachelor of Arts, Business Administration	2006
University of Florida Warrington College of Business	

PROFESSIONAL EXPERIENCE:

2017 - Present <i>President</i>	GPS Civil Construction, Inc	Holly Hill, FL
- On a company level, managing all day-to-day operations of a heavy civil and site development construction company focusing on both public works and private development projects. - On a project specific level, I manage all major projects personally. This includes evaluating and hiring subcontractors, managing product purchasing, control of overall project schedule, constant communication with project owners, and managing manpower and resource requirements necessary to deliver projects efficiently.		
2014 - 2017 <i>Estimator / Project Manager</i>	P & S Paving, Inc	Daytona Beach, FL
- Managing, from bidding to project completion, the construction of several roadway and site development projects throughout the Central Florida area. - Total Value of Projects Bid \$270,000,000 - Total Value of Projects Constructed and Personally Managed \$ 38,900,000		
2012 – 2014 <i>Project Manager</i> <i>Various projects throughout US</i>	Dade Service Corp	Daytona Beach, FL
Managing, from design phase to completion, the construction of refrigerated distribution centers, warehouses, and ripening rooms nationwide.		
2009 – 2012 <i>Construction Support Lead/Supervisor</i> <i>V.C. Summer Nuclear Units 2 & 3</i>	The Shaw Group – Nuclear Power	Columbia, SC
- Overseeing the Turbine Building construction support organization of the power plant. - Responsible for monitoring adherence to budgeted performance factors. - Performing investigations into budget overruns and identifying trends in labor efficiency patterns. - Assisting the Site Development Manager in planning the development of a nearly 1,000 acre site adjacent to an existing Nuclear Generating Station. - Responsible for evaluation of existing, and development of new, project budgets.		
2008 – 2009 <i>Field Engineer</i> <i>Deerhaven Coal Power Plant AQCS Retrofit</i>	CH2M Hill - Power Group	Gainesville, FL
- Various field engineering and surveying assignments to provide constructability support. - Gathering, tracking and performing analysis of costs associated with material and labor expenditures.		

OTHER QUALIFICATIONS:

CGC1523245 - Certified General Contractor
CUC1225259 - Certified Underground Utility and Excavation Contractor
987710-0001-2007 – Florida Fire Protection System Contractor V
LEED AP
OSHA 30 Hour Card holder

Significant Projects:

- 2018-2020 – GPS Civil Construction
 - FDOT - E5Z25 SR600 Drainage Improvements - \$1,478,900
 - FDOT - E5U82 US1 Concrete Panel Replacement - \$2,228,858
 - FDOT - E5V72 92 Box Culvert Repair - \$484,765
 - Flagler County - Pritchard Drive Pipe Crossing - \$106,955
 - Flagler County – Airport Access Road - \$169,767
 - Volusia County - Orange City Votran Parking Lot - \$800,000
 - Volusia County – Beresford Ave Sidewalk/Drainage/Asphalt Roadway Improvements - \$396,128
 - Volusia County – Public Works Concrete Parking - \$29,251
 - Volusia County Schools - Atlantic High School Drainage Improvements - \$306,500
 - Volusia County Schools – Olson Drive Concrete - \$67,877
 - City of NSB - New Smyrna Airport Taxiway and Apron Improvements - \$1,256,676
 - City of NSB – Fire Station 51 Concrete Pavement / Parking Lot - \$99,055
 - City of Deltona - Tivoli Drive Intersection Improvements - \$960,000
 - City of Deltona - Deltona Lakes Neighborhood Sidewalks - \$772,000
 - City of Daytona Beach - Grounds Maintenance Redevelopment - \$434,743
 - City of Daytona Beach – Bethune Point Shoreline Restoration - \$413,490
 - DeLand Business Farm - \$124,950
 - Brunswick Site Development - \$39,093
 - Tanger Outlets Drainage – \$49,539
 - Tree Town Concrete Pavement - \$98,000
 - ERAU Sidewalk and Curb Clyde Morris Blvd - \$76,118
 - US-1 at Enclave Apartments – New Concrete Turn Lane on US-1 - \$127,751
 - Beach Street / Sweetheart Trail Concrete - \$265,138
- 2014-2017 – P&S Paving
 - SCOPA Pavement Improvements - \$144,341
 - Putnam County Resurfacing 2014 - \$741,854
 - Southern Riverfront Paving - \$103,309
 - Our Lady of Lourdes - \$125,270
 - Edgewater 2014 Resurfacing - \$244,151
 - DBIA Wildlife Mitigation - \$2,057,976
 - 100 & I95 Push Button – \$92,169
 - Bethune Cookman Site Work - \$1,631,150
 - North Causeway Boat Ramp - \$77,422
 - D2 M&R E2S56-R0 - \$293,750
 - Williamson/Town West Turn Lane - \$609,361
 - ERAU Research Park West - \$1,925,889
 - North Causeway Beautification - \$1,045,509
 - Maserati of Daytona - \$177,240
 - Edgewater 2015 Resurfacing - \$346,468
 - ERAU Research Park Pump Station - \$484,055
 - St. Johns Rest Area E2U66 - \$444,550
 - INFINITI DAYTONA - \$543,046
 - Top Build Daytona - \$155,448
 - SR 19 Putnam Co E2U35 - \$5,266,949
 - Aberdeen at Ormond - \$104,571
 - SR 520 Tucker to Aurora T5580 - \$5,771,370
 - Project Longboard - \$408,298
 - Palatka Riverfront - \$780,000
 - Spring to Spring Trail E5Y96 - \$3,268,345
 - Grand Haven Development - \$743,011
 - Snow Hill Road Paving - \$2,926,568
 - SR19 CURB & GUTTER TO SR100 - \$3,438,726
 - Sanford Taxiway R Reconstruction - \$1,440,784

- 2012-2014 – Dade Service Corporation
 - DiMare Distribution Center – Houston, TX - \$11,000,000
 - DelMonte Chicago Distribution, Chicago, IL - \$900,000
 - DelMonte Dallas Distribution - Dallas, TX - \$700,000
 - Calavo Dallas Distribution - Dallas, TX - \$600,000
 - West Pak Distribution - Temecula, CA - \$1,300,000
- 2009-2012 – The Shaw Group –
 - VC Summer New Nuclear – Units 2 & 3 - \$12,000,000,000
- 2008-2009 – CH2M Hill –
 - Deer Haven Coal Power Plant – Air Quality Control System Retrofit - \$135,000,000

DALLAS MOORE

EDUCATION:

Associate of Arts, Mathematics
Daytona State College

2009

PROFESSIONAL EXPERIENCE:

2018 - Present

GPS Civil Construction, Inc

Holly Hill, FL

Vice President

- Running all field construction operations
- Areas of expertise: Asphalt paving, concrete paving, concrete curb and sidewalk, grading, structural concrete, maintenance of traffic, underground utilities, survey and layout, project management,
- Several years of experience running field operations on FDOT projects.
 - Major Projects have included:
 - FDOT - E5Z25 SR600 Drainage Improvements - \$1,478,900
 - FDOT - E5U82 US1 Concrete Panel Replacement - \$2,228,858
 - FDOT - E5V72 92 Box Culvert Repair - \$484,765
 - Flagler County - Pritchard Drive Pipe Crossing - \$106,955
 - Flagler County - Airport Access Road - \$169,767
 - Volusia County - Orange City Votran Parking Lot - \$800,000
 - Volusia County - Beresford Ave Sidewalk/Drainage/Asphalt Roadway Improvements - \$396,128
 - Volusia County - Public Works Concrete Parking - \$29,251
 - Volusia County Schools - Atlantic High School Drainage Improvements - \$306,500
 - Volusia County Schools - Olson Drive Concrete - \$67,877
 - City of NSB - New Smyrna Airport Taxiway and Apron Improvements - \$1,256,676
 - City of NSB - Fire Station 51 Concrete Pavement / Parking Lot - \$99,055
 - City of Deltona - Tivoli Drive Intersection Improvements - \$960,000
 - City of Deltona - Deltona Lakes Neighborhood Sidewalks - \$772,000
 - City of Daytona Beach - Grounds Maintenance Redevelopment - \$434,743
 - City of Daytona Beach - Bethune Point Shoreline Restoration - \$413,490
 - DeLand Business Farm - \$124,950
 - Brunswick Site Development - \$39,093
 - Tanger Outlets Drainage - \$49,539
 - Tree Town Concrete Pavement - \$98,000
 - ERAU Sidewalk and Curb Clyde Morris Blvd - \$76,118
 - US-1 at Enclave Apartments - New Concrete Turn Lane on US-1 - \$127,751
 - Beach Street / Sweetheart Trail Concrete - \$265,138

2003 - 2018

P & S Paving, Inc

Daytona Beach, FL

Superintendent

- Managing construction sites for several roadway and site development projects throughout the Central Florida area.
 - Total Value of Projects Constructed and Personally Managed - Greater than \$30,000,000
 - Several years experience running field operations on FDOT projects.
 - Major Projects run have included:
 - VOLUSIA SIDEWALK MNT E5P42-RO - \$1,115,500
 - SR 600 (US 92) T5351 - \$1,678,307
 - CHAPMAN ROAD - \$7,429,253
 - TELEDYNE ODI - \$306,108
 - SR 415 (T5417) - \$18,388,844
 - NORTH HALIFAX DRIVE REHAB - \$1,312,944
 - SR 44 - SR415 TO JUNGLE RD - \$5,008,595
 - DBIA TAXIWAY Y - \$1,613,246

- NEW SMYRNA HARBOR - \$2,429,281
- WHITE PALMS APARTMENTS - \$1,690,300
- SR 5 (US1) FLAGLER T5457 - \$8,326,181
- NORTH YOUNG STREET (T5454) - \$654,997
- Cambridge Canal Phase 1 - \$1,289,776
- Palm Coast Parkway 6-Laning - \$10,556,445
- Cambridge Canal Phase 2 - \$736,585
- SR 400 BEVILLE RD T5536 - \$2,534,883
- DIS Super Stretch Improvements- \$719,939
- SR 19 Putnam Co E2U35 - \$5,266,949
- SR 520 Tucker to Aurora T5580 - \$5,771,370

OTHER QUALIFICATIONS:

FDOT Advanced Maintenance of Traffic (MOT)
 Certified Stormwater Inspector
 OSHA 10 Hour Card
 Merchant Mariner OUPV License

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein. **Please provide three (3) current and correct references from clients for similar services. (DO NOT include the City of Port Orange)**

1. Company Name: US-1 Utility Extensions, Volusia County
Contact Person: Roger Smith
City, State: Oak Hill, FL
Telephone Number: 386-943-7027
Email Address: rogersmith@volusia.org
Description of goods/services provided: Extension of utilities along US-1 Corridor
Contract Amount: \$2,778,100
Start/End Date of Contract: 12/2023 - Current
2. Company Name: Hart Ave Drainage & Water Main Improvements
Contact Person: Sean Maroney
City, State: Edgewater, FL
Telephone Number: 386-424-2400
Email Address: smaroney@cityofedgewater.org
Description of goods/services provided: Reconstruction of existing neighborhood water, storm, roadway
Contract Amount: \$3,030,327
Start/End Date of Contract: 12/2022 - 08/2023
3. Company Name: DeLand Airport Access Road
Contact Person: Ray Bahrami
City, State: DeLand, FL
Telephone Number: 386-626-7189
Email Address: bahramir@deland.org
Description of goods/services provided: Construction of new roadway w/ water, sewer, storm
Contract Amount: \$2,480,108
Start/End Date of Contract: 05/2022 - 08/2023

This document must be completed and returned with your Submittal.

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE (page 2)

**LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST**

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

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

1. Contact Name: Volusia County, Roger Smith
Phone: 386-943-7027
Current Client: ☒ Yes ☐ No
Number of years of service provided: 6
Description of service: Underground Utilities, Roadway Construction

2. Contact Name: City of Edgewater, Sean Maroney
Phone: 386-424-2400
Current Client: ☒ Yes ☐ No
Number of years of service provided: 3
Description of service: Underground Utilities, Roadway Construction

3. Contact Name: City of DeLand, Ray Bahrami
Phone: 386-626-7189
Current Client: ☒ Yes ☐ No
Number of years of service provided: 5
Description of service: Underground Utilities, Roadway Construction

This document must be completed and returned with your Submittal.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative.** Bidder shall attach additional sheets as necessary.

Subcontractor No. 1Name: BETTER BARRICADESDescription of Work: STRIPING, SIGNSPercent of Contract Price: 1.6%Previous Experience Together: ☒ Yes ☐ NoSubcontractor No. 2Name: SUPERIOR SODDescription of Work: SODPercent of Contract Price: 0.7%Previous Experience Together: ☒ Yes ☐ NoSubcontractor No. 3Name: DELAMERE INDUSTRIESDescription of Work: Pedestrian rail, hand railPercent of Contract Price: 4.7%Previous Experience Together: ☒ Yes ☐ NoSubcontractor No. 4Name: ROGERS ENVIRONMENTALDescription of Work: SILT FENCE, EROSION CONTROLPercent of Contract Price: 0.2%Previous Experience Together: ☒ Yes ☐ NoSubcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, Greg Schlaffer, on behalf
(Print Name and Title)

of GPS Civil Construction, Inc. ("Company"), certify that GPS Civil Construction, Inc.
(Company Name) (Company Name)

does not:

1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies with Boycott Israel List; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The City of Port Orange shall provide notice, in writing, to the Company of the City's determination concerning the false certification. The Company shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Company does not demonstrate that the City's determination of false certification was made in error, then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes prohibits the City from: 1) Contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and 2) Contracting with companies for goods or services over \$1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Company, I hereby certify that the company identified above in the section entitled "Company Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List and is not engaged in business operations in Syria. I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

GPS Civil Construction, Inc.

COMPANY NAME

SIGNATURE

Greg Schlaffer

PRINT NAME

President

TITLE

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION (page 2)

STATE OF FLORIDA

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schaffer and who:

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

Cathy A Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document to be completed and returned with your Submittal

FORM 7.11 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

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

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

Project# (as applicable): _____

Business Name: GPS CIVIL CONSTRUCTION, INC Contact Person/Title: GREG SCHLAFFER, PRESIDENT

Mailing Address: 455 WALKER ST City, State, Zip: HOLLY HILL, FL, 32117

Phone Number: 386-872-5811 Email address: GREG@GPS-CIVIL.COM

Physical Presence of Business: ☒ Headquarters ☐ Principal Place of Business

Within Legal Boundaries: ☐ City of Port Orange ☒ Volusia County ☒ State of Florida

FEIN (Federal Employer Identification Number): 82-3777772

Business Structure: ☒ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship ☐ Other (Specify): _____

****PLEASE ATTACH A VALID BUSINESS TAX RECEIPT OR OTHER SUCH DOCUMENTATION****

ATTESTATION – I understand that:

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

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

GPS CIVIL
Name of Business

[Signature]
Authorized Signature

GREG SCHLAFFER, PRESIDENT
Printed Name and Title

STATE OF: Florida

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

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



This document must be completed and returned with your Submittal

2023 / 2024

Volusia County Business Tax Receipt

Issued pursuant to F.S. 205 and Volusia County Code of Ordinances Chapter 114-1 by:
Volusia County Treasury and Billing - 125 W New York Ave, Room 120, Deland, FL 32720 - (386) 943-7085



Account #: 201803080002

Expires: September 30, 2024

Business Location: 455 WALKER ST

Business Name: GPS CIVIL CONSTRUCTION, INC

Owner Name: GREGORY SCHLAFFER

Mailing Address: 455 WALKER ST
HOLLY HILL, FL 32117

BUSINESS TYPE	REQ DOC #	CODE	COUNT	TAX
General Contractor Class A	CGC1523245	301C	26	\$54.00

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

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

Volusia County Business Tax Receipt

Treasury and Billing - 125 W New York Ave, Room 120, Deland, FL 32720 - (386) 943-7085

DATE PAID: 09/27/2023
RECEIPT #: 516832
TOTAL TAX: \$54.00
PENALTY: \$0.00
TOTAL PAID: \$54.00



Business Name: GPS CIVIL CONSTRUCTION, INC
Owner Name: GREGORY SCHLAFFER
Mailing Address: 455 WALKER ST
HOLLY HILL, FL 32117

Account #: 201803080002

Expires: September 30, 2024

Business Location: 455 WALKER ST

PLEASE DETATCH THIS PORTION OF THE BUSINESS TAX RECEIPT FOR YOUR RECORDS.



BUSINESS TAX RECEIPT

City of Holly Hill

1065 Ridgewood Ave

Holly Hill, FL 32117

386-248-9442 www.hollyhillfl.org

EXPIRATION DATE: September 30, 2024

ISSUED TO: GPS CIVIL CONSTRUCTION, INC
455 WALKER ST

HOLLY HILL FL 32117-2605

LICENSE YEAR: 10/23-09/24

LICENSE NUMBER: 24-00026609

FEE: \$150.25

DATE: September 30, 2023

COMMENTS:

BUSINESS LOCATION: 455 WALKER ST

BUSINESS OWNER: SCHLAFFER, GREG

VALID PROVIDING ALL STATE CERTIFICATION/REGISTRATION REQUIREMENTS ARE MET.

BUSINESS CLASSIFICATION

<u>CODE</u>	<u>DESCRIPTION</u>	<u>AMOUNT PAID</u>
23220	GENERAL CONTRACTOR	110.25
00100	FIRE INSPECTION	40.00000 X 1.00 = 40.00

- THIS DOCUMENT MUST BE POSTED CONSPICUOUSLY IN YOUR PLACE OF BUSINESS, PENALTY FOR FAILURE TO DO SO.
- TAX RECEIPT DOES NOT GUARANTEE JOB AND/OR WORK PERFORMANCE.
- BUSINESS MUST COMPLY WITH CITY ORDINANCE.

FORM 7.12 – E-VERIFY AFFIDAVIT



**CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES**

Project Name: JACKSON STREET + OAK STREET DRAINAGE IMPROVEMENTS

Solicitation Number: ITB 24-13

I, the undersigned hereby certify that GPS Civil Construction, Inc. (insert contractor company name) does not employ, contract with or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

I acknowledge that it is my responsibility to ensure full compliance with Section 448.095, Florida Statutes. I am aware enrollment in the E-Verify system for employers can be done at www.e-verify.gov.

A true and correct copy of GPS Civil Construction, Inc. (insert contractor company name) proof of registration in the E-Verify system is attached to this Affidavit.

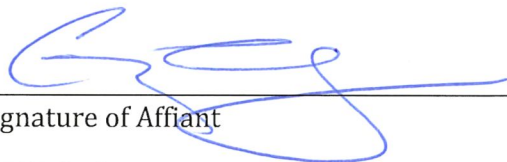
By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

Greg Schlaffer, President

Print or Type Name, Title

82-3777772

Federal Employer ID Number (FEIN)


Signature of Affiant

1378191

E-Verify Number

STATE OF FLORIDA

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

Cathy A. [Signature] Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal





Company ID Number: 1378191



THE E-VERIFY MEMORANDUM OF UNDERSTANDING FOR EMPLOYERS

ARTICLE I PURPOSE AND AUTHORITY

The parties to this agreement are the Department of Homeland Security (DHS) and GPS Civil Construction, Inc. (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, "Employment Eligibility Verification" and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

ARTICLE II RESPONSIBILITIES

A. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
 - a. Notice of E-Verify Participation
 - b. Notice of Right to Work
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives' contact information changes.
3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee's E-Verify access if the employer is separated from the company or no longer needs access to E-Verify.



Company ID Number: 1378191

4. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.
 5. The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases.
 - a. The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer Representative from continued use of E-Verify.
 6. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:
 - a. If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.
 - b. If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool.
- Note:** Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9.
7. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.
 8. The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the anti-discrimination requirements of section 274B of the INA with respect to Form I-9 procedures.
 - a. The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above; (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee; (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly



Company ID Number: 1378191

employed an unauthorized alien in violation of section 274A(a)(1)(A); and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify.

b. DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify.

9. The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10. The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11. The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II.B of this MOU.

12. The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

13. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status.



Company ID Number: 1378191

(including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15. The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16. The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at E-Verify@uscis.dhs.gov. Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17. The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

18. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon



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reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify.

19. The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false.

20. The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS.

21. The Employer agrees that [E-Verify trademarks](#) and logos may be used only under license by DHS/USCIS (see [M-795 \(Web\)](#)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify.

22. The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU.

B. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1. If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors.

2. In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify.

- a. An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.



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b. Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

c. Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin

E-Verify verification of all existing employees within 180 days after the election.

e. The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as:

- i. That Form I-9 is complete (including the SSN) and complies with Article II.A.6,
- ii. The employee's work authorization has not expired, and
- iii. The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).

f. The Employer shall complete a new Form I-9 consistent with Article II.A.6 or update the previous Form I-9 to provide the necessary information if:

- i. The Employer cannot determine that Form I-9 complies with Article II.A.6,
- ii. The employee's basis for work authorization as attested in Section 1 has expired or changed, or
- iii. The Form I-9 contains no SSN or is otherwise incomplete.

Note: If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with



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Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.A.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual.

g. The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article.

3. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

C. RESPONSIBILITIES OF SSA

1. SSA agrees to allow DHS to compare data provided by the Employer against SSA's database. SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database.
2. SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).
3. SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry. E-Verify provides the information to the Employer.
4. SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence. If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary. In such cases, SSA will provide additional instructions to the employee. If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer.

Note: If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218.

D. RESPONSIBILITIES OF DHS

1. DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU:
 - a. Automated verification checks on alien employees by electronic means, and



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- b. Photo verification checks (when available) on employees.
2. DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.
3. DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify.
4. DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials.
5. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.
6. DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify.
7. DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements.
8. DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry.
9. DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case.



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The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.
4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.
5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.
6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.
2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.
4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the



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employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days.

5. If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee's Form I-551, Form I-766, U.S. Passport, or passport card to DHS for review by:

- a. Scanning and uploading the document, or
- b. Sending a photocopy of the document by express mail (furnished and paid for by the employer).

7. The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee's documentation to DHS as described in the preceding paragraph. The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch.

8. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

9. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

ARTICLE IV SERVICE PROVISIONS

A. NO SERVICE FEES

1. SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V MODIFICATION AND TERMINATION

A. MODIFICATION

1. This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties.

2. Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes.



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B. TERMINATION

1. The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties.
2. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer's participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer's business.
3. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.
4. The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

ARTICLE VI PARTIES

- A. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.
- B. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.
- C. The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.
- D. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.



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E. The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

F. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively. The Employer understands that any inaccurate statement, representation, data or other information provided to DHS may subject the Employer, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) immediate termination of its MOU and/or; (3) possible debarment or suspension.

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

To be accepted as an E-Verify participant, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 1-888-464-4218.



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Approved by:

Employer GPS Civil Construction, Inc.	
Name (Please Type or Print) Gregory Schlaffer	Title
Signature Electronically Signed	Date 02/08/2019
Department of Homeland Security – Verification Division	
Name (Please Type or Print) USCIS Verification Division	Title
Signature Electronically Signed	Date 02/08/2019



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Information Required for the E-Verify Program

Information relating to your Company:

Company Name	GPS Civil Construction, Inc.
Company Facility Address	455 Walker Street Holly Hill, FL 32117
Company Alternate Address	
County or Parish	VOLUSIA
Employer Identification Number	823777772
North American Industry Classification Systems Code	237
Parent Company	
Number of Employees	10 to 19
Number of Sites Verified for	1 site(s)



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Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

FL

1



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Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name Gregory Schlaffer
Phone Number 3868725811
Fax 3868725822
Email area@apscivil.com

Name Tiffany Canup
Phone Number 3868725811
Fax 3868725822
Email tiffanv@apscivil.com

Name Gregory Schlaffer
Phone Number 3868725811
Fax
Email area@apscivil.com



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This list represents the first 20 Program Administrators listed for this company.

FORM 7.13 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY

Matter Primary Covered Transactions

(To be completed by Prime Contractor)

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

GPS Civil Construction, Inc.

Organization Name

Greg Schlaffer, President

Name and Title of Authorized Representative

ITB#24-13

Bid Number or Project Name



Signature

5/24/2024

Date

This document must be completed and returned with your Submittal

FORM 7.14 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

**AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES CONTRACTING WITH
FOREIGN ENTITIES OF CONCERN**

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury as follows:

1. Affiant is the President of GPS Civil Construction, Inc.
(Title) (Business Name)
which does business in the State of Florida, hereinafter called the "Entity".
2. Entity is not owned by the government of a foreign country of concern, as defined in Section 287.138 (1) (c), Florida Statutes.
3. The government of a foreign country of concern does not have a controlling interest in Entity, as defined in Section 287.138 (1)(a), Florida Statutes.
4. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern.
5. Entity is not owned or controlled by the government of a foreign country of concern.
6. For purposes of this affidavit, a foreign country of concern means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes.

The undersigned is authorized to execute this affidavit on behalf of the Entity.

Date: May 24th, 2024

Signed: [Signature]

Entity: GPS Civil Construction, Inc.

Name: Greg Schlaffer

Title: President

STATE OF: Florida

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

[Signature]
Notary Public, State of Florida at Large:

Printed Name/Seal of Notary, Commission and Expiration Date:

My commission expires: 4/27/2026

(seal)



This document must be completed and returned with your Submittal

FORM 7.15 – NO SUBMITTAL RESPONSE FORM

N/A

If your company will not be submitting a proposal in response to this solicitation, please complete this form and return via e-mail prior to the solicitation due date established within to:

City of Port Orange
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129
purchdiv@port-orange.org

This information will assist the Purchasing Division in the preparation of future solicitations.

Solicitation: ITB #24-13 Jackson Street & Oak Street Drainage Improvements

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a "no response".

- ☐ Specifications "too tight" or geared toward on brand or manufacturer (please explain below)
- ☐ Insufficient time to respond
- ☐ Specifications unclear (please explain below)
- ☐ We do not offer this product/service or an equivalent
- ☐ Our product schedule does not permit us to perform within stated timeline for the project
- ☐ Unable to meet specifications
- ☐ Unable to meet bond requirements
- ☐ Unable to hold prices firm throughout the term of the contract period
- ☐ Unable to meet insurance requirements
- ☐ Other: _____

Print Name: _____

Signature: _____

Date: _____

Additional Information:

If submitting this form, only this form needs to be returned. It is not necessary to return the entire solicitation package.

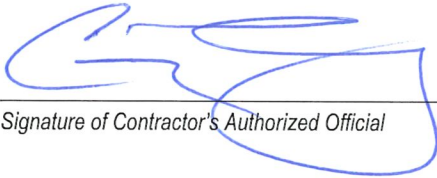
APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, GPS Civil Construction, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Greg Schlaffer, President

Name & Title of Contractor's Authorized Official

Date: 05/24/2024

This document must be completed and returned with your Submittal

REVISED (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #24-13

JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS

NAME OF BUSINESS: GPS Civil

CONTACT PERSON: Clayton Donahoo

EMAIL ADDRESS: clayton@gpscivil.com

AUTHORIZED SIGNATURE: 

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, leaving no blank cells; return completed, signed form with bid submittal and include on USB/thumb drive.

SITE PREPARATIONS

ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Mobilization	1	LS	\$ 115,000.00	\$ 115,000.00
2	Survey / As-builts	1	LS	\$ 30,000.00	\$ 30,000.00
3	Maintenance of Traffic	1	LS	\$ 42,000.00	\$ 42,000.00
4	Excavation / Grading	1	LS	\$ 225,000.00	\$ 225,000.00
5	Demo Existing RCP	1	LS	\$ 8,000.00	\$ 8,000.00
6	Demo Existing Headwall	36	EA	\$ 456.00	\$ 16,416.00
7	Tree/Shrub/Plant Removals/Remediation from Swale	1	LS	\$ 43,000.00	\$ 43,000.00
8	Relocate Existing Utility Pole	11	EA	\$ 1,500.00	\$ 16,500.00
9	Open Cut Asphalt Remediation	63	SY	\$ 368.00	\$ 23,184.00
10	Remove/Replace Existing Concrete Driveway	320	SF	\$ 17.00	\$ 5,440.00
11	Water Valve Adjustment	8	EA	\$ 365.00	\$ 2,920.00
12	Sewer Manhole Adjustment	10	EA	\$ 524.00	\$ 5,240.00
13	Storm Manhole Adjustment	1	EA	\$ 706.00	\$ 706.00
14	Existing Electric Box Relocated	1	EA	\$ 5,600.00	\$ 5,600.00
15	Existing PVC Riser Relocated	1	EA	\$ 1,400.00	\$ 1,400.00
16	Inlet Protection	7	EA	\$ 283.00	\$ 1,981.00
17	Silt Fence	6,729	LF	\$ 1.50	\$ 10,093.50
18	Sod	7,407	SY	\$ 8.00	\$ 59,256.00
SUBTOTAL ITEMS 1-18					\$ 611,736.50

ROADWAY SYSTEM

ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
19	Asphalt Planing (1")	11,027	SY	\$ 2.55	\$ 28,118.85
20	Friction Course FC-9.5 (1")	639	TN	\$ 192.00	\$ 122,688.00
21	Structural Course SP-12.5 (2")	65	TN	\$ 200.00	\$ 13,000.00
22	Optional Base Group 9 (10")	582	SY	\$ 60.00	\$ 34,920.00
23	Stabilized Subgrade (12")	1,227	SY	\$ 25.00	\$ 30,675.00
24	Type F Concrete Curb	1,936	LF	\$ 30.00	\$ 58,080.00
25	4" Sidewalk	7,102	SF	\$ 6.00	\$ 42,612.00
26	ADA Mats	16	EA	\$ 1,100.00	\$ 17,600.00
27	Thickened Edge Sidewalk	8,525	SF	\$ 10.00	\$ 85,250.00



28	Concrete Driveway	2,717	SF	\$ 13.00	\$ 35,321.00
29	Pedestrian Railing	1,794	LF	\$ 85.00	\$ 152,490.00
30	Retaining Wall w/ Handrail	42	LF	\$ 244.00	\$ 10,248.00
SUBTOTAL ITEMS 19-30					\$ 631,002.85

DRAINAGE SYSTEM					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
31	15" HDPE	97	LF	\$ 61.00	\$ 5,917.00
32	15" RCP	44	LF	\$ 160.00	\$ 7,040.00
33	18" RCP	50	LF	\$ 165.00	\$ 8,250.00
34	24" RCP	17	LF	\$ 180.00	\$ 3,060.00
35	30" RCP	677	LF	\$ 190.00	\$ 128,630.00
36	19" x 30" ERCP	1,999	LF	\$ 182.00	\$ 363,818.00
37	29" x 45" ERCP	1,936	LF	\$ 307.00	\$ 594,352.00
38	24" MES	1	EA	\$ 3,600.00	\$ 3,600.00
39	19" x 30" MES	1	EA	\$ 3,900.00	\$ 3,900.00
40	29" x 45" MES	1	EA	\$ 9,400.00	\$ 9,400.00
41	48" Storm Manhole	2	EA	\$ 5,800.00	\$ 11,600.00
42	60" Storm Manhole	2	EA	\$ 7,000.00	\$ 14,000.00
	a) 72" Storm Manhole	1	EA	\$ 8,500.00	\$ 8,500.00
43	Type C Inlet	1	EA	\$ 4,000.00	\$ 4,000.00
44	Type E Inlet	10	EA	\$ 9,400.00	\$ 94,000.00
45	Type E Inlet w/ 12" Slot	4	EA	\$ 5,400.00	\$ 21,600.00
46	Type H Inlet	2	EA	\$ 9,600.00	\$ 19,200.00
47	Type H Inlet w/ 12" Slot	5	EA	\$ 9,300.00	\$ 46,500.00
48	Type 4 Curb Inlet w/ J Bottom	18	EA	\$ 10,200.00	\$ 183,600.00
49	15" Yard Drain	18	EA	\$ 1,800.00	\$ 32,400.00
50	Connect to Existing Storm Pipe	9	EA	\$ 1,000.00	\$ 9,000.00
51	Connect to Existing Structure	2	EA	\$ 1,000.00	\$ 2,000.00
	SUBTOTAL ITEMS 31-51				\$ 1,574,367.00
STRIPING AND SIGNAGE					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
52	6" Single White	8,503	LF	\$ 2.00	\$ 17,006.00
53	6" Double Yellow	3,744	LF	\$ 4.00	\$ 14,976.00
54	24" White Stop Bar	107	LF	\$ 13.00	\$ 1,391.00
55	12" White Crosswalk	431	LF	\$ 7.00	\$ 3,017.00
56	Turn Lane Arrow Template	1	EA	\$ 152.00	\$ 152.00
57	Remove Existing Sign/Post	6	EA	\$ 84.00	\$ 504.00
58	Furnish & Install Sign/Post	22	EA	\$ 703.00	\$ 15,466.00
59	Mailbox Remove/Relocate	9	EA	\$ 133.00	\$ 1,197.00
	SUBTOTAL ITEMS 52-59				\$ 53,709.00
TOTAL PRICE				\$	2,870,815.35

LEGEND:

LS - Lump Sum

EA - Each

LF - Linear Feet

SF - Square Feet

TN - Ton

SY - Square Yard

BID BOND**BID BOND**

Bond No.: N/A

KNOW ALL MEN BY THESE PRESENTS that GPS Civil Construction, Inc., as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 455 Walker St, Holly Hill, FL 32117, Tel.: 386-872-5811, (hereinafter called "PRINCIPAL"), and Nationwide Mutual Insurance Company, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at One West Nationwide Blvd, 1-04-701, Columbus, OH 43215, Tel: 515-508-4159 (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of Five Percent of the Amount Bid----- dollars and (-----)/100 (\$---5%---), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated May 24, 2024, for:

Project Name/Bid No.: ITB #24-13 Jackson Street & Oak Street Drainage Improvements

Project Address: west side of Jackson Street (between Dunlawton Ave and Canal View Blvd) and south side of Oak Street (between Jackson Street and Dunlawton Ave)
Port Orange, FL

Legal Description: See Attached

Description of Work: Pipe the existing drainage ditches on the west side of Jackson Street (between Dunlawton Ave and Canal View Blvd) and the south side of Oak Street (between Jackson Street and Dunlawton Ave), milling and resurfacing of Jackson and Oak Streets, and adding new sidewalks to the west side of Jackson Street from Oak Street to Canal View Blvd and on the north side of Oak Street from Jackson Street to Dunlawton Ave.

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid withing one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds withing the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this 16th day of May, 2024, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL: GPS Civil Construction, Inc.

Signature

GREG SCHULTER, President
Corporate Officer & Title

ATTEST:

Signature

Tiffany Canup, Secretary
Corporate Secretary (Affix Corporate Seal)

WITNESSES:

SURETY: Nationwide Mutual Insurance Company

Attorney-in-Fact (signature)

Tyler D DeBord, Attorney-in-Fact

Name & Title

Tyler D DeBord

Name of Local Resident Agent

Daytona Beach, FL 32114

City, State, Zip

386-239-5703

Telephone:

A.M. Best No.: 002358 NAIC No.: 23787

STATE OF Florida

COUNTY OF Volusia

ATTEST:

Signature

Kara Ruckert, Senior Account Manager
Corporate Secretary (Affix Corporate Seal)

Before me this day personally appeared Tyler D DeBord (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the Nationwide Mutual Insurance Company (corporate surety) and that this person has been authorized by Nationwide Mutual Insurance Company (corporate surety) to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant

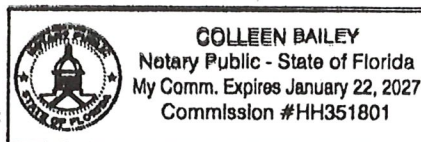
The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this

16th day of May, 2024, by Tyler D DeBord and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



END OF BID BOND

This document must be completed and returned with your Submittal

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS THAT:

Nationwide Mutual Insurance Company, an Ohio corporation

hereinafter referred to severally as the "Company" and collectively as "the Companies" does hereby make, constitute and appoint:

STEPHEN P FARMER; TYLER D DEBORD; VINCENT DELUCA; ASHLEY TYREE; KARA RUCKERT; MARGARET HALL

each in their individual capacity, its true and lawful attorney-in-fact, with full power and authority to sign, seal, and execute on its behalf any and all bonds, undertaking and contracts of suretyship or other written obligations in the nature therefor; for all obligees including any and all consents required by the Department of Transportation, State of Florida, and other obligatory instruments of similar nature, in penalties not exceeding the sum of

UNLIMITED

and to bind the Company thereby, as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Company; and all acts of said Attorney pursuant to the authority given are hereby ratified and confirmed.

This power of attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the board of directors of the Company:

"RESOLVED, that the president, or any vice president be, and each hereby is, authorized and empowered to appoint attorneys-in-fact of the Company, and to authorize them to execute and deliver on behalf of the Company any and all bonds, forms, applications, memorandums, undertakings, recognizances, transfers, contracts of indemnity, policies, contracts guaranteeing the fidelity of persons holding positions of public or private trust, and other writings obligatory in nature that the business of the Company may require; and to modify or revoke, with or without cause, any such appointment or authority; provided, however, that the authority granted hereby shall in no way limit the authority of other duly authorized agents to sign and countersign any of said documents on behalf of the Company."

"RESOLVED FURTHER, that such attorneys-in-fact shall have full power and authority to execute and deliver any and all such documents and to bind the Company subject to the terms and limitations of the power of attorney issued to them, and to affix the seal of the Company thereto; provided, however, that said seal shall not be necessary for the validity of any such documents."

This power of attorney is signed and sealed under and by the following bylaws duly adopted by the board of directors of the Company.

Execution of Instruments. Any vice president, any assistant secretary or any assistant treasurer shall have the power and authority to sign or attest all approved documents, instruments, contracts, or other papers in connection with the operation of the business of the company in addition to the chairman of the board, the chief executive officer, president, treasurer or secretary; provided, however, the signature of any of them may be printed, engraved, or stamped on any approved document, contract, instrument, or other papers of the Company.

IN WITNESS WHEREOF, the Company has caused this instrument to be sealed and duly attested by the signature of its officer the 20th day of August, 2021.

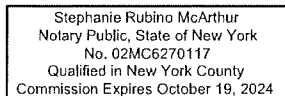


Antonio C. Albanese, **Vice President** of Nationwide Mutual Insurance Company

ACKNOWLEDGMENT

STATE OF NEW YORK COUNTY OF NEW YORK: ss

On this 20th day of August, 2021, before me came the above-named officer for the Company aforesaid, to me personally known to be the officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposes and says, that he is the officer of the Company aforesaid, that the seal affixed hereto is the corporate seal of said Company, and the said corporate seal and his signature were duly affixed and subscribed to said instrument by the authority and direction of said Company.

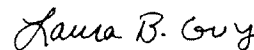


Notary Public
My Commission Expires
October 19, 2024

CERTIFICATE

I, Laura B. Guy, Assistant Secretary of the Company, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney issued by the Company; that the resolution included therein is a true and correct transcript from the minutes of the meetings of the boards of directors and the same has not been revoked or amended in any manner; that said Antonio C. Albanese was on the date of the execution of the foregoing power of attorney the duly elected officer of the Company, and the corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority of said board of directors; and the foregoing power of attorney is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of said Company this 16th day of May, 2024.



Assistant Secretary



Brown & Brown of Florida, Inc.
P.O. Box 2412
Daytona Beach, FL 32115-2412
P: (800) 877-2769
bbinsurance.com

May 16, 2024

City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129

Re: GPS Civil Construction, Inc. – Bond Prequalification Letter

To Whom It May Concern:

We have the pleasure of handling the bid, performance and payment bonds for GPS Civil Construction, Inc.. Nationwide Mutual Insurance Company is their current surety. They are A.M. Best Rated (A+, XV) with a Treasury Limit of \$1,545,739,000. Nationwide Mutual Insurance Company is favorable to supporting single projects in the amount of \$6,000,000 and Aggregate support up to \$15,000,000.

GPS Civil Construction, Inc. is an excellent contractor and we hold them in high regard. We feel extremely confident in our contractor and encourage you to offer them an opportunity to execute any upcoming projects.

Please note that the decision to issue a bond is a matter between GPS Civil Construction, Inc. and Nationwide Mutual Insurance Company and will be subject to their standard underwriting at the time of the final bond request, which will include but not be limited to the acceptability of the contract documents, bond forms and financing. We assume no liability to third parties or to you if for any reason they do not execute said bonds.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tyler D. DeBord', with a stylized flourish at the end.

Tyler D. DeBord, AFSB, CPCU
Senior Vice President, Surety Practice Leader



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

2601 BLAIR STONE ROAD
TALLAHASSEE FL 32399-0783

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Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



**STATE OF FLORIDA DEPARTMENT
OF BUSINESS AND PROFESSIONAL
REGULATION**

CGC1523245
CERTIFIED GENERAL CONTRACTOR
SCHLAFFER, GREGORY PETER
GPS CIVIL CONSTRUCTION, INC.

ISSUED: 09/20/2022

Signature
LICENSED UNDER CHAPTER 489, FLORIDA STATUTES
EXPIRATION DATE: AUGUST 31, 2024

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD**

LICENSE NUMBER: CGC1523245

EXPIRATION DATE: AUGUST 31, 2024

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

SCHLAFFER, GREGORY PETER
GPS CIVIL CONSTRUCTION, INC.
455 WALKER STREET
HOLLY HILL FL 32117



ISSUED: 09/20/2022

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**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

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TALLAHASSEE FL 32399-0783

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Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



**STATE OF FLORIDA DEPARTMENT
OF BUSINESS AND PROFESSIONAL
REGULATION**

CUC1225259
CERT UNDERGROUND & EXCAV CNTR
SCHLAFFER, GREGORY PETER
GPS CIVIL CONSTRUCTION, INC.

ISSUED: 09/20/2022

Signature

LICENSED UNDER CHAPTER 489, FLORIDA STATUTES
EXPIRATION DATE: AUGUST 31, 2024

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD**

LICENSE NUMBER: CUC1225259

EXPIRATION DATE: AUGUST 31, 2024

THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

SCHLAFFER, GREGORY PETER
GPS CIVIL CONSTRUCTION, INC.
455 WALKER STREET
HOLLY HILL FL 32117



ISSUED: 09/20/2022

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Jimmy Patronis
CHIEF FINANCIAL OFFICER

Julius Halas
DIVISION DIRECTOR



John Gatlin
BUREAU CHIEF

Catherine Thrasher
SAFETY PROGRAM MANAGER

FLORIDA DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF STATE FIRE MARSHAL
200 EAST GAINES STREET - Tallahassee, Florida 32399-0342
Tel. 850-413-3644

CERTIFICATE OF COMPETENCY
OFFICIAL COPY

THIS CERTIFIES THAT: Gregory P Schlaffer
455 Walker Street
Holy Hill FL 32117
BUSINESS ORGANIZATION: GPS Civil Construction, Inc.

Contractor V means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in the act and ending no more than 1 foot above the finished floor.

Issue Date: 07/01/2022
Type: 09
Class: 14
County: Volusia
License/Permit #: FPC22-000007
Expiration Date: 06/30/2024



Jimmy Patronis

Chief Financial Officer



Growth and Resource Management

123 West Indiana Avenue
DeLand, Florida 32720

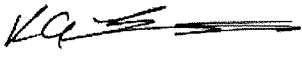
Listing Card

09/12/2023

911906

To: GPS CIVIL CONSTRUCTION INC
455 WALKER ST
HOLLY HILL, FL 32117

CUT ON SOLID LINE AND KEEP ON PERSON AT ALL TIMES.

Listing Card	
VOL #18042602	EXPIRES 09/30/2025
THIS CERTIFIES	MR. GREGORY PETER SCHLAFFER
	GPS CIVIL CONSTRUCTION INC
IS LICENSED AS A	01 CONSTRUCTION CONTRACT.-CLASS A
	CGC1523245
IN THE COUNTY OF VOLUSIA, FLORIDA	
BY	
	VOLUSIA COUNTY CLCA
BUILDING OFFICIAL	



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Profit Corporation

GPS CIVIL CONSTRUCTION, INC.

Filing Information

Document Number P17000099589

FEI/EIN Number 82-3777772

Date Filed 12/19/2017

State FL

Status ACTIVE

Principal Address

455 Walker Street

Holly Hill, FL 32117

Changed: 03/08/2022

Mailing Address

455 Walker Street

Holly Hill, FL 32117

Changed: 03/08/2022

Registered Agent Name & Address

KISTEMAKER BUSINESS LAW GROUP

120 E GRANADA BLVD

ORMOND BEACH, FL 32176

Name Changed: 11/27/2023

Address Changed: 11/27/2023

Officer/Director Detail

Name & Address

Title PRESIDENT, TREASURER, DIRECTOR

SCHLAFFER, GREGORY

455 WALKER STREET

HOLLY HILL, FL 32117

Title VP, DIRECTOR

MOORE, DALLAS
455 WALKER STREET
HOLLY HILL, FL 32117

Title Secretary

Canup, Tiffany
455 Walker Street
Holly Hill, FL 32117

Annual Reports

Report Year	Filed Date
2022	03/08/2022
2023	01/30/2023
2024	02/02/2024

Document Images

02/02/2024 -- ANNUAL REPORT	View image in PDF format
11/27/2023 -- Reg_Agent Change	View image in PDF format
01/30/2023 -- ANNUAL REPORT	View image in PDF format
03/08/2022 -- ANNUAL REPORT	View image in PDF format
02/01/2021 -- ANNUAL REPORT	View image in PDF format
01/06/2020 -- ANNUAL REPORT	View image in PDF format
01/17/2019 -- ANNUAL REPORT	View image in PDF format
01/25/2018 -- ANNUAL REPORT	View image in PDF format
12/19/2017 -- Domestic Profit	View image in PDF format



Florida Department of Transportation

RON DESANTIS
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JARED W. PERDUE, P.E.
SECRETARY

May 01, 2023

GPS CIVIL CONSTRUCTION, INC
455 WALKER STREET
HOLLY HILL, FLORIDA 32117

RE: CERTIFICATE OF QUALIFICATION

The Department of Transportation has qualified your company for the type of work indicated below.

FDOT APPROVED WORK CLASSES:

DRAINAGE, FLEXIBLE PAVING, GRADING, GRASSING, SEEDING AND SODDING, SIDEWALK, Curb & Gutter, Driveways, Handrails, Rehabilitation of Concrete Pavement, Rip Rap, Underground Utilities (Water & Sewer).

Unless notified otherwise, this Certificate of Qualification will expire **6/30/2024**.

In accordance with Section 337.14(4), Florida Statutes, changes to Ability Factor or Maximum Capacity Rating will not take effect until after the expiration of the current certificate of prequalification (if applicable).

In accordance with Section 337.14(1), Florida Statutes, an application for qualification must be filed within (4) months of the ending date of the applicant's audited annual financial statements.

If the company's maximum capacity has been revised, it may be accessed by logging into the Contractor Prequalification Application System via the following link:

[HTTPS://fdotwp1.dot.state.fl.us/ContractorPreQualification](https://fdotwp1.dot.state.fl.us/ContractorPreQualification)

Once logged in, select "View" for the most recently approved application, and then click the "Manage" and "Application Summary" tabs.

The company may apply for a Revised Certificate of Qualification at any time prior to the expiration date of this certificate according to Section 14-22.0041(3), Florida Administrative Code (F.A.C.), by accessing the most recently approved application as shown above and choosing "Update" instead of "View." If certification in additional classes of work is desired, documentation is needed to show that the company has performed such work.

All prequalified contractors are required by Section 14-22.006(3), F.A.C., to certify their work underway monthly in order to adjust maximum bidding capacity to available bidding capacity. You can find the link to this report at the website shown above.

Sincerely,

James E. Taylor II, Prequalification Supervisor
Contracts Administration Office

JTII:cg

EJCDC Exhibit No. 3

ITB 24 - 13

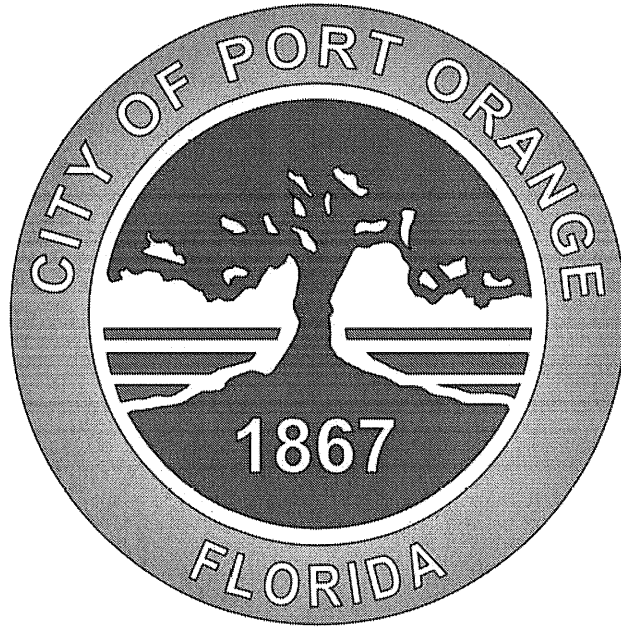
on file with Office of the City Clerk

Consisting of 277 pages

EJCDC Exhibit No. 4
ITB 24 - 13

Community Development block Grant Program ("CDBG")
Operating and Procedures Manual

Consisting of 23 pages



City of Port Orange

Community Development Block Grant Program (CDBG)

Operating & Procedures Manual

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Summary of the Community Development Block Grant (CDBG) Program:

This section summarizes the National Objectives, Eligible and Ineligible Activities, and citizen participation requirements of the CDBG program. For a more complete description, consult the Code of Federal Regulations, Title 24, Part 570.200(a)(2) and (3), 570.200-570.207, 570.506.

The primary objective of the Community Development Block Grant (CDBG) Program is the development of viable urban communities, by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low- and moderate- income. Funds must be used to carry out activities that will meet one of the three National Objectives:

1. Benefit to low- and moderate- income persons
2. Prevention or elimination of slums or blight, or
3. Meet an urgent need

At least seventy percent (70%) of the total CDBG funds expended must be used for activities that benefit low- and moderate- income persons.

Basic Eligible Activities – 24 CFR 570.201

- Acquisition of Real Property – subject to limitations of 570.207
- Housing Rehabilitation – subject to 570.202
- Code Enforcement
- Public Facilities and Improvements – such as water and sewer facilities, streets, neighborhood centers, and the conversion of school buildings for eligible purposes
- Removal of Architectural Barriers – ADA Compliance/Handicap Access for public and/or private, qualifying projects
- Public Services – subject to 15% cap of total annual CDBG allocation
- Special Activities by Community-Based Development Organizations (CBDO) – 570.204
- Special Economic Development Activities – 570.203
- Relocation and Demolition

Basic Ineligible Activities – 24 CFR 570.207, 570.207(A), 570.201(e), 570.201(e)(1), (2), 570.203, 570.204, 570.209, 570.205, 570.206

- Buildings used for the general conduct of government
- General government expenses
- Political activities

The following activities may not be assisted unless certain criteria are met or they are carried out under the authority of 570.203 or 570.204:

- Purchase of construction equipment, purchase of furnishings and personal property, unless part of a public service activity or necessary for use by a grantee in the administration of the CDBG program

- Repair, operation, and maintenance of public facilities, improvements or services, except expenses associated with eligible public service activities, interim assistance, and office space for CDBG program staff
- New housing construction, except under the special provisions provided under 570.207(b)(3)(i)-(ii)
Income payments of a subsistence nature

The City of Port Orange prioritizes: Affordable housing, Infrastructure, Facility Improvements, and Disaster recovery/relief

Citizen Participation Plan:

The City has completed a Citizen Participation Plan. This is located on the City's website at www.port-orange.org. A copy is also available in the City's Community Development office located on the second floor of City Hall at 1000 City Center Circle, Port Orange, Florida. This plan details the efforts to include and encourage public involvement in the development of the CDBG program.

Specifically, the City shall hold public meetings to solicit citizen views about community development needs.

How to Apply for CDBG funds:

The City of Port Orange practices an open process for selection of award of CDBG funding, unless otherwise noted in the Consolidated Plan/Action Plan. Projects will be considered based on eligibility of project, priority of project within the City's adopted Consolidated Plan and availability of funds left in the program as long as goals and objectives meet those in the Consolidated Plan/Action Plan. Program year begins October 1 and ends September 30.

If a proposed project meets a national objective and is considered an eligible activity, required information to be submitted must include:

- 1 Project Narrative/Description
- 2 Detailed pro-forma state and complete budget, including all operating expenses for the project (if applicable)
- 3 Articles of Incorporation (if applicable)
- 4 501(c)(3) documentation (if applicable)
- 5 List of Board of Directors (if applicable)
- 6 Authorization to request funds – documentation authorizing submission of request for funds. Must include copy of minutes in which this resolution or motion was recorded (if applicable)
- 7 Designation of Authorized Official (if applicable)
- 8 Organizational chart (if applicable)
- 9 Resume of Chief Program Administrator & Chief Fiscal Officer (if applicable)
- 10 Financial statement and audit (if applicable)
- 11 Conflict of Interest Certification (if applicable)
- 12 Documentation of compliance with national objective

Award Process:

Request for funding is reviewed to ensure project meets all requirements. Unless an RFP process is initiated, requests for funds are accepted on a first come first served basis and subject to fund availability.

In addition to meeting local and national goals, objectives, and eligibility criteria, a project's funding potential may be increased by demonstrating that the applicant has the ability to administer and complete the project; by showing how other forms of funding have been pursued and/or secured; and by exhibiting the project is not a duplication of service already provided in the area.

If determined eligible, a notification letter will be sent to the applicant (if other than an internal request for funding) with a commitment. Ineligible applications will receive notice as to why they did not qualify.

If funding is selected for an agency other than the City, applicant must sign a written contract with the City that details the agreements and requirements set forth in accordance with HUD, OMB and City regulations. In this instance, if the applicant is not awarded the full amount of the request, the scope of the project will be revised accordingly with approval from City staff. Funding cannot be awarded for expenditures made prior to a written contract.

If the applicant is creating affordable housing, a land use restriction agreement will be placed on the property to ensure affordability status at or below 80% of the area median income.

Mortgages may be required with some affordable housing projects.

City of Port Orange Procurement Statement:

All publicly funded procurement activities must be performed within the established policies and procedures of the City.

General guidelines

- ☐ . < \$500.00 – No quotes required
- ☐ . \$500 - \$2,499.99 – Two verbal or written quotes required
- ☐ . \$2,500 - \$4,999.99 – Three verbal or written quotes required
- ☐ . \$5,000 - \$24,999.99 – Three written quotes required
- ☐ . \$25,000+ - Formal sealed bids must be presented to City Council for approval

Credit Card Purchase limits:

- ☐ . 0-\$1000 no quotes- (950 credit card limit)
- ☐ . \$1000-\$2499.00 two verbal or written quotes
- ☐ . \$2499-\$5000 three quotations - verbal or written – City Manager approval
- ☐ . \$5000 - \$24999 three written quotes required – City Manager
- ☐ . \$25000 up formal bid threshold must be presented to City Council

Environmental Reviews:

Community Development Block Grant regulations require the preparation of a project Environmental Review Record (ERR) and environmental clearance before funds are expended or costs incurred. The overall governing legislation is the National Environmental Policy Act (NEPA). The Port Orange Community Development Block Grant Program must also determine whether a project meets other applicable statutory and regulatory requirements such as those of the Advisory Council on Historic Preservation and the Environmental Protection Agency.

General Responsibilities:

Federal regulations require that the City of Port Orange determine if project activities will cause adverse impacts to the human environment. The human environment is defined as the natural and physical environment and the relationship of people with that environment. In essence, the environmental review process must consider the ultimate effect of a proposed project, including the potential effects of both the CDBG and related project activities. For example, if CDBG funds are being used to extend a water line to a site for a new affordable housing project, then the ultimate effect of the project is not only the new water line, but also the new housing. Therefore, the environmental review must address the impacts of both the CDBG-funded water line and the privately financed development of the new housing project. The scope of an environmental review encompasses this definition of a project.

Subrecipient Requirements (if applicable):

If the City chooses to fund a subrecipient to carry out a CDBG-eligible project, the City may ask the subrecipient to assist in the development of the ERR by providing additional information, maps and site data. In some cases, project subrecipients may be asked to complete a biological assessment or gain project clearance from applicable state regulatory agencies.

Subrecipients shall comply with all terms and conditions of and shall implement all required mitigation measured identified in the environmental review record completed for their project. The subrecipient shall ensure that all activities related to their project including property acquisition, construction, and the use of the property/facilities are conducted in accordance with the project scope, as defined in the Environmental Review Record and with the conditions set out in it. The subrecipient shall also retain a copy of any required environmental data and CDBG Program's written notice to proceed in their project files.

CDBG Program Requirements:

The City of Port Orange will complete the Environmental Review Record. The time required for completion of the ERR can vary from weeks to months. If the initial Environmental Assessment determines that an Environmental Impact Statement (EIS) or a Biological Assessment (BA) is necessary, the subrecipient (if any) will be required to make appropriate budget modifications to assure the costs of the EIS or BA are paid for from project funds.

After completing the Environmental Review Record, the City may publish a notice of a Finding of No Significant Impact (FONSI) in a local newspaper declaring intent to request release of project funds from HUD. After the release of funds from HUD, the City will send the subrecipient (if any) a contract with a written notice to begin the project. *No project activities or project costs may be incurred until receipt of the notice to proceed.*

Labor Standards:

All CDBG activities are subject to Federal labor standards requirements as identified in all contracts. The Federal labor requirements for which the CDBG program monitors are detailed in this section.

General Requirements:

The labor standards for construction contracts are set forth in four federal statutes (additional information regarding these federal regulations may be obtained by contacting the City's Community Development office or on the internet at www.hud.gov):

Section 110 of the Housing and Community Development Act of 1974, as amended (Title I): All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with grants received under this title shall be paid at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended. This section also applies to the rehabilitation of residential property if property consists of eight or more units.

Davis-Bacon Act: All laborers or mechanics employed by contractors or subcontractors on the project shall be paid wages at rates no less than those prevailing on similar construction in the locality as determined by the Secretary of Labor; regardless of contractual relationship. Wages must be paid weekly.

Contract Work Hours and Safety Standards Act (for prime contracts over \$100,000): The wages for every mechanic and laborer employed on the job shall be computed on the basis of a standard work week of forty hours. Employees shall be compensated at a rate of not less than one and one-half times the basic hourly rate of pay for all hours worked in excess of forty hours in the work week.

No person employed on the job site shall be required to work in surroundings or any other working conditions which are unsanitary, hazardous or dangerous to the health and safety of an employee as determined by the Construction Safety and Health standards promulgated by the Secretary of the United States Department of Labor.

Copeland Act (Anti-Kickback Law): Whoever by force, intimidation or threat of procuring dismissal from employment or by any other manner whatsoever, induces any persons employed in the construction, prosecution, completion or repair of any public building, public work or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under their contract of employment, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

Monitoring/Enforcing Federal Labor Standards Provisions:

The City of Port Orange CDBG Program will be responsible for monitoring of contractor compliance with the Federal Labor Standards Provisions.

Use of Volunteers:

Volunteers on Community Development Block Grant projects are exempt from the prevailing wage law (Davis-Bacon) requirements if they are providing services to a grant recipient (local government or non-profit organization) without promise, expectation, or receipt of compensation and they are not otherwise employed, at any time, on the project. Federal rules at 24 CFR Part 70.3 cover the use of volunteers on CDBG assisted construction projects. If volunteers are going to be used on the project, the recipient must comply with the following reporting requirements:

- For projects that include paid construction workers, the recipient must record volunteers' names and hours volunteered; and
- For projects that will only use volunteers, recipients must record the number of volunteers and the number of hours worked, collectively.

Additional restrictions regarding use of volunteers on CDBG projects may be enforced by state or local statute, rule or practice.

Finance/Accounting:

This section addresses the financial and accounting aspects of the CDBG program. The following procedures are guidelines that should be adhered to in financial transactions to meet federal requirements.

General Requirements:

In accordance with OMB Circular A-100, A-128 or A-133, the City (and any/all subrecipients) must meet the audit requirements specified therein. Additionally, all financial transactions with CDBG monies are subject to federal audit. The City's CDBG program administrator will insure HUD form 60002, section 3 Summary Reports are filed in accordance with Federal guidelines 24CFR 570.607(b). The City's Finance Department will monitor compliance.

Project Budget:

The approved grant budget contained in the City's grant agreement with HUD identifies the activities determined to be eligible for reimbursement by the grant funds. Grant funds cannot be used for pre-agreement costs that are incurred before the grant contract is signed. The City's financial system for tracking CDBG should:

- Maintain the amounts budgeted for eligible activities in its accounting records
- Include both obligations/expenditures and unexpended/unobligated balances for each line item
- Periodically compare actual obligations and expenditures to-date against planned obligations and expenditures and against projected accomplishments for the grant project

Internal Controls:

Internal controls are a combination of procedures, specified job responsibilities, qualified personnel, and records which create accountability in the financial management system and safeguard its cash, property, and assets. The internal controls must protect the integrity of the grant funds. At a minimum, the system should provide for adequate separation of duties so that no one person has authority over an entire financial transaction. One person should not have control over more than one of the following:

- Authorization to execute transaction
- Recording the transaction
- Custody of the assets involved in the transaction

Financial Reporting:

The City's financial system will generate regular reports that permit an observer to compare actual expenditures against the approved budget.

Other Financial System Requirements:

The City's financial system will be set up to satisfy an auditor conducting an audit. During an audit, the auditor will examine the records to ascertain if:

- Funds are properly budgeted and approved
- Budget revisions have been documented and approved

- Personnel changes are properly allocated to the block grant and based on payroll documents such as time and attendance records
- All expenditures can be traced to source documents (purchase orders, invoices, cancelled checks)
- Drawdowns have been timely
- Only allowable funds have been claimed on the project
- Property has been managed and inventoried properly
- In-kind costs and costs billed to other funds are clearly documented

Program Income:

Program income is defined as the gross income that has been directly generated from use of CDBG funds. Examples include:

- Gross income from the use or rental of real property that has been acquired, constructed, or improved with CDBG funds. Cost incidentals to the generation of the income are deducted from the gross income
- Interest earned on program income
- Funds collected through special assessments that are made against properties owned and occupied by non-low and moderate-income households where the assessments have been made to recover some or all of the CDBG portion of a public improvement
- Proceeds from the disposition of real property that has been acquired or improved with CDBG funds where the disposition occurs within a five-year period after initial expenditure of the CDBG funds

Fair Housing/ADA:

The CDBG program triggers several additional federal requirements that affect CDBG projects. These requirements include:

1. Fair Housing
 2. Handicap Accessibility
 3. Lead Based Paint
-

General Requirements:

- 1) **Fair Housing Activities** The City, as well as any subrecipients, are responsible for taking necessary and appropriate actions to prevent discrimination in federally assisted housing and lending practices related to loans insured or guaranteed by the federal government. Further, the City and any subrecipients should strive to promote a strategy for increasing the choice of housing opportunities for low- and moderate-income persons, including minorities and female-headed households. Possible actions the City, and any subrecipients, can take are as follows:

- Review zoning, building and housing codes and revise if necessary to encourage equal opportunity in housing
- Consider fair housing priorities when developing land use plans for public facilities and housing
- Develop or strengthen local fair housing laws, including enforcement powers and sanctions
- Require private developers and real estate agents to use HUD affirmative marketing and advertising practices

2) **Handicap Accessibility**

- A) **Americans with Disabilities Act:** The Americans with Disabilities Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act, also referred to as the ADA, also states that discrimination includes the failure to design and construct (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communications barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be carried out without much difficulty or expense.
- B) **Section 504 Handicap Accessibility Policy:** Section 504 was enacted as part of the Rehabilitation Act of 1973. It prohibits discrimination on the basis of handicap in all programs and activities receiving federal assistance and, in 1978, it was amended to apply to all programs conducted by the federal government. This regulation provides that no qualified individual with handicaps

shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subject to discrimination under any program or activity that receives federal financial assistance.

The City of Port Orange will provide sign interpreters for public meetings upon request for CDBG program accessibility. All public meeting sites are handicap accessible and auxiliary aids are available for those individuals requesting them. Structures built or rehabilitated must be made handicap accessible. Structures designed, built or altered (rehabilitated) with CDBG funds will conform to the Uniform Federally Accessibility Standards (UFAS), which was published in the Federal Register on August 7, 1984 (49 CFR 13518). The UFAS technical requirements meet or exceed comparable provisions of ANSI 117.1-1980 Specifications for Making Buildings and Facilities Accessible to, and Useable by Physically Handicapped People.

- 3) **Lead-Based Paint** (applies to residential housing projects/programs) The use of lead-based paint is prohibited. CDBG recipients must certify that no lead-based paint will be used in residential units assisted with CDBG funds and must document that all occupants of structures built before 1978 have been notified of the hazard of lead-based paint.

The federal requirements pertaining to lead-based paint are contained in 24 CFR Part 35. A fact sheet containing information about current efforts to protect children from lead-based paint poisoning has been prepared by the Environmental Protection Agency and HUD. A copy may be obtained from the City of Port Orange.

SUPPLEMENTARY CONDITIONS TO THE CONSTRUCTION CONTRACT

U.S. Department of Housing
and Urban Development
Office of Housing

OMB Approval No. 2502-0598
(Exp. 9/30/2021)

Public Reporting Burden for this collection of information is estimated to average 0.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Article 1: Labor Standards

A. Applicability. The Project or program to which the construction work covered by this Contract pertains is being assisted or insured by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance. Any statute or regulation contained herein shall also include any subsequent amendment or successor statute or regulation. The terms of this Supplementary Conditions to the Construction Contract (HUD-92554M) takes precedence over all provisions of the "General Conditions of the Contract for Construction" (AIA Document A201) inconsistent with said Supplementary Conditions.

B. Minimum Wages. Pursuant to Section 212 of the National Housing Act, as amended, 12 U.S.C. 1715c, the minimum wage provisions contained in this paragraph B do not apply to those projects with Security Instruments insured under Section 221(h)(1) designed for less than 9 families and they do not apply to those projects with Security Instruments insured under either Section 220 or 233 designed for less than 12 families.

1. (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) shall 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 (40 U.S.C. 3141(2)(B)(ii)) on behalf of laborers or mechanics are considered wages paid to such laborers or

mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); 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 29 CFR 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 29 CFR 5.5(a)(1)(ii)) 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) Any class of laborers or mechanics that is not listed in the wage determination and that is to be employed under this Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits 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 HUD or its designee 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 HUD or its designee to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 ("**Administrator**"). The Administrator, or an authorized representative, shall approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise HUD or its designee or shall notify HUD or its designee within the thirty (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 HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, shall issue a determination within thirty (30) days of receipt and so advise HUD or its

designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs B.1.(ii)(b) or (c) of this Article, 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 that 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. HUD or its designee 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, HUD or its designee 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. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

3. Payrolls, records, and certifications.

(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 (40 U.S.C. 3141(2)(B)(ii))), 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 (40 U.S.C. 3141(2)(B)(ii)), 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 HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor shall submit the payrolls to the applicant, sponsor, or Owner, as the case may be, for transmission to HUD or its designee. 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, whether paper (Optional Form WH- 347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347.pdf> or its successor site), or electronically pursuant to Program Obligations. 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 HUD or its designee 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 HUD or its designee, 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 subparagraph 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 HUD or its designee.

(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 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), 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 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 subparagraph B.3.(ii)(b) of this Article.

(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 Sections 3801 et seq of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under subparagraph B.3.(i) of this Article available for inspection, copying, or transcription by authorized representatives of HUD or its designee 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, HUD or its designee 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 shall 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, or with a State Apprenticeship Agency recognized by such Office, or if a person is employed in his or her first ninety (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, 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 the 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, or a State Apprenticeship Agency recognized by such Office, withdraws approval of an apprenticeship program, the Contractor shall 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 shall 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's 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 shall 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 29 CFR Part 5 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 set forth in subparagraphs 1 through 10 of this paragraph B and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage determination, 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 Contract clauses referenced in this subparagraph.

7. Contract termination and 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 or 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 HUD or its designee, 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 (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Department . . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined under this title or imprisoned not more than two years, or both."

C. Contract Work Hours and Safety Standards Act.

1. Applicability and Definitions. This paragraph C of Article 1 is applicable only if a direct form of federal assistance is involved, such as Section 8, Section 202/811 Capital Advance, grants etc., and is applicable only where the prime contract is in an amount greater than \$100,000. As used in this paragraph C, the terms "laborers" and "mechanics" include watchmen and guards.

2. Overtime requirements. No contractor or subcontractor contracting for any part of the Contract work that 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 (40) 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 (40) hours in such workweek.

3. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the immediately preceding subparagraph C.2, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the 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 such subparagraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in such subparagraph.

4. Withholding for unpaid wages and liquidated damages. HUD or its designee 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 under any other Federal contract with the same prime contractor, or under 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 subparagraph 3 of this paragraph C.

5. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 5 of this paragraph C 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 such subparagraphs 1 through 5.

D. Certification.

For projects with Security Instruments insured under the National Housing Act, as amended, that are subject to paragraph B of this Article 1, the Contractor is required to execute the Contractor's Prevailing Wage Certificate within HUD-92448 as a condition precedent to insurance by HUD of the Loan, or an advance thereof, made or to be made by the Lender in connection with the construction of the Project.

Article 2: Equal Employment Opportunity

A. Applicability. This Article 2 applies to any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.

B. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The Contractor shall 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, disability 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.

C. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants shall receive consideration for employment without regard to

race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

D. The Contractor shall send to each labor union or representative of workers with which it 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 hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor shall 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.

F. The Contractor shall 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 shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. 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 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, regulations or order of the Secretary of Labor, or as otherwise provided by law.

H. The Contractor shall include the provisions of paragraphs A through H of this Article 2 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 shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as HUD or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Article 3: Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area

A. This Article 3 is applicable to projects covered by Section 3, as defined in 24 CFR Part 135.

B. The work to be performed under this Contract is on a project assisted under a program providing Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very-low income residents of the unit of local government or the metropolitan area (or non-metropolitan county) as determined by HUD in which the Project is located and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or non-metropolitan county) as the Project.

Article 4: Health and Safety

A. This Article 4 is applicable only where the prime contract is in an amount greater than \$100,000.

B. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

C. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR

Part 1926, and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

D. The Contractor shall include the provisions of this Article 4 in every subcontract so that such provisions shall be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as HUD or the Secretary of Labor shall direct as a means of enforcing such provisions.

End of HUD Provisions

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EJCDC Exhibit No. 5

ITB 24 - 13

General Decision Number FL20240137 Davis-Bacon Wage Determination

Consisting of 7 pages

"General Decision Number: FL20240137 05/10/2024

Superseded General Decision Number: FL20230137

State: Florida

Construction Type: Heavy

County: Volusia County in Florida.

HEAVY CONSTRUCTION PROJECTS (Including Sewer and Water Lines)
(EXCLUDING CAPE CANAVERAL AIR FORCE STATION, PATRICK AIR FORCE
BASE, KENNEDY SPACE FLIGHT CENTER AND MALABAR RADAR SITE)

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	. Executive Order 14026 generally applies to the contract. . The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	. Executive Order 13658 generally applies to the contract. . The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	03/29/2024
2	05/10/2024

* ENGI0673-013 05/01/2024

	Rates	Fringes
OPERATOR: Oiler.....	\$ 24.50	15.10

IRON0808-003 01/01/2024		

	Rates	Fringes
IRONWORKER, STRUCTURAL.....	\$ 31.50	16.45

LAB00517-002 05/01/2023		

	Rates	Fringes
LABORER: Grade Checker.....	\$ 22.61	11.59

PAIN1010-011 06/01/2021		

	Rates	Fringes
Painter - Brush, Roller & Spray.....	\$ 24.71	14.60

* SUFL2009-176 06/24/2009

	Rates	Fringes
CARPENTER, Excludes Form Work....	\$ 13.56 **	1.84
CEMENT MASON/CONCRETE FINISHER...	\$ 12.63 **	0.00

ELECTRICIAN.....	\$ 16.71 **	3.51
FORM WORKER.....	\$ 11.36 **	0.00
LABORER: Common or General.....	\$ 9.03 **	0.81
LABORER: Landscape.....	\$ 8.44 **	0.00
LABORER: Pipelayer.....	\$ 11.17 **	1.27
LABORER: Power Tool Operator (Hand Held Drills/Saws, Jackhammer and Power Saws Only).....	\$ 10.63 **	2.20
OPERATOR: Asphalt Paver.....	\$ 11.88 **	0.00
OPERATOR: Backhoe Loader Combo.....	\$ 16.10 **	2.44
OPERATOR: Backhoe/Excavator.....	\$ 13.12 **	2.58
OPERATOR: Bulldozer.....	\$ 12.88 **	0.00
OPERATOR: Crane.....	\$ 14.88 **	3.17
OPERATOR: Grader/Blade.....	\$ 16.00 **	2.84
OPERATOR: Loader.....	\$ 13.38 **	0.00
OPERATOR: Mechanic.....	\$ 13.83 **	2.19
OPERATOR: Roller.....	\$ 10.50 **	0.00
OPERATOR: Scraper.....	\$ 11.00 **	1.74
OPERATOR: Trackhoe.....	\$ 20.92	5.50
OPERATOR: Tractor.....	\$ 10.00 **	0.00
TRUCK DRIVER, Includes Dump Truck.....	\$ 11.07 **	0.00
TRUCK DRIVER: Lowboy Truck.....	\$ 11.00 **	0.00
TRUCK DRIVER: Off the Road Truck.....	\$ 12.21 **	1.97

WELDERS - Receive rate prescribed for craft performing

operation to which welding is incidental.

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** Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$17.20) or 13658 (\$12.90). Please see the Note at the top of the wage determination for more information. Please also note that the minimum wage requirements of Executive Order 14026 are not currently being enforced as to any contract or subcontract to which the states of Texas, Louisiana, or Mississippi, including their agencies, are a party.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date

for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

State Adopted Rate Identifiers

Classifications listed under the ""SA"" identifier indicate that the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R. §1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

SECTION 7 – REQUIRED FORMS



ORIGINAL

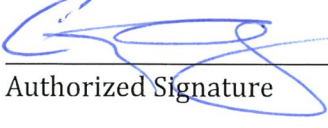
FORM 7.1 – BID SUBMITTAL CHECKLIST

- ☒ Form 7.2 – Bidder's Acknowledgement Form
- ☒ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- ☒ Form 7.4 – Drug Free Preference Statement
- ☒ Form 7.5 – Public Entity Crimes Statement
- ☒ Form 7.6 – Anti-Collusion Form
- ☒ Form 7.7 – Statement of Bidder's Qualifications
- ☒ Form 7.8 – Professional References for Previous Experience
- ☒ Form 7.9 – List of Subcontractors
- ☒ Form 7.10 – Scrutinized Companies Certification
- ☒ Form 7.11 – Local Business Affidavit of Eligibility
- ☒ Form 7.12 – E-Verify Affidavit
- ☒ Form 7.13 – Debarment, Suspension and Other Responsibility Matters
- ☒ Form 7.14 – Affidavit of Compliance With Section 287.138
- ☒ Form 7.15 – No Submittal Response Form
- ☒ Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying
- ☒ (Attachment 1) – Schedule of Unit Pricing
- ☒ Original Recorded Bid Bond
- ☒ Current Bonding Capacity Letter (as outlined in Section 6)
- ☒ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)

____ Submission of one (1) original marked "ORIGINAL" and one (1) digital (flash drive) version in PDF format

BY: GPS Civil Construction, Inc.

Name of Business



Authorized Signature

5/24/2024

Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER'S ACKNOWLEDGEMENT FORM

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the ITB at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to one-hundred-twenty (120) days in order to allow the City of Port Orange adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the ITB.

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

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

GPS Civil Construction, Inc.

Name of Business

Authorized Signature

Greg Schlaffer, President

Printed Name and Title

82-3777772

Federal Identification No.

455 Walker Street

Mailing Address

Holly Hill, FL 32117

City, State & Zip Code

386-872-5811

Telephone Number

Greg@gpscivil.com

E-mail Address

STATE OF: Florida COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this

24th day of May, 2024, by Greg Schlaffer and who:

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

Cathy A Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

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

Addendum# 01 Date: 5/17/24 Addendum# _____ Date: _____
Addendum# _____ Date: _____ Addendum# _____ Date: _____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

GPS Civil Construction, Inc.

Name of Business

[Signature]
Authorized Signature

Greg Schlaffer, President

Printed Name and Title

STATE OF: Florida COUNTY OF: Volusia

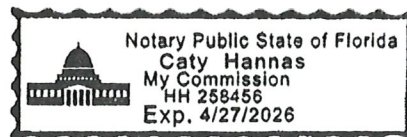
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this

24th day of May, 2024, by Greg Schlaffer and who:

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

Cathy Hannas
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

IDENTICAL TIE BIDS – Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, statements or replies are equal with respect to price, quality and service are received by the City for procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied Bidders have a drug-free workplace program.

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

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

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

GPS Civil Construction, Inc.

Name of Business

Authorized Signature

Greg Schlaffer, President

Printed Name and Title

STATE OF: Florida COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document must be completed and returned with your Submittal

**FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES
UNDER SECTION 287.133(3)(A), FLORIDA STATUTES**

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

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

1. The business address of GPS Civil Construction, Inc. (name of Offeror or business) is
455 Walker Street, Holly Hill, FL 32117.
2. My relationship to GPS Civil Construction, Inc. (name of Offeror or business) is President
_____(relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. **(Draw a line through paragraph 6 if paragraph 7 below applies.)**
7. ~~There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted Bidder list. The name of the convicted person or affiliate is: _____ A copy of the order of the Division Administrative Hearing is attached.~~
(Draw a line through paragraph 7 if paragraph 6 above applies)

GPS Civil Construction, Inc.

Name of Business

Authorized Signature

Greg Schlaffer, President

Printed Name and Title

STATE OF: Florida

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

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

This document must be completed and returned with your Submittal



FORM 7.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

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

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

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

NAME OF FIRM: GPS Civil Construction, Inc.

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

PRINTED SIGNATURE: 

TITLE: President

ADDRESS: 455 Walker Street

CITY, STATE AND ZIP CODE: Holly Hill, FL 32117

TELEPHONE: _____
386-872-5811

FAX: _____
386-872-5822

F.E.I.N.: 82-3777772

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

- A. Name of Bidder: GPS Civil Construction, Inc.
- B. Permanent main office address: 455 Walker Street, Holly Hill, FL 32117
- C. Date organized: 12/19/2017
- D. If a corporation, where incorporated: Florida
- E. How many years have you been engaged in the business under your present firm or trade name? 6 years
- F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- G. General character of work performed by your company: Heavy Civil and Sitework
- H. Have you ever failed to complete any work awarded to you? If so, where and why? No.
- I. Have you ever defaulted on a contract? If so, where and why? No.
- J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- K. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- L. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- M. Credit currently available: \$ 700,000
- N. Give bank name, contact name and phone number: Climate First Bank - Lex Ford 689-444-5500
- O. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☒ Yes ☐ No

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals comprising the Statement of Bidder's Qualifications.

GPS Civil Construction, Inc.

Name of Business

Authorized Signature

Greg Schlaffer, President

Printed Name and Title

STATE OF: Florida

COUNTY OF: Volusia

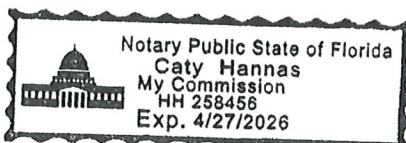
The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

Cathy D Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal



Contracts on Hand

Job	Contract Amount
21-003 - Marriott Renaissance	\$ 787,506.00
22-005 - Ocean Club Gift Shop	\$ 577,533.00
22-008 - First Avenue Drainage	\$ 296,400.00
22-010 - Woodspring Suites - Port Orange	\$ 1,121,764.00
22-012 - Palm Coast Southern Rec Center	\$ 1,274,381.00
23-003 - Lift Station 22 Forcemain 2319	\$ 904,552.00
23-005 - Costco	\$ 2,495,766.00
23-007 - Flynn Street Ditch Repair	\$ 294,221.00
23-009 - Mullinax Ford	\$ 197,789.00
23-013 - KFC LPGA	\$ 308,515.50
23-014 - Park Ave Water Main Replacement	\$ 664,550.00
23-015 - Holiday Inn Express	\$ 125,244.00
23-019 - Hubbard & High Street Drainage	\$ 192,870.00
23-020 - T2914 US-1 Storm Drainage	\$ 1,225,295.00
23-021 - Ace Hardware LPGA	\$ 110,850.00
23-022 - Pioneer Trail & Sugar Mill Drive	\$ 2,313,571.52
23-024 - Raw Water Main Extension - WTP #3 Wellfield	\$ 268,390.00
23-026 - Greenway Trail - North Extension	\$ 2,425,979.50
23-027 - US-1 Utility Extensions	\$ 2,778,100.00
24-001 - Halifax Port Orange	\$ 1,805,237.00
24-002 - Halifax Daytona	\$ 1,494,313.00

GPS Civil Construction - Job List - Major

Job No	Job Name	Customer	Contract Amount	Start	Complete
22-006	NW Area Stormwater Improvements	City of Deltona	\$ 1,829,020.00	Aug-22	Jun-23
22-002	NSB Middle New Parent Loop Parking Lot	Volusia County Schoolboard	\$ 1,102,594.00	Jun-22	Sep-22
22-001	DeLand Airport Access Road	City of DeLand	\$ 2,498,508.00	May-22	Mar-23
21-038	ERAU Parking Garage Sitework	Hoar Construction	\$ 439,554.00	Jan-22	Aug-22
21-036	AutoZone Palm Coast Site Package	HJB Construction	\$ 267,700.00	Dec-21	Feb-22
21-032	Canal View Runoff - Road Reconstruction	City of Port Orange	\$ 492,900.00	Mar-22	Jun-22
21-030	DASERCO Site Package	Dade Service Corporation	\$ 517,581.00	Mar-22	Dec-22
21-024	The Gables	Hazen Construction	\$ 145,765.00	Aug-21	Dec-21
21-021	Dollar General Orange City	Fulcrum Construcion	\$ 220,050.00	Nov-21	Jul-22
21-020	South Pine Meadows	City of DeBary	\$ 347,485.00	Nov-21	Mar-22
21-018	Tanglewood Drainage Improvements & Road Reconstruction	Seminole County	\$ 652,488.00	Sep-21	Jul-22
21-017	Latitude Landings Parking Lot Construction	Building Management Systems	\$ 534,421.00	Jul-21	Dec-21
21-016	LPGA Scenic Thoroughfare	Florida Land Trust	\$ 305,036.00	Jul-21	Aug-21
21-010	E5X14 Roadway Repair	FDOT - D5	\$ 128,820.00	Jun-21	Aug-21
21-007	Tree Town USA - Bunnell	Halifax Paving	\$ 100,258.00	Mar-21	Apr-21
21-004	Howes Street and Orange Ave WM and Drainage	City of Port Orange	\$ 1,110,776.00	May-21	Apr-22
21-003	Marriot Renaissance Parking Lot Construction	PRM	\$ 606,705.00	Feb-21	Dec-22
21-002	27th Ave Beach Access Ramp	Volusia County	\$ 668,516.00	Feb-21	Aug-22
21-001	Beresford Ave Sidewalk	Volusia County	\$ 389,128.00	Feb-21	Apr-21
20-017	Orange City Votran Bus Depot	Volusia County	\$ 796,452.00	Oct-20	Mar-21
20-011	US-1 New Turnlane at Enclave Apts	Halifax Paving	\$ 127,751.00	July-20	Aug-20
20-009	Beach Street Sidewalk	Hazen Construction	\$ 247,204.00	June-20	Mar-21
20-003	Deltona Lakes and Spirit Elementary Neighborhood Sidewalk	City of Deltona	\$ 711,587.00	June-20	Jan-21
19-013	Bethune Point Shoreline Restoration	City of Daytona Beach	\$ 398,114.00	February-20	Jul-20
19-012	Flagler Airport Access Road	Flagler County	\$ 171,580.00	January-20	Mar-20
19-011	E5V72 - US92 Box Culvert	FDOT - D5	\$ 488,288.00	January-20	Apr-20
19-008	New Smyrna Beach Airport Apron/Taxi Construction	City of New Smyrna Beach	\$ 1,256,676.00	December-19	Sep-20
19-004	Atlantic High Drainage	Giles Electric	\$ 306,500.00	June-19	Aug-19
19-003	Tivoli Drive Intersection Improvements	City of Deltona	\$ 953,662.00	August-19	May-20
19-002	E5U82 - US-1 Concrete Panel Replacement	FDOT - D5	\$ 2,105,379.00	April-19	Feb-20
18-007	DeLand Business Farm	Dade Service Corporation	\$ 124,954.00	December-18	Jun-19
18-004	E5Z25 - SR600	FDOT - D5	\$ 1,478,900.00	October-18	Jun-19
18-003	Palm Coast Pipe Crossing	City of Palm Coast	\$ 106,954.00	June-18	Sep-18
18-001	Daytona Beach Grounds Maintenance Redevelopment	City of Daytona Beach	\$ 434,743.00	April-18	Nov-18

Equipment List (Updated 2/21/2024)

Equip #+ Description	Manufacturer	Model	Year	VIN/Serial	License Plate #	
BR001	SM300 Broom Tractor	Laymor	SM300	2014	34914	
BR002	Sweeper Ride on 8' Windrow 3 Wheel	Laymor	SM300	2015	35700	
BR003	Cat SSL/CTL Pickup Broom	Caterpillar	BU118		0P6601850	
DZ001	John Deere 450K Crawler Dozer	John Deere	450K	2020	1T0450KXELF373725	
DZ001-2	Undercarriage Replacement on JD 450K					
DZ002	John Deere 650 P-Tier Utility Dozer	John Deere	650 P-Tier	20203	1T0650PAPPLX02433	
EX002	Cat 305E Hydraulic Excavator	Caterpillar	305E	2019	H5M08733	
EX003	Link Belt Excavator	Link-Belt	145X4	2021	LBX145Q7NMHEX2049	
EX004	Link Belt Excavator	Link-Belt	145X5	2021	LBX145Q7NMHEX2290	
EX005	2022 Hitachi ZX350LC-6 Excavator SN	Hitachi	ZX350LC-6	2022	HCMDDQ60T00082178	
EX005-2	Rebuild of EX005 Hitahci ZX350					
EX006	E50 R2-Series Bobcat Compact Excavator	Bobcat	E50 R2	2022	B4GP15642	
EX007	2017 John Deere 245G FT4 Excavator	John Deere	245G	2017	1FF245GXJHF800446	
EX008	John Deere 210 P-Tier Excavator	John Deere	210 P-Tier	2023	1FF210PAKPF000704	
EX009	John Deere 35G Compact Excavator	John Deere	35G	2023	1FF035GXCPK302832	
LR001	Cat 3CY Loader	Caterpillar	926M	2018	LTE05316	
LR002	ZW 180 Wheel Loader	Hitachi	ZW180	2018	RYUPD860PH8405235	
LR003	ZW 150 Wheel Loader	Hitachi	ZW150	2021	RYUPTC60AH8505583	
LR004	Volvo L70E Loader	Volvo	L70E	2005	L70EV60853	
LR005	ZW150 Wheel Loader	Hitachi	ZW150		RYUPTC60EH8505667	
LR006	John Deere 544 P-Tier Wheel Loader	John Deere	544 P-Tier	2023	1DW544PAHPLX18785	
LR007	John Deere 544 P-Tier Wheel Loader	John Deere	545 P-Tier	2023	1DW544PAEPLX18769	
LR008	John Deere 544 P-Tier Wheel Loader	John Deere	545 P-Tier	2023	1DW544PAAPLX20629	
LR009	John Deere 331G Compact Track Loader	John Deere	331G	2023	1T0331GMTRF459909	
ME001	TP-L5B/L Pipe Laser	Topcon	TP-L5B/L	2018	RR3949	
ME003	20 FT Grade A Steel Container (Office)	Immediate Warehousing	20 FT	2019	N/A	
ME004	20 FT Grade A Steel Container (US 1)	Immediate Warehousing	20 FT	2019	N/A	
ME005	SRV116T 2TB Server	Net Works	SRV116T	N/A	N/A	
ME006	Trailer Water Tank 500 Gallon	Multiquip	WT5C	2019	54SLBM1227KL027631	CG0719
ME007	VIB Plate Reversible	Wacker	BPU 4045A	2016	10557503	
ME008	VIB Plate Reversible	Wacker	BPU 3050A	2020	11251247	
ME009	Large Rammer 2900-3600	Multiquip	MTX70HD	2021	G-4547	
ME010	TP-L6B Pipe Laser	Topcon	TP-L6B	2022	P2001828	
ME011	Pressure Pump	Wheeler-Rex	48301	2022	15771	
ME012	Dome Head Test Plug					
ME013	Godwin Skid-Mounted Water Pump	Godwin	GRL200	2018		
ME014	Magnum Trailer-Mounted Water Pump	Magnum	MTG030	2011	1114087	
ME015	PPSI Trailer-Mounted Water Pump	PPSI	4DD-TR-YD	2016	4DD-637	
ME015-2	Rebuild of ME015 PPSI Pump					
ME016	5 Cubic Yard Stone Box					
ME017	Weber MT Plate Compactor - REV -5000 -7000 LB	Weber MT	CR2		20074302	
ME018	Trench Box					
ME019	Weber Plate Compactor-REV-6800-7800 LB	Weber MT	CR3-II		20079406	
ME020	TP-L6B Pipe Laser	Topcon	TP-L6B		P2004067	
ME021	Multipquip 4 Stroke 3HP 690 BPM Rammer	Multiquip	690BPM		G-4545	
ME022	Weber Rammer SRV620-II	Weber MT	SRV620-II		20093394	
ME023	Menegotti Mortar Mixer 7-9 CU FT	Menegotti	Mortar9CF		M09508	
ME024	Weber Plate Compactor-REV-9000-10000 LB	Weber	CR5-II		20095410	
ME025	Titan 5 Plus 8 x 20 Trenchbox	Titan				
ME026	Dome Head Plug					
ME027	11 GPM 550 PSI Triple Diaphragm Pump				61549	

Abbreviation	Description
BR	Broom
CM	Curb Machine
EX	Excavator
LR	Loader
DZ	Dozer
RL	Roller
SK	Skid Steer
TC	Tractor
TA	Trailer
TR	Truck
ME	Miscellaneous Equipment
MG	Motor Grader
MX	Mixer
OT	Off-Road Truck

GREG SCHLAFFER

EDUCATION:

Master of Science, Building Construction	2009
University of Florida Rinker School of Building Construction	
Bachelor of Arts, Business Administration	2006
University of Florida Warrington College of Business	

PROFESSIONAL EXPERIENCE:

2017 - Present <i>President</i>	GPS Civil Construction, Inc	Holly Hill, FL
- On a company level, managing all day-to-day operations of a heavy civil and site development construction company focusing on both public works and private development projects. - On a project specific level, I manage all major projects personally. This includes evaluating and hiring subcontractors, managing product purchasing, control of overall project schedule, constant communication with project owners, and managing manpower and resource requirements necessary to deliver projects efficiently.		
2014 - 2017 <i>Estimator / Project Manager</i>	P & S Paving, Inc	Daytona Beach, FL
- Managing, from bidding to project completion, the construction of several roadway and site development projects throughout the Central Florida area. - Total Value of Projects Bid \$270,000,000 - Total Value of Projects Constructed and Personally Managed \$ 38,900,000		
2012 – 2014 <i>Project Manager</i> <i>Various projects throughout US</i>	Dade Service Corp	Daytona Beach, FL
Managing, from design phase to completion, the construction of refrigerated distribution centers, warehouses, and ripening rooms nationwide.		
2009 – 2012 <i>Construction Support Lead/Supervisor</i> <i>V.C. Summer Nuclear Units 2 & 3</i>	The Shaw Group – Nuclear Power	Columbia, SC
- Overseeing the Turbine Building construction support organization of the power plant. - Responsible for monitoring adherence to budgeted performance factors. - Performing investigations into budget overruns and identifying trends in labor efficiency patterns. - Assisting the Site Development Manager in planning the development of a nearly 1,000 acre site adjacent to an existing Nuclear Generating Station. - Responsible for evaluation of existing, and development of new, project budgets.		
2008 – 2009 <i>Field Engineer</i> <i>Deerhaven Coal Power Plant AQCS Retrofit</i>	CH2M Hill - Power Group	Gainesville, FL
- Various field engineering and surveying assignments to provide constructability support. - Gathering, tracking and performing analysis of costs associated with material and labor expenditures.		

OTHER QUALIFICATIONS:

CGC1523245 - Certified General Contractor
CUC1225259 - Certified Underground Utility and Excavation Contractor
987710-0001-2007 – Florida Fire Protection System Contractor V
LEED AP
OSHA 30 Hour Card holder

Significant Projects:

- 2018-2020 – GPS Civil Construction
 - FDOT - E5Z25 SR600 Drainage Improvements - \$1,478,900
 - FDOT - E5U82 US1 Concrete Panel Replacement - \$2,228,858
 - FDOT - E5V72 92 Box Culvert Repair - \$484,765
 - Flagler County - Pritchard Drive Pipe Crossing - \$106,955
 - Flagler County – Airport Access Road - \$169,767
 - Volusia County - Orange City Votran Parking Lot - \$800,000
 - Volusia County – Beresford Ave Sidewalk/Drainage/Asphalt Roadway Improvements - \$396,128
 - Volusia County – Public Works Concrete Parking - \$29,251
 - Volusia County Schools - Atlantic High School Drainage Improvements - \$306,500
 - Volusia County Schools – Olson Drive Concrete - \$67,877
 - City of NSB - New Smyrna Airport Taxiway and Apron Improvements - \$1,256,676
 - City of NSB – Fire Station 51 Concrete Pavement / Parking Lot - \$99,055
 - City of Deltona - Tivoli Drive Intersection Improvements - \$960,000
 - City of Deltona - Deltona Lakes Neighborhood Sidewalks - \$772,000
 - City of Daytona Beach - Grounds Maintenance Redevelopment - \$434,743
 - City of Daytona Beach – Bethune Point Shoreline Restoration - \$413,490
 - DeLand Business Farm - \$124,950
 - Brunswick Site Development - \$39,093
 - Tanger Outlets Drainage – \$49,539
 - Tree Town Concrete Pavement - \$98,000
 - ERAU Sidewalk and Curb Clyde Morris Blvd - \$76,118
 - US-1 at Enclave Apartments – New Concrete Turn Lane on US-1 - \$127,751
 - Beach Street / Sweetheart Trail Concrete - \$265,138
- 2014-2017 – P&S Paving
 - SCOPA Pavement Improvements - \$144,341
 - Putnam County Resurfacing 2014 - \$741,854
 - Southern Riverfront Paving - \$103,309
 - Our Lady of Lourdes - \$125,270
 - Edgewater 2014 Resurfacing - \$244,151
 - DBIA Wildlife Mitigation - \$2,057,976
 - 100 & I95 Push Button – \$92,169
 - Bethune Cookman Site Work - \$1,631,150
 - North Causeway Boat Ramp - \$77,422
 - D2 M&R E2S56-R0 - \$293,750
 - Williamson/Town West Turn Lane - \$609,361
 - ERAU Research Park West - \$1,925,889
 - North Causeway Beautification - \$1,045,509
 - Maserati of Daytona - \$177,240
 - Edgewater 2015 Resurfacing - \$346,468
 - ERAU Research Park Pump Station - \$484,055
 - St. Johns Rest Area E2U66 - \$444,550
 - INFINITI DAYTONA - \$543,046
 - Top Build Daytona - \$155,448
 - SR 19 Putnam Co E2U35 - \$5,266,949
 - Aberdeen at Ormond - \$104,571
 - SR 520 Tucker to Aurora T5580 - \$5,771,370
 - Project Longboard - \$408,298
 - Palatka Riverfront - \$780,000
 - Spring to Spring Trail E5Y96 - \$3,268,345
 - Grand Haven Development - \$743,011
 - Snow Hill Road Paving - \$2,926,568
 - SR19 CURB & GUTTER TO SR100 - \$3,438,726
 - Sanford Taxiway R Reconstruction - \$1,440,784

- 2012-2014 – Dade Service Corporation
 - DiMare Distribution Center – Houston, TX - \$11,000,000
 - DelMonte Chicago Distribution, Chicago, IL - \$900,000
 - DelMonte Dallas Distribution - Dallas, TX - \$700,000
 - Calavo Dallas Distribution - Dallas, TX - \$600,000
 - West Pak Distribution - Temecula, CA - \$1,300,000
- 2009-2012 – The Shaw Group –
 - VC Summer New Nuclear – Units 2 & 3 - \$12,000,000,000
- 2008-2009 – CH2M Hill –
 - Deer Haven Coal Power Plant – Air Quality Control System Retrofit - \$135,000,000

DALLAS MOORE

EDUCATION:

Associate of Arts, Mathematics
Daytona State College

2009

PROFESSIONAL EXPERIENCE:

2018 - Present

GPS Civil Construction, Inc

Holly Hill, FL

Vice President

- Running all field construction operations
- Areas of expertise: Asphalt paving, concrete paving, concrete curb and sidewalk, grading, structural concrete, maintenance of traffic, underground utilities, survey and layout, project management,
- Several years of experience running field operations on FDOT projects.
 - Major Projects have included:
 - FDOT - E5Z25 SR600 Drainage Improvements - \$1,478,900
 - FDOT - E5U82 US1 Concrete Panel Replacement - \$2,228,858
 - FDOT - E5V72 92 Box Culvert Repair - \$484,765
 - Flagler County - Pritchard Drive Pipe Crossing - \$106,955
 - Flagler County - Airport Access Road - \$169,767
 - Volusia County - Orange City Votran Parking Lot - \$800,000
 - Volusia County - Beresford Ave Sidewalk/Drainage/Asphalt Roadway Improvements - \$396,128
 - Volusia County - Public Works Concrete Parking - \$29,251
 - Volusia County Schools - Atlantic High School Drainage Improvements - \$306,500
 - Volusia County Schools - Olson Drive Concrete - \$67,877
 - City of NSB - New Smyrna Airport Taxiway and Apron Improvements - \$1,256,676
 - City of NSB - Fire Station 51 Concrete Pavement / Parking Lot - \$99,055
 - City of Deltona - Tivoli Drive Intersection Improvements - \$960,000
 - City of Deltona - Deltona Lakes Neighborhood Sidewalks - \$772,000
 - City of Daytona Beach - Grounds Maintenance Redevelopment - \$434,743
 - City of Daytona Beach - Bethune Point Shoreline Restoration - \$413,490
 - DeLand Business Farm - \$124,950
 - Brunswick Site Development - \$39,093
 - Tanger Outlets Drainage - \$49,539
 - Tree Town Concrete Pavement - \$98,000
 - ERAU Sidewalk and Curb Clyde Morris Blvd - \$76,118
 - US-1 at Enclave Apartments - New Concrete Turn Lane on US-1 - \$127,751
 - Beach Street / Sweetheart Trail Concrete - \$265,138

2003 - 2018

P & S Paving, Inc

Daytona Beach, FL

Superintendent

- Managing construction sites for several roadway and site development projects throughout the Central Florida area.
 - Total Value of Projects Constructed and Personally Managed - Greater than \$30,000,000
 - Several years experience running field operations on FDOT projects.
 - Major Projects run have included:
 - VOLUSIA SIDEWALK MNT E5P42-RO - \$1,115,500
 - SR 600 (US 92) T5351 - \$1,678,307
 - CHAPMAN ROAD - \$7,429,253
 - TELEDYNE ODI - \$306,108
 - SR 415 (T5417) - \$18,388,844
 - NORTH HALIFAX DRIVE REHAB - \$1,312,944
 - SR 44 - SR415 TO JUNGLE RD - \$5,008,595
 - DBIA TAXIWAY Y - \$1,613,246

- NEW SMYRNA HARBOR - \$2,429,281
- WHITE PALMS APARTMENTS - \$1,690,300
- SR 5 (US1) FLAGLER T5457 - \$8,326,181
- NORTH YOUNG STREET (T5454) - \$654,997
- Cambridge Canal Phase 1 - \$1,289,776
- Palm Coast Parkway 6-Laning - \$10,556,445
- Cambridge Canal Phase 2 - \$736,585
- SR 400 BEVILLE RD T5536 - \$2,534,883
- DIS Super Stretch Improvements- \$719,939
- SR 19 Putnam Co E2U35 - \$5,266,949
- SR 520 Tucker to Aurora T5580 - \$5,771,370

OTHER QUALIFICATIONS:

FDOT Advanced Maintenance of Traffic (MOT)
 Certified Stormwater Inspector
 OSHA 10 Hour Card
 Merchant Mariner OUPV License

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein. **Please provide three (3) current and correct references from clients for similar services. (DO NOT include the City of Port Orange)**

1. Company Name: US-1 Utility Extensions, Volusia County
Contact Person: Roger Smith
City, State: Oak Hill, FL
Telephone Number: 386-943-7027
Email Address: rogersmith@volusia.org
Description of goods/services provided: Extension of utilities along US-1 Corridor
Contract Amount: \$2,778,100
Start/End Date of Contract: 12/2023 - Current
2. Company Name: Hart Ave Drainage & Water Main Improvements
Contact Person: Sean Maroney
City, State: Edgewater, FL
Telephone Number: 386-424-2400
Email Address: smaroney@cityofedgewater.org
Description of goods/services provided: Reconstruction of existing neighborhood water, storm, roadway
Contract Amount: \$3,030,327
Start/End Date of Contract: 12/2022 - 08/2023
3. Company Name: DeLand Airport Access Road
Contact Person: Ray Bahrami
City, State: DeLand, FL
Telephone Number: 386-626-7189
Email Address: bahramir@deland.org
Description of goods/services provided: Construction of new roadway w/ water, sewer, storm
Contract Amount: \$2,480,108
Start/End Date of Contract: 05/2022 - 08/2023

This document must be completed and returned with your Submittal.

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE (page 2)

**LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST**

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

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

1. Contact Name: Volusia County, Roger Smith
Phone: 386-943-7027
Current Client: ☒ Yes ☐ No
Number of years of service provided: 6
Description of service: Underground Utilities, Roadway Construction

2. Contact Name: City of Edgewater, Sean Maroney
Phone: 386-424-2400
Current Client: ☒ Yes ☐ No
Number of years of service provided: 3
Description of service: Underground Utilities, Roadway Construction

3. Contact Name: City of DeLand, Ray Bahrami
Phone: 386-626-7189
Current Client: ☒ Yes ☐ No
Number of years of service provided: 5
Description of service: Underground Utilities, Roadway Construction

This document must be completed and returned with your Submittal.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative.** Bidder shall attach additional sheets as necessary.

Subcontractor No. 1Name: BETTER BARRICADESDescription of Work: STRIPING, SIGNSPercent of Contract Price: 1.6%Previous Experience Together: ☒ Yes ☐ NoSubcontractor No. 2Name: SUPERIOR SODDescription of Work: SODPercent of Contract Price: 0.7%Previous Experience Together: ☒ Yes ☐ NoSubcontractor No. 3Name: DELAMERE INDUSTRIESDescription of Work: Pedestrian rail, hand railPercent of Contract Price: 4.7%Previous Experience Together: ☒ Yes ☐ NoSubcontractor No. 4Name: ROGERS ENVIRONMENTALDescription of Work: SILT FENCE, EROSION CONTROLPercent of Contract Price: 0.2%Previous Experience Together: ☒ Yes ☐ NoSubcontractor No. 5

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, Greg Schlaffer, on behalf
(Print Name and Title)

of GPS Civil Construction, Inc. ("Company"), certify that GPS Civil Construction, Inc.
(Company Name) (Company Name)

does not:

1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies with Boycott Israel List; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Syria.

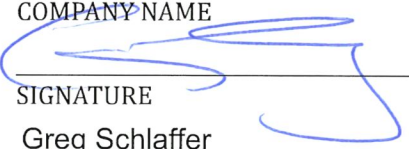
Submitting a false certification shall be deemed a material breach of contract. The City of Port Orange shall provide notice, in writing, to the Company of the City's determination concerning the false certification. The Company shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Company does not demonstrate that the City's determination of false certification was made in error, then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes prohibits the City from: 1) Contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and 2) Contracting with companies for goods or services over \$1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Company, I hereby certify that the company identified above in the section entitled "Company Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List and is not engaged in business operations in Syria. I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

GPS Civil Construction, Inc.

COMPANY NAME


SIGNATURE

Greg Schlaffer

PRINT NAME

President

TITLE

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION (page 2)

STATE OF FLORIDA

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schaffer and who:

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

Cathy A Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



This document to be completed and returned with your Submittal

FORM 7.11 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

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

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

Project# (as applicable): _____

Business Name: GPS CIVIL CONSTRUCTION, INC Contact Person/Title: GREG SCHLAFFER, PRESIDENT

Mailing Address: 455 WALKER ST City, State, Zip: HOLLY HILL, FL, 32117

Phone Number: 386-872-5811 Email address: GREG@GPS-CIVIL.COM

Physical Presence of Business: ☒ Headquarters ☐ Principal Place of Business

Within Legal Boundaries: ☐ City of Port Orange ☒ Volusia County ☒ State of Florida

FEIN (Federal Employer Identification Number): 82-3777772

Business Structure: ☒ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship ☐ Other (Specify): _____

****PLEASE ATTACH A VALID BUSINESS TAX RECEIPT OR OTHER SUCH DOCUMENTATION****

ATTESTATION – I understand that:

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

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

GPS CIVIL
Name of Business

[Signature]
Authorized Signature

GREG SCHLAFFER, PRESIDENT
Printed Name and Title

STATE OF: Florida

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

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



This document must be completed and returned with your Submittal

2023 / 2024

Volusia County Business Tax Receipt

Issued pursuant to F.S. 205 and Volusia County Code of Ordinances Chapter 114-1 by:
Volusia County Treasury and Billing - 125 W New York Ave, Room 120, Deland, FL 32720 - (386) 943-7085



Account #: 201803080002

Expires: September 30, 2024

Business Location: 455 WALKER ST

Business Name: GPS CIVIL CONSTRUCTION, INC

Owner Name: GREGORY SCHLAFFER

Mailing Address 455 WALKER ST
HOLLY HILL, FL 32117

BUSINESS TYPE	REQ DOC #	CODE	COUNT	TAX
General Contractor Class A	CGC1523245	301C	26	\$54.00

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

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

Volusia County Business Tax Receipt

Treasury and Billing - 125 W New York Ave, Room 120, Deland, FL 32720 - (386) 943-7085

DATE PAID: 09/27/2023
RECEIPT #: 516832
TOTAL TAX: \$54.00
PENALTY: \$0.00
TOTAL PAID: \$54.00



Business Name: GPS CIVIL CONSTRUCTION, INC
Owner Name: GREGORY SCHLAFFER
Mailing Address 455 WALKER ST
HOLLY HILL, FL 32117

Account #: 201803080002

Expires: September 30, 2024

Business Location: 455 WALKER ST

PLEASE DETATCH THIS PORTION OF THE BUSINESS TAX RECEIPT FOR YOUR RECORDS.



BUSINESS TAX RECEIPT

City of Holly Hill

1065 Ridgewood Ave

Holly Hill, FL 32117

386-248-9442 www.hollyhillfl.org

EXPIRATION DATE: September 30, 2024

ISSUED TO: GPS CIVIL CONSTRUCTION, INC
455 WALKER ST

HOLLY HILL FL 32117-2605

LICENSE YEAR: 10/23-09/24

LICENSE NUMBER: 24-00026609

FEE: \$150.25

DATE: September 30, 2023

COMMENTS:

BUSINESS LOCATION: 455 WALKER ST

BUSINESS OWNER: SCHLAFFER, GREG

VALID PROVIDING ALL STATE CERTIFICATION/REGISTRATION REQUIREMENTS ARE MET.

BUSINESS CLASSIFICATION

<u>CODE</u>	<u>DESCRIPTION</u>	<u>AMOUNT PAID</u>
23220	GENERAL CONTRACTOR	110.25
00100	FIRE INSPECTION	40.00000 X 1.00 = 40.00

- THIS DOCUMENT MUST BE POSTED CONSPICUOUSLY IN YOUR PLACE OF BUSINESS, PENALTY FOR FAILURE TO DO SO.
- TAX RECEIPT DOES NOT GUARANTEE JOB AND/OR WORK PERFORMANCE.
- BUSINESS MUST COMPLY WITH CITY ORDINANCE.

FORM 7.12 – E-VERIFY AFFIDAVIT



**CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES**

Project Name: JACKSON STREET + OAK STREET DRAINAGE IMPROVEMENTS

Solicitation Number: ITB 24-13

I, the undersigned hereby certify that GPS Civil Construction, Inc. (insert contractor company name) does not employ, contract with or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

I acknowledge that it is my responsibility to ensure full compliance with Section 448.095, Florida Statutes. I am aware enrollment in the E-Verify system for employers can be done at www.e-verify.gov.

A true and correct copy of GPS Civil Construction, Inc. (insert contractor company name) proof of registration in the E-Verify system is attached to this Affidavit.

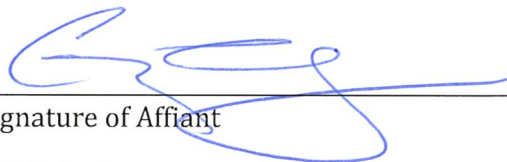
By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

Greg Schlaffer, President

Print or Type Name, Title

82-3777772

Federal Employer ID Number (FEIN)


Signature of Affiant

1378191

E-Verify Number

STATE OF FLORIDA

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

Cathy A. [Signature] Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal





Company ID Number: 1378191



THE E-VERIFY MEMORANDUM OF UNDERSTANDING FOR EMPLOYERS

ARTICLE I PURPOSE AND AUTHORITY

The parties to this agreement are the Department of Homeland Security (DHS) and GPS Civil Construction, Inc. (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, "Employment Eligibility Verification" and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

ARTICLE II RESPONSIBILITIES

A. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
 - a. Notice of E-Verify Participation
 - b. Notice of Right to Work
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives' contact information changes.
3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee's E-Verify access if the employer is separated from the company or no longer needs access to E-Verify.



Company ID Number: 1378191

4. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.
 5. The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases.
 - a. The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer Representative from continued use of E-Verify.
 6. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:
 - a. If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.
 - b. If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool.
- Note:** Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9.
7. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.
 8. The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the anti-discrimination requirements of section 274B of the INA with respect to Form I-9 procedures.
 - a. The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above; (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee; (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly



Company ID Number: 1378191

employed an unauthorized alien in violation of section 274A(a)(1)(A); and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify.

b. DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify.

9. The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10. The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11. The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II.B of this MOU.

12. The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

13. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status



Company ID Number: 1378191

(including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15. The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16. The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at E-Verify@uscis.dhs.gov. Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17. The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

18. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon



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reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify.

19. The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false.

20. The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS.

21. The Employer agrees that [E-Verify trademarks](#) and logos may be used only under license by DHS/USCIS (see [M-795 \(Web\)](#)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify.

22. The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU.

B. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1. If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors.

2. In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify.

- a. An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.



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b. Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

c. Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin

E-Verify verification of all existing employees within 180 days after the election.

e. The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as:

- i. That Form I-9 is complete (including the SSN) and complies with Article II.A.6,
- ii. The employee's work authorization has not expired, and
- iii. The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).

f. The Employer shall complete a new Form I-9 consistent with Article II.A.6 or update the previous Form I-9 to provide the necessary information if:

- i. The Employer cannot determine that Form I-9 complies with Article II.A.6,
- ii. The employee's basis for work authorization as attested in Section 1 has expired or changed, or
- iii. The Form I-9 contains no SSN or is otherwise incomplete.

Note: If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with



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Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.A.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual.

g. The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article.

3. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

C. RESPONSIBILITIES OF SSA

1. SSA agrees to allow DHS to compare data provided by the Employer against SSA's database. SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database.
2. SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).
3. SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry. E-Verify provides the information to the Employer.
4. SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence. If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary. In such cases, SSA will provide additional instructions to the employee. If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer.

Note: If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218.

D. RESPONSIBILITIES OF DHS

1. DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU:
 - a. Automated verification checks on alien employees by electronic means, and



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- b. Photo verification checks (when available) on employees.
2. DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.
3. DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify.
4. DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials.
5. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.
6. DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify.
7. DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements.
8. DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry.
9. DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case.



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The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.
4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.
5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.
6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.
2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.
3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.
4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the



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employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days.

5. If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee's Form I-551, Form I-766, U.S. Passport, or passport card to DHS for review by:

- a. Scanning and uploading the document, or
- b. Sending a photocopy of the document by express mail (furnished and paid for by the employer).

7. The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee's documentation to DHS as described in the preceding paragraph. The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch.

8. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

9. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

ARTICLE IV SERVICE PROVISIONS

A. NO SERVICE FEES

1. SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

ARTICLE V MODIFICATION AND TERMINATION

A. MODIFICATION

1. This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties.

2. Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes.



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B. TERMINATION

1. The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties.
2. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer's participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer's business.
3. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.
4. The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

ARTICLE VI PARTIES

- A. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.
- B. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.
- C. The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.
- D. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.



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E. The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

F. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively. The Employer understands that any inaccurate statement, representation, data or other information provided to DHS may subject the Employer, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) immediate termination of its MOU and/or; (3) possible debarment or suspension.

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

To be accepted as an E-Verify participant, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 1-888-464-4218.



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Approved by:

Employer GPS Civil Construction, Inc.	
Name (Please Type or Print) Gregory Schlaffer	Title
Signature Electronically Signed	Date 02/08/2019
Department of Homeland Security – Verification Division	
Name (Please Type or Print) USCIS Verification Division	Title
Signature Electronically Signed	Date 02/08/2019



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Information Required for the E-Verify Program

Information relating to your Company:

Company Name	GPS Civil Construction, Inc.
Company Facility Address	455 Walker Street Holly Hill, FL 32117
Company Alternate Address	
County or Parish	VOLUSIA
Employer Identification Number	823777772
North American Industry Classification Systems Code	237
Parent Company	
Number of Employees	10 to 19
Number of Sites Verified for	1 site(s)



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Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:

FL 1



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Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name Gregory Schlaffer
Phone Number 3868725811
Fax 3868725822
Email area@apscivil.com

Name Tiffany Canup
Phone Number 3868725811
Fax 3868725822
Email tiffanv@apscivil.com

Name Gregory Schlaffer
Phone Number 3868725811
Fax
Email area@apscivil.com



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This list represents the first 20 Program Administrators listed for this company.

FORM 7.13 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY

Matter Primary Covered Transactions

(To be completed by Prime Contractor)

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

GPS Civil Construction, Inc.

Organization Name

Greg Schlaffer, President

Name and Title of Authorized Representative

ITB#24-13

Bid Number or Project Name



Signature

5/24/2024

Date

This document must be completed and returned with your Submittal

FORM 7.14 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

**AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES CONTRACTING WITH
FOREIGN ENTITIES OF CONCERN**

The undersigned ("Affiant"), on behalf of the entity listed below ("Entity"), hereby attests under penalty of perjury as follows:

1. Affiant is the President of GPS Civil Construction, Inc.
(Title) (Business Name)
which does business in the State of Florida, hereinafter called the "Entity".
2. Entity is not owned by the government of a foreign country of concern, as defined in Section 287.138 (1) (c), Florida Statutes.
3. The government of a foreign country of concern does not have a controlling interest in Entity, as defined in Section 287.138 (1)(a), Florida Statutes.
4. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern.
5. Entity is not owned or controlled by the government of a foreign country of concern.
6. For purposes of this affidavit, a foreign country of concern means the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes.

The undersigned is authorized to execute this affidavit on behalf of the Entity.

Date: May 24th, 2024

Signed: [Signature]

Entity: GPS Civil Construction, Inc.

Name: Greg Schlaffer

Title: President

STATE OF: Florida

COUNTY OF: Volusia

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 24th day of May, 2024, by Greg Schlaffer and who:

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

[Signature]
Notary Public, State of Florida at Large:

Printed Name/Seal of Notary, Commission and Expiration Date:

My commission expires: 4/27/2026

(seal)



This document must be completed and returned with your Submittal

FORM 7.15 – NO SUBMITTAL RESPONSE FORM

N/A

If your company will not be submitting a proposal in response to this solicitation, please complete this form and return via e-mail prior to the solicitation due date established within to:

City of Port Orange
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129
purchdiv@port-orange.org

This information will assist the Purchasing Division in the preparation of future solicitations.

Solicitation: ITB #24-13 Jackson Street & Oak Street Drainage Improvements

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a "no response".

☐ Specifications "too tight" or geared toward on brand or manufacturer (please explain below)

☐ Insufficient time to respond

☐ Specifications unclear (please explain below)

☐ We do not offer this product/service or an equivalent

☐ Our product schedule does not permit us to perform within stated timeline for the project

☐ Unable to meet specifications

☐ Unable to meet bond requirements

☐ Unable to hold prices firm throughout the term of the contract period

☐ Unable to meet insurance requirements

☐ Other: _____

Print Name: _____

Signature: _____

Date: _____

Additional Information:

If submitting this form, only this form needs to be returned. It is not necessary to return the entire solicitation package.

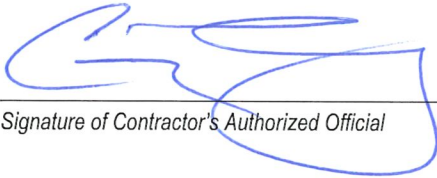
APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, GPS Civil Construction, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official

Greg Schlaffer, President

Name & Title of Contractor's Authorized Official

Date: 05/24/2024

This document must be completed and returned with your Submittal

REVISED (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #24-13

JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS

NAME OF BUSINESS: GPS Civil

CONTACT PERSON: Clayton Donahoo

EMAIL ADDRESS: clayton@gpscivil.com

AUTHORIZED SIGNATURE: 

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, leaving no blank cells; return completed, signed form with bid submittal and include on USB/thumb drive.

SITE PREPARATIONS

ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Mobilization	1	LS	\$ 115,000.00	\$ 115,000.00
2	Survey / As-builts	1	LS	\$ 30,000.00	\$ 30,000.00
3	Maintenance of Traffic	1	LS	\$ 42,000.00	\$ 42,000.00
4	Excavation / Grading	1	LS	\$ 225,000.00	\$ 225,000.00
5	Demo Existing RCP	1	LS	\$ 8,000.00	\$ 8,000.00
6	Demo Existing Headwall	36	EA	\$ 456.00	\$ 16,416.00
7	Tree/Shrub/Plant Removals/Remediation from Swale	1	LS	\$ 43,000.00	\$ 43,000.00
8	Relocate Existing Utility Pole	11	EA	\$ 1,500.00	\$ 16,500.00
9	Open Cut Asphalt Remediation	63	SY	\$ 368.00	\$ 23,184.00
10	Remove/Replace Existing Concrete Driveway	320	SF	\$ 17.00	\$ 5,440.00
11	Water Valve Adjustment	8	EA	\$ 365.00	\$ 2,920.00
12	Sewer Manhole Adjustment	10	EA	\$ 524.00	\$ 5,240.00
13	Storm Manhole Adjustment	1	EA	\$ 706.00	\$ 706.00
14	Existing Electric Box Relocated	1	EA	\$ 5,600.00	\$ 5,600.00
15	Existing PVC Riser Relocated	1	EA	\$ 1,400.00	\$ 1,400.00
16	Inlet Protection	7	EA	\$ 283.00	\$ 1,981.00
17	Silt Fence	6,729	LF	\$ 1.50	\$ 10,093.50
18	Sod	7,407	SY	\$ 8.00	\$ 59,256.00
SUBTOTAL ITEMS 1-18					\$ 611,736.50

ROADWAY SYSTEM

ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
19	Asphalt Planing (1")	11,027	SY	\$ 2.55	\$ 28,118.85
20	Friction Course FC-9.5 (1")	639	TN	\$ 192.00	\$ 122,688.00
21	Structural Course SP-12.5 (2")	65	TN	\$ 200.00	\$ 13,000.00
22	Optional Base Group 9 (10")	582	SY	\$ 60.00	\$ 34,920.00
23	Stabilized Subgrade (12")	1,227	SY	\$ 25.00	\$ 30,675.00
24	Type F Concrete Curb	1,936	LF	\$ 30.00	\$ 58,080.00
25	4" Sidewalk	7,102	SF	\$ 6.00	\$ 42,612.00
26	ADA Mats	16	EA	\$ 1,100.00	\$ 17,600.00
27	Thickened Edge Sidewalk	8,525	SF	\$ 10.00	\$ 85,250.00



28	Concrete Driveway	2,717	SF	\$ 13.00	\$ 35,321.00
29	Pedestrian Railing	1,794	LF	\$ 85.00	\$ 152,490.00
30	Retaining Wall w/ Handrail	42	LF	\$ 244.00	\$ 10,248.00
SUBTOTAL ITEMS 19-30					\$ 631,002.85

DRAINAGE SYSTEM					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
31	15" HDPE	97	LF	\$ 61.00	\$ 5,917.00
32	15" RCP	44	LF	\$ 160.00	\$ 7,040.00
33	18" RCP	50	LF	\$ 165.00	\$ 8,250.00
34	24" RCP	17	LF	\$ 180.00	\$ 3,060.00
35	30" RCP	677	LF	\$ 190.00	\$ 128,630.00
36	19" x 30" ERCP	1,999	LF	\$ 182.00	\$ 363,818.00
37	29" x 45" ERCP	1,936	LF	\$ 307.00	\$ 594,352.00
38	24" MES	1	EA	\$ 3,600.00	\$ 3,600.00
39	19" x 30" MES	1	EA	\$ 3,900.00	\$ 3,900.00
40	29" x 45" MES	1	EA	\$ 9,400.00	\$ 9,400.00
41	48" Storm Manhole	2	EA	\$ 5,800.00	\$ 11,600.00
42	60" Storm Manhole	2	EA	\$ 7,000.00	\$ 14,000.00
	a) 72" Storm Manhole	1	EA	\$ 8,500.00	\$ 8,500.00
43	Type C Inlet	1	EA	\$ 4,000.00	\$ 4,000.00
44	Type E Inlet	10	EA	\$ 9,400.00	\$ 94,000.00
45	Type E Inlet w/ 12" Slot	4	EA	\$ 5,400.00	\$ 21,600.00
46	Type H Inlet	2	EA	\$ 9,600.00	\$ 19,200.00
47	Type H Inlet w/ 12" Slot	5	EA	\$ 9,300.00	\$ 46,500.00
48	Type 4 Curb Inlet w/ J Bottom	18	EA	\$ 10,200.00	\$ 183,600.00
49	15" Yard Drain	18	EA	\$ 1,800.00	\$ 32,400.00
50	Connect to Existing Storm Pipe	9	EA	\$ 1,000.00	\$ 9,000.00
51	Connect to Existing Structure	2	EA	\$ 1,000.00	\$ 2,000.00
	SUBTOTAL ITEMS 31-51				\$ 1,574,367.00
STRIPING AND SIGNAGE					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
52	6" Single White	8,503	LF	\$ 2.00	\$ 17,006.00
53	6" Double Yellow	3,744	LF	\$ 4.00	\$ 14,976.00
54	24" White Stop Bar	107	LF	\$ 13.00	\$ 1,391.00
55	12" White Crosswalk	431	LF	\$ 7.00	\$ 3,017.00
56	Turn Lane Arrow Template	1	EA	\$ 152.00	\$ 152.00
57	Remove Existing Sign/Post	6	EA	\$ 84.00	\$ 504.00
58	Furnish & Install Sign/Post	22	EA	\$ 703.00	\$ 15,466.00
59	Mailbox Remove/Relocate	9	EA	\$ 133.00	\$ 1,197.00
	SUBTOTAL ITEMS 52-59				\$ 53,709.00
TOTAL PRICE				\$	2,870,815.35

LEGEND:

LS - Lump Sum

EA - Each

LF - Linear Feet

SF - Square Feet

TN - Ton

SY - Square Yard

BID BOND**BID BOND**

Bond No.: N/A

KNOW ALL MEN BY THESE PRESENTS that GPS Civil Construction, Inc., as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at 455 Walker St, Holly Hill, FL 32117, Tel.: 386-872-5811, (hereinafter called "PRINCIPAL"), and Nationwide Mutual Insurance Company, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at One West Nationwide Blvd, 1-04-701, Columbus, OH 43215, Tel: 515-508-4159 (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of Five Percent of the Amount Bid----- dollars and (-----)/100 (\$---5%---), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated May 24, 2024, for:

Project Name/Bid No.: ITB #24-13 Jackson Street & Oak Street Drainage Improvements

Project Address: west side of Jackson Street (between Dunlawton Ave and Canal View Blvd) and south side of Oak Street (between Jackson Street and Dunlawton Ave)
Port Orange, FL

Legal Description: See Attached

Description of Work: Pipe the existing drainage ditches on the west side of Jackson Street (between Dunlawton Ave and Canal View Blvd) and the south side of Oak Street (between Jackson Street and Dunlawton Ave), milling and resurfacing of Jackson and Oak Streets, and adding new sidewalks to the west side of Jackson Street from Oak Street to Canal View Blvd and on the north side of Oak Street from Jackson Street to Dunlawton Ave.

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid withing one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds withing the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this 16th day of May, 2024, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL: GPS Civil Construction, Inc.

Signature

GREG SCHULTER, President
Corporate Officer & Title

ATTEST:

Signature

Tiffany Canup, Secretary
Corporate Secretary (Affix Corporate Seal)

WITNESSES:

SURETY: Nationwide Mutual Insurance Company

Attorney-in-Fact (signature)

Tyler D DeBord, Attorney-in-Fact

Name & Title

Tyler D DeBord

Name of Local Resident Agent

Daytona Beach, FL 32114

City, State, Zip

386-239-5703

Telephone:

A.M. Best No.: 002358

NAIC No.: 23787

STATE OF Florida

COUNTY OF Volusia

ATTEST:

Signature

Kara Ruckert, Senior Account Manager

Corporate Secretary (Affix Corporate Seal)

Before me this day personally appeared Tyler D DeBord (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the Nationwide Mutual Insurance Company (corporate surety) and that this person has been authorized by Nationwide Mutual Insurance Company (corporate surety) to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant

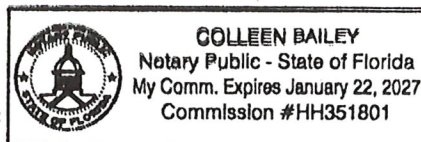
The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this

16th day of May, 2024, by Tyler D DeBord and who:

☒ Is personally known to me; or ☐ has produced N/A as identification.

Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:



END OF BID BOND

This document must be completed and returned with your Submittal

Power of Attorney

KNOW ALL MEN BY THESE PRESENTS THAT:

Nationwide Mutual Insurance Company, an Ohio corporation

hereinafter referred to severally as the "Company" and collectively as "the Companies" does hereby make, constitute and appoint:

STEPHEN P FARMER; TYLER D DEBORD; VINCENT DELUCA; ASHLEY TYREE; KARA RUCKERT; MARGARET HALL

each in their individual capacity, its true and lawful attorney-in-fact, with full power and authority to sign, seal, and execute on its behalf any and all bonds, undertaking and contracts of suretyship or other written obligations in the nature therefor; for all obligees including any and all consents required by the Department of Transportation, State of Florida, and other obligatory instruments of similar nature, in penalties not exceeding the sum of

UNLIMITED

and to bind the Company thereby, as fully and to the same extent as if such instruments were signed by the duly authorized officers of the Company; and all acts of said Attorney pursuant to the authority given are hereby ratified and confirmed.

This power of attorney is made and executed pursuant to and by authority of the following resolution duly adopted by the board of directors of the Company:

"RESOLVED, that the president, or any vice president be, and each hereby is, authorized and empowered to appoint attorneys-in-fact of the Company, and to authorize them to execute and deliver on behalf of the Company any and all bonds, forms, applications, memorandums, undertakings, recognizances, transfers, contracts of indemnity, policies, contracts guaranteeing the fidelity of persons holding positions of public or private trust, and other writings obligatory in nature that the business of the Company may require; and to modify or revoke, with or without cause, any such appointment or authority; provided, however, that the authority granted hereby shall in no way limit the authority of other duly authorized agents to sign and countersign any of said documents on behalf of the Company."

"RESOLVED FURTHER, that such attorneys-in-fact shall have full power and authority to execute and deliver any and all such documents and to bind the Company subject to the terms and limitations of the power of attorney issued to them, and to affix the seal of the Company thereto; provided, however, that said seal shall not be necessary for the validity of any such documents."

This power of attorney is signed and sealed under and by the following bylaws duly adopted by the board of directors of the Company.

Execution of Instruments. Any vice president, any assistant secretary or any assistant treasurer shall have the power and authority to sign or attest all approved documents, instruments, contracts, or other papers in connection with the operation of the business of the company in addition to the chairman of the board, the chief executive officer, president, treasurer or secretary; provided, however, the signature of any of them may be printed, engraved, or stamped on any approved document, contract, instrument, or other papers of the Company.

IN WITNESS WHEREOF, the Company has caused this instrument to be sealed and duly attested by the signature of its officer the 20th day of August, 2021.

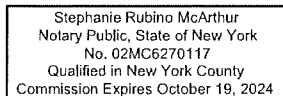


Antonio C. Albanese, **Vice President** of Nationwide Mutual Insurance Company

ACKNOWLEDGMENT

STATE OF NEW YORK COUNTY OF NEW YORK: ss

On this 20th day of August, 2021, before me came the above-named officer for the Company aforesaid, to me personally known to be the officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, deposes and says, that he is the officer of the Company aforesaid, that the seal affixed hereto is the corporate seal of said Company, and the said corporate seal and his signature were duly affixed and subscribed to said instrument by the authority and direction of said Company.

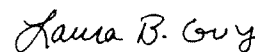


Notary Public
My Commission Expires
October 19, 2024

CERTIFICATE

I, Laura B. Guy, Assistant Secretary of the Company, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney issued by the Company; that the resolution included therein is a true and correct transcript from the minutes of the meetings of the boards of directors and the same has not been revoked or amended in any manner; that said Antonio C. Albanese was on the date of the execution of the foregoing power of attorney the duly elected officer of the Company, and the corporate seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority of said board of directors; and the foregoing power of attorney is still in full force and effect.

IN WITNESS WHEREOF, I have hereunto subscribed my name as Assistant Secretary, and affixed the corporate seal of said Company this 16th day of May, 2024.



Assistant Secretary



Brown & Brown of Florida, Inc.
P.O. Box 2412
Daytona Beach, FL 32115-2412
P: (800) 877-2769
bbinsurance.com

May 16, 2024

City of Port Orange, Florida
1000 City Center Circle
Port Orange, FL 32129

Re: GPS Civil Construction, Inc. – Bond Prequalification Letter

To Whom It May Concern:

We have the pleasure of handling the bid, performance and payment bonds for GPS Civil Construction, Inc.. Nationwide Mutual Insurance Company is their current surety. They are A.M. Best Rated (A+, XV) with a Treasury Limit of \$1,545,739,000. Nationwide Mutual Insurance Company is favorable to supporting single projects in the amount of \$6,000,000 and Aggregate support up to \$15,000,000.

GPS Civil Construction, Inc. is an excellent contractor and we hold them in high regard. We feel extremely confident in our contractor and encourage you to offer them an opportunity to execute any upcoming projects.

Please note that the decision to issue a bond is a matter between GPS Civil Construction, Inc. and Nationwide Mutual Insurance Company and will be subject to their standard underwriting at the time of the final bond request, which will include but not be limited to the acceptability of the contract documents, bond forms and financing. We assume no liability to third parties or to you if for any reason they do not execute said bonds.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Tyler D. DeBord', with a stylized flourish at the end.

Tyler D. DeBord, AFSB, CPCU
Senior Vice President, Surety Practice Leader



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

2601 BLAIR STONE ROAD
TALLAHASSEE FL 32399-0783

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Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



**STATE OF FLORIDA DEPARTMENT
OF BUSINESS AND PROFESSIONAL
REGULATION**

CGC1523245
CERTIFIED GENERAL CONTRACTOR
SCHLAFFER, GREGORY PETER
GPS CIVIL CONSTRUCTION, INC.

ISSUED: 09/20/2022

Signature
LICENSED UNDER CHAPTER 489, FLORIDA STATUTES
EXPIRATION DATE: AUGUST 31, 2024

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD**

LICENSE NUMBER: CGC1523245

EXPIRATION DATE: AUGUST 31, 2024

THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

SCHLAFFER, GREGORY PETER
GPS CIVIL CONSTRUCTION, INC.
455 WALKER STREET
HOLLY HILL FL 32117



ISSUED: 09/20/2022

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**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

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TALLAHASSEE FL 32399-0783

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Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



**STATE OF FLORIDA DEPARTMENT
OF BUSINESS AND PROFESSIONAL
REGULATION**

CUC1225259
CERT UNDERGROUND & EXCAV CNTR
SCHLAFFER, GREGORY PETER
GPS CIVIL CONSTRUCTION, INC.

ISSUED: 09/20/2022

Signature

LICENSED UNDER CHAPTER 489, FLORIDA STATUTES
EXPIRATION DATE: AUGUST 31, 2024

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD**

LICENSE NUMBER: CUC1225259

EXPIRATION DATE: AUGUST 31, 2024

THE UNDERGROUND UTILITY & EXCAVATION CO HEREIN IS CERTIFIED UNDER THE
PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

SCHLAFFER, GREGORY PETER
GPS CIVIL CONSTRUCTION, INC.
455 WALKER STREET
HOLLY HILL FL 32117



ISSUED: 09/20/2022

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Jimmy Patronis
CHIEF FINANCIAL OFFICER

Julius Halas
DIVISION DIRECTOR



John Gatlin
BUREAU CHIEF

Catherine Thrasher
SAFETY PROGRAM MANAGER

FLORIDA DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF STATE FIRE MARSHAL
200 EAST GAINES STREET - Tallahassee, Florida 32399-0342
Tel. 850-413-3644

CERTIFICATE OF COMPETENCY
OFFICIAL COPY

THIS CERTIFIES THAT: Gregory P Schlaffer
455 Walker Street
Holy Hill FL 32117
BUSINESS ORGANIZATION: GPS Civil Construction, Inc.

Contractor V means a contractor whose business is limited to the execution of contracts requiring the ability to fabricate, install, inspect, alter, repair and service the underground piping for a fire protection system using water as the extinguishing agent beginning at the point of service as defined in the act and ending no more than 1 foot above the finished floor.

Issue Date: 07/01/2022
Type: 09
Class: 14
County: Volusia
License/Permit #: FPC22-000007
Expiration Date: 06/30/2024



Jimmy Patronis

Chief Financial Officer



Growth and Resource Management

123 West Indiana Avenue

DeLand, Florida 32720

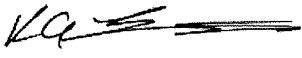
Listing Card

09/12/2023

911906

To: GPS CIVIL CONSTRUCTION INC
455 WALKER ST
HOLLY HILL, FL 32117

CUT ON SOLID LINE AND KEEP ON PERSON AT ALL TIMES.

Listing Card	
VOL #18042602	EXPIRES 09/30/2025
THIS CERTIFIES	MR. GREGORY PETER SCHLAFFER
	GPS CIVIL CONSTRUCTION INC
IS LICENSED AS A	01 CONSTRUCTION CONTRACT.-CLASS A
	CGC1523245
IN THE COUNTY OF VOLUSIA, FLORIDA	
BY	
	VOLUSIA COUNTY CLCA
BUILDING OFFICIAL	



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Profit Corporation

GPS CIVIL CONSTRUCTION, INC.

Filing Information

Document Number P17000099589

FEI/EIN Number 82-3777772

Date Filed 12/19/2017

State FL

Status ACTIVE

Principal Address

455 Walker Street

Holly Hill, FL 32117

Changed: 03/08/2022

Mailing Address

455 Walker Street

Holly Hill, FL 32117

Changed: 03/08/2022

Registered Agent Name & Address

KISTEMAKER BUSINESS LAW GROUP

120 E GRANADA BLVD

ORMOND BEACH, FL 32176

Name Changed: 11/27/2023

Address Changed: 11/27/2023

Officer/Director Detail

Name & Address

Title PRESIDENT, TREASURER, DIRECTOR

SCHLAFFER, GREGORY

455 WALKER STREET

HOLLY HILL, FL 32117

Title VP, DIRECTOR

MOORE, DALLAS
455 WALKER STREET
HOLLY HILL, FL 32117

Title Secretary

Canup, Tiffany
455 Walker Street
Holly Hill, FL 32117

Annual Reports

Report Year	Filed Date
2022	03/08/2022
2023	01/30/2023
2024	02/02/2024

Document Images

02/02/2024 -- ANNUAL REPORT	View image in PDF format
11/27/2023 -- Reg_Agent Change	View image in PDF format
01/30/2023 -- ANNUAL REPORT	View image in PDF format
03/08/2022 -- ANNUAL REPORT	View image in PDF format
02/01/2021 -- ANNUAL REPORT	View image in PDF format
01/06/2020 -- ANNUAL REPORT	View image in PDF format
01/17/2019 -- ANNUAL REPORT	View image in PDF format
01/25/2018 -- ANNUAL REPORT	View image in PDF format
12/19/2017 -- Domestic Profit	View image in PDF format



Florida Department of Transportation

RON DESANTIS
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JARED W. PERDUE, P.E.
SECRETARY

May 01, 2023

GPS CIVIL CONSTRUCTION, INC
455 WALKER STREET
HOLLY HILL, FLORIDA 32117

RE: CERTIFICATE OF QUALIFICATION

The Department of Transportation has qualified your company for the type of work indicated below.

FDOT APPROVED WORK CLASSES:

DRAINAGE, FLEXIBLE PAVING, GRADING, GRASSING, SEEDING AND SODDING, SIDEWALK, Curb & Gutter, Driveways, Handrails, Rehabilitation of Concrete Pavement, Rip Rap, Underground Utilities (Water & Sewer).

Unless notified otherwise, this Certificate of Qualification will expire **6/30/2024**.

In accordance with Section 337.14(4), Florida Statutes, changes to Ability Factor or Maximum Capacity Rating will not take effect until after the expiration of the current certificate of prequalification (if applicable).

In accordance with Section 337.14(1), Florida Statutes, an application for qualification must be filed within (4) months of the ending date of the applicant's audited annual financial statements.

If the company's maximum capacity has been revised, it may be accessed by logging into the Contractor Prequalification Application System via the following link:

[HTTPS://fdotwp1.dot.state.fl.us/ContractorPreQualification](https://fdotwp1.dot.state.fl.us/ContractorPreQualification)

Once logged in, select "View" for the most recently approved application, and then click the "Manage" and "Application Summary" tabs.

The company may apply for a Revised Certificate of Qualification at any time prior to the expiration date of this certificate according to Section 14-22.0041(3), Florida Administrative Code (F.A.C.), by accessing the most recently approved application as shown above and choosing "Update" instead of "View." If certification in additional classes of work is desired, documentation is needed to show that the company has performed such work.

All prequalified contractors are required by Section 14-22.006(3), F.A.C., to certify their work underway monthly in order to adjust maximum bidding capacity to available bidding capacity. You can find the link to this report at the website shown above.

Sincerely,

James E. Taylor II, Prequalification Supervisor
Contracts Administration Office

JTII:cg



ITB #24-13
JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS
BID TABULATION
 BIDS RECEIVED MAY 24, 2024

SITE PREPARATIONS				GPS CIVIL CONSTRUCTION, INC.		HAZEN CONSTRUCTION, LLC		MASCI GENERAL CONTRACTOR, INC.	
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
1	Mobilization	1	LS	\$115,000.00	\$115,000.00	\$125,789.00	\$125,789.00	\$304,000.00	\$304,000.00
2	Survey / As-builts	1	LS	\$30,000.00	\$30,000.00	\$54,935.00	\$54,935.00	\$111,640.00	\$111,640.00
3	Maintenance of Traffic	1	LS	\$42,000.00	\$42,000.00	\$88,400.00	\$88,400.00	\$75,000.00	\$75,000.00
4	Excavation / Grading	1	LS	\$225,000.00	\$225,000.00	\$291,533.00	\$291,533.00	\$55,000.00	\$55,000.00
5	Demo Existing RCP	1	LS	\$8,000.00	\$8,000.00	\$23,651.00	\$23,651.00	\$15,000.00	\$15,000.00
6	Demo Existing Headwall Tree/Shrub/Plant	36	EA	\$456.00	\$16,416.00	\$1,204.00	\$43,344.00	\$1,500.00	\$54,000.00
7	Removals/Remediation from Swale	1	LS	\$43,000.00	\$43,000.00	\$27,500.00	\$27,500.00	\$38,000.00	\$38,000.00
8	Relocate Existing Utility Pole	11	EA	\$1,500.00	\$16,500.00	\$2,500.00	\$27,500.00	\$250.00	\$2,750.00
9	Open Cut Asphalt Remediation	63	SY	\$368.00	\$23,184.00	\$129.00	\$8,127.00	\$397.57	\$25,046.91
10	Remove/Replace Existing Concrete Driveway	320	SF	\$17.00	\$5,440.00	\$35.00	\$11,200.00	\$23.97	\$7,670.40
11	Water Valve Adjustment	8	EA	\$365.00	\$2,920.00	\$350.00	\$2,800.00	\$390.00	\$3,120.00
12	Sewer Manhole Adjustment	10	EA	\$524.00	\$5,240.00	\$650.00	\$6,500.00	\$920.00	\$9,200.00
13	Storm Manhole Adjustment	1	EA	\$706.00	\$706.00	\$650.00	\$650.00	\$920.00	\$920.00
14	Existing Electric Box Relocated	1	EA	\$5,600.00	\$5,600.00	\$8,500.00	\$8,500.00	\$500.00	\$500.00
15	Existing PVC Riser Relocated	1	EA	\$1,400.00	\$1,400.00	\$1,900.00	\$1,900.00	\$1,920.00	\$1,920.00
16	Inlet Protection	7	EA	\$283.00	\$1,981.00	\$400.00	\$2,800.00	\$100.00	\$700.00
17	Silt Fence	6,729	LF	\$1.50	\$10,093.50	\$2.00	\$13,458.00	\$2.00	\$13,458.00
18	Sod	7,407	SY	\$8.00	\$59,256.00	\$5.00	\$37,035.00	\$4.20	\$31,109.40
SUBTOTAL ITEMS 1-18					\$611,736.50		\$775,622.00		\$749,034.71
ROADWAY SYSTEM				GPS CIVIL CONSTRUCTION, INC.		HAZEN CONSTRUCTION, LLC		MASCI GENERAL CONTRACTOR, INC.	
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
19	Asphalt Planing (1")	11,027	SY	\$2.55	\$28,118.85	\$3.00	\$33,081.00	\$2.50	\$27,567.50
20	Friction Course FC-9.5 (1")	639	TN	\$192.00	\$122,688.00	\$215.00	\$137,385.00	\$179.45	\$114,668.55
21	Structural Course SP-12.5 (2")	65	TN	\$200.00	\$13,000.00	\$225.00	\$14,625.00	\$179.45	\$11,664.25
22	Optional Base Group 9 (10")	582	SY	\$60.00	\$34,920.00	\$24.00	\$13,968.00	\$38.20	\$22,232.40
23	Stabilized Subgrade (12")	1,227	SY	\$25.00	\$30,675.00	\$12.00	\$14,724.00	\$15.20	\$18,650.40
24	Type F Concrete Curb	1,936	LF	\$30.00	\$58,080.00	\$28.00	\$54,208.00	\$49.30	\$95,444.80
25	4" Sidewalk	7,102	SF	\$6.00	\$42,612.00	\$8.00	\$56,816.00	\$12.23	\$86,857.46
26	ADA Mats	16	EA	\$1,100.00	\$17,600.00	\$625.00	\$10,000.00	\$450.00	\$7,200.00
27	Thickened Edge Sidewalk	8,525	SF	\$10.00	\$85,250.00	\$12.00	\$102,300.00	\$14.45	\$123,186.25
28	Concrete Driveway	2,717	SF	\$13.00	\$35,321.00	\$9.00	\$24,453.00	\$17.45	\$47,411.65
29	Pedestrian Railing	1,794	LF	\$85.00	\$152,490.00	\$38.00	\$68,172.00	\$110.00	\$197,340.00
30	Retaining Wall w/ Handrail	42	LF	\$244.00	\$10,248.00	\$275.00	\$11,550.00	\$997.00	\$41,874.00
SUBTOTAL ITEMS 19-30					\$631,002.85		\$541,282.00		\$794,097.26

DRAINAGE SYSTEM				GPS CIVIL CONSTRUCTION, INC.		HAZEN CONSTRUCTION, LLC		MASCI GENERAL CONTRACTOR, INC.	
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
31	15" HDPE	97	LF	\$61.00	\$5,917.00	\$55.00	\$5,335.00	\$75.90	\$7,362.30
32	15" RCP	44	LF	\$160.00	\$7,040.00	\$67.00	\$2,948.00	\$198.30	\$8,725.20
33	18" RCP	50	LF	\$165.00	\$8,250.00	\$82.00	\$4,100.00	\$215.20	\$10,760.00
34	24" RCP	17	LF	\$180.00	\$3,060.00	\$118.00	\$2,006.00	\$235.70	\$4,006.90
35	30" RCP	677	LF	\$190.00	\$128,630.00	\$167.00	\$113,059.00	\$269.45	\$182,417.65
36	19" x 30" ERCP	1,999	LF	\$182.00	\$363,818.00	\$192.00	\$383,808.00	\$296.50	\$592,703.50
37	29" x 45" ERCP	1,936	LF	\$307.00	\$594,352.00	\$365.00	\$706,640.00	\$373.50	\$723,096.00
38	24" MES	1	EA	\$3,600.00	\$3,600.00	\$4,320.00	\$4,320.00	\$3,200.00	\$3,200.00
39	19" x 30" MES	1	EA	\$3,900.00	\$3,900.00	\$4,530.00	\$4,530.00	\$4,100.00	\$4,100.00
40	29" x 45" MES	1	EA	\$9,400.00	\$9,400.00	\$7,547.00	\$7,547.00	\$9,129.00	\$9,129.00
41	48" Storm Manhole	2	EA	\$5,800.00	\$11,600.00	\$6,696.00	\$13,392.00	\$10,475.00	\$20,950.00
42	60" Storm Manhole	2	EA	\$7,000.00	\$14,000.00	\$7,568.00	\$15,136.00	\$12,317.00	\$24,634.00
	a) 72" Storm Manhole	1	EA	\$8,500.00	\$8,500.00	\$7,996.00	\$7,996.00	\$17,500.00	\$17,500.00
43	Type C Inlet	1	EA	\$4,000.00	\$4,000.00	\$5,142.00	\$5,142.00	\$6,818.00	\$6,818.00
44	Type E Inlet	10	EA	\$9,400.00	\$94,000.00	\$9,347.00	\$93,470.00	\$10,045.00	\$100,450.00
45	Type E Inlet w/ 12" Slot	4	EA	\$5,400.00	\$21,600.00	\$7,258.00	\$29,032.00	\$12,045.00	\$48,180.00
46	Type H Inlet	2	EA	\$9,600.00	\$19,200.00	\$8,509.00	\$17,018.00	\$11,775.00	\$23,550.00
47	Type H Inlet w/ 12" Slot	5	EA	\$9,300.00	\$46,500.00	\$8,716.00	\$43,580.00	\$13,775.00	\$68,875.00
48	Type 4 Curb Inlet w/ J Bottom	18	EA	\$10,200.00	\$183,600.00	\$10,076.00	\$181,368.00	\$12,899.00	\$232,182.00
49	15" Yard Drain	18	EA	\$1,800.00	\$32,400.00	\$5,449.00	\$98,082.00	\$2,500.00	\$45,000.00
50	Connect to Existing Storm Pipe	9	EA	\$1,000.00	\$9,000.00	\$1,950.00	\$17,550.00	\$2,500.00	\$22,500.00
51	Connect to Existing Structure	2	EA	\$1,000.00	\$2,000.00	\$2,400.00	\$4,800.00	\$2,000.00	\$4,000.00
SUBTOTAL ITEMS 31-51					\$1,574,367.00	\$1,760,859.00		\$2,160,139.55	
STRIPING AND SIGNAGE				GPS CIVIL CONSTRUCTION, INC.		HAZEN CONSTRUCTION, LLC		MASCI GENERAL CONTRACTOR, INC.	
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE	UNIT PRICE	EXTENDED PRICE
52	6" Single White	8,503	LF	\$2.00	\$17,006.00	\$2.00	\$17,006.00	\$2.30	\$19,556.90
53	6" Double Yellow	3,744	LF	\$4.00	\$14,976.00	\$4.00	\$14,976.00	\$2.75	\$10,296.00
54	24" White Stop Bar	107	LF	\$13.00	\$1,391.00	\$13.00	\$1,391.00	\$11.95	\$1,278.65
55	12" White Crosswalk	431	LF	\$7.00	\$3,017.00	\$7.00	\$3,017.00	\$6.48	\$2,792.88
56	Turn Lane Arrow Template	1	EA	\$152.00	\$152.00	\$155.00	\$155.00	\$200.00	\$200.00
57	Remove Existing Sign/Post	6	EA	\$84.00	\$504.00	\$85.00	\$510.00	\$100.00	\$600.00
58	Furnish & Install Sign/Post	22	EA	\$703.00	\$15,466.00	\$725.00	\$15,950.00	\$650.00	\$14,300.00
59	Mailbox Remove/Relocate	9	EA	\$133.00	\$1,197.00	\$300.00	\$2,700.00	\$100.00	\$900.00
SUBTOTAL ITEMS 52-59					\$53,709.00	\$55,705.00		\$49,924.43	
TOTAL PRICE:					\$2,870,815.35	\$3,133,468.00		\$3,753,195.95	



CITY OF PORT ORANGE

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

ADDENDUM # 1

May 17, 2024

ITB #24-13 JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS

To All Bidders:

The following changes, clarifications and additions are hereby made part of the bidding and specifications for the above referenced project dated April 26, 2024 and prepared by the City of Port Orange Purchasing Division as fully and completely as if the same were fully set forth therein. It is the sole responsibility of bidder to confirm that all addenda have been received prior to submitting bid and acknowledge such in the bid documents.

REVISED (ATTACHMENT1) SCHEDULE OF UNIT PRICING

Bidders are advised they must complete **REVISED (Attachment1) Schedule of Unit Pricing**. If Bidder does not complete and include with bid submittal **REVISED (Attachment1) Schedule of Unit Pricing**, their bid will be deemed non-responsive. **REVISED (Attachment1) Schedule of Unit Pricing** is posted as a separate document on DemandStar at www.demandstar.com and the City of Port Orange Purchasing Web page at <https://www.port-orange.org/bids.aspx>.

A. REVISIONS:

None

B. CHANGES TO THE ITB:

None

C. CLARIFICATIONS:

None

D. QUESTIONS AND ANSWERS

Question #1: What is the Engineer Estimate ?

ANSWER: \$3,400,000

Question #2: Relocate existing utility pole is listed on Bid Form as pay item #8. Plans indicate relocate is to be "BY UAO (Utility/Agency Owner)"?

ANSWER: Pay item #8 is for the contractor's cost to assist and coordinate with FPL for the relocation of the utility poles.

Question #3: Retaining wall with handrail is listed on Bid Form as pay item #30 and no details are shown on drawings. Sheet C-12 states that proposed retaining wall with handrail is "BY OTHERS"?

ANSWER: Please disregard the "BY OTHERS". Retaining wall is to be per FDOT Index #400-011 SCHEME 1 with handrail per FDOT Index #515-070.

Question #4: Is this project federally funded? If so, is project subject to buy America or buy American?

ANSWER: This project does have some Federal Funding (CDBG) and is subject to Build America, Buy America (BABAA) requirements. Please refer to Section 6, Compliance with Other Federal Standards.

Question #5: Storm structure ST-32 (48" manhole) cannot be installed as flow of (2) pipes 19" x 30" ERCP converge into the same manhole perpendicular to each other. The right size should be 72". Can a pay item for 72" manhole be added to bid form?

ANSWER: The REVISED (ATTACHMENT1) SCHEDULE OF UNIT PRICING has been updated to include the following changes:

- 1) Bid Item 42a (72" Storm Manhole) for Storm Structure ST-32 has been added.
 - 2) Bid Item 41 (48" Storm Manhole) Estimated Quantity has been reduced from 3 to 2.
- Please see REVISED (ATTACHMENT1) SCHEDULE OF UNIT PRICING posted as a separate document on DemandStar and the City of Port Orange Purchasing web page.

Question #6: What type of grate is required on the storm structures? Traffic or non-traffic rated? Steel or cast iron?

ANSWER: Grates for the Ditch Bottom Inlets per FDOT Index# 425-052 shall be traffic rated cast iron grates.

In all other respects, except as specifically stated herein, the subject ITB #24-13 JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS remains the same.

END OF ADDENDUM #1

Joseph Castro
Buyer

jcastro@port-orange.org

This affidavit must be completed and returned by the Awarded Bidder, upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT

EXHIBIT CONTRACT # _____

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

OR

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

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

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

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

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

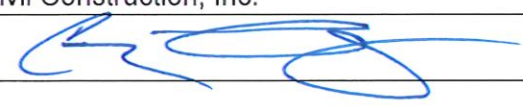
A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

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

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

Name of Contractor: GPS Civil Construction, Inc.

Signature of Owner/Officer: 

Title: President Date: 6/5/2024

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

AFFIDAVIT REGARDING WORKERS' COMPENSATION

State of Florida

County of Volusia

I, Greg Schlaffer (GPS Civil Construction, Inc), being duly sworn according to law, deposes and says (it, he, she, they) have accepted the Workers' Compensation laws of the State of Florida, with its supplements and amendments and has insured (its, his, her, their) liability there under accordance with the terms of sail Laws with the FFVA Mutual Company, under the terms of Policy Number WC840-0810993-2024A for a period from March 1st, 2024 to March 1st, 2025.

WITNESS:

By: Tiffany Canup

Name: Tiffany Canup

CONTRACTOR:

Company: GPS Civil Construction, Inc.

By: Greg Schlaffer

Name/Title: Greg Schlaffer, President

Sworn to/Affirmed and subscribed before me this 5th day of June, 2024, by Greg Schlaffer, who is personally known to me or who produced _____ as identification.

Caty Hannas
NOTARY PUBLIC - STATE OF Florida

Type or Print Name: Caty Hannas

Commission No.: _____

Commission Expires: 4/27/26

(Seal)



CITY OF PORT ORANGE, FLORIDA

INVITATION TO BID ITB #24-13 JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS



City of Port Orange Purchasing Division
Prepared by: Joseph Castro
Release Date: April 26, 2024

Bid Due Date & Time: May 24, 2024 @ 2:30 PM EST

City of Port Orange, Florida
1000 City Center Circle, Port Orange, FL 32129
(386) 506-5717
purchdiv@port-orange.org;
www.port-orange.org



Legal Notice to Bidders

ITB #24-13

JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS

Notice is hereby given that the City of Port Orange is soliciting bids for ITB #24-13 Jackson Street & Oak Street Drainage Improvements. Bids will be accepted in the City Clerk's office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 PM Eastern Standard Time (EST) on May 24, 2024** which may be amended by addendum issued by the City. All untimely bids will not be considered and will be returned to the Bidder unopened. All bids will be evaluated to ensure they contain all required forms in order to deem the Bidder responsive or non-responsive. **Bids will be opened and read aloud at 2:30 PM EST in Council Chambers.**

There will be a Non-Mandatory Pre-Bid Conference for the project at **10:00 AM EST on May 3, 2024** at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, FL 32129. All attendees to the Pre-Bid Conference must sign in. The representative of each Bidder shall be an authorized employee of the Bidder and **MUST** sign in accordingly. Bidders are urged to obtain bid documents and familiarize themselves with the documents prior to the Pre-Bid Conference.

A Bid Guarantee in the form of a Bid Bond executed by the Bidder and an acceptable surety or a certified check or bank draft payable to the City of Port Orange, Florida in an amount equal to five percent (5%) of the proposed bid must be submitted with each bid. If awarded, the Bidder must also be able to obtain both payment and performance bonds equal to one-hundred-percent (100%) of project value from a surety company licensed in Florida and must submit proof of their present bonding capacity with their submitted bid package in the form of a current (not older than 3 months) letter from Bidder's bonding agent. Bidder's failure to include the bonding capacity letter with bid package may result in rejection of Bidder's submittal.

DESCRIPTION: *Pipe the existing drainage ditches on the west side of Jackson Street (between Dunlawton Ave and Canal View Blvd) and the south side of Oak Street (between Jackson Street and Dunlawton Ave), milling and resurfacing of Jackson and Oak Streets, and adding new sidewalks to the west side of Jackson Street from Oak Street to Canal View Blvd and on the north side of Oak Street from Jackson Street to Dunlawton Ave.*

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

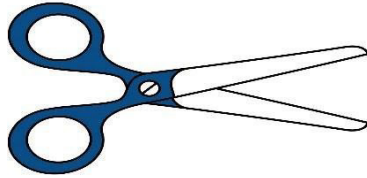
All bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all bids will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 and at www.municode.com.

Copies of the bid documents, requirements, scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from the City of Port Orange Purchasing web page at www.port-orange.org/bids.aspx and DemandStar via their website at www.demandstar.com.

All questions shall be directed **in writing** to Joseph Castro, Buyer jcastro@port-orange.org and purchdiv@port-orange.org and reference "Questions on ITB #24-13 Jackson Street & Oak Street Drainage Improvements" in the subject line. Last day for questions will be **May 10, 2024 by 5:00 PM EST**.

The Cone of Silence begins with the issuance of the solicitation document and continues until City Council meets to make a final decision on an award. During this time Bidders, suppliers, contractors and sub-contractors are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City agents, or elected officials. Any Bidder who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation. While the Cone of Silence is in effect, all communications from potential Bidders, suppliers, contractors and sub-contractors must be directed to the Purchasing Division@purchdiv@port-orange.org.

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



SEALED BID - DO NOT OPEN

SEALED BID NO.: ITB #24-13

BID TITLE: Jackson Street & Oak Street Drainage Improvements

DUE DATE/TIME: MAY 24, 2024 AT 2:30 PM EST

SUBMITTED BY: _____
(Name of Company)

BIDDER'S ADDRESS: _____

DELIVER TO: CITY OF PORT ORANGE CITY CLERK'S OFFICE
ATTN: JOSEPH CASTRO, BUYER
PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129

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

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SECTION 1 – PURPOSE AND OVERVIEW

The purpose of this Invitation to Bid (ITB) is to solicit competitive sealed bids from Firms or Companies (Bidders) for construction of stormwater drainage on Jackson Street and Oak Street as required.

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

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

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SECTION 2 – INSTRUCTIONS TO BIDDERS

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

TIMELINE (Eastern Standard Time):

The City reserves the right to alter dates as needed.

DESCRIPTION	DATE
Date of Distribution	April 26, 2024
Non-Mandatory Pre-Bid Conference	May 3, 2024 10:00AM
Deadline for Questions	May 10, 2024 5:00PM
Addendum Posting (If needed)	May 17, 2024 5:00PM
Bids Due	May 24, 2024 2:30PM
City Council Meeting for Approval of Recommendation of Award	To Be Determined

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

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

Sealed bids must be delivered no later than the date and time listed in the Timeline above. All times referenced are local time. Bids shall be sealed and Bidders shall clearly indicate on the outside of their bid the following:

- Invitation to Bid (ITB) Number and Title
- Date of Opening
- Name of Bidder
- Address of Bidder

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

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

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

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

PRE-BID CONFERENCE

There will be a Non-Mandatory Pre-Bid Conference on the date and time referenced in the Timeline above at City Hall, Council Chambers (1st Floor), 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the Non-Mandatory Pre-Bid Conference MUST sign in. The representative of each Bidder shall be an authorized employee of the Bidder and must sign in accordingly.

QUESTIONS REGARDING THIS ITB

All questions shall reference "ITB #24-13 Jackson Street & Oak Street Drainage Improvements" in the subject line. All questions concerning this ITB shall be submitted in writing no later than the date and time referenced in the Timeline above to:

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

ADDENDA

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the bid due date. Bidders should not rely on any representations, statements or explanations other than those made in this ITB or in any addendum to this ITB. Where there appears to be a conflict between the ITB and any addenda issued, the last addendum issued will prevail. The Bidder should verify prior to submitting a bid that all addenda have been received. Bidders should acknowledge the correct number of addenda received as part of their bids. All addenda will be published on the City Purchasing web page at www.port-orange.org/bids.aspx and the DemandStar website at www.demandstar.com.

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

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

CLARIFICATIONS

It is the Bidder's responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this ITB. Lack of understanding and/or misinterpretation of any portions of this ITB shall not be cause for withdrawal of your bid after opening or for subsequent protest of award.

MINIMUM QUALIFICATIONS

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

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

NO LOBBYING

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

SCHEDULE OF UNIT PRICING

Schedule of Unit Pricing is to be completed as directed and without modification and returned as part of the ITB submittal prior to the ITB deadline for submission. Failure to fill out the Schedule of Unit Pricing as directed and without modification may negatively affect the evaluation of your bid.

EXCEPTIONS TO SPECIFICATIONS

If taking exception to any portion of the ITB specifications, the Bidder must indicate those exceptions as stated on the Bidder's Acknowledgement Form (7.2).

BID SUBMISSION AND WITHDRAWAL

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

CORRECTION OF BIDS

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

WITHDRAWAL OF BIDS

NO bid shall be withdrawn for a period of one-hundred-twenty (120) days subsequent to the bid opening without the consent of the City of Port Orange. Negligence on the part of the Bidder in preparing their bid confers no right of withdrawal or modification after the bid has been opened at the appointed time and place by the City of Port Orange. Any such withdrawn bid shall not be resubmitted.

OPENING OF BIDS

Bids will be received until the date and time stated in this ITB and will be publicly opened and read at the place, time and date stated. The City bears no responsibility for the premature opening of a bid not properly addressed and identified.

LITIGATION HISTORY

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

DEBARMENT HISTORY

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

REJECTION OF BIDS

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

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

- (a) Failure to update the information on file including address, product, service or business descriptions.
- (b) Failure to perform according to contract provisions.
- (c) Conviction in a court of law of any criminal offense in connection with the conducting of business.
- (d) Evidence of a violation of any federal or state antitrust law based on the submission of bids or proposals, or the awarding of contracts.

- (e) Evidence that the Bidder has attempted to give a City employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the City's purchasing activity.
- (f) Other reasons deemed appropriate by the City.

OWNERSHIP OF DOCUMENTS

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

AMERICANS WITH DISABILITIES ACT (ADA)

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

REQUIRED DOCUMENTS FOR AWARDED BIDDER

The awarded Bidder shall return all the required post-award documents within 10 days after the issuance of the Notice of Intent to Award in order to execute the contract.

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SECTION 3 – SCOPE OF WORK

Please refer to Attachment 2 Jackson and Oak St. Improvements Bid Set documents on the City's webpage@ www.port-orange.org/bids.aspx and DemandStar@www.demandstar.com.

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SECTION 4 – STANDARD PURCHASE DEFINITIONS

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

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

26. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the “driver of change” and seeks alternatives/options.
27. **Lowest Responsible Bid** means the responsive bid meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.
28. **Lowest Responsible Bidder** means the Bidder submitting lowest responsible bid.
29. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).
30. **Negotiator** is a member of the negotiation team.
31. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
33. **DemandStar** is the official online repository for all City competitive solicitations.
34. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
35. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Bidders/Proposers to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
36. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
37. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
38. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment practice.
39. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
40. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Proposer to perform the resultant Contract.
41. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City’s standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder’s authority to deliver and invoice the City for Goods or Services specified, and the City’s commitment to accept the Goods or Services for an agreed upon price.
42. **Request for Proposal (RFP)** means a formal request to prospective proposers requesting qualifications of the proposer and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
43. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective proposers requesting statements of qualifications pursuant to Florida Statute 287.055 “Consultant’s Competitive Negotiation Act” which has been advertised for Statement in a newspaper.
44. **Respondent** means an entity that has (or will, i.e. “prospective respondents”) submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.

45. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.
46. **Responsible (Bidder)** is a Bidder who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
47. **Responsive (Bidder)** is a Bidder that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
48. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.
49. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a Bidder must execute in terms of delivering specific commodities or in performance of contractual services.
50. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
51. **Solicitation** means a formal request, as applicable, for prospective Bidders/Proposers to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.
52. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.
53. **Stakeholder** means an individual, who is not likely to become a supplier, who has an interest in the commodities/contractual services needed.
54. **Subcontractor** means a person, firm or entity providing goods or services to a Bidder/Proposer to be used in the performance of the Bidder/Proposer's obligations under the Contract.
55. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.
56. **Unbalanced Bid** means a bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.

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SECTION 5 – GENERAL TERMS AND CONDITIONS

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

1. **ACCEPTANCE BY CITY**

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

2. **ADDENDA**

When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Bidders should acknowledge all addenda by completing Form 7.3 Addendum and Change Order Procedure Acknowledgement and include it in the returned response package. Failure to acknowledge the correct number of addenda issued may result in rejection of the response. It is the responsibility of the Bidder to ensure all addenda have been reviewed prior to submitting a bid. All addenda shall be posted by the City on DemandStar at www.demandstar.com and the City of Port Orange Purchasing web page at <https://www.port-orange.org/bids.aspx>. The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the solicitation response due date. Bidders should not rely on any representations, statements or explanations other than those made in this solicitation or in any addendum to the solicitation. Where there appears to be a conflict between the solicitation and any addenda issued, the last addendum issued shall prevail.

3. **ADDITIONAL GOODS**

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

4. **ANTI-COLLUSION STATEMENT**

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

5. **APPLICABLE LAWS**

In connection with the furnishing of supplies or performance of work under the contract, the Bidder agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other

applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.

6. **ASSIGNMENT**

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

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

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

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

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

8. **AWARDS**

Recommendation for award will be considered by the City of Port Orange City Council at the earliest possible regular meeting subsequent to the evaluation process. This ITB is issued in accordance with and shall be governed by the provisions of the City's Purchasing Manual. The City of Port Orange City Council reserves the right to make award(s) by individual sections, groups, all or none, or a combination thereof, with one or more Bidders; to reject any and all proposals, or to waive any informality or technicality in proposals received as deemed to be in the best interest of the City. The City does not award publicly funded contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act, 8 United States Code §1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, proposal or quote for purchase of services and goods by the City of Port Orange.

9. **AWARD AND EXECUTION OF CONTRACT**

When a bid received has been determined to be satisfactory, a contract will be awarded, or Purchase Order issued to the lowest responsive and responsible Bidder within the time designated in the contract documents. The Bidder(s) to whom the award is made shall execute the contract(s) and return it, together with the properly executed bonds and insurance certificates to the City within the time specified.

10. **BID RETURNS**

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

11. **BID PROTEST**

Any person who is adversely affected by the City's decision or intended decision shall file with the City Purchasing Manager a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, statements, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-

hour time established herein. The formal written protest shall be filed with the Purchasing Manager in writing within ten (10) days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings. Upon receipt of the formal written protest that has been timely filed, the City shall stop the solicitation or contract award process until the subject of the protest is resolved by final City action. However, the City may continue the solicitation or award process, provided the City Manager sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties. The policy this City has established is as follows:

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

12. **BID TABULATION**

Bidders who wish to receive a copy of the bid tabulation may obtain it via DemandStar at www.demandstar.com or on the City Purchasing web page at www.port-orange.org/bids.aspx.

13. **BIDDER'S PRODUCT OR SERVICES**

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

- a. If the Bidder is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.
- b. The Bidder shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the Bidder.
- c. In furnishing the service or product to the City, the Bidder shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, proposal or quote.

14. **BONDS**

If this solicitation requires submission of bid guarantee and payment and performance bonds, there will be a separate section explaining those requirements. When the Purchasing Manager deems it necessary, bid bonds/deposits shall be prescribed and are advertised in the public notices inviting bids. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the bid amount.

Payment and Performance Bonds requested for construction projects shall be in an amount equal to one hundred percent (100%) of the total contract amount which will be recorded by the City, at the contractor's sole cost and expense, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirements of Florida law. The City will bill the cost of recording to the contractor. Unsuccessful respondents are entitled to the return of their bid bond. A successful respondent shall forfeit any surety required by the Purchasing Manager upon failure of the respondent to enter into a contract within the time specified after the award of bid.

15. **CERTIFICATE OF INSURANCE**

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

16. **CHANGE ORDERS**

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

17. **CHANGE ORDER REQUEST NOTIFICATION**

The awarded Bidder is responsible for giving the City of Port Orange, prior to the contract expiration date, at least forty-five (45) calendar days of advance notice for any anticipated changes in price greater than \$25,000, and any changes in time and/or scope of the awarded contract. The Bidder shall not continue to provide services past the contract expiration date unless approved by a written Change Order Notice from the City.

18. **CLEAN UP**

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

19. **CONDUCT OF BIDDERS**

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

20. **CONE OF SILENCE**

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

Exceptions to the Cone of Silence:

- Written communication directed to the Procurement Officer;
- All communications occurring at Pre-Proposal Conferences;
- Oral presentations before publicly noticed committee meetings;
- Procurement of goods and services for Emergency situations; and

- Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.

21. **CONFLICT OF INTEREST**

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

22. **CONFLICT OF INSTRUCTIONS**

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

23. **CONTRACT OBLIGATION**

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

24. **CONTRACT RENEWALS**

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

25. **COPYRIGHT AND PATENT RIGHTS**

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

26. **COST INCURRED BY BIDDER**

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

27. **DAMAGE**

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

28. **DEBARMENT HISTORY**

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

29. **DEFAULT PROVISIONS**

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

30. **DELIVERY OF GOODS/SERVICES**

All materials are to be delivered F.O.B.; City of Port Orange designated facility. Delivery dates pertaining to this invitation must be clearly stated in the bid form where required and include weekends and

holidays. Failure to comply with this requirement may be a cause for disqualification of bid. Unless otherwise specified, delivery at the earliest date is required. The Bidder shall clearly state in the response the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases "as required," "as soon as possible" or "prompt" may result in disqualification of the bid. Delivery time will be a factor for any orders placed as a result of this response. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the Bidder in default. Upon approval of a contract, the Bidder is obligated to deliver the goods to the destination specified in the solicitation or the purchase order and bears the risk of loss until delivery. If this solicitation or purchase order does not contain delivery instructions, Bidder shall request instructions in writing from the Purchasing Manager. If the delivery instructions contained in the solicitation allocate delivery costs and risks in a manner contrary to this section, the provisions of this competitive solicitation shall prevail. When delivery is not met as provided for in the contract, the Purchasing Division reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the Bidder, in addition to any other damages, direct or consequential, incurred by the City as a result thereof. In addition, failure of the Bidder to meet the contract delivery dates will be cause for removal of the Bidder from the City's list of eligible Bidders/proposers as determined by the Purchasing Division.

31. **DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER**

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

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

32. **DISCLOSURE OF CONFLICTS**

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

33. **DISQUALIFICATION OF BIDDER**

The Purchasing Manager shall maintain a current listing of qualified Bidders. The Purchasing Manager may, from time to time, remove any Bidder's name from the list of qualified Bidders. Normally the removal of a Bidder from the Bidder list is done after nonresponse from that Bidder for three (3) consecutive solicitations. Such action may also arise out of breach of contract, default, or irregular business practice, based on the Finance Director and City Attorney's recommendation. Any or all responses may be rejected if the City believes that collusion exists among the Bidders. Responses in which the prices are obviously

unbalanced may be rejected. If multiple responses are submitted by a Bidder and after the responses are opened one of the responses is withdrawn, the result will be that all of the responses submitted by that Bidder will be withdrawn; however, nothing herein prohibits a Bidder from submitting multiple responses for different products or services.

34. **EVALUATION**

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

35. **EXCEPTIONS TO SPECIFICATIONS**

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

36. **E-VERIFY**

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

37. **FACILITIES**

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

38. **FAILURE TO RESPOND**

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

39. **FINANCIAL STABILITY**

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

40. **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.

41. **FOREIGN COUNTRIES OF CONCERN**

A governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if: a) the entity is owned by the government of a foreign country of concern to include the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern; b) the government of a foreign country of concern has a controlling interest in the entity; or c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

42. **GOVERNING FORMS**

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

43. **GOVERNING LAW**

Bidders shall comply with all applicable federal, state and local laws and regulations. All responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com. The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services. Every acquisition equal to or greater than \$35,000.00 must have a signed, notarized "Public Entity Crimes Form" to comply with Section 287.133(3)(a), Florida Statutes. Also required is the "Drug-Free Preference Form" to comply with Section 287.087, Florida Statutes. Each form is included in the Solicitation.

44. **GRANT FUNDING**

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

45. **HIPAA COMPLIANCE**

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

46. **IDENTICAL TIE BIDS**

If there are tie bids, meaning everything except the information relating to the submitting firm is the same, the following methods shall be used in the order below to break the tie:

- If one has or had a contract with the City and performance is or was satisfactory. If performance of a tie Bidder who has or had a contract with the City and performance is or was not satisfactory, the other tie-Bidder is awarded.
- Drug free workplace policy in place.

47. **INDEMNIFICATION/HOLD HARMLESS**

(a) Bidder shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Bidder, 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 the Bidder, his/its agents, servants and employees. Bidder 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 Bidder's work and any injury, loss, damage, death or property damage, Bidder 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 Bidder 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

Bidder as long as the claims made could be causally connected to Bidder as reasonable determined by the City.

48. **INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful Bidder as an independent contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful Bidder under this contract and that the successful Bidder has no authority to bind the City. The Bidder represents itself to be an independent contractor offering such services to the public and shall not represent himself or his employees to be an employee of the City. Therefore, the Bidder shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney's fees); and damage of any kind related to such matters. The Bidder shall further understand that the City cannot save and hold harmless and or indemnify the Bidder and/or the Bidder's employees against any liability incurred or arising as a result of any activity of the Bidder or any activity of the Bidder's employees performed in connection with the contract.

49. **INSPECTIONS AND TESTING**

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

50. **INSURANCE CANCELLATION**

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

51. **INSURANCE REQUIREMENTS**

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

IMPORTANT: The City does not accept Workers' Compensation Exemptions. Bidder may use leased employees if the Bidder 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 Bidder 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. Bidder 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, non-renewal 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 of prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages. Bidder 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 Bidder is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Bidder to

ensure the subcontractors maintain the required coverage, shall not relieve the Bidder of any contractual responsibility, obligation or liability. The City reserves the right to increase the insurance coverage requirement as determined for higher risk contracts. The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with and does not waive the insurance required by this. Should at any time the Bidder 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 Bidder for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the contract.

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Standard Insurance Requirements									
Required	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 Form.	<table><tr><td><u>Contract Amount</u></td><td><u>Limits</u></td></tr><tr><td>Up to \$10 million</td><td>Statutory/\$500,000</td></tr><tr><td>\$10 - \$20 million</td><td>Statutory/\$1,000,000</td></tr></table> Contracts over \$20 million to be determined by the City	<u>Contract Amount</u>	<u>Limits</u>	Up to \$10 million	Statutory/\$500,000	\$10 - \$20 million	Statutory/\$1,000,000	- If contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' coverage required. - If vessels involved, Jones Act coverage with limits of \$500,000 required
<u>Contract Amount</u>	<u>Limits</u>								
Up to \$10 million	Statutory/\$500,000								
\$10 - \$20 million	Statutory/\$1,000,000								
☒	Comprehensive General Liability (including completed operations and contractual liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage: \$1,000,000 each occurrence \$1,000,000 aggregate	When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.						
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles	<u>Limits:</u> Auto Liability Bodily Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate							
Additional Insurance Requirements									
☐	Property Insurance Builders Risk <u>Additional Coverage:</u>	<u>Limits:</u> Buildings – completed value of contract "All Risk" coverage on latest ISO for or its equivalent. Permission grated to occupy. Owner named as insured AIMA	If agreement required handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.						
☐	Installation Floater (IT)	<u>Limits:</u> Coverage – To Be Determined							
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000							
☐	Professional Liability/Errors and Omissions	<u>Limits:</u> Coverage - \$1,000,000							
☐	Umbrella Policy	<u>Limits:</u> Coverage – To Be Determined							
☐	Payment and Performance Bond required	<u>Limits:</u> Coverage – equal to amount of contract							
	City Manager waives Payment and Performance Bond for work under \$200,000 unless otherwise requested by the Department Head.								
	Unless otherwise required by law, City Manager waives insurance for FOB goods only purchases.								

52. **INVOICES AND PAYMENTS**

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, Port Orange, Florida, 32129 or email to apbilling@port-orange.org. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if contractor offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. If the awarded firm would like to receive payment via ACH, this can be accommodated after the contract is fully executed.

53. **IRREVOCABILITY OF RESPONSES**

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

54. **LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS**

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

55. **LEGAL REQUIREMENTS**

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

56. **LICENSES, PERMITS AND TAXES**

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

57. **LITERATURE (if applicable):**

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

58. **LOCAL PREFERENCE**

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

59. **MAINTENANCE**

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

60. **NAME BRANDS**
Specifications may reference name brands and model numbers. It is not the intent of the City of Port Orange to restrict these bids in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Bidders may offer items of equal stature and the burden of proof of such stature rests with the Bidder, unless otherwise specified by the City. The City of Port Orange shall act as sole judge in determining equality and acceptability of products offered.
61. **NON-DISCRIMINATION**
There shall be no discrimination as to race, color, religion, gender, age, marital status, national origin, ancestry, and physical or mental disability in the operations conducted under this contract. Included as applicable activities by the contractor under this section are the solicitation for or purchase of goods or services, or the subcontracting of work in performance of this contract.
62. **NON-EXCLUSIVITY OF CONTRACT**
The selected Bidder understands and agrees that any resulting contractual relationship is non-exclusive, and the City of Port Orange reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the City of Port Orange.
63. **NON-PERFORMANCE**
Failure to meet the expected quality of workmanship, schedule, or other criteria agreed upon, shall be considered a default. In case of default, the City may procure the required services from other sources and hold the contractor responsible for any excess costs occasioned thereby and may immediately cancel the contract.
64. **NOTICE TO CONTRACTOR**
The employment of unauthorized aliens by any contractor is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.
65. **OPTIONAL CONTRACT USAGE**
As provided in Section 287.042(16), Florida Statutes, State of Florida agencies may purchase from a contract resulting from this solicitation, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.
66. **PATENTS/COPYRIGHTS**
The successful Bidder agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.
67. **PRE-BID CONFERENCE**
The Purchasing Manager shall determine if a pre-bid conference is required and provide the date, time and location in the solicitation legal advertisement and solicitation specifications. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow. Only Bidders attending a mandatory pre-bid conference will be eligible to submit a response. The representative of each Bidder shall be an authorized employee of the Bidder and shall sign in accordingly.
68. **PREPARATION OF RESPONSES**
In preparing responses, the Schedule of Unit Pricing form, the Bid Bond form (when a Bid Bond is required as bid security), Certificate as to Corporate Principal, Public Entity Crimes Statement, Anti- Collusion Statement, and Drug Free Preference Statement must be properly executed in ink. The prescribed Schedule of Unit Prices shall be typewritten or written in ink, or electronically imputed in the blank spaces for each item, with the amounts extended if a unit price bid, and all amounts totaled. The sum of the total bid as calculated from the individual items, Schedule of Unit Prices, shall equal the Total Price. Except as provided below, bids containing substitutions or combinations of alternates will not be considered unless such substitutions or combinations are specifically authorized by the solicitation. The Bidder shall sign his/her name and give his/her business address in the spaces provided therefore. If the submittal is made as a partnership, it shall be signed by all partners; if made by a corporation, it shall be signed in the name of the corporation by one of the officers thereof and shall have affixed the seal of the corporation.

69. **POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES**

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

70. **PRICING**

The Bidder certifies that prices, terms and conditions in the response will be firm for acceptance for a period of one-hundred-twenty (120) days from the date of response opening unless otherwise stated by the City. Responses may not be withdrawn before the expiration of one-hundred-twenty (120) days. Prices shall be firm, with no escalator clauses unless specified by the City. Responses may be withdrawn after one-hundred-twenty (120) days only upon written notification to the City. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Schedule of Unit Pricing form. Prices shall be all inclusive: no price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, the Bidder shall indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid. When submitting bids/proposals based on a lump sum basis, Bidders shall be required to submit a price for each line item listed on the Schedule of Unit Pricing in order to be considered for award.

71. **PRODUCTS/ESTIMATES**

Items included on the bid form represent the needs of various departments within the City. This is in no way to be construed as the entire or complete list of products to be purchased from the resulting contract. There is no anticipated dollar volume for this contract and estimated quantities provided on the Schedule of Unit Pricing are for bidding purposes only and are not guaranteed. Items shall be ordered on an as needed, when needed basis. Exact quantities or estimated quantities cannot be predetermined.

72. **PROPRIETARY INFORMATION**

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

73. **PROTECTION**

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

74. **PUBLIC ENTITY CRIMES**

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

75. **PUBLIC RECORDS COMPLIANCE**

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

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

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-506-5563, cityclerk@port-orange.org, CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA, 32129.

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

76. **PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT**

Section 119.071(1)(c), Florida Statutes: **Any financial statement that an agency requires a prospective Bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law.** This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that Bidders will not be able to procure a copy of their competitors' bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a Bidder, or where a Bidder answers questions. In other words, neither Bidders, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing Bidders, but the new law limits public attendance to portions of such meetings.

77. **PURCHASE ORDER AND DELIVERY**

The successful Bidder shall not deliver products or provide services without a City of Port Orange purchase order, signed by an authorized agent of the City of Port Orange. The fastest, most reasonable delivery time shall be indicated by the Bidder. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped F.O.B. INSIDE DELIVERY unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the

appropriate room or place designated by the using department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach which shall be rectified prior to expiration of the time for performance. Failure to rectify within the performance period shall be considered cause to reject future deliveries and cancellation of the contract by City of Port Orange without prejudice to other remedies provided by law. Where delivery times are critical, the City of Port Orange reserves the right to award accordingly.

78. **QUALITY**

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest-grade workmanship unless otherwise specified in this bid by the City.

79. **QUESTIONS/INTERPRETATIONS**

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

80. **RECORDS/AUDIT**

- (a) The contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the contractor involving transactions related to this contract.
- (b) The contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such contractor involved in transactions related to such subcontract, or this contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.
- (c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

81. **RECYCLED MATERIALS**

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

82. **REJECTING OF RESPONSES/RE-BIDDING**

The City reserves the right to accept or reject any or all responses or parts of responses, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified. The City Council shall have the authority to reject any and all responses. If the lowest and best response exceeds the budgeted amount and the City Council does not make additional funds available, the Purchasing Division with the help of the department head shall have the authority to re-advertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available. (Code 1981, § 8-28.)

83. **REQUEST FOR ADDITIONAL INFORMATION**

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

84. **REVIEW OF RESPONSES/SUBMISSIONS**

Each response will be reviewed to determine if the response is responsive to the submission requirements outlined in the solicitation. A responsive response is one which follows the requirements of the

solicitation, includes all required documentation, is submitted in the format outlined in the solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your response non-responsive.

85. **RIGHT OF WITHDRAWAL**

A bid, proposal, statement, or reply may not be withdrawn before the expiration of one-hundred-twenty (120) days from the response due date.

86. **RIGHTS TO SOLICITATION SUBMITTED MATERIAL**

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

87. **RULES, REGULATIONS AND LICENSING REQUIREMENT**

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

88. **SAMPLES**

Samples, when requested, must be furnished at, or before the bid opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at the Bidder's request, be returned within thirty (30) days after bid award at the Bidder's expense. If requested by the City, samples and/or inspection of like items are to be made available in the central Florida area.

89. **SCRUTINIZED COMPANIES LIST**

The Contractor shall refrain from any of the prohibited business activities with the Governments of Sudan and Iran as described in section 215.473, Florida Statutes. Pursuant to section 287.135(5), Florida Statutes, the City may immediately terminate this Contract for cause if the Contractor is found to have submitted a false certification or if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations with Cuba or Syria during the term of the contract. The Contractor shall provide a completed Form 7.10 Scrutinized Company Certification, certifying the Contractor's compliance with this section, prior to the execution of this Agreement.

90. **SEPARATION AND DISTRUBUTION**

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

91. **SEVERABILITY**

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

92. **SIGNATURE REQUIRED**

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

93. **SIGNED RESPONSE CONSIDERED AN OFFER**

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

94. **SILENCE OF SPECIFICATIONS**

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item bid.

95. **SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS**

Pursuant to Florida Statute 287.05701, the governing body of a county, municipality, special district, or any other political subdivision of the state may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is responsible. Furthermore, an awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

96. **SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES**

Unless otherwise specified, Bidders shall use the solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the Bidder's authorized representative. Responses containing erasures or corrections must be initialed by the Bidder in ink. Responses shall be submitted by mail or hand delivery only. No response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: City Clerk, City of Port Orange, Attn: Purchasing Division, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 p.m. on the date indicated in the solicitation documents or as addenda issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All late responses will be returned to the Bidder and will not be opened. Bids (Envelope/Package) shall contain one (1) original and one (1) digital (CD or flash drive) version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/ package shall be clearly marked on the outside to include the bid project name, bid number, name and address of the Bidder.

97. **STATE LICENSING REQUIREMENTS**

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

98. **SUBCONTRACTING**

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

99. **SUPPLEMENTAL MATERIALS**

Bidders are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements that the Bidder wishes to include as a condition of the bid must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

100. **TAXES**

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

101. **TERM CONTRACTS**

Acceptance by the City of Port Orange of Bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the City. If the contract is intended to cover a specific time-period, the term will be given in the bid specifications.

102. **TERMINATION**

a) **For Convenience.** The City of Port Orange reserves the right to terminate the 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. Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City Manager or his designee, postmarked or delivered to the Contractor at least thirty (30) days prior to the date of termination, and specifically setting forth the effective date of termination.

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

c) **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 Contractor. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination.

103. **TITLE TRANSFER**

Title and Risk of Loss of goods shall not pass to City of Port Orange until City of Port Orange actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. The contractor is advised to consult the using department for instructions. The place of delivery shall be specified in the bid specification and/or on the purchase order as a "Deliver To:" address.

104. **UNBALANCED BID**

A mathematically unbalanced bid is where a Bidder places a high price on some items and a low price on other items in a unit price contract. A bid is materially unbalanced when there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the City. Unbalanced bids will be rejected if the prices are deemed materially unbalanced.

105. **USE OF SOLICITATION FORMS**

The Bidder shall complete the appropriate solicitation form(s) included in the solicitation. All blanks on the solicitation forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A." Supplemental information may be attached to the solicitation forms. Failure to fully complete the appropriate solicitation forms may result in disqualification of the response. If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional solicitation form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated. The signature of the Authorized Person or

entity must be that of an officer, partner or a sole proprietor of the entity making the response. The original response, and each copy submitted shall contain an original signature on the Bidder's Acknowledgement Form contained in each solicitation.

106. **VARIANCES**

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

107. **WAIVER OF IRREGULARITIES**

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

108. **WARRANTIES**

Bidders shall furnish all data pertinent to warranties or guarantees which may apply to items in the response. Bidders may not limit or exclude any implied warranties. The Bidder warrants that products sold to the City shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, City of Port Orange may return the product for correction or replacement at the Bidder's expense. If the Bidder fails to make the appropriate correction within a reasonable time, City of Port Orange may correct at the Bidder's expense.

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SECTION 6 – SPECIAL REQUIREMENTS/INSTRUCTIONS

PERIOD OF OFFER VALIDITY:

Bids offered in this ITB must remain firm for a period of one-hundred-twenty (120) days from the ITB opening date.

AWARD RECOMMENDATION:

It is the intent of the City to award a contract to the lowest responsive and responsible Bidder as outlined in Section 3 and (Attachment 1) Schedule of Unit Pricing.

CONTRACT TERM:

Three hundred thirty (330) days from issuance of Notice to Proceed from the City for substantial completion and an additional thirty (30) days for final completion, not to exceed a total of three hundred sixty (360) days for the term of the contract.

ELIGIBILITY OF BIDDER:

To be eligible to respond to this ITB, the Bidders must demonstrate proof of prior experience working with the services described in this ITB. Please provide eligibility experience with your submittal by completing Form 7.7 Statement of Bidder's Qualifications in its entirety.

PROOF OF E-VERIFY REGISTRATION

Bidders who do not include proof of E-Verify registration with form 7.12 City of Port Orange Contractor E-Verify Affidavit may be deemed non-responsive. Include printed pages from the E-Verify website showing company name and E-Verify registration number.

LICENSES AND PERMITS

Contractor is responsible for all applicable local and state licenses, permits and fees.

PAYMENT & PERFORMANCE BONDS

The Bidder must be able to obtain payment and performance bonds from a surety company licensed in Florida and must submit proof of their present bonding capacity with their bid submittal package in the form of a current (not older than 3 months) letter from Bidder's bonding agent. Bidder's bonding capacity must be equal to or greater than 100% of the total amount bid. Bidders who do not include their present bonding capacity letter in their submittal package may be deemed non-responsive.

Upon award, the successful Bidder will be required to furnish and pay for a Payment and Performance Bond equal to one hundred percent (100%) of the contract amount to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirement of Florida law. The City will bill the cost of recording to the contractor.

BID BONDS:

A certified check or bank draft, payable to the City of Port Orange, FL or a satisfactory bid bond executed by the Bidder and an acceptable surety in the amount equal to (5%) of the total amount of the bid shall be submitted with each bid. If submitting a bid bond in lieu of a certified check or bank draft, the original recorded bid bond must be included with bid submittal. If submitting a bid bond in lieu of a certified check or bank draft, Bidders who do not include their original recorded bid bond with their submittal may be deemed non-responsive.

NOTICE:

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

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 asset 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.

(i) 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.

(ii) 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.

(iii) 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. If applicable per the standard described above, Contractor shall comply with the following provisions from 29 C.F.R. § 5.5(b)(1)-(4), hereinbelow, and furthermore, Contractor shall include these provisions, in full, into any subcontracts.

(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

- (1) 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.
- (2) 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.
- (3) 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

- (1) 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.
- (2) 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.
- (3) 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. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

- (1) 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).
- (2) 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.
- (3) **This certification, included in the solicitation referenced hereinabove and made a part hereof by this reference**, 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.

- (4) 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.

Required Certification: If applicable, the Contractor must sign and submit with this Agreement the following certification, *APPENDIX A, 44 C.F.R. PART 18 – Certification Regarding Lobbying*.

(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.

- (1) 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.
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- (2) 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>.
- (3) 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.

(1) *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—

(2) *Prohibitions*.

(i) 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.

(ii) 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.

(3) *Exceptions.*

(i) 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.

(ii) 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.

(4) *Reporting requirement.*

(i) 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.

(ii) 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.

(5) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (5), 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:

(1) 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.

(2) 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.

(3) 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.

(4) 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 hereinabove.

(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. §200.334 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.

(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.

Not all FEMA financial assistance programs are subject to BABAA. Most disaster financial assistance programs are not subject to BABAA requirements, including the Public Assistance (PA), Hazard Mitigation Grant Program (HMGP),

Individual Assistance (IA), and Fire Mitigation Assistance Grant (FMAG) programs.

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.

[Remainder of page left intentionally blank]

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- ___ Form 7.2 – Bidder’s Acknowledgement Form
- ___ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- ___ Form 7.4 – Drug Free Preference Statement
- ___ Form 7.5 – Public Entity Crimes Statement
- ___ Form 7.6 – Anti-Collusion Form
- ___ Form 7.7 – Statement of Bidder’s Qualifications
- ___ Form 7.8 – Professional References for Previous Experience
- ___ Form 7.9 – List of Subcontractors
- ___ Form 7.10 – Scrutinized Companies Certification
- ___ Form 7.11 – Local Business Affidavit of Eligibility
- ___ Form 7.12 – E-Verify Affidavit
- ___ Form 7.13 – Debarment, Suspension and Other Responsibility Matters
- ___ Form 7.14 – Affidavit of Compliance With Section 287.138
- ___ Form 7.15 – No Submittal Response Form
- ___ Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying
- ___ (Attachment 1) – Schedule of Unit Pricing
- ___ Original Recorded Bid Bond
- ___ Current Bonding Capacity Letter (as outlined in Section 6)
- ___ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)
- ___ Submission of one (1) original marked “ORIGINAL” and one (1) digital (flash drive) version in PDF format

BY: _____
Name of Business

Authorized Signature

Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER’S ACKNOWLEDGEMENT FORM

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the ITB at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to one-hundred-twenty (120) days in order to allow the City of Port Orange adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the ITB.

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

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

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

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

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

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

Name of Business

Mailing Address

Authorized Signature

City, State & Zip Code

Printed Name and Title

Telephone Number

Federal Identification No.

E-mail Address

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this

_____ day of _____, 2024, by _____ and who:

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

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

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

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

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

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

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

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

Name of Business

Authorized Signature

Printed Name and Title

STATE OF:_____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this

_____ day of _____, 2024, by _____ and who:

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

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

IDENTICAL TIE BIDS – Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, statements or replies are equal with respect to price, quality and service are received by the City for procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied Bidders have a drug-free workplace program.

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

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

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

Name of Business

Authorized Signature

Printed Name and Title

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

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

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

**FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES
UNDER SECTION 287.133(3)(A), FLORIDA STATUTES**

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

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

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

Name of Business

STATE OF: _____

Authorized Signature

COUNTY OF: _____

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 7.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

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

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

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

NAME OF FIRM: _____

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

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY, STATE AND ZIP CODE: _____

TELEPHONE: _____ FAX: _____

F.E.I.N.: _____

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER’S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

- A. Name of Bidder: _____
- B. Permanent main office address: _____
- C. Date organized: _____
- D. If a corporation, where incorporated: _____
- E. How many years have you been engaged in the business under your present firm or trade name? _____
- F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- G. General character of work performed by your company: _____
- H. Have you ever failed to complete any work awarded to you? If so, where and why? _____
- I. Have you ever defaulted on a contract? If so, where and why? _____
- J. List the more important projects recently completed by your company, stating the approximate cost for each and the month and year completed: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- K. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- L. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- M. Credit currently available: \$ _____
- N. Give bank name, contact name and phone number: _____
- O. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☐Yes ☐No

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals comprising the Statement of Bidder’s Qualifications.

	_____ Name of Business
STATE OF: _____	_____ Authorized Signature
COUNTY OF: _____	_____ Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2024, by _____ and who:

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

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

This document must be completed and returned with your Submittal

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein. **Please provide three (3) current and correct references from clients for similar services. (DO NOT include the City of Port Orange)**

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

This document must be completed and returned with your Submittal.

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE (page 2)

**LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST**

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

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

1. Contact Name: _____

Phone: _____

Current Client: ☐ Yes ☐ No

Number of years of service provided: _____

Description of service: _____

2. Contact Name: _____

Phone: _____

Current Client: ☐ Yes ☐ No

Number of years of service provided: _____

Description of service: _____

3. Contact Name: _____

Phone: _____

Current Client: ☐ Yes ☐ No

Number of years of service provided: _____

Description of service: _____

This document must be completed and returned with your Submittal.

FORM 7.9 – LISTING OF SUBCONTRACTORS

The Bidder proposes that the following subcontractors are qualified to perform the referenced work and have successfully done so on recent projects similar in nature and size. All subcontractors whose work product accounts for 5% or more of the total contract value shall be listed. Upon approval of subcontractors listed, the successful **Bidder shall not substitute subcontractors without approval from the City Representative.** Bidder shall attach additional sheets as necessary.

Subcontractor No. 1

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No**Subcontractor No. 2**

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No**Subcontractor No. 3**

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No**Subcontractor No. 4**

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No**Subcontractor No. 5**

Name: _____

Description of Work: _____

Percent of Contract Price: _____

Previous Experience Together: ☐ Yes ☐ No

This document must be completed and returned with your submittal

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION

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

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, _____, on behalf
(Print Name and Title)

of _____ ("Company"), certify that _____
(Company Name) (Company Name)

does not:

1. Participate in a boycott of Israel; and
2. Is not on the Scrutinized Companies with Boycott Israel List; and
3. Is not on the Scrutinized Companies with Activities in Sudan List; and
4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and
5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The City of Port Orange shall provide notice, in writing, to the Company of the City's determination concerning the false certification. The Company shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Company does not demonstrate that the City's determination of false certification was made in error, then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes prohibits the City from: 1) Contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and 2) Contracting with companies for goods or services over \$1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Company, I hereby certify that the company identified above in the section entitled "Company Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List and is not engaged in business operations in Syria. I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

COMPANY NAME

SIGNATURE

PRINT NAME

TITLE

FORM 7.10 SCRUTINIZED COMPANIES CERTIFICATION (page 2)

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

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

_____, Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

FORM 7.11 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

City of Port Orange

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

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION:

Project# (as applicable): _____

Business Name: _____ Contact Person/Title: _____

Mailing Address: _____ City,State,Zip: _____

Phone Number: _____ Email address: _____

Physical Presence of Business: ☐ Headquarters ☐ Principal Place of Business

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

FEIN (Federal Employer Identification Number): _____

Business Structure: ☐ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship ☐ Other (Specify): _____

****PLEASE ATTACH A VALID BUSINESS TAX RECEIPT OR OTHER SUCH DOCUMENTATION****

ATTESTATION – I understand that:

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

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

Name of Business

STATE OF: _____

Authorized Signature

COUNTY OF: _____

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

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

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.12 – E-VERIFY AFFIDAVIT



CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES

Project Name: _____

Solicitation Number: _____

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

I acknowledge that it is my responsibility to ensure full compliance with Section 448.095, Florida Statutes. I am aware enrollment in the E-Verify system for employers can be done at www.e-verify.gov.

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

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

Print or Type Name, Title

Signature of Affiant

Federal Employer ID Number (FEIN)

E-Verify Number

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2024, by _____ and who:

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

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

FORM 7.13 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY

Matter Primary Covered Transactions

(To be completed by Prime Contractor)

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

Organization Name

Bid Number or Project Name

Name and Title of Authorized Representative

Signature

Date

This document must be completed and returned with your Submittal

FORM 7.14 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

**AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES CONTRACTING WITH
FOREIGN ENTITIES OF CONCERN**

The undersigned (“Affiant”), on behalf of the entity listed below (“Entity”), hereby attests under penalty of perjury as follows:

1. Affiant is the _____ of _____
(Title) (Business Name)
which does business in the State of Florida, hereinafter called the “Entity”.
2. Entity is not owned by the government of a foreign country of concern, as defined in Section 287.138 (1) (c), Florida Statutes.
3. The government of a foreign country of concern does not have a controlling interest in Entity, as defined in Section 287.138 (1)(a), Florida Statutes.
4. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern.
5. Entity is not owned or controlled by the government of a foreign country of concern.
6. For purposes of this affidavit, a foreign country of concern means the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes.

The undersigned is authorized to execute this affidavit on behalf of the Entity.

Date: _____, 20____ Signed: _____

Entity: _____ Name: _____

Title: _____

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2024, by _____ and who:

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

Notary Public, State of Florida at Large:

(seal)

Printed Name/Seal of Notary, Commission and Expiration Date:

My commission expires: _____

This document must be completed and returned with your Submittal

FORM 7.15 – NO SUBMITTAL RESPONSE FORM

If your company will not be submitting a proposal in response to this solicitation, please complete this form and return via e-mail prior to the solicitation due date established within to:

City of Port Orange
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129
purchdiv@port-orange.org

This information will assist the Purchasing Division in the preparation of future solicitations.

Solicitation: ITB #24-13 Jackson Street & Oak Street Drainage Improvements

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a “no response”.

- ☐ Specifications “too tight” or geared toward on brand or manufacturer (please explain below)
- ☐ Insufficient time to respond
- ☐ Specifications unclear (please explain below)
- ☐ We do not offer this product/service or an equivalent
- ☐ Our product schedule does not permit us to perform within stated timeline for the project
- ☐ Unable to meet specifications
- ☐ Unable to meet bond requirements
- ☐ Unable to hold prices firm throughout the term of the contract period
- ☐ Unable to meet insurance requirements
- ☐ Other: _____

Print Name: _____

Signature: _____

Date: _____

Additional Information:

If submitting this form, only this form needs to be returned. It is not necessary to return the entire solicitation package.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name & Title of Contractor's Authorized Official

Date: _____

This document must be completed and returned with your Submittal

(ATTACHMENT 1) - SCHEDULE OF UNIT PRICING



(ATTACHMENT 1) SCHEDULE OF UNIT PRICING ITB #24-13 JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS

NAME OF BUSINESS:					
CONTACT PERSON:					
EMAIL ADDRESS:					
AUTHORIZED SIGNATURE:					
ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK					
Bidder must fill in each cell highlighted in GREEN, leaving no blank cells; return completed, signed form with bid submittal and include on USB/thumb drive.					
SITE PREPARATIONS					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Mobilization	1	LS	\$	\$
2	Survey / As-builts	1	LS	\$	\$
3	Maintenance of Traffic	1	LS	\$	\$
4	Excavation / Grading	1	LS	\$	\$
5	Demo Existing RCP	1	LS	\$	\$
6	Demo Existing Headwall	36	EA	\$	\$
7	Tree/Shrub/Plant Removals/Remediation from Swale	1	LS	\$	\$
8	Relocate Existing Utility Pole	11	EA	\$	\$
9	Open Cut Asphalt Remediation	63	SY	\$	\$
10	Remove/Replace Existing Concrete Driveway	320	SF	\$	\$
11	Water Valve Adjustment	8	EA	\$	\$
12	Sewer Manhole Adjustment	10	EA	\$	\$
13	Storm Manhole Adjustment	1	EA	\$	\$
14	Existing Electric Box Relocated	1	EA	\$	\$
15	Existing PVC Riser Relocated	1	EA	\$	\$
16	Inlet Protection	7	EA	\$	\$
17	Silt Fence	6,729	LF	\$	\$
18	Sod	7,407	SY	\$	\$
SUBTOTAL ITEMS 1-18					\$
ROADWAY SYSTEM					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
19	Asphalt Planing (1")	11,027	SY	\$	\$
20	Friction Course FC-9.5 (1")	639	TN	\$	\$
21	Structural Course SP-12.5 (2")	65	TN	\$	\$
22	Optional Base Group 9 (10")	582	SY	\$	\$
23	Stabilized Subgrade (12")	1,227	SY	\$	\$
24	Type F Concrete Curb	1,936	LF	\$	\$
25	4" Sidewalk	7,102	SF	\$	\$
26	ADA Mats	16	EA	\$	\$
27	Thickened Edge Sidewalk	8,525	SF	\$	\$
28	Concrete Driveway	2,717	SF	\$	\$
29	Pedestrian Railing	1,794	LF	\$	\$
30	Retaining Wall w/ Handrail	42	LF	\$	\$
SUBTOTAL ITEMS 19-30					\$
DRAINAGE SYSTEM					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
31	15" HDPE	97	LF	\$	\$
32	15" RCP	44	LF	\$	\$
33	18" RCP	50	LF	\$	\$
34	24" RCP	17	LF	\$	\$
35	30" RCP	677	LF	\$	\$
36	19" x 30" ERCP	1,999	LF	\$	\$
37	29" x 45" ERCP	1,936	LF	\$	\$
38	24" MES	1	EA	\$	\$
39	19" x 30" MES	1	EA	\$	\$
40	29" x 45" MES	1	EA	\$	\$
41	48" Storm Manhole	3	EA	\$	\$
42	60" Storm Manhole	2	EA	\$	\$
43	Type C Inlet	1	EA	\$	\$
44	Type E Inlet	10	EA	\$	\$
45	Type E Inlet w/ 12" Slot	4	EA	\$	\$
46	Type H Inlet	2	EA	\$	\$
47	Type H Inlet w/ 12" Slot	5	EA	\$	\$
48	Type 4 Curb Inlet w/ J Bottom	18	EA	\$	\$
49	15" Yard Drain	18	EA	\$	\$
50	Connect to Existing Storm Pipe	9	EA	\$	\$
51	Connect to Existing Structure	2	EA	\$	\$
SUBTOTAL ITEMS 31-51					\$
STRIPING AND SIGNAGE					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
52	6" Single White	8,503	LF	\$	\$
53	6" Double Yellow	3,744	LF	\$	\$
54	24" White Stop Bar	107	LF	\$	\$
55	12" White Crosswalk	431	LF	\$	\$
56	Turn Lane Arrow Template	1	EA	\$	\$
57	Remove Existing Sign/Post	6	EA	\$	\$
58	Furnish & Install Sign/Post	22	EA	\$	\$
59	Mailbox Remove/Relocate	9	EA	\$	\$
SUBTOTAL ITEMS 52-59					\$
TOTAL PRICE					\$

LEGEND:
LS - Lump Sum
EA - Each
LF - Linear Feet
SF - Square Feet
TN - Ton
SY - Square Yard

BID BOND**BID BOND**

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that _____, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____, (hereinafter called "PRINCIPAL"), and _____, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____ (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of _____ dollars and (____)/100 (\$____), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated _____, 20____, for:

Project Name/Bid No.:

Project Address:

Legal Description: See Attached

Description of Work:

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid within one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds within the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL:

Signature

Corporate Officer & Title

SURETY:

Attorney-in-Fact (signature)

Name & Title

Name of Local Resident Agent

City, State, Zip

Telephone:

A.M. Best No.: _____ NAIC No.: _____

STATE OF _____

COUNTY OF _____

Before me this day personally appeared _____ (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the _____ (corporate surety) and that this person has been authorized by _____ (corporate surety) to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

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

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

END OF BID BOND

This document must be completed and returned with your Submittal

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

WITNESSES:

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

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

PAYMENT AND PERFORMANCE BOND

(Public Works)

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

BOND NO. _____

PRINCIPAL:

Developer or Contractor: _____

Principal Business Address: _____

Contact Person: _____

Phone Number: _____

SURETY:

Address: _____

Contact Person: _____

Phone Number: _____

OWNER:

City of Port Orange, Florida, a chartered municipal corporation

1000 City Center Circle

Port Orange, Florida 32129-4144

Contact Person: _____

Phone Number: _____

City Manager
(386) 506-5501

Amount: \$ _____

City Case: _____

Description of Work: _____

Project Location: _____

Legal Description: _____

Front Page

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

[CA_____]

DRAFT

Bond No. _____

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

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

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

THE CONDITION OF THIS BOND is that if Principal:

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

Notice of Nonpayment and Time Limitations

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.05(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:

(Principal)

(As to Corporate Principal) Secretary

By: _____
Name, Title

(Witness to Principal)

(Corporate Seal)

(Surety)

(Witness to Surety)

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

(Corporate Seal)

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

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

This affidavit must be completed and returned by the Awarded Bidder, upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT

EXHIBIT CONTRACT # _____

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

OR

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

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

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

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

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

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

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

Name of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____

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

AFFIDAVIT REGARDING WORKERS' COMPENSATION

State of _____

County of _____

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

WITNESS:

CONTRACTOR:

By: _____

Company: _____

Name: _____

By: _____

Name/Title: _____

Sworn to/Affirmed and subscribed before me this _____ day of _____, 20____, by _____, who is personally known to me or who produced _____ as identification.

NOTARY PUBLIC – STATE OF

Type or Print Name: _____

Commission No.: _____

Commission Expires: _____

(Seal)

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

This Agreement is by and between **City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129** ("Owner") and _____ ("Contractor").

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

ARTICLE 1—WORK

- 1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

_____.

ARTICLE 2—THE PROJECT

- 2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

_____.

ARTICLE 3—ENGINEER

- 3.01 The part of the project that pertains to the Work has been designed by the Project Engineer, _____, P.E. ("Engineer") of _____, and shall act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4—CONTRACT TIMES

- 4.01 *Time is of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

- 4.02 *Contract Times: Dates*

A. Deleted in its entirety.

- 4.03 *Contract Times: Days*

A. The Work will be substantially complete within ____ days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions.

4.04 *Milestones* – Deleted in its entirety.

4.05 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the Contract Times, as duly modified. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 - 1. *Substantial Completion*: Contractor shall pay Owner \$0.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for Substantial Completion, until the Work is substantially complete.
 - 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$0.00 for each day that expires after such time until the Work is completed and ready for final payment.
 - 3. Deleted in its entirety.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.
- C. Deleted in its entirety.

4.06 *Special Damages* - Deleted in its entirety.

- A. Deleted in its entirety.
- B. Deleted in its entirety.
- C. Deleted in its entirety.

ARTICLE 5—CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents, the amounts that follow, subject to adjustment under the Contract:
 - A. Deleted in its entirety.
 - B. Deleted in its entirety.
 - C. Deleted in its entirety.
 - D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6—PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on the basis of Contractor's Applications for Payment on or about the **15th** day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 - 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract.
 - a. **95%** percent of the value of the Work completed (with the balance being retainage).
 - 1) Deleted in its entirety.
 - b. Deleted in its entirety.
- B. Owner shall withhold Five percent (5%) of each progress payment as retainage.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work, Owner shall pay the remainder of the Contract Price in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Consent of Surety*

- A. Owner will not make final payment, or return or release retainage at Substantial Completion or any other time, unless Contractor submits written consent of the surety to such payment, return, or release.

6.05 *Interest Deleted in its entirety.*

- A. Deleted in its entirety.

ARTICLE 7—CONTRACT DOCUMENTS

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
 - 1. This Agreement (pages 1 to __, inclusive).
 - 2. Bonds:
 - a. Combination Payment and Performance bond, together with power of attorney, (pages 1 to 4, inclusive).

3. General Conditions (pages 1 to 74, inclusive).
4. Deleted in its entirety.
5. Technical Specifications, on file with City Engineer, Junos Reed (pages __ to __, inclusive).
6. Bid Set Drawings, on file with City Engineer, Junos Reed (pages __ to __, inclusive).
7. Addendum No. __ (pages __ to __, inclusive).
8. Addendum No. __ (pages __ to __, inclusive).
9. Exhibits to this Agreement (enumerated as follows):
 - a. Exhibit No. 1 Contractor's Bid Schedule (page __, inclusive).
 - b. Exhibit No. 2 Contractor's Proposal (pages __ to __, inclusive).
 - c. Exhibit No. 3 Composite Exhibit No. 3 City's _____ (pages __ to __, not attached, on file with office of the City Clerk).
 - d. Exhibit No. 4 City of Port Orange Community Development Block Grant Program ("CDBG") Operating and Procedures Manual (pages 1 to 22, inclusive).
 - e. Exhibit No 5 General Decision Number FL20240137 Davis-Bacon Wage Determination (pages 1 to 7, inclusive).
10. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
 - e. Warranty Bond, if any.
- B. The Contract Documents listed in Paragraph 7.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

ARTICLE 8—REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS

8.01 Contractor's Representations

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 1. Contractor has examined and carefully studied the Contract Documents, including Addenda.

2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, with respect to the Technical Data in such reports and drawings.
5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
8. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

8.02 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 8.02:

1. “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), published by the Engineers Joint Contract Documents Committee, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

ARTICLE 9—MISCELLANEOUS

9.01 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.02 *Successors and Assigns*

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.03 *Severability*

Any provisions or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions and parts shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable

provision or part that comes as close as possible to expressing the intention of the stricken provision.

9.04 *No-Damage-for-Delay*

Contractor shall not be entitled to any damages (including, without limitation, expenses, costs, fees, extended field overhead and general conditions, equipment costs, home office overhead, lost productivity and inefficiency damages, additional payroll and labor costs, etc.) for any delay to its Work. Contractor's sole and exclusive remedy for a delay to its Work that is not caused by Contractor (or a person or entity performing a portion of Contractor's scope of Work) shall be an extension of time to substantially complete and finally complete the Project; provided, however, that Owner granting Contractor an extension of time is not a condition precedent to this no-damage-for-delay provision. Contractor shall also not be entitled to any damages for disruption or interference to its Work or for having to accelerate or incur additional labor or payroll costs in order to make up or overcome a delay to its Work so that it can maintain the dates for Substantial Completion and Final Completion. Contractor agrees that in determining and agreeing to the Contract Price it is considered this no-damage-for-delay provision and understands that it is not entitled to any damages whatsoever for a delay to its Work.

9.05 *No intended Third-Party Beneficiaries*

There are no intended third-party beneficiaries to the Contract.

9.06 *Public Record Compliance*

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically: (a) keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service; (b) provide the public with access to public records on the same terms and conditions that the City would provide the records at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential 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.

9.07 *Records*

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

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

9.08 *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.

9.09 *Contract construction*

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

9.10 *Financial Disclosures*

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

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

9.11 *Waiver of Jury Trial*

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

9.12 *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.

9.13 *Compliance with Other Federal Standards*

(a) Termination for Cause. Administrative, contractual, or legal remedies in instances where the Contractor violates or breaches Contract terms are set forth in Article 16 of General Conditions.

(b) Termination for Convenience. Termination for convenience by the City, including how it will be carried out and the basis for settlement is set forth in Article 16 of General Conditions.

(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 29C.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. The Davis-Bacon Act only applies to the Emergency Management Performance Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, Transit Security Grant Program, Intercity Passenger Rail Program, and Rehabilitation of High Hazard Potential Dams Program. 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.

® 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.

® 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).”

® Copeland Anti Kick Back Act: Compliance with the Copeland “Anti-Kickback” Act.

(i) 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.

(ii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above, and also a clause requiring the subcontractors to include the clause in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor the contract clause.

(iii) 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:

- (aa) Compliance with the Contract Work Hours and Safety Standards Act. If applicable per the standard described above, Contractor shall comply with the following provisions from 29 C.F.R. § 5.5(b)(1)-(4), hereinbelow, and furthermore, Contractor shall include these provisions, in full, into any subcontracts.

(aa) *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.

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 recipient or subrecipient 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 recipient or subrecipient 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.

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

Clean Air Act

- (1) 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.
- (2) 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 awarding agency and the Regional Office of the Environmental Protection Agency.
- (3) The Contractor agrees to include these requirements in each subcontract

exceeding \$150,000 financed in whole or in part with federal assistance provided by HUD through Community Development Block Grant Program.

Federal Water Pollution Control Act

- (1) 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.
- (2) 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.
- (3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by HUD through Community Development Block Grant Program.

(i) Suspension and Debarment. Federal regulations restrict the City from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. Contractor can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

- (1) 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).
- (2) 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.
- (3) This certification, included in the solicitation referenced hereinabove and made a part hereof by this reference, 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.
- (4) 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.

Required Certification: If applicable, the Contractor must sign and submit with this Agreement the following certification, *APPENDIX A, 44 C.F.R. PART 18 – Certification Regarding Lobbying*, included in the solicitation and made a part hereof by reference.

(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.

- (1) 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.
 - (i) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (ii) Meeting contract performance requirements; or
 - (iii) At a reasonable price.
- (2) 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>.
- (3) 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.

If applicable to the Federal awarding agency requirements:

(1) *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.

(2) *Prohibitions.*

(i) 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.

(ii) 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.

(aa) *Exceptions.*

(i) 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.

(ii) 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.

(4) *Reporting requirement.*

(aa) 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.

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

aa. 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.

aa. 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.

(aa) *Subcontracts*. The Contractor shall insert the substance of this clause, including this paragraph (5), 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:

(1) The Contractor agrees to provide City, any pass-through entity, the State of Florida and the Recipient (if applicable), authorized representatives of the United States Department of Housing and Urban and Development (“HUD”), 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.

(aa) 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.

(aa) The Contractor agrees to provide the HUD/CDBG Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(aa) 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 HUD/CDBG Administrator or the Comptroller General of the United States.

(o) Changes. To be allowable under the Federal agency award 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 hereinabove.

(p) Compliance with Federal Laws, Regulations and Executive Orders and Acknowledgement of Federal Funding. This is an acknowledgment that HUD and Community Development Block Grant Program ("CDBG") 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, HUD and CDBG 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.

(q) 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.

(r) 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.

(s) 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.

(t) 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.

(u) 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.

(v) 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.

(w) Record Retention: Contractor will retain all required records pertinent to this contract for a period of five years after closeout of the HUD and CDBG 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.

(x) 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.

(y) 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.

(z) 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 Housing and Urban Development ("HUD").

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 HUD, the federal awarding agency; subrecipients will forward disclosures to the pass-through entity, who will in turn forward the disclosures to HUD.

Required Certification: Unless otherwise waived for HUD CDBG financial assistance programs that are subject to BABAA, Contractor and subcontractors must sign and submit a compliance certification to the next tier (e.g., subcontractors submit to the Contractor; Contractor submits to the City).

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on _____ (which is the Effective Date of the Contract).

Contractor:

(typed or printed name of organization)

By: _____
(individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

(If company is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____
(individual's signature)

Title: _____
(typed or printed)

Address for giving notices:

Phone: _____

Email: _____

License No.: _____

State: _____

Owner:

City of Port Orange

(typed or printed name of organization)

By:

(individual's signature)

Date:

(date signed)

Name:

Donald O. Burnette

(typed or printed)

Title:

Mayor

(typed or printed)

Attest:

Robin L. Fenwick, MMC

(individual's signature)

Title:

City Clerk

(typed or printed)

Address for giving notices:

1000 City Center Circle

Port Orange, Florida 32129

(386) 506-5500

EJCDC General Conditions

Consisting of 74 Pages

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*

- a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
 - b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
- a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
33. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
34. *Punch List* - the detailed list of incomplete, unsatisfactory or unacceptable, or defective items that Contractor is required to complete prior to final payment that is generated in accordance with Paragraph 14.06 of the General Conditions.”
34. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.

47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.

49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

50. *Emergency Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the

extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

C. Deleted in its entirety.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion date;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 *Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, Owner and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made

to Contractor until acceptable schedules are submitted to and approved by Engineer and Owner.

1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times and identifies Contractor's critical path sequence of scheduled activities with the earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities and latest finish date for scheduled activities. All float in the Progress Schedule shall belong to Owner in order to offset a delay attributable to Owner or its agents. Such acceptance will not impose on Engineer or Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.
5. If Contractor submits a schedule indicating an intention to achieve completion of the Work prior to contractually required dates, including milestones, no liability of the Owner to the Contractor for any failure of the Contractor to complete early shall be created, whether or not the Owner approves such schedule.
6. The Contractor acknowledges that the Owner may retain the services of a scheduling consultant at the Owner's expense. The Contractor shall cooperate with any such scheduling consultant at the Owner's direction, including without limitation, with regard to the preparation of the Project schedule.

2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the

performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or could have discovered the conflict or error by careful review of the Contract Documents including pertinent figures and applicable field measurements and dimensions therein..

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
 - c. In the event there is a discrepancy or conflict in the Drawings and Specifications applicable to a particular detail or assembly of the Work, Contractor must promptly seek clarification from Engineer before proceeding with the Work. Subject to Paragraph 3.03.A.3. above, if Contractor proceeds with the Work without seeking such clarification, Contractor will be

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bound by the stricter and more expensive detail or assembly. Contractor agrees and recognizes that in agreeing to the Contract Price it has factored in the costs associated with installing the stricter and more expensive detail or assembly.

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times shall not commence to run and Contractor shall not commence the Work until Owner issues a Notice to Proceed . A Notice to Proceed may be issued by Owner at any time after the Effective Date of the Contract.

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date specified in the Notice to Proceed which shall cause the Contract Times to commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.
- B. Contractor shall lay-out and verify all field dimensions and measurements at the Site before proceeding with any portion of the Work.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall only be entitled to an equitable adjustment in Contract Times.

- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Unanticipated causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
 - 1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. Abnormal weather conditions not anticipated or customary in Volusia County;
 - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 - 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times is limited as follows:
 - 1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 - 2. Deleted in its entirety.
 - 3. Adjustments of Contract Times are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times must be supplemented by supporting data that sets forth in detail the following:
 - 1. The circumstances that form the basis for the requested adjustment;
 - 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 - 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 - 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
 - 5. Deleted in its entirety.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Deleted in its entirety.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

5.02 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

- 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.
- 2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and

subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The Contractor shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell pads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
 - 2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
 - 3. Technical Data contained in such reports and drawings.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *Reliance by Contractor on Technical Data:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents and shall under no circumstances relieve Contractor from visiting the Site and becoming familiar with and satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.
- D. *Limitations of Other Data and Documents:* Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
 - 3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
 - 4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:
 - 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;
 - 2. is of such a nature as to require a change in the Drawings or Specifications;
 - 3. differs materially from that shown or indicated in the Contract Documents; or
 - 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after first becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition within 5 days. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review*: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
 - 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
 - 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract

Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or

- c. Contractor failed to give the written notice required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
 1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor*: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after first becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility within 5 days.

C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.

During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

D. *Owner's Statement to Contractor Regarding Underground Facility*: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.

E. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.

2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 Hazardous Environmental Conditions at Site

A. Reports and Drawings: The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. Reliance by Contractor on Technical Data Authorized: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.

C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such

removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.

- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing) within 5 days of first becoming aware of the condition. Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that (i) they are attributable to the existence or location of any Hazardous Environmental Condition that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents or a report listed in the Supplemental Conditions, (ii) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the Hazardous Environmental Conditions, (iii) Contractor did not negligently, recklessly, or intentionally cause the Hazardous Environmental Condition, and (iv) Contractor notifies Owner and Engineer of such condition within 5 days after first becoming aware of such condition.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.

- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. Deleted in its entirety.
- J. Deleted in its entirety..
- K. Deleted in its entirety.

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a payment and performance bond in accordance with Sec. 255.05, Florida Statutes, in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into Contractor's performance bond.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The payment and performance bonds shall be recorded in the public records of Volusia County, Florida.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in Florida, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. Prior to the date of commencement as set forth in the Notice to Proceed, if Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.

- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 *Insurance—General Provisions*

- A. Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions. In the event of any conflict between this Paragraph 6.02 and the specific insurance requirements of Contractor set forth in Supplemental Conditions, the specific requirements in Supplemental Conditions shall govern.
- B. All insurance required by the Contract to be purchased and maintained by Contractor shall be obtained from insurance companies that are duly licensed or authorized in the State of Florida to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Deleted in its entirety.
- F. Failure of Owner to demand such certificates or other evidence of the Contractor’s full compliance with these insurance requirements, or failure of Owner to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the Contractor’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. Owner’s liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner’s liability policies for any of Contractor’s obligations to the Owner, Engineer, or third parties.

- H. Contractor shall require:
1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If Contractor does not purchase or maintain the insurance required by the Contract, Contractor shall notify the Owner in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if Contractor has failed to obtain required insurance, the Owner may elect (but is in no way obligated) to obtain equivalent insurance to protect Owner's interests at the expense of the Contractor who was required to provide such coverage, and the Contract Price will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 *Contractor's Insurance*

- A. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
1. include at least the specific coverages required;

2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable;
 5. include completed operations coverage:
 - a. Such insurance shall remain in effect for 10 years after Substantial Completion.
 - b. Contractor shall furnish Owner and each additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment.
 6. make the Contractor solely responsible for any insurance deductible or self-insured retention.
 7. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations).

The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

- B. *Property Insurance for Facilities of Owner Where Work Will Occur:* Contractor is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D. Such policy shall identify both Contractor and Owner as additional insureds. Contractor shall be solely responsible for any deductible.
- C. *Property Insurance for Substantially Complete Facilities:* Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Contractor will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Contractor's procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner through Contractor will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer, and Contractor shall obtain an occupancy or use endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
 - 1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors,

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members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.

2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Deleted in its entirety.
1. Deleted in its entirety.
- C. Deleted in its entirety.
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.
- D. Owner, at its sole discretion, may elect to fund the costs associated with any property insurance claim, excluding the deductible, and seek reimbursement from Contractor's policy that identifies both Contractor and Owner as named insureds. If Owner exercises this right, it shall have sole authority to settle and adjust any claim and receive reimbursement under the policy with the proceeds made payable to Owner. Contractor shall have the obligation to cooperate and comply with all terms and provisions of the policy and its failure to do so shall constitute a material breach of the Contract. If Owner does not elect this right, Contractor shall be required to fund the costs associated with any property insurance claim and seek reimbursement under the policy.

- E. In the event of any conflict between this Paragraph 6.06 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions shall govern.

ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES

7.01 Contractor’s Means and Methods of Construction

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor’s employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor’s own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner’s written rules and regulations regarding jobsite conduct.
- C. The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape

players, CD players, boom boxes, sound producing devices and the like are prohibited on the Project site. The Contractor shall not be permitted to use restrooms or other sanitary facilities within the Owner's existing buildings or on-site facilities.

- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For

the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that

named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.

2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.

- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. Deleted in its entirety.
- C. Deleted in its entirety.

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable

at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 Record Documents

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve

Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in

accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation

thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

- c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
 - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;

5. Any review and approval of a Shop Drawing or Sample submittal;
 6. The issuance of a notice of acceptability by Engineer;
 7. The end of the correction period established in Paragraph 15.08;
 8. Any inspection, test, or approval by others; or
 9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 *Indemnification*

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner, and the Owner's officers, and employees, from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection .
- B. The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be \$1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.
- C. Notwithstanding the above and without monetary limitation, the Contractor hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.
- D. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.18.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation

in the performance of the Work, etc., to the extent caused by the negligence, recklessness, or intentional misconduct of Contractor and the persons or entities employed or utilized by Contractor in the performance of the Contract.

7.19 Delegation of Professional Design Services

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;
 - 2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 - 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be

set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.
 2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.

- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Deleted in its entirety.*

- A. Deleted in its entirety.N/A

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On

the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.

- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, an Emergency Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with an Emergency Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of an Emergency Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 *Emergency Work Change Directives*

- A. An Emergency Work Change Directive may only be used in emergency situations and will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification documented by an Emergency Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Emergency Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.
- B. If Owner has issued a written Emergency Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit a Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design

concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.

- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 - 1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 - 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 - 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the

basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).

C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:

1. A mutually acceptable fixed fee; or
2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.

- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a recommendation regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
4. *Engineer's Full Review and Recommendation on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either recommend approval of the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of

Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.

5. *Binding Decision*: Engineer's recommendation is sent to the Owner who shall render a final decision. The Owner's decision is final and binding upon Contractor, unless Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 *Notification to Surety*

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS - DELETED IN ITS ENTIRETY

12.01 *Claims* - Deleted in its entirety.

- A. Deleted in its entirety.
 - 1. Deleted in its entirety.
 - 2. Deleted in its entirety.
 - 3. Deleted in its entirety.
 - 4. Deleted in its entirety.
- B. Deleted in its entirety.
- C. Deleted in its entirety.
- D. Deleted in its entirety.
 - 1. Deleted in its entirety.
 - 2. Deleted in its entirety.
 - 3. Deleted in its entirety.
- E. Deleted in its entirety.
- F. Deleted in its entirety.
- G. Deleted in its entirety.

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 - 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation,

superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any

surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.

2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.

i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:

1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants,

purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.

2. The cost of purchasing, renting, or furnishing small tools and hand tools.
3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
5. Costs due to the negligence, recklessness, or intentional misconduct of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
6. Expenses incurred in preparing and advancing Claims.
7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. Contractor's Fee

1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.

- E. Documentation and Audit:** Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions,

drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance:* Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are estimates and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price shall be guaranteed and will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;

2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
3. by manufacturers of equipment furnished under the Contract Documents;
4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects*: Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties*: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.
- B. Owner shall not be deemed to have accepted any defective work from Contractor that was not discovered by Engineer or Owner unless the defect was specifically detailed to Owner in writing by Contractor notifying Owner of the defective work and Owner notifies Contractor in writing that it will accept defective work (whether as-is, by receiving credit, or receiving other compensation, losses, or damage from Contractor as discussed above in Paragraph 14.04.A.) Contractor recognizes and understands that it shall not be relieved of responsibility or liability with performing defective work even if such defective work previously passed inspection by any inspector, including, without limitation, an inspector with the governing building department or a threshold inspector.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable

to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. The Owner shall incur no liability for delays occasioned by any stop-work order issued in accordance with this paragraph.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer and Owner. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the

provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments*

1. Contractor, on the 25th of each month, shall submit to Engineer for review an Application for Payment (in a form approved by Owner) filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.
2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications*

1. Engineer will, within 10 days after each Application for Payment is stamped as received by Engineer, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, Contractor shall make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work

- under Paragraph 13.03, and any other qualifications stated in the recommendation); and
- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
 5. Neither Engineer's review of Contractor's Work for purposes of recommending payments nor Engineer's recommendation of any payment shall relieve Contractor of responsibility or liability for defects in the Work.
 6. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;

- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
- e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due*

- 1. Subject to the provisions of Paragraph 15.01.E. and Section 218. 735, Florida Statutes, after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) shall be paid by Owner in accordance with Section 218.735, Florida Statutes, within 25 business days after the date on which the payment application is stamped as received by Engineer.

E. *Reductions in Payment by Owner*

- 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or

- I. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 *Substantial Completion*

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of Punch List items to be completed or corrected before final payment. Substantial Completion cannot occur before the Owner is able to begin to utilize the entire Work for the purposes for which it was intended.B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion. Engineer shall attach to the certificate a Punch List of items to be completed or corrected before final payment Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached Punch List. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised Punch List of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the Punch List of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed Punch List items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the Punch List.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
 - 2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection – Punch List*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to, the evidence that Contractor maintains completed operations coverage for its required commercial general liability (CGL) insurance;
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective final releases or waivers (satisfactory to Owner) of all Lien rights and Liens filed in connection with the Work.
3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor whereby Contractor swears that: (a) all payrolls, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid Contractor through the date of Contractor's final Application for Payment have been paid by Contractor; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay Contractor in the final Application for Payment will represent Contractor's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that Contractor will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its

option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

4. The documents and materials that Contractor is required to submit to accompany its Final Application for Payment (as set forth in this Paragraph 15.06) are conditions precedent to issuance of final payment.
- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within Twenty-five (25) days of the final Application for Payment being stamped as received by Engineer.

15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such adjacent areas;
 - 2. correct such defective Work;
 - 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer;
 - 5. Contractor's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or
 - 6. Contractor's failure to obtain or maintain the insurance required of it in the Contract.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 5 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 5 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the

Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon 5 days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.

Contractor, however, cannot terminate the Contract due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph. Contractor, however, cannot stop the Work due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 *Deleted in its entirety.A.Deleted in its entirety.1. Deleted in its entirety.2. Deleted in its entirety.B. Deleted in its entirety.1. Deleted in its entirety.2. Deleted in its entirety.3. Deleted in its entirety.*

1. *Claims, disputes or other matters in question between the parties to this Agreement shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Completion of pre-suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of the Agreement.*
2. *Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any mediation or litigation, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.*
3. *Either party may initiate a mediation preceding by a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen or as provided in subparagraph ____, but in no event after the expiration of the applicable statute of limitations.*
4. *The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) days of the request for mediation, the Orlando office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its pool of approved mediators.*
5. *Unless otherwise mutually agreed, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, each party to bear its own fees, costs and expenses.*
6. *In the event that pre-suit mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit Courts of Volusia County Florida. The Parties, including the*

Contractor's Surety, waive Venue and Jurisdiction of any Federal Court and expressly waive Trial by Jury.

ARTICLE 18—MISCELLANEOUS

18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 - 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 - 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 - 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 *Cumulative Remedies*

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the

Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the State of Florida.

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

EJCDC General Conditions
Additions and Deletions Version

Consisting of 87 pages

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared By



Endorsed By



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~~GUIDELINES FOR USE OF EJCDC® C-700, STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT~~

~~1.0 — PURPOSE AND INTENDED USE OF THE DOCUMENT~~

~~EJCDC® C-700, Standard General Conditions of the Construction Contract (2018), is the foundation document for the EJCDC Construction Series. The General Conditions define the basic rights, responsibilities, risk allocations, and contractual relationship of the Owner and Contractor, and establish how the Contract is to be administered.~~

~~2.0 — OTHER DOCUMENTS~~

~~EJCDC documents are intended to be used as a system and changes in one EJCDC document may require a corresponding change in other documents. Other EJCDC documents may also serve as a reference to provide insight or guidance for the preparation of this document.~~

~~These General Conditions have been prepared for use with either EJCDC® C-520, Agreement Between Owner and Contractor for Construction Contract (Stipulated Price), or EJCDC® C-525, Agreement Between Owner and Contractor for Construction Contract (Cost Plus Fee) (2018 Editions). The provisions of the General Conditions and the Agreement are interrelated, and a change in one may necessitate a change in the other.~~

~~To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018).~~

~~The full EJCDC Construction series of documents is discussed in the EJCDC® C-001, Commentary on the 2018 EJCDC Construction Documents (2018).~~

~~3.0 — ORGANIZATION OF INFORMATION~~

~~All parties involved in a construction project benefit significantly from a standardized approach in the location of subject matter throughout the documents. Experience confirms the danger of addressing the same subject matter in more than one location; doing so frequently leads to confusion and unanticipated legal consequences. Careful attention should be given to the guidance provided in EJCDC® N-122/AIA® A521, Uniform Location of Subject Matter (2012 Edition) when preparing documents. EJCDC® N-122/AIA® A521 is available at no charge from the EJCDC website, www.ejcdc.org, and from the websites of EJCDC's sponsoring organizations.~~

~~If CSI MasterFormat™ is used for organizing the Project Manual, consult CSI MasterFormat™ for the appropriate document number (e.g., under 00 11 00, Advertisements and Invitations), and accordingly number the document and its pages.~~

~~4.0 — EDITING THIS DOCUMENT~~

~~Remove these Guidelines for Use. Some users may also prefer to remove the two cover pages.~~

~~Although it is permissible to revise the Standard EJCDC Text of C-700 (the content beginning at page 1 and continuing to the end), it is common practice to leave the Standard EJCDC Text of C-700 intact and unaltered, with modifications and supplementation of C-700's provisions set forth in EJCDC® C-800, Supplementary Conditions of the Construction Contract (2018). If the Standard Text itself is revised, the~~

user must comply with the terms of the License Agreement, Paragraph 4.0, Document Specific Provisions, concerning the tracking or highlighting of revisions. The following is a summary of the relevant License Agreement provisions:

1. The term “Standard EJCDC Text” for C-700 refers to all text prepared by EJCDC in the main body of the document. Document covers, logos, footers, instructions, or copyright notices are not Standard EJCDC Text for this purpose.
2. During the drafting or negotiating process for C-700, it is important that the two contracting parties are both aware of any changes that have been made to the Standard EJCDC Text. Thus, if a draft or version of C-700 purports to be or appears to be an EJCDC document, the user must plainly show all changes to the Standard EJCDC Text, using “Track Changes” (redline/strikeout), highlighting, or other means of clearly indicating additions and deletions.
3. If C-700 has been revised or altered and is subsequently presented to third parties (such as potential bidders, grant agencies, lenders, or sureties) as an EJCDC document, then the changes to the Standard EJCDC Text must be shown, or the third parties must receive access to a version that shows the changes.
4. Once the document is ready to be finalized (and if applicable executed by the contracting parties), it is no longer necessary to continue to show changes to the Standard EJCDC Text. The user may produce a final version of the document in a format in which all changes are accepted, and the document at that point does not need to include any “Track Changes,” redline/strikeout, highlighting, or other indication of additions and deletions to the Standard EJCDC Text.

5.0 LICENSE AGREEMENT

This document is subject to the terms and conditions of the **License Agreement, 2018 EJCDC® Construction Series Documents**. A copy of the License Agreement was furnished at the time of purchase of this document, and is available for review at www.ejcdc.org and the websites of EJCDC’s sponsoring organizations.

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

ARTICLE 1—DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 3. *Application for Payment*—The document prepared by Contractor, in a form acceptable to Engineer, to request progress or final payments, and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 5. *Bidder*—An individual or entity that submits a Bid to Owner.
 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 7. *Bidding Requirements*—The Advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 9. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.

10. *Claim*

- a. A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment of Contract Price or Contract Times; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to address; or seeking other relief with respect to the terms of the Contract.
 - b. A demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal, or seeking resolution of a contractual issue that Engineer has declined to address.
 - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment.
 - d. A demand for money or services by a third party is not a Claim.
11. *Constituent of Concern*—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
12. *Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
13. *Contract Documents*—Those items so designated in the Agreement, and which together comprise the Contract.
14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
17. *Cost of the Work*—See Paragraph 13.01 for definition.
18. *Drawings*—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.

20. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.
22. *Engineer*—The individual or entity named as such in the Agreement.
23. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
24. *Hazardous Environmental Condition*—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto.
- a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
 - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
 - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date, or by a time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.

30. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
32. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
33. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.
34. *Punch List* - the detailed list of incomplete, unsatisfactory or unacceptable, or defective items that Contractor is required to complete prior to final payment that is generated in accordance with Paragraph 14.06 of the General Conditions.”
343. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
37. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
38. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands or areas furnished by Owner which are designated for the use of Contractor.
39. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
40. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.
42. *Substantial Completion*—The time and date at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be ~~occupied and/or~~ utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion of such Work. ~~Substantial Completion cannot occur before the Project is issued a Certificate of Occupancy (or Completion, if applicable) by the governing building department that allows Owner to begin to utilize the entire Project for the purposes for which it was intended.~~
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
46. *Technical Data*
- Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
 - If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.

- c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
- 47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.
- 48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
- 49. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- 50. *Emergency Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work due to an emergency that prevents the parties from using the Change Order process.

1.02 Terminology

- A. The words and terms discussed in Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight, including weekends and legal holidays unless otherwise specifically defined.

- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
 2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 3. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or Paragraph 15.04).
- E. *Furnish, Install, Perform, Provide*
1. The word “furnish,” when used in connection with services, materials, or equipment, means to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, means to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, means to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.
- G. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2—PRELIMINARY MATTERS

2.01 *Delivery of Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the

extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.

- C. ~~Deleted in its entirety. Evidence of Owner's Insurance: After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), the certificates and other evidence of insurance required to be provided by Owner under Article 6.~~

2.02 Copies of Documents

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully signed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 Before Starting Construction

- A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Contract (or as otherwise required by the Contract Documents), Contractor shall submit to Engineer for timely review:
1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract, and identifying the Substantial Completion and Final Completion dates;
 2. a preliminary Schedule of Submittals; and
 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.04 Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work, and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other Submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, ~~or~~ Owner and others as appropriate, will be held to review the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will be made to Contractor until acceptable schedules are submitted to and approved by Engineer and Owner.
1. The Progress Schedule will be acceptable to Engineer and Owner if it provides an orderly progression of the Work to completion within the Contract Times and identifies Contractor's critical path sequence of scheduled activities with the earliest start dates for scheduled activities, the earliest finish date for scheduled activities, the latest start date for scheduled activities and latest finish date for scheduled activities. All float in the Progress Schedule shall belong to Owner in order to offset a day delay attributable to Owner or its agents. Such acceptance will not impose on Engineer or Owner responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
 2. Contractor's Schedule of Submittals will be acceptable to Engineer and Owner if it provides a workable arrangement for reviewing and processing the required submittals.
 3. Contractor's Schedule of Values will be acceptable to Engineer and Owner as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.
 4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.
 5. If Contractor submits a schedule indicating an intention to achieve completion of the Work prior to contractually required dates, including milestones, no liability of the Owner to the Contractor for any failure of the Contractor to complete early shall be created, whether or not the Owner approves such schedule.
 6. The Contractor acknowledges that the Owner may retain the services of a scheduling consultant at the Owner's expense. The Contractor shall cooperate with any such scheduling consultant at the Owner's direction, including without limitation, with regard to the preparation of the Project schedule.

2.06 Electronic Transmittals

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the Electronic Documents.

ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- G. Nothing in the Contract Documents creates:
 - 1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or
 - 2. any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity, except as may otherwise be required by Laws and Regulations.

3.02 *Reference Standards*

- A. *Standards Specifications, Codes, Laws and Regulations*
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, means the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 2. No provision of any such standard specification, manual, reference standard, or code, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner or Engineer any duty or authority to supervise or direct the

performance of the Work, or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract issued pursuant to Paragraph 11.01.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof or could have discovered the conflict or error by carefully studying and comparing careful review of the Contract Documents and checking and verifying including pertinent figures therein and all applicable field measurements and dimensions therein.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).
 - c. In the event there is a discrepancy or conflict in the Drawings and Specifications applicable to a particular detail or assembly of the Work, Contractor must promptly seek clarification from Engineer before proceeding with the Work. Subject to Paragraph 3.03.A.3. above, if Contractor proceeds with the Work without seeking such clarification, Contractor will be

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bound by the stricter and more expensive detail or assembly. Contractor agrees and recognizes that in agreeing to the Contract Price it has factored in the costs associated with installing the stricter and more expensive detail or assembly.

3.04 *Requirements of the Contract Documents*

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer in writing all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly notify Owner and Contractor in writing that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media versions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein precludes Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4—COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed* ~~*(Old 2.03)*~~

- A. The Contract Times ~~will~~shall not commence to run and Contractor shall not commence on the 30th day after the Effective Date of the Contract or, if the Work until Owner issues a Notice to

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~~Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given issued by Owner at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th day after the Effective Date of the Contract, whichever date is earlier.~~

4.02 *Starting the Work*

- A. Contractor shall start to perform the Work on the date ~~when specified in the Notice to Proceed which shall cause~~ the Contract Times to commence to run. No Work may be done at the Site prior to such date.

4.03 *Reference Points*

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

B. Contractor shall lay-out and verify all field dimensions and measurements at the Site before proceeding with any portion of the Work.

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 2. Proposed adjustments in the Progress Schedule that will change the Contract Times must be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work will be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall only be entitled to an equitable adjustment in ~~Contract Price or~~ Contract Times.
- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption,

and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.

- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Such an adjustment will be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Unanticipated Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited to the following:
1. Severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. Abnormal weather conditions not anticipated or customary in Volusia County;
 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
 4. Acts of war or terrorism.
- D. Contractor's entitlement to an adjustment of Contract Times ~~or Contract Price~~ is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
 2. Deleted in its entirety. Contractor shall not be entitled to an adjustment in Contract Price for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
 3. Adjustments of Contract Times ~~or Contract Price~~ are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times ~~or Contract Price~~ must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
 2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
 3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
 4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and

5. ~~Deleted in its entirety. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.~~

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect of the delay, disruption, or interference on the critical path to completion of the Work.

- F. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.

ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands ~~(Old 4.01)~~

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. ~~Deleted in its entirety. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.~~
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities, staging, or storage of materials and equipment. Contractor shall have the obligation to restore the additional lands to their original condition.

5.02 Use of Site and Other Areas ~~(Old 6.11)~~

- A. *Limitation on Use of Site and Other Areas*
1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas, or to improvements, structures, utilities, or similar facilities located at such adjacent lands or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such

damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

2. If a damage or injury claim is made by the owner or occupant of any such land or area because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.13, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or in a court of competent jurisdiction; and (c) to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against any such claim, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. The Contractor shall prevent paint, mortar, and concrete splatter on concrete sidewalks and stairwell tower floorpads. Any such splatter shall be immediately removed so no evidence of splatter remains. All construction debris shall be removed in a timely manner. Surrounding graded and grassed areas shall be regularly magnetically scanned to collect miscellaneous nails and other sharp objects; the Contractor shall remove such objects from the construction site. Removal and disposal of such waste materials, rubbish, and other debris will conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. Concrete and ceramic surfaces shall be cleaned and washed. Woodwork and resilient flooring shall be dusted and cleaned. Sash, fixtures and equipment shall be thoroughly cleaned. Stains, spots, dust, marks and smears shall be removed from all surfaces. Hardware and metal surfaces shall be cleaned and polished. Glass and plastic surfaces shall be thoroughly cleaned by professional window cleaners. All damaged, broken or scratched glass or plastic shall be replaced by the Contractor at the Contractor's expense. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings*: The Supplementary Conditions identify:

1. Those reports of explorations and tests of subsurface conditions at or adjacent to the Site that contain Technical Data;
2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), that contain Technical Data; and
3. Technical Data contained in such reports and drawings.

B. *Underground Facilities*: Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

C. *Reliance by Contractor on Technical Data*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents and shall under no circumstances relieve Contractor from visiting the Site and becoming familiar with and satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.

D. *Limitations of Other Data and Documents*: Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate;

2. is of such a nature as to require a change in the Drawings or Specifications;
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after first becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition within 5 days. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine whether it is necessary for Owner to obtain additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,

- c. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise;
 - b. The existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice required by Paragraph 5.04.A.
- 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
- 4. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.
- F. *Underground Facilities; Hazardous Environmental Conditions*: Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities*: Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for:
 - 1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - 2. complying with applicable state and local utility damage prevention Laws and Regulations;
 - 3. verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
 - 4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

5. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated on the Drawings, or was not shown or indicated on the Drawings with reasonable accuracy, then Contractor shall, promptly after first becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing regarding such Underground Facility within 5 days.
- C. *Engineer's Review:* Engineer will:
1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
 2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
 3. obtain any pertinent cost or schedule information from Contractor; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and
 4. advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Early Resumption of Work:* If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- F. *Possible Price and Times Adjustments*
1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in

Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
 - c. Contractor gave the notice required in Paragraph 5.05.B.
2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, then any such adjustment will be set forth in a Change Order.
 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
 4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site;
2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
3. Technical Data contained in such reports and drawings.

B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures

- of construction to be employed by Contractor, and safety precautions and programs incident thereto;
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing) within 5 days of first becoming aware of the condition. Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely. An equitable adjustment shall be made in the Contract Price or Contract Time, or both, to the extent that (i) they are attributable to the existence or location of any Hazardous Environmental Condition that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents or a report listed in the Supplemental Conditions, (ii) Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the Hazardous Environmental Conditions, (iii) Contractor did not negligently, recklessly, or intentionally cause the Hazardous Environmental Condition, and (iv)

Contractor notifies Owner and Engineer of such condition within 5 days after first becoming aware of such condition.

- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- H. If, after receipt of such written notice, Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.B, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I obligates Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~
- J. Deleted in its entirety.~~To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.~~
- K. Deleted in its entirety.~~The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.~~

ARTICLE 6—BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a payment and performance bond ~~and a payment bond in accordance with Sec. 255.05, Florida Statutes, each~~ in an amount at least equal to the Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract. The obligations, duties, responsibilities, and requirements of Contractor set forth in this Contract shall be incorporated into Contractor's performance bond.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, ~~except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, U.S. Department of the Treasury.~~ A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority must show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. The payment and performance bonds shall be recorded in the public records of Volusia County, Florida.
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in ~~the state or jurisdiction in which the Project is located~~ Florida, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. Prior to the date of commencement as set forth in the Notice to Proceed, ~~if~~ Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.
- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

6.02 Insurance—General Provisions

- A. ~~Owner and~~ Contractor shall obtain and maintain insurance as required in this article and in the Supplementary Conditions. In the event of any conflict between this Paragraph 6.02 and the specific insurance requirements of Contractor set forth in Supplemental Conditions, the specific requirements in Supplemental Conditions shall govern.
- B. All insurance required by the Contract to be purchased and maintained by ~~Owner or~~ Contractor shall be obtained from insurance companies that are duly licensed or authorized in the ~~s~~State or jurisdiction in which the Project is located of Florida to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Deleted in its entirety. ~~Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.~~
- F. Failure of Owner ~~or Contractor~~ to demand such certificates or other evidence of the ~~Contractor~~ other party’s full compliance with these insurance requirements, or failure of Owner ~~or Contractor~~ to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the ~~other party~~ Contractor’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. Owner’s liability

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policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner and Engineer (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.

I. If ~~either party~~ Contractor does not purchase or maintain the insurance required ~~of such party~~ by the Contract, ~~Contractor~~ such party shall notify the ~~Owner~~ other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.

J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.

K. Without prejudice to any other right or remedy, if ~~Contractor~~ a party has failed to obtain required insurance, the ~~Owner~~ other party may elect (but is in no way obligated) to obtain equivalent insurance to protect ~~such other party's~~ Owner's interests at the expense of the ~~Contractor~~ party who was required to provide such coverage, and the Contract Price will be adjusted accordingly.

L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.

M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.

N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.

6.03 Contractor's Insurance

- A. *Required Insurance*: Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions*: The policies of insurance required by this Paragraph 6.03 as supplemented must:
1. include at least the specific coverages required;
 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract;
 4. apply with respect to the performance of the Work, whether such performance is by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable; ~~and~~
 5. include completed operations coverage:
 - a. Such insurance shall remain in effect for 10 years after Substantial Completion.
 - b. Contractor shall furnish Owner and each additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment.
 6. make the Contractor solely responsible for any insurance deductible or self-insured retention.
 7. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds*: The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and

5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

6.04 *Builder's Risk and Other Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.
- B. *Property Insurance for Facilities of Owner Where Work Will Occur:* ~~Owner-Contractor~~ is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D. Such policy shall identify both Contractor and Owner as additional insureds. Contractor shall be solely responsible for any deductible.
- C. *Property Insurance for Substantially Complete Facilities:* Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, ~~Contractor-Owner~~ will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of ~~Owner's-Contractor's~~ procurement of such property insurance.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, as provided in Paragraph 15.04, then Owner ~~(directly, if it is the purchaser of the builder's risk policy, or through Contractor)~~ will provide advance notice of such occupancy or use to the builder's risk or all-risk insurer, and Contractor shall obtain an occupancy or use endorsement consenting to the continuation of coverage prior to Owner commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or

damage the insurer will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.

1. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by ~~Owner or Contractor~~ as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. ~~Deleted in its entirety. Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.~~
1. ~~Deleted in its entirety. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.~~
- C. ~~Deleted in its entirety. The waivers in this Paragraph 6.05 include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.~~
- D. Contractor shall be responsible for assuring that each Subcontract contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.04 shall maintain such proceeds in a segregated account, and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.
- D. Owner, at its sole discretion, may elect to fund the costs associated with any property insurance claim, ~~excluding~~ the deductible, and seek reimbursement from Contractor's policy that identifies both Contractor and Owner as named insureds. If Owner exercises this right, it shall have sole authority to settle and adjust any claim and receive reimbursement under the policy with the proceeds made payable to Owner. Contractor shall have the obligation to cooperate and comply with all terms and provisions of the policy and its failure to do so shall ~~constitute~~ constitute a material breach of the Contract. If Owner does not elect this right, Contractor shall be required to fund the costs associated with any property insurance claim and seek reimbursement under the policy.
- E. In the event of any conflict between this Paragraph 6.06 and the specific insurance requirements of Contractor set forth in the Supplemental Conditions, the specific insurance requirements in the Supplemental Conditions shall govern.

ARTICLE 7—CONTRACTOR'S RESPONSIBILITIES

7.01 *Contractor's Means and Methods of Construction*

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor's expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor's determination of the need for such services, (2) the qualifications or licensing

of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

7.02 *Supervision and Superintendence*

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.03 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor's employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor's own acts and omissions. The Contractor agrees to remove from the Project an employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding the jobsite conduct.
- C. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers and proper shoes are required apparel. The display of vulgar words, signs or figures is prohibited. Sandals and flip-flops are prohibited on the Project site. The use of radios, tape players, CD players, boom boxes, sound producing devices and the like are prohibited on the Project site. The Contractor shall not be permitted to use restrooms or other sanitaiysanitary facilities within the Owner's existing buildings or on-site facilities.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site will be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

7.04 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the

performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.

- B. All materials and equipment incorporated into the Work must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment must be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.05 "Or Equals"

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material, or items from other proposed Suppliers, under the circumstances described below.
 - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
 - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - 3) has a proven record of performance and availability of responsive service; and
 - 4) is not objectionable to Owner.
 - b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) the item will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense:* Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.

- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal," which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of equipment or material under the circumstances described below. To the extent possible such requests must be made before commencement of related construction at the Site.
 - 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of equipment or material from anyone other than Contractor.
 - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 - 3. Contractor shall make written application to Engineer for review of a proposed substitute item of equipment or material that Contractor seeks to furnish or use. The application:
 - a. will certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design;
 - 2) be similar in substance to the item specified; and
 - 3) be suited to the same use as the item specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times;

- 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item; and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
- c. will identify:
 - 1) all variations of the proposed substitute item from the item specified; and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. will contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request will be final and binding, and may not be reversed through an appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor or Supplier to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors or Suppliers for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor or Supplier, whether initially or as a replacement, will constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis, Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.
- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.

- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights will be disclosed in the Contract Documents.
- B. ~~Deleted in its entirety. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.~~
- C. ~~Deleted in its entirety. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.~~

7.09 *Permits*

- A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits, licenses, and certificates of occupancy. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a

negotiated contract). Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.11 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.
- C. Owner or Contractor may give written notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.12 Record Documents

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.13 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve

Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations.

- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- E. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in

accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).

- J. Contractor's duties and responsibilities for safety and protection will resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as material safety data sheets) or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

7.16 *Submittals*

A. *Shop Drawing and Sample Requirements*

1. Before submitting a Shop Drawing or Sample, Contractor shall:
 - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determine and verify:
 - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
 - 2) the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
 - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
2. Each Shop Drawing or Sample must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.

3. With each Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Submittal; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
1. *Shop Drawings*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide, and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.C.
 2. *Samples*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the Submittal for the limited purposes required by Paragraph 7.16.C.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Engineer's Review of Shop Drawings and Samples*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals. Engineer's review and approval will be only to determine if the items covered by the Submittals will, after installation or incorporation in the Work, comply with the requirements of the Contract Documents, and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation

thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order or other appropriate Contract modification.

5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, will not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance, or approval of a Shop Drawing or Sample will result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.C.4.

D. *Resubmittal Procedures for Shop Drawings and Samples*

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous Submittals.
2. Contractor shall furnish required Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*

1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
 - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
 - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.

- c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
- d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
- 2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
 - 1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and
 - 2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, or improper modification, maintenance, or operation, by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
 - 1. Observations by Engineer;
 - 2. Recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. The issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. Use or occupancy of the Work or any part thereof by Owner;

5. Any review and approval of a Shop Drawing or Sample submittal;
 6. The issuance of a notice of acceptability by Engineer;
 7. The end of the correction period established in Paragraph 15.08;
 8. Any inspection, test, or approval by others; or
 9. Any correction of defective Work by Owner.
- E. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.

7.18 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner ~~and Engineer~~, and the Owner's officers, directors, members, partners, and employees, agents, consultants and subcontractors of each and any of them, from losses, damages, costs, and judgments (including but not limited to all reasonable fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third-party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which otherwise exists as to any party or person described in this subsection but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable.
- B. ~~In any and all claims against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts. The Contractor acknowledges the limit of dollar amount of Contractor's indemnity obligations required by the Contract specifically for those claims caused in whole or in part by the Owner or Engineer shall be \$1,000,000 or the Contract Sum of the Project, whichever is more. The parties agree that the indemnity~~

provided herein bears a reasonable commercial relationship to the Contract and is incorporated by this reference into the Project specifications and bid documents. if any.

- C. Notwithstanding the above and without monetary limitation, the Contractor hereby indemnifies and holds harmless the Owner, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by negligence, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of the Contract.
- D. Contractor agrees and understands that its obligation to indemnify, hold harmless, and defend as set forth in Paragraphs 7.18.A and B. above includes without limitation, claims, losses, etc., for personal injury, death, property damage, Hazardous Environmental Conditions, infringement of patent rights or copyrights incidental to the use or incorporation in the performance of the Work, etc., to the extent caused by the negligence, recklessness, or intentional misconduct of Contractor and the persons or entities employed or utilized by Contractor in the performance of the Contract.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work by express delegation in the Contract Documents. Such delegation will specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria stated in the Contract Documents.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
 - 1. Checking for conformance with the requirements of this Paragraph 7.19;

2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
 3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

ARTICLE 8—OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any third-party utility work that Owner has arranged to take place at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed

without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. The identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. An itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. The extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 *Legal Relationships*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment will take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.
 - 1. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due Contractor, and assign to such other contractor or

utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this Paragraph 8.03.B.

2. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due Contractor.
- C. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9—OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents will be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.

- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 ~~*Evidence of Financial Arrangements*~~

- A. ~~Deleted in its entirety. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract (including obligations under proposed changes in the Work).~~ N/A

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10—ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe, as an experienced and qualified design professional, the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.07. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Resident Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.06 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.07 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, will create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation, and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Contractor under Paragraph 15.06.A, will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.07 also apply to the Resident Project Representative, if any.

10.08 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs of which Engineer has been informed.

ARTICLE 11—CHANGES TO THE CONTRACT

11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, an [Emergency Work Change Directive](#), or a Field Order.

- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer.

11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. Changes in Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with an [Emergency](#) Work Change Directive;
 - 2. Changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. Changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.05, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters; and
 - 4. Changes that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of an [Emergency](#) Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.

11.03 [Emergency](#) Work Change Directives

- A. An [Emergency](#) Work Change Directive [may only be used in emergency situations and](#) will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ~~ordered or~~ documented by an [Emergency](#) Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the [Emergency](#) Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.07 regarding change of Contract Price.

- B. If Owner has issued a written Emergency Work Change Directive and:
 - 1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
 - 2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit ~~any Claim seeking such a~~ Change Order including an adjustment no later than 60 days after issuance of the Work Change Directive.

11.04 *Field Orders*

- A. Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.05 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.
- B. Such changes in the Work may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

11.06 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.C.2.

11.07 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must comply with the provisions of Article 12.

- B. An adjustment in the Contract Price will be determined as follows:
1. Where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03);
 2. Where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.07.C.2); or
 3. Where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.07.C).
- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit will be determined as follows:
1. A mutually acceptable fixed fee; or
 2. If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. For costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee will be 15 percent;
 - b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 percent;
 - c. Where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of 5 percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted Work the maximum total fee to be paid by Owner will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;
 - d. No fee will be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. The amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in Cost of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and
 - f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs,

Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.

11.08 *Change of Contract Times*

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

- B. *Change Proposal Procedures*

- 1. *Submittal:* Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
- 2. *Supporting Data:* The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal.
 - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
 - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event.

- 3. *Engineer's Initial Review:* Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision recommendation regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting

data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.

4. *Engineer's Full Review and ~~Action-Recommendation~~ on the Change Proposal:* Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either ~~recommend approve~~approval of the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
5. *Binding Decision:* Engineer's recommendation is sent to the Owner who shall render a final decision. The Owner's decision is final and binding upon ~~Owner and~~ Contractor, unless ~~Owner or~~ Contractor appeals the decision by filing a Claim under Article 12.
- C. *Resolution of Certain Change Proposals:* If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion:* Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

11.10 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12—CLAIMS - DELETED IN ITS ENTIRETY

12.01 *Claims* - Deleted in its entirety

- A. Deleted in its entirety.~~Claims Process:~~ The following disputes between Owner and Contractor are subject to the Claims process set forth in this article:
 1. Deleted in its entirety.~~Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;~~
 2. Deleted in its entirety.~~Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents;~~

3. ~~Deleted in its entirety.~~ Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters; and
 4. ~~Deleted in its entirety.~~ Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- B. ~~Deleted in its entirety.~~ *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. ~~Deleted in its entirety.~~ *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim will be stated in writing and submitted to the other party, with a copy to Engineer.
- D. ~~Deleted in its entirety.~~ *Mediation*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate will stay the Claim submittal and response process.
 2. ~~Deleted in its entirety.~~ If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process will resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process will resume as of the date of the conclusion of the mediation, as determined by the mediator.
 3. ~~Deleted in its entirety.~~ Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. ~~Deleted in its entirety.~~ *Partial Approval:* If the party receiving a Claim approves the Claim in part and denies it in part, such action will be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. ~~Deleted in its entirety.~~ *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal

~~of the denial. A denial of the Claim will be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.~~

- G. ~~Deleted in its entirety.~~ *Final and Binding Results:* ~~If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim will be incorporated in a Change Order or other written document to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.~~

ARTICLE 13—COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 2. When needed to determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work will be in amounts no higher than those commonly incurred in the locality of the Project, will not include any of the costs itemized in Paragraph 13.01.C, and will include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor in advance of the subject Work. Such employees include, without limitation, superintendents, foremen, safety managers, safety representatives, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work will be apportioned on the basis of their time spent on the Work. Payroll costs include, but are not limited to, salaries and wages plus the cost of fringe benefits, which include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, will be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts

will accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment will accrue to Owner, and Contractor shall make provisions so that they may be obtained.

3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, which will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee will be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, and surveyors, ~~attorneys, and accountants~~) employed or retained for services specifically related to the Work.
5. Other costs consisting of the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - 1) In establishing included costs for materials such as scaffolding, plating, or sheeting, consideration will be given to the actual or the estimated life of the material for use on other projects; or rental rates may be established on the basis of purchase or salvage value of such items, whichever is less. Contractor will not be eligible for compensation for such items in an amount that exceeds the purchase cost of such item.
 - c. *Construction Equipment Rental*
 - 1) Rentals of all construction equipment and machinery, and the parts thereof, in accordance with rental agreements approved by Owner as to price (including any surcharge or special rates applicable to overtime use of the construction equipment or machinery), and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs will be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts must cease when the use thereof is no longer necessary for the Work.
 - 2) Costs for equipment and machinery owned by Contractor or a Contractor-related entity will be paid at a rate shown for such equipment in the equipment rental rate book specified in the Supplementary Conditions. An hourly rate will be computed by dividing the monthly rates by 176. These computed rates will include all operating costs.

- 3) With respect to Work that is the result of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price ("changed Work"), included costs will be based on the time the equipment or machinery is in use on the changed Work and the costs of transportation, loading, unloading, assembly, dismantling, and removal when directly attributable to the changed Work. The cost of any such equipment or machinery, or parts thereof, must cease to accrue when the use thereof is no longer necessary for the changed Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of builder's risk or other property insurance established in accordance with Paragraph 6.04), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses will be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work does not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 2. The cost of purchasing, renting, or furnishing small tools and hand tools.
 3. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 4. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.

5. Costs due to the negligence, **recklessness, or intentional misconduct** of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 6. Expenses incurred in preparing and advancing Claims.
 7. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee*
1. When the Work as a whole is performed on the basis of cost-plus-a-fee, then:
 - a. Contractor's fee for the Work set forth in the Contract Documents as of the Effective Date of the Contract will be determined as set forth in the Agreement.
 - b. for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work, Contractor's fee will be determined as follows:
 - 1) When the fee for the Work as a whole is a percentage of the Cost of the Work, the fee will automatically adjust as the Cost of the Work changes.
 - 2) When the fee for the Work as a whole is a fixed fee, the fee for any additions or deletions will be determined in accordance with Paragraph 11.07.C.2.
 2. When the Work as a whole is performed on the basis of a stipulated sum, or any other basis other than cost-plus-a-fee, then Contractor's fee for any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price on the basis of Cost of the Work will be determined in accordance with Paragraph 11.07.C.2.
- E. *Documentation and Audit*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor and pertinent Subcontractors will establish and maintain records of the costs in accordance with generally accepted accounting practices. Subject to prior written notice, Owner will be afforded reasonable access, during normal business hours, to all Contractor's accounts, records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner. Pertinent Subcontractors will afford such access to Owner, and preserve such documents, to the same extent required of Contractor.

13.02 *Allowances*

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.

B. *Cash Allowances*: Contractor agrees that:

1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment for any of the foregoing will be valid.

C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.

D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor for Work covered by allowances, and the Contract Price will be correspondingly adjusted.

13.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.

B. The estimated quantities of items of Unit Price Work are ~~not guaranteed estimates~~ and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.

C. Each unit price ~~shall be guaranteed and~~ will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.

E. *Adjustments in Unit Price*

1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
 - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.

2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
3. Adjusted unit prices will apply to all units of that item.

ARTICLE 14—TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK~~**OLD ARTICLE 13**~~

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply with such procedures and programs as applicable.

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work will be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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Such inspections and tests will be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering will be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt written notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement:* Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. *Preservation of Warranties:* When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages:* In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions

in the Contract Documents with respect to the Work will be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

B. Owner shall not be deemed to have accepted any defective work from Contractor that was not discovered by Engineer or Owner unless the defect was specifically detailed to Owner in writing by Contractor notifying Owner of the defective work and Owner notifies Contractor in writing that it will accept defective work (whether as-is, by receiving credit, or receiving other compensation, losses, or damage from Contractor as discussed above in Paragraph 14.04.A.) Contractor recognizes and understands that it shall not be relieved of responsibility or liability with performing defective work even if such defective work previously passed inspection by any inspector, including, without limitation, an inspector with the governing building department or a threshold inspector.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 1. If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right

of Owner to stop the Work will not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them. The Owner shall incur no liability for delays occasioned by any stop-work order issued in accordance with this paragraph.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace defective Work as required by Engineer, then Owner may, after 7 days' written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15—PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer and Owner. Progress payments for Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments*
 - 1. ~~At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month),~~ Contractor, on the 25th of each month, shall submit to Engineer for review an Application for Payment (in a form approved by Owner) filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents.

2. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. Review of Applications

1. Engineer will, within 10 days after ~~receipt of~~ each Application for Payment is stamped as received by Engineer, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor ~~within 10 days after the date on the Application for Payment is stamped as received by Engineer~~ indicating in writing Engineer's reasons for refusing to recommend payment and the action necessary to make payment application proper. In the latter case, Contractor ~~shall~~may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.

3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work;
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Neither Engineer's review of Contractor's Work for purposes of recommending payments nor Engineer's recommendation of any payment shall relieve Contractor of responsibility or liability for defects in the Work.
6. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. Payment Becomes Due

1. ~~Ten days a~~ Subject to the provisions of Paragraph 15.01.E. and Section 218. 735, Florida Statutes, after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) shall be paid by Owner in accordance with Section 218.735, Florida Statutes, within 25 business days after the date on which the payment application is stamped as received by Engineer will become due, and when due will be paid by Owner to Contractor.

E. Reductions in Payment by Owner

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. Claims have been made against Owner based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;
 - b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
 - c. Contractor has failed to provide and maintain required bonds or insurance;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
 - e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
 - f. The Work is defective, requiring correction or replacement;
 - g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - h. The Contract Price has been reduced by Change Orders;
 - i. An event has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
 - j. Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
 - k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens; or
 - l. Other items entitle Owner to a set-off against the amount recommended.
2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the

specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed will be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld will be treated as an amount due as determined by Paragraph 15.01.D.1 and subject to interest as provided in the Agreement.

15.02 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than 7 days after the time of payment by Owner.

15.03 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of ~~P~~punch ~~L~~Ist items to be completed or corrected before final payment. Substantial Completion cannot occur before the Project is issued a Certificate of Occupancy (or Completion, if applicable) by the governing building department that allows Owner is able to begin to utilize the entire Project Work for the purposes for which it was intended.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will fix the date of Substantial Completion subject to Certificate of Occupancy (or Completion). Engineer shall attach to the certificate a ~~p~~Punch ~~L~~Ist of items to be completed or corrected before final payment. Owner shall have 7 days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached ~~P~~punch ~~L~~Ist. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised ~~p~~Punch ~~L~~Ist of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the Punch List of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed Punch List items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the Punch List.

15.04 *Partial Use or Occupancy*

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time, Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through 15.03.E for that part of the Work.
 - 2. At any time, Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.04 regarding builder's risk or other property insurance.

15.05 *Final Inspection – Punch List*

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 *Final Payment*

A. *Application for Payment*

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to, the evidence that Contractor maintains completed operations coverage for its required commercial general liability (CGL) insurance; ~~insurance;~~
 - b. consent of the surety, if any, to final payment;
 - c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
 - d. a list of all duly pending Change Proposals and Claims; and
 - e. complete and legally effective final releases or waivers (satisfactory to Owner) of all Lien rights ~~arising out of the Work, and of~~ Liens filed in connection with the Work.
3. In lieu of the final releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor whereby Contractor swears that: (a) ~~the releases and receipts include all~~ payrolls ~~labor, services, material, and equipment bills and other indebtedness connected with the Work for which Owner has paid Contractor through the date of Contractor's final Application for Payment have been paid by Contractor a Lien could be filed;~~ and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner will pay Contractor in the final Application for Payment will represent Contractor's receipt of all payments for the Work except for the specifically enumerated Claims (and Claims not specifically enumerated are deemed released and waived) and that Contractor will promptly pay its Subcontractors and Suppliers upon its receipt of the final payment. might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any

Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.

4. The documents and materials that Contractor is required to submit to accompany its Final Application for Payment (as set forth in this Paragraph 15.06) are conditions precedent to issuance of final payment.

- B. *Engineer's Review of Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Notice of Acceptability:* In support of its recommendation of payment of the final Application for Payment, Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment and issuance of notice of the acceptability of the Work.
- E. *Final Payment Becomes Due:* Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within Twenty-five (25)30 days of the final Application for Payment being stamped as received by Owner's receipt of the final Application for Payment from Engineer.

15.07 Waiver of Claims

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted as a Claim, or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
1. correct the defective repairs to the Site or such adjacent areas;
 2. correct such defective Work;
 3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the failure to pay.
- D. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- E. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16—SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 *Owner May Terminate for Cause*

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; ~~or~~
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer; ~~or~~
 - 5. Contractor's failure to timely pay Subcontractors and Suppliers after it receives payment from Owner, or
 - 6. Contractor's failure to obtain or maintain the insurance required of it in the Contract.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) 10-5 days' written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) written notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7-5 days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the

Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. ~~Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order.~~ When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 *Owner May Terminate for Convenience*

- A. Upon ~~7-5~~ days' written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, such as demobilization expenses, and including costs incurred to prepare a termination for convenience cost proposal. Attorneys' fees, accountant fees, home office overhead and similar expenses shall not be deemed reasonable expenses.
- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, or other economic loss arising out of or resulting from such termination.

16.04 *Contractor May Stop Work or Terminate*

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract

and recover from Owner payment on the same terms as provided in Paragraph 16.03. Contractor, however, cannot terminate the Contract due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, 7 days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph. Contractor, however, cannot stop the Work due to any dispute (i) concerning the amount of payment due Contractor or (ii) any amounts Owner is withholding from Contractor.

ARTICLE 17—FINAL RESOLUTION OF DISPUTES

17.01 Deleted in its entirety. ~~Methods and Procedures~~

- A. Deleted in its entirety. ~~Disputes Subject to Final Resolution: The following disputed matters are subject to final resolution under the provisions of this article:~~

1. Deleted in its entirety. ~~A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full, pursuant to Article 12; and~~
2. Deleted in its entirety. ~~Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise after final payment has been made.~~

- B. Deleted in its entirety. ~~Final Resolution of Disputes: For any dispute subject to resolution under this article, Owner or Contractor may:~~

1. Deleted in its entirety. ~~elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions;~~
2. Deleted in its entirety. ~~agree with the other party to submit the dispute to another dispute resolution process; or~~
3. Deleted in its entirety. ~~if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.~~

1. Claims, disputes or other matters in question between the parties to this Agreement shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Completion of pre-

suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of the Agreement.

2. Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any mediation or litigation, and the Owner shall continue to make payments to the Contractor in accordance with the Contract Documents.
3. Either party may initiate a mediation preceding by a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen or as provided in subparagraph , but in no event after the expiration of the applicable statute of limitations.
4. The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. In the event the parties have not agreed upon a mediator within thirty (30) days of the request for mediation, the Orlando office of the American Arbitration Association, upon the written request of either party, shall appoint a mediator from its pool of approved mediators.
5. Unless otherwise mutually agreed, the mediation shall be held in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect, each party to bear its own fees, costs and expenses.
6. In the event that pre-suit mediation is unsuccessful, all claims, disputes or other matters in question shall be resolved in the Circuit Courts of Volusia County Florida. The Parties, including the Contractor's Surety, waive Venue and Jurisdiction of any Federal Court and expressly waive Trial by Jury.

ARTICLE 18—MISCELLANEOUS

18.01 Giving Notice

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
 1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
 2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
 3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

18.02 Computation of Times

- A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are

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and American Society of Civil Engineers. All rights reserved.

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otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 *Limitation of Damages*

- A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 *No Waiver*

- A. A party's non-enforcement of any provision will not constitute a waiver of that provision, nor will it affect the enforceability of that provision or of the remainder of this Contract.

18.06 *Survival of Obligations*

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination of the Contract or of the services of Contractor.

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the ~~Sstate of Florida~~ State of Florida ~~in which the Project is located.~~

18.08 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

18.10 *Headings*

- A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.



End of Solicitation Documents



NOTICE OF INTENT TO AWARD

June 4, 2024

**ITB #24-13
JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS**

On May 24, 2024 the City of Port Orange received three (3) responsive submittals for ITB #24-13 Jackson Street & Oak Street Drainage Improvements.

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

GPS CIVIL CONSTRUCTION, INC.

This recommendation of award will be presented to City Council for approval in the near future. Interested parties may review the City Council agenda at: <https://www.port-orange.org/776/Agendas-and-Minutes>.

Joseph Castro
Buyer

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes or failure to post the bond or other security required by law within the time allowed, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes." The 72-hour posting requirement will elapse on June 7, 2024 at 4:00 PM EST.



REVISED (ATTACHMENT 1) SCHEDULE OF UNIT PRICING

ITB #24-13

JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS

NAME OF BUSINESS:

CONTACT PERSON:

EMAIL ADDRESS:

AUTHORIZED SIGNATURE:

ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3 - SCOPE OF WORK

Bidder must fill in each cell highlighted in GREEN, leaving no blank cells; return completed, signed form with bid submittal and include on USB/thumb drive.

SITE PREPARATIONS

ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1	Mobilization	1	LS	\$	\$
2	Survey / As-builts	1	LS	\$	\$
3	Maintenance of Traffic	1	LS	\$	\$
4	Excavation / Grading	1	LS	\$	\$
5	Demo Existing RCP	1	LS	\$	\$
6	Demo Existing Headwall	36	EA	\$	\$
7	Tree/Shrub/Plant Removals/Remediation from Swale	1	LS	\$	\$
8	Relocate Existing Utility Pole	11	EA	\$	\$
9	Open Cut Asphalt Remediation	63	SY	\$	\$
10	Remove/Replace Existing Concrete Driveway	320	SF	\$	\$
11	Water Valve Adjustment	8	EA	\$	\$
12	Sewer Manhole Adjustment	10	EA	\$	\$
13	Storm Manhole Adjustment	1	EA	\$	\$
14	Existing Electric Box Relocated	1	EA	\$	\$
15	Existing PVC Riser Relocated	1	EA	\$	\$
16	Inlet Protection	7	EA	\$	\$
17	Silt Fence	6,729	LF	\$	\$
18	Sod	7,407	SY	\$	\$
	SUBTOTAL ITEMS 1-18				\$

ROADWAY SYSTEM

ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
19	Asphalt Planing (1")	11,027	SY	\$	\$
20	Friction Course FC-9.5 (1")	639	TN	\$	\$
21	Structural Course SP-12.5 (2")	65	TN	\$	\$
22	Optional Base Group 9 (10")	582	SY	\$	\$
23	Stabilized Subgrade (12")	1,227	SY	\$	\$
24	Type F Concrete Curb	1,936	LF	\$	\$
25	4" Sidewalk	7,102	SF	\$	\$
26	ADA Mats	16	EA	\$	\$
27	Thickened Edge Sidewalk	8,525	SF	\$	\$

28	Concrete Driveway	2,717	SF	\$	\$
29	Pedestrian Railing	1,794	LF	\$	\$
30	Retaining Wall w/ Handrail	42	LF	\$	\$
	SUBTOTAL ITEMS 19-30				\$
DRAINAGE SYSTEM					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
31	15" HDPE	97	LF	\$	\$
32	15" RCP	44	LF	\$	\$
33	18" RCP	50	LF	\$	\$
34	24" RCP	17	LF	\$	\$
35	30" RCP	677	LF	\$	\$
36	19" x 30" ERCP	1,999	LF	\$	\$
37	29" x 45" ERCP	1,936	LF	\$	\$
38	24" MES	1	EA	\$	\$
39	19" x 30" MES	1	EA	\$	\$
40	29" x 45" MES	1	EA	\$	\$
41	48" Storm Manhole	2	EA	\$	\$
42	60" Storm Manhole	2	EA	\$	\$
	a) 72" Storm Manhole	1	EA	\$	\$
43	Type C Inlet	1	EA	\$	\$
44	Type E Inlet	10	EA	\$	\$
45	Type E Inlet w/ 12" Slot	4	EA	\$	\$
46	Type H Inlet	2	EA	\$	\$
47	Type H Inlet w/ 12" Slot	5	EA	\$	\$
48	Type 4 Curb Inlet w/ J Bottom	18	EA	\$	\$
49	15" Yard Drain	18	EA	\$	\$
50	Connect to Existing Storm Pipe	9	EA	\$	\$
51	Connect to Existing Structure	2	EA	\$	\$
	SUBTOTAL ITEMS 31-51				\$
STRIPING AND SIGNAGE					
ITEM#	DESCRIPTION	ESTIMATED QUANTITY	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
52	6" Single White	8,503	LF	\$	\$
53	6" Double Yellow	3,744	LF	\$	\$
54	24" White Stop Bar	107	LF	\$	\$
55	12" White Crosswalk	431	LF	\$	\$
56	Turn Lane Arrow Template	1	EA	\$	\$
57	Remove Existing Sign/Post	6	EA	\$	\$
58	Furnish & Install Sign/Post	22	EA	\$	\$
59	Mailbox Remove/Relocate	9	EA	\$	\$
	SUBTOTAL ITEMS 52-59				\$
TOTAL PRICE					\$

LEGEND:

LS - Lump Sum
EA - Each
LF - Linear Feet
SF - Square Feet
TN - Ton
SY - Square Yard



NOTICE OF INTENT TO AWARD

June 4, 2024

**ITB #24-13
JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS**

On May 24, 2024 the City of Port Orange received three (3) responsive submittals for ITB #24-13 Jackson Street & Oak Street Drainage Improvements.

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

GPS CIVIL CONSTRUCTION, INC.

This recommendation of award will be presented to City Council for approval in the near future. Interested parties may review the City Council agenda at: <https://www.port-orange.org/776/Agendas-and-Minutes>.

Joseph Castro
Buyer

"Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes or failure to post the bond or other security required by law within the time allowed, shall constitute a waiver of proceedings under Chapter 120, Florida Statutes." The 72-hour posting requirement will elapse on June 7, 2024 at 4:00 PM EST.

CITY OF PORT ORANGE

FINAL ENGINEERING PLANS

CITY OF PORT ORANGE
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129
PHONE NUMBER: (386) 506-5754
FAX NUMBER: N/A
CONTACT PERSON: JUNOS REED, P.E.
e-mail: jureed@port-orange.org

ZEVE COHEN & ASSOCIATES, INC.
300 INTERCHANGE BOULEVARD, SUITE C
ORMOND BEACH, FL 32174
PHONE NUMBER: (386) 677-2482
FAX NUMBER: (386) 677-2505
CONTACT PERSON: ROBERT BALL, P.E.
e-mail: bball@zevecohen.com

ATLANTIC DRAFTING & SURVEYING, INC.
1362 N. US HWY 1, SUITE 304
ORMOND BEACH, FL 32174
PHONE NUMBER: (386) 264-8490
FAX NUMBER: N/A
CONTACT PERSON: JOSEPH WOOLDRIDGE, P.S.M.
e-mail: ads.inc.fl1@gmail.com

C1	COVER SHEET
C2-C4	CONSTRUCTION NOTES
C5-C6	TYPICAL SECTIONS
C7	KEY MAP
C8-C12	PAVING, GRADING & DRAINAGE PLAN
C13-C17	SIGNAGE & PAVEMENT MARKING PLAN
C18-C20	CONSTRUCTION DETAILS

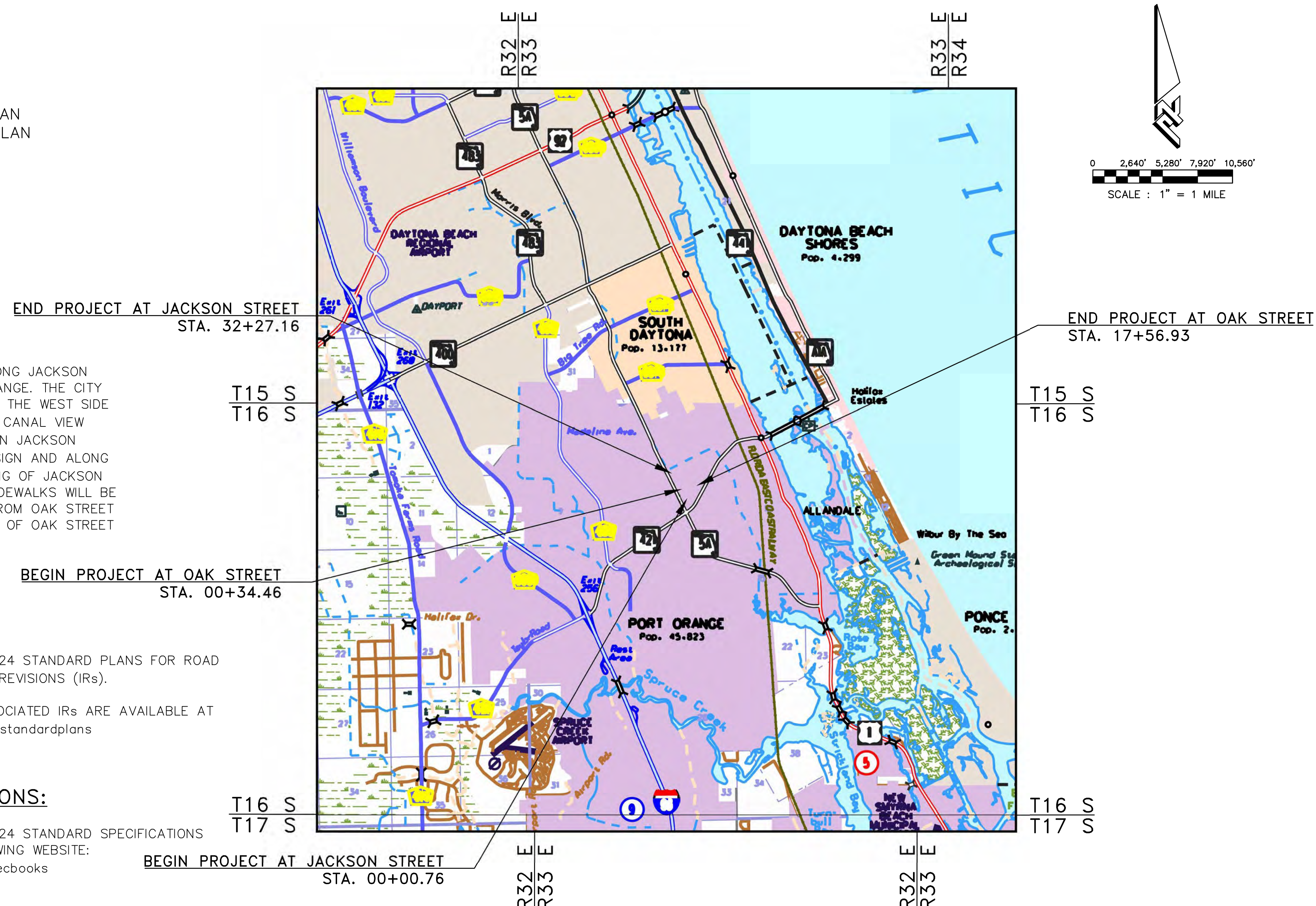
THIS PROJECT INCLUDES ROADWAY IMPROVEMENTS ALONG JACKSON STREET AND OAK STREET FOR THE CITY OF PORT ORANGE. THE CITY DESIRES TO PIPE THE EXISTING DRAINAGE DITCHES ON THE WEST SIDE OF JACKSON STREET (BETWEEN DUNLAWTON AVE AND CANAL VIEW BLVD) AND THE SOUTH SIDE OF OAK STREET (BETWEEN JACKSON STREET AND DUNLAWTON AVE.). AS PART OF THE DESIGN AND ALONG LIMITS OF THE DITCH PIPING, THE MILLING/RESURFACING OF JACKSON AND OAK STREETS WILL ALSO BE COMPLETED. NEW SIDEWALKS WILL BE ADDED ALONG THE WEST SIDE OF JACKSON STREET FROM OAK STREET TO CANAL VIEW BOULEVARD AND ON THE NORTH SIDE OF OAK STREET FROM JACKSON STREET TO DUNLAWTON AVENUE.

FLORIDA DEPARTMENT OF TRANSPORTATION, FY 2023–24 STANDARD PLANS FOR ROAD AND BRIDGE CONSTRUCTION AND APPLICABLE INTERIM REVISIONS (IRs).

STANDARD PLANS FOR ROAD CONSTRUCTION AND ASSOCIATED IRs ARE AVAILABLE AT THE FOLLOWING WEBSITE: <http://www.fdot.gov/design/standardplans>

APPLICABLE IRs:

FLORIDA DEPARTMENT OF TRANSPORTATION, FY 2023-24 STANDARD SPECIFICATIONS
FOR ROAD AND BRIDGE CONSTRUCTION AT THE FOLLOWING WEBSITE: BEGIN
<http://fdot.gov/programmanagement/implemented/specbooks>



****NOTE: THE SCALE OF THESE PLANS MAY HAVE CHANGED DUE TO REPRODUCTION.****



CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION
(4-616) (L.C.)

JACKSON AND OAK STREET IMPROVEMENTS FINAL ENGINEERING PLANS COVER SHEET

PROJECT NO: ZC 22123

DESIGNED BY: MLR

DRAFTED BY: MLR

CHECKED BY: BB

DRAWING FILE: 01_22123 - COV

ROBERT J. BALL, P.E., NO. 60001
MELIA L. RUSSELL, P.E., NO. 68357
NOT VALID WITHOUT SEAL

SHEET: C1 OF 20

GENERAL NOTES

1. ALL CONSTRUCTION, DRAINAGE STRUCTURES AND OTHER SITE IMPROVEMENTS SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE LATEST EDITIONS OF FLORIDA DEPARTMENT OF TRANSPORTATION STANDARD PLANS AND SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION OR THE CITY'S LAND DEVELOPMENT CODE REQUIREMENTS, STANDARD CONSTRUCTION DETAILS & STANDARD SPECIFICATIONS, WHICHEVER IS MORE STRINGENT.
2. SHOP DRAWINGS AND CERTIFICATIONS FOR ALL MATERIALS AND STRUCTURES ARE REQUIRED. THE CONTRACTOR SHALL REVIEW AND SEAL SHOP DRAWINGS. THE CONTRACTOR SHALL SUBMIT REVIEWED SHOP DRAWINGS TO THE ENGINEER FOR APPROVAL PRIOR TO ORDERING THE MATERIALS REQUIRED FOR CONSTRUCTION.
3. CONSTRUCTION SHALL BE IN ACCORDANCE WITH ALL REQUIRED PERMITS. THE CONTRACTOR SHALL MAINTAIN COPIES OF ALL RELEVANT PERMITS AND CONSTRUCTION DOCUMENTS AVAILABLE ON THE JOB SITE AT ALL TIMES.
4. CONTRACTOR TO MAINTAIN THE SITE IN A SAFE AND SECURE MANNER TO PROTECT PUBLIC SAFETY AND THE CONDITION OF THE IMPROVEMENTS.
5. THE CONTRACTOR SHALL MAINTAIN, AT THE JOB SITE, A RECORD COPY OF ALL CONSTRUCTION DRAWINGS AND SPECIFICATIONS ON WHICH ALL FIELD CHANGES ARE TO BE SHOWN. THESE CHANGES ARE TO BE INCORPORATED IN THE "AS-BUILT" SURVEY FURNISHED TO THE ENGINEER.
6. SHOULD CONDITIONS VARY FROM THOSE SHOWN ON THESE PLANS, THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE ENGINEER OF RECORD PRIOR TO CONTINUING CONSTRUCTION.
7. ANY FIELD MODIFICATIONS OR DEVIATIONS TO THESE CONSTRUCTION PLANS REQUIRE APPROVAL BY BOTH THE ENGINEER OF RECORD AND THE CITY PRIOR TO PERFORMING THE WORK.
8. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO PROVIDE AN "AS-BUILT" SURVEY OF THE COMPLETED CONSTRUCTION. THE "AS-BUILT" SURVEY SHALL BE PREPARED IN ACCORDANCE WITH APPROPRIATE GOVERNMENTAL REGULATIONS AND ZCA REQUIREMENTS. THE "AS-BUILT" SURVEY SHALL BE PREPARED ON ZCA'S DESIGN/PERMITTED PLANS. ELECTRONIC AND PAPER COPIES OF THE AS-BUILT SURVEY SHALL BE PROVIDED TO THE ENGINEER OF RECORD. THE "AS-BUILT" SHALL BE SIGNED AND SEALED BY A FLORIDA REGISTERED PROFESSIONAL LAND SURVEYOR.
9. THE CONTRACTOR SHALL BE RESPONSIBLE FOR MAINTAINING VEHICULAR AND PEDESTRIAN TRAFFIC SAFELY THROUGH THE WORK ZONE AT ALL TIMES, IF APPLICABLE. ANY SIDEWALK, LANE OR ROAD CLOSURE REQUIRES REVIEW AND APPROVAL IN ADVANCE AND A SEVEN (7) DAY MINIMUM NOTICE TO THE CITY OF PORT ORANGE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE REQUIRED COORDINATION.
10. MAINTENANCE OF TRAFFIC WILL BE IN ACCORDANCE WITH THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAY CONSTRUCTION, MAINTENANCE AND UTILITY OPERATIONS AND THE FLORIDA DEPARTMENT OF TRANSPORTATION STANDARD PLANS, LATEST EDITION.
11. CONTRACTOR TO NOTIFY THE REGULATORY AGENCIES FORTY EIGHT (48) HOURS PRIOR TO THE START OF CONSTRUCTION. CONTRACTOR SHALL SEND COPIES OF ALL TESTING REPORTS TO THE REGULATORY AGENCIES AND THE ENGINEER OF RECORD.
12. SURVEY INFORMATION PROVIDED BY METRIC DRAFTING & SURVEYING, INC. DATED 11/19/2022, ALL ELEVATIONS BASED ON NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88) AND ARE SHOWN IN FEET. STATE PLANE COORDINATES ARE BASED UPON NAD 83.
13. ALL PUBLIC LAND CORNERS AND MONUMENTS WITHIN THE LIMITS OF CONSTRUCTION ARE TO BE PROTECTED. THE CONTRACTOR SHALL EMPLOY A SURVEYOR, REGISTERED WITH THE STATE OF FLORIDA, TO REPLACE/RESTORE ANY PROPERTY OR LAND MARKERS DISTURBED BY CONSTRUCTION ACTIVITIES.
14. NO LAND SHALL BE CLEARED, EXCAVATED OR FILLED AND NO STRUCTURES SHALL BE ERRECTED, REPAIRED OR DEMOLISHED WITHOUT PROPER PERMIT(S).
15. THE CONTRACTOR SHALL BE RESPONSIBLE FOR COMPLIANCE WITH ALL LOCAL, STATE AND FEDERAL REGULATIONS AS WELL AS THE REQUIREMENTS OF ST. JOHNS RIVER WATER MANAGEMENT DISTRICT AND E.P.A. (NPDES). CONTRACTOR SHALL ESTABLISH BEST MANAGEMENT PRACTICES AND EROSION CONTROL METHODS PRIOR TO COMMENCING ANY SITE CLEARING OR DEMOLITION AND SHALL MAINTAIN THOSE BARRIERS UNTIL FINAL ACCEPTANCE OF THE PROJECT.
16. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROJECT'S NPDES PERMITTING, INSPECTION AND REPORTING, IF APPLICABLE.
17. THE EROSION, SEDIMENT AND TURBIDITY CONTROL MEASURES DELINEATED HEREON ARE THE MINIMUM REQUIREMENTS. ADDITIONAL MEASURES MAY BE REQUIRED, DEPENDING ON THE ACTUAL SITE CONDITIONS. JURISDICTIONAL AGENCY PERMIT REQUIREMENTS AND CONSTRUCTION OPERATIONS. STAKED SILT FENCE SHALL BE UTILIZED TO CONTROL EROSION AND RELEASE OF SUSPENDED SOLIDS. SEDIMENT TRACKING CONTROL DEVICES SHALL BE USED TO PREVENT THE OFFSITE TRANSPORT OF SEDIMENT BY MOTORIZED VEHICLES. IF CONTROL MEASURES DO NOT PROVE SATISFACTORY, WORK SHALL CEASE UNTIL NEW MEASURES ARE ADOPTED WITH SATISFACTORY RESULTS.
18. ALL EROSION AND SEDIMENT TRACKING CONTROL DEVICES SHALL BE INSPECTED DAILY AND IMMEDIATELY FOLLOWING A RAINFALL EVENT. REFER TO PROJECT'S STORMWATER POLLUTION PREVENT PLAN (SWPPP). ANY DEFICIENCIES FOUND IN THE EROSION CONTROL MEASURES SHALL BE REPAIRED IMMEDIATELY. THE CONTRACTOR SHALL KEEP A LOG BOOK DOCUMENTING THESE DAILY INSPECTIONS, DEFICIENCIES AND REMEDIAL ACTIONS.
19. ALL UNSUITABLE SOILS AND UNSUITABLE MATERIALS (SUCH AS CLAY, ORGANICS, ROCK, CEMENTED COQUINA, DEBRIS, ETC.) SHALL BE REMOVED, DISPOSED OF IN A LEGAL MANNER AND REPLACED WITH DRY COMPACTED GRANULAR MATERIAL SATISFACTORY TO THE CITY. THE COST OF ALL WORK AND MATERIALS IS TO BE INCLUDED IN THE UNIT PRICE OF THE ASSOCIATED CONSTRUCTION ITEMS UNLESS OTHERWISE SHOWN IN THE PLANS.
20. IN THE EVENT THAT WATER IS ENCOUNTERED DURING CONSTRUCTION, DEWATERING SHALL BE PERFORMED AS NEEDED. THE CONTRACTOR IS SOLELY RESPONSIBLE FOR THE DESIGN, PERMITTING, INSTALLATION, OPERATION AND REMOVAL OF DEWATERING SYSTEMS AND THEIR SAFETY AND CONFORMITY WITH APPLICABLE CODES AND REGULATIONS.
21. PRIOR TO COMMENCEMENT OF CONSTRUCTION, THE CONTRACTOR SHALL NOTIFY THE APPROPRIATE ELECTRIC, TELEPHONE, GAS, CABLE TELEVISION, COMMUNICATIONS, ETC. COMPANIES TO DETERMINE THE TYPE AND LOCATION OF ALL UNDERGROUND FACILITIES IN THE AREA OF CONSTRUCTION.
22. ALL UNDERGROUND UTILITIES HAVE BEEN LOCATED HORIZONTALLY AND VERTICALLY BASED ON THE BEST INFORMATION AVAILABLE AND SHOULD BE CONSIDERED APPROXIMATE ONLY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATING AND VERIFYING ALL ELEVATIONS OF EXISTING UTILITIES (PUBLIC AND PRIVATE) SHOWN OR NOT SHOWN PRIOR TO CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR NOTIFYING THE VARIOUS UTILITY COMPANIES TO MAKE THE NECESSARY ARRANGEMENTS FOR ANY RELOCATION, DISRUPTION OF SERVICE OR CLARIFICATION OF ACTIVITY REGARDING SAID UTILITY. THE CONTRACTOR SHALL EXERCISE EXTREME CAUTION WHEN WORKING NEAR OR CROSSING A UTILITY, WHETHER SHOWN ON THESE PLANS OR FIELD LOCATED. THE CONTRACTOR SHALL BE RESPONSIBLE TO COORDINATE AND NOTIFY THE UTILITY COMPANIES FOR UTILITIES WHICH NEED TO BE RELOCATED FOR THE PROPOSED CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE TO PAY FOR ANY REPAIR, RELOCATION OR TEMPORARY MEASURES NEEDED FOR EXISTING OR PROPOSED UTILITIES.
23. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO LOCATE AND AVOID ALL UTILITIES, OTHER STRUCTURES AND OBSTRUCTIONS BOTH ABOVE AND BELOW GROUND. ALL DAMAGE RESULTING FROM THE CONTRACTOR'S FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL BE REPAIRED AT THE CONTRACTOR'S EXPENSE.
24. THE CONTRACTOR SHALL NOTIFY ALL UTILITY PROVIDERS AT LEAST TWO (2) BUSINESS DAYS PRIOR TO ANY CONSTRUCTION.
25. THE CONTRACTOR SHALL MAINTAIN UNINTERRUPTED SERVICE AT ALL SERVICE CONNECTIONS. THE MANNER IN WHICH THIS IS ACCOMPLISHED SHALL BE LEFT TO THE DISCRETION OF THE CONTRACTOR, SUBJECT TO THE REQUIREMENTS OF THE CONTRACT SPECIFICATIONS.
26. ALL EXISTING DRAINAGE STRUCTURES AND UTILITIES WITHIN THE CONSTRUCTION LIMITS SHALL REMAIN, UNLESS OTHERWISE NOTED IN PLANS.
27. ALL STATIONS AND OFFSETS REFER TO CENTERLINE CONSTRUCTION UNLESS OTHERWISE NOTED IN PLANS.
28. THE LENGTH OF ALL DRAINAGE PIPES AND LOCATION OF ALL DRAINAGE STRUCTURES ARE APPROXIMATE. THE LOCATION OF THE DRAINAGE STRUCTURE SHALL DETERMINE THE LENGTH OF PIPE.
29. THE TOP OF CASTING ELEVATIONS (TC) OF ALL STRUCTURES ARE SHOWN. HOWEVER, THE CONTRACTOR SHALL INSTALL ALL FRAMES SO AS TO PROVIDE A SMOOTH SURFACE FOR VEHICULAR AND/OR PEDESTRIAN TRAFFIC.
30. CONTRACTOR SHALL CONFIRM PROPOSED TOP OF CASTING (TC) ELEVATIONS WILL ALLOW POSITIVE DRAINAGE TO PROPOSED INLETS. IF POSITIVE DRAINAGE DOES NOT EXIST, CONTRACTOR TO COORDINATE WITH ENGINEER OF RECORD FOR SOLUTION AND ADJUST PROPOSED INLETS AS NECESSARY AT NO COST.
31. CONTRACTOR SHALL CONFIRM ELEVATION OF EXISTING GRADE PRIOR TO PLACING DRAINAGE OUTFALL STRUCTURES. CONTRACTOR SHALL NOTIFY ENGINEER OF RECORD IF EXISTING GRADE DOES NOT MATCH PROPOSED OUTFALL INVERT. CONTRACTOR SHALL ADJUST OUTFALL STRUCTURE INVERT AND/OR STRUCTURE LOCATION AS DIRECTED BY ENGINEER OF RECORD AT NO COST.
32. ANY DRAINAGE PROBLEMS CREATED BY CONSTRUCTION, OR EXISTING BEFORE CONSTRUCTION AND NOT ALLEVIATED, SHOULD BE BROUGHT TO THE ATTENTION OF THE ENGINEER OF RECORD AT THE TIME OF DISCOVERY.
33. ALL STORMWATER PIPES AND INLETS SHALL BE CLEANED OF DEBRIS AND ERODED MATERIALS AT LAST STAGES OF AND PRIOR TO COMPLETION OF CONSTRUCTION.
34. SPECIAL ATTENTION IS DIRECTED TO THE FACT THAT PORTIONS OF SOME DRAINAGE STRUCTURES MAY EXTEND INTO THE STABILIZED PORTION OF THE ROADBED. EXTREME CAUTION WILL BE NECESSARY DURING COMPACTION AND STABILIZATION OPERATIONS AT THESE LOCATIONS TO AVOID DAMAGE AND ACHIEVE THE REQUIRED COMPACTION.
35. DURING CONSTRUCTION, AN ALL-WEATHER ACCESSIBLE ROADWAY SHALL BE MAINTAINED AT ALL TIMES FOR FIRE ACCESS.
36. ALL REQUIRED FIRE LINES & HYDRANTS SHALL BE INSTALLED IN ACCORDANCE WITH LOCAL & STATE REQUIREMENTS AND OPERATIONAL PRIOR TO THE START OF VERTICAL CONSTRUCTION.
37. NONE OF THE EXISTING LIMEROCK BASE THAT IS REMOVED IS TO BE USED IN THE CONSTRUCTION OF THE NEW LIMEROCK BASE UNLESS OTHERWISE NOTED ON PLANS.
38. EXISTING DRIVEWAYS WITHIN THE LIMITS OF THIS PROJECT ARE TO BE REPLACED AT THE SAME LOCATION AND WIDTH WITH THE SAME TYPE OF MATERIAL, UNLESS OTHERWISE SHOWN IN THE PLANS.
39. ALL RAMPS, SIDEWALKS AND ACCESSIBLE ROUTES ARE TO BE IN COMPLIANCE WITH CURRENT A.D.A. REQUIREMENTS.
40. SIGNS THAT ARE REMOVED AND ARE TO BE RELOCATED SHALL BE STOCK PILED BY THE CONTRACTOR, ANY EXISTING SIGNS DAMAGED DURING CONSTRUCTION SHALL BE REPLACED BY THE CONTRACTOR AT HIS COST.
41. ROADWAY AND PARKING SIGNAGE AND MARKINGS SHALL BE IN CONFORMANCE WITH THE MANUAL OF UNIFORM TRAFFIC CONTROL DEVICES, CURRENT EDITION.
42. UNLESS OTHERWISE NOTED, PROPOSED GRADES SHOWN ARE FINISHED GRADES.
43. OPERATION AND MAINTENANCE OF THE STORMWATER SYSTEM WILL BE PROVIDED BY THE OWNER OF PROPERTY. MAINTENANCE IS TO INCLUDE BI-WEEKLY MOWING OF SIDE SLOPES FOR VEGETATION CONTROL AND MONTHLY INSPECTION/CLEANING OF CULVERTS & STORM SYSTEMS.
44. ALL DISTURBED AREAS SHALL BE SODDED, UNLESS OTHERWISE SHOWN, AND SHALL HAVE SOD/ VEGETATED COVER ESTABLISHED PRIOR TO THE INSPECTION FOR THE CERTIFICATE OF OCCUPANCY.
45. INSTALLATION OF THE REQUIRED STREET SIGNS, TRAFFIC SIGNS, PAYMENT STRIPING, STREET LIGHTS AND SIDEWALKS ALONG WITH THE PAINTING OF THE FIRE HYDRANTS MUST BE COMPLETED PRIOR TO THE ISSUANCE OF THE CERTIFICATE OF COMPLETION.
46. CONTRACTOR IS RESPONSIBLE FOR INSPECTING AND PRE-TESTING PRIOR TO SCHEDULING A TEST OR WALK-THROUGH WITH THE UTILITY REPRESENTATIVES, MUNICIPAL REPRESENTATIVES AND ENGINEER OF RECORD, ANY COST ASSOCIATED WITH RETESTING SHALL BE PAID FOR BY THE CONTRACTOR.
47. THE ENGINEER OF RECORD AND LOCAL UTILITY SHALL BE GIVEN SEVENTY-TWO (72) HOURS NOTICE OF ALL REQUESTED MEETINGS AND/OR TESTING MEASURES.
48. CONTRACTOR SHALL BE RESPONSIBLE TO COORDINATE WITH THE REGULATORY REPRESENTATIVES TO DETERMINE THE INSPECTIONS NEED FOR THE PROJECT. CONTRACTOR SHALL PROVIDE PROPER NOTIFICATION TO INSPECTING AUTHORITIES BEFORE AND DURING CONSTRUCTION.
49. ZEV COHEN AND ASSOCIATES, INC. (ZCA) LIABILITY SHALL BE LIMITED TO THE COMPANY'S DESIGN OF SPECIFIC IMPROVEMENTS AS DEPICTED ON THE SITE INFRASTRUCTURE CONSTRUCTION DOCUMENTS.
50. CONTRACTOR TO TAKE VIDEO OF EXISTING CONDITIONS THROUGHOUT THE CORRIDOR PRIOR TO THE COMMENCEMENT OF CONSTRUCTION TO ENSURE THAT ANY DAMAGE CAUSED BY CONSTRUCTION AND/OR EQUIPMENT SHALL BE REPAIRED BY THE CONTRACTOR AT THE CONTRACTOR'S EXPENSE. VIDEO WILL BE USED AS PROOF OF EXISTING CONDITIONS PRIOR TO WORK.

ALL MATERIALS AND INSTALLATION METHODS USED FOR LAND DEVELOPMENT CODE REQUIRED IMPROVEMENTS FOR SUBDIVISIONS AND SITE PLANS SHALL BE IN CONFORMANCE WITH THE CITY, FDOT STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION (LATEST EDITION), AND THE FDOT ROADWAY AND TRAFFIC DESIGN STANDARDS (LATEST EDITION).									
1. ALL RIGHT-OF-WAY OTHER THAN ROADWAY AREAS SHALL BE SEEDED AND MULCHED OR SODDED. ALL SLOPES STEEPER THAN 6:1 SHALL REQUIRE SODDING. THE CITY RESERVES THE RIGHT TO REQUIRE SODDING IN SPECIAL AREAS WHERE EROSION IS A CONCERN.	2. THE FOLLOWING WILL BE THE STANDARD PROTECTION FOR DITCHES UNLESS DRAINAGE CALCULATIONS INDICATE OTHERWISE:								
<table><tr><th>SWALE PROFILE GRADES</th><th>PROTECTION REQUIRED</th></tr><tr><td>0.2% - 1.0%</td><td>SEEDING AND MULCHING</td></tr><tr><td>1.0% - 4.0%</td><td>SODDING</td></tr><tr><td>4.0% +</td><td>DITCH PAVING</td></tr></table>	SWALE PROFILE GRADES	PROTECTION REQUIRED	0.2% - 1.0%	SEEDING AND MULCHING	1.0% - 4.0%	SODDING	4.0% +	DITCH PAVING	3. THE PAYMENT, BASE, AND SUBGRADE THICKNESS PRESENTED ON DETAILS REPRESENTS THE MINIMUM REQUIREMENTS FOR LOCAL PUBLIC STREETS AND PRIVATE PARKING LOTS. AREAS SUBJECT TO HEAVY TRAFFIC, SUCH AS COLLECTOR ROADS AND COMMERCIAL PRIVATE PARKING LOTS, HAVE INCREASED REQUIREMENTS.
SWALE PROFILE GRADES	PROTECTION REQUIRED								
0.2% - 1.0%	SEEDING AND MULCHING								
1.0% - 4.0%	SODDING								
4.0% +	DITCH PAVING								
4. THE DEVELOPER SHALL PROVIDE, AT THEIR OWN EXPENSE, A CERTIFIED SOILS ENGINEERING LABORATORY TO PERFORM ALL FIELD AND LABORATORY TESTING REQUIRED TO VERIFY THAT THE CONSTRUCTION IS IN COMPLIANCE WITH THE CITY'S MINIMUM STANDARDS. IT IS THE RESPONSIBILITY OF THE DEVELOPER TO ENSURE THAT COPIES OF ALL TEST REPORTS ARE PROVIDED TO THE CITY'S DESIGNATED SITE INSPECTOR PRIOR TO THE PROJECT FINAL INSPECTION IN ORDER TO ALLOW PROJECT ACCEPTANCE BY THE CITY.	5. THE LIMITS OF STABILIZED SUBGRADE SHALL EXTEND TO A DEPTH OF 12" BELOW THE BOTTOM OF THE BASE AND OUTWARD TO 12" BEYOND THE CURB.								
6. THE STABILIZING MATERIAL, IF REQUIRED, SHOULD BE A HIGH BEARING VALUE SOIL, SAND-CLAY, LIMEROCK, RECYCLED CONCRETE, SHELL, OR OTHER MATERIAL AS APPROVED BY THE CITY DESIGNATED SITE INSPECTOR AND A LICENSED SOILS ENGINEER.	7. THE SUBGRADE SHALL BE STABILIZED TO NO LESS THAN LBR 40 TO A 12" DEPTH AND COMPACTED TO NO LESS THAN 98% DENSITY BASED ON MODIFIED PROCTOR MAXIMUM DRY TEST PER AASHTO T-180. FOR ROADWAYS, TESTS FOR SUBBASE BEARING CAPACITY AND COMPACTION SHALL BE DONE AT A MINIMUM OF EVERY 300 FEET AND SHALL BE STAGED TO THE LEFT, RIGHT, AND AT CENTER LINE OF THE								
8. ROADWAY, FOR SITE PLANS, TEST SHALL BE PERFORMED FOR EVERY 600 SQUARE YARDS OF STABILIZED AREA, OR PORTIONS THEREOF.	9. BASES FOR ALL STREETS SHALL HAVE A MINIMUM 6" DEPTH, FLOWABLE FILL (FDOT SPECIFICATIONS SECTION 121) BASES SHALL HAVE A MINIMUM STRENGTH OF 350 POUNDS PER SQUARE INCH AT 7 DAYS COMPACTED TO 98% DENSITY PER AASHTO T-180 MODIFIED PROCTOR TEST IN CONFORMANCE WITH SECTION 210. CONSTRUCTION OF ROAD AND BRIDGE CONSTRUCTION (LATEST EDITION). RECYCLED CONCRETE OR LIMEROCK BASES SHALL BE COMPACTED TO 98% MAXIMUM DENSITY BASED ON AASHTO T-180 MODIFIED PROCTOR TEST.								
	<table><tr><td>STANDARD CONSTRUCTION DETAIL ROADWAY AND PARKING AREA DESIGN AND CONSTRUCTION NOTES</td><td>FILE NAME: R1.DWG</td></tr><tr><td>REV. 12/18</td><td>DETAIL REF: R-1</td></tr></table>	STANDARD CONSTRUCTION DETAIL ROADWAY AND PARKING AREA DESIGN AND CONSTRUCTION NOTES	FILE NAME: R1.DWG	REV. 12/18	DETAIL REF: R-1				
STANDARD CONSTRUCTION DETAIL ROADWAY AND PARKING AREA DESIGN AND CONSTRUCTION NOTES	FILE NAME: R1.DWG								
REV. 12/18	DETAIL REF: R-1								

29. THE FOLLOWING SYMBOLS SHALL BE CUT IN THE CURB TO MARK LOCATION OF SERVICES:	<table><tr><th>SYMBOL</th><th>SERVICE</th></tr><tr><td>"V"</td><td>SEWER</td></tr><tr><td>"L"</td><td>RECLAIMED WATER</td></tr><tr><td>"A"</td><td>POTABLE WATER</td></tr><tr><td>"X"</td><td>VALVE - POTABLE WATER</td></tr></table>	SYMBOL	SERVICE	"V"	SEWER	"L"	RECLAIMED WATER	"A"	POTABLE WATER	"X"	VALVE - POTABLE WATER
SYMBOL	SERVICE										
"V"	SEWER										
"L"	RECLAIMED WATER										
"A"	POTABLE WATER										
"X"	VALVE - POTABLE WATER										
30. THREE (3) CONCRETE CYLINDERS SHALL BE TAKEN FOR EVERY SEVENTY-FIVE (75) CUBIC YARDS OF CONCRETE OR LESS PLACED. 1 CYLINDER WILL BE TESTED IN 14 DAYS, 1 IN 28 DAYS AND 1 SHALL BE RETAINED FOR 1 YEAR. RESULTS SHALL BE PROVIDED TO THE CITY'S DESIGNATED SITE INSPECTOR AS THEY BECOME AVAILABLE.	31. A CONCRETE SLUMP TEST SHALL BE REQUIRED WITHIN THE FIRST THIRTY (30) CUBIC YARDS OF CONCRETE. THEREAFTER, SLUMP TESTS SHALL BE REQUIRED FOR EVERY THIRTY (30) CUBIC YARDS OF CONCRETE, OR FRACTION THEREOF, WITH COPIES OF THE RESULTS PROVIDED TO THE CITY'S DESIGNATED SITE INSPECTOR. THE SLUMP TEST SHALL MEET THE REQUIRED MIX DESIGN ON EACH LOAD DELIVERED.										
32. THE DEVELOPER SHALL PROVIDE ALL REQUIRED PAVEMENT MARKINGS ON ALL ROADWAYS PER CITY, COUNTY, AND STATE REQUIREMENTS. 6" WIDE FOG LINE SHALL BE INSTALLED WHERE NO CURB IS PRESENT. CENTERLINE STRIPES SHALL BE PROVIDED ON EXTENSIONS OF CITY COLLECTOR OR ARTERIAL ROADS, COUNTY ROADS, STATE HIGHWAYS AND ALONG LOCAL STREETS IN THE VICINITY OF THEIR INTERSECTION WITH THE ABOVE MENTIONED ROADWAYS.	33. A FDOT APPROVED 30" STOP SIGN AND A 24" WIDE WHITE THERMOPLASTIC STOP BAR ARE REQUIRED AT ALL ROADWAY INTERSECTIONS.										
34. ALL TRAFFIC CONTROL DEVICES PLACED AT INTERSECTIONS, PRIVATE STREETS, PUBLIC STREETS, COUNTY ROADS AND STATE HIGHWAYS WITHIN THE CITY LIMITS SHALL BE INSTALLED ACCORDING TO THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES, LATEST EDITION. THE MAINTENANCE OF TRAFFIC (MOT) INSTALLATION AND SUBSEQUENT OPERATION SHALL BE OVERSEEN BY A CONTRACTOR WHOSE JOBSITE PERSONNEL HOLD A CURRENT FDOT CERTIFICATION IN TEMPORARY TRAFFIC CONTROL COMMENSURATE WITH THEIR LEVEL OF RESPONSIBILITY (EX. FLAGGER, INTERMEDIATE, ADVANCED).	35. THE DEVELOPER IS RESPONSIBLE FOR PAYING FEES FOR TRAFFIC CONTROL DEVICES. STREET SIGNS AND STOP SIGNS SHALL BE PLACED AT ALL INTERSECTIONS, INCLUDING, BUT NOT LIMITED TO, PRIVATE STREETS, PUBLIC STREETS, COUNTY ROADS AND STATE HIGHWAYS WITHIN THE CITY LIMITS.										
36. THE DEVELOPER IS RESPONSIBLE FOR PAYING FEES FOR ALL STREET LIGHTS TO FPL PRIOR TO ACCEPTANCE OF THE PROJECT BY THE CITY.	37. FOUR FOOT (4') WIDE SIDEWALKS SHALL BE PROVIDED ON BOTH SIDES OF ALL RESIDENTIAL STREETS.										
38. BIKE PATHS SHALL BE CONSTRUCTED EIGHT FEET (8') IN WIDTH ALONG ARTERIAL AND OTHER SELECTED HIGHWAYS AS DIRECTED BY THE CITY.											
	<table><tr><td>STANDARD CONSTRUCTION DETAIL ROADWAY AND PARKING AREA DESIGN AND CONSTRUCTION NOTES (CONTINUED)</td><td>FILE NAME: R1.DWG</td></tr><tr><td>REV. 12/18</td><td>DETAIL REF: R-1.3</td></tr></table>	STANDARD CONSTRUCTION DETAIL ROADWAY AND PARKING AREA DESIGN AND CONSTRUCTION NOTES (CONTINUED)	FILE NAME: R1.DWG	REV. 12/18	DETAIL REF: R-1.3						
STANDARD CONSTRUCTION DETAIL ROADWAY AND PARKING AREA DESIGN AND CONSTRUCTION NOTES (CONTINUED)	FILE NAME: R1.DWG										
REV. 12/18	DETAIL REF: R-1.3										

10. FLOWABLE FILL AND RECYCLED CONCRETE MIX DESIGNS SHALL BE SUBMITTED BY A LICENSED SOILS ENGINEER TO THE CITY'S ENGINEERING DEPARTMENT PRIOR TO THE START OF SUBGRADE PREPARATION. ALL MIX DESIGNS SHALL BE SUBJECT TO THE APPROVAL OF THE CITY.	11. CONCRETE DELIVERY TICKETS SHALL BE PROVIDED TO THE CITY'S DESIGNATED SITE INSPECTOR AT THE TIME OF PLACEMENT. IF THE INSPECTOR IS NOT ON SITE THROUGHOUT THE ENTIRE INSTALLATION, ACCUMULATED DELIVERY TICKETS CAN BE PROVIDED TO THE INSPECTOR BY THE CONTRACTOR ON THE FOLLOWING DAY.				
12. TESTING OF THE IN-PLACE BASE SHALL BE DONE AT INTERVALS EQUIVALENT TO SUBGRADE TESTING AND SHALL CONSIST OF, AT A MINIMUM, ONE MOISTURE CONTENT AND ONE COMPACTION TEST.	13. PORTLAND CEMENT CONCRETE, LIMEROCK, RECYCLED CONCRETE, OR FULL DEPTH ASPHALT PAVEMENT MAY BE USED IN PLACE OF FLOWABLE FILL BASE. ALL ROADWAY DESIGNS SHALL BE SUBJECT TO APPROVAL BY THE CITY.				
14. BASE COURSES SHALL HAVE LIQUID ASPHALT PRIME COAT APPLIED AT THE APPROPRIATE RATE SPECIFIED IN FDOT STANDARD SPECIFICATION 300.7 (LATEST EDITION) IF ASPHALT WILL NOT BE INSTALLED WITHIN 24 HOURS OR IF BASE COURSE IS OPEN TO ANY TRAFFIC.	15. FLOWABLE FILL BASE MATERIAL CONSTRUCTION SHALL BE CONTINUOUSLY SUPERVISED BY A SOILS TESTING LABORATORY AT THE DEVELOPER'S EXPENSE. THE TESTING LABORATORY SHALL PROVIDE AN ON-SITE TECHNICIAN EXPERIENCED IN SOIL CEMENT BLENDING.				
16. FLOWABLE FILL BASE COURSES SHALL BE ALLOWED TO CURE A MINIMUM OF SEVEN (7) DAYS UNDER NO TRAFFIC PRIOR TO PLACING ANY ASPHALT SURFACE. TEST REPORTS ARE REQUIRED TO BE DELIVERED TO THE CITY'S DESIGNATED SITE INSPECTOR PRIOR TO TRAFFIC USAGE.	17. RECYCLED CONCRETE CAN BE USED AS A BASE MATERIAL PROVIDED THE MATERIAL IS A MINIMUM OF 60% CARBONATE OF CALCIUM AND MAGNESIUM. THE MATERIAL SHALL BE LIMITED TO MAXIMUM 3% OF WATER SENSITIVE CLAY MATERIAL. LIQUID LIMIT SHALL NOT EXCEED 35 AND BE NON-PLASTIC AND THE PLASTICITY INDEX SHALL NOT EXCEED 10. THE MATERIAL SHALL NOT CONTAIN ORGANIC MATERIAL, CHERTY OR OTHER EXTREMELY HARD PIECES, LUMPS, BALLS OR POCKETS OF SAND SIZE MATERIAL OF A QUANTITY AS TO BE DETRIMENTAL TO THE PROPER BONDING, FINISHING OR STRENGTH OF THE RECYCLED CONCRETE BASE. FOR BASE APPLICATIONS, AT LEAST 97% (BY WEIGHT) OF THE MATERIAL SHALL PASS A 1" SIEVE AND FOR SUBBASE APPLICATIONS, AT LEAST 97% (BY WEIGHT) OF THE MATERIAL SHALL PASS A 1-1/2" SIEVE. FOR BOTH APPLICATIONS, THE MATERIAL SHALL BE WELL GRADED DOWN TO DUST AND HAVE A MINIMUM 130 LBR VALUE. COARSE AGGREGATE USED IN THE RECYCLED CONCRETE SHALL HAVE A MAXIMUM LOSS OF 45% PER LOS ANGELES ABRASION TEST. ALL MATERIALS SHALL BE WELL GRADED IN ACCORDANCE WITH REQUIREMENTS SET FORTH IN SECTION 204, FDOT STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION (LATEST EDITION).				
18. RECYCLED CONCRETE OR LIMEROCK FOR BASE OR SUBGRADE APPLICATIONS SHALL BE ALLOWED ON CITY ROADWAYS ONLY WHERE THE LOWEST ELEVATION OF THE ROADWAY SUBGRADE IS A MINIMUM OF 6" ABOVE THE SEASONAL HIGH GROUNDWATER TABLE AS CERTIFIED BY A FLORIDA LICENSED PROFESSIONAL SOILS ENGINEER AND SUBSEQUENTLY APPROVED BY THE CITY, IN AREAS NOT MEETING THESE STANDARDS. A FLOWABLE FILL BASE OR FULL DEPTH ASPHALTIC BASE WILL BE REQUIRED. ALL CRUSHING OF RECYCLED CONCRETE SHALL BE COMPLETED PRIOR TO THE MATERIAL BEING PLACED UPON THE SITE. TESTING OF SOIL CEMENT BASE SHALL HAVE THE SAME REQUIREMENTS AND BE PERFORMED AT THE SAME LOCATION AND INTERVALS AS REQUIRED FOR LIMEROCK.					
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39. STANDARD TURNING RADI FOR INTERSECTIONS:					
RESIDENTIAL STREETS INTERSECTING STATE OR COUNTY ROADWAYS	35-50 FEET				
OR MAJOR THOROUGHFARES WITHIN THE CITY					
CITY STREETS INTERSECTING ENTRANCES TO COMMERCIAL SITES	35 FEET				
INTERSECTIONS INTERIOR IN SUBDIVISIONS	35 FEET				
NOTE: SHOULD VOLUSIA COUNTY OR THE FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) DETERMINE THAT LARGER RADI ARE WARRANTED WITHIN THEIR RIGHT-OF-WAY, THE LARGER RADI SHALL APPLY.					
40. STANDARD TURNING RADI AND WIDTHS OF ACCESS DRIVES FOR SITE PLANS (NOT SUBDIVISIONS) SHALL BE IN ACCORDANCE WITH LDC, CH. 12, SEC. 3(1).					
41. CONSTRUCTION METHODS AND DESIGN FOR CONCRETE PAVEMENT SHALL CONFORM TO FDOT STANDARD SPECIFICATION FOR ROAD AND BRIDGE CONSTRUCTION, LATEST EDITION.					
42. ALL CONTRACTORS THAT ARE PERFORMING THE CONSTRUCTION OF LAND DEVELOPMENT CODE REQUIRED IMPROVEMENTS (INCLUDING WATER MAINS, SANITARY SEWER MAINS, RECLAIMED WATER MAINS, STORM WATER PIPES AND INLETS, ROADWAYS, AND PARKING FACILITIES) SHALL BE CERTIFIED WITH THE STATE OF FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD FOR THE TYPE OF WORK THAT THEY PERFORM.					
43. ALL CONTRACTORS THAT ARE PERFORMING THE CONSTRUCTION WORK OF LAND DEVELOPMENT CODE REQUIRED IMPROVEMENTS SHALL BE LICENSED BY THE STATE OF FLORIDA CONSTRUCTION INDUSTRY LICENSING BOARD AND REGISTERED WITH VOLUSIA COUNTY. THE LICENSE AND REGISTRATION SHALL PERTAIN TO THE TYPE OF WORK BEING PERFORMED.					
44. EXCEPT AS PROVIDED IN THE LAND DEVELOPMENT CODE, ALL ELECTRIC, TELEPHONE, TELEVISION, LINES AND SIMILAR UTILITIES ARE REQUIRED TO BE INSTALLED UNDERGROUND AT THE EXPENSE OF THE OWNER, DEVELOPER, AND BUILDER.					
45. MINIMUM UTILITY DEPTHS:					
POTABLE WATER, SANITARY SEWER AND RECLAIMED WATER MAINS	36 INCHES				
HIGH VOLTAGE SUCH AS POWER FEEDER, SERVICE, AND DROPS	30 INCHES				
LOW VOLTAGE SUCH AS PHONE AND CABLE TV FOR FEEDER AND SERVICE	18 INCHES				
LOW VOLTAGE UTILITIES SUCH AS PHONE AND CABLE TV FOR DROPS	12 INCHES				
NOTE: IN NO INSTANCE SHALL THE DEPTH OF COVER BE LESS THAN 36" FROM FINISHED GRADE TO THE TOP OF PIPE FOR POTABLE WATER MAINS, SANITARY SEWER MAINS AND RECLAIMED WATER MAINS. HOWEVER, IN THE EVENT THAT THIS CONDITION CANNOT BE MET DUE TO UNANTICIPATED CONFLICTS DURING THE CONSTRUCTION PROCESS, DUCTILE IRON PRESSURE CLASS 350 OR CONCRETE ENCASEMENT MAY BE USED AS APPROVED BY THE CITY PUBLIC UTILITIES DEPARTMENT.					
46. LANDSCAPE PLANS SHALL CLEARLY DEPICT THE DESIGN LOCATION OF PLANTINGS RELATIVE TO THE LOCATION OF UNDERGROUND AND OVERHEAD PUBLIC UTILITIES AND STORMWATER INFRASTRUCTURE IN ORDER TO EVALUATE POTENTIAL CONFLICTS.					
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19. DESIGN MIXES AND PRODUCT GRADATION INFORMATION FOR ALL MATERIALS TO BE INSTALLED AS PART OF THE LAND DEVELOPMENT CODE REQUIRED IMPROVEMENTS SHALL BE SUBMITTED TO THE CITY'S ENGINEER FOR ACCEPTANCE BY THE CITY. THE INFORMATION SHALL BE SUBMITTED NO LESS THAN THREE (3) WORKING DAYS PRIOR TO ANY CONSTRUCTION. SUBMITTALS SHALL INCLUDE, BUT NOT BE LIMITED TO, INFORMATION TO EVALUATE THE MATERIALS PROPOSED FOR INSTALLATION AS SUBGRADE, BASE, AND PAVEMENT FOR ALL ROADWAY AND PARKING AREA SURFACES.	20. ASPHALT BINDER FOR WEARING COURSE HOT MIX AGGREGATES MAY BE VIRGIN MATERIAL OR UP TO 20% RECLAIMED ASPHALT PAVEMENT (RAP) IN ACCORDANCE WITH FDOT SPECIFICATIONS 334 (LATEST EDITION).				
21. PRIOR TO PLACEMENT, FDOT CERTIFIED ASPHALT PLANTS MUST CERTIFY TO THE CITY'S PROJECT INSPECTOR THAT THE ASPHALT DELIVERED TO THE SITE IS IN ACCORDANCE WITH THE APPROVED PLANS AND SPECIFICATIONS.	22. EXTRACTION AND GRADATION TESTS ON ASPHALT MIXES SHALL BE PROVIDED TO THE CITY'S DESIGNATED SITE INSPECTOR FOR EVERY 2500 SQUARE YARDS OF ASPHALT, OR PART THEREOF, TO ENSURE THAT DESIGN MIXES MEET THE CITY STANDARD SPECIFICATIONS.				
23. FIELD TESTING OF THE ASPHALT PAVEMENT SHALL BE DONE AT INTERVALS EQUIVALENT TO SUBGRADE TESTING AND SHALL CONSIST OF, AS A MINIMUM, A COMPACTION TEST, ASPHALT PAVEMENT SHALL BE COMPACTED TO 98% DENSITY PER FM 1-T238 (METHOD B), NUCLEAR DENSITY TEST, "BACKSCATTER METHOD" AND/OR MINIMUM 90% MAXIMUM VOIDLESS SPECIFIC GRAVITY.	24. IN ADDITION TO THE FIELD DENSITY TESTS NOTED, THE CITY RESERVES THE RIGHT TO REQUIRE CORE SAMPLES OF PAVEMENT SECTIONS EXTRACTED AND TESTED BY A CERTIFIED SOILS ENGINEERING LABORATORY AT THE DEVELOPER'S EXPENSE. THE CITY'S DESIGNATED SITE INSPECTOR SHALL DESIGNATE THE LOCATIONS OF THE TEST CORE LOCATIONS.				
25. THE ROADWAY CROWN SHALL HAVE A STANDARD ONE QUARTER INCH (1/4") PER FOOT SLOPE.	26. ALL ROADWAYS WITH CURB AND GUTTER SECTIONS SHALL HAVE AS A STANDARD A MINIMUM LONGITUDINAL SLOPE OF 0.30%. THE ROADWAY CENTERLINE SHALL BE CLEARLY MARKED ON THE DESIGN PLANS. AT A MINIMUM, DESIGN ROADWAY CENTERLINE ELEVATIONS SHALL BE NOTED AT ALL GRADE CHANGES AND AT 100' INTERVALS ALONG THE ROADWAY PROFILE ON BOTH THE DESIGN PLANS AND AS-BUILT DRAWINGS.				
27. THE FINISHED PAVEMENT EDGE SHALL BE ONE QUARTER INCH (1/4") ABOVE THE ADJACENT CONCRETE GUTTER FOR GUTTERS COLLECTING AND CONVEYING STORMWATER.	28. CONCRETE CURBS SHALL BE PROVIDED ON BOTH SIDES OF ALL STREETS AND ALL CONCRETE CURBS SHALL BE CONSTRUCTED WITH MINIMUM 3,000 PSI CONCRETE AT 28 DAYS.				
29. CONCRETE CURBING, SIDEWALKS, PAVEMENT AND SIMILAR CONCRETE AREAS SHALL BE SAW CUT WITHIN 4 TO 18 HOURS OF PLACEMENT. SAW CUTS SHALL BE 1/4" IN WIDTH TO A DEPTH OF 1/4 OF THE TOTAL DEPTH OF CONCRETE OR 1-1/2", WHICHEVER IS LESS. SAW CUTS SHALL BE LOCATED AT INTERVALS OF TEN FEET (10') WITH EXPANSION JOINTS AT STREET INTERSECTIONS, RADIUS POINTS, STRUCTURES, AND ALONG CURVES AT SIXTY FEET (60') INTERVALS. ALL EXPANSION JOINT MATERIAL IS REQUIRED TO BE INSTALLED THROUGH THE ENTIRE DEPTH OF THE CONCRETE CURB. FOR LINEAL SECTIONS OF CURBS, EXPANSION JOINTS SHALL BE LOCATED AT A MAXIMUM SPACING OF FIVE-HUNDRED FEET (500') AND SHALL BE 1/2" IN WIDTH.					
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JACKSON AND OAK STREET
IMPROVEMENTS
FINAL ENGINEERING PLANS
CONSTRUCTION NOTES

PROJECT NO.: ZC 22123
DESIGNED BY: MLR
DRAFTED BY: MLR
CHECKED BY: BB
DRAWING FILE: 02-04_22123-NOT



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R:\2123 JACOBSON & OAK STREET FINAL ENGINEERING PLANS\DWG\02-04-2123-NOT.DWG - PRINTED: 3/6/2024 10:57 AM

1. WATER DISTRIBUTION SYSTEM SHALL BE DESIGNED TO COMPLY WITH THE CITY'S LATEST FIRE/WATER FLOW CODE. ALL DEDICATED FIRE LINES SHALL BE INDEPENDENT OF ALL OTHER DOMESTIC WATER SERVICES.
2. ALL SINGLE AND DOUBLE RESIDENTIAL WATER SERVICES SHALL BE ENDOT ENDURE 1". COMMERCIAL SERVICES SHALL BE 1" OR 2" - NO 1-1/2" SERVICES ARE ALLOWED. POLYETHYLENE TUBING SHALL BE USED, IN ACCORDANCE WITH THE FOLLOWING SPECIFICATIONS:
- A. POLYETHYLENE TUBING SHALL BE CTS 3408 HIGH DENSITY TUBING, BLUE IN COLOR, AND RATED FOR A MINIMUM OF 200 PSI WITH SDR OF 9 (CTS)
- B. THE TUBING SHALL COME WITH A LIFETIME WARRANTY
- C. THE TUBING SHALL HAVE A VIRGIN HIGH DENSITY POLYETHYLENE CENTER FOR WHICH THE MANUFACTURER SHALL FURNISH A CERTIFICATE OF PURITY
- D. THE TUBING SHALL HAVE UV PROTECTION AND SHALL NOT BE AFFECTED BY DIRECT SUNLIGHT. THE TUBING SHALL COMPLY WITH OR EXCEED THE APPLICABLE STANDARDS OF ASTM D1248, D3350, D2239, D2737, NSF 14 AND AWWA C501
3. WATER SERVICES SHALL BE NORMALLY DOUBLE 1" SERVICES LOCATED AT SIDE LOT LINES. AT LOCATIONS WHERE SERVICES NEED TO BE OFFSET, SUCH AS AT FIRE HYDRANTS, FR TRANSFORMERS, ETC., 1" SINGLE SERVICES SHALL BE SPECIFIED. THESE SERVICES MAY BE OFFSET A MAXIMUM OF 2' FROM SIDE LOT LINES.
4. APPROVED WATER VALVE TYPES ARE THE FOLLOWING:
- RESILIENT SEATED GATE VALVES EQUAL TO OR LESS THAN 24" DIAMETER, PER AWWA C 515
 - BUTTERFLY VALVES GREATER THAN 24" DIAMETER, PER AWWA C-504
 - TAPPING VALVES WITH MECHANICAL TAPPING SLEEVE
5. WATER VALVES SHALL BE PLACED AT ALL STREET INTERSECTIONS AND AT MAXIMUM SPACINGS OF 1,000'.
6. AT ALL WATER MAIN TEES AND CROSSES, VALVES SHALL BE INSTALLED ON ALL LEGS EXCEPT ONE.
7. WATER MAINS SHALL BE C-900 PVC, BLUE IN COLOR, OR DIP PRESSURE CLASS 350 STANDARD CEMENT LINED UNLESS OTHERWISE APPROVED BY THE CITY. WATER MAINS 10" OR GREATER SHALL BE DIP.
8. PVC FITTINGS 4-INCH THROUGH 36-INCH SHALL BE PVC (OR DIP WITH PROTECTO 401) INJECTION-MOLDED OR FABRICATED AS SPECIFIED, MADE OF MATERIALS MEETING OR EXCEEDING THE REQUIREMENTS OF CELL CLASS 12454-B MATERIAL AS DEFINED IN ASTM D1784. FABRICATED FITTINGS SHALL BE MANUFACTURED WITH PIPE THAT MEETS OR EXCEEDS AWWA C-905 STANDARD, AND SHALL BE FIBERGLASS REINFORCED TO A PRESSURE RATING OF 165 PSI. ALL PVC OR MECHANICAL JOINT FITTINGS MUST COMPLY WITH OR EXCEED ANSI/AWWA C907, UNI-B-14 STANDARDS AS THEY APPLY TO THE APPROPRIATE SIZE RANGE AND METHOD OF MANUFACTURE.
9. ALL HDPE PIPE UTILIZED FOR WATER, FORCE MAIN AND/OR RECLAIMED WATER MAIN EXTENSIONS SHALL BE SDR 11 WITH #10 COPPERHEAD TRACER WIRE UNLESS SPECIFICALLY NOTED OTHERWISE. THE HDPE PIPE SHALL BE SIZED TO MATCH THE EXTERNAL DIAMETER OF THE PVC OR DIP PIPE TO WHICH IT IS ATTACHED.
10. ALL VALVES 2" AND LARGER SHALL BE 5 RESILIENT SEATED GATE VALVES (CORP STOPS ARE NOT ACCEPTABLE).
11. MEGALUGS, BOLTLESS RESTRAINED JOINTS OR GRIPPER GASKETS SHALL BE USED ON ALL RESTRAINED JOINT INSTALLATIONS. MINIMUM DEPTH OF BURY ON PIPES NOT MEETING REQUIRED COVER REQUIREMENTS SHALL FOLLOW THE MOST RECENT DIPRA THRUST RESTRAINT DESIGN GUIDELINES USING TORQUE WRENCHES PER MANUFACTURERS RECOMMENDATION.
12. WATER MAINS SHALL HAVE A MINIMUM COVER OF 36 INCHES AND A MAXIMUM DEPTH OF 48 INCHES FROM FINAL GRADE. CONFLICT LOCATIONS OR SPECIAL CIRCUMSTANCES NOT MEETING THESE REQUIREMENTS MAY BE APPROVED WHEN IT IS DETERMINED TO BE IN THE BEST INTEREST OF THE CITY.



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POTABLE WATER DESIGN NOTES

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13. WATER MAINS SHALL BE INSTALLED APPROXIMATELY 4' OFF THE BACK OF CURB OR AS APPROVED BY THE CITY. FOR CONSTRUCTION PURPOSES, THE PLANS SHALL DIMENSION THE PROPOSED LOCATIONS OF ALL WATER MAINS MEASURED FROM THE BACK OF CURB (OR EDGE OF PAVEMENT, IF NO CURB IS USED).
14. 3" METALLIZED PIPE LOCATION TAPE SHALL BE LOCATED BETWEEN 15" AND 24" BELOW FINISHED GRADE OR AS SPECIFIED BY MANUFACTURER FOR ALL PVC LINES. MARKER TAPE SHALL BE USED ON ALL DUCTILE IRON PIPE, AS WELL.
15. LANDSCAPE PLANS SHALL CLEARLY DEPICT THE DESIGN LOCATION OF PLANTINGS RELATIVE TO THE LOCATION OF PUBLIC UTILITIES AND STORMWATER INFRASTRUCTURE IN ORDER TO EVALUATE POTENTIAL CONFLICTS.
16. THE FIRE DEPARTMENT CONNECTION (FDC) FOR BUILDINGS WITH A FIRE PROTECTION SPRINKLER SYSTEM MUST BE WITHIN 50' OF UNOBSTRUCTED PATH TO A FIRE HYDRANT LOCATION APPROVED BY THE FIRE MARSHALL AND/OR PUBLIC UTILITIES ENGINEER.
17. A MINIMUM OF ONE FIRE HYDRANT SHALL BE LOCATED AT EVERY INTERSECTION. OTHER FIRE HYDRANTS SHALL BE LOCATED SO AS TO PRODUCE A MAXIMUM 250' FEET AND/OR MEETING THE LATEST NFPA CODE HOSE LAY REQUIREMENT ALONG THE STREET FOR ALL RESIDENTIAL BUILDINGS. FIRE HYDRANTS MAY NOT BE INSTALLED WITHIN 20' OF ANY ELECTRICAL TRANSFORMER.
18. NEW OR RELOCATED, UNDERGROUND MAINS SHALL BE LAID TO PROVIDE THE FOLLOWING MINIMUM HORIZONTAL SEPARATIONS (OUTSIDE TO OUTSIDE):

	WATER	STORM GRAVITY	STORM FORCE	RECLAIM	SANITARY GRAVITY	SANITARY FORCE
WATER		3'	3'	3'	6', PREFERRED 10'	6', PREFERRED 10'
STORM GRAVITY	3'		3'	3'	6', PREFERRED 10'	6', PREFERRED 10'
STORM FORCE	3'	3'		3'	6', PREFERRED 10'	6', PREFERRED 10'
RECLAIM	3'	3'	3'		6', PREFERRED 10'	6', PREFERRED 10'
SANITARY GRAVITY	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'		6', PREFERRED 10'
SANITARY FORCE	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	

19. A 3' MINIMUM HORIZONTAL SEPARATION BETWEEN THE WATER AND SANITARY GRAVITY MAINS SHALL BE ALLOWED WHEN THE WATER MAIN IS INSTALLED IN A SEPARATE TRENCH OR ON AN UNDISTURBED EARTH SHELF AT LEAST 6" ABOVE THE SANITARY GRAVITY MAIN.



STANDARD CONSTRUCTION DETAIL
POTABLE WATER DESIGN NOTES
(CONTINUED)

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20. NEW OR RELOCATED, UNDERGROUND MAINS SHALL BE LAID TO PROVIDE THE FOLLOWING MINIMUM CROSSING/VERTICAL SEPARATIONS (OUTSIDE TO OUTSIDE):

	WATER	STORM GRAVITY	STORM FORCE	RECLAIM	SANITARY GRAVITY	SANITARY FORCE
WATER		OVER STORM GRAVITY 6', PREFERRED 12"	OVER STORM FORCE 12"	OVER RECLAIM 12"	OVER SANITARY GRAVITY 6', PREFERRED 12"	OVER SANITARY FORCE 12"
STORM GRAVITY	OVER WATER 12" UNDER WATER 6", PREFERRED 12"		UNDER STORM FORCE 12"	UNDER RECLAIM 12"	UNDER SANITARY GRAVITY 12"	UNDER SANITARY FORCE 12"
STORM FORCE	OVER WATER 12"	OVER STORM GRAVITY 6'		OVER RECLAIM 12"	OVER SANITARY GRAVITY 12"	UNDER SANITARY FORCE 12"
RECLAIM	OVER WATER 12"	OVER STORM GRAVITY 12"	OVER STORM FORCE 12"		OVER SANITARY GRAVITY 12"	OVER SANITARY FORCE 12"
SANITARY GRAVITY	UNDER WATER 6", PREFERRED 12"	UNDER STORM GRAVITY 6', PREFERRED 12"	UNDER STORM FORCE 12"	UNDER RECLAIM 12"		UNDER SANITARY FORCE 12"
SANITARY FORCE	OVER WATER 12"	OVER STORM GRAVITY 12"	OVER STORM FORCE 12"	OVER RECLAIM 12"	OVER SANITARY GRAVITY 12"	



STANDARD CONSTRUCTION DETAIL
POTABLE WATER DESIGN NOTES
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1. THE CITY'S PUBLIC UTILITIES DEPARTMENT (386) 506-5750 SHALL BE GIVEN A MINIMUM OF 2 BUSINESS DAYS ADVANCE NOTICE (NOT INCLUDING HOLIDAYS OR WEEKENDS) PRIOR TO BEGINNING ANY POTABLE WATER SYSTEM CONSTRUCTION.
2. ALL WORK PERFORMED ON THE POTABLE WATER FACILITIES OWNED OR PROPOSED TO BE OWNED BY THE CITY SHALL BE CONSTRUCTED BY A STATE CERTIFIED UNDERGROUND UTILITY CONTRACTOR OR GENERAL CONTRACTOR LICENSED IN THE STATE OF FLORIDA AND REGISTERED WITH THE CITY.
3. NEWLY CONSTRUCTED POTABLE WATER SYSTEM EXTENSIONS MAY NOT BE USED PRIOR TO FINAL TESTING, CLEARANCE AND ACCEPTANCE BY THE CITY OF PORT ORANGE. THIS INCLUDES CONSTRUCTION WATER REQUIRED FOR SEWER LINE CLEANING OR RELATED USES.
4. ALL TAPPING OF MAINS SHALL BE PERFORMED BY THE CITY AND BILLED IN ACCORDANCE WITH THE ADOPTED FEE RESOLUTION. SCHEDULING OF THESE CONNECTIONS OR TAPPINGS SHALL REQUIRE A MINIMUM OF 2 BUSINESS DAYS, DIRECTED TO THE CITY'S DESIGNATED SITE INSPECTOR WHO SHALL COORDINATE THE WORK DIRECTLY WITH THE PUBLIC UTILITIES DEPARTMENT. SUBSEQUENTLY, THE CONNECTION SHALL BE SCHEDULED TO COMMENCE BETWEEN 8:00 A.M. AND NOON ON THE APPROPRIATE DAY.
5. CONTRACTOR SHALL PREPARE A SAFE, SECURE AND DRY EXCAVATION FOR THE TAPPING OF MAINS BY THE CITY. THE BOTTOM OF THE EXCAVATION SHALL HAVE A MINIMUM OF 6" THICK BEDDING OF #57 STONE. ALL EXCAVATIONS GREATER THAN 5 FEET IN DEPTH SHALL COMPLY WITH THE TRENCH SAFETY ACT.
6. THE CITY RESERVES THE RIGHT TO REQUIRE TIE-IN CONNECTIONS TO BE PERFORMED DURING PERIODS OF LOW FLOW (MIDNIGHT TO 6:00 A.M.) IN ORDER TO MINIMIZE SERVICE DISRUPTION TO EXISTING CUSTOMERS. THE INSTALLATION OF LINE STOPPING DEVICES ON PRESSURE MAIN (POTABLE WATER, RECLAIM WATER AND SANITARY FORCE MAINS) MAY BE REQUIRED ON ANY REQUESTED UTILITY OUTAGE AT THE DISCRETION OF PUBLIC UTILITIES DEPARTMENT TO MINIMIZE INTERRUPTION TO EXISTING UTILITY CUSTOMERS.
7. ALL METERS SHALL BE PROVIDED BY THE CITY IN ACCORDANCE WITH THE ADOPTED FEE RESOLUTION. METERS AND VALVES FOR METERS 2" OR LESS WILL BE PROVIDED AND INSTALLED BY THE CITY. METERS 4" OR GREATER WILL BE PROVIDED BY THE CITY AND INSTALLED BY THE OWNER/DEVELOPER/CONTRACTOR. ALL UNDERGROUND VALVES FOR METERS 4" OR GREATER WILL BE PROVIDED AND INSTALLED BY THE OWNER/DEVELOPER/CONTRACTOR. NOTE: LARGE COMMERCIAL RECLAIMED WATER METERS GREATER THAN 4" TAKE A MINIMUM OF 6 WEEKS FOR DELIVERY AFTER FEES ARE PAID TO THE CITY.
8. DEWATERING SHALL BE PROVIDED TO KEEP GROUNDWATER ELEVATION A MINIMUM OF 6 INCHES BELOW WATER MAIN BEING LAID.
9. ALL WATER MAINS SHALL BE LAID ON A FIRM FOUNDATION WITH ALL UNSUITABLE MATERIAL (MUCK, ROCK, COQUINA, ETC) REMOVED AND REPLACED WITH CLEAN GRANULAR MATERIAL.
10. TRENCHES SHALL BE BACKFILLED WITH MATERIAL ACCEPTABLE TO THE CITY WITH A MINIMUM COMPACTION OF 98% IN PAVED AREAS AND 95% IN UNPAVED AREAS IN ACCORDANCE WITH ASHTO T-180.
11. IT SHALL BE THE CONTRACTORS RESPONSIBILITY TO ENSURE THAT TRENCH COMPACTION TESTS BE PROVIDED AT POINTS 1 FOOT ABOVE THE PIPE AND AT 1 FOOT VERTICAL INTERVALS TO FINISH GRADE, AT A MINIMUM SPACING OF EVERY 300 FEET.
12. ALL PVC PIPE SHALL BE STORED IN SUCH A WAY AS TO PREVENT WARPING, DEFLECTION, OR ANY DEFORMATION.
13. NO USED, RE-USED, RUSTED, SECOND HAND, OR ANY MATERIAL THAT IS NOT NEW SHALL BE USED IN ANY UTILITY IMPROVEMENT PROJECTS WITHIN THE CITY'S SERVICE AREA.
14. ALL POTABLE WATER MAINS SHALL USE A THRUST RESTRAINT JOINT METHOD IN COMPLIANCE WITH THE DUCTILE IRON PIPE RESEARCH ASSOCIATION (DIPRA) GUIDELINES. IN THE EVENT THAT PVC PIPE IS SPECIFIED, THE RESTRAINT JOINT SHALL BE MODIFIED IN ACCORDANCE WITH THE RECOMMENDED ADDITIONAL RESTRAINT LENGTH REQUIRED FOR PIPE WRAPPED WITH POLYETHYLENE.



STANDARD CONSTRUCTION DETAIL
POTABLE WATER CONSTRUCTION NOTES

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15. AT THE UTILITY CROSSINGS, ONE FULL LENGTH OF WATER MAIN PIPE SHALL BE CENTERED ABOVE OR BELOW THE OTHER PIPELINE SO THE WATER MAIN JOINTS WILL BE AS FAR AS POSSIBLE FROM THE OTHER PIPELINE. ALTERNATIVELY, AT SUCH CROSSINGS, THE PIPES SHALL BE ARRANGED SO THAT ALL WATER MAIN JOINTS ARE AT LEAST THREE FEET FROM ALL JOINTS IN VACUUM-TYPE SANITARY SEWERS, STORM SEWERS, STORMWATER FORCE MAINS OR PIPELINES CONVEYING RECLAIMED WATER REGULATED UNDER PART III OF CHAPTER 62-610 FAC AND AT LEAST SIX FEET FROM ALL JOINTS IN GRAVITY- OR PRESSURE-TYPE SANITARY SEWERS, WASTEWATER FORCE MAINS, OR PIPELINES CONVEYING RECLAIMED WATER NOT REGULATED UNDER PART III OF CHAPTER 62-610, FAC.
16. ALL WATER SERVICE ENDINGS SHALL BE MARKED WITH A 2"x4" LUMBER (PRESSURE TREATED) EXTENDING 4 FEET ABOVE GRADE, WITH WATER SERVICES SECURED 12" MAXIMUM ABOVE THE GROUND. ALL SERVICES SHALL BE LOCKED AT THE TIME OF FINAL INSPECTION BY THE CONTRACTOR IN THE PRESENCE OF THE CITY INSPECTOR OR CITY PERSONNEL, AFTER THEY HAVE BEEN INSPECTED AND VERIFIED TO OPERATE PROPERLY.
17. ALL WATER VALVES SHALL BE ADJUSTED TO FINISHED GRADE AND THE CAPS PAINTED BLUE TO MAKE THEM PLAINLY VISIBLE.
18. WATER SYSTEMS SHALL BE PRESSURE TESTED AT 150 PSI STATIC PRESSURE FOR A PERIOD OF 2 HOURS PER AWWA STANDARDS.
19. IN AREAS WHERE RECLAIMED WATER IS NOT AVAILABLE THE CONTRACTOR SHALL BE REQUIRED TO (UPON SATISFACTORY COMPLETION OF THE PRESSURE TEST) TRANSFER THE WATER FROM THE POTABLE WATER LINES TO THE RECLAIMED WATER LINES FOR UTILIZATION IN THEIR PRESSURE TEST.
20. THE CONTRACTOR SHALL BE REQUIRED TO PIG ALL POTABLE MAINS 6" AND LARGER IN DIAMETER AND PRIMARY DISTRIBUTION MAINS LOCATED ON COLLECTOR AND ARTERIAL ROADWAYS. ALL PIGS SHALL BE NEW. NO FOAM PIGS ARE ALLOWED. LAUNCHING AND EXTRACTION POINTS SHALL BE DETERMINED BY THE CONTRACTOR. ALL PIGGING OPERATIONS SHALL BE WITNESSED BY A PUBLIC UTILITIES REPRESENTATIVE OR A CITY UTILITY INSPECTOR.
21. ALL PROPOSED POTABLE WATER MAINS SHALL BE FLUSHED, DISINFECTED, PRESSURE TESTED AND BACTERIOLOGICALLY CLEARED FOR SERVICE WHEN APPROPRIATE IN ACCORDANCE WITH THE LATEST AWWA STANDARDS AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REQUIREMENTS. THE CONTRACTOR SHALL NOTIFY THE CITY'S DESIGNATED SITE INSPECTOR WHO SHALL COORDINATE WITH CITY PERSONNEL AT THE WATER TREATMENT PLANT AT LEAST 2 BUSINESS DAYS PRIOR TO BEGINNING FLUSH OF THE MAINS AND PRIOR TO THE COMMENCEMENT OF PRESSURE TESTING.
22. THE PHYSICAL TAKING OF WATER SAMPLE FOR BACTERIOLOGICAL TESTING SHALL BE DONE BY THE CITY'S LABORATORY PERSONNEL. THE CONTRACTOR SHALL NOTIFY THE CITY'S DESIGNATED SITE INSPECTOR AT LEAST TWO BUSINESS DAY PRIOR TO NEEDING SAMPLES TAKEN TO COORDINATE WITH THE LABORATORY. ALL SAMPLING FORMS WILL BE COMPLETED BY THE CITY'S DESIGNATED LABORATORY PERSONNEL. THE CITY'S LABORATORY WILL CONDUCT THE TESTING IN ACCORDANCE WITH THE LATEST AWWA STANDARDS AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REQUIREMENTS. THE RESULTS WILL BE FORWARDED TO THE CONTRACTOR AND ENGINEER OF RECORD. IF THE INITIAL DISINFECTION OR OTHER RESULTS INDICATE UNACCEPTABLE WATER QUALITY, THE MAIN SHALL BE RE-FLUSHED, RE-SAMPLED AND RE-TESTED. IF CHECK SAMPLES FAIL TO PRODUCE ACCEPTABLE RESULTS, THE CYCLE WILL BE REPEATED (FLUSH, CHLORINATE, SAMPLE, TEST, AND RE-FLUSH, RE-SAMPLE, RE-TEST, AS NEEDED) UNTIL SATISFACTORY RESULTS ARE OBTAINED.



STANDARD CONSTRUCTION DETAIL
POTABLE WATER CONSTRUCTION NOTES
(CONTINUED)

FILE NAME
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23. WHEN THE PUBLIC UTILITIES OFFICE RECEIVES POTABLE WATER CLEARANCE REQUEST REQUIRING SIGNATURE, THE CITY'S DISTRIBUTION SUPERVISOR AND/OR DESIGNATED SITE INSPECTOR WILL BE CONTACTED TO INDEPENDENTLY VERIFY THAT THE SYSTEM IS IN PROPERLY FUNCTIONING ORDER (I.E. ALL VALVES, HYDRANTS, AND WATER SERVICES ARE ACCESSIBLE AND OPERABLE). SIMULTANEOUSLY, THE CITY MAY ALSO TAKE A RANDOM BACTERIOLOGICAL SAMPLE WITHIN THE NEW SYSTEM TO VERIFY THAT WATER IS SAFE FOR CONSUMPTION. ONCE THE DISTRIBUTION SUPERVISOR AND/OR DESIGNATED SITE INSPECTOR HAVE VERIFIED THAT THE SYSTEM IS IN PROPER FUNCTIONING ORDER AND THAT THE BACTERIOLOGICAL SAMPLE(S) INDICATE THE WATER IS SAFE FOR CONSUMPTION, THE PUBLIC UTILITIES OFFICE WILL THEN SIGN OFF ON THE WATER CLEARANCE REQUEST.
24. UPON CONSTRUCTION COMPLETION AND ACCEPTANCE OF THE SYSTEM, IT SHALL BE THE DESIGN ENGINEER'S RESPONSIBILITY TO ENSURE THAT THE SYSTEM IS PROPERLY CERTIFIED AND ACCEPTED BY THE DEPARTMENT OF HEALTH AND AS-BUILTS ARE PROVIDED TO THE CITY PRIOR TO ANY PUBLIC USE OF THIS SYSTEM.
25. UPON FINAL ACCEPTANCE OF NEW WATER SYSTEMS, WATER VALVES SHALL BE COMPLETELY OPENED BY PUBLIC UTILITIES PERSONNEL. AT NO TIME SHALL CONTRACTOR OPERATE ANY EXISTING VALVES.
26. ALL FIRE HYDRANTS SHALL BE LOCATED TO MAKE THEM EASILY ACCESSIBLE TO FIRE PERSONNEL. IN CASE OF A FIRE, THE PRIMARY HYDRANT PORT SHALL ALWAYS FACE THE STREET. 5 FEET MINIMUM RADIUS CLEAR AREA AROUND THE FIRE HYDRANT SHALL BE MAINTAINED.
27. ALL WATER SERVICES SHALL BE MARKED WITH AN "A" SAW CUT INTO THE CURB OR BY METAL TABS SET INTO THE PAVEMENT.
28. ALL WATER VALVES SHALL BE MARKED WITH AN "X" SAW CUT INTO THE CURB OR BY METAL TABS SET INTO THE PAVEMENT. BLOW-OFFS SHALL BE MARKED SIMILARLY, AS WELL. REVERSE TAPPING VALVE SHALL BE MARKED WITH AN "X" SAW CUT INTO THE CURB OR PAVEMENT WITH THE ARROW POINTING TO THE DIRECTION OF THE PRESSURE MAIN RUN.



STANDARD CONSTRUCTION DETAIL
POTABLE WATER CONSTRUCTION NOTES
(CONTINUED)

FILE NAME
W2.DOC

DETAIL REF:
W-2.2

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- THE CITY'S PUBLIC UTILITIES DEPARTMENT (386) 506-5750 SHALL BE GIVEN A MINIMUM OF 48 HOURS ADVANCE NOTICE (NOT INCLUDING HOLIDAYS OR WEEKENDS) PRIOR TO BEGINNING ANY SANITARY SEWER CONSTRUCTION.

CONSTRUCTION:

1. ALL WORK PERFORMED ON SANITARY SEWER FACILITIES OWNED OR PROPOSED TO BE OWNED BY THE CITY SHALL BE CONSTRUCTED BY AN UNDERGROUND UTILITY CONTRACTOR, OR FLORIDA LICENSED GENERAL CONTRACTOR REGISTERED WITH THE CITY.
2. THE PLANS SHALL DIMENSION THE LOCATION, OF ALL MAINS MEASURED FROM THE BACK OF CURB (OR EDGE OF PAVEMENT, IF NO CURBING EXISTS. LANDSCAPE PLANS SHALL CLEARLY DEPICT THE DESIGN LOCATION OF PLANTINGS RELATIVE TO THE LOCATION OF PROPOSED AND EXISTING PUBLIC UTILITIES AND STORMWATER INFRASTRUCTURE.
3. PROFILE VIEWS SHALL BE PROVIDED FOR ALL SEWER MAINS. PROFILE VIEWS SHALL BE ON THE SAME SHEET AS THE ASSOCIATED PLAN VIEW AND SHALL INCLUDE THE FOLLOWING INFORMATION:
- A. SIZE, SLOPE, LENGTH AND CLASS OF PIPE
- B. MANHOLE RIM AND INVERT ELEVATIONS
- C. UTILITY CROSSINGS WITH VERTICAL SEPARATION
- D. SHOW PROPOSED SEWER AND EXISTING UTILITY
- E. EXISTING GROUND PROFILE
- F. MATCH LINE
- G. VICINITY MAP
- H. PROFILE VIEW STATIONS TO COINCIDE WITH PLAN VIEW STATIONS
4. GREASE INTERCEPTORS ARE REQUIRED FOR ALL COMMERCIAL BUILDINGS HAVING KITCHEN, FOOD PREPARATION OR SERVING FACILITIES AND /OR MISCELLANEOUS USES. GREASE INTERCEPTORS CONSTRUCTED EXTERNAL TO BUILDINGS SHALL BE SIZED IN ACCORDANCE WITH FAC 64-E-6. CALCULATIONS TO DETERMINE SIZING REQUIREMENTS SHALL BE SUBMITTED AS PART OF BUILDING PERMITTING. AN INSPECTION MANHOLE MAY BE REQUIRED IMMEDIATELY DOWN STREAM OF THE GREASE INTERCEPTOR FOR INSPECTION PURPOSES, AS DEEMED APPROPRIATE BY THE CITY.
5. ON ALL EXCAVATION AND BACKFILLING, THE CONTRACTOR SHALL PROVIDE ADEQUATE SHEETING AND BRACING IN ACCORDANCE TO OSHA GUIDELINE IN ORDER TO PROVIDE FOR THE SAFETY OF WORKMEN, AS WELL AS REPRESENTATIVES OF THE CITY, THE DESIGN ENGINEER, AND THE DEVELOPER.
6. ALL PVC PIPE SHALL BE STORED IN SUCH A WAY AS TO PREVENT WARPING, DEFLECTION, OR DEFORMATION. ANY PIPE DEEMED TO BE MISSHAPED IN ANY WAY FOR ANY REASON SHALL BE REJECTED.
7. NO USED, RE-USED, RUSTED, SECOND HAND, OR ANY MATERIAL THAT IS NOT NEW SHALL BE USED IN ANY UTILITY IMPROVEMENT PROJECTS WITHIN THE CITY SERVICE AREA.
8. THE CONTRACTOR SHALL AT ALL TIMES, DURING PIPE LAYING OPERATIONS DEWATER THE GROUND SUFFICIENTLY TO KEEP THE GROUNDWATER ELEVATION A MINIMUM OF 6" BELOW THE PIPE BEING LAID WITHIN THE AREA OF THE TRENCH.
9. ALL PIPES SHALL BE LAID ON A FIRM FOUNDATION. SOFT OR SPONGY BEDDING FOR PIPES IS NOT ACCEPTABLE. ANY UNSUITABLE MATERIAL SHALL BE REMOVED AND REPLACED WITH A DRY, COMPACTED, GRANULAR MATERIAL SATISFACTORY TO THE CITY. MORTAR TO CONTAIN "HYDRATITE" OR APPROVED EQUAL, TO PREVENT SHRINKAGE. CEMENT USED IN CONCRETE MIX FOR PRECAST STRUCTURES SHALL BE TYPE II, ACID RESISTANT AND SULFIDE RESISTANT CONCRETE.
10. MORTAR TO CONTAIN "HYDRATITE" OR APPROVED EQUAL, TO PREVENT SHRINKAGE. CEMENT USED IN CONCRETE MIX FOR PRECAST STRUCTURES SHALL BE TYPE II, ACID RESISTANT AND SULFIDE RESISTANT CONCRETE.



STANDARD CONSTRUCTION DETAIL
SANITARY SEWER NOTES

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11. THE CITY MAY REQUIRE ALL NEW SANITARY SEWER GRAVITY SYSTEMS TO BE SMOKE TESTED PRIOR TO FINAL ACCEPTANCE. ALL TESTING MUST BE DONE IN THE PRESENCE OF THE CITY'S DESIGNATED SITE INSPECTOR.
12. THE CITY OF PORT ORANGE RESERVES THE RIGHT TO REQUIRE THE DEVELOPER TO PERFORM VACUUM TESTING OF ALL SANITARY MANHOLES, AIR TEST SEWER MAINS, AND REQUIRES THAT ALL SANITARY SEWER MAIN LINES BE TELEVIEWED PRIOR TO FINAL ACCEPTANCE. LATERALS SHALL BE TELEVIEWED UPON DEMAND BY THE CITY PRIOR TO FINAL ACCEPTANCE WHEN IT IS SUSPECTED THAT A PROBLEM EXISTS.
13. ALL TAPPING OF PRESSURE MAINS AND CORING OF MANHOLES SHALL BE PERFORMED BY THE CITY AND BILLED IN ACCORDANCE WITH THE ADOPTED FEE RESOLUTION. SCHEDULING OF THESE CONNECTIONS SHALL REQUIRE A MINIMUM 48 HOURS NOTIFICATION DIRECTED TO THE CITY'S DESIGNATED SITE INSPECTOR WHO SHALL COORDINATE THE WORK DIRECTLY WITH THE PUBLIC UTILITIES DEPARTMENT. SUBSEQUENTLY, THE CONNECTION SHALL BE SCHEDULED TO COMMENCE BETWEEN 8:00 A.M. AND NOON ON THE APPROPRIATE DAY ESTABLISHED BY CITY. WITH RESPECT TO TIE-IN CONNECTIONS AND CORING OPERATIONS, THE CITY RESERVES THE RIGHT TO REQUIRE CONNECTIONS TO BE PERFORMED DURING PERIODS OF LOW FLOW (MIDNIGHT TO 6:00 A.M.) IN ORDER TO MINIMIZE SERVICE DISRUPTION TO EXISTING CUSTOMERS. CONTRACTORS HAVING EXPERIENCE AND PROPER EQUIPMENT MAY BE GRANTED PERMISSION TO CORE MANHOLE BY PUBLIC UTILITIES DEPARTMENT.
14. NEW OR RELOCATED, UNDERGROUND MAINS SHALL BE LAID TO PROVIDE THE FOLLOWING MINIMUM HORIZONTAL SEPARATIONS (OUTSIDE TO OUTSIDE):

	WATER	STORM GRAVITY	STORM FORCE	RECLAIM	SANITARY GRAVITY	SANITARY FORCE
WATER		3'	3'	3'	6', PREFERRED 10'	6', PREFERRED 10'
STORM GRAVITY	3'		3'	3'	6', PREFERRED 10'	6', PREFERRED 10'
STORM FORCE	3'	3'		3'	6', PREFERRED 10'	6', PREFERRED 10'
RECLAIM	3'	3'	3'		6', PREFERRED 10'	6', PREFERRED 10'
SANITARY GRAVITY	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'		6', PREFERRED 10'
SANITARY FORCE	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	

15. A 3' MINIMUM HORIZONTAL SEPARATION BETWEEN THE SANITARY GRAVITY AND WATER MAINS SHALL BE ALLOWED WHEN THE WATER MAIN IS INSTALLED IN A SEPARATE TRENCH OR ON AN UNDISTURBED EARTH SHELF AT LEAST 6" ABOVE THE SANITARY GRAVITY MAIN. ALTERNATIVELY, THE 3' MINIMUM HORIZONTAL SEPARATION SHALL BE ALLOWED WHEN THE SEWER MAIN IS ENCASED WITH CONCRETE OR ENCLOSED IN A WATER TIGHT CARRIER PIPE OR UPGRADED TO PRESSURE RATED PVC PIPE (MEETING AWWA C-900 OR C-905 SPECIFICATION AND PRESSURE TESTED AT 150 PSI TO ASSURE WATER TIGHTNESS PRIOR TO BACKFILLING).



STANDARD CONSTRUCTION DETAIL
SANITARY SEWER NOTES
(CONTINUED)

FILE NAME
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S-1.1

REV. 12/18

JACKSON AND OAK STREET
IMPROVEMENTS
FINAL ENGINEERING PLANS
CONSTRUCTION NOTES

PROJECT NO.: ZC 22123

DESIGNED BY: MLR

DRAFTED BY: MLR

CHECKED BY: BB

DRAWING FILE: 02-04_22123-NOT

ROBERT J. BALL, P.E., NO. 69001
METAL RUSSELL, P.E., NO. 69007
NOT VALID WITHOUT SEAL

SHEET: C3 OF 20



CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION

UBR 45198

VOLUSIA COUNTY, FLORIDA

CITY OF PORT ORANGE

R:\22123 JACSON & OAK STREET FINAL ENGINEERING PLANS\CD\DWGS\02-04-22123-NOT DWG - PRINTED 3/6/2024 10:57 AM

16. NEW OR RELOCATED, UNDERGROUND MAINS SHALL BE LAID TO PROVIDE THE FOLLOWING MINIMUM CROSSING/VERTICAL SEPARATIONS (OUTSIDE TO OUTSIDE):

	WATER	STORM GRAVITY	STORM FORCE	RECLAIM	SANITARY GRAVITY	SANITARY FORCE
		OVER STORM GRAVITY 6", PREFERRED 12"	OVER STORM FORCE 12"	OVER RECLAIM 12"	OVER SANITARY GRAVITY 6", PREFERRED 12"	OVER SANITARY FORCE 12"
WATER		UNDER STORM GRAVITY 12"	UNDER STORM FORCE 12"	UNDER RECLAIM 12"	UNDER SANITARY GRAVITY 12"	UNDER SANITARY FORCE 12"
	OVER WATER 12"		OVER STORM FORCE 6"	OVER RECLAIM 6", PREFERRED 12"	OVER SANITARY GRAVITY 6", PREFERRED 12"	OVER SANITARY FORCE 12"
STORM GRAVITY	UNDER WATER 12"		UNDER STORM FORCE 6"	UNDER RECLAIM 12"	UNDER SANITARY GRAVITY 12"	UNDER SANITARY FORCE 12"
	OVER WATER 12"	OVER STORM GRAVITY 6"		OVER RECLAIM 12"	OVER SANITARY GRAVITY 12"	OVER SANITARY FORCE 12"
STORM FORCE	UNDER WATER 12"	UNDER STORM GRAVITY 6"		UNDER RECLAIM 12"	UNDER SANITARY GRAVITY 12"	UNDER SANITARY FORCE 12"
	OVER WATER 12"	OVER STORM GRAVITY 12"	OVER STORM FORCE 12"		OVER SANITARY GRAVITY 12"	OVER SANITARY FORCE 12"
RECLAIM	UNDER WATER 12"	UNDER STORM GRAVITY 6", PREFERRED 12"	UNDER STORM FORCE 12"		UNDER SANITARY GRAVITY 12"	UNDER SANITARY FORCE 12"
	OVER WATER 12"	OVER STORM GRAVITY 12"	OVER STORM FORCE 12"	OVER RECLAIM 12"		OVER SANITARY FORCE 12"
SANITARY GRAVITY	UNDER WATER 12"	UNDER STORM GRAVITY 6", PREFERRED 12"	UNDER STORM FORCE 12"	UNDER RECLAIM 12"		UNDER SANITARY FORCE 12"
	OVER WATER 12"	OVER STORM GRAVITY 12"	OVER STORM FORCE 12"	OVER RECLAIM 12"	OVER SANITARY GRAVITY 12"	
SANITARY FORCE	UNDER WATER 12"	UNDER STORM GRAVITY 6", PREFERRED 12"	UNDER STORM FORCE 12"	UNDER RECLAIM 12"	UNDER SANITARY GRAVITY 12"	



STANDARD CONSTRUCTION DETAIL
SANITARY SEWER NOTES
(CONTINUED)

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17. SEWER LATERAL LOCATIONS SHALL BE MARKED ALONG THE OUTSIDE OF THE CURB WITH A SAW CUT "V", OR BY A METAL TAB SET INTO THE PAVEMENT.
18. THE CONTRACTOR SHALL INSTALL A METALLIZED FOIL LOCATOR TAPE, OR SIMILAR DEVICE AS MAY BE APPROVED BY THE CITY FOR THE FULL LENGTH OF ALL PVC SEWAGE FORCE MAINS. THIS PIPE LOCATOR AID SHALL BE INSTALLED BETWEEN 15" AND 24" BELOW FINISHED GRADE OR AS DIRECTED BY THE MANUFACTURER. TAPE SHALL BE COLOR CODED GREEN FOR SANITARY SEWER AND FORCE MAIN. A CONTINUOUS NO. 10 COPPER HEAD WIRE SHALL BE INSTALLED WITH WIRE BROUGHT UP AT ALL VALVES.

FORCE MAIN SANITARY SEWER:

- PVC SANITARY SEWER FORCE MAINS, INCLUDING FITTINGS, SHALL BE GREEN PVC AWWA C-900, OR C-905, UNLESS SPECIFICALLY NOTED OTHERWISE. PRESSURE FITTINGS SHALL BE PRESSURE CLASS 150 OR C-907.
- HDPE SANITARY SEWER FORCE MAINS SHALL BE SDR11 (OR THICKER) UNLESS SPECIFICALLY NOTED OTHERWISE. THE HDPE PIPE SHALL BE SIZED TO MATCH THE EXTERNAL DIAMETER OF THE PVC TO WHICH IT IS ATTACHED. PRESSURE FITTINGS SHALL BE PRESSURE CLASS 150 OR C-907.
- ALL SANITARY SEWER FORCE MAINS SHALL USE A THRUST RESTRAINT JOINT METHOD IN COMPLIANCE WITH THE DUCTILE IRON PIPE RESEARCH ASSOCIATION GUIDELINES MODIFIED TO ACCOMMODATE PVC PIPE BY FOLLOWING THE RECOMMENDED INCREASE IN RESTRAINT LENGTH CORRESPONDING TO THE INSTALLATION OF POLYETHYLENE WRAP. IN NO INSTANCE SHALL THRUST BLOCKS BE PERMITTED.
- ALL IN-LINE SANITARY SEWER FORCE MAIN VALVES SHALL BE AWWA C-509 OR C-515 COMPLIANT RESILIENT SEAT VALVES FEATURING AN EPOXY LINED DUCTILE IRON BODY.
- FORCE MAIN SYSTEMS SHALL BE PRESSURE TESTED AT 100 PSI STATIC PRESSURE FOR A PERIOD OF 2 HOURS PER AWWA STANDARDS.
- FORCE MAINS SHALL BE FLUSHED, PRESSURE TESTED, PIGGED AND CLEARED FOR SERVICE IN ACCORDANCE WITH THE LATEST AWWA STANDARDS AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REQUIREMENTS. THE CONTRACTOR SHALL NOTIFY THE CITY'S DESIGNATED SITE INSPECTOR WHO SHALL COORDINATE WITH CITY PERSONNEL AT THE WATER OR WASTEWATER TREATMENT PLANT (AS APPROPRIATE) AT LEAST 48 HOURS PRIOR TO BEGINNING A FULL-DIAMETER FLUSH OF THE MAINS AND PRIOR TO THE COMMENCEMENT OF PRESSURE TESTING (SUBJECT TO AVAILABILITY).
- THE CONTRACTOR SHALL BE REQUIRED TO PIG ALL FORCE MAINS AND PRIMARY TRANSMISSION MAINS LOCATED ON COLLECTOR AND ARTERIAL ROADWAYS, LAUNCHING AND EXTRACTION POINTS SHALL BE DETERMINED BY THE CONTRACTOR. ALL PIGGING OPERATIONS SHALL BE WITNESSED BY A PORT ORANGE REPRESENTATIVE.

GRAVITY SANITARY SEWER:

- ALL GRAVITY SANITARY SEWER LINES IN PUBLIC RIGHTS-OF-WAY SHALL BE GREEN PVC SDR26, ASTM D-3034. SEWER LINES CONSTRUCTED OUTSIDE OF PUBLIC RIGHTS-OF-WAY, WITHIN SIDE YARDS, BACKYARDS, AND OTHER POORLY ACCESSIBLE AREAS SHALL BE CONSTRUCTED OF GREEN AWWA C-900 PVC SDR25. USE OF PLASTIC STYRENE FITTINGS SHALL NOT BE ALLOWED.
- IN PLACES WHERE A MINIMUM COVER OF 36" CANNOT BE MAINTAINED, AWWA C-900 GREEN PVC SDR25 OR CONCRETE ENCASEMENT SHALL BE USED. WATER LINES, RECLAIMED LINES, AND STORM DRAINAGE CROSSINGS SHALL ALSO FOLLOW THE CONCRETE ENCASEMENT REQUIREMENT PER THESE STANDARDS AND AS PER REGULATORY REQUIREMENTS.
- GRAVITY SANITARY SEWER PIPE SIZES SHALL BE:
MAINS - 8" DIAMETER MINIMUM
COMMERCIAL SERVICE LATERALS WITH MULTIPLE CONNECTIONS - 6" DIAMETER MINIMUM
SINGLE FAMILY RESIDENTIAL SERVICE LATERALS - 4" DIAMETER
MULTI-FAMILY RESIDENTIAL SERVICE LATERALS - 6" DIAMETER MINIMUM



STANDARD CONSTRUCTION DETAIL
SANITARY SEWER NOTES
(CONTINUED)

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- SINGLE FAMILY RESIDENTIAL SERVICE LATERALS SHALL BE CONSTRUCTED AT EACH LOT OR UNIT AND LOCATED ON THE DOWNSTREAM SIDE OF THE LOT CENTER LINE. THESE SERVICES SHALL BE EXTENDED 48" ABOVE GROUND AT THE PROPERTY LINE WITH A PVC RISER AND PLUG BEING EASILY VISIBLE FROM THE ROAD. RUBBER SEAL FITTINGS SHALL BE USED ON ALL LINES. NO GLUED JOINTS ARE PERMITTED ON LATERALS.
- GRAVITY SANITARY SEWER LINE CONSTRUCTION SHALL BE ACCOMPLISHED BY THE USE OF A LASER INSTRUMENT UNLESS ANOTHER METHOD IS PREVIOUSLY APPROVED BY THE CITY.
- MINIMUM GRAVITY SANITARY SEWER SLOPES ARE AS FOLLOWS:
8" PIPE - 0.40 %
10" PIPE - 0.30 %
12" PIPE - 0.22 %
- GRAVITY SANITARY SEWER LINES SHALL BE INSTALLED WHENEVER POSSIBLE UNDER PAVED AREAS WITHIN PUBLIC RIGHTS-OF-WAY. UTILITY EASEMENTS SHALL BE PROVIDED WHENEVER PUBLICLY-OWNED SEWER LINES ARE CONSTRUCTED OUTSIDE OF A PUBLIC RIGHT-OF-WAY.
- AS A GENERAL RULE, THE NUMBER OF JOINTS SHALL BE LIMITED WHENEVER POSSIBLE. IN SPECIAL CASES WHERE A POINT REPAIR TO AN 8" TO 12" PVC SEWER MAIN IS REQUIRED, THE PROPER RIGID WRAP AROUND SLEEVE SUCH AS A JCM-210 OVERSIZED DUCTILE IRON COUPLING OR AN APPROVED EQUAL MAY BE ALLOWED BY SPECIAL APPROVAL BY THE CITY.
- SEWER MAINS SHALL BE FLUSHED, PRESSURE TESTED, PIGGED AND CLEARED FOR SERVICE IN ACCORDANCE WITH THE LATEST AWWA STANDARDS AND THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION REQUIREMENTS. THE CONTRACTOR SHALL NOTIFY THE CITY'S DESIGNATED SITE INSPECTOR WHO SHALL COORDINATE WITH CITY PERSONNEL AT THE WATER OR WASTEWATER TREATMENT PLANT (AS APPROPRIATE) AT LEAST 48 HOURS PRIOR TO BEGINNING A FULL-DIAMETER FLUSH OF THE MAINS AND PRIOR TO THE COMMENCEMENT OF PRESSURE TESTING (SUBJECT TO AVAILABILITY).
- THE CONTRACTOR SHALL BE REQUIRED TO PIG ALL MAINS AND PRIMARY TRANSMISSION MAINS LOCATED ON COLLECTOR AND ARTERIAL ROADWAYS, LAUNCHING AND EXTRACTION POINTS SHALL BE DETERMINED BY THE CONTRACTOR. ALL PIGGING OPERATIONS SHALL BE WITNESSED BY A PORT ORANGE REPRESENTATIVE.

SANITARY MANHOLES:

- STANDARD MANHOLES SHALL BE LOCATED AT INTERVALS NOT EXCEEDING 350'. SHOP DRAWINGS FOR ALL STRUCTURES SHALL BE SUBMITTED TO AND APPROVED BY THE DESIGN ENGINEER PRIOR TO INSTALLATION WITH TWO COPIES FORWARDED BY THE DESIGN ENGINEER TO THE CITY.
- MAXIMUM DEPTH OF SANITARY MANHOLES SHALL BE 15'.
- LOCAL COLLECTION SANITARY SEWER MANHOLES SHALL BE PRECAST WITH A MINIMUM INSIDE DIAMETER OF 48".
- THICKER MANHOLE WALLS AND BASES MAY BE REQUIRED TO PREVENT FLOATATION BASED ON HIGH GROUND WATER TABLE ELEVATIONS AS DETERMINED USING ACCEPTED ENGINEERING PRACTICES AND/OR PUBLIC UTILITIES DEPARTMENT.
- ALL SANITARY SEWER MANHOLES SHALL HAVE ALL INTERIOR SURFACES COATED WITH THREE (3) COATS OF WHITE/GRAY OVER RED OVER BLACK EW-1 EPOXY PAINT WITH A TOTAL OF 12 MILS THICKNESS OR BLACK COAL-TAR EPOXY WITH A TOTAL OF 16 MILS THICKNESS. OUTSIDE SURFACE TO BE COATED WITH TWO (2) COATS OF BLACK OVER BLACK EW-1 EPOXY PAINT WITH A TOTAL OF 8 MILS AND ONE (1) COAT OF BLACK COAL-TAR EPOXY WITH A TOTAL OF 8 MILS. ALL COATS SHALL BE APPLIED AT THE FACTORY EXCEPT MINOR FIELD TOUCH UP AT JOINTS AND AT MANHOLE NECK.
- ALL MANHOLES CONSTRUCTED IN SIDE YARDS, BACKYARDS, AND EASEMENTS OUTSIDE OF THE RIGHT-OF-WAY SHALL BE OUTFITTED WITH FIBERGLASS OR EPOXY LINERS IN COMPLIANCE WITH ASTM-3753 OR OTHER TYPES OF LINERS APPROVED BY THE CITY. IN ADDITION, THE CITY MAY REQUIRE LINERS TO BE INSTALLED IN OTHER AREAS WHERE THE PUBLIC UTILITIES DEPARTMENT BELIEVES THE NEED IS JUSTIFIED SUCH AS IMMEDIATELY UPSTREAM OF FORCE MAINS CONNECTING TO GRAVITY MAINS.



STANDARD CONSTRUCTION DETAIL
SANITARY SEWER NOTES
(CONTINUED)

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- MANHOLE RIMS SHALL MATCH FLUSH WITH THE FINISH GRADE ELEVATION IN PAVED AREAS AND A MINIMUM OF 0.2' AND MAXIMUM OF 0.5' ABOVE GRADE ELEVATION IN UNPAVED AREAS.
- ALL SANITARY SEWER MANHOLE COVERS SHALL HAVE THE WORDS "PORT ORANGE FLORIDA SANITARY SEWER" CAST INTO THEM.
- THE CONTRACTOR SHALL CONSTRUCT SANITARY SEWER MANHOLES IN SUCH A WAY THAT SEWER LINES DO NOT INTERSECT SEALED JOINTS BETWEEN SECTIONS OF THE MANHOLE.
- NO BUG HOLES OR HONEYCOMB WILL BE ACCEPTED.
- INDIVIDUAL SANITARY SERVICE ON NEW CONSTRUCTION SHALL NOT BE CONNECTED DIRECTLY INTO MANHOLES. THE SERVICE CONNECTION WILL BE BY USE OF WYE CONNECTIONS, UNLESS OTHERWISE APPROVED BY THE CITY.
- RUBBER BOOTS WITH 316 STAINLESS STEEL BANDS SHALL BE UTILIZED IN THE CONNECTION OF THE SEWER MAIN TO THE MANHOLES. COMPLETELY COVER RUBBER BOOTS AT OUTSIDE CONNECTION AND SEAL INSIDE PROTRUSION WITH HYDRAULIC CEMENT.
- EZ-WRAP PLASTIC, AS MANUFACTURED BY PRESS SEAL GASKET CORPORATION, SHALL BE USED ON THE OUTSIDE OF ALL MANHOLE AND WET WELL JOINTS. APPLY ONE LAYER OF 9" WRAP CENTERED ON EACH JOINT. A CITY INSPECTOR SHALL PERSONALLY INSPECT ALL JOINT SEALS PRIOR TO BACKFILLING OPERATIONS.

TESTING:

- ALL TESTING REQUIRED BY THE CITY SHALL BE PAID FOR BY THE CONTRACTOR / DEVELOPER. THE CONTRACTOR SHALL EMPLOY AN INDEPENDENT TESTING LABORATORY AT HIS OWN EXPENSE.
- TO ENSURE THAT COMPACTION OF ALL FILL MATERIAL IS COMPLETED PROPERLY, TESTS SHALL BE DONE 12" ABOVE THE PIPE AND THEN AT 12" VERTICAL INTERVALS UNTIL FINAL GRADE IS REACHED.
- ALL TRENCHES SHALL BE BACKFILLED WITH ACCEPTABLE MATERIAL AND COMPACTED TO MINIMUM 95% IN UNPAVED AREAS AND 98% IN PAVED AREAS OF THE MAXIMUM DENSITY BASED ON AASHTO T-180 MODIFIED PROCTOR TEST.
- TEST RESULTS SHALL BE SUBMITTED TO THE CITY AT A MINIMUM FREQUENCY OF ONE SET OF TESTS BETWEEN EACH MANHOLE AND ONE ADDITIONAL SET OF TESTS AT EVERY MANHOLE. IDENTIFICATION OF TEST LOCATIONS SHALL BE CLEARLY INDICATED ON TEST REPORTS. TEST RESULTS SHALL BE FORWARDED PROMPTLY TO THE CITY'S DESIGNATED SITE INSPECTOR.

CLOSE-OUT:

- ALL SEWER MAINS, PRIOR TO FINAL ACCEPTANCE BY THE CITY AND PRIOR TO ANY FINAL PAVING OPERATIONS, SHALL BE TELEVIEWED AND SUBMITTED TO THE CITY USING A "PAN AND TILT CAMERA" WITH DEPTH GAUGE IN FRONT OF THE CAMERA BY A CITY APPROVED CONTRACTOR. THE CAMERA SHALL RUN FROM DOWN STREAM MANHOLE TO UP STREAM MANHOLE. CITY INSPECTOR SHALL BE NOTIFIED IN ADVANCE AND BE PRESENT DURING THE TELEVIEWING OF THE SEWER SYSTEM. THE VIDEO SHALL BE NON-STOP WITH AUDIO DESCRIBING WHAT IS BEING REVIEWED. WRITTEN VIDEO LOGS DESCRIBING THE CONDITION OF THE LINES SHALL ACCOMPANY THE VIDEO SUBMISSION TO THE CITY 48 HOURS PRIOR TO COMMENCING ANY INSTALLATION OF ASPHALT OR CONCRETE PAVEMENT. THE CITY MAY REQUIRE ADDITIONAL VIDEO TAPING, VIDEO TAPING OF LATERALS, AND/OR INFILTRATION/EXFILTRATION TESTS IF DEFECTS ARE APPARENT OR WORKMANSHIP IS QUESTIONABLE.
- UPON CONSTRUCTION COMPLETION AND ACCEPTANCE OF THE SYSTEM, IT SHALL BE THE DESIGN ENGINEER'S RESPONSIBILITY TO ENSURE THAT THE SYSTEM IS PROPERLY CERTIFIED AND ACCEPTED BY THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND AS-BUILTS ARE PROVIDED TO THE CITY PRIOR TO ANY USE OF THE SYSTEM.



STANDARD CONSTRUCTION DETAIL
SANITARY SEWER NOTES
(CONTINUED)

REV. 12/18

FILE NAME
S1.DOC

DETAIL REF:
S-1.5

ALL MATERIALS AND INSTALLATION METHODS USED FOR LAND DEVELOPMENT CODE REQUIRED IMPROVEMENTS FOR SUBDIVISIONS AND SITE PLANS SHALL BE IN CONFORMANCE WITH THE CITY, FOOT STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION (LATEST EDITION) AND THE FOOT ROADWAY AND TRAFFIC DESIGN STANDARDS (LATEST EDITION).

- ALL STORM SEWERS AND CULVERTS LOCATED IN ROADWAY RIGHTS-OF-WAY AND ROADWAY EASEMENTS SHALL BE:
 - CLASS III (MIN.) REINFORCED CONCRETE PIPE (RCP), IN ACCORDANCE WITH ASTM C76, C655, C506 AND C507. ALL RCP JOINTS SHALL BE ENTIRELY WRAPPED WITH FILTER FABRIC WITH A MINIMUM WIDTH OF 24" AND A MINIMUM OF 24" OVERLAP SECURED WITH PLASTIC OR STAINLESS BANDS. GASKETS ALONE ARE NOT PERMITTED AS AN EQUIVALENT SUBSTITUTE FOR MEETING THIS REQUIREMENT. ALL JOINTS SHALL BE RUBBER GASKETED FOR BOTH ROUND AND ELLIPTICAL PIPE.
 - CORRUGATED, SMOOTH INTERIOR WALL, HIGH DENSITY POLYETHYLENE (HDPE), UP TO 60" DIAMETER, IN ACCORDANCE WITH ASTM F2306. ALL JOINTS WILL BE IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
 - CORRUGATED, SMOOTH INTERIOR WALL, POLYPROPYLENE (PP), UP TO 60" DIAMETER, IN ACCORDANCE WITH ASTM F2881. ALL JOINTS WILL BE IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
 - CORRUGATED, SMOOTH INTERIOR WALL, PVC, UP TO 36" DIAMETER, IN ACCORDANCE WITH ASTM F949. ALL JOINTS WILL BE IN ACCORDANCE WITH MANUFACTURER'S SPECIFICATIONS.
- STORM SEWERS AND CULVERTS LOCATED OUTSIDE OF ROADWAY RIGHTS-OF-WAY AND ROADWAY EASEMENTS MAY BE MADE OF ALTERNATE MATERIALS, INCLUDING SDR26 TO SDR35 PVC IN ACCORDANCE WITH ASTM D-3034.
- DEPTH OF COVER MEASURED TO THE TOP OF PIPE (NOT INCLUDING THE BELL JOINT) SHALL BE A MINIMUM OF 12". DEVIATION FROM THIS REQUIREMENT MAY BE ALLOWED BY INCREASING THE PIPE'S STRUCTURAL CAPACITY. THIS DEVIATION MUST BE SPECIFIED ON THE PLANS APPROVED FOR CONSTRUCTION AND SUBSEQUENTLY REFLECTED ON THE SHOP DRAWINGS AND AS-BUILT PLANS.
- ALL STORM DRAINAGE PIPES LOCATED IN ROADWAY RIGHTS-OF-WAY AND ROADWAY EASEMENTS SHALL BE A MINIMUM OF 15" DIAMETER OR EQUIVALENT AND BE DESIGNED FOR A MINIMUM OF A 25 YEAR - 24 HOUR STORM. STORM DRAINAGE PIPES SMALLER THAN 15" ARE PERMITTED ON PRIVATE SITE PLANS PROVIDED MAINTENANCE IS PERFORMED BY THE OWNER.
- STORM INLETS, MANHOLES, AND CATCH BASINS SHALL BE EITHER POURED IN PLACE OR PRECAST REINFORCED CONCRETE. STRUCTURES SHALL BE REQUIRED AT EACH CHANGE OF PIPE SIZE OR CHANGE IN PIPE DIRECTION. ALL STRUCTURES SHALL BE IN COMPLIANCE WITH FOOT DRAINAGE INDEX 200. CAST IN PLACE STRUCTURES SHALL HAVE 8" THICK WALLS AND PRECAST STRUCTURES SHALL HAVE 6" THICK WALLS. THESE DIMENSIONS MUST BE REFLECTED ON BOTH SHOP AND AS-BUILT DRAWINGS.
- CULVERTS SHALL BE SLOPED TO MAINTAIN A MINIMUM SELF-CLEANING VELOCITY OF 3' PER SECOND USING MANNING'S "n" CORRESPONDING TO THE PIPE MATERIAL.
- FOR SITE PLANS, STORM INLET SPACING SHALL BE DESIGNED TO ACCEPT 100% OF THE RUNOFF FROM A RAINFALL INTENSITY OF 4" PER HOUR WITHOUT RESULTING IN PONDING OF WATER AROUND THE INLET.
- FOR SUBDIVISION PLANS, STORM INLET SPACING, WITH PIPING 15" IN DIAMETER OR LARGER, SHALL BE DESIGNED WITH THE MAXIMUM DISTANCE OF 300' BETWEEN INLETS AND/OR CLEAN-OUT JUNCTION BOXES. FOR ROADWAY SECTIONS HAVING CURB AND GUTTER AND DESIGN SPEEDS OF 45 MPH AND LESS, SPREAD RESULTING FROM A RAINFALL INTENSITY OF 4" PER HOUR SHALL NOT EXCEED ONE-HALF OF THE TRAVEL LANE ADJACENT TO THE GUTTER.
- RETENTION AREA WATER DEPTHS SHALL BE 4' MINIMUM TO 12' MAXIMUM, MEASURED FROM THE NORMAL WATER LEVEL.



STANDARD CONSTRUCTION DETAIL
STORM DRAINAGE DESIGN
AND CONSTRUCTION NOTES

REV. 12/18

FILE NAME
ST1.DOC

DETAIL REF:
ST-1

- THE MAXIMUM PERMISSIBLE SLOPE OF ANY NEW POND BANKS IS 4:1 (HORIZONTAL:VERTICAL). THIS LIMIT SHALL BE APPLIED TO ALL AREAS EXCEPT BELOW THE WATER TABLE WHERE SHARPER SLOPES ARE PERMISSIBLE.
- PIPED STORMWATER SYSTEMS SHALL HAVE A MINIMUM DRAINAGE MAINTENANCE EASEMENT WIDTH OF 20', CENTERED OVER PIPE/STRUCTURE, AND SHALL BE INCREASED DEPENDING UPON CONDITIONS, SUCH AS OSHA UNSHIELDED TRENCH COMPLIANCE.
- NORMAL ROADSIDE SVALES ARE PERMITTED TO BE CONSTRUCTED TO A MAXIMUM DEPTH OF 18" BELOW THE OUTSIDE EDGE OF PAVEMENT OR CONCRETE CURB.
- CONCRETE EROSION CONTROL MUST BE PROVIDED WHERE SVALES OR CULVERTS INTERCEPT DRAINAGE DITCHES.
- IN GENERAL, ALL RETENTION / DETENTION SITES MUST BE CONSTRUCTED ON ALL PROJECTS PRIOR TO ANY ROAD, PARKING LOT, OR BUILDING CONSTRUCTION COMMENCING OR AS CURRENT PERMIT CONDITIONS DICTATE. SEWER AND WATER MAINS MAY BE INSTALLED PRIOR TO RETENTION/DETENTION SITE OSTRUCTION IF DEWATERING IS NOT REQUIRED.
- POND INFLOW AND OUTLET STRUCTURES SHALL GENERALLY BE CONSTRUCTED WITH REINFORCED CONCRETE.
- SKIMMERS FOR WET PONDS SHALL BE CONSTRUCTED SUCH THAT THE BOTTOM EXTENDS 6" BELOW THE NORMAL WATER LEVEL AND 6" ABOVE THE OVERFLOW. FOR DRY PONDS, THE SKIMMER BOTTOM SHALL BE SET 6" BELOW THE LOWEST OVERFLOW ELEVATION AND 6" ABOVE THE HIGHEST POINT OF OVERFLOW. ALL SKIMMERS SHALL BE CONSTRUCTED OF MINIMUM 1/4" THICK ALUMINUM OR FIBERGLASS AND ADEQUATELY SUPPORTED TO PREVENT DEFLECTION.
- DEVELOPMENT PLANS FOR ALL STORMWATER MANAGEMENT SYSTEMS SHALL CONTAIN POP-OFF DATA (OVERFLOW), BOTTOM ELEVATION, NORMAL WATER LEVELS, MEAN ANNUAL SEASONAL HIGH WATER TABLE ELEVATION, TREATMENT VOLUME AND CORRESPONDING ELEVATION, 100 YEAR HIGH WATER LEVELS, AND THE DESIGN TAILWATER ELEVATION (IF APPLICABLE).
- WHEN CULVERTS ARE INSTALLED TO MAINTAIN THE FLOW OF EXISTING DRAINAGE WAYS WHERE NEWLY PROPOSED ROADS WOULD OTHERWISE SEVER THE DRAINAGE WAY THEN CULVERTS CROSSING RIGHTS OF WAY SHALL EXTEND FROM RIGHT-OF-WAY LINE TO RIGHT-OF-WAY LINE UNDER THE ROADWAY. CULVERTS SHALL BE DESIGNED TO ACCOMMODATE THE FLOW FROM THE 100 YEAR-24 HOUR STORM EVENT WITHOUT FLOODING ADJACENT PROPERTY OR SURCHARGING THE SAID ROADWAY.
- THE CITY MAY REQUEST THAT THE DEVELOPER SUBMIT A REPORT BY A QUALIFIED HYDROLOGIST ON THE IMPACT THE POND WILL HAVE ON NEIGHBORING WATER TABLE ELEVATIONS BOTH DURING CONSTRUCTION AND AFTER POND COMPLETION. THE CITY MAY REQUIRE GROUNDWATER MONITORING DURING THE POND EXCAVATION.
- SOIL EROSION CONTROL MEASURES, SATISFACTORY TO THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT AND THE CITY, SHALL BE EMPLOYED DURING CONSTRUCTION.
- A 10' MAINTENANCE EASEMENTS/RIGHTS-OF-WAY SHALL BE PROVIDED AROUND THE ENTIRE PERIMETER OF ALL PONDS AND ASSOCIATED OUTFALLS DISCHARGING INTO AND OUT OF LAKES. APPLICABLE CROSS SECTIONS SHALL BE INCLUDED ON FINAL DEVELOPMENT PLANS.
- THE CONTRACTOR SHALL BE RESPONSIBLE TO OBTAIN ANY AND ALL DEWATERING PERMITS THAT MAY BE REQUIRED.
- IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO REVIEW AND MAINTAIN A COPY OF THE SRVMD AND NPDES PERMITS AT THE CONSTRUCTION SITE AND ABIDE BY ALL CONDITIONS OF THE PERMIT.
- LANDSCAPE PLANS SHALL CLEARLY DEPICT THE DESIGN LOCATION OF PLANTINGS RELATIVE TO THE LOCATION OF PUBLIC UTILITIES AND STORMWATER INFRASTRUCTURE IN ORDER TO EVALUATE POTENTIAL CONFLICTS.



STANDARD CONSTRUCTION DETAIL
STORM DRAINAGE DESIGN
AND CONSTRUCTION NOTES
(CONTINUED)

REV. 12/18

FILE NAME
ST1.DOC

DETAIL REF:
ST-1.1

25. NEW OR RELOCATED, UNDERGROUND MAINS SHALL BE LAID TO PROVIDE THE FOLLOWING MINIMUM CROSSING/VERTICAL SEPARATIONS (OUTSIDE TO OUTSIDE):

	WATER	STORM GRAVITY	STORM FORCE	RECLAIM	SANITARY GRAVITY	SANITARY FORCE
		OVER STORM GRAVITY 6", PREFERRED 12"	OVER STORM FORCE 12"	OVER RECLAIM 12"	OVER SANITARY GRAVITY 6", PREFERRED 12"	OVER SANITARY FORCE 12"
WATER		UNDER STORM GRAVITY 12"	UNDER STORM FORCE 12"	UNDER RECLAIM 12"	UNDER SANITARY GRAVITY 12"	UNDER SANITARY FORCE 12"
	OVER WATER 12"		OVER STORM FORCE 6"	OVER RECLAIM 6", PREFERRED 12"	OVER SANITARY GRAVITY 6", PREFERRED 12"	OVER SANITARY FORCE 6", PREFERRED 12"
STORM GRAVITY	UNDER WATER 6", PREFERRED 12"		UNDER STORM FORCE 6"	UNDER RECLAIM 12"	UNDER SANITARY GRAVITY 12"	UNDER SANITARY FORCE 12"
	OVER WATER 12"	OVER STORM GRAVITY 6"		OVER RECLAIM 12"	OVER SANITARY GRAVITY 12"	OVER SANITARY FORCE 12"
STORM FORCE	UNDER WATER 12"	UNDER STORM GRAVITY 6"		UNDER RECLAIM 12"	UNDER SANITARY GRAVITY 12"	UNDER SANITARY FORCE 12"
	OVER WATER 12"	OVER STORM GRAVITY 12"	OVER STORM FORCE 12"		OVER SANITARY GRAVITY 12"	OVER SANITARY FORCE 12"
RECLAIM	UNDER WATER 12"	UNDER STORM GRAVITY 6", PREFERRED 12"	UNDER STORM FORCE 12"		UNDER SANITARY GRAVITY 12"	UNDER SANITARY FORCE 12"
	OVER WATER 12"	OVER STORM GRAVITY 12"	OVER STORM FORCE 12"	OVER RECLAIM 12"		OVER SANITARY FORCE 12"
SANITARY GRAVITY	UNDER WATER 6", PREFERRED 12"	UNDER STORM GRAVITY 6", PREFERRED 12"	UNDER STORM FORCE 12"	UNDER RECLAIM 12"		UNDER SANITARY FORCE 12"
	OVER WATER 12"	OVER STORM GRAVITY 12"	OVER STORM FORCE 12"	OVER RECLAIM 12"	OVER SANITARY GRAVITY 12"	
SANITARY FORCE	UNDER WATER 12"	UNDER STORM GRAVITY 6", PREFERRED 12"	UNDER STORM FORCE 12"	UNDER RECLAIM 12"	UNDER SANITARY GRAVITY 12"	



STANDARD CONSTRUCTION DETAIL
STORM DRAINAGE DESIGN
AND CONSTRUCTION NOTES
(CONTINUED)

REV. 12/18

FILE NAME
ST1.DOC

DETAIL REF:
ST-1.2

25. NEW OR RELOCATED, UNDERGROUND MAINS SHALL BE LAID TO PROVIDE THE FOLLOWING MINIMUM HORIZONTAL SEPARATIONS (OUTSIDE TO OUTSIDE):

	WATER	STORM GRAVITY	STORM FORCE	RECLAIM	SANITARY GRAVITY	SANITARY FORCE
		3'	3'	3'	6', PREFERRED 10'	6', PREFERRED 10'
WATER					6', PREFERRED 10'	6', PREFERRED 10'
STORM GRAVITY	3'		3'	3'	6', PREFERRED 10'	6', PREFERRED 10'
STORM FORCE	3'	3'		3'	6', PREFERRED 10'	6', PREFERRED 10'
	3'	3'	3'		6', PREFERRED 10'	6', PREFERRED 10'
RECLAIM	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'		6', PREFERRED 10'
SANITARY GRAVITY	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'		6', PREFERRED 10'
SANITARY FORCE	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	6', PREFERRED 10'	



STANDARD CONSTRUCTION DETAIL
STORM DRAINAGE DESIGN
AND CONSTRUCTION NOTES
(CONTINUED)

REV. 12/18

FILE NAME
ST1.DOC

DETAIL REF:
ST-1.3

JACKSON AND OAK STREET
IMPROVEMENTS
FINAL ENGINEERING PLANS
CONSTRUCTION NOTES

PROJECT NO.: ZC 22123

DESIGNED BY: MLR

DRAFTED BY: MLR

CHECKED BY: BB

DRAWING FILE: 02-04_22123-NOT

ROBERT J. BALL, P.E., NO. 69001
NATAL RUSSELL, P.E., NO. 69007
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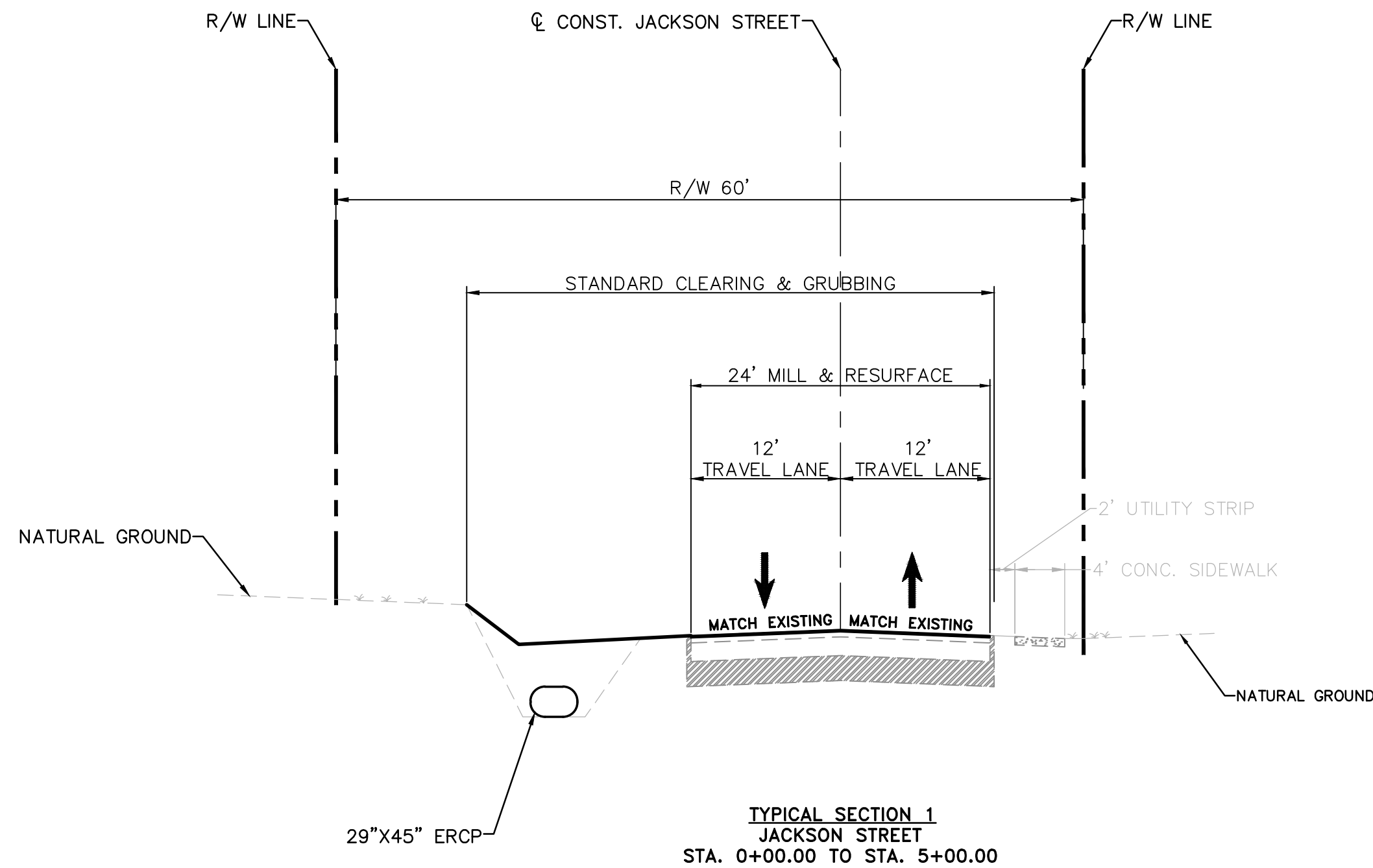
SHEET: C4 OF 20



CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION

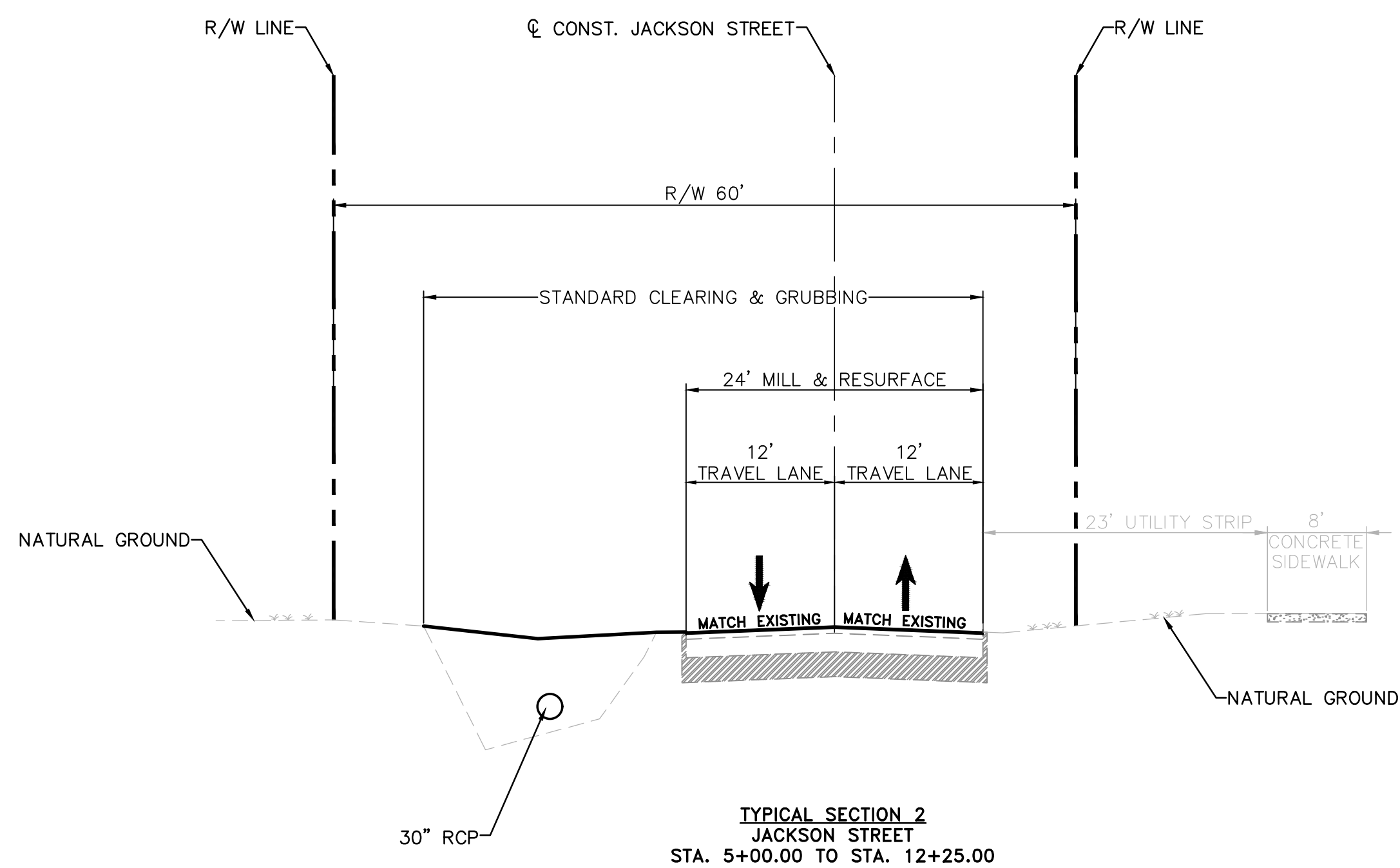
CITY OF PORT ORANGE
VOLUSIA COUNTY, FLORIDA

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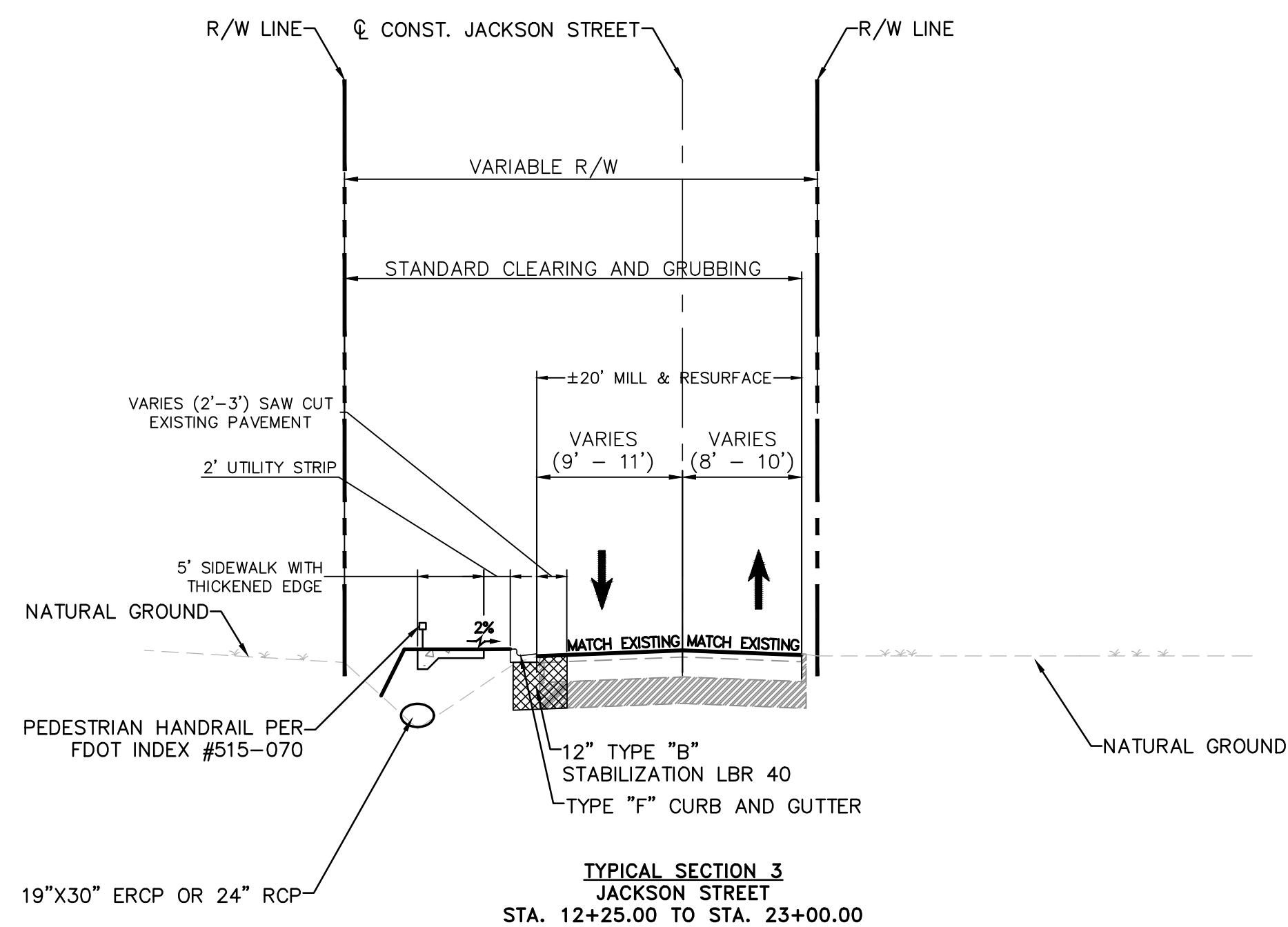
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PAVEMENT FOR A DEPTH OF (1")

RESURFACING
FRICTION COURSE FC-9.5 (1") (TRAFFIC C)



MILLING
MILL EXISTING ASPHALT
PAVEMENT FOR A DEPTH OF (1")

RESURFACING
FRICTION COURSE FC-9.5 (1") (TRAFFIC C)



MILLING
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PAVEMENT FOR A DEPTH OF (1")

RESURFACING
FRICTION COURSE FC-9.5 (1") (TRAFFIC C)

WIDENING
OPTIONAL BASE GROUP 9 RECYCLED CONC.
AGGREGATE, LBR150 10" WITH
TYPE SP-12.5 STRUCTURAL COURSE (TRAFFIC C) (2")
AND FRICTION COURSE FC-9.5 (1")



CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION

NO. DATE BY SUBMITTALS / REVISIONS

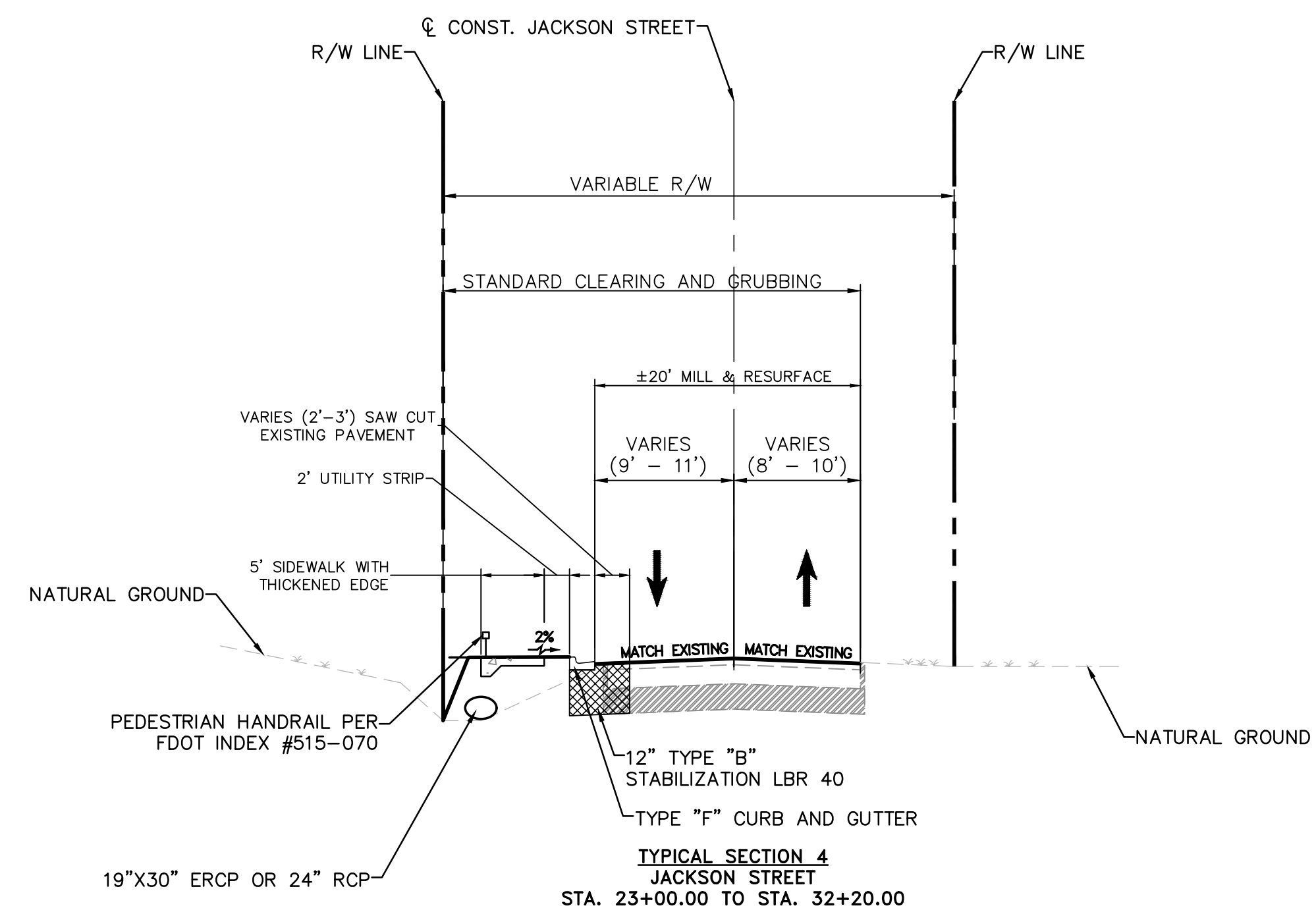
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IMPROVEMENTS
FINAL ENGINEERING PLANS
TYPICAL SECTIONS**

CITY OF PORT ORANGE
VOLUSIA COUNTY, FLORIDA

PROJECT NO.: ZC 22123
DESIGNED BY: MLR
DRAFTED BY: MLR
CHECKED BY: BB
DRAWING FILE: 05-06_22123-TYPICAL_SECTION

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MICHAEL RUSSELL, P.E., NO. 60007
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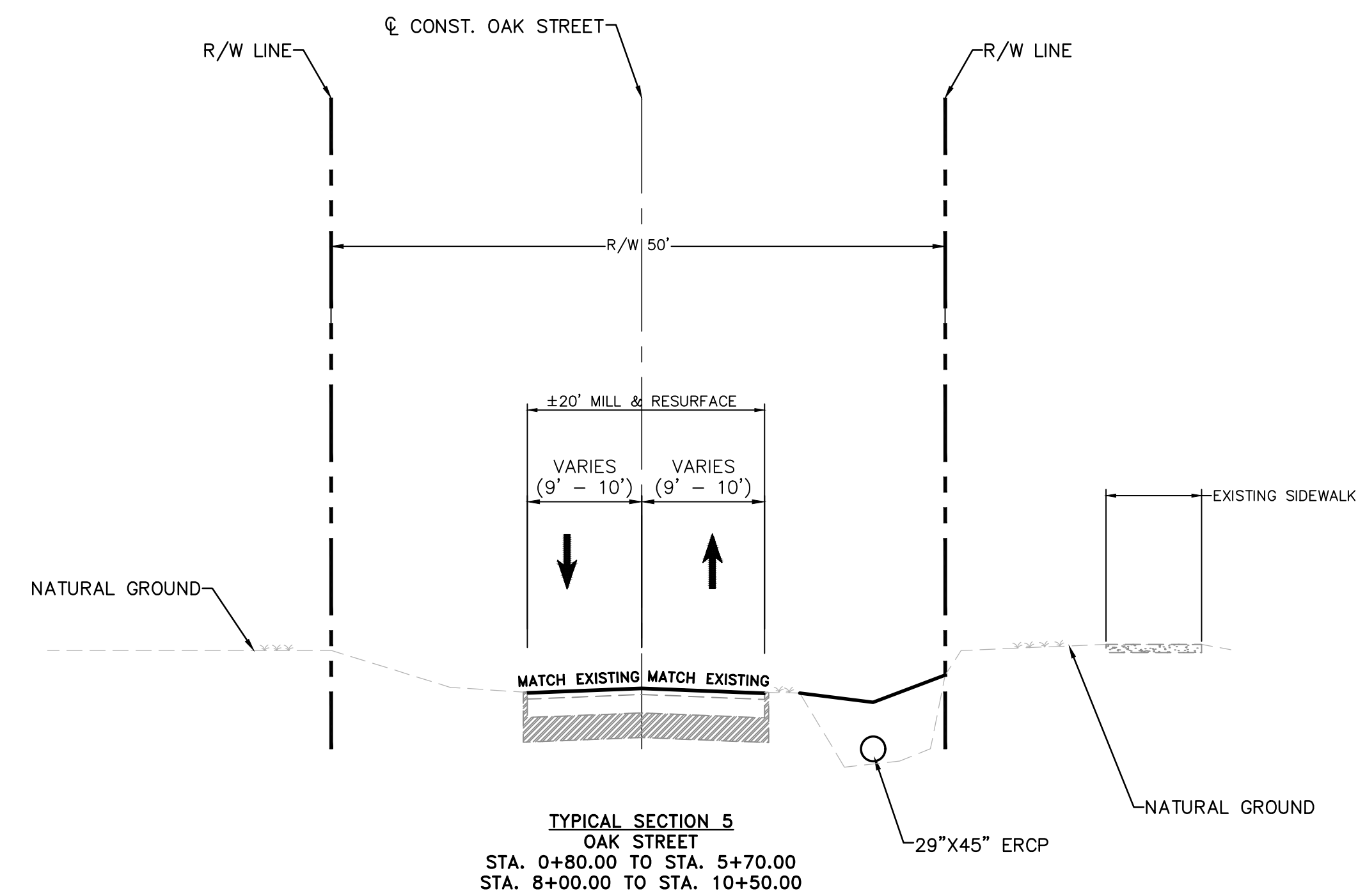
SHEET: **C5** OF **20**



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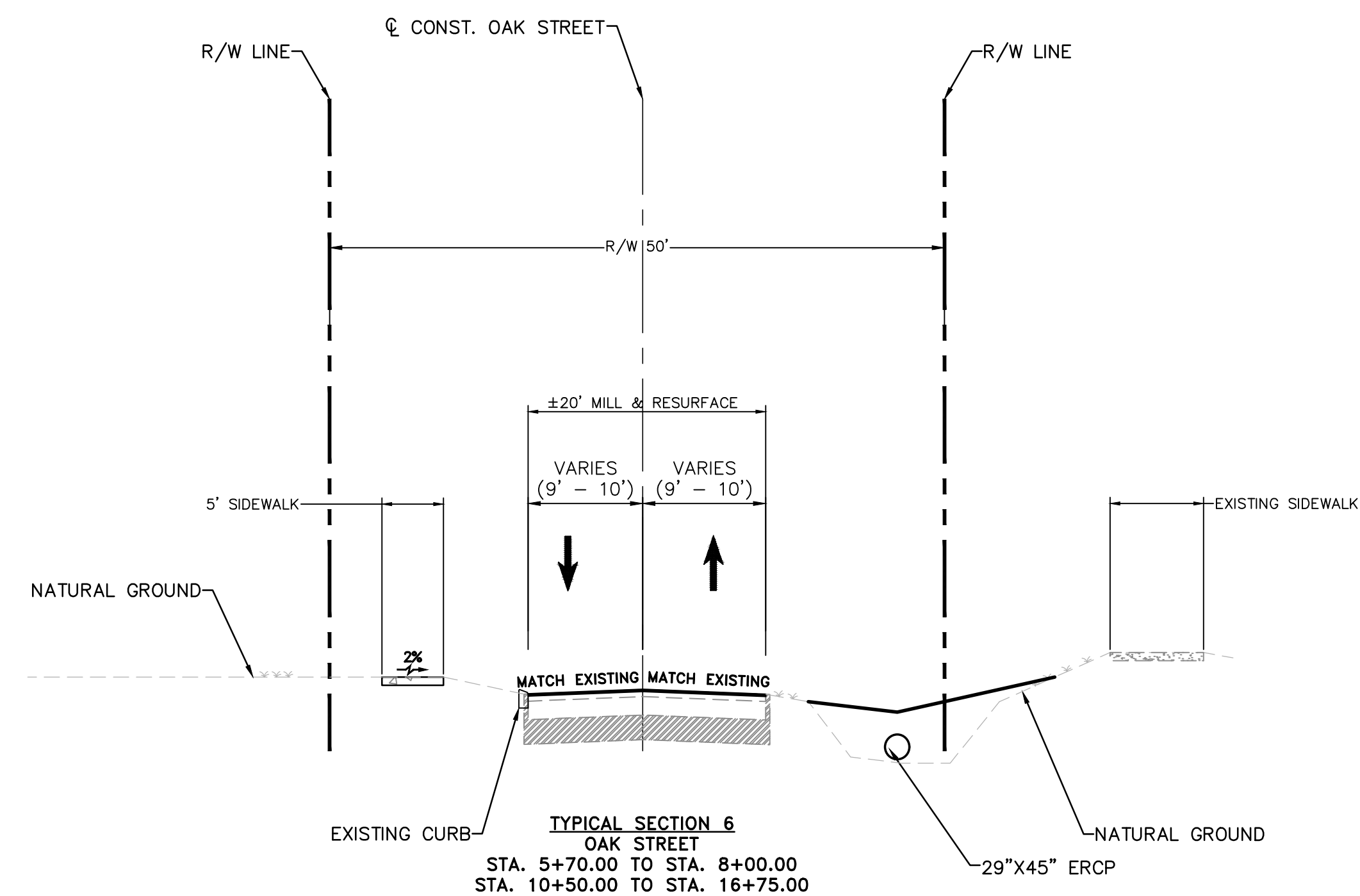
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TYPE SP-12.5 STRUCTURAL COURSE (TRAFFIC C) (2")
AND FRICTION COURSE FC-9.5 (1")



MILLING
MILL EXISTING ASPHALT
PAVEMENT FOR A DEPTH OF (1")

RESURFACING
FRICTION COURSE FC-9.5 (1") (TRAFFIC C)

WIDENING
OPTIONAL BASE GROUP 9 RECYCLED CONCRETE
AGGREGATE, LBR150 10" WITH
TYPE SP-12.5 STRUCTURAL COURSE (TRAFFIC C) (2")
AND FRICTION COURSE FC-9.5 (1")



MILLING
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PAVEMENT FOR A DEPTH OF (1")

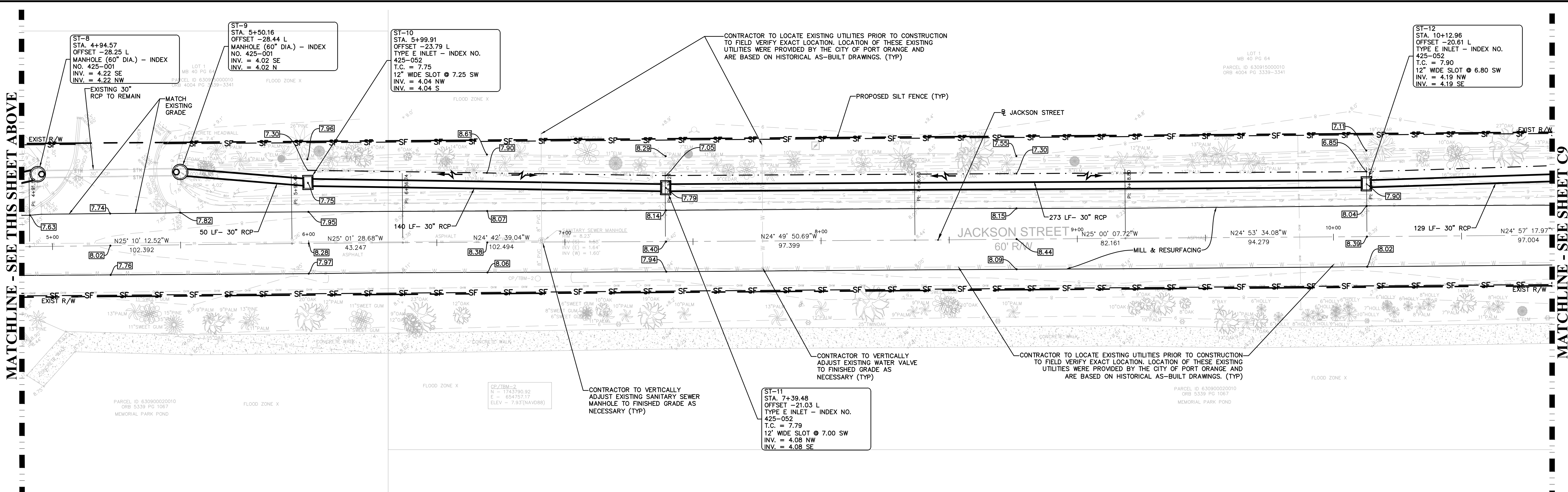
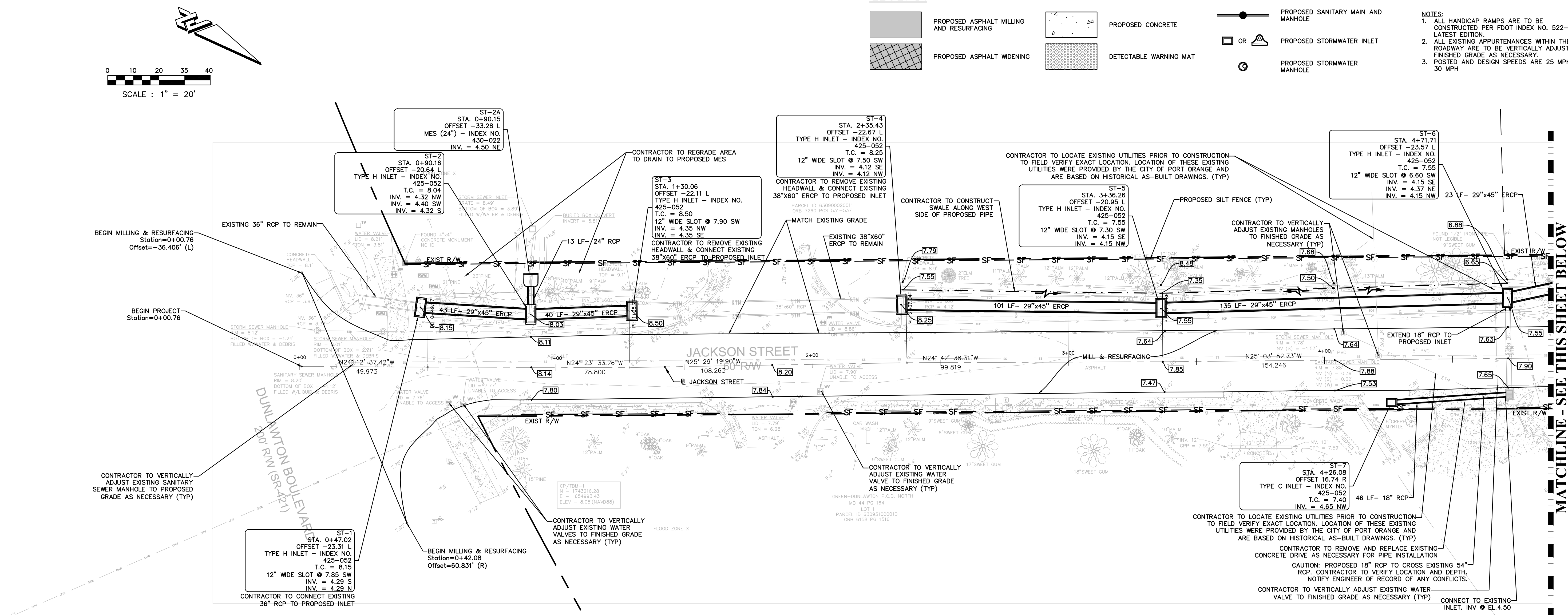
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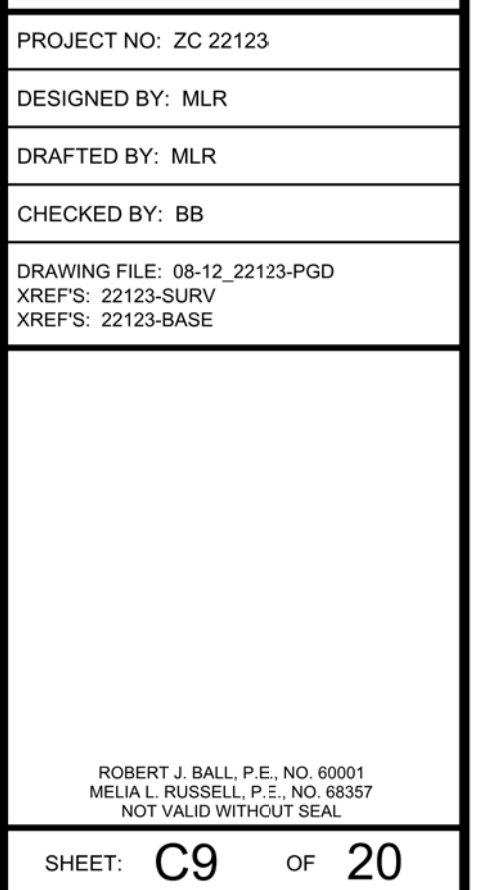
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TYPE SP-12.5 STRUCTURAL COURSE (TRAFFIC C) (2")
AND FRICTION COURSE FC-9.5 (1")

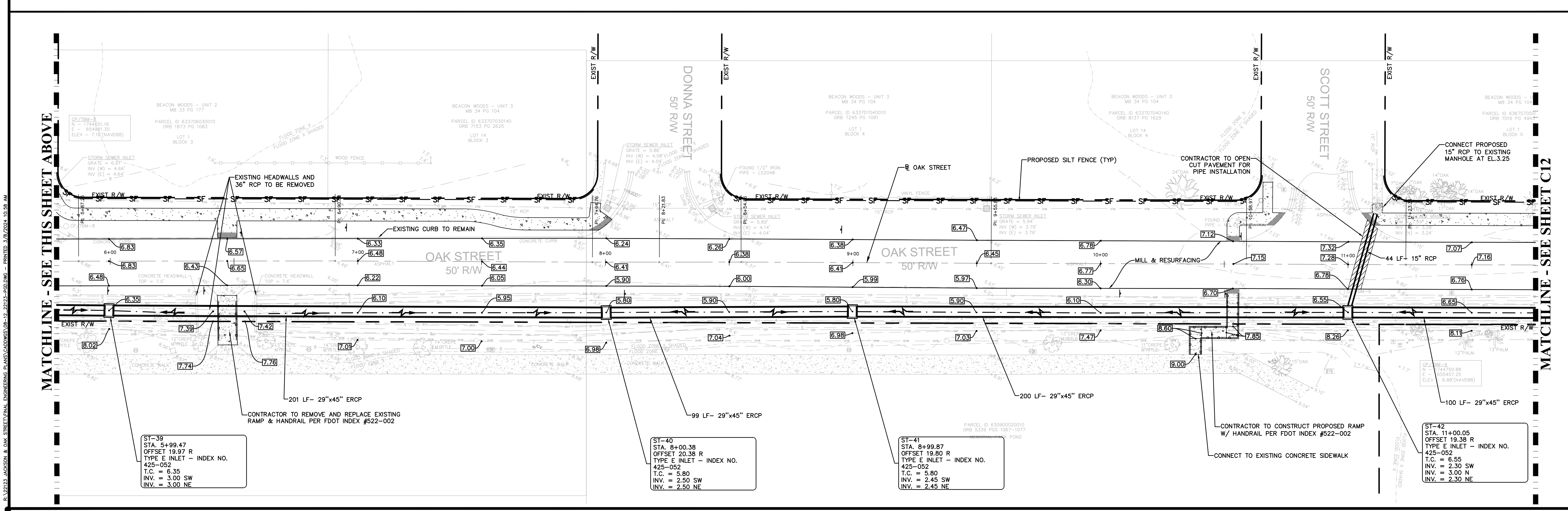
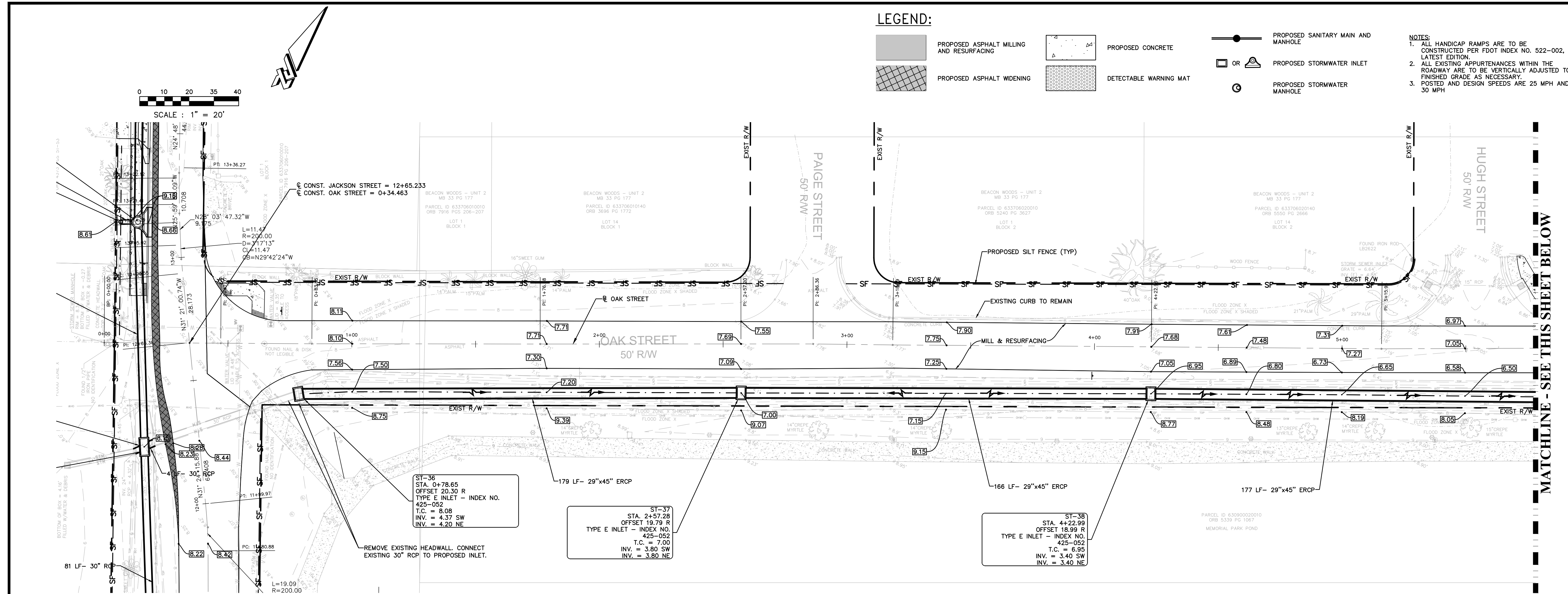
LEGEND:

- PROPOSED ASPHALT MILLING AND RESURFACING
- PROPOSED ASPHALT WIDENING
- PROPOSED CONCRETE
- DETECTABLE WARNING MAT
- PROPOSED SANITARY MAIN AND MANHOLE
- PROPOSED STORMWATER INLET
- PROPOSED STORMWATER MANHOLE

- NOTES:**
- ALL HANDICAP RAMPS ARE TO BE CONSTRUCTED PER FDOT INDEX NO. 522-002, LATEST EDITION.
 - ALL EXISTING APPURTENANCES WITHIN THE ROADWAY ARE TO BE VERTICALLY ADJUSTED TO FINISHED GRADE AS NECESSARY.
 - POSTED AND DESIGN SPEEDS ARE 25 MPH AND 30 MPH







ZEV COHEN & ASSOCIATES, INC.
CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION

PROJECT NO. ZC 22123
DESIGNED BY: MLR
DRAFTED BY: MLR
CHECKED BY: BB
DRAWING FILE: 08-12_22123-PGD
XREFS: 22123-SURV
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METAL RUSSELL, P.E., NO. 60607
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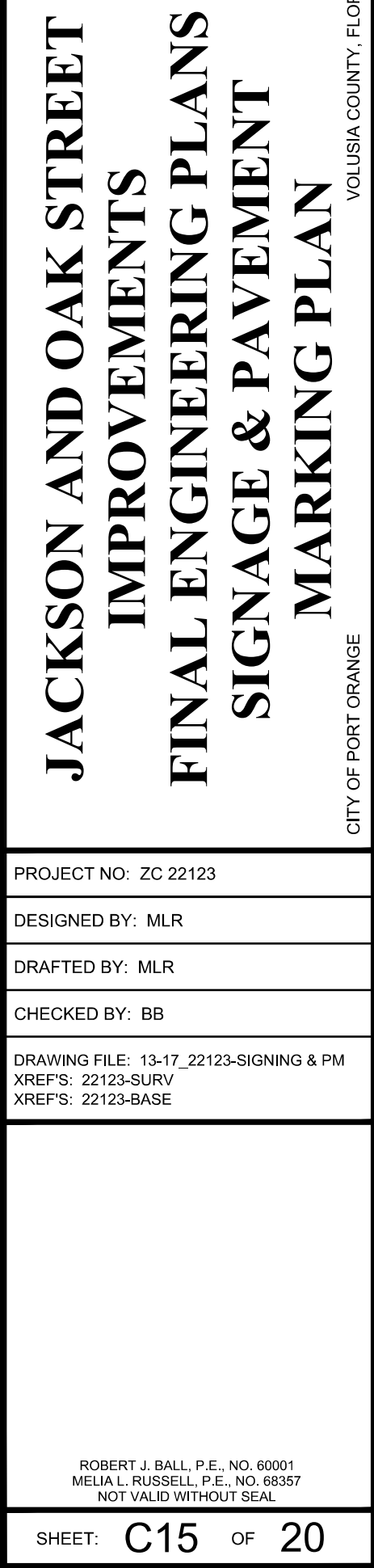
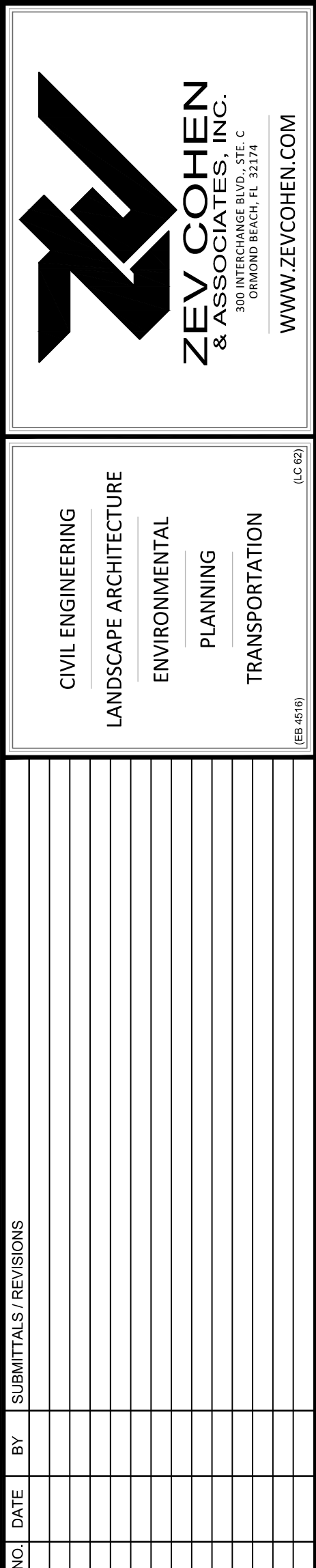
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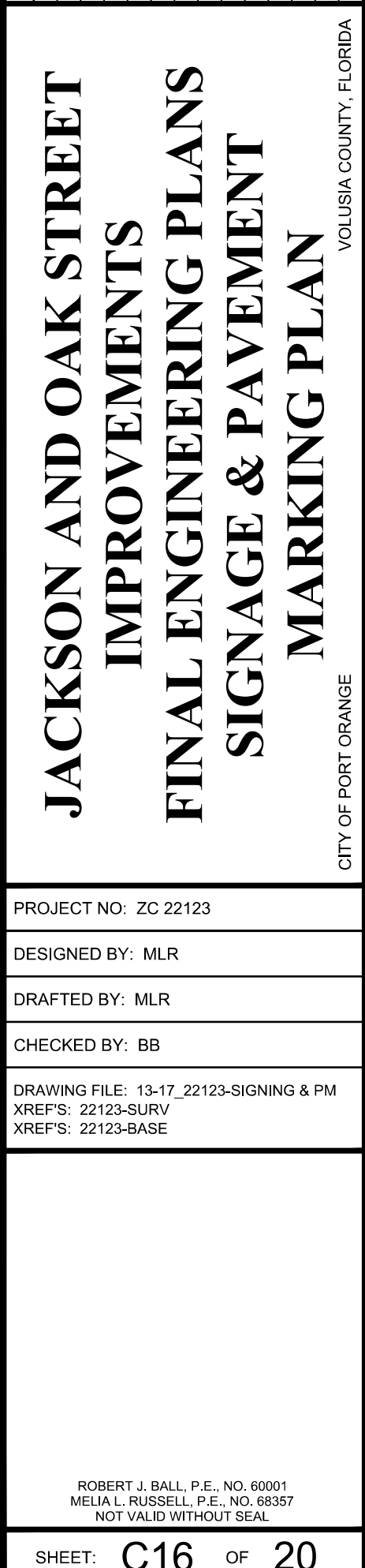
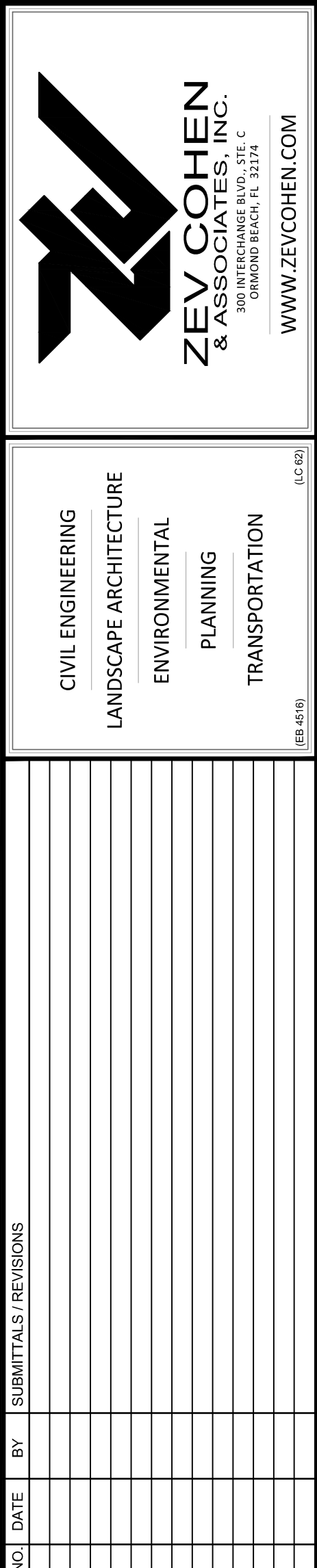
**JACKSON AND OAK STREET
IMPROVEMENTS
FINAL ENGINEERING PLANS
PAVING, GRADING & DRAINAGE
PLAN**

CITY OF PORT ORANGE
VOLUSIA COUNTY, FLORIDA



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CITY OF PORT ORANGE
VOLUSIA COUNTY, FLORIDA

ROBERT J. BALL, P.E., NO. 60001
MELIA L. RUSSELL, P.E., NO. 68357
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SHEET: C17 OF 20

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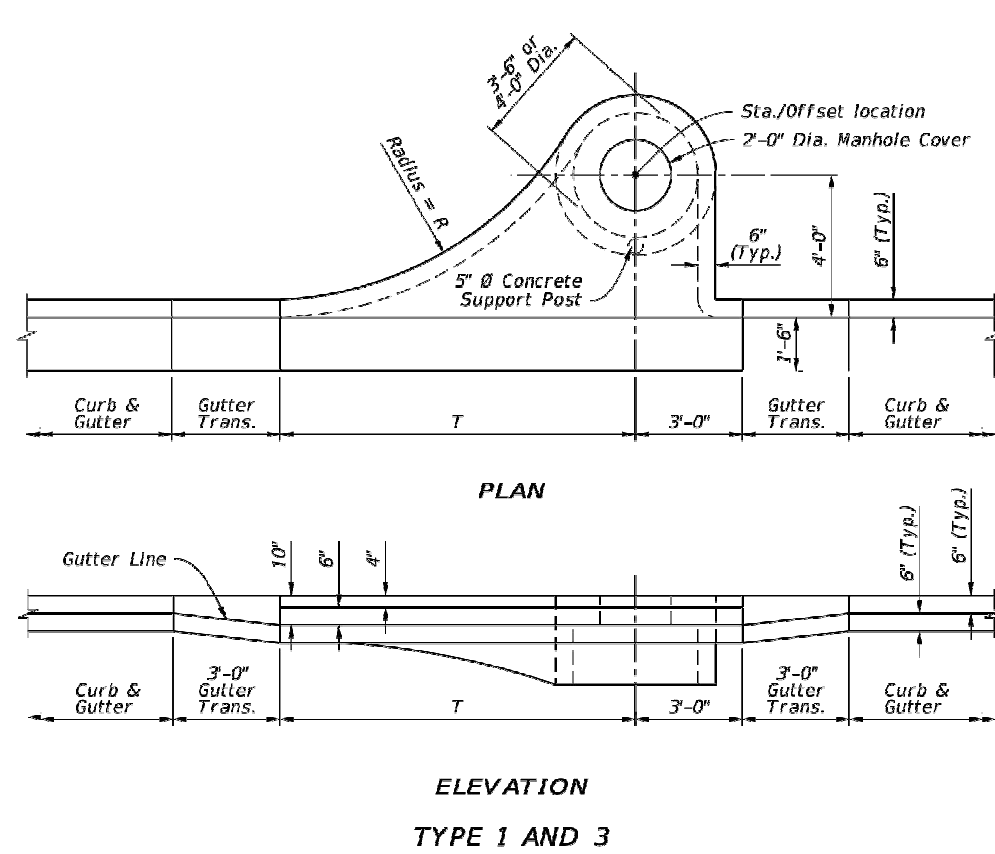
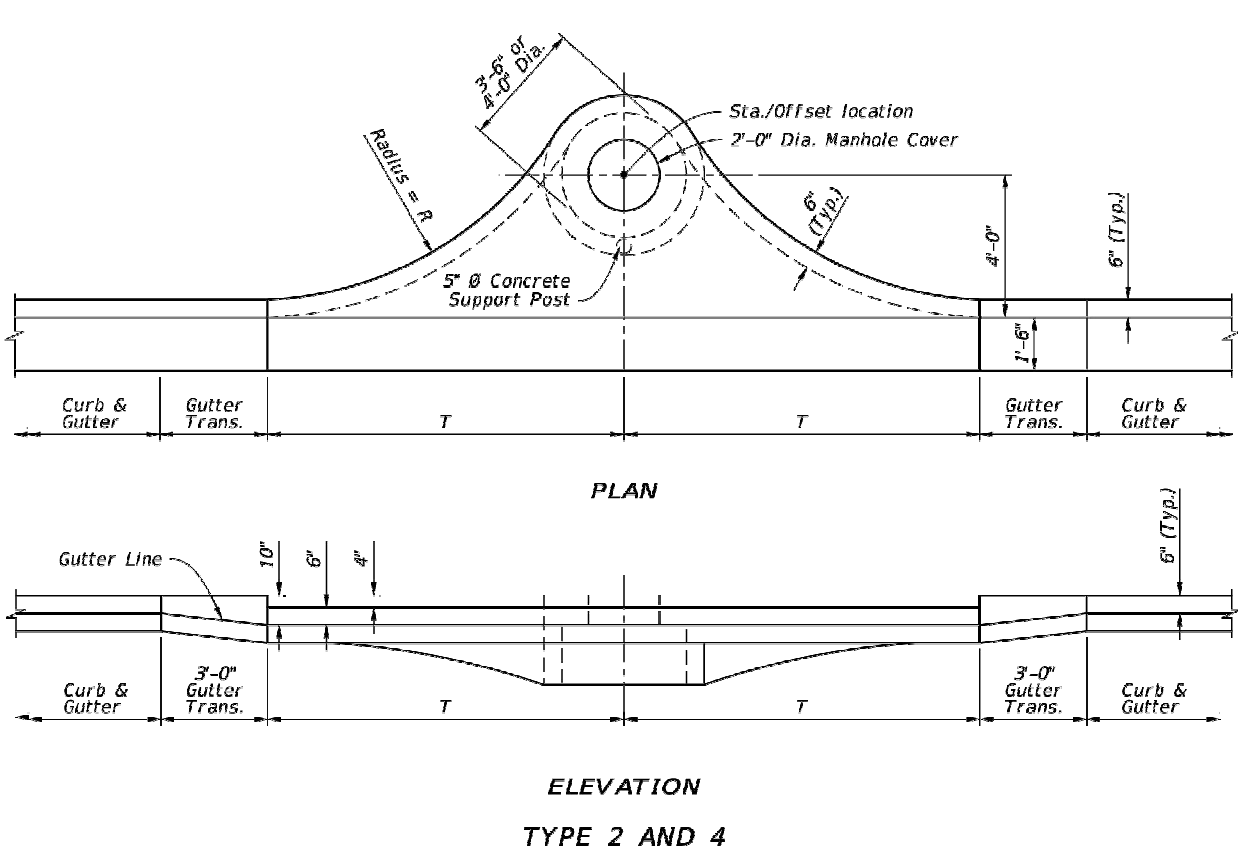
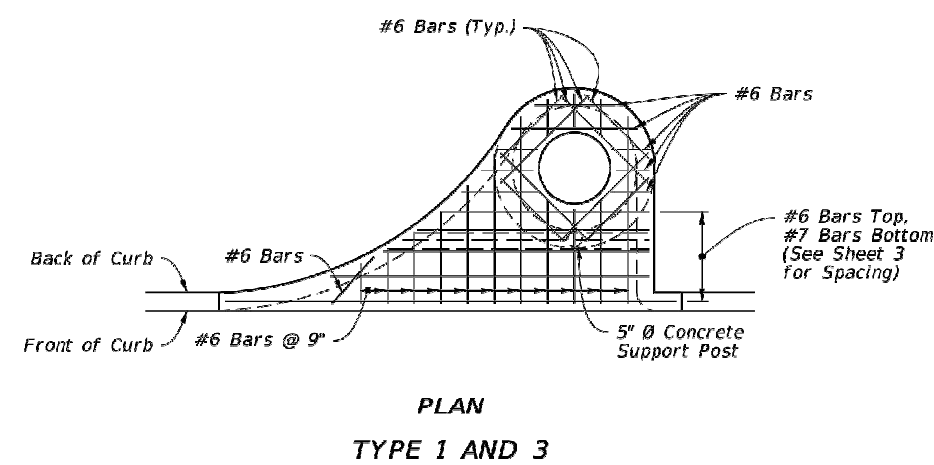


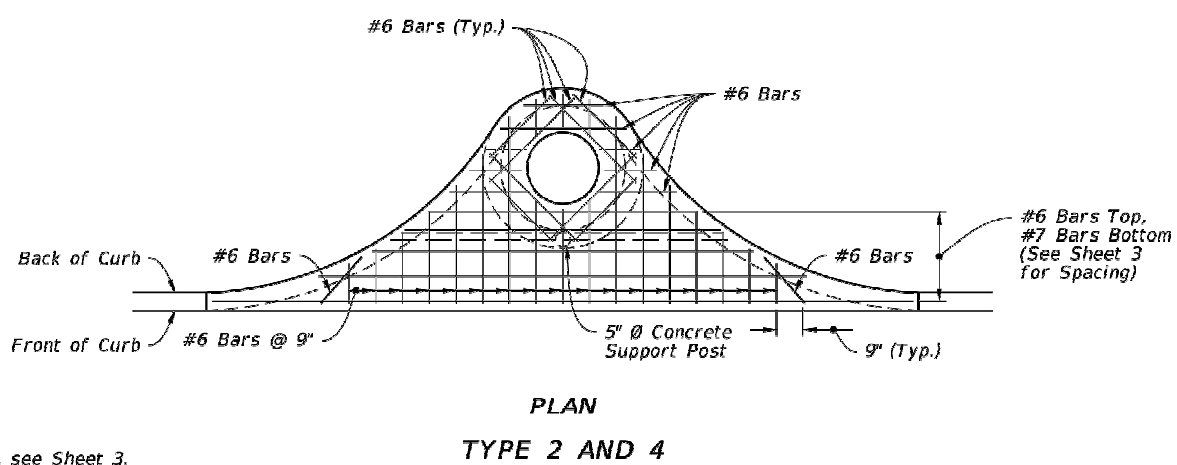
TABLE 1 INLET DIMENSIONS		
Inlet Type	R	T
1	10'-0"	10'-0"
2	10'-0"	10'-0"
3	6'-0"	6'-0"
4	6'-0"	6'-0"



TOP DIMENSIONAL DETAILS



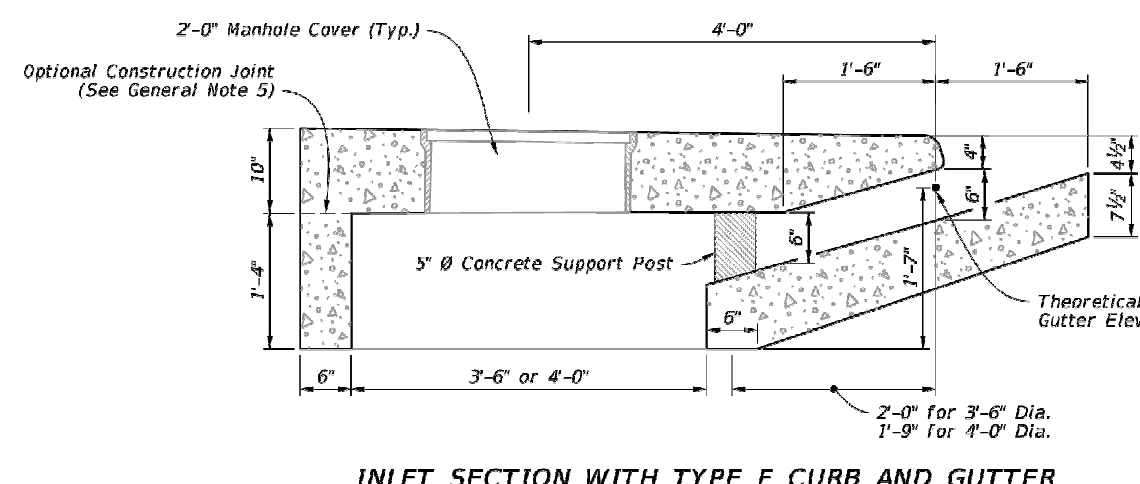
NOTE:
For transverse section reinforcement, see Sheet 3.



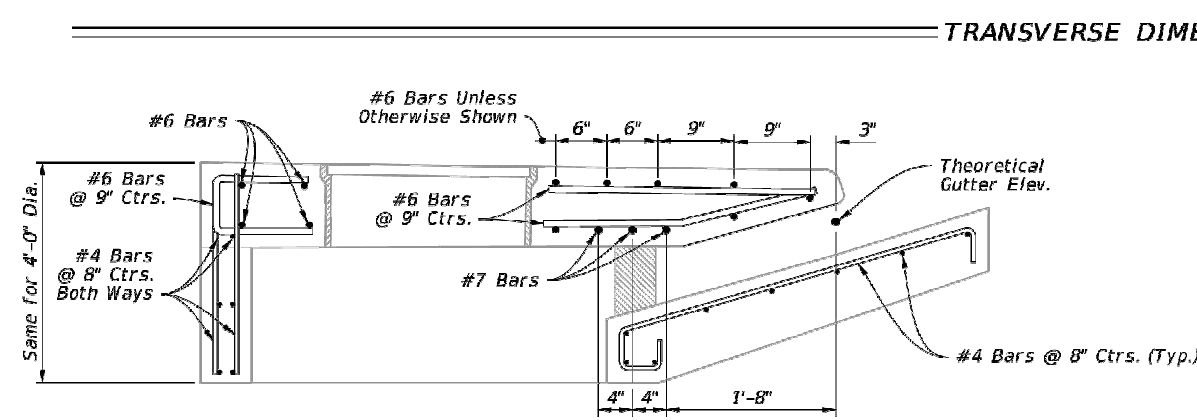
TOP DIMENSIONAL AND TOP REINFORCING DETAILS

LAST REVISION	DESCRIPTION:	FDOT	FY 2023-24 STANDARD PLANS	INDEX	SHEET
11/01/20			CURB INLET TOP TYPES 1, 2, 3, AND 4	425-020	2 of 3

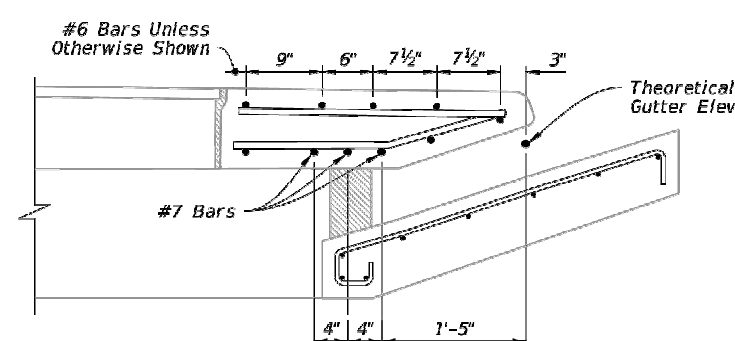
10/30/2023 8:48:53 AM



INLET SECTION WITH TYPE F CURB AND GUTTER



3'-6" DIA. STRUCTURE BOTTOM



INLET SECTION WITH TYPE F CURB AND GUTTER

TRANSVERSE REINFORCING DETAILS

LAST REVISION	DESCRIPTION:	FDOT	FY 2023-24 STANDARD PLANS	INDEX	SHEET
11/01/20			CURB INLET TOP TYPES 1, 2, 3, AND 4	425-020	3 of 3

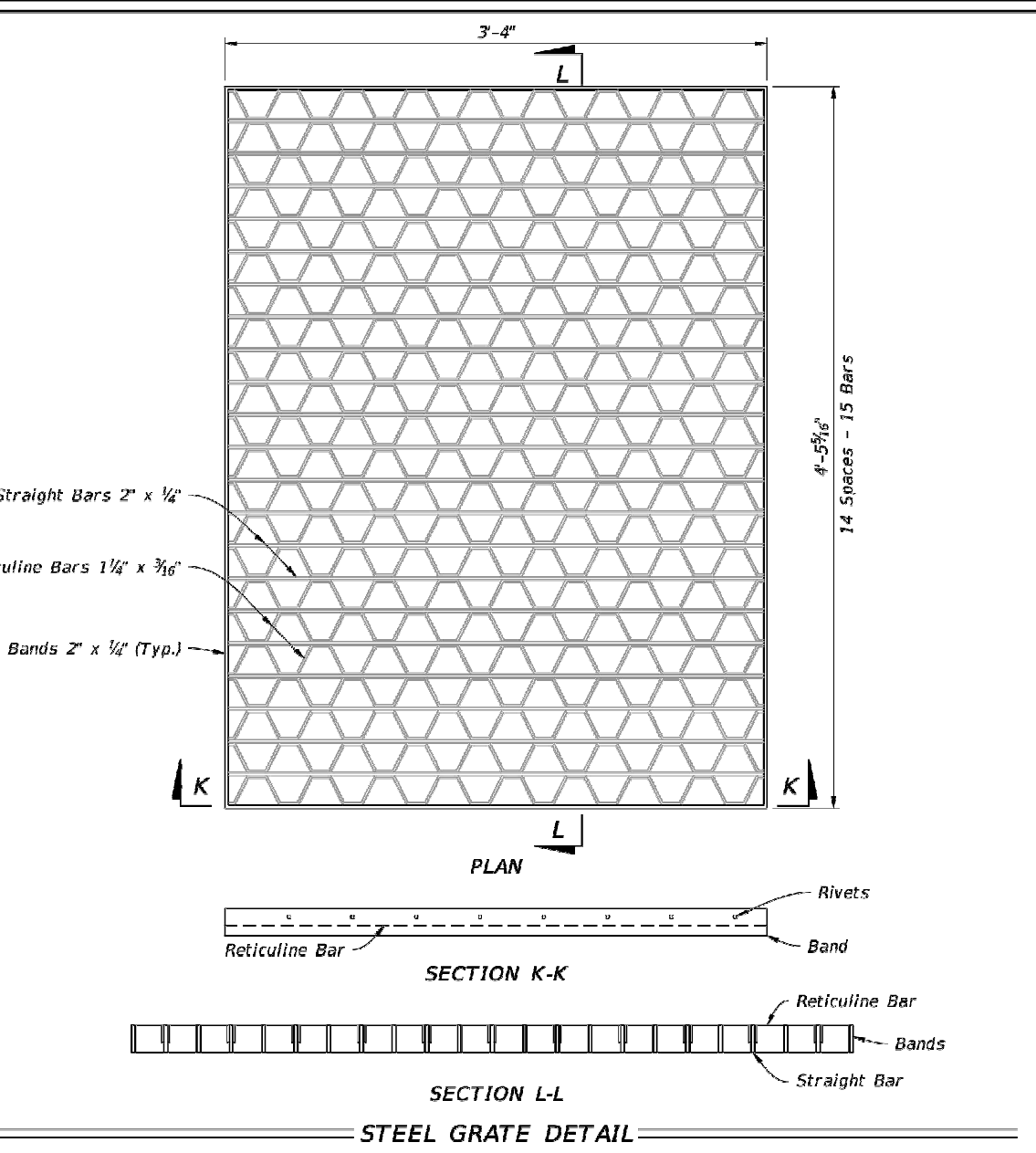
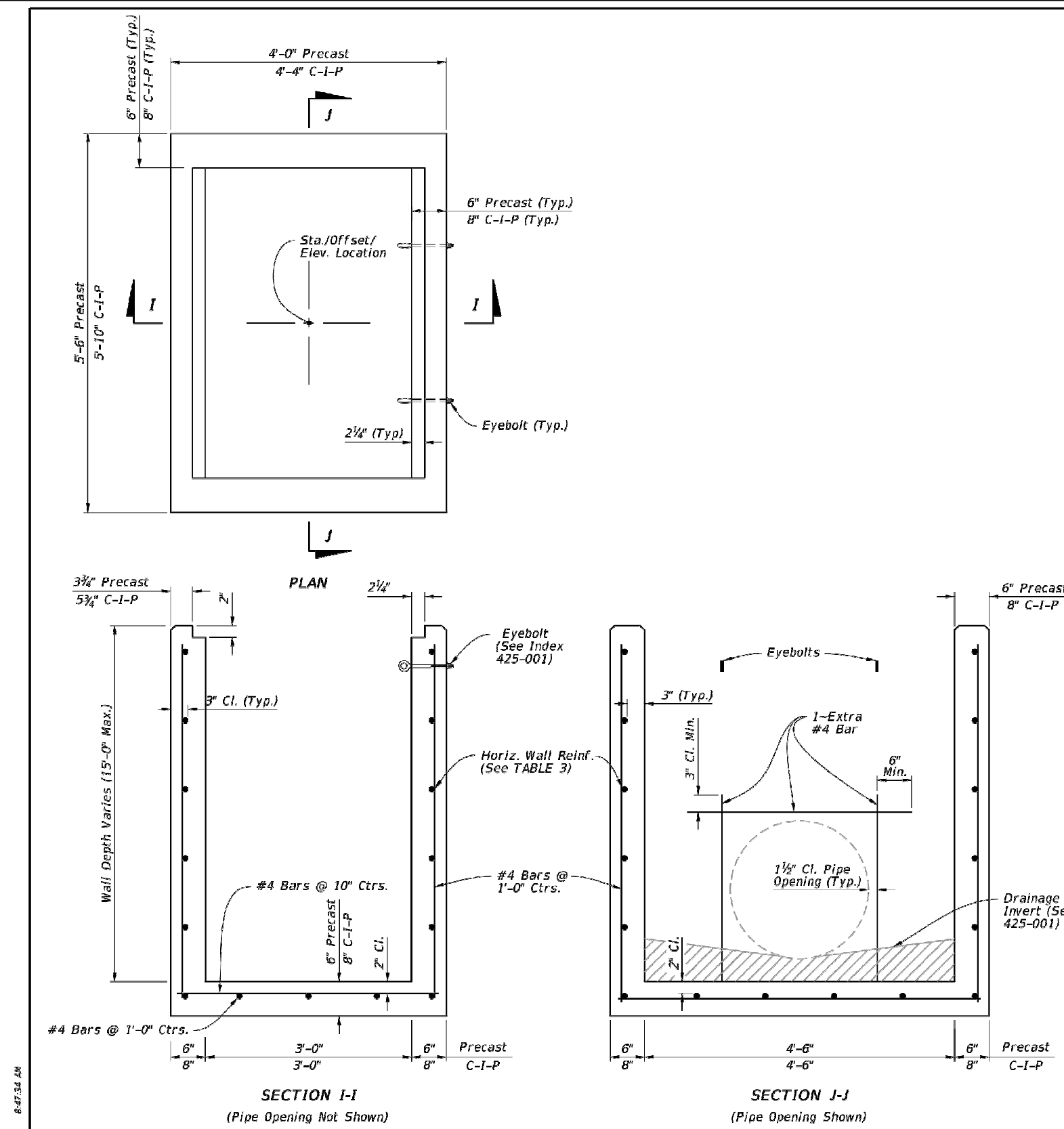
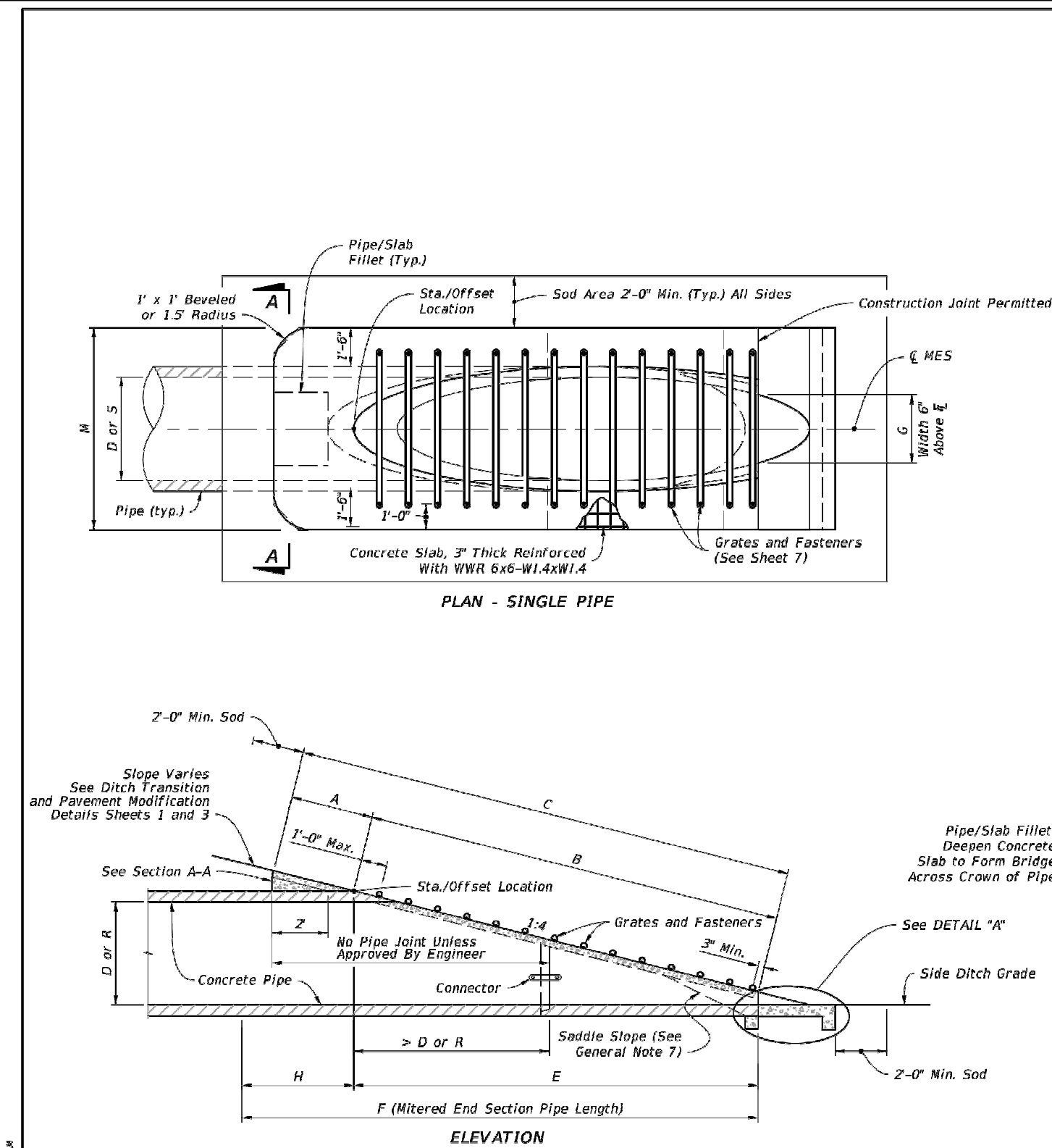


TABLE 3 HORIZONTAL WALL REINFORCING SCHEDULE				
WALL DEPTH	SCHEDULE	AREA (IN. ² /FT.)	MAX. SPACING BARS	WWR
0' - 3'	A12	0.20	12"	8"
0' - 7.5'	A6	0.20	6"	5"
7.5' - 10'	B5.3	0.24	5 1/2"	5"
10' - 15'	C6.5	0.37	6 1/2"	6"

NOTES:
1. Grate, Concrete Apron, and Sod not shown on structure detail.
2. See Sheet 3, 9, and 10 for Concrete Apron and Soidal Area Details.

TYPE E - DIMENSIONAL, REINFORCING, AND STEEL GRATE DETAILS

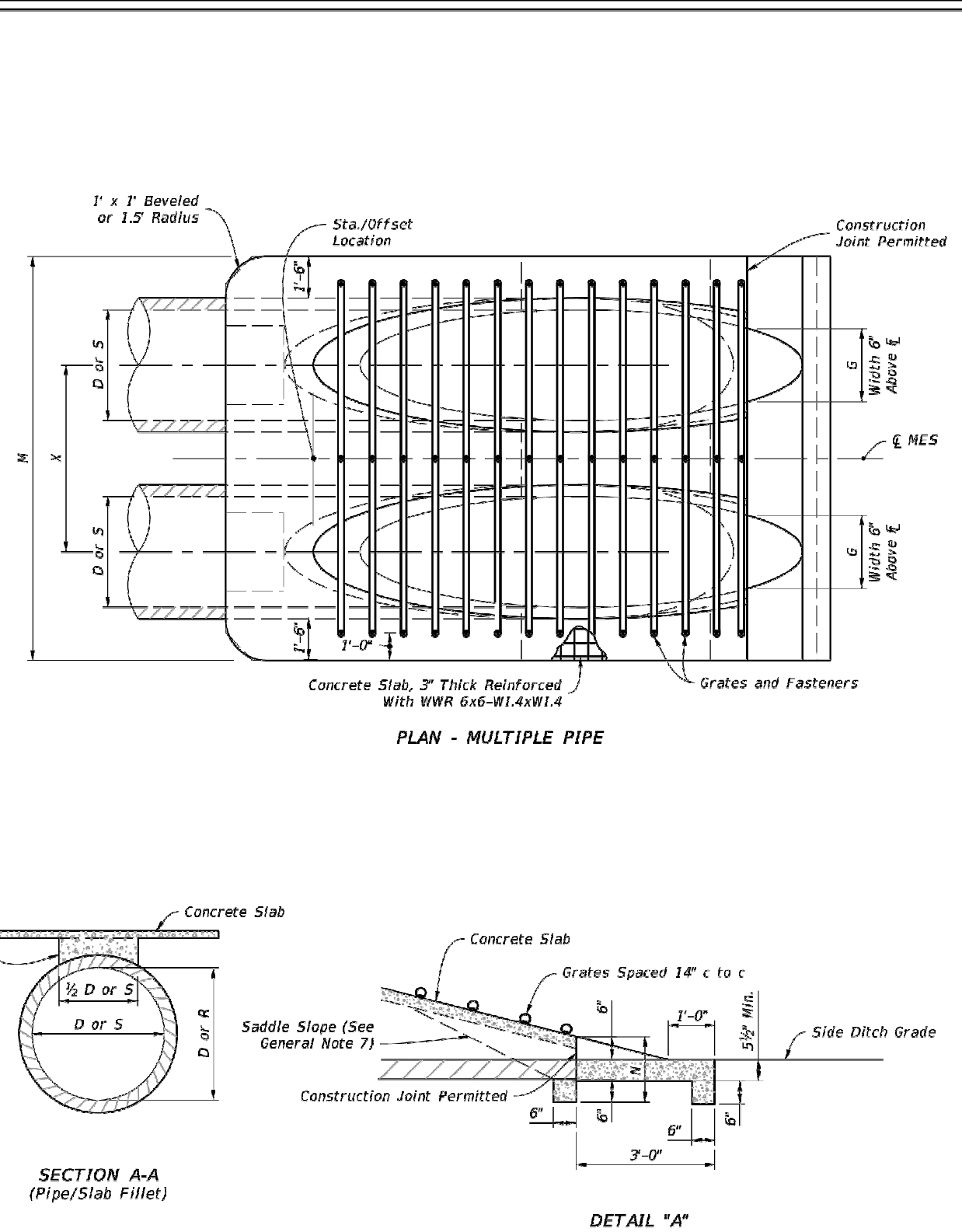
LAST REVISION	DESCRIPTION:	FDOT	FY 2023-24 STANDARD PLANS	INDEX	SHEET
11/01/20			DITCH BOTTOM INLET TYPES C, D, E, AND H	425-052	4 of 14



PLAN - SINGLE PIPE



ELEVATION



PLAN - MULTIPLE PIPE

SECTION A-A
(Pipe/Slab Fillet)

DETAIL "A"

ROUND CONCRETE PIPE
(Elliptical Pipe Similar)

SINGLE AND MULTIPLE CONCRETE PIPE

LAST REVISION	DESCRIPTION:	FDOT	FY 2023-24 STANDARD PLANS	INDEX	SHEET
11/01/18			SIDE DRAIN MITERED END SECTION	430-022	2 of 7



CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION

10/30/2023 8:48:53 AM

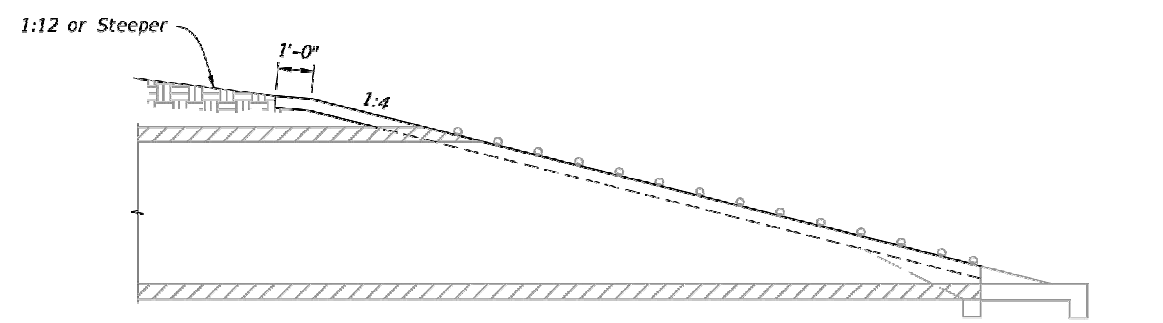
JACKSON AND OAK STREET
IMPROVEMENTS
FINAL ENGINEERING PLANS
CONSTRUCTION DETAILS

VOLUSIA COUNTY, FLORIDA
CITY OF PORT ORANGE

PROJECT NO: ZC 22123
DESIGNED BY: MLR
DRAFTED BY: MLR
CHECKED BY: BB
DRAWING FILE: 18-20_22123-DET

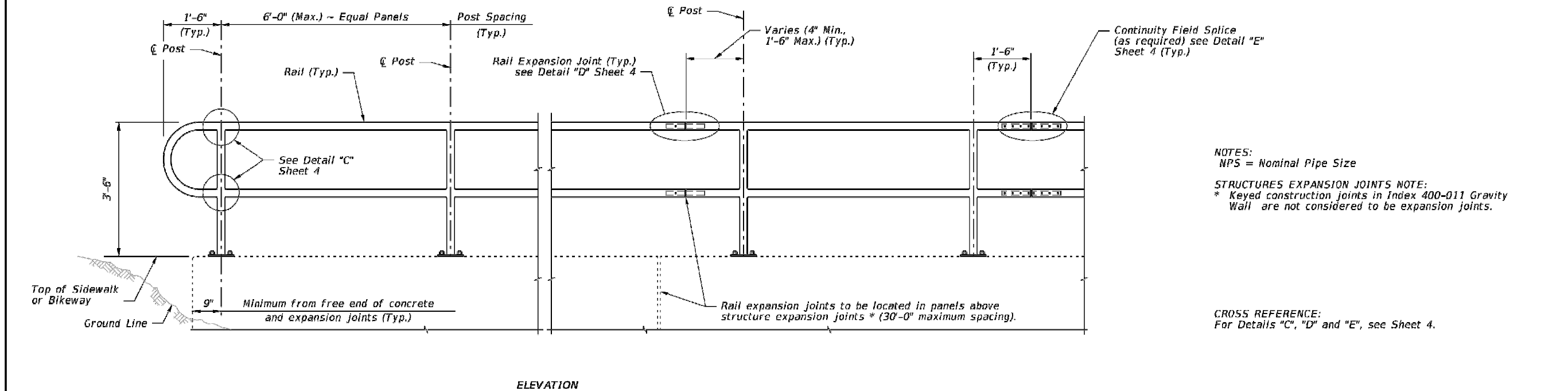
ROBERT J. BALL, P.E., NO. 60001
MICHAEL RUSSELL, P.E., NO. 60007
NOT VALID WITHOUT SEAL

SHEET: C19 OF 20

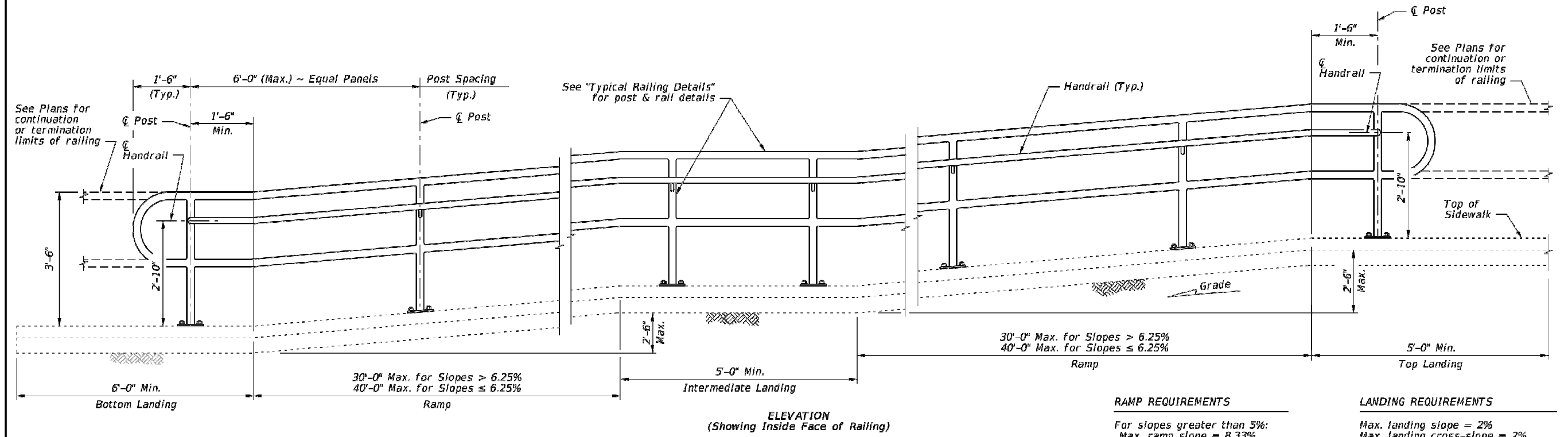
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CONCRETE PIPE DIMENSIONS AND QUANTITIES AND PERMISSIBLE PAVEMENT MODIFICATION

LAST REVISION 11/01/19	DESCRIPTION:	 FY 2023-24 STANDARD PLANS	SIDE DRAIN MITERED END SECTION 430-022	INDEX 430-022	SHEET 3 of 7
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TYPICAL RAILING DETAILS & RAILINGS ON GRADES 0% TO 5%



RAILINGS ON GRADES STEEPER THAN 5% TO 8.33%

LAST REVISION 11/01/17	DESCRIPTION:	 FY 2023-24 STANDARD PLANS	PIPE GUIDERAIL (ALUMINUM)	INDEX 515-070	SHEET 2 of 5
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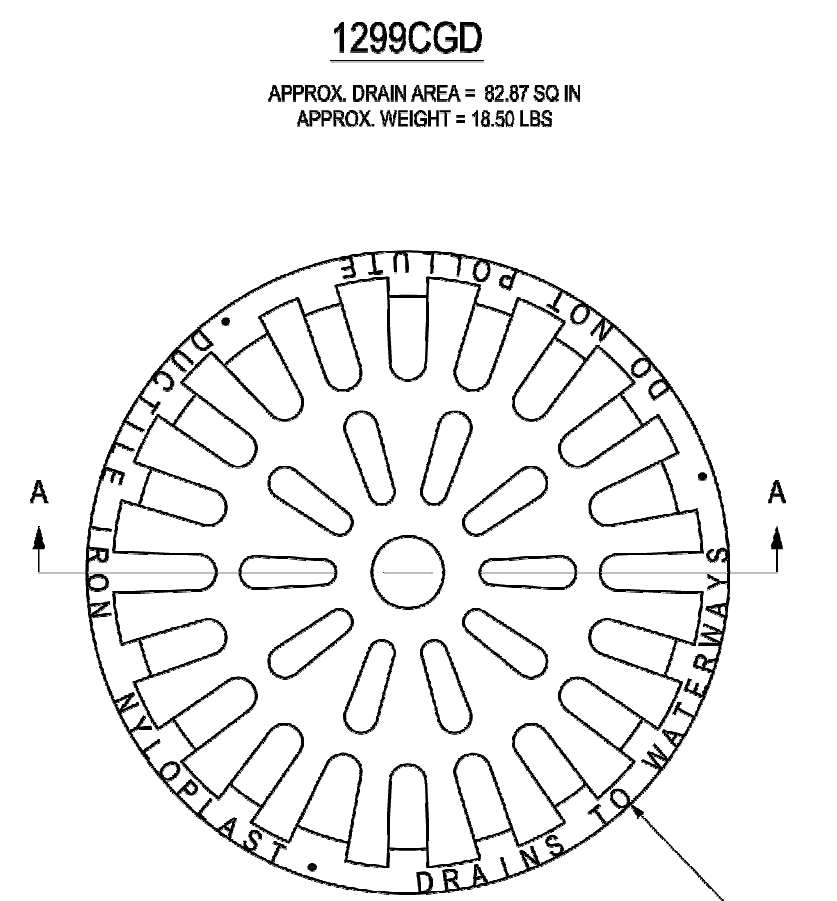
NOTES:

1. Shop Drawings are required.
2. Work with Specification 515.
3. Materials:
 - A. Pan Head Self Screws: Aluminum Alloy 7074-T6 or 7075-T73 or Stainless Steel (SS) Type 316 or 18-8 Alloy.
 - B. Base Plates and Cop Plates: ASTM B209, Alloy 6061-T6
 - C. Structural Pipe Tube and Bars: ASTM B221 or ASTM B429, Alloy 6061-T6
 - D. End Rails 90° bends and corner bends with a maximum 4 foot spacing: Alloy 6063-T5 is permitted.

RAILING MEMBER DIMENSIONS / TABLE			
MEMBER	DESIGNATION	OUTSIDE DIMENSION	WALL THICKNESS
Posts	2" NPS (Sch. 40)	2.375"	0.154"
Rails	2" NPS (Sch. 40)	2.375"	0.154"
Rail Joint/Splice Sleeves	1½" NPS (Sch. 40)	1.900"	0.145"
Handrails Joint/Splice Sleeves	1" NPS (Sch. 40)	1.315"	0.133"
	1.50 ODx0.125 Wall	1.500"	0.125"
Handrails	1½" NPS (Sch. 40)	1.900"	0.145"
Handrail Support Bar	1" Ø Round Bar	1.000"	N/A

- E. Galvanized Steel Fasteners:
 - a. Hex Head Bolts: ASTM A 307 Type 1 or ASTM F1554 Grade 36
 - b. Adhesive Anchors: ASTM F1554 Grade 36 fully threaded rods
 - c. Hex Nuts: ASTM A563
 - d. Flat Washers: ASTM F438
 - F. Aluminum Studs: ASTM B209, Alloy 6061
 - G. Bearing Pads: Plain, Fabric Reinforced, or Fabric Laminated meeting requirements of Specifications 515 & 932
4. Fabrication:
- A. Place expansion joints at a maximum of 30'-0" spacing.
 - B. Field splices are similar to the expansion joint detail and may be approved by the Engineer to facilitate handling, but top rail must be continuous across a minimum of two posts.
 - C. Connection details (Detail C-1) only used to make the railing continuous for unforeseen field adjustments.
 - D. Corners and changes in tangential longitudinal alignment may be made continuous with a 9° bend radius or 180° bent sections with 180° bent sections with 180° bent radii as long as handrails are not required.
 - E. For curved longitudinal alignments, shop bent top and bottom rails and handrails to match the alignment radius. Changes in tangential longitudinal alignment greater than 45°, position posts a maximum of 2'-0" outside face of the corner, not at the corner apex.
5. Handrails are required and must be continuous at landings for:
- A. Grades Steeper than 5%.
 - B. Three or more steps
6. Cutting of reinforcing steel is permitted for post installed anchor bolts.

LAST REVISION 11/01/18	DESCRIPTION:	 FY 2023-24 STANDARD PLANS	PIPE GUIDERAIL (ALUMINUM)	INDEX 515-070	SHEET 1 of 5
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SECTION A-A

DIMENSIONS ARE FOR REFERENCE ONLY
ACTUAL DIMENSIONS MAY VARY
DIMENSIONS ARE IN INCHES
QUALITY: MATERIALS SHALL CONFORM TO ASTM A536 GRADE 70-50-05
PAINT: CASTINGS ARE FURNISHED WITH A BLACK PAINT
LOCKING DEVICE AVAILABLE UPON REQUEST

THIS PRINT DISCLOSES SUBJECT MATTER IN WHICH NYLOPLAST HAS PROPRIETARY RIGHTS. THE RECEIPT OR POSSESSION OF THIS PRINT DOES NOT CONFER, TRANSFER, OR LICENSE THE USE OF THE DESIGN OR TECHNICAL INFORMATION CONTAINED HEREIN. REPRODUCTION OF THIS PRINT OR ANY INFORMATION CONTAINED HEREIN, OR MANUFACTURE OF A PRODUCT INCORPORATING THE DISCLOSURE TO OTHERS IS FORBIDDEN, EXCEPT BY SPECIFIC WRITTEN PERMISSION FROM NYLOPLAST.	DRAWN BY	EDC	MATERIAL	DUCTILE IRON	 31/00 VERNON, GA 30518 BUREAU, GA 30518 PHN (770) 933-2443 FAX (770) 933-2440 www.nyloplast-usa.com				
	DATE	3-6-06							
	REVISED BY	EDC	PROJECT NO NAME						
	DATE	3-10-11							
	DWG SIZE	A	SCALE			1/4"	SHEET	1 OF 1	
						DWG NO.	70911-16-005	REV	D
					TITLE		12 IN DOME GRATE		



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/06/2024

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 Insurance Services, Inc. P.O. Box 2412 Daytona Beach FL 32115-2415	CONTACT NAME: Brenda Klaus PHONE (A/C, No, Ext): (386) 361-5292 E-MAIL ADDRESS: Brenda.Klaus@bbbrown.com FAX (A/C, No): INSURER(S) AFFORDING COVERAGE INSURER A: Westfield Insurance Company INSURER B: Auto-Owners Insurance Company INSURER C: FFVA Mutual INSURER D: Southern-Owners Insurance Company INSURER E: Liberty Surplus Insurance Corporation INSURER F:	NAIC # 24112 18968 10385 10190 10725
INSURED GPS Civil Construction, Inc. 455 Walker St. Holly Hill FL 32117		

COVERAGES**CERTIFICATE NUMBER:** 23-24 / 24-25**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 ☒ XCU GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC OTHER:			CWP076547D	03/01/2024	03/01/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 1,000 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			53-745184-00	03/01/2024	03/01/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP \$ 10,000
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 0			CWP076547D	03/01/2024	03/01/2025	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N N	N / A	WC840-0810993-2024A	03/01/2024	03/01/2025	☒ 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	INLAND MARINE			72745184	03/01/2024	03/01/2025	LEASE/RENT EQUIP \$ 240,000

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

SEE NOTES FOR POLICY COVERAGE FORMS
PROJECT TB #24-13: JACKSON STREET & OAK STREET DRAINAGE IMPROVEMENTS
CITY OF PORT ORANGE IS ADDITIONAL INSURED AND A WAIVER OF SUBROGATION APPLIES, AS REQUIRED BY WRITTEN CONTRACT AND IF APPLICABLE, PER THE FORMS LISTED ON THE ATTACHED ADDITIONAL REMARKS SCHEDULE.
30 DAY NOTICE OF CANCELLATION, EXCEPT FOR NON-PAYMENT OF PREMIUM, WILL BE PROVIDED TO THE CERTIFICATE HOLDER BY THE CARRIER FOR GENERAL LIABILITY, AUTO LIABILITY, WORKERS COMPENSATION, AND UMBRELLA LIABILITY POLICIES.

CERTIFICATE HOLDER**CANCELLATION**CITY OF PORT ORANGE
1000 City Center Circle

PORT ORANGE

FL 32129

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

AUTHORIZED REPRESENTATIVE

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AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

Page ____ of ____

AGENCY Brown & Brown Insurance Services, Inc.		NAMED INSURED GPS Civil Construction, Inc.
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** Certificate of Liability Insurance: Notes

STORAGE TANK POLLUTION
INSURER E
POLICY NUMBER: IRONTX30007300
POLICY TERM: 05/19/2023-05/19/2024
PER EACH POLLUTION INCIDENT: \$1,000,000
AGGREGATE LIMIT: \$1,000,000
RETROACTIVE DATE: 10-01-2021

CURRENT BLANKET POLICY FORMS**GENERAL LIABILITY**

- 1) CG2010 1219 - ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS- SCHEDULED PERSON OR ORGANIZATION (BLANKET COVERAGE) (ADDITIONAL INSURED - ONGOING OPERATIONS)
- 2) CG2037 1219 - ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS- COMPLETED OPERATIONS (BLANKET COVERAGE) (ADDITIONAL INSURED - COMPLETED OPERATIONS)
- 3) CG7137 1112 - WESTFIELD SIGNATURE SERIES- COMMERCIAL GENERAL LIABILITY CONTRACTORS ENDORSEMENT (ADDITIONAL INSURED - LESSOR OF EQUIPMENT, ADDITIONAL INSURED MGR OR LESSOR OF PREMISE, ADDITIONAL INSURED - STATE OR POLITICAL, WAIVER OF SUBROGATION, PRIMARY AND NON-CONTRIBUTORY)

AUTO LIABILITY

- 1) 58504 0115 - DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE - BLANKET COVERAGE (ADDITIONAL INSURED, ADDITIONAL INSURED - RENTAL CAR COMPANY)
- 2) 58583 0115 - WAIVER OF OUR RIGHT TO RECOVER PAYMENTS (WAIVER OF SUBROGATION) - BLANKET (WAIVER OF SUBROGATION)
- 3) 58540 1219 - PRIMARY & NON-CONTRIBUTORY - BLANKET COVERAGE (PRIMARY & NON-CONTRIBUTORY)

WORKERS COMPENSATION

- 1) WC000313 0484 - WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT (WAIVER OF SUBROGATION)

UMBRELLA LIABILITY

- 1) CU0001 0413 - COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM (FOLLOW FORM COVERAGE; ADDITIONAL INSURED)
 - 2) CU7034 0911 - PRIMARY AND NON-CONTRIBUTORY COVERAGE ENDORSEMENT - AUTOMATIC STATUS WHEN REQUIRED BY CONTRACT (PRIMARY & NON-CONTRIBUTORY)
- THE UMBRELLA POLICY APPLIES IN EXCESS OF THE GENERAL LIABILITY AND EMPLOYERS LIABILITY



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (C8b) Approval of Task Authorization No. 6 with Zev Cohen & Associates for Construction Phase Services & Community Development Block Grant (CDBG) Compliance Monitoring relating to ITB #24-13 for Jackson and Oak Street Stormwater Improvement Project

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Task Authorization No. 6 with Zev Cohen & Associates for an amount not to exceed \$99,500 and authorize the Mayor and City Clerk to sign all necessary documents.

SUMMARY: The Engineering Department is requesting approval of Task Authorization (TA) No. 6 with Zev Cohen & Associates, Inc. under the Master Contract for Engineering and Environmental Services as it relates to the Jackson & Oak Street Stormwater Improvement Project Construction Phase Services in the amount of \$99,500.

The stormwater infrastructure along Jackson Street from Dunlawton to Canal View and Oak Street from Jackson to Dunlawton Avenue both have an open ditch drainage system directly adjacent to the roadway to convey the stormwater off the street. The completed project will improve stormwater conveyance, traffic safety, and pedestrian sidewalk connectivity. This will also allow for more efficient maintenance.

Council originally approved the Jackson and Oak Street Stormwater project under the FY22-23 Capital Improvement Program.

Zev Cohen & Associates, Inc. is the Engineer of Record for the Jackson and Oak Street Stormwater Project and will be providing construction phase services along with Community Development Block Grant monitoring requirements.

The completion date of TA No. 6 will be 420 days from the Notice to Proceed. This TA will run concurrent with the construction contract with GPS Civil Construction, Inc. with additional time after construction to allow for closeout items.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Zev Cohen & Associates Task Authorization No 6 - Jackson and Oak Drainage Improvements	Zev Cohen & Associates Task Authorization No 6 - Jackson and Oak Drainage Improvements.pdf
2.	Zev Cohen - Jackson and Oak Construction Phase	Zev Cohen - Jackson and Oak Construction Phase.pdf
3.	COI - Zev Cohen & Assoc RFSQ 21-03 ALL 11.21.2024	Zev Cohen & Assoc RFSQ 21-03 ALL 11.21.2024.pdf
4.	Master Contract Zev Cohen and Associates CA7764	Master Contract Zev Cohen and Associates CA7764.pdf

Julia Wiggins	Created/Initiated - 5/30/2024
Richard Colby	Approved - 5/30/2024
Junos Reed	Approved - 6/27/2024
John McKinney	Approved - 6/28/2024
Matthew Jones	Approved - 6/28/2024
Wayne Clark	Approved - 7/9/2024
Tracee Cody	Final Approval - 7/10/2024

TASK AUTHORIZATION NO. 6
Master Contract for Services dated January 18, 2022
Between the City of Port Orange, Florida and Zev Cohen & Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **ZEV COHEN & ASSOCIATES, INC.**, a Florida corporation with its principal place of business at 300 Interchange Boulevard, Suite C, Ormond Beach, Florida 32714 ("Contractor"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract for Engineering Services dated January 18, 2022, 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 **Jackson Street and Oak Street Stormwater Improvements Project Construction Phase** and 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 **420 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 "1" attached hereto and made a part hereof for all purposes, subject to a limit not to exceed **\$99,500.00**. All payments shall be governed by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.
5. This Task Authorization may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The delivery by facsimile or e-mail of an executed copy of this Task Authorization shall be deemed valid as if an original signature was delivered. No contract shall be formed between the Contractor and the City until the City signs this Task Authorization.

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

Witnesses:

ZEV COHEN & ASSOCIATES, INC.

By: _____
Printed Name: _____ **Robert J. Ball, President**

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

Printed Name: _____ Date: _____

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: _____

ATTEST:

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

Date: _____

[CA7764]

Exhibit “1”

Zev Cohen & Associates, Inc.

Dated June 7, 2024

Consisting of 1 Page

Zev Cohen and Associates, Inc.

Scope of Work Based on discussions with Staff, the City desires to pipe the existing drainage ditches on the west side of Jackson Street (between Dunlawton Ave and Canal View Blvd) and the south side of Oak Street (between Jackson St and Dunlawton Ave). As part of the design and along the limits of the ditch piping, the milling/resurfacing of Jackson and Oak Streets will also be completed. New sidewalks will be added along the west side of Jackson Street from Oak Street to Canalview Boulevard and on the north side of Oak Street from Jackson Street to Dunlawton Avenue.

Task 1.0 Construction Administration

ZCA shall provide the following construction administration services for the above civil site improvements. It is anticipated to be an approximately ten (10) month construction project.

- A. ZCA will attend a pre-construction meeting
- B. Review Contractor's pay applications once per month for ZCA design documents
- C. Review Contractor's shop drawings for ZCA design documents
- D. Respond to Contractor's request for additional information, clarification or interpretations of the Construction Documents
- E. Site visits to verify construction as in general accordance with the approved Plans and specifications. We assume fill time inspection is not required but we included six (6) hours a week for the assumed eight (8) months of actual field work.
- F. Review of "As-built" survey documents
- G. Provide Engineering Certifications to appropriate agencies (if applicable) based upon As-built Surveys prepared and certified by the Contractor's or Client's Registered Land Surveyor which will be in accordance with the regulatory agency and ZCA's requirements. The As-built survey shall be provided in both hard copy and electronic format. The As-built shall be prepared on ZCA's approved base plans and changes and location of design information shown.
- H. Attend regularly scheduled weekly progress meetings
- I. NEPA - ZCA will compile and provide a Categorical Exclusion Package to submit to the permitting agency for approval. If additional NEPA documentation or permitting for an Environmental Assessment or Environmental Impact Statement is required, an additional scope will be prepared.
- J. Davis Bacon Act Compliance - ZCA will conduct monthly bulletin board inspections (4 hours/mo), interview requirements (12 hours/mo), and certified payroll review (12 hours/mo). If additional Davis Bacon Act compliance is required, an additional scope will be prepared.
- K. ZCA shall develop a basic stormwater model to satisfy SJRWMD permit criteria. The purpose is to demonstrate compliance with the water management ditch piping criteria utilizing a ten (10) year storm event.

Fee Schedule

Subconsultant

ZCA

Task 1 – Construction Administration

\$99,500.00

Total: \$99,500.00

Exhibit “A”

Zev Cohen & Associates, Inc.

Dated June 7, 2024

Consisting of 1 Page

Zev Cohen and Associates, Inc.

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Fee Schedule

Subconsultant

ZCA

Task 1 – Construction Administration

\$99,500.00

Total: \$99,500.00



ZEVCOHE-01

ASOSTENUTO

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/21/2023

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 : Travelers Property & Casualty of America	25674
INSURED Zev Cohen & Associates Inc. 300 Interchange Blvd. Suite C Ormond Beach, FL 32174	INSURER B : Phoenix Insurance Co. (Travelers)	25623
	INSURER C : Travelers Casualty & Surety Co	19038
	INSURER D : Arch Insurance Company	11150
	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		6602P382574	11/21/2023	11/21/2024	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
B	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY	X		BA1R863945	11/21/2023	11/21/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE DED ☒ RETENTION \$ 10,000			CUP2P385607	11/21/2023	11/21/2024	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000
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	X	UB7S340867	11/21/2023	11/21/2024	☒ 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			PAAEP0163000	11/21/2023	11/21/2024	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: RFSQ 21-03 "Professional Engineering Services." Certificate Holder is an Additional Insureds with regards to General & Auto Liability when required by written contract. A Waiver of Subrogation applies to Workers Compensation when required by written contract.

CERTIFICATE HOLDER

CANCELLATION

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



CITY OF PORT ORANGE MASTER CONTRACT PROFESSIONAL ENGINEERING SERVICES FOR PUBLIC WORKS, UTILITIES AND ENVIRONMENTAL SERVICES

This Standard Contract for Services ("Contract") is entered into this 18 day of Jan, 2022, 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 **ZEV COHEN AND ASSOCIATES, INC.**, a Florida corporation, whose principal address is 300 Interchange Boulevard, Suite C, Ormond Beach, Florida 32174. ("Engineer"). The City and Engineer are collectively referred to herein as 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

(a) The Engineer hereby agrees to provide the following services to the City of Port Orange:

(i) Professional continuous utility engineering consulting services to complete a wide range of projects led by the City of Port Orange Public Works and Utilities Department in accordance with Consultants Competitive Negotiation Act, and as more specifically described in Request for Statement of Qualifications 21-03 ("RFSQ 21-03"). This Contract together with RFSQ 21-03, Addendum No. 1, Addendum No. 2, and Engineer'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 Engineer. For convenience, Section 3, Scope of Services, of RFSQ 21-03, and the Hourly Rate Schedule as submitted by Engineer in Engineer's Proposal are attached hereto as Exhibit "1." A complete copy of RFSQ 21-03 is available in the Office of the City Clerk. Engineer 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 both of the Parties, and shall continue for a period of three (3) years, or until either party provides the other party written notice of its intent to terminate as provided in 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 one (1) year periods.

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, and shall complete all services within the timeline specified by this contract, and 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) ("Task Authorization") issued and executed by the City and signed by the Engineer. A sample Task Authorization is attached hereto as Exhibit "2."

- a. All Task Authorizations 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 Authorizations shall remain in full force and effect until completion of all work or services performed under this Contract and/or the Task Authorization.
- b. No new or additional Task Authorization shall be issued after the original expiration date of this Contract. The extension of this Contract to coincide with the completion of an existing Task Authorization issued prior to the original expiration date of this Contract shall not be construed as or constitute authorization by the City or the Engineer to enter into a new or additional Task Authorization 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.

3. *City Obligations* The City reserves the right to utilize lump sum or hourly rate compensation, at the hourly rate compensation as set forth in Exhibit "1." Rates may be adjusted on the anniversary of the effective date of this Contract, upon mutual written agreement of the Parties. The City's obligation to pay Engineer under this Contract is limited to an amount not to exceed the appropriated budget per 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. 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 Public Works and Utilities Director, Lynn Stevens, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Engineer. For notice provisions, see the paragraph below entitled "Notice."

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

6. 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 Engineer 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 to 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 the construction permits) and 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 development 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, 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 set of originals as they exist at the time of termination. Such plans as are delivered shall become and remain the property of the City.
- (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.

7. Responsibility of the Engineer The Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, and specifications 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 his performance.

8. 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 will entitle Engineer to further compensation at rates to be agreed upon by City and Engineer. A reproducible set of plans and specifications shall be delivered to and become the property of the City upon completion of the Project by the Engineer.

9. 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.

10. Modifications to Scope of Work/Change Orders

(a) Change Orders. The Contract Administrator, upon written approval 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 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 receive an equitable adjustment and the contract

shall be modified in writing accordingly. Any change shall include all costs and damages 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.

11. Subcontractors or Sub-Subcontractors

(a) 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 an amendment to this Contract. Any substitution in such subcontractors, associates, or consultants shall be subject to the prior approval of the Contract Administrator.

(b) Engineer shall save and hold the City harmless from any and all claims or actions by Engineer's Subcontractors or Sub-subcontractors for payment of monies such Subcontractor or Sub-subcontractor claims to be owed by Engineer for work performed under this Contract.

(c) Nothing in this Contract shall create any obligation on the part of the City to pay directly to any Subcontractors or Sub-subcontractors or claims of a Subcontractor or Sub-subcontractors for amounts owed by Engineer to Subcontractor or Sub-subcontractor for work performed under this Contract.

(d) Engineer shall be fully responsible for all negligent acts and omissions of it Subcontractors and Sub-subcontractors and of persons directly or indirectly employed by them and of persons of whose negligent acts any of them may be liable to the same extent that it is responsible for the negligent acts and omissions of persons directly employed by it. Nothing in the Contract documents shall create any contractual relationship between any subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any moneys due any subcontractor to the extent practicable, evidence of amounts paid to the Engineer on account of specific work done in accordance with the schedule of values.

(e) The Engineer shall require all subcontractors or sub-subcontractors or outside associates employed in connection with the performance of this Contract to comply fully with the terms and conditions of this Contract between the City and the Engineer.

12. 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.
 - (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.
 - a. 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
 - b. 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 his 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 his termination claim within the time allowed, the Contract Administrator may determine on the basis of information available to him, the amount, if any, due to the Engineer by reason of the termination and shall thereupon pay to the Engineer the amount so determined.
- (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 total contract price 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:

a. 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;

b. 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

c. A sum, as profit on Paragraph 11 (a) above, 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.

13. 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 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.

14. Engineer's Records. The design, permits and all other records prepared by the Engineer, assembled for the City, subcontracted for the City, and any other records related to the scope of work in the possession of the Engineer shall be retained by the Engineer for the requisite time set forth in Florida Administrative Code Rule 1 B-24 <http://dos.myflorida.com/library-archives/records-management/>. Engineer may dispose of the records in accordance with Florida law, upon receipt of a signed written release signed by the City Attorney. During the term of this Contract, as amended from time to time, Engineer agrees to indemnify the City for failure to comply with the requirements of this paragraph including costs of litigation and legal fees incurred through all appeals. City reserves the right to select and approve the defense attorney. The Engineer's obligations pursuant to this paragraph shall survive the termination of this Contract, and as amended from time to time.

15. 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.

16. 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 119.0701, 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.

17. Insurance Engineer shall maintain insurance, as required herein, during the life of this Contract. Engineer 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 Engineer shall be primary and non-contributory. All insurance coverages of the Engineer shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Engineer'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. Engineer may use leased employees if the Engineer 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 Engineer 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. Engineer 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.

Engineer 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 Engineer is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the Engineer to ensure the subcontractors maintain the required coverage, shall not relieve the Engineer 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 Engineer 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 Engineer for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

Standard Insurance Requirements											
	Insurance	Standards	Additional Requirements								
☒	<u>Workers' Compensation</u> The Engineer 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 Engineer using an employee leasing company shall complete the Leased Employee Affidavit (Exhibit A).	<table><tr><td><u>Contract Amount</u></td><td><u>Limits</u></td></tr><tr><td>Up to \$10 million</td><td>Statutory/\$500,000</td></tr><tr><td>\$10 - \$20 million</td><td>Statutory/\$1,000,000</td></tr><tr><td colspan="2">Contracts over \$20 million To Be Determined by the City.</td></tr></table>	<u>Contract Amount</u>	<u>Limits</u>	Up to \$10 million	Statutory/\$500,000	\$10 - \$20 million	Statutory/\$1,000,000	Contracts over \$20 million To Be Determined by the City.		☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.
<u>Contract Amount</u>	<u>Limits</u>										
Up to \$10 million	Statutory/\$500,000										
\$10 - \$20 million	Statutory/\$1,000,000										
Contracts over \$20 million To Be Determined by the City.											

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

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

19. **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.

20. **Liability for Loss or Damage**

(a) Engineer shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Engineer, 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, to the extent caused by negligent performance of the Contract by Engineer, his/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.

21. 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) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. 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.

22. 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 on or after the effective date of this Contract and thereafter during the remaining term of this Contract, including all subcontractors. Any subcontract entered into by Engineer with any subcontractor performing work under this Contract shall include the following language: "The Sub-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 on or after the effective date of this Contract and thereafter during the remaining term of the Contract." The Engineer covenants and agrees that if it is found in violation of this section of the Executive Order, such violation shall be a material breach of this Contract and Engineer shall indemnify, defend and hold harmless the City from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the City.

23. 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.

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

25. Controlling Law **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY, CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY**

LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

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

28. *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.

29. *Notice* For purposes of this agreement, notices shall be sent as follows:

City:	City of Port Orange Attention: City Manager 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5501
Copy to:	City of Port Orange Attention: Lynn Stevens, Public Works & Utilities Director 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5575
Engineer:	Zev Cohen and Associates, Inc. Attention: M. Dwight Durant, Director 300 Interchange Boulevard Suite C Ormond Beach, Florida 32174 (386) 677-2482 - Telephone (386) 677-2505 – Facsimile ddurant@zevcohen.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.

30. *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, Engineer 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 Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer 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) Engineer'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 Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract or Task Authorization.

31. Waiver of Breach and Materiality Failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed as a modification of the terms of this Contract.

32. 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 Engineer and the City until the City signs this Agreement.

33. 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: Jill Eckstein


Printed Name: Nina Squires

ZEV COHEN AND ASSOCIATES, INC.

By:


M. Dwight Durant, Director

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:

1/14/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ✓ physical presence or online notarization, this 14th day of January, 2022, by M. Dwight Durant, as Director of Zev Cohen and Associates, Inc., a Florida corporation. He is ✓ personally known or produced as identification.




Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

CITY OF PORT ORANGE

Printed Name: James Miller

By: [Signature]

Donald O. Burnette, Mayor

Printed Name: Matt Jones

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 18 day of Jan., 2022, 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.



[Signature]
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

Witnesses:

Printed Name: James Miller

By: [Signature]

Robin L. Fenwick, MMC, City Clerk

Printed Name: Matt Jones

Date: 1/18/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me, by means of ☒ physical presence or ☐ online notarization, this 18 day of Jan., 2022, by Robin L. Fenwick, as City Clerk of the City of Port Orange, a Florida municipal corporation, on behalf of the city. She is ☒ personally known or ☐ produced as identification.



[Signature]
Notary Public, State of Florida

Printed, typed or stamped name, commission and expiration:

EXHIBIT “1”

Engineer's Billing Rate Schedule and RFSQ 21-03 Section 3

Consisting of 2 Pages



300 Interchange Blvd., Suite C
Ormond Beach, FL 32174
386-677-2482 • Fax: 386-677-2506
www.ZevCohen.com

2021 Hourly Rate Schedule

Principal	\$190.00
Department Director	\$175.00
Senior Professional Engineer	\$155.00
Senior Registered Landscape Architect	\$150.00
Project Manager	\$155.00
Senior Planner	\$140.00
Senior Biologist/Env. Scientist/GIS Analyst	\$140.00
Professional Engineer	\$140.00
Registered Landscape Architect	\$135.00
Environmental Scientist II/GIS Specialist II	\$105.00
Engineer II	\$110.00
Landscape Architect II	\$105.00
Planner II	\$105.00
Senior Designer	\$100.00
Environmental Scientist I/GIS Specialist I	\$ 95.00
Engineer I	\$ 95.00
Landscape Architect I	\$ 95.00
Planner I	\$ 95.00
Designer	\$ 85.00
CADD Manager	\$110.00
Senior CADD Technician	\$100.00
CADD Technician	\$ 90.00
Construction Administration Manager	\$130.00
Construction Administrator	\$110.00
Construction Administration Technician	\$ 90.00
IT Manager	\$ 95.00
Certified Soil Scientist	\$155.00
Certified Arborist	\$100.00
Landscape Designer	\$ 85.00
Engineering Technician	\$ 75.00
Biological Technician	\$ 65.00
Technical Assistant	\$ 65.00
Senior Clerical	\$ 60.00
Clerical	\$ 50.00

SECTION 3 – SCOPE OF SERVICES AND REQUIREMENTS

SCOPE OF SERVICES

The City of Port Orange is soliciting proposals from qualified firms for professional continuous engineering consulting services to complete a wide range of needs lead by the City of Port Orange Public Works & Utilities Department. The City will select a minimum of three, and up to five firms who can provide all, some, or one of the category service disciplines outlined in the scope of services. Firms do not have to be able to provide all of the services listed in the scope of services. For instance, if a firm only provides Environmental Services then they should state that in their initial Statement and provide all of the supporting data within the submittal to support the type of services provided. Individual firms are the focus of this RFSQ process, therefore the City will not accept Statements of Qualifications submitted with multiple firms (i.e., teams). The City is seeking the most highly qualified firms in the following category service disciplines;

- **Public Utilities (Water, Wastewater, & Reclaimed Water):**
 - Analysis, survey, design, permitting, bidding assistance, engineering services during construction, and State Revolving Funds (SRF) loan assistance for the Cities water, wastewater, and reuse systems. Including but not limited to the Cities wastewater collection and treatment systems, raw water wells, raw water transmission, water treatment, and reclaimed water storage and distribution systems
- **Public Works (Stormwater, Roadways, and Sidewalls/Trails):**
 - Analysis, survey, design, permitting, bidding assistance and engineering during construction for the Cities roadways and sidewalks
 - General stormwater needs as required by the Stormwater Utility Program. The list of services shall consist of, but not be limited to, the following:
 - National Pollutant Discharge Elimination System (NPDES) program assistance and implementation,
 - Total Maximum Daily Load (TMDL) program assistance and implementation including, but not limited to, the evaluation and establishment of estuarine TMDLS and NNC, developing ecosystem goals and targets based on the requirements of the environmental and biological indicators, hydrodynamic modeling, water quality statistical analysis, natural systems analysis and habitat analysis,
 - Watershed management planning including, but not limited to, initial hydrologic and hydraulic modeling of the watersheds in Port Orange, as well as pollutant loading modeling and updates to existing Stormwater Management Master Plans of the watersheds,
 - Engineering analysis/design and permitting of capital improvement projects, and
 - Other stormwater/environmental needs that may arise.
- **Environmental Services:**
 - Provide services related to wetlands mitigation bank management, gopher tortoise mitigation bank management, potable drinking water Consumptive Use Permit (CUP) permit monitoring, reporting, and compliance assistance, hydrologic services related to potable water wellfield management and development
 - Monitoring, sampling, and reporting services as required for permits issued and regulated by various local and State agencies such as Consumptive Use Permitting and other operational permits issued to the City by St. Johns River Water Management, U.S. Army Corps of Engineers, and the Florida Department of Environmental Protection for the operation of the Cities Wetlands Mitigation Bank, Gopher Tortoise Mitigation Bank each have very specific and differing water sampling, monitoring, and reporting procedures and requirements.
- **Grant Compliance Assistance:**
 - Provide Grant Compliance assistance for local, state, and federally administered grants, including but not limited to, HUD Community Development Block Grants, FEMA Hazard Mitigation Grant Program, FDEP Legislative Appropriation grants. Services will include tasks such as; Assistance with U.S. Department of Housing and Urban Development Environmental Review Record Development for projects funded with Community Development Block Grant Funds. Reviewing, monitoring, evaluating and acting upon documentation required for Construction Contract compliance.

[End of Scope of Services - Remainder of this page left intentionally blank]

EXHIBIT "2"

Task Authorization Template

Consisting of 4 Pages

TASK AUTHORIZATION NO. ____
Master Contract for Services dated _____
Between the City of Port Orange, Florida and Zev Cohen and Associates, Inc.

THIS Task Authorization is entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation with its principal place of business at 1000 City Center Circle, Port Orange, Florida 32129 (the "City") and **ZEV COHEN AND ASSOCIATES, INC.**, Florida corporation, with its principal place of business at 300 Interchange Boulevard, Suite C, Ormond Beach, Florida 32174 ("Engineer"), and hereinafter collectively referred to as the "Parties," and is to that certain Master Contract relating to Professional Engineering Services for Public Works, Utilities and Environmental Services, as dated 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, Engineer 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. Engineer shall complete the services to be provided herein within _____ days of the date of written notice by the City to the Engineer.

4. In return for the services identified above, the City agrees to compensate Engineer at the prices set forth in Exhibit "1" attached hereto and made a part hereof, 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, Engineer 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 Engineer and null and void for the purposes of this Contract or Task Authorization. The signature on this Contract by the Engineer 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) Engineer'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 Engineer has disclosed all debts or fees owed to or that are pending before the City prior to the execution of this Contract or 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 Engineer and the City until the City signs this Task Authorization.

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

Witnesses:

ZEV COHEN AND ASSOCIATES, INC.

Printed Name: _____

By: _____

M. Dwight Durant, Director

Printed Name: _____

Date: _____

Witnesses:

CITY OF PORT ORANGE

Printed Name: _____

By: _____
Donald Burnette, Mayor or
Wayne Clark, City Manager

Printed Name: _____

Date: _____

Witnesses:

ATTEST:

Printed Name: _____

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

Printed Name: _____

Date: _____



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (C9) Designation of Voting Delegate for Florida League of Cities Conference being held August 15-17, 2024

DEPARTMENT: City Manager

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Designate Mayor Don Burnette to serve as the voting delegate at the 2024 Florida League of Cities Annual Conference

SUMMARY: The Florida League of Cities' Annual Conference will be held at the Diplomat Beach Resort, Hollywood, Florida on August 15-17, 2024. This conference will provide valuable educational opportunities to help Florida's municipal officials serve their citizenry more effectively.

The League's By-Laws require each municipality to designate one official to be the voting delegate to cast their vote at the Annual Business Session. Election of League leadership and adoption of resolutions are undertaken during the business meeting. One official from each municipality will make decisions that determine the direction of the League.

In accordance with the League's By-Laws, each municipality's vote is determined by population, and the League will use the Estimates of Population from the University of Florida.

In recent years, City Council has designated Mayor Don Burnette as the voting delegate. Mayor Burnette has volunteered to serve in this capacity again at this year's conference.

PRESENTER: Robin Fenwick

ATTACHMENTS:

1.	2024 Voting Delegate Memo	2024 Voting Delegate Memo.pdf
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Tracee Cody
Robin Fenwick
Wayne Clark

Created/Initiated - 6/25/2024
Approved - 6/25/2024
Approved - 7/9/2024

Tracee Cody

Final Approval - 7/10/2024



To: Key Official

From: Eryn Russell, Florida League of Cities

Date: June 10, 2024

Subject: 2024 Annual Conference Voting Delegate Information

The Florida League of Cities Annual Conference will be held at the Diplomat Beach Resort in Hollywood, Florida, from August 15-17, 2024. This conference will provide valuable educational opportunities to help Florida's municipal officials serve their citizenry more effectively.

We ask that each member municipality sending delegates to the Annual Conference designate one of their officials to cast their votes at the Annual Business Session, which will be held on **Saturday, August 17**. Election of League leadership and adoption of resolutions are undertaken during the business meeting. One official from each municipality will vote on matters affecting the League.

In accordance with the League's by-laws, each municipality's vote is determined by population, and the League will use the Estimates of Population from the University of Florida.

Conference registration materials were sent to each municipality via the League's e-newsletter and are available online at flcities.com.

If you have any questions about voting delegates, please email erussell@flcities.com.
Voting delegate forms must be received by the League no later than July 31, 2024.

Attachments: Form Designating Voting Delegate



**2024 Annual Conference
Florida League of Cities, Inc.
August 15-17, 2024
Hollywood, Florida**

It is important that each member municipality sending delegates to the Annual Conference of the Florida League of Cities designate one of their officials to cast their votes at the Annual Business Session. League By-Laws require each municipality to select one person to serve as the municipality's voting delegate. *Municipalities do not need to adopt a resolution to designate a voting delegate.*

Please fill out this form and return it to the League office so that your voting delegate may be properly identified. **Voting delegate forms must be received by the League no later than July 31, 2024.**

Designation of Voting Delegate

Name of Voting Delegate: _____

Title: _____

Delegate Email: _____

Municipality of: _____

AUTHORIZED BY:

Name

Title

Return this form to:

Eryn Russell
Florida League of Cities, Inc.
Post Office Box 1757
Tallahassee, FL 32302-1757
Email: erussell@flcities.com



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (C10) Approval of Volusia County Funding Allocation for the Edward Byrne Memorial Justice Assistance Grant Countywide (JAGC) Program

DEPARTMENT: Police Services

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the FY 2023 allocation of funding from the Justice Assistance Grant (JAG) Agency and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: Volusia County (the County) is eligible to receive funding from the FY 2023/24 share of the Edward Byrne Memorial Justice Assistance Grant (JAG) Countywide Program, which focuses on improving the criminal justice system by funding initiatives within local and state agencies. In order to submit nonprofit agencies' applications for this funding, the County must receive approval from 51% of cities located within Volusia County.

The JAG program focuses on providing funding to several municipalities to improve the criminal justice system through one or more purpose areas. This includes, but is not limited to, programs focused on law enforcement, prosecution/court, prevention/education, drug treatment, and enforcement programs. The County is recommending the funds be allocated to the non-profits SMA Healthcare, Inc. and the House Next Door, Inc.

Grant regulations require approval of the funding distribution by the majority of all local governments within the County. A letter certifying that Port Orange approves of the recommended allocation of funds to SMA Healthcare, Inc. and the House Next Door is required. In previous years, Port Orange has provided support for these programs. No financial or other commitments are required from Port Orange.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	JAGC FY2023 51% Letter final	JAGC FY2023 51% Letter final.pdf
2.	FY2023 JAGC Allocations	FY2023 JAGC Allocations.pdf

Robin Fenwick	Created/Initiated - 6/26/2024
Manuel Marino	Approved - 6/26/2024
Matthew Jones	Approved - 6/26/2024
Wayne Clark	Approved - 7/9/2024
Tracee Cody	Final Approval - 7/10/2024



CITY OF PORT ORANGE

1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5500
FAX 386-756-5290
www.Port-Orange.org

June 13, 2024

Mr. Cody Menacof
Bureau Chief
Office of Criminal Justice Grants
Florida Department of Law Enforcement
P.O. Box 1489
Tallahassee, FL 32302-1489

Dear Mr. Menacof,

In compliance with State of Florida Rule 11D-9, F.A.C., the City of Port Orange approves the distribution of \$159,507 of Federal Fiscal Year 2023 Edward Byrne Memorial Justice Assistance Grant (JAG) County-wide program for the following projects within Volusia County.

Recipient	Contractor & Project Purpose	Amount
County of Volusia	SMA Healthcare, Inc: Adult Drug Court Peer Recovery Specialists	\$121,225
County of Volusia	The House Next Door: Success by Design Program	\$38,282
	Total	\$159,507

Sincerely,

CITY OF PORT ORANGE

By: _____

Donald O. Burnette, Mayor

Date: _____

ATTEST:

By: _____

Robin L. Fenwick, MMC, City Clerk

FY2023 JAG Countywide (JAGC) Allocations

County	Allocation		County	Allocation
Alachua	\$105,730		Lake	\$107,450
Baker	\$31,841		Lee	\$204,223
Bay	\$98,708		Leon	\$119,985
Bradford	\$48,339		Levy	\$42,725
Brevard	\$165,078		Liberty	\$48,456
Broward	\$432,599		Madison	\$60,176
Calhoun	\$40,408		Manatee	\$131,275
Charlotte	\$73,307		Marion	\$114,686
Citrus	\$63,454		Martin	\$75,991
Clay	\$63,591		Monroe	\$74,431
Collier	\$150,659		Nassau	\$56,091
Columbia	\$130,165		Okaloosa	\$82,621
Dade	\$648,300		Okeechobee	\$97,780
Desoto	\$50,851		Orange	\$344,174
Dixie	\$52,495		Osceola	\$111,820
Duval	\$275,276		Palm Beach	\$348,087
Escambia	\$132,109		Pasco	\$163,116
Flagler	\$52,901		Pinellas	\$270,837
Franklin	\$42,490		Polk	\$199,599
Gadsden	\$46,879		Putnam	\$89,624
Gilchrist	\$31,686		Santa Rosa	\$113,699
Glades	\$67,462		Sarasota	\$126,824
Gulf	\$55,521		Seminole	\$142,758
Hamilton	\$71,917		St. Johns	\$77,658
Hardee	\$49,412		St. Lucie	\$102,125
Hendry	\$74,068		Sumter	\$58,307
Hernando	\$64,081		Suwannee	\$47,419
Highlands	\$66,064		Taylor	\$49,763
Hillsborough	\$345,441		Union	\$32,229
Holmes	\$37,768		Volusia	\$159,507
Indian River	\$69,111		Wakulla	\$32,798
Jackson	\$38,194		Walton	\$43,878
Jefferson	\$44,331		Washington	\$41,746
Lafayette	\$42,178		Total	\$7,534,272



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (C11) Resolution No. 24-19 - Stormwater Drainage Utility Annual Fee Rate Increase

DEPARTMENT: Finance

GOAL: 2 - Infrastructure
3 - Quality of Life
5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 24-19 - Stormwater Drainage Utility Annual Fee Rate Increase subject to the adoption of Ordinance No. 2024-01.

SUMMARY: Raftelis Financial Consultants, Inc. completed a stormwater rate study for the city in 2023 which recommended a 3-year tiered rate adjustment. In September 2023, Council approved Resolution No. 23-31 which authorized the first year update to the annual Stormwater Fees. This Resolution will implement year two of three of the proposed changes based on the study and framework approved in 2023. The proposed fee increase of \$15 per year brings the current \$130 fee to \$145 per equivalent dwelling unit/EDU (formerly known as a Single Family Unit or SFU). The third and final increase based on this study, to \$160 per EDU, will occur in Fiscal Year 2025-26. The 5-year Capital Improvement Program for stormwater projects is based on these revenue projections.

The City currently maintains 137 stormwater ponds, about 86,000 linear feet of canals and ditches and 518,000 linear feet of stormwater pipes. In addition, the City maintains more than 4,000 inlets in our stormwater conveyance system with 14 state-designated outfalls or discharges into the Halifax River. The City has on the horizon approximately \$60 million in new stormwater infrastructure projects to continue ongoing efforts to improve and strengthen the drainage system of over 23,000 properties.

The National Pollution Discharge Elimination System (NPDES) stormwater permitting program, as implemented by the Florida Department of Environmental Protection (FDEP), requires cities to enhance their stormwater management services and monitor and regulate stormwater runoff for pollutants to protect downstream water quality and habitat in our natural waterways. To finance these improvements and meet the necessary requirements, the City implemented a dedicated funding source in the form of a Stormwater Drainage Utility Fee ("Stormwater Fee") in 1986. The Stormwater Fee is designed to generate revenues that are used to fund various stormwater management projects and initiatives. These projects may include constructing or

upgrading stormwater infrastructure, implementing erosion control measures, creating new retention ponds, improving drainage systems, and conducting public education and outreach campaigns on stormwater best management practices.

Chapter 74, Article V of the Code of Ordinances, City of Port Orange, Florida (the "Stormwater Utility Ordinance") establishes the City's stormwater drainage utility and authorizes imposition of the annual Stormwater Fee. The Stormwater Utility Ordinance describes how the fee is calculated and authorizes collection of the fee pursuant to the uniform collection method set forth in section 197.3632, Florida Statutes (the "Uniform Collection Act"), pursuant to which non-ad valorem assessments such as the Stormwater Fee may be collected on the annual ad valorem tax bill mailed each November. The City has imposed the Stormwater Fee and collected the fee pursuant to the uniform collection method each year since 2005.

PRESENTER: John McKinney

ATTACHMENTS:

1.	Resolution No. 24-19 w appendix	Resolution No. 24-19 w appendix.pdf
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John McKinney	Created/Initiated - 5/31/2024
Tom DiEulio	Approved - 6/4/2024
Junos Reed	Approved - 6/4/2024
John McKinney	Approved - 6/4/2024
Matthew Jones	Approved - 7/9/2024
Wayne Clark	Approved - 7/11/2024
Tracee Cody	Final Approval - 7/11/2024

RESOLUTION NO. 24-19

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA APPROVING THE STORMWATER UTILITY FEE RATES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2025 IN ACCORDANCE WITH CHAPTER 74, SECTIONS 156-164 OF THE CITY CODE OF ORDINANCES; PROVIDING FOR COLLECTION OF THE STORMWATER FEES AS NON-AD VALOREM ASSESSMENTS PURSUANT TO THE TAX BILL COLLECTION METHOD AUTHORIZED BY SECTION 197.3632, FLORIDA STATUTES; APPROVING THE NON-AD VALOREM ASSESSMENT ROLL FOR SUCH FEES; DIRECTING CERTIFICATION OF SUCH ROLL TO THE VOLUSIA COUNTY TAX COLLECTOR; RATIFYING AND CONFIRMING CITY RESOLUTION NO. 23-31; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange (the "City") is authorized by Article VIII, Section 2(b) of the Florida Constitution and Sections 166.021, 197.3632 and 403.0893, Florida Statutes to establish a stormwater drainage utility, to impose annual stormwater utility fees sufficient to plan, construct, operate and maintain stormwater management systems, and to provide for the collection of such fees pursuant to the uniform method by which the fees are included on the annual property tax bill mailed by the Volusia County Tax Collector each November; and

WHEREAS, in accordance therewith, the City Council adopted Sections 74-156 through 74-164 of the City of Port Orange Code of Ordinances (as amended, the "Stormwater Ordinance") which established a stormwater drainage utility (the "Stormwater Utility System") and provides for the calculation, imposition and collection of stormwater drainage utility fees (the "Stormwater Fees"); and

WHEREAS, the City imposes the Stormwater Fees each year to fund the annual provision of stormwater management services and facilities, and collects the fees as non-ad valorem assessments included on the annual property tax bill, as authorized by Section 197.3632, Florida Statutes (the "Uniform Collection Act") and Section 403.0893, Florida Statutes; and

WHEREAS, pursuant to the Uniform Collection Act, the City must certify a non-ad valorem assessment roll to the Volusia County Tax Collector by September 15th of each year in order to collect the Stormwater Fees on the annual property tax bill; and

WHEREAS, the non-ad valorem assessment roll includes the list of the parcels from which the Stormwater Fees will be collected on the annual property tax bill, and the amount of the fee imposed against each parcel; and

WHEREAS, the Stormwater Utility Rate Study prepared by Raftelis Financial Consultants, Inc., a copy of which was attached to City Resolution No. 23-31 (the "Rate Study"), summarized the Stormwater Utility System's projected revenue requirements for

the five fiscal year period of October 1, 2022 through September 30, 2027 and identified the need for Stormwater Fee rate adjustments during such period due to anticipated changes in operating costs, increases to annual debt services payments for debt obligations incurred by the City to finance stormwater-related capital improvements, and the amount and timing of additional capital improvements; and

WHEREAS, the Stormwater Fee rate schedule approved by City Resolution No. 23-31 will allow the City to maintain a sustainable financial position for the Stormwater Utility System that is consistent with performance criteria established by the City and based on utility industry standards; and

WHEREAS, such rate increases will provide for the recovery of the total costs anticipated for the Stormwater Utility system, thereby ensuring the utility system remains a self-supporting enterprise; and

WHEREAS, this Resolution is adopted for purposes of adopting and certifying the non-ad valorem assessment roll for fiscal year 2025, based on the Stormwater Fee rates approved by Resolution No. 23-31; and

WHEREAS, Resolution No. 23-31 was duly adopted following the public hearing conducted by the City Council on September 5, 2023, public notice of which was published and mailed to each affected property owner notifying such property owner of the opportunity to be heard, as required by the Uniform Collection Act; and

WHEREAS, comments and objections of all interested persons have been heard and considered prior to adoption of this Resolution; and

WHEREAS, the City's Stormwater Utility System and the services and facilities associated therewith provide for the proper and safe collection, storage, control, management, treatment and conveyance of the stormwater burden generated by the real property subject to the Stormwater Fees approved hereunder; and

WHEREAS, the benefits derived from the stormwater management services and facilities provided by the City exceed the amount of the Stormwater Fees imposed hereunder, and the Stormwater Fees imposed against any tax parcel subject thereto does not exceed the proportional benefits that such tax parcel will receive compared to any other tax parcel; and

WHEREAS, the City Council hereby finds and determines that the Stormwater Fees for Fiscal Year 2025 imposed in accordance with this Resolution provide an equitable method of funding the City's stormwater management services and facilities by fairly and reasonably apportioning the costs thereof among the real property specially benefited thereby.

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

Section 1. The Recitals set forth above are hereby incorporated as legislative findings of the City Council.

Section 2. The Mayor and City Council of the City of Port Orange, Florida hereby ratify, confirm and approve the Stormwater Fee rate schedule approved by City Resolution No. 23-31. The Stormwater Fee rates for Fiscal Year 2025 and each year thereafter are set forth in Section 4 hereof. Non-ad valorem assessments in the amount of the Stormwater Fees for Fiscal Year 2025, are hereby imposed based upon such rate schedule.

The Stormwater Fees for Fiscal Year 2025 and each year thereafter shall be collected pursuant to the Uniform Collection Act. Upon adoption hereof, the Finance Director shall cause the certification and delivery of the Non-Ad Valorem Assessment Roll for such fees to the Volusia County Tax Collector by September 15, 2024 and by September 15 of each successive year, in the manner prescribed by the Uniform Collection Act; provided, however that the Finance Director may cause certification and delivery of such roll by an earlier date if required or requested by the Tax Collector. The roll as delivered to the Tax Collector shall be accompanied by a Certificate to Non-Ad Valorem Assessment Roll in substantially the form attached hereto as Appendix A. The Non-Ad Valorem Assessment Roll, a copy of which is available in the Port Orange City Clerk's Office located at 1000 City Center Circle, Port Orange, Florida 32129, is hereby approved and incorporated herein by reference.

The Stormwater Fees for certain tax parcels shall be collected by direct billing instead of non-ad valorem assessments pursuant to the Uniform Collection Act. A list of such tax parcels is available in the office of the City Clerk.

Section 3. The Rate Study uses the term "Equivalent Dwelling Unit (EDU)" for the unit of measurement applied against each developed parcel to determine the relative demand for stormwater services created by development of such parcel and the amount of such parcel's Stormwater Fee. One EDU equals 3,050 square feet of impervious surfaces, with one EDU assigned per dwelling unit on residential property and the total amount of impervious surface area on non-residential property, in square feet, divided by 3,050 square feet to determine the number of EDUs assigned. The number of EDUs assigned to each parcel is then multiplied by the annual rate to determine the amount of the Stormwater Fee imposed against such parcel, with all developed parcels assigned a minimum of one EDU. The Stormwater Ordinance has historically used the term "Single-Family Unit (SFU)" as the equivalency unit for calculating the amount of the Stormwater, though has been amended to adopt the term Equivalent Dwelling Unit as the designated unit of measurement, to conform to the Rate Study and current naming conventions in widespread use throughout the stormwater utility industry. While City Resolution No. 23-31 used the term "SFU" when referring to the unit of measurement for the Stormwater Fees, this Resolution and other-stormwater resolutions in the future shall use the term "EDU" in accordance with the amended Stormwater Ordinance. The use of impervious surface area is hereby approved, ratified and confirmed as a fair and reasonable method of apportioning the benefits conveyed by the City's stormwater drainage utility among the real property specially benefitted thereby.

Section 4. The estimated maximum rate of the Non-Ad Valorem Assessments for Fiscal Year 2025 and fiscal years thereafter set forth in City Resolution No. 23-31 are hereby ratified and confirmed. Such rates are as follows:

Fiscal Year 2025 (ending September 30, 2025)	Fiscal Year 2026 (ending September 30, 2026) and each fiscal year thereafter
\$145 per EDU	\$160 per EDU

Such maximum rates for fiscal years after Fiscal Year 2025 were included in the mailed notices to affected property owners, and such rates may be adopted without further notice to affected property owners unless notice is required by the Uniform Collection Act. The Stormwater Fee is an annual charge that will continue year after year unless or until amended by resolution of City Council. The Stormwater Fee rates approved herein are hereby determined to be reasonable and necessary to pay for the operation, maintenance, administration and capital improvements of the Stormwater Utility System.

Section 5. Proceeds of the Stormwater Fee, after payment of any costs or expenses resulting from annual administration and collection and the City's use of the Uniform Collection Act, may only be expended for purposes related to the City's provision of stormwater services and the Stormwater Utility System, as set forth in the Stormwater Ordinance.

Section 6. All resolutions or parts thereof in conflict herewith or contrary hereto are hereby repealed to the extent of such conflict.

Section 7. If any section, subsection, clause, phrase, or portion of this resolution, or application hereof, is for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion or provision and such holding shall not affect the validity of the remaining portions or applications hereof.

Section 8. City Resolution No. 23-31 is hereby ratified and confirmed.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the _____ day of _____, 2024

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

APPENDIX A

**FORM OF CERTIFICATE
OF NON-AD VALOREM ASSESSMENT ROLL**

I HEREBY CERTIFY that I am the Finance Director and authorized agent of the City of Port Orange (the "City"), located in Volusia County, Florida; as such I have satisfied myself that all property included or includable on the City's non-ad valorem assessment roll for stormwater utility drainage fees (the "Non-Ad Valorem Assessment Roll") is properly assessed so far as I have been able to ascertain; and that all required extensions on the above described roll to show the non-ad valorem assessments attributable to the property listed therein have been made pursuant to law.

I FURTHER CERTIFY that, in accordance with the Uniform Assessment Collection Act, this certificate and the herein described Non-Ad Valorem Assessment Roll will be delivered to the Volusia County Tax Collector by September 15, 2024.

IN WITNESS WHEREOF, I have subscribed this certificate and directed the same to be delivered to the Volusia County Tax Collector and made part of the above described Non-Ad Valorem Assessment Roll this _____ day of September, 2024.

PORT ORANGE, FLORIDA

By: _____
Finance Director



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (C12) Resolution No. 24-22 - Deed of Dedication for public purposes along the north side of Charles Street, adjacent to 1101 Charles Street (Sugar Mill Elementary)

DEPARTMENT: Community Development

GOAL: 1 - Public Safety

2 - Infrastructure

3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 24-22.

SUMMARY: As part of the subdivision improvements for the Madeline Commons subdivision, the developer is required to construct a right-turn lane on westbound Charles Street into the Sugar Mill Elementary School parent pick-up/drop-off driveway on the east side of the school property. As part of the subdivision plat and plans for the subdivision approved in 2023, the property owner of the subdivision is required to dedicate a 12-foot by 190-foot strip of property along Charles Street for the right-turn lane and pedestrian improvements. In addition, the developer is required by the Master Development Agreement for the subdivision to coordinate the dedication of a 12-foot by 110-foot strip of property along the north side of Charles Street, located in front of Sugar Mill Elementary School, from the School Board of Volusia County to the City of Port Orange. The land dedicated by the School Board of Volusia County will be added to the Charles Street right-of-way, allowing the construction of a required right-turn lane at the Sugar Mill Elementary School parent pick-up/drop-off driveway along with pedestrian improvements (sidewalk, signage, and crosswalks) along Charles Street between 5th Street and the Sugar Mill Elementary School parent pick-up/drop-off driveway.

On June 25, 2024, the Volusia County School Board voted to approve the dedication of a 12-foot by 110-foot strip of property to the City to be added to the Charles Street right-of-way. Construction of the right-turn lane and pedestrian improvements along Charles Street began in late June and are planned to be completed before the start of the 2024/2025 school year.



PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 24-22 w exhibit	Resolution No. 24-22 w exhibit.pdf
2.	Signed Deed of Dedication	Signed Deed of Dedication.pdf
3.	Madeline Commons LLC Agmt with VCSB	Madeline Commons LLC Agmt with VCSB.pdf
4.	Madeline Commons - Subdivision Plat	Madeline Commons - Subdivision Plat.pdf

Lisa Epstein
Tim Burman
Shannon Balmer
Wayne Clark
Tracee Cody

Created/Initiated - 6/25/2024
Approved - 6/25/2024
Approved - 7/8/2024
Approved - 7/9/2024
Final Approval - 7/10/2024

RESOLUTION NO. 24-22

A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, ACCEPTING A DEED OF
DEDICATION CONVEYING A TRACT OF LAND OF
VARYING WIDTH FOR ADDITIONAL RIGHT-OF-WAY FOR
THE PURPOSE OF PUBLIC USE; PROVIDING FOR
CONFLICTING ORDINANCES; PROVIDING FOR
SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE
DATE.

WHEREAS, The School Board of Volusia County, Florida is willing to convey to the City of Port Orange, Florida certain real property for the purpose of right-of way improvements; and

WHEREAS, The School Board of Volusia County, Florida has executed and presented to the City of Port Orange, Florida, a Deed of Dedication, attached hereto as **EXHIBIT “1”**, incorporated herein and made a part hereof by reference; and

WHEREAS, said deed conveys lands necessary for the future construction of a right-turn lane on westbound Charles Street right-of-way into Sugar Mill Elementary School; and

WHEREAS, it is in the best interest of the City to accept the Deed of Dedication for purposes stated herein; and

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

Section 1. The above Recitals are incorporated by reference into the body of this Resolution.

Section 2. The City Council of the City of Port Orange, Florida hereby accepts the Deed of Dedication, attached hereto.

Section 3. The City Council of the City of Port Orange, Florida has determined that the acquisition of the aforesaid property is for a public purpose.

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

Section 5. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this resolutions which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

Section 6. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on this _____ day of _____ 2024

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

EXHIBIT "1"

Prepared by:
Shannon K. Balmer,
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

A portion of Parcel No. 6304-00-00-0022

Deed of Dedication (Right-of-Way)

This Deed of Dedication, is made and executed this 25 day of June, 2024, between **THE SCHOOL BOARD OF VOLUSIA COUNTY, FLORIDA**, a political subdivision of the State of Florida whose mailing address is PO BOX 2118 DELAND FL 32721 2118 hereinafter referred to as, "Dedicator;" and **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, of the County of Volusia in the State of Florida, post office address: Attn: City Manager, 1000 City Center Circle, Port Orange, FL 32129-4144, "City."

WITNESSETH:

That the said Dedicator, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to said Dedicator, in hand paid by the City, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby dedicate, release, remise, and quit-claim unto the City, its successors and assigns forever, for the purposes of a right-of-way for a public road and appurtenances, all that certain land lying and being in the County of Volusia, State of Florida, being more particularly described as follows:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, lien, equity, and claim whatsoever of the Dedicator, either in law or equity forever.

CITY, by accepting this Dedication, obligates itself to forever preserve and use the property dedicated herein for the purpose recited above, and such other public purposes deemed desirable by City.

AND the said Dedicator hereby covenants with City that the Dedicator is lawfully seized of said land in fee simple; that the Dedicator has good right and lawful authority to dedicate and convey said land; that the Dedicator does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, the said Dedicator has caused this *Deed of Dedication* to be executed on its behalf the day and year first above written.

Signed, sealed and delivered
in the presence of:

Dedicator:
**THE SCHOOL BOARD OF VOLUSIA
COUNTY, FLORIDA**, a political
subdivision of the State of Florida

Celeste C. Gilmore
Printed Name: Celeste C. Gilmore
Address: 200 N Clara Ave
Deland FL 32720

Socorro Matcovich
Printed Name: Socorro Matcovich
Address: 200 N. Clara Ave,
Deland, FL 32720

By: Jamie M. Haynes
Print Name: Ms. Jamie M. Haynes
Title: Board Chair

Date: 6.25.2024
Attest: [Signature]
Printed Name: Dr. Carmen J. Balgobin
Title: Superintendent

STATE OF FLORIDA
COUNTY OF VOLUSIA

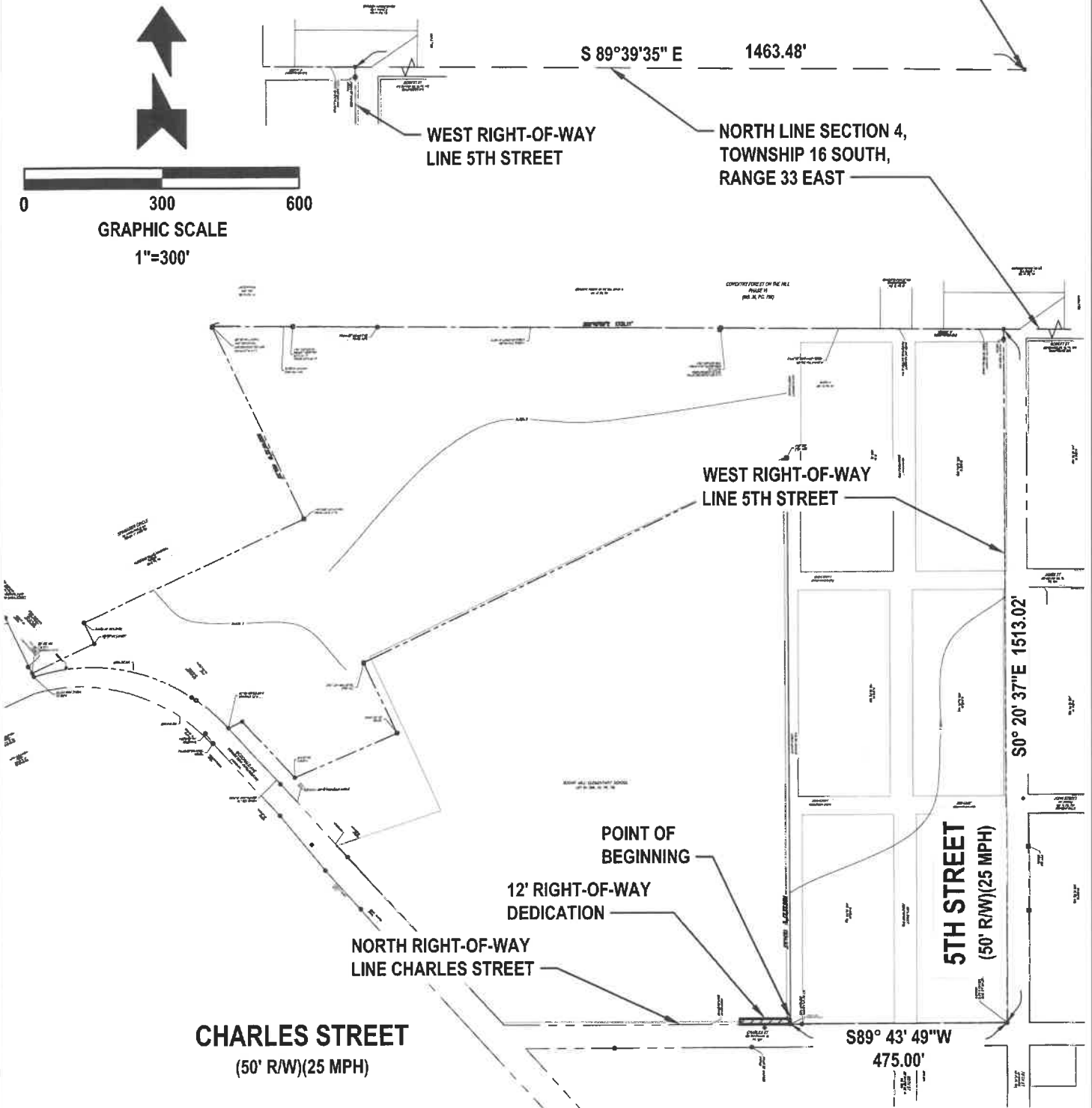
The foregoing *Deed of Dedication* was sworn to and acknowledged before me by means of [XX] physical presence or [] online notarization this 25th day of June, 2024 by Jamie M. Haynes, Chair of **THE SCHOOL BOARD OF VOLUSIA COUNTY, FLORIDA**, a political subdivision of the State of Florida, on behalf of the corporation who [☒] is personally known to me, or [☐] have produced as identification.

Karen A. Bishop
Notary Public, State of Florida at Large
Commission Number, Date of Commission, Expiration, and Seal



EXHIBIT "A"

ROW DEDICATION

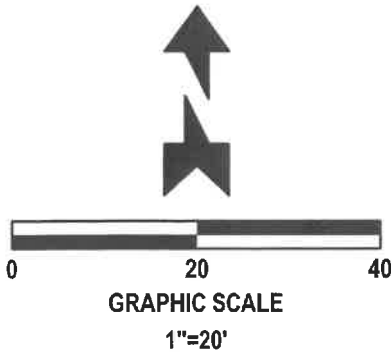


**THIS IS NOT A SURVEY
SHEET 1 OF 3
SEE SHEET 3 FOR
SURVEYOR'S SIGNATURE**

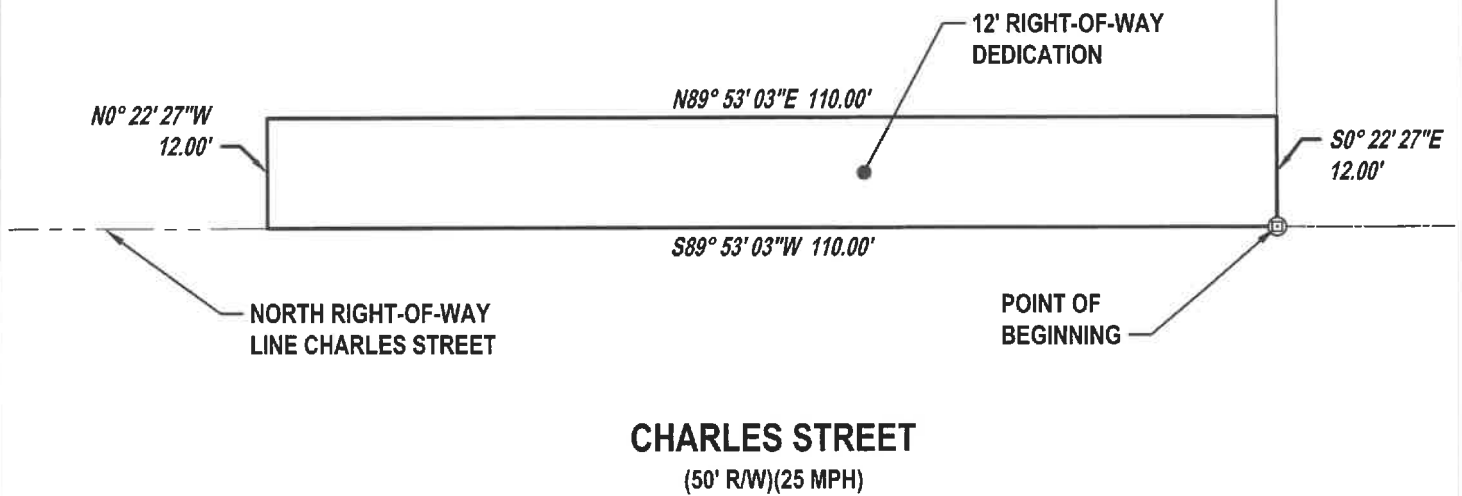
OWB: DAB
DATE:
4/1/2024
MAP SUBJECT:
12' RIGHT-OF-WAY
DEDICATION
SCALE:
1"=300'

TYPE OF SURVEY:
**SKETCH AND
LEGAL
ROW
DEDICATION**


Professional Surveyor
S A 1 A
SURVEYING, INC.
Residential Commercial Construction
Phone: 386.676.2363
711 Pineland Trail, Ormond Beach, Florida 32174 LB 8205



SUGAR MILL ELEMENTARY SCHOOL
LOT 8A (MB. 23, PG. 70)
VOLUSIA COUNTY, FL



**THIS IS NOT A SURVEY
SHEET 2 OF 3
SEE SHEET 3 FOR
SURVEYOR'S SIGNATURE**

OWB: DAB
DATE: 4/1/2024
MAP SUBJECT:
12' RIGHT-OF-WAY
DEDICATION
SCALE: 1"=20'

TYPE OF SURVEY:
**SKETCH AND
LEGAL
ROW
DEDICATION**


Professional Surveyor
Phone: 386.676.2363
711 Pineland Trail, Ormond Beach, Florida 32174 LB 8205
A1A
SURVEYING, INC.
Residential Commercial Construction

LEGAL DESCRIPTION:

A RIGHT-OF-WAY DEDICATION BEING A PORTION OF LOT 8A AS DESCRIBED IN MAP BOOK 23, PAGE 70, OFFICIAL RECORDS OF VOLUSIA COUNTY, FLORIDA.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF REFERENCE, COMMENCE AT THE NORTHEAST CORNER OF SECTION 4, TOWNSHIP 16 SOUTH RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA; RUN THENCE ALONG THE NORTH LINE OF SAID SECTION 4, SOUTH 89 DEGREES 39 MINUTES 35 SECONDS EAST FOR A DISTANCE OF 1463.48 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF 5TH STREET (A 50 FOOT RIGHT-OF-WAY AS CURRENTLY LAID OUT AND OCCUPIED); THENCE DEPARTING THE AFORESAID NORTH SECTION LINE OF SECTION 4 AND ALONG SAID WEST RIGHT-OF-WAY LINE OF 5TH STREET, SOUTH 00 DEGREES 20 MINUTES 37 SECONDS EAST FOR A DISTANCE OF 1513.02 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF CHARLES STREET (A 50 FOOT RIGHT-OF-WAY AS CURRENTLY LAID OUT AND OCCUPIED); THENCE DEPARTING THE AFORESAID WEST RIGHT-OF-WAY LINE OF 5TH STREET AND ALONG SAID NORTH RIGHT-OF-WAY LINE OF CHARLES STREET, SOUTH 89 DEGREES 43 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 475.00 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID NORTH RIGHT-OF-WAY LINE, SOUTH 89 DEGREES 53 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 110.00 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE 00 DEGREES 22 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 12.00 FEET; THENCE NORTH 89 DEGREES 53 MINUTES 03 SECONDS EAST FOR A DISTANCE OF 110.00 FEET; THENCE SOUTH 00 DEGREES 22 MINUTES 27 SECONDS EAST FOR A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING.

SAID RIGHT-OF-WAY DEDICATION CONTAINING 1,320 SQUARE FEET AND 0.030 ACRES MORE OR LESS.

GENERAL NOTES AND SURVEY REPORT:

1. BEARINGS SHOWN HEREON ARE REFERENCED TO FLORIDA STATE PLANE COORDINATES, EAST ZONE, NAD 1983/2011, U.S. SURVEY FEET, DERIVING A BEARING OF N09°39'35"W ON THE NORTH LINE OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 23 EAST. BEARINGS SHOWN FOR ANGLE MEASUREMENT ONLY.
2. LEGAL DESCRIPTION NEW PER A1A SURVEYING, INC.
3. SKETCH AND DESCRIPTION NOT VALID OR COMPLETE WITHOUT SHEETS 1 THROUGH 3.
4. SKETCH AND DESCRIPTION BASED ON A BOUNDARY SURVEY PERFORMED BY DEWBERRY, PROJECT No. 50149742, SURVEY DATE MARCH 24, 2022.

ABBREVIATIONS / LEGEND:

C	CURVE	LLC	LIMITED LIABILITY COMPANY
CA	CENTRAL ANGLE	LS	LICENSED SURVEYOR
CH	CHORD	NO.	NUMBER
CH BRG	CHORD BEARING	PG.	PAGE
FL	FLORIDA	P.B.	PLAT BOOK
L	LENGTH	R	RADIUS
LB	LICENSED BUSINESS	R/W	RIGHT-OF-WAY
LC	LICENSED CORPORATION	OR	ORDINANCE BOOK

SHEET 3 OF 3

THE FOREGOING PLAT IS CERTIFIED TO MEET THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS AS PER CHAPTER 511.06, FLORIDA ADMINISTRATIVE CODE, AS PURSUANT TO SECTION 27.03, FLORIDA STATUTES.

04/01/2024
DAVID McMILLEN
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

OWB: DAB
DATE: 4/1/2024
MAP SUBJECT:
12' RIGHT-OF-WAY
DEDICATION
SCALE: N/A

TYPE OF SURVEY:
**SKETCH AND
LEGAL
ROW
DEDICATION**


Professional Surveyor
Phone: 386.676.2363
711 Pineland Trail, Ormond Beach, Florida 32174 LB 8205
**A1A
SURVEYING, INC.**
Residential Commercial Construction

Prepared by:
Shannon K. Balmer,
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

A portion of Parcel No. 6304-00-00-0022

Deed of Dedication (Right-of-Way)

This Deed of Dedication, is made and executed this 25 day of June, 2024, between **THE SCHOOL BOARD OF VOLUSIA COUNTY, FLORIDA**, a political subdivision of the State of Florida whose mailing address is PO BOX 2118 DELAND FL 32721 2118 hereinafter referred to as, "Dedicator;" and **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, of the County of Volusia in the State of Florida, post office address: Attn: City Manager, 1000 City Center Circle, Port Orange, FL 32129-4144, "City."

WITNESSETH:

That the said Dedicator, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to said Dedicator, in hand paid by the City, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby dedicate, release, remise, and quit-claim unto the City, its successors and assigns forever, for the purposes of a right-of-way for a public road and appurtenances, all that certain land lying and being in the County of Volusia, State of Florida, being more particularly described as follows:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, lien, equity, and claim whatsoever of the Dedicator, either in law or equity forever.

CITY, by accepting this Dedication, obligates itself to forever preserve and use the property dedicated herein for the purpose recited above, and such other public purposes deemed desirable by City.

AND the said Dedicator hereby covenants with City that the Dedicator is lawfully seized of said land in fee simple; that the Dedicator has good right and lawful authority to dedicate and convey said land; that the Dedicator does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, the said Dedicator has caused this *Deed of Dedication* to be executed on its behalf the day and year first above written.

Signed, sealed and delivered
in the presence of:

Dedicator:
**THE SCHOOL BOARD OF VOLUSIA
COUNTY, FLORIDA**, a political
subdivision of the State of Florida

Celeste C. Gilmore
Printed Name: Celeste C. Gilmore
Address: 200 N Clara Ave
Deland FL 32720

Socorro Matcovich
Printed Name: Socorro Matcovich
Address: 200 N. Clara Ave,
Deland, FL 32720

By: Jamie M. Haynes
Print Name: Ms. Jamie M. Haynes
Title: Board Chair

Date: 6.25.2024
Attest: [Signature]
Printed Name: Dr. Carmen J. Balgobin
Title: Superintendent

STATE OF FLORIDA
COUNTY OF VOLUSIA

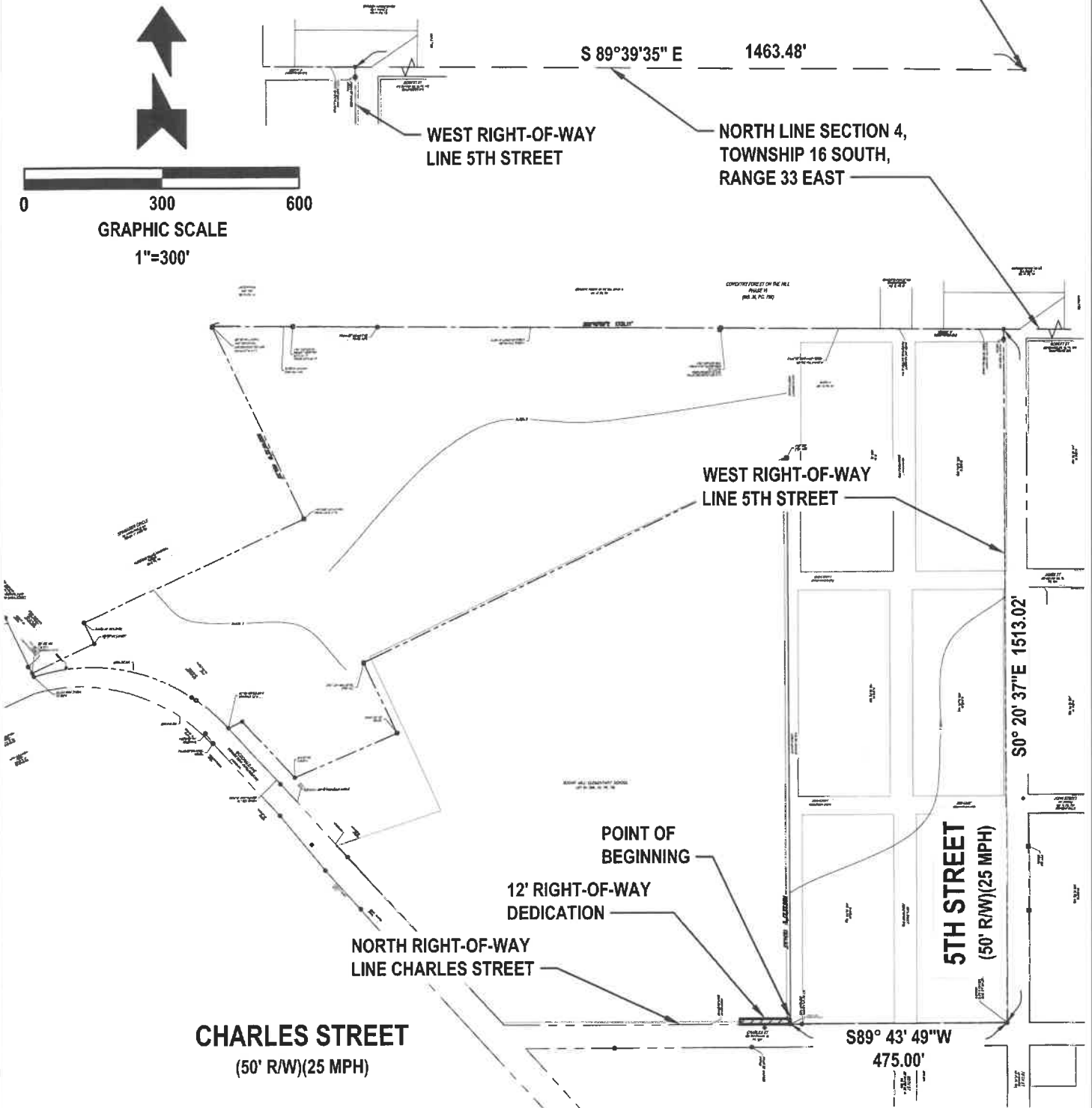
The foregoing *Deed of Dedication* was sworn to and acknowledged before me by means of [XX] physical presence or [] online notarization this 25th day of June, 2024 by Jamie M. Haynes, Chair of **THE SCHOOL BOARD OF VOLUSIA COUNTY, FLORIDA**, a political subdivision of the State of Florida, on behalf of the corporation who [☒] is personally known to me, or [☐] have produced as identification.

Karen A. Bishop
Notary Public, State of Florida at Large
Commission Number, Date of Commission, Expiration, and Seal



EXHIBIT "A"

ROW DEDICATION

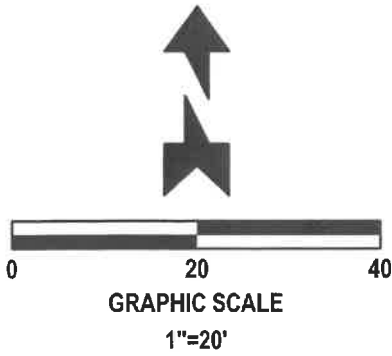


**THIS IS NOT A SURVEY
SHEET 1 OF 3
SEE SHEET 3 FOR
SURVEYOR'S SIGNATURE**

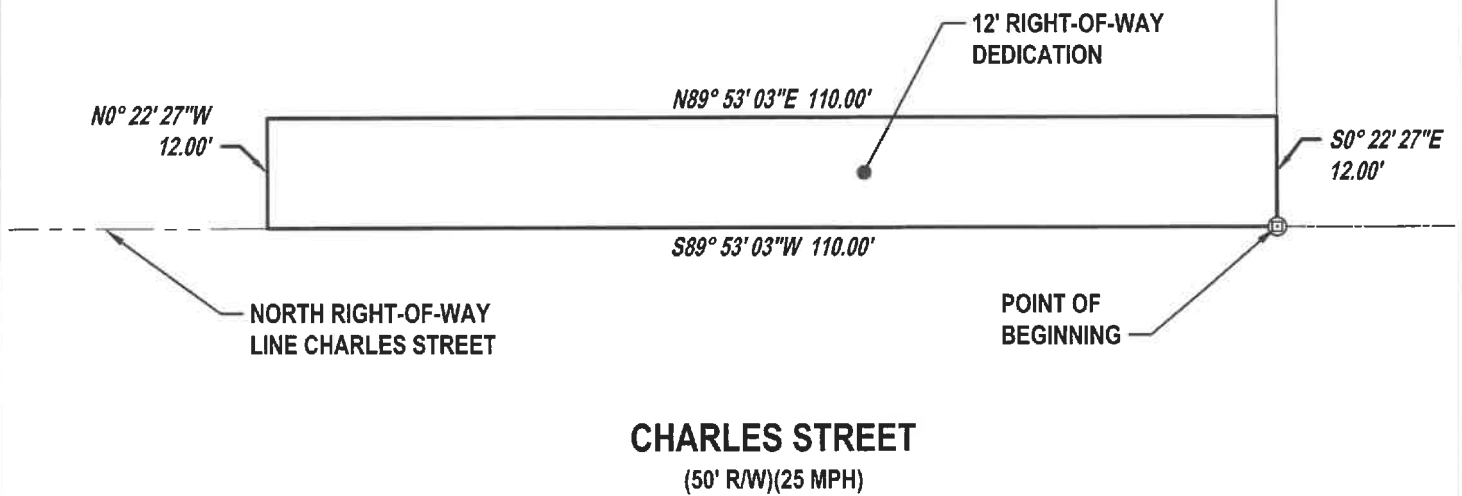
OWB: DAB
DATE:
4/1/2024
MAP SUBJECT:
12' RIGHT-OF-WAY
DEDICATION
SCALE:
1"=300'

TYPE OF SURVEY:
**SKETCH AND
LEGAL
ROW
DEDICATION**


Professional Surveyor
S A 1 A
SURVEYING, INC.
Residential Commercial Construction
Phone: 386.676.2363
711 Pineland Trail, Ormond Beach, Florida 32174 LB 8205



SUGAR MILL ELEMENTARY SCHOOL
LOT 8A (MB. 23, PG. 70)
VOLUSIA COUNTY, FL



**THIS IS NOT A SURVEY
SHEET 2 OF 3
SEE SHEET 3 FOR
SURVEYOR'S SIGNATURE**

OWB: DAB
DATE:
4/1/2024
MAP SUBJECT:
12' RIGHT-OF-WAY
DEDICATION
SCALE:
1"=20'

TYPE OF SURVEY:
**SKETCH AND
LEGAL
ROW
DEDICATION**


Professional Surveyor
Phone: 386.676.2363
711 Pineland Trail, Ormond Beach, Florida 32174 LB 8205
A1A
SURVEYING, INC.
Residential Commercial Construction

LEGAL DESCRIPTION:

A RIGHT-OF-WAY DEDICATION BEING A PORTION OF LOT 8A AS DESCRIBED IN MAP BOOK 23, PAGE 70, OFFICIAL RECORDS OF VOLUSIA COUNTY, FLORIDA.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF REFERENCE, COMMENCE AT THE NORTHEAST CORNER OF SECTION 4, TOWNSHIP 16 SOUTH RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA; RUN THENCE ALONG THE NORTH LINE OF SAID SECTION 4, SOUTH 89 DEGREES 39 MINUTES 35 SECONDS EAST FOR A DISTANCE OF 1463.48 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF 5TH STREET (A 50 FOOT RIGHT-OF-WAY AS CURRENTLY LAID OUT AND OCCUPIED); THENCE DEPARTING THE AFORESAID NORTH SECTION LINE OF SECTION 4 AND ALONG SAID WEST RIGHT-OF-WAY LINE OF 5TH STREET, SOUTH 00 DEGREES 20 MINUTES 37 SECONDS EAST FOR A DISTANCE OF 1513.02 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF CHARLES STREET (A 50 FOOT RIGHT-OF-WAY AS CURRENTLY LAID OUT AND OCCUPIED); THENCE DEPARTING THE AFORESAID WEST RIGHT-OF-WAY LINE OF 5TH STREET AND ALONG SAID NORTH RIGHT-OF-WAY LINE OF CHARLES STREET, SOUTH 89 DEGREES 43 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 475.00 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID NORTH RIGHT-OF-WAY LINE, SOUTH 89 DEGREES 53 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 110.00 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE 00 DEGREES 22 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 12.00 FEET; THENCE NORTH 89 DEGREES 53 MINUTES 03 SECONDS EAST FOR A DISTANCE OF 110.00 FEET; THENCE SOUTH 00 DEGREES 22 MINUTES 27 SECONDS EAST FOR A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING.

SAID RIGHT-OF-WAY DEDICATION CONTAINING 1,320 SQUARE FEET AND 0.030 ACRES MORE OR LESS.

GENERAL NOTES AND SURVEY REPORT:

1. BEARINGS SHOWN HEREON ARE REFERENCED TO FLORIDA STATE PLANE COORDINATES, EAST ZONE, NAD 1983/2011, U.S. SURVEY FEET, DERIVING A BEARING OF N09°39'35"W ON THE NORTH LINE OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 23 EAST. BEARINGS SHOWN FOR ANGLE MEASUREMENT ONLY.
2. LEGAL DESCRIPTION NEW PER A1A SURVEYING, INC.
3. SKETCH AND DESCRIPTION NOT VALID OR COMPLETE WITHOUT SHEETS 1 THROUGH 3.
4. SKETCH AND DESCRIPTION BASED ON A BOUNDARY SURVEY PERFORMED BY DEWBERRY, PROJECT No. 50149742, SURVEY DATE MARCH 24, 2022.

ABBREVIATIONS / LEGEND:

C	CURVE	LLC	LIMITED LIABILITY COMPANY
CA	CENTRAL ANGLE	LS	LICENSED SURVEYOR
CH	CHORD	NO.	NUMBER
CH BRG	CHORD BEARING	PG.	PAGE
FL	FLORIDA	P.B.	PLAT BOOK
L	LENGTH	R	RADIUS
LB	LICENSED BUSINESS	R/W	RIGHT-OF-WAY
LC	LICENSED CORPORATION	OR	ORDINANCE BOOK

SHEET 3 OF 3

THE FOREGOING PLAT IS CERTIFIED TO MEET THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS AS PER CHAPTER 5112.6, FLORIDA ADMINISTRATIVE CODE, AS PURSUANT TO SECTION 27.03, FLORIDA STATUTES.

04/01/2024
DAVID McMILLEN
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

OWB: DAB
DATE: 4/1/2024
MAP SUBJECT:
12' RIGHT-OF-WAY
DEDICATION
SCALE:
N/A

TYPE OF SURVEY:
SKETCH AND
LEGAL
ROW
DEDICATION


Professional Surveyor
S A I A
SURVEYING, INC.
Residential Commercial Construction
Phone: 386.676.2363
711 Pineland Trail, Ormond Beach, Florida 32174 LB 8205

**MEMORANDUM OF AGREEMENT
BY AND BETWEEN
THE VOLUSIA COUNTY SCHOOL BOARD
AND ADJ MADELINE COMMONS, LLC**

THIS AGREEMENT made and entered into this 25th day of June, 2024, by and between the **ADJ MADELINE COMMONS, LLC**, a Florida limited liability company, hereinafter, the “**DEVELOPER**,” and the **VOLUSIA COUNTY SCHOOL BOARD**, hereinafter, the “**BOARD**.”

W I T N E S S E T H

WHEREAS, the City of Port Orange has approved the Madeline Commons Planned Unit Development PUD Master Development Agreement, recorded at Book 8154, Page 833, Public Records of Volusia County, Florida, hereinafter referred to as “Madeline Commons”, which includes various infrastructure improvements to be completed by the DEVELOPER; and

WHEREAS, the improvements to be constructed by the DEVELOPER for Madeline Commons include an off-site right turn lane on Charles Street west of Madeline Commons at the entrance of Sugar Mill Elementary and associated landscaping, irrigation, milling and resurfacing, and stormwater improvements that are partially located on BOARD property, all of which shall be hereinafter referred to as the “Project,” a copy of which is attached hereto as Exhibit “A”; and

WHEREAS, also included in the Project is the proposed restoration of a stormwater drainage system (swale) that is located on BOARD property, specifically on the eastern boundary of Sugar Mill Elementary School, and shall be included with this Project; and

WHEREAS, the purpose of this Memorandum of Agreement is to memorialize the BOARD’S approval of the DEVELOPER’S Project and entry onto BOARD property to undertake and to complete those improvements on BOARD property included as part of the Project.

NOW, THEREFORE, and in consideration of the terms and conditions in this Agreement and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Recitals. The foregoing recitals are true and correct and form a material part of this Agreement upon which the parties have relied. The BOARD has resolved to enter into and to execute this Memorandum of Agreement.

Section 2. Purpose and General Intent. This Memorandum of Agreement establishes the expectations and general obligations of each party in relation to the construction of the off-site right turn lane; installation, and planting of landscaping; and the installation and construction of underground stormwater drainage facilities/system on BOARD property as part of the DEVELOPER’S Project.

Section 3. License and Right of Entry. The BOARD hereby grants to the DEVELOPER a License and Right of Entry onto the property as is described in Exhibit "B" hereto. This License and Right of Entry is to allow the DEVELOPER to enter, to occupy, and to use, subject to all the terms and conditions hereof, the premises located at Sugar Mill Elementary, 1101 Charles Street, Port Orange, Volusia County, Florida, only for the purposes of constructing the right turn lane, the restoration of the construction of underground stormwater drainage facilities/systems, and the installing and planting landscaping as described in Exhibit "A" hereto. This license shall carry with it such additional rights as are necessary or incidental to carrying out its intended purpose and shall continue until the DEVELOPER'S Project are complete.

Section 4. Fee Simple Transfer. The BOARD agrees it will convey fee simple interest in the real property described in Exhibit "B" hereto. Said property will be conveyed by the BOARD to the City of Port Orange by Warranty Deed, free and clear of all liens, encumbrances, and other interests. The BOARD's conveyance will be by donation to the City of Port Orange for the purpose of constructing and maintaining a segment of the off-site right turn lane from Charles Street by the DEVELOPER. The BOARD shall have extended possession of the property to allow the BOARD to control and to assure that the BOARD's existing ingress and egress remains in place until the DEVELOPER completes the improvements in front of Sugar Mill Elementary School that are part of the Project. Once the turn lane and restoration of the stormwater drainage (swale) is approved by the BOARD, the extended possession shall be terminated. Upon completion of the Project, the BOARD shall be notified and shall have the right to inspect and approve the turn lane and stormwater drainage improvements that are on BOARD property. The grant of extended possession shall be at no cost to the BOARD. In the event the DEVELOPER's Project is permanently abandoned, then the BOARD shall have the right to request the City of Port Orange to re-convey the real property to the BOARD.

Section 5. Maintenance of Improvements on BOARD property. After the DEVELOPER has completed all the construction, installation, planting and landscaping associated with the DEVELOPER'S Project, the BOARD will be responsible for perpetual maintenance of those improvements that remain on school property. Additionally, the BOARD will maintain the underground stormwater drainage system to be constructed on BOARD property.

Section 5. Notice. Any notice delivered with respect to this Agreement must be in writing and will be deemed to be delivered (whether or not actually received) when (i) hand-delivered to the persons designated below, or (ii) when deposited in the United States Mail, postage prepaid, certified mail, return-receipt requested, addressed to the person at the address for the party as set forth below, or such other address or to such other person as the party may have specified by written notice to the other party delivered according to this section:

To the DEVELOPER:
ADJ MADELINE COMMONS, LLC
Anand Jobalia
444 Seabreeze Blvd, Ste 805
Daytona Beach, FL 32118

To the BOARD:
Volusia County Schools Facilities Services
Ronald E. Young, Planning and Construction Director
3750 Olson Drive
Daytona Beach, FL 32124

Section 6. Either party hereto may unilaterally cancel this Agreement for refusal by either to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by such party in conjunction with this Agreement.

Remainder of this page intentionally left blank.

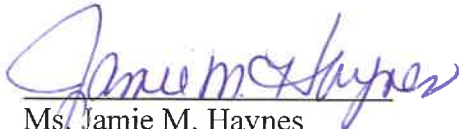
IN WITNESS WHEREOF, VOLUSIA COUNTY SCHOOL BOARD has executed this Agreement 6/25/2024 and ADJ MADELINE COMMONS, LLC has executed this Agreement 7/3/2024.

ADJ MADELINE COMMONS, LLC
a Florida limited liability company

By: RS-JD Fund I, LLC,
a Florida limited liability company,
its member

**VOLUSIA COUNTY
SCHOOL BOARD**

By: AJ-DJ Stokes, LLC,
a Florida limited liability company
its manager

By: 
Ms. Jamie M. Haynes
Board Chair

By: 
Anand Jobalia
Manager

Date: 6.25.2024

Date: 7/3/2024

ATTEST:
By: 
Dr. Carmen J. Balgobin
Superintendent

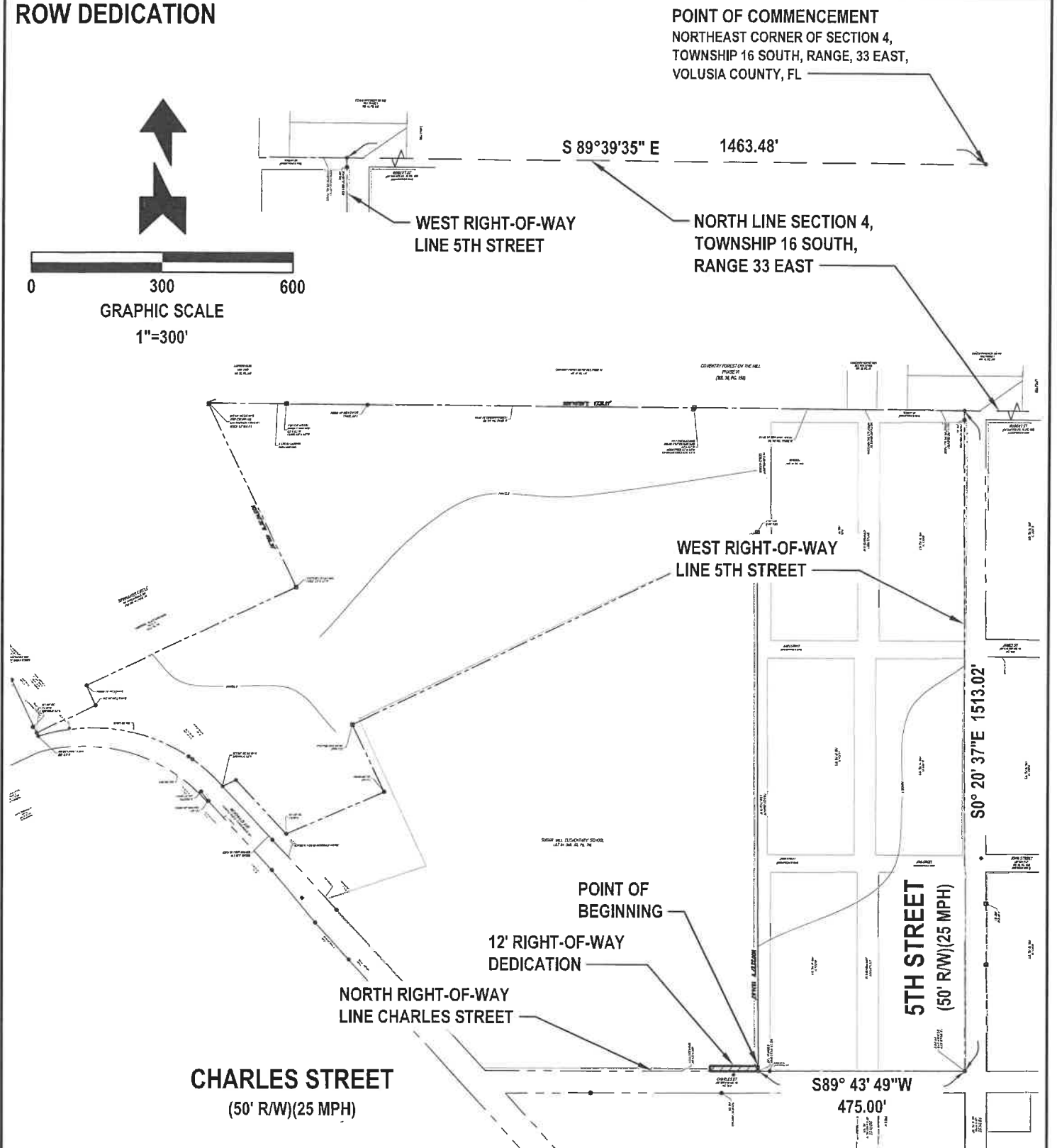
ATTEST:
By: 
Name: Logan Carter
Title: Project Coordinator

Approved as to Form and Content for the Board

By: 
Kevin W. Pendley, B.C.S.
General Counsel, Volusia County
School Board

EXHIBIT B

ROW DEDICATION



THIS IS NOT A SURVEY
SHEET 1 OF 3
SEE SHEET 3 FOR
SURVEYOR'S SIGNATURE

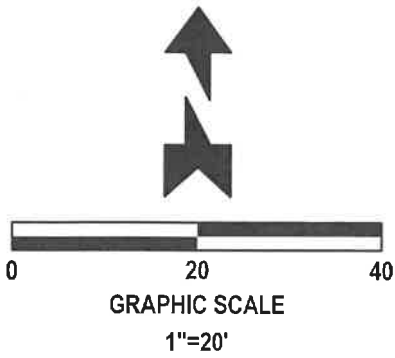
OWB: DAB
DATE:
4/1/2024
MAP SUBJECT:
12' RIGHT-OF-WAY
DEDICATION
SCALE:
1"=300'

TYPE OF SURVEY:
**SKETCH AND
LEGAL
ROW
DEDICATION**

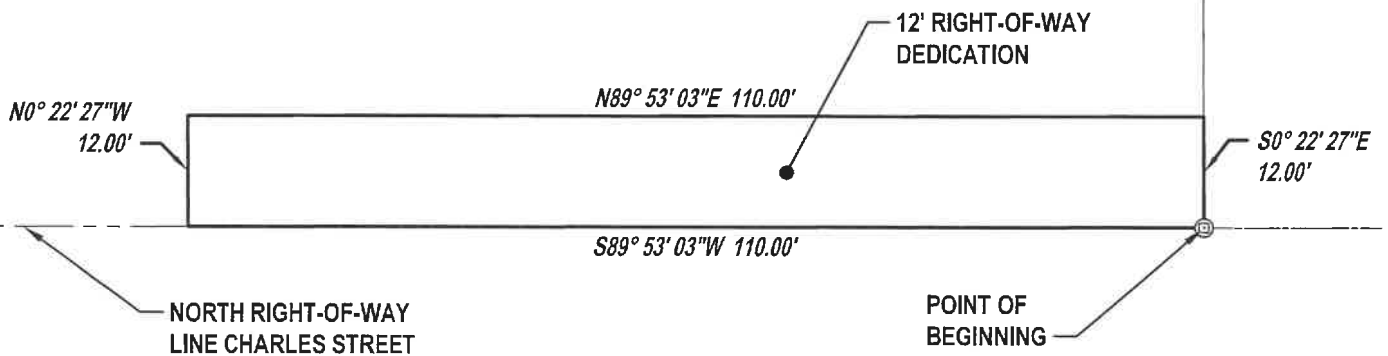


Phone: 386.676.2363
711 Pineland Trail, Ormond Beach, Florida 32174 LB 8205

S A 1 A
SURVEYING, INC.
Residential Commercial Construction



SUGAR MILL ELEMENTARY SCHOOL
LOT 8A (MB. 23, PG. 70)
VOLUSIA COUNTY, FL



CHARLES STREET
(50' R/W)(25 MPH)

THIS IS NOT A SURVEY
SHEET 2 OF 3
SEE SHEET 3 FOR
SURVEYOR'S SIGNATURE

OWB: DAB
DATE:

4/1/2024

MAP SUBJECT:
12' RIGHT-OF-WAY
DEDICATION

SCALE:

1"=20'

TYPE OF SURVEY:

**SKETCH AND
LEGAL
ROW
DEDICATION**



Phone: 386.676.2363

711 Pineland Trail, Ormond Beach, Florida 32174 LB 8205

S A I A
SURVEYING, INC.

Residential Commercial Construction

LEGAL DESCRIPTION:

A RIGHT-OF-WAY DEDICATION BEING A PORTION OF LOT 8A AS DESCRIBED IN MAP BOOK 23, PAGE 70, OFFICIAL RECORDS OF VOLUSIA COUNTY, FLORIDA.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

AS A POINT OF REFERENCE, COMMENCE AT THE NORTHEAST CORNER OF SECTION 4, TOWNSHIP 16 SOUTH RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA; RUN THENCE ALONG THE NORTH LINE OF SAID SECTION 4, SOUTH 89 DEGREES 39 MINUTES 35 SECONDS EAST FOR A DISTANCE OF 1463.48 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF 5TH STREET (A 50 FOOT RIGHT-OF-WAY AS CURRENTLY LAID OUT AND OCCUPIED); THENCE DEPARTING THE AFORESAID NORTH SECTION LINE OF SECTION 4 AND ALONG SAID WEST RIGHT-OF-WAY LINE OF 5TH STREET, SOUTH 00 DEGREES 20 MINUTES 37 SECONDS EAST FOR A DISTANCE OF 1513.02 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF CHARLES STREET (A 50 FOOT RIGHT-OF-WAY AS CURRENTLY LAID OUT AND OCCUPIED); THENCE DEPARTING THE AFORESAID WEST RIGHT-OF-WAY LINE OF 5TH STREET AND ALONG SAID NORTH RIGHT-OF-WAY LINE OF CHARLES STREET, SOUTH 89 DEGREES 43 MINUTES 49 SECONDS WEST FOR A DISTANCE OF 475.00 FEET FOR THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID NORTH RIGHT-OF-WAY LINE, SOUTH 89 DEGREES 53 MINUTES 03 SECONDS WEST FOR A DISTANCE OF 110.00 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE 00 DEGREES 22 MINUTES 27 SECONDS WEST FOR A DISTANCE OF 12.00 FEET; THENCE NORTH 89 DEGREES 53 MINUTES 03 SECONDS EAST FOR A DISTANCE OF 110.00 FEET; THENCE SOUTH 00 DEGREES 22 MINUTES 27 SECONDS EAST FOR A DISTANCE OF 12.00 FEET TO THE POINT OF BEGINNING.

SAID RIGHT-OF-WAY DEDICATION CONTAINING 1,320 SQUARE FEET AND 0.030 ACRES MORE OR LESS.

GENERAL NOTES AND SURVEY REPORT:

1. BEARINGS SHOWN HEREON ARE REFERENCED TO FLORIDA STATE PLANE COORDINATES, EAST ZONE, NAD 1983/2011, U.S. SURVEY FEET, DERIVING A BEARING OF N09°39'35"W ON THE NORTH LINE OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 23 EAST. BEARINGS SHOWN FOR ANGLE MEASUREMENT ONLY.
2. LEGAL DESCRIPTION NEW PER A1A SURVEYING, INC.
3. SKETCH AND DESCRIPTION NOT VALID OR COMPLETE WITHOUT SHEETS 1 THROUGH 3.
4. SKETCH AND DESCRIPTION BASED ON A BOUNDARY SURVEY PERFORMED BY DEWBERRY, PROJECT No. 50149742, SURVEY DATE MARCH 24, 2022.

ABBREVIATIONS / LEGEND:

C	CURVE	LLC	LIMITED LIABILITY COMPANY
CA	CENTRAL ANGLE	LS	LICENSED SURVEYOR
CH	CHORD	NO.	NUMBER
CH BRG	CHORD BEARING	PG.	PAGE
FL	FLORIDA	P.B.	PLAT BOOK
L	LENGTH	R	RADIUS
LB	LICENSED BUSINESS	R/W	RIGHT-OF-WAY
LC	LICENSED CORPORATION	OR	ORDINANCE BOOK

SHEET 3 OF 3

THE FOREGOING PLAT IS CERTIFIED TO MEET THE MINIMUM TECHNICAL STANDARDS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL LAND SURVEYORS AS PER CHAPTER 547.6, FLORIDA ADMINISTRATIVE CODE, AS PURSUANT TO SECTION 177.009, FLORIDA STATUTES.

04/01/2024
DAVID McMILLEN
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

OWB: DAB
DATE:

4/1/2024

MAP SUBJECT:
12' RIGHT-OF-WAY
DEDICATION

SCALE:
N/A

TYPE OF SURVEY:

SKETCH AND
LEGAL
ROW
DEDICATION


Professional Surveyor
A1A
SURVEYING, INC.
Residential Commercial Construction
Phone: 386.676.2363
711 Pineland Trail, Ormond Beach, Florida 32174 LB 8205

MADELINE COMMONS

A REPLAT OF ALL OF BLOCKS 22-27 AND THOSE PLATTED, UNIMPROVED RIGHTS-OF-WAYS, LYING NORTH OF BLOCKS 24 AND 25, WEST OF BLOCKS 25-27, BETWEEN BLOCKS 24-25, 23-26, 22-27, 22-23, 26-27, 23-24, AND 25-26, PORTANA PLAT NO. 1, MAP BOOK 10, PAGE 107, AND A PORTION OF GOVERNMENT LOT 2 OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33 EAST, AND A PORTION OF LOT 2, BLOCK 12, MAP OF DUNLAWTON, MAP BOOK 14, PAGE 83. SITUATED IN SECTION 04, TOWNSHIP 16 SOUTH, RANGE 33 EAST, CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA.

LEGAL DESCRIPTION:

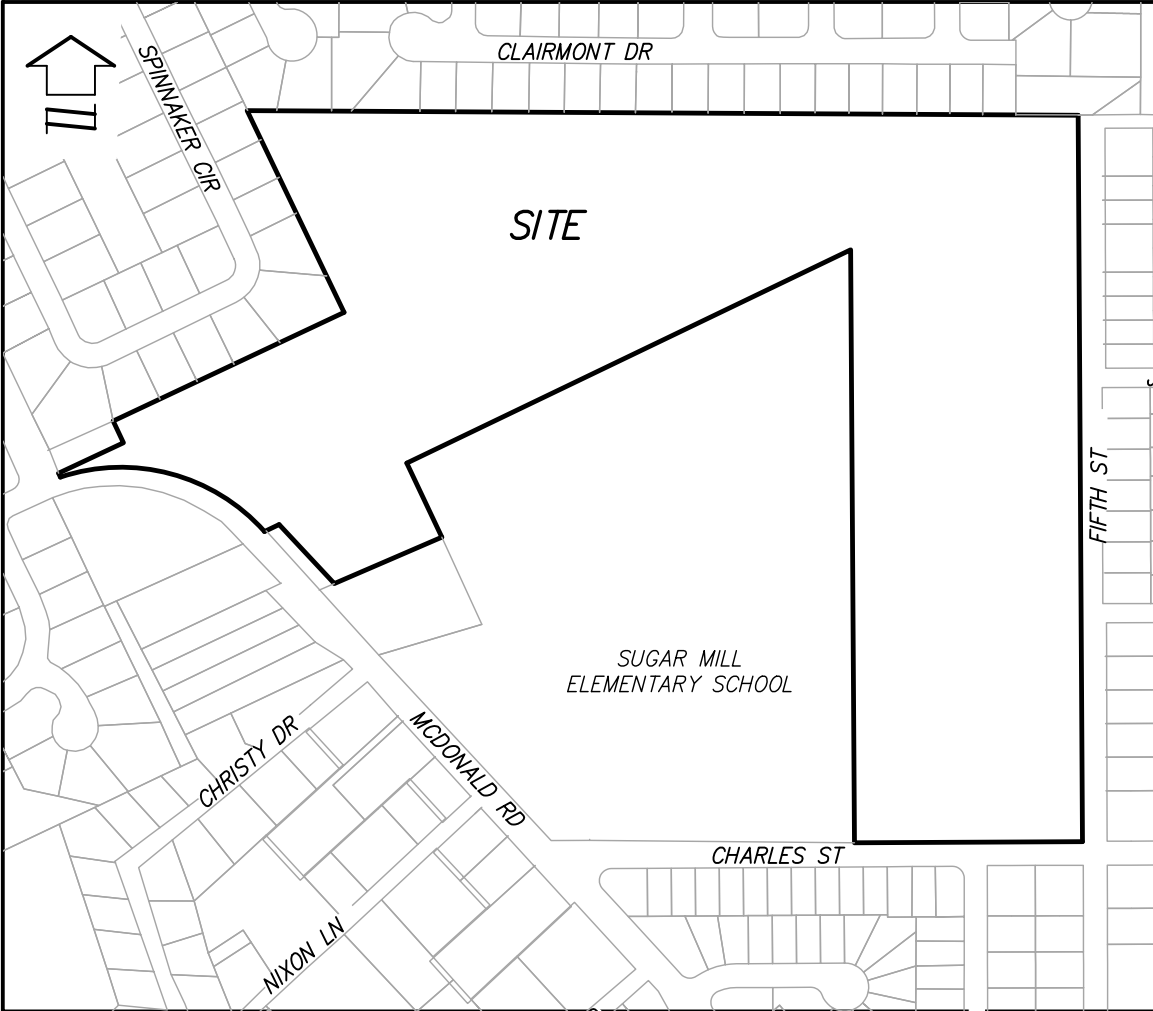
ALL OF BLOCKS 22-27 AND THOSE PLATTED UNIMPROVED RIGHTS-OF-WAYS LYING NORTH OF BLOCKS 24 AND 25, WEST OF BLOCKS 25-27, BETWEEN BLOCKS 24-25, 23-26, 22-27, 22-23, 26-27, 23-24, AND 25-26, PORTANA PLAT NO. 1, ACCORDING TO THE PLAT THEREOF RECORDED IN MAP BOOK 10, PAGE 107, OF THE PUBLIC RECORDS VOLUSIA COUNTY, FLORIDA, AND A PORTION OF GOVERNMENT LOT 2 OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33 EAST, AND A PORTION OF LOT 2, BLOCK 12, MAP OF DUNLAWTON, ACCORDING TO THE PLAT THEREOF RECORDED IN MAP BOOK 14, PAGE 83, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS.

COMMENCE AT THE NORTHEAST CORNER OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33 EAST; THENCE RUN N89°39'35"W ALONG THE NORTH LINE OF SAID SECTION 4, A DISTANCE OF 1463.48 FEET TO THE POINT OF BEGINNING; THENCE RUN S00°20'37"E, A DISTANCE OF 1513.02 FEET TO THE NORTH RIGHT-OF-WAY OF CHARLES STREET; THENCE RUN S89°43'49"W ALONG SAID NORTH RIGHT-OF-WAY, A DISTANCE OF 476.00 FEET; THENCE DEPARTING SAID NORTH RIGHT-OF-WAY, RUN N00°22'27"W, A DISTANCE OF 1234.90 FEET; THENCE S64°20'18"W, A DISTANCE OF 1025.66 FEET; THENCE S25°18'45"E, A DISTANCE OF 170.50 FEET; THENCE S66°38'02"W, A DISTANCE OF 243.77 FEET; THENCE N43°03'47"W, A DISTANCE OF 168.44 FEET; THENCE S64°20'18"W, A DISTANCE OF 33.99 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY OF MCDONALD ROAD AND A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 400.03 FEET, A CENTRAL ANGLE OF 66°41'22", A CHORD BEARING OF N75°05'16"W AND A CHORD DISTANCE OF 439.78 FEET; THENCE RUN WESTERLY ALONG THE ARC OF SAID CURVE, A DISTANCE OF 465.32 FEET TO THE INTERSECTION OF THE NORTH RIGHT-OF-WAY OF CHARLES STREET AND THE NORTHEASTERLY RIGHT-OF-WAY OF SAULS STREET; THENCE RUN N25°19'35"W ALONG THE NORTHERLY RIGHT-OF-WAY SAULS STREET, A DISTANCE OF 9.09 FEET; THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY, RUN N64°49'03"E, A DISTANCE OF 149.27 FEET; THENCE N25°10'57"W, A DISTANCE OF 50.00 FEET TO THE SOUTH LINE OF HARBORSIDE VILLAGE SUBDIVISION PHASE IV, MAP BOOK 47, PAGE 166; THENCE N64°49'03"E ALONG SAID SOUTH LINE, A DISTANCE OF 531.53 FEET TO THE EAST LINE OF SAID HARBORSIDE VILLAGE SUBDIVISION PHASE IV; THENCE N25°40'32"W ALONG SAID EAST LINE, A DISTANCE OF 466.30 FEET TO A POINT ON THE SOUTH LINE OF LANTERN PARK UNIT 2, MAP BOOK 32, PAGE 113, AND COVENTRY FOREST ON THE HILL PHASE IV, MAP BOOK 47, PAGE 176, AND COVENTRY FOREST ON THE HILL PHASE VI, MAP BOOK 36, PAGE 198, AND COVENTRY FOREST SUB SECTION SEVEN, MAP BOOK 42, PAGE 68, AND COVENTRY FOREST ON THE HILL PHASE I, MAP BOOK 44, PAGE 116, THENCE RUN S89°40'58"E ALONG SAID SOUTH LINES, A DISTANCE OF 1731.11 FEET TO THE POINT OF BEGINNING;

CONTAINING 1507262 SQUARE FEET OR 34.60 ACRES MORE OR LESS.

GENERAL NOTES:

- BEARINGS SHOWN HEREON ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 WITH 2011 ADJUSTMENT DERIVING A BEARING OF S89°40'58"E ALONG THE SOUTH LINE OF LANTERN PARK UNIT 2, MB. 32, PG. 113, AND COVENTRY FOREST ON THE HILL PHASE IV, MB. 47, PG. 176, AND COVENTRY FOREST ON THE HILL PHASE VI, MB. 36, PG. 198, AND COVENTRY FOREST SUB SECTION SEVEN, MB. 42, PG. 68, AND COVENTRY FOREST ON THE HILL PHASE I, MB. 44, PG. 116
- ALL LOT LINES INTERSECTING CURVES ARE RADIAL UNLESS NOTED OTHERWISE.
- ALL PLATTED UTILITY EASEMENTS, EXCLUSIVE OF PRIVATE EASEMENTS GRANTED TO OR OBTAINED BY A PARTICULAR ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY, SHALL ALSO BE EASEMENTS FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES. PROVIDED, HOWEVER, NO SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES SHALL INTERFERE WITH THE FACILITIES AND SERVICES OF AN ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY. IN THE EVENT A CABLE TELEVISION COMPANY DAMAGES THE FACILITIES OF A PUBLIC UTILITY, IT SHALL BE SOLELY RESPONSIBLE FOR THE DAMAGES PURSUANT TO SECTION 177.091(28), FLORIDA STATUTES. SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE AND OPERATION SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE AS ADOPTED BY THE FLORIDA PUBLIC SERVICE COMMISSION.
- ALL DRAINAGE EASEMENTS SHOWN HEREON ARE DEDICATED TO THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC., AND THE CITY OF PORT ORANGE.
- TRACTS "D", "E", AND "F", DEPICTED HEREON AS COMMON OPEN SPACE AND TREE PRESERVATION AREAS WILL BE OWNED AND MAINTAINED BY MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. ITS SUCCESSORS AND/OR ASSIGNS FOR THE PURPOSE OF COMMON OPEN SPACE AND TREE PRESERVATION.
- TRACT C (LIFT STATION), IS TO BE OWNED AND MAINTAINED BY THE CITY OF PORT ORANGE AS DEEDED IN FEE SIMPLE BY SEPARATE INSTRUMENT.
- TRACT A (BIO-RETENTION POND) AND TRACT B (BIO-RETENTION POND/ PRESERVATION EASEMENT), ARE TO BE OWNED AND MAINTAINED BY THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC., WITH ACCESS EASEMENTS RIGHTS IN FAVOR OF THE CITY OF PORT ORANGE.
- LANDSCAPE BUFFERS SHOWN WITHIN TRACTS A, B, D, E AND F ARE TO BE CONTROLLED AND MAINTAINED BY THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. THERE WILL BE NO CLEARING OR ALTERATION UNLESS OTHERWISE SHOWN ON APPROVED PLANS BY THE CITY OF PORT ORANGE.
- TREE PRESERVATION EASEMENTS OVER THE SPECIMEN AND HISTORIC TREES WITHIN THE SITE AND SHOWN HEREON ARE HEREBY GRANTED TO THE CITY OF PORT ORANGE.
- THIS PLAT IS SUBJECT TO ALL EASEMENTS OF RECORD AND RESERVATIONS OF EASEMENTS, INCLUDING BUT NOT LIMITED TO DRAINAGE, UTILITY, AND ACCESS EASEMENTS DEDICATED OR GRANTED HEREON WHICH SHALL BE LOCATED AS FOLLOWS EXCEPT AS OTHERWISE NOTED ON THE PLAT:
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- THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION SHALL BE RESPONSIBLE FOR THE OPERATION AND MAINTENANCE OF THE DRAINAGE SYSTEM SERVING THE AREA WITHIN THE BOUNDARIES OF THIS PLOT, AS DEPICTED ON THE STORMWATER MANAGEMENT PLAN APPROVED FOR THE DEVELOPMENT BY THE CITY OF PORT ORANGE, FLORIDA. SHOULD THE ASSOCIATION FAIL TO PERFORM THE MAINTENANCE OF THE DRAINAGE AND STORMWATER MANAGEMENT SYSTEMS, THE CITY OF PORT ORANGE SHALL BE ENTITLED TO ENTER UPON THE COMMON AREAS AND DESIGNATED EASEMENT AREAS TO PERFORM MAINTENANCE, REPAIR, OR REPLACE THE FACILITIES; AND, SHALL HAVE THE RIGHT TO LIEV ALL OWNERS OF RECORD IN PROPERTY FOR THE COST OF SUCH MAINTENANCE, REPAIR, AND REPLACEMENT, AS DEEMED BY THE CITY TO BE NECESSARY. IN THE EVENT OF TERMINATION, DISSOLUTION, OR FINAL LIQUIDATION OF THE ASSOCIATION, THE RESPONSIBILITY FOR THE OPERATION AND MAINTENANCE OF THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM WILL BE TRANSFERRED TO AND ACCEPTED BY AN ENTITY WHICH COMPLIES WITH SECTION 40C-42.027, F.A.C. AND BE APPROVED BY THE SAINT JOHNS RIVER WATER MANAGEMENT DISTRICT PRIOR TO SUCH TERMINATION, DISSOLUTION, OR LIQUIDATION.
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VICINITY MAP
1"=400'

LEGEND AND ABBREVIATIONS:

LB	LICENSED BUSINESS	U.E.	UTILITY EASEMENT
NO.	NUMBER	A.E.	ACCESS EASEMENT
LS	LAND SURVEYOR	MB	MAP BOOK
I.D.	IDENTIFICATION	ORB	OFFICIAL RECORDS BOOK
ORB	OFFICIAL RECORDS BOOK	PG(S)	PAGE(S)
E	CENTERLINE	R/W	RIGHT OF WAY
R	RADIUS	ESMT	EASEMENT
L	ARC LENGTH	SEC	SECTION
Δ	DELTA (CENTRAL ANGLE)	RLS	REGISTERED LAND SURVEYOR
C.D.	CHORD LENGTH	CMF	CONCRETE MONUMENT FOUND
C.B.	CHORD BEARING	IRC	IRON ROD AND CAP
R	RADIUS	IR	IRON ROD
POC	POINT ON CURVE	IP	IRON PIPE
POL	POINT ON LINE	PLS	PROFESSIONAL LICENSED SURVEYOR
POC	POINT OF COMPOUND CURVATURE	N.R.	NON-RADIAL LINE
PRC	POINT OF REVERSE CURVATURE	N.V.A.	NON-VEHICULAR ACCESS EASEMENT
PC	POINT OF CURVATURE	H.O.A.	HOMEOWNERS ASSOCIATION
PT	POINT OF TANGENCY	(M)	MEASURED DISTANCE
PNT	POINT OF NON-TANGENCY	□	FOUND CONCRETE MONUMENT AS NOTED
PI	POINT OF INTERSECTION	⊙	FOUND NAIL & DISK AS NOTED
P.O.C.	POINT OF COMMENCEMENT	⊙	SET NAIL & DISK (LB 8011)
P.O.B.	POINT OF BEGINNING	●	FOUND IRON ROD & CAP AS NOTED
O.A.	OVERALL	●	FOUND IRON ROD AS NOTED
D.E.	DRAINAGE EASEMENT	○	SET 5/8" IRON ROD & CAP (LB 8011)
P.U.E.	PUBLIC UTILITY EASEMENT		
D.U.E.	DRAINAGE AND UTILITY EASEMENT		

SHEET INDEX

SHEET 1	COVER SHEET, LEGAL DESCRIPTION, NOTES
SHEET 2	KEY SHEET
SHEET 3-7	DETAILS SHEET
SHEET 8	DRAINAGE EASEMENT DETAILS SHEET

PLANNING COMMISSION CERTIFICATE OF APPROVAL:

THIS STATEMENT HEREBY CERTIFIES THAT THE PLAT ENTITLED "MADELINE COMMONS" WAS APPROVED BY THE PORT ORANGE PLANNING COMMISSION ON _____.

BY: _____

CHAIRMAN OF THE PORT ORANGE PLANNING COMMISSION

CITY COUNCIL CERTIFICATE OF APPROVAL

THIS STATEMENT HEREBY CERTIFIES THAT THE PLAT ENTITLED "MADELINE COMMONS" WAS APPROVED BY THE PORT ORANGE CITY COUNCIL ON _____.

BY: _____
MAYOR OF THE CITY OF PORT ORANGE, FLORIDA

ATTEST: _____
CITY CLERK OF THE CITY OF PORT ORANGE, FLORIDA

MAP BOOK:

PAGE:

MADELINE COMMONS DEDICATION

KNOW ALL MEN BY THESE PRESENTS, THAT MADELINE COMMONS, LLC BEING THE OWNER IN FEE SIMPLE OF THE LANDS SHOWN AND DESCRIBED HEREON AS THE PLAT ENTITLED MADELINE COMMONS, LOCATED IN THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, HEREBY DEDICATES THE SAID LANDS AND PLAT FOR THE USES AND PURPOSES HEREIN EXPRESSED. ALL STREET AND ROAD RIGHTS OF WAY SHOWN ON THE PLAT ARE, UNLESS OTHERWISE INDICATED, DEDICATED TO THE CITY OF PORT ORANGE. ALL POTABLE WATER, RECLAIMED WATER, AND SANITARY SEWER MAINS CONSTRUCTED WITHIN THE AREA ENCOMPASSED WITHIN THE PLAT ARE DEDICATED TO THE CITY OF PORT ORANGE. ALL TREE PRESERVATION, DRAINAGE, MAINTENANCE, UTILITY & ACCESS EASEMENTS SHOWN OR DESCRIBED ON THE PLAT ARE, UNLESS OTHERWISE INDICATED, GRANTED TO THE CITY OF PORT ORANGE FOR THE PURPOSES DESCRIBED IN THE GENERAL NOTES. ALL DRAINAGE AND MAINTENANCE EASEMENTS ARE GRANTED TO MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. FOR THE PURPOSES DESCRIBED IN THE GENERAL NOTES. TRACTS A, B, D, E, AND F ARE ALL GRANTED TO MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. FOR THE PURPOSES DESCRIBED IN THE GENERAL NOTES. IN WITNESS WHEREOF, THE OWNER HAS CAUSED THESE PRESENTS TO BE SIGNED BY THE OFFICER NAMED BELOW ON _____, A.D. 2022.

BY: MADELINE COMMONS, LLC, A FLORIDA LIMITED LIABILITY COMPANY

NAME: MOISHE GOLDSCHMIDT

SIGNED: _____

TITLE: MANAGER

WITNESS (SIGNATURE)

WITNESS (PRINTED)

WITNESS (SIGNATURE)

WITNESS (PRINTED)

STATE OF FLORIDA, COUNTY OF VOLUSIA

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 2022, BY MOISHE GOLDSCHMIDT AS MANAGER OF MADELINE COMMONS LLC, A FOREIGN LIMITED LIABILITY COMPANY ON BEHALF OF THE COMPANY. SAID PERSON ACKNOWLEDGED BEFORE ME BY MEANS OF [_____] PHYSICAL PRESENCE OR [_____] ONLINE NOTARIZATION AND [_____] IS PERSONALLY KNOWN TO ME OR [_____] HAS PRODUCED [_____] AS IDENTIFICATION.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL ON THE ABOVE DATE.

SIGNATURE OF NOTARY _____

NOTARY PRINTED NAME _____

MY COMMISSION EXPIRES _____

MY COMMISSION NO. _____

QUALIFICATION STATEMENT OF SURVEYOR AND MAPPER

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED BEING A PROFESSIONAL SURVEYOR AND MAPPER HAS PREPARED THE FOREGOING PLAT AND IT WAS MADE UNDER MY DIRECTION AND SUPERVISION; AND THAT THIS PLAT COMPLIES WITH ALL OF THE SURVEY REQUIREMENTS AS REQUIRED BY CHAPTER 177, FLORIDA STATUTES; AND THAT SAID LAND IS LOCATED IN ORANGE COUNTY, FLORIDA.

WILLIAM P. HINKLE _____

DATE _____

FLORIDA REGISTRATION NUMBER: 4633

(SEAL)

DEWBERRY

131 WEST KALEY STREET

ORLANDO, FLORIDA 32806

CERTIFICATE OF AUTHORIZATION NUMBER LB 8011

REVIEW BY SURVEYOR AND MAPPER FOR THE CITY

I HEREBY CERTIFY TO THE CITY, THAT I HAVE REVIEWED THE FOREGOING PLAT FOR COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 177, PART I FLORIDA STATUTES, AND THAT I HAVE PROVIDED BOTH THE CITY AND THE SURVEYOR AND MAPPER OF RECORD A LIST OF DEVIATIONS, IF ANY, FROM SUCH REQUIREMENTS.

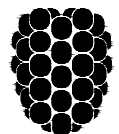
(SIGNATURE) _____ DATE: _____

PRINT NAME/REGISTRATION NUMBER _____

CERTIFICATE OF CLERK

I HEREBY CERTIFY THAT I HAVE EXAMINED THE FOREGOING PLAT AND FIND THAT IT COMPLIES IN FORM, WITH ALL THE REQUIREMENTS OF CHAPTER 177, PART I FLORIDA STATUTES, AND THAT IT WAS FILED FOR RECORD ON _____ AT _____ A.M./P.M.

CLERK OF CIRCUIT COURT
VOLUSIA COUNTY, FLORIDA



Dewberry

110 WEST INDIANA AVENUE, SUITE 202
DELAND, FLORIDA 32720
PHONE: 386.785.0469 FAX: 386.785.0715
WWW.DEWBERRY.COM

CERTIFICATE OF AUTHORIZATION NO. LB 8011

NOTICE

THIS PLAT, AS RECORDED IN ITS GRAPHIC FORM, IS THE OFFICIAL DEPICTION OF THE SUBDIVIDED LANDS DESCRIBED HEREIN AND WILL IN NO CIRCUMSTANCES BE SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT.

THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.

MADELINE COMMONS

MAP BOOK:

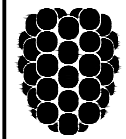
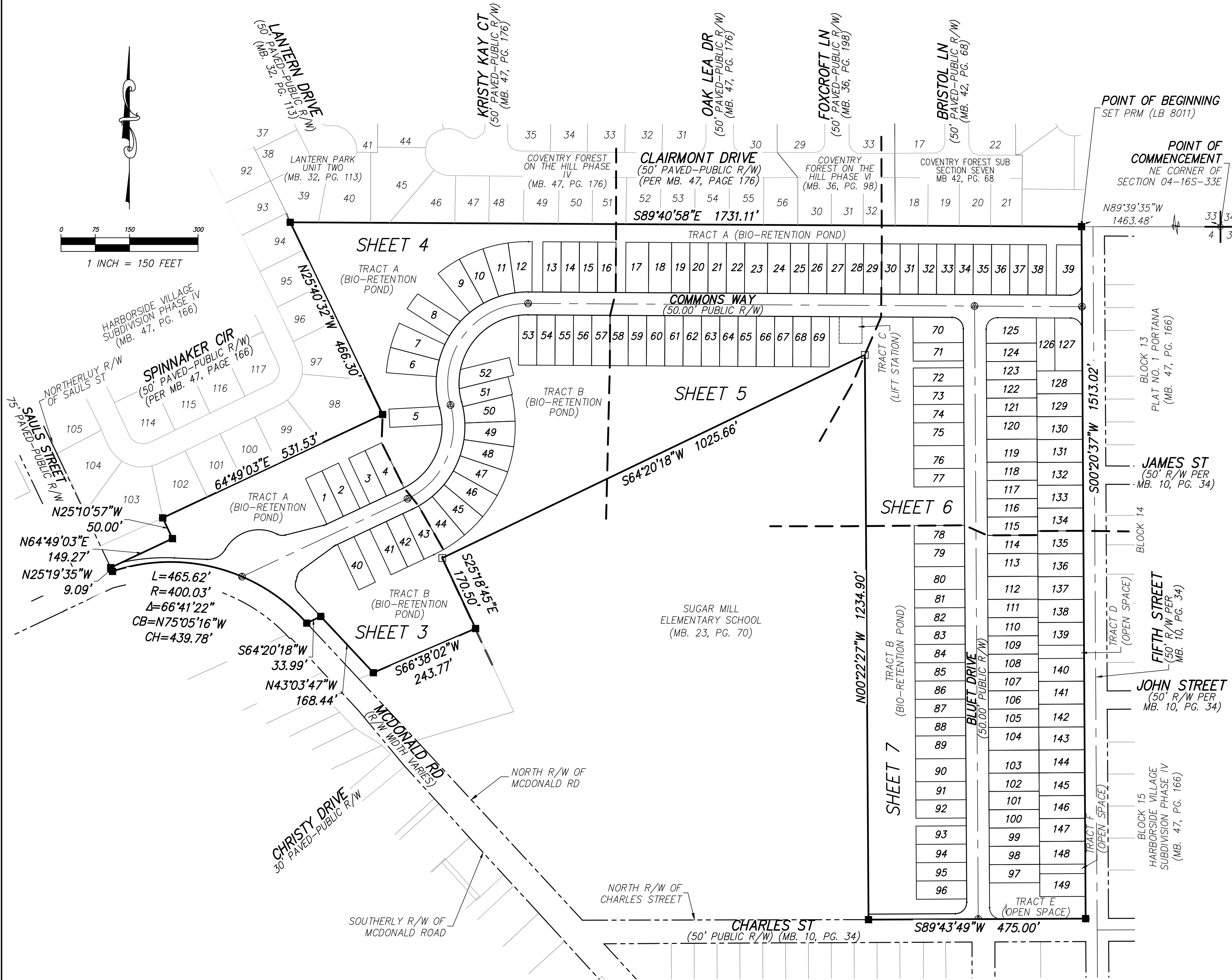
PAGE:

A REPLAT OF ALL OF BLOCKS 22-27 AND THOSE PLATTED, UNIMPROVED RIGHTS-OF-WAYS, LYING NORTH OF BLOCKS 24 AND 25, WEST OF BLOCKS 25-27, BETWEEN BLOCKS 24-25, 23-26, 22-27, 22-23, 26-27, 23-24, AND 25-26, PORTANA PLAT NO. 1, MAP BOOK 10, PAGE 107, AND A PORTION OF GOVERNMENT LOT 2 OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33 EAST, AND A PORTION OF LOT 2, BLOCK 12, MAP OF DUNLAWTON, MAP BOOK 14, PAGE 83.
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GENERAL NOTES:

1. BEARINGS SHOWN HEREON ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 WITH 2011 ADJUSTMENT DERIVING A BEARING OF S89°40'58"E ALONG THE SOUTH LINE OF LANTERN PARK UNIT 2, MB. 32, PG. 113, AND COVENTRY FOREST ON THE HILL PHASE IV, MB. 47, PG. 176, AND COVENTRY FOREST ON THE HILL PHASE VI, MB. 36, PG. 198, AND COVENTRY FOREST SUB SECTION SEVEN, MB. 42, PG. 68, AND COVENTRY FOREST ON THE HILL PHASE 1, MB. 44, PG. 116
2. ALL LOT LINES INTERSECTING CURVES ARE RADIAL UNLESS NOTED OTHERWISE.
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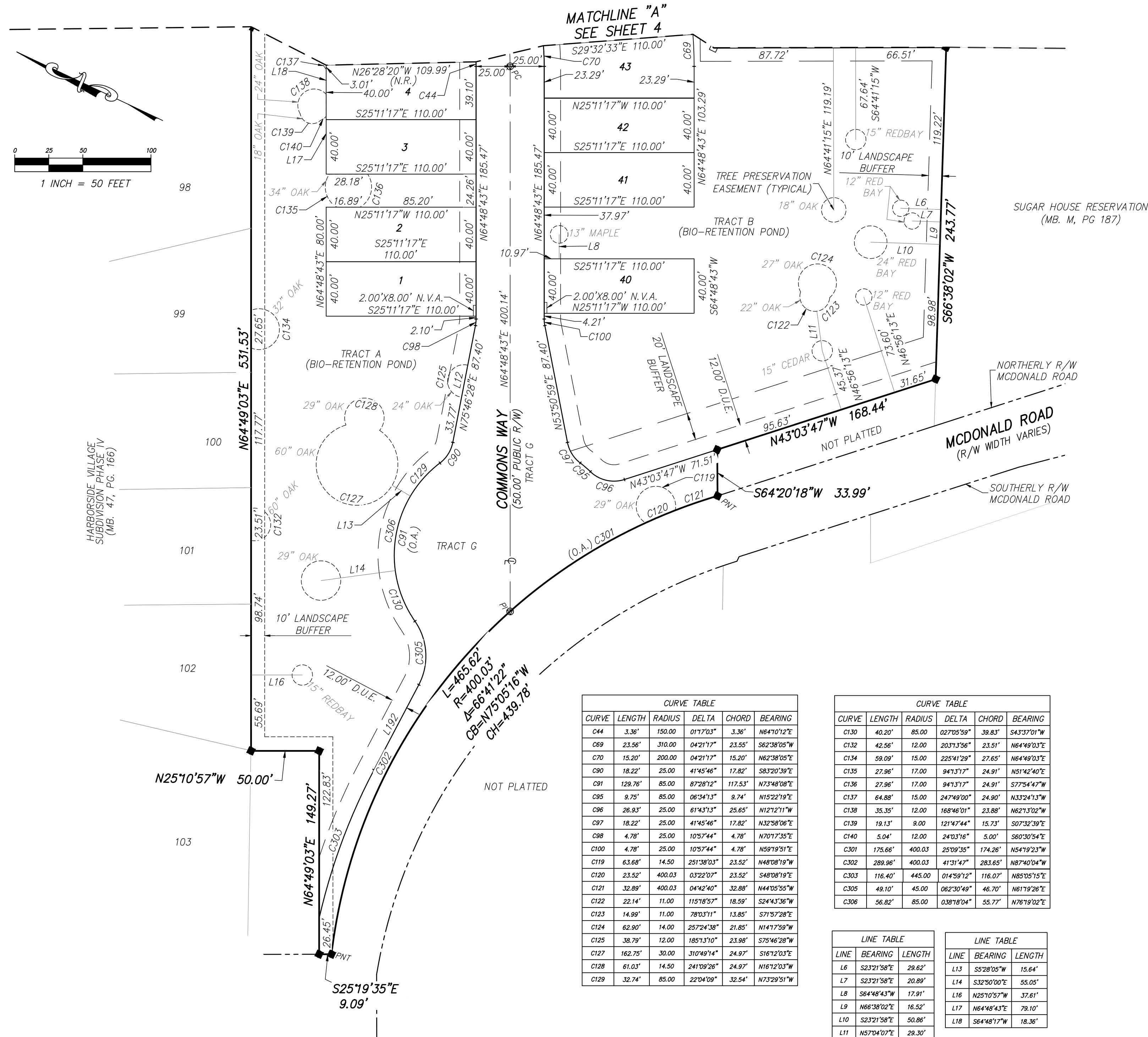
Dewberry

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PHONE: 386.765.0469 FAX: 386.765.0715
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CERTIFICATE OF AUTHORIZATION NO. LB 8011

MADELINE COMMONS

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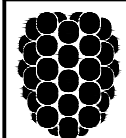


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15. "TREE CONSERVATION EASEMENT AS DEFINED ON THIS PLOT IS FOR THE EXPRESS PURPOSE OF THE PRESERVATION AND LONGEVITY OF THE TREES THEREIN. ACTIONS DETRIMENTAL TO TREE HEALTH SURVIVAL WITHIN THE BOUNDARIES OF THE DRIPLINE ARE PROHIBITED WITHOUT THE EXPRESS PERMISSION OF THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE CONSERVATION EASEMENT. NOTHING HEREIN SHALL, HOWEVER, BE CONSTRUED TO PREVENT NATURAL VEGETATION WITHIN THE EASEMENT AREA FROM BEING CLEARED BY HAND TO PROVIDE A NEAT, MANICURED APPEARANCE. IN ADDITION, NOTHING HEREIN SHALL BE CONSTRUED TO PREVENT THE PLACEMENT OF SOD, IRRIGATION AND LANDSCAPE PLANTS OR TO PREVENT NORMAL LAWN MAINTENANCE SUCH AS MOWING, EDGING AND WEEDING NOT HARMFUL TO THE OBJECTIVE OF TREE PRESERVATION WITHIN THE EASEMENT AREA. ANY PROPOSED CONSTRUCTION OR OTHER USE WITHIN A CONSERVATION EASEMENT MUST BE REVIEWED AND APPROVED BY THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE CONSERVATION EASEMENT."
16. THE NON-VEHICULAR ACCESS EASEMENTS LOCATED ON LOTS 39, 70, 125 AND 127 ARE TO BE GRANTED TO AND CONTROLLED BY THE CITY OF PORT ORANGE.
17. PLANTINGS AND IRRIGATION SYSTEM IN THE ROUND-ABOUT WILL BE OWNED AND MAINTAINED BY THE DEVELOPMENT AND THEIR HOA.

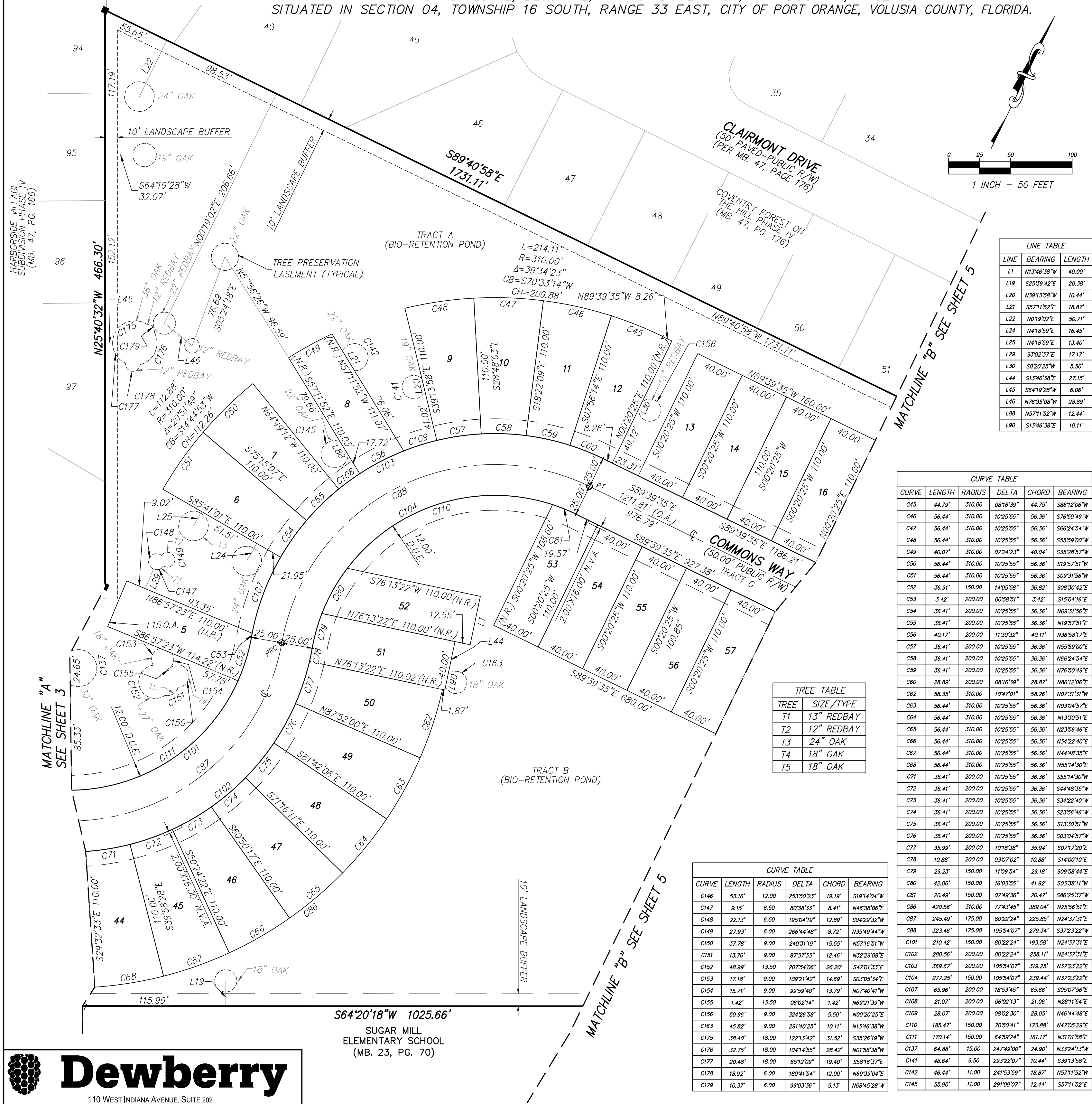
**Dewberry**

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CERTIFICATE OF AUTHORIZATION NO. LB 8011

MADELINE COMMONS

A REPLAT OF ALL OF BLOCKS 22-27 AND THOSE PLATTED, UNIMPROVED RIGHTS-OF-WAYS, LYING NORTH OF BLOCKS 24 AND 25, WEST OF BLOCKS 25-27, BETWEEN BLOCKS 24-25, 23-26, 22-23, 22-27, 23-24, AND 25-26, PORTANA PLAT NO. 1, MAP BOOK 10, PAGE 107, AND A PORTION OF GOVERNMENT LOT 2 OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33 EAST, AND A PORTION OF LOT 2, BLOCK 12, MAP OF DUNLAWTON, MAP BOOK 14, PAGE 83.

SITUATED IN SECTION 04, TOWNSHIP 16 SOUTH, RANGE 33 EAST, CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA.



MAP BOOK:

PAGE:

GENERAL NOTES:

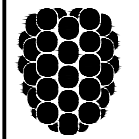
- BEARINGS SHOWN HEREON ARE BASED ON THE NORTH AMERICAN DATUM OF 1983, WITH 2011 ADJUSTMENT DERIVING A BEARING OF S89°40'58"E ALONG THE SOUTH LINE OF LANTERN PARK UNIT 2, MB. 32, PG. 113, AND COVENTRY FOREST ON THE HILL PHASE IV, MB. 47, PG. 176, AND COVENTRY FOREST ON THE HILL PHASE VI, MB. 36, PG. 198, AND COVENTRY FOREST SUB SECTION SEVEN, MB. 42, PG. 68, AND COVENTRY FOREST ON THE HILL PHASE 1, MB. 44, PG. 116.
- ALL LOT LINES INTERSECTING CURVES ARE RADIAL UNLESS NOTED OTHERWISE.
- ALL PLATTED UTILITY EASEMENTS, EXCLUSIVE OF PRIVATE EASEMENTS GRANTED TO OR OBTAINED BY A PARTICULAR ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY, SHALL ALSO BE EASEMENTS FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES; PROVIDED, HOWEVER, NO SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES SHALL INTERFERE WITH THE FACILITIES AND SERVICES OF AN ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY. IN THE EVENT A CABLE TELEVISION COMPANY DAMAGES THE FACILITIES OF A PUBLIC UTILITY, IT SHALL BE SOLELY RESPONSIBLE FOR THE DAMAGES PURSUANT TO SECTION 177.091(28), FLORIDA STATUTES. SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE AND OPERATION SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE AS ADOPTED BY THE FLORIDA PUBLIC SERVICE COMMISSION.
- ALL DRAINAGE EASEMENTS SHOWN HEREON ARE DEDICATED TO THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC., AND THE CITY OF PORT ORANGE.
- TRACTS "D", "E", AND "F", DEPICTED HEREON AS COMMON OPEN SPACE AND TREE PRESERVATION AREAS WILL BE OWNED AND MAINTAINED BY MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. ITS SUCCESSORS AND/OR ASSIGNS FOR THE PURPOSE OF COMMON OPEN SPACE AND TREE PRESERVATION.
- TRACT C (LIFT STATION), IS TO BE OWNED AND MAINTAINED BY THE CITY OF PORT ORANGE AS DEEDED IN FEE SIMPLE BY SEPARATE INSTRUMENT.
- TRACT A (BIO-RETENTION POND) AND TRACT B (BIO-RETENTION POND)/ PRESERVATION EASEMENTS ARE TO BE OWNED AND MAINTAINED BY THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. WITH ACCESS EASEMENTS RIGHTS IN FAVOR OF THE CITY OF PORT ORANGE.
- LANDSCAPE BUFFERS SHOWN WITHIN TRACTS A, B, D, E AND F ARE TO BE CONTROLLED BY THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. THERE WILL BE NO CLEARING OR ALTERATION UNLESS OTHERWISE SHOWN ON APPROVED PLANS BY THE CITY OF PORT ORANGE.
- TREE PRESERVATION EASEMENTS OVER THE SPECIMEN AND HISTORIC TREES WITHIN THE SITE AND SHOWN HEREON ARE HEREBY GRANTED TO THE CITY OF PORT ORANGE.
- THIS PLAT IS SUBJECT TO ALL EASEMENTS OF RECORD AND PRESERVATIONS OF EASEMENTS, INCLUDING BUT NOT LIMITED TO DRAINAGE, UTILITY, AND ACCESS EASEMENTS DEDICATED OR GRANTED HEREON WHICH SHALL BE LOCATED AS FOLLOWS EXCEPT AS OTHERWISE NOTED ON THE PLAT:
ENTIRE STREET FRONTS OF LOTS AND COMMON OPEN SPACE AREAS:
12.00 FEET WIDE
- THIS PLAT IS SUBJECT TO DECLARATION OF COVENANTS AND RESTRICTIONS AS RECORDED IN OFFICIAL RECORDS BOOK _____, PAGE _____, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.
- THIS PLAT IS SUBJECT TO MADELINE COMMONS PLANNED UNIT DEVELOPMENT MASTER DEVELOPMENT AGREEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 8154, PAGE 833, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.
- THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, SHALL BE RESPONSIBLE FOR THE OPERATION AND MAINTENANCE OF THE DRAINAGE SYSTEM SERVING THE AREA WITHIN THE BOUNDARIES OF THIS PLAT, AS DEPICTED ON THE STORMWATER MANAGEMENT PLAN APPROVED FOR THE DEVELOPMENT BY THE CITY OF PORT ORANGE, FLORIDA. SHOULD THE ASSOCIATION FAIL TO PERFORM THE MAINTENANCE OF THE DRAINAGE AND STORMWATER MANAGEMENT SYSTEMS, THE CITY OF PORT ORANGE SHALL BE ENTITLED TO ENTER UPON THE COMMON AREAS AND DESIGNATED EASEMENT AREAS TO PERFORM MAINTENANCE, REPAIR, OR REPLACE THE FACILITIES; AND, SHALL HAVE THE RIGHT TO LIEN ALL OWNERS OF RECORD IN PROPERTY FOR THE COST OF SUCH MAINTENANCE, REPAIR, AND REPLACEMENT AS DEEMED BY THE CITY TO BE NECESSARY IN THE EVENT OF TERMINATION, DISSOLUTION, OR FINAL LIQUIDATION OF THE ASSOCIATION. THE RESPONSIBILITY FOR THE OPERATION AND MAINTENANCE OF THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM WILL BE TRANSFERRED TO AND ACCEPTED BY AN ENTITY WHICH COMPLIES WITH SECTION 406-42.027, F.A.C. AND BE APPROVED BY THE SAINT JOHN'S RIVER WATER MANAGEMENT DISTRICT PRIOR TO SUCH TERMINATION, DISSOLUTION, OR LIQUIDATION.
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- PLANTINGS AND IRRIGATION SYSTEM IN THE ROUND-ABOUT WILL BE OWNED AND MAINTAINED BY THE DEVELOPMENT AND THEIR HOA.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N13°46'38"W	40.00'
L19	S25°39'44"E	20.38'
L20	N39°13'58"W	10.44'
L21	S57°11'52"E	18.87'
L22	N07°19'02"E	50.71'
L24	N41°03'09"E	16.45'
L25	N41°03'09"E	13.40'
L29	S32°02'37"E	12.17'
L30	S02°02'25"W	5.50'
L44	S13°46'38"E	27.15'
L45	S64°19'28"W	6.08'
L46	N76°32'08"E	28.89'
L88	N57°11'52"W	12.44'
L90	S13°46'38"E	10.11'

CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	CHORD
C45	44.79'	310.00'	08°16'39"	44.75'
C46	56.44'	310.00'	10°25'55"	56.36'
C47	56.44'	310.00'	10°25'55"	56.36'
C48	56.44'	310.00'	10°25'55"	56.36'
C49	40.07'	310.00'	07°24'23"	40.04'
C50	56.44'	310.00'	10°25'55"	56.36'
C51	56.44'	310.00'	10°25'55"	56.36'
C52	36.91'	150.00'	14°05'58"	36.82'
C53	3.42'	200.00'	00°58'51"	3.42'
C54	36.41'	200.00'	10°25'55"	36.36'
C55	36.41'	200.00'	10°25'55"	36.36'
C56	40.17'	200.00'	11°30'32"	40.11'
C57	36.41'	200.00'	10°25'55"	36.36'
C58	36.41'	200.00'	10°25'55"	36.36'
C59	36.41'	200.00'	10°25'55"	36.36'
C60	28.89'	200.00'	08°16'39"	28.87'
C62	58.35'	310.00'	10°47'01"	58.26'
C63	56.44'	310.00'	10°25'55"	56.36'
C64	56.44'	310.00'	10°25'55"	56.36'
C65	56.44'	310.00'	10°25'55"	56.36'
C66	56.44'	310.00'	10°25'55"	56.36'
C67	56.44'	310.00'	10°25'55"	56.36'
C68	56.44'	310.00'	10°25'55"	56.36'
C71	36.41'	200.00'	10°25'55"	36.36'
C72	36.41'	200.00'	10°25'55"	36.36'
C73	36.41'	200.00'	10°25'55"	36.36'
C74	36.41'	200.00'	10°25'55"	36.36'
C75	36.41'	200.00'	10°25'55"	36.36'
C76	36.41'	200.00'	10°25'55"	36.36'
C77	35.99'	200.00'	10°16'38"	35.94'
C78	10.88'	200.00'	03°07'02"	10.88'
C79	29.23'	150.00'	11°09'54"	29.18'
C80	42.06'	150.00'	16°03'55"	41.92'
C81	20.49'	150.00'	07°49'36"	20.47'
C86	420.56'	310.00'	77°43'45"	399.04'
C87	245.49'	175.00'	80°22'24"	225.85'
C88	323.46'	175.00'	105°54'07"	279.34'
C101	210.42'	150.00'	80°22'24"	193.58'
C102	280.56'	200.00'	80°22'24"	258.11'
C103	369.67'	200.00'	105°54'07"	319.25'
C104	271.25'	150.00'	105°54'07"	239.44'
C107	65.96'	200.00'	18°53'45"	65.66'
C108	21.07'	200.00'	06°02'13"	21.06'
C109	28.07'	200.00'	08°02'30"	28.05'
C110	185.47'	150.00'	70°50'41"	173.88'
C111	170.14'	150.00'	64°59'34"	161.17'
C137	64.88'	15.00'	24°48'00"	24.90'
C141	48.64'	9.50'	29°52'07"	10.44'
C142	46.44'	11.00'	24°13'59"	18.87'
C145	55.90'	11.00'	29°19'07"	12.44'

TREE TABLE		
TREE	SIZE/TYPE	
T1	13" REDBAY	
T2	12" REDBAY	
T3	24" OAK	
T4	18" OAK	
T5	18" OAK	

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	BEARING
C146	53.16'	12.00'	253°50'21"	19.19'	S19°14'04"W
C147	9.15'	6.50'	80°38'31"	8.41'	N46°38'06"E
C148	22.11'	6.50'	195°04'18"	12.89'	S04°29'32"W
C149	27.83'	6.00'	266°44'46"	8.72'	N35°48'44"W
C150	37.78'	9.00'	240°31'18"	15.55'	N57°05'51"W
C151	13.76'	9.00'	87°37'33"	12.46'	N32°29'08"E
C152	48.89'	13.50'	207°54'08"	26.20'	S47°01'32"E
C153	17.18'	8.00'	109°21'42"	14.69'	S23°05'34"E
C154	15.77'	8.00'	99°59'40"	13.79'	N07°40'41"W
C155	1.42'	13.50'	08°02'47"	1.42'	N89°21'30"W
C156	50.86'	9.00'	324°28'38"	5.50'	N09°20'25"E
C163	45.62'	9.00'	291°40'25"	10.11'	N13°46'38"W
C175	38.40'	18.00'	122°13'42"	31.52'	S39°28'19"W
C176	32.75'	18.00'	104°14'35"	28.42'	N01°56'38"W
C177	20.48'	18.00'	65°12'09"	18.40'	S58°16'37"E
C178	18.82'	6.00'	180°41'54"	12.00'	N89°39'04"E
C179	10.37'	6.00'	99°03'36"	8.13'	N68°45'28"W



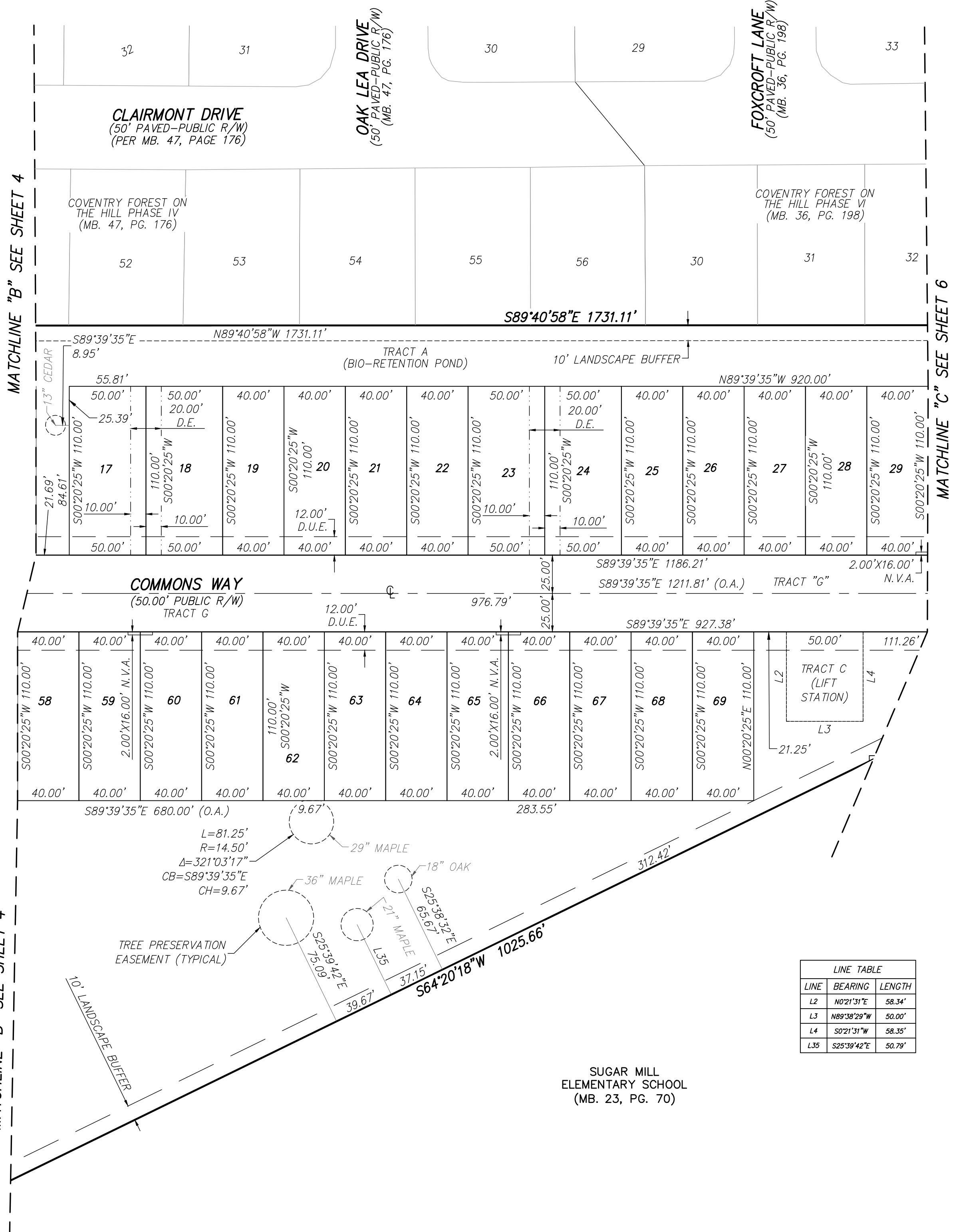
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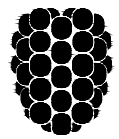
CERTIFICATE OF AUTHORIZATION NO. LB 8011

MADELINE COMMONS

A REPLAT OF ALL OF BLOCKS 22-27 AND THOSE PLATTED, UNIMPROVED RIGHTS-OF-WAYS, LYING NORTH OF BLOCKS 24 AND 25, WEST OF BLOCKS 25-27, BETWEEN BLOCKS 24-25, 23-26, 22-27, 22-23, 26-27, 23-24, AND 25-26, PORTANA PLAT NO. 1, MAP BOOK 10, PAGE 107, AND A PORTION OF GOVERNMENT LOT 2 OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33 EAST, AND A PORTION OF LOT 2, BLOCK 12, MAP OF DUNLAWTON, MAP BOOK 14, PAGE 83.
SITUATED IN SECTION 04, TOWNSHIP 16 SOUTH, RANGE 33 EAST, CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA.



LINE TABLE		
LINE	BEARING	LENGTH
L2	N02°1'31"E	58.34'
L3	N89°38'29"W	50.00'
L4	S02°1'31"W	58.35'
L35	S25°39'42"E	50.79'



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GENERAL NOTES:

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- TRACT C (LIFT STATION), IS TO BE OWNED AND MAINTAINED BY THE CITY OF PORT ORANGE AS DEEDED IN FEE SIMPLE BY SEPARATE INSTRUMENT.
- TRACT A (BIO-RETENTION POND) AND TRACT B (BIO-RETENTION POND/PRESERVATION EASEMENTS) ARE TO BE OWNED AND MAINTAINED BY THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. WITH ACCESS EASEMENTS RIGHTS IN FAVOR OF THE CITY OF PORT ORANGE.
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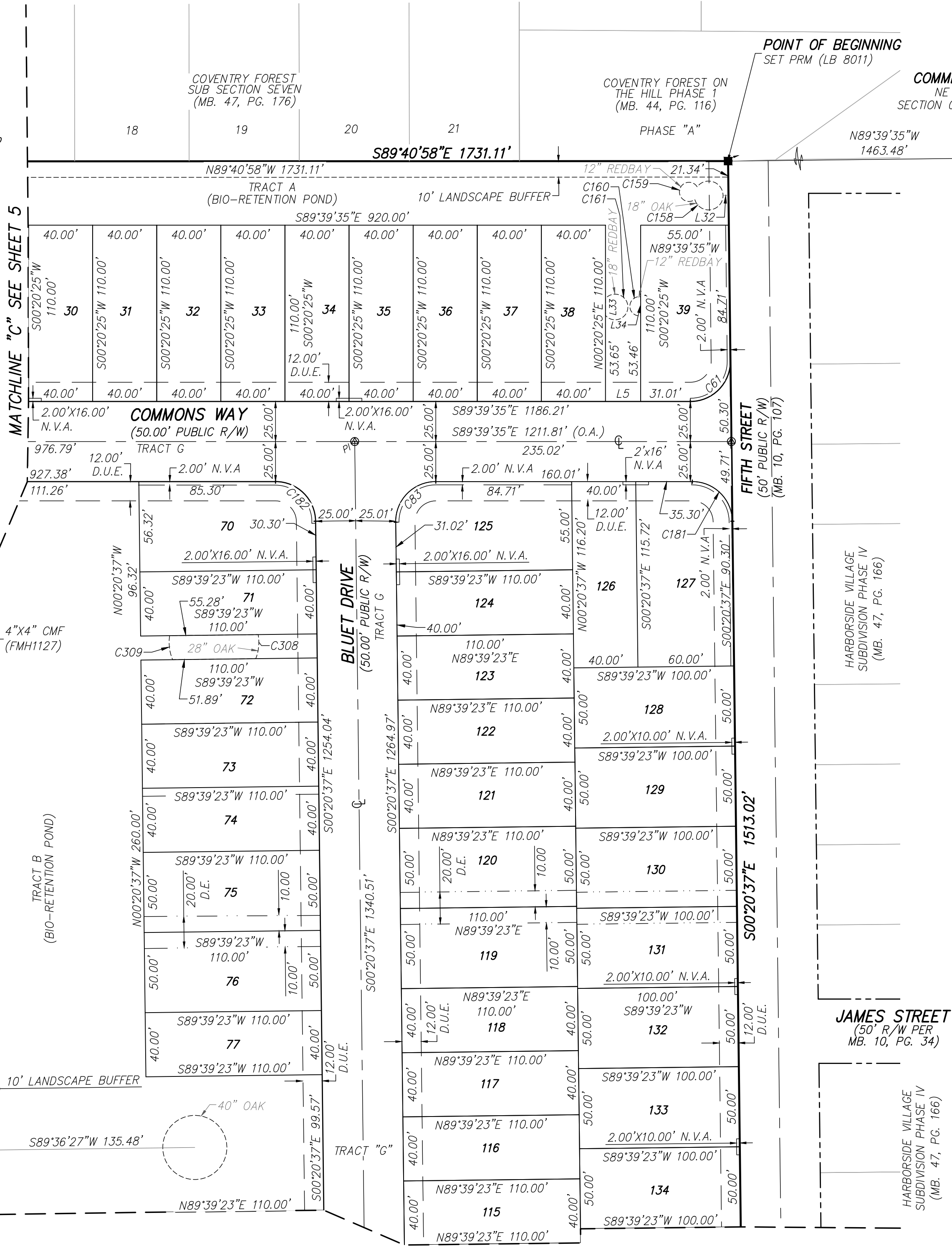
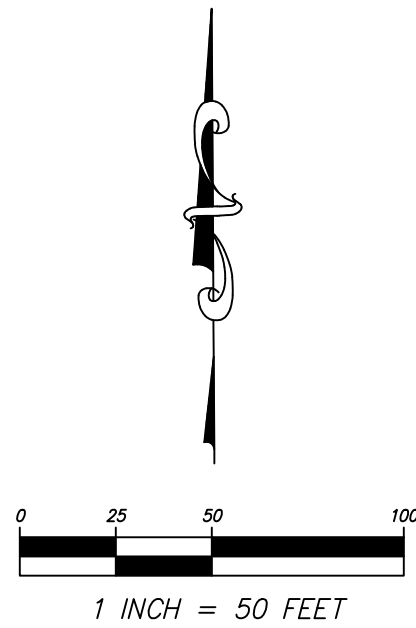
ENTIRE STREET FRONTS OF LOTS AND COMMON OPEN SPACE AREAS:
12.00 FEET WIDE
- THIS PLAT IS SUBJECT TO DECLARATION OF COVENANTS AND RESTRICTIONS AS RECORDED IN OFFICIAL RECORDS BOOK _____, PAGE _____, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.
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- THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION, SHALL BE RESPONSIBLE FOR THE OPERATION AND MAINTENANCE OF THE DRAINAGE SYSTEM SERVING THE AREA WITHIN THE BOUNDARIES OF THIS PLOT, AS DEPICTED ON THE STORMWATER MANAGEMENT PLAN APPROVED FOR THE DEVELOPMENT BY THE CITY OF PORT ORANGE, FLORIDA. SHOULD THE ASSOCIATION FAIL TO PERFORM THE MAINTENANCE OF THE DRAINAGE AND STORMWATER MANAGEMENT SYSTEMS, THE CITY OF PORT ORANGE SHALL BE ENTITLED TO ENTER UPON THE COMMON AREAS AND DESIGNATED EASEMENT AREAS TO PERFORM MAINTENANCE, REPAIR, OR REPLACE THE FACILITIES; AND, SHALL HAVE THE RIGHT TO LIEN ALL OWNERS OF RECORD IN PROPERTY FOR THE COST OF SUCH MAINTENANCE, REPAIR, AND REPLACEMENT, AS DEEMED BY THE CITY TO BE NECESSARY. IN THE EVENT OF TERMINATION, DISSOLUTION, OR FINAL LIQUIDATION OF THE ASSOCIATION, THE RESPONSIBILITY FOR THE OPERATION AND MAINTENANCE OF THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM WILL BE TRANSFERRED TO AND ACCEPTED BY AN ENTITY WHICH COMPLIES WITH SECTION 40C-42.027, F.A.C. AND BE APPROVED BY THE SAINT JOHN'S RIVER WATER MANAGEMENT DISTRICT PRIOR TO SUCH TERMINATION, DISSOLUTION, OR LIQUIDATION.
- ALL OTHER EASEMENTS ARE SUBORDINATE TO ANY PRESERVATION EASEMENTS DEDICATED HEREON. THERE SHALL BE NO REMOVAL OR DISTURBANCE OF ANY VEGETATION WITHIN SUCH PRESERVATION EASEMENTS. ANY PROPOSED CONSTRUCTION OR OTHER USE WITHIN A PRESERVATION EASEMENT MUST BE REVIEWED AND APPROVED BY THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE PRESERVATION EASEMENT.
- TREE PRESERVATION EASEMENT AS DEFINED ON THIS PLOT IS FOR THE EXPRESS PURPOSE OF THE PRESERVATION AND LONGEVITY OF THE TREES THEREIN. ACTIONS DETRIMENTAL TO TREE HEALTH SURVIVAL WITHIN THE BOUNDARIES OF THE DRIPLINE ARE PROHIBITED WITHOUT THE EXPRESS PERMISSION OF THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE PRESERVATION EASEMENT. NOTHING HEREIN SHALL, HOWEVER, BE CONSTRUED TO PREVENT NATURAL VEGETATION WITHIN THE EASEMENT AREA FROM BEING CLEARED BY HAND TO PROVIDE A NEAT, MANICURED APPEARANCE. IN ADDITION, NOTHING HEREIN SHALL BE CONSTRUED TO PREVENT THE PLACEMENT OF SOD, IRRIGATION AND LANDSCAPE PLANTS OR TO PREVENT NORMAL LAWN MAINTENANCE, SUCH AS MOWING, EDGING AND WEEDING NOT HARMFUL TO THE OBJECTIVE OF TREE PRESERVATION WITHIN THE EASEMENT AREA. ANY PROPOSED CONSTRUCTION OR OTHER USE WITHIN A PRESERVATION EASEMENT MUST BE REVIEWED AND APPROVED BY THE CITY OF PORT ORANGE AND ANY OTHER AUTHORITY HAVING JURISDICTION OVER THE PRESERVATION EASEMENT.
- THE NON-VEHICULAR ACCESS EASEMENTS LOCATED ON LOTS 39, 70, 125 AND 127 ARE TO BE GRANTED TO AND CONTROLLED BY THE CITY OF PORT ORANGE.
- PLANTINGS AND IRRIGATION SYSTEM IN THE ROUND-ABOUT WILL BE OWNED AND MAINTAINED BY THE DEVELOPMENT AND THEIR HOA.

MADELINE COMMONS

MAP BOOK:

PAGE:

A REPLAT OF ALL OF BLOCKS 22-27 AND THOSE PLATTED, UNIMPROVED RIGHTS-OF-WAYS, LYING NORTH OF BLOCKS 24 AND 25, WEST OF BLOCKS 25-27, BETWEEN BLOCKS 24-25, 23-26, 22-27, 22-23, 26-27, 23-24, AND 25-26, PORTANA PLAT NO. 1, MAP BOOK 10, PAGE 107, AND A PORTION OF GOVERNMENT LOT 2 OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33 EAST, AND A PORTION OF LOT 2, BLOCK 12, MAP OF DUNLAWTON, MAP BOOK 14, PAGE 83.
SITUATED IN SECTION 04, TOWNSHIP 16 SOUTH, RANGE 33 EAST, CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA.

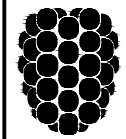


GENERAL NOTES:

- BEARINGS SHOWN HEREON ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 WITH 2011 ADJUSTMENT DERIVING A BEARING OF S89°40'58"E ALONG THE SOUTH LINE OF LANTERN PARK UNIT 2, MB. 32, PG. 113, AND COVENTRY FOREST ON THE HILL PHASE IV, MB. 47, PG. 176, AND COVENTRY FOREST ON THE HILL PHASE VI, MB. 36, PG. 198, AND COVENTRY FOREST SUB SECTION SEVEN, MB. 42, PG. 68, AND COVENTRY FOREST ON THE HILL PHASE 1, MB. 44, PG. 116
- ALL LOT LINES INTERSECTING CURVES ARE RADIAL UNLESS NOTED OTHERWISE.
- ALL PLATTED UTILITY EASEMENTS, EXCLUSIVE OF PRIVATE EASEMENTS GRANTED TO OR OBTAINED BY A PARTICULAR ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY, SHALL ALSO BE EASEMENTS FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES; PROVIDED, HOWEVER, NO SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES SHALL INTERFERE WITH THE FACILITIES AND SERVICES OF AN ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY. IN THE EVENT A CABLE TELEVISION COMPANY DAMAGES THE FACILITIES OF A PUBLIC UTILITY, IT SHALL BE SOLELY RESPONSIBLE FOR THE DAMAGES PURSUANT TO SECTION 177.09(28), FLORIDA STATUTES. SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE AND OPERATION SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE AS ADOPTED BY THE FLORIDA PUBLIC SERVICE COMMISSION.
- ALL DRAINAGE EASEMENTS SHOWN HEREON ARE DEDICATED TO THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC., AND THE CITY OF PORT ORANGE.
- TRACTS "D", "E", AND "F", DEPICTED HEREON AS COMMON OPEN SPACE AND TREE PRESERVATION AREAS WILL BE OWNED AND MAINTAINED BY MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. ITS SUCCESSORS AND/OR ASSIGNS FOR THE PURPOSE OF COMMON OPEN SPACE AND TREE PRESERVATION.
- TRACT C (LIFT STATION), IS TO BE OWNED AND MAINTAINED BY THE CITY OF PORT ORANGE AS DEEDED IN FEE SIMPLE BY SEPARATE INSTRUMENT.
- TRACT A (BIO-RETENTION POND) AND TRACT B (BIO-RETENTION POND/ PRESERVATION EASEMENT), ARE TO BE OWNED AND MAINTAINED BY THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC., WITH ACCESS EASEMENTS RIGHTS IN FAVOR OF THE CITY OF PORT ORANGE.
- LANDSCAPE BUFFERS SHOWN WITHIN TRACTS A, B, D, E AND F ARE TO BE CONTROLLED AND MAINTAINED BY THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. THERE WILL BE NO CLEARING OR ALTERATION UNLESS OTHERWISE SHOWN ON APPROVED PLANS BY THE CITY OF PORT ORANGE.
- TREE PRESERVATION EASEMENTS OVER THE SPECIMEN AND HISTORIC TREES WITHIN THE SITE AND SHOWN HEREON ARE HEREBY GRANTED TO THE CITY OF PORT ORANGE.
- THIS PLAT IS SUBJECT TO ALL EASEMENTS OF RECORD AND RESERVATIONS OF EASEMENTS, INCLUDING BUT NOT LIMITED TO DRAINAGE, UTILITY, AND ACCESS EASEMENTS DEDICATED OR GRANTED HEREON WHICH SHALL BE LOCATED AS FOLLOWS EXCEPT AS OTHERWISE NOTED ON THE PLAT:
ENTIRE STREET FRONTAGES OF LOTS AND COMMON OPEN SPACE AREAS: 12.00 FEET WIDE
- THIS PLAT IS SUBJECT TO DECLARATION OF COVENANTS AND RESTRICTIONS AS RECORDED IN OFFICIAL RECORDS BOOK _____, PAGE _____, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.
- THIS PLAT IS SUBJECT TO MADELINE COMMONS PLANNED UNIT DEVELOPMENT MASTER DEVELOPMENT AGREEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 8154, PAGE 833, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.
- THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC., A FLORIDA NOT-FOR-PROFIT CORPORATION SHALL BE RESPONSIBLE FOR THE OPERATION AND MAINTENANCE OF THE DRAINAGE SYSTEM SERVING THE AREA WITHIN THE BOUNDARIES OF THIS PLOT, AS DEPICTED ON THE STORMWATER MANAGEMENT PLAN APPROVED FOR THE DEVELOPMENT BY THE CITY OF PORT ORANGE, FLORIDA. SHOULD THE ASSOCIATION FAIL TO PERFORM THE MAINTENANCE OF THE DRAINAGE AND STORMWATER MANAGEMENT SYSTEMS, THE CITY OF PORT ORANGE SHALL BE ENTITLED TO ENTER UPON THE COMMON AREAS AND DESIGNATED EASEMENT AREAS TO PERFORM MAINTENANCE, REPAIR, OR REPLACE THE FACILITIES; AND, SHALL HAVE THE RIGHT TO LIEN ALL OWNERS OF RECORD IN PROPERTY FOR THE COST OF SUCH MAINTENANCE, REPAIR, AND REPLACEMENT, AS DEEMED BY THE CITY TO BE NECESSARY. IN THE EVENT OF TERMINATION, DISSOLUTION, OR FINAL LIQUIDATION OF THE ASSOCIATION, THE RESPONSIBILITY FOR THE OPERATION AND MAINTENANCE OF THE SURFACE WATER OR STORMWATER MANAGEMENT SYSTEM WILL BE TRANSFERRED TO AND ACCEPTED BY AN ENTITY WHICH COMPLIES WITH SECTION 40C-42.027, F.A.C. AND BE APPROVED BY THE SAINT JOHN'S RIVER WATER MANAGEMENT DISTRICT PRIOR TO SUCH TERMINATION, DISSOLUTION, OR LIQUIDATION.
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- PLANTINGS AND IRRIGATION SYSTEM IN THE ROUND-ABOUT WILL BE OWNED AND MAINTAINED BY THE DEVELOPMENT AND THEIR HOA.

CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	CHORD
C01	28.17'	25.00'	66°50'57"	27.34'
C03	28.81'	25.00'	66°01'28"	27.24'
C158	48.15'	9.00'	306°32'37"	8.10'
C159	28.81'	6.00'	275°08'53"	8.10'
C160	20.36'	6.00'	194°23'44"	11.91'
C161	38.63'	8.00'	276°48'02"	10.62'
C161	38.97'	25.00'	89°18'58"	35.14'
C182	38.97'	25.00'	89°18'58"	35.14'
C308	15.28'	28.00'	63°16'34"	15.10'
C309	15.28'	28.00'	63°16'34"	15.10'

LINE TABLE		
LINE	BEARING	LENGTH
L5	N89°19'35"W	21.83'
L32	N89°19'23"E	3.36'
L33	S0°20'25"W	10.62'
L34	N0°20'25"E	11.91'



Dewberry

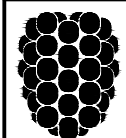
110 WEST INDIANA AVENUE, SUITE 202
DELAND, FLORIDA 32720
PHONE: 386.785.0469 FAX: 386.785.0715
WWW.DEWBERRY.COM

CERTIFICATE OF AUTHORIZATION NO. LB 8011

GENERAL NOTES:

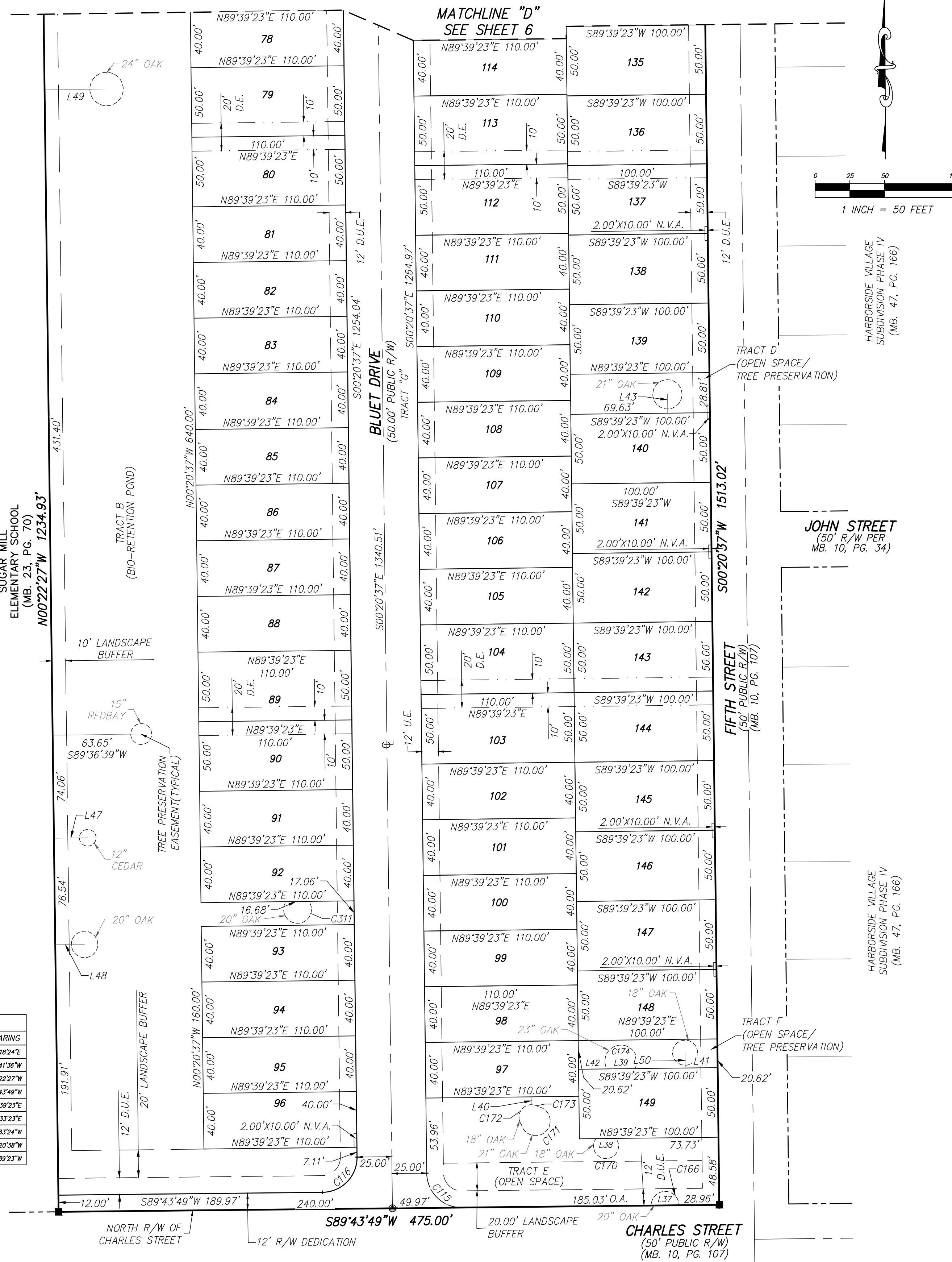
- | LINE TABLE | | |
|------------|-------------|--------|
| LINE | BEARING | LENGTH |
| L37 | N89°43'49"E | 20.00' |
| L38 | S89°39'23"W | 14.36' |
| L39 | N89°39'23"E | 20.17' |
| L40 | N02°0'37"W | 5.63' |
| L41 | N89°39'23"E | 23.31' |
| L42 | N89°39'23"E | 20.42' |
| L43 | S02°0'37"E | 13.53' |
| L47 | S89°35'43"W | 24.30' |
| L48 | S89°36°03"W | 21.06' |
| L49 | S89°34°34"W | 44.53' |
| L50 | S02°0'37"E | 10.98' |

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	BEARING
C115	39.24'	25.00	89°55'34"	35.33'	S45°18'24"E
C116	39.30'	25.00	90°02'46"	35.38'	S44°14'36"W
C164	35.51'	8.00	254°20'15"	12.75'	N00°22'27"W
C166	31.50'	10.00	180°27'40"	22.00'	S89°43'49"W
C170	39.92'	9.00	254°08'52"	14.36'	N89°39'23"E
C171	44.86'	10.50	244°47'21"	17.73'	S43°33'23"E
C172	19.82'	8.00	126°17'59"	16.05'	S26°33'24"W
C173	5.34'	9.00	335°59'38"	5.26'	N73°02'38"W
C174	47.66'	11.50	237°27'59"	20.17'	S89°39'23"W



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CERTIFICATE OF AUTHORIZATION No. LB 8011



MADELINE COMMONS

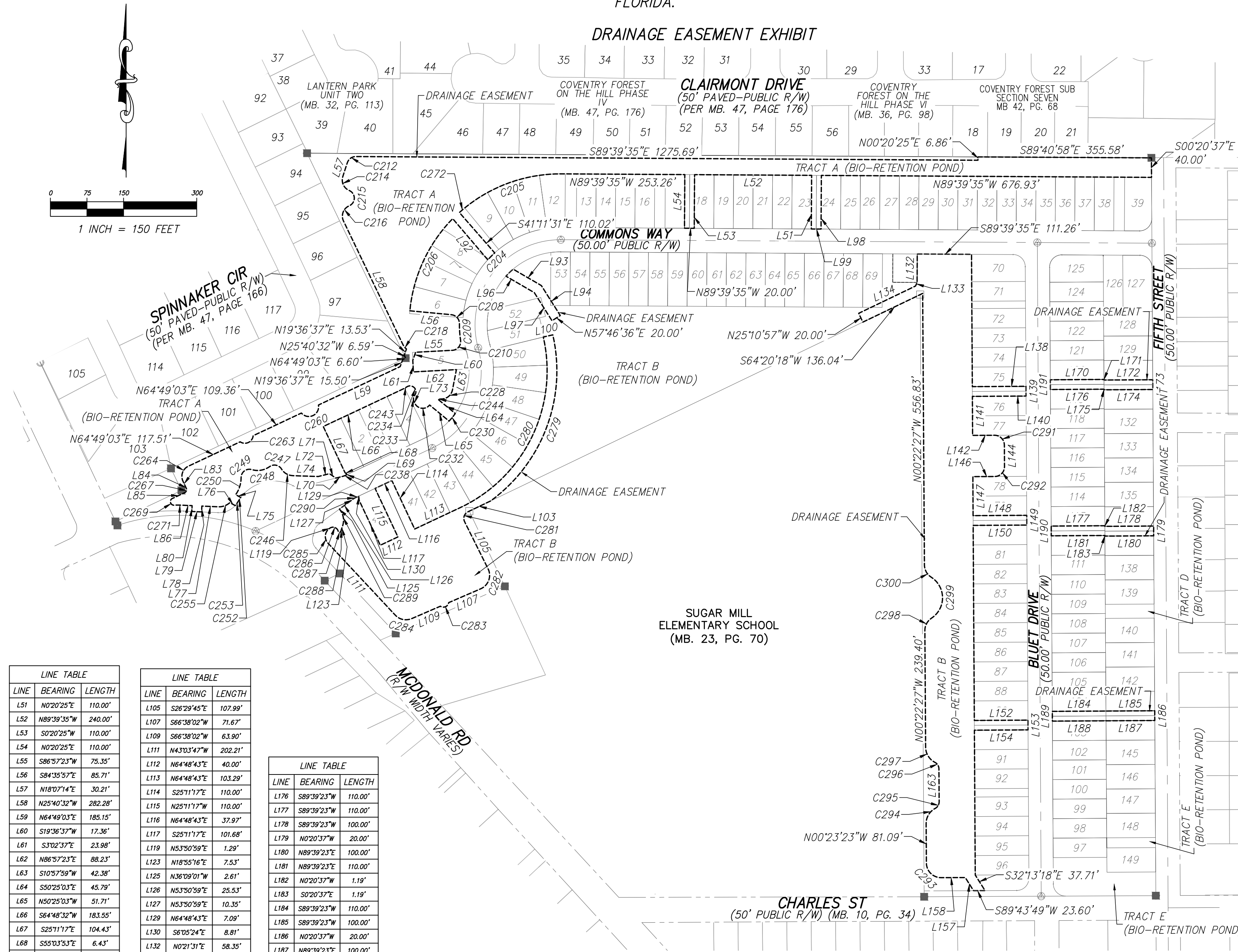
MAP BOOK:

PAGE:

A REPLAT OF ALL OF BLOCKS 22-27 AND THOSE PLATTED, UNIMPROVED RIGHTS-OF-WAYS, LYING NORTH OF BLOCKS 24 AND 25, WEST OF BLOCKS 25-27, BETWEEN BLOCKS 24-25, 23-26, 22-27, 22-23, 26-27, 23-24, AND 25-26, PORTANA PLAT NO. 1, MAP BOOK 10, PAGE 107, AND A PORTION OF GOVERNMENT LOT 2 OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33 EAST, AND A PORTION OF LOT 2, BLOCK 12, MAP OF DUNLAWTON, MAP BOOK 14, PAGE 83.

SITUATED IN SECTION 04, TOWNSHIP 16 SOUTH, RANGE 33 EAST, CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA.

DRAINAGE EASEMENT EXHIBIT



LINE TABLE		
LINE	BEARING	LENGTH
L51	N02°02'25"E	110.00'
L52	N89°39'35"W	240.00'
L53	S02°02'25"W	110.00'
L54	N02°02'25"E	110.00'
L55	S85°52'37"W	75.35'
L56	S84°35'52"E	85.71'
L57	N18°02'14"E	30.21'
L58	N25°40'32"W	282.28'
L59	N64°49'03"E	185.15'
L60	S19°36'33"W	17.36'
L61	S3°02'37"E	23.98'
L62	N86°52'23"E	88.23'
L63	S10°52'59"W	42.36'
L64	S50°25'03"E	45.79'
L65	N50°25'03"W	51.71'
L66	S84°48'32"W	183.55'
L67	S25°11'17"E	104.43'
L68	S55°03'53"E	6.43'
L69	S84°48'43"W	3.20'
L70	S75°46'28"W	15.21'
L71	N55°03'53"W	15.86'
L72	S75°46'28"W	23.66'
L73	N26°28'20"W	3.64'
L74	N88°04'53"W	52.40'
L75	S80°39'52"E	12.10'
L76	N60°39'52"W	12.45'
L77	N87°25'09"W	33.71'
L78	S2°34'51"W	12.00'
L79	N87°25'09"W	20.00'
L80	N2°34'51"E	12.00'
L81	N25°10'57"W	13.91'
L82	N06°42'42"W	1.68'
L83	N64°49'03"E	26.15'
L84	N87°25'09"W	16.96'
L85	N40°27'08"W	111.07'
L86	N39°49'03"W	66.92'
L87	N32°13'24"E	72.65'
L88	S59°49'03"E	67.23'
L89	S32°13'24"E	68.12'
L90	S02°02'25"W	110.00'
L91	N89°39'35"W	20.00'
L92	N77°04'38"E	20.00'
L93	S64°20'18"W	51.62'

LINE TABLE		
LINE	BEARING	LENGTH
L105	S36°29'45"E	107.89'
L106	S86°38'02"W	71.67'
L107	S86°38'02"W	63.80'
L108	S86°38'02"W	202.21'
L109	N64°48'43"E	40.00'
L110	N64°48'43"E	103.29'
L111	S25°11'17"E	110.00'
L112	N25°11'17"W	110.00'
L113	N64°48'43"E	37.92'
L114	N02°03'37"E	101.68'
L115	N53°50'59"E	1.29'
L116	N18°55'16"E	7.53'
L117	N36°09'01"W	2.61'
L118	N02°03'37"W	1.19'
L119	N53°50'59"E	25.53'
L120	N64°48'43"E	7.09'
L121	S8°05'24"E	8.81'
L122	N02°31'31"E	58.35'
L123	N23°09'53"E	7.89'
L124	N64°20'18"E	129.35'
L125	N89°39'35"E	110.00'
L126	S02°03'37"E	20.00'
L127	S89°39'35"E	110.00'
L128	S02°03'37"E	80.00'
L129	N89°39'35"E	45.00'
L130	S02°03'37"E	44.57'
L131	S89°39'35"W	45.00'
L132	S02°04'1"E	80.00'
L133	N89°39'35"E	110.00'
L134	S02°03'37"E	20.00'
L135	S89°39'35"W	110.00'
L136	S02°03'37"E	20.00'
L137	S89°39'35"E	109.99'
L138	S02°03'37"E	20.00'
L139	S02°03'37"E	109.99'
L140	S89°39'35"E	31.85'
L141	S89°39'35"E	49.50'
L142	N02°04'46"W	67.73'
L143	N89°39'35"E	110.00'
L144	S02°03'37"E	1.19'
L145	N89°39'35"E	100.00'
L146	S02°03'37"E	20.00'
L147	S89°39'35"E	100.00'
L148	S02°03'37"E	20.00'
L149	S89°39'35"E	100.00'
L150	S02°03'37"E	1.19'

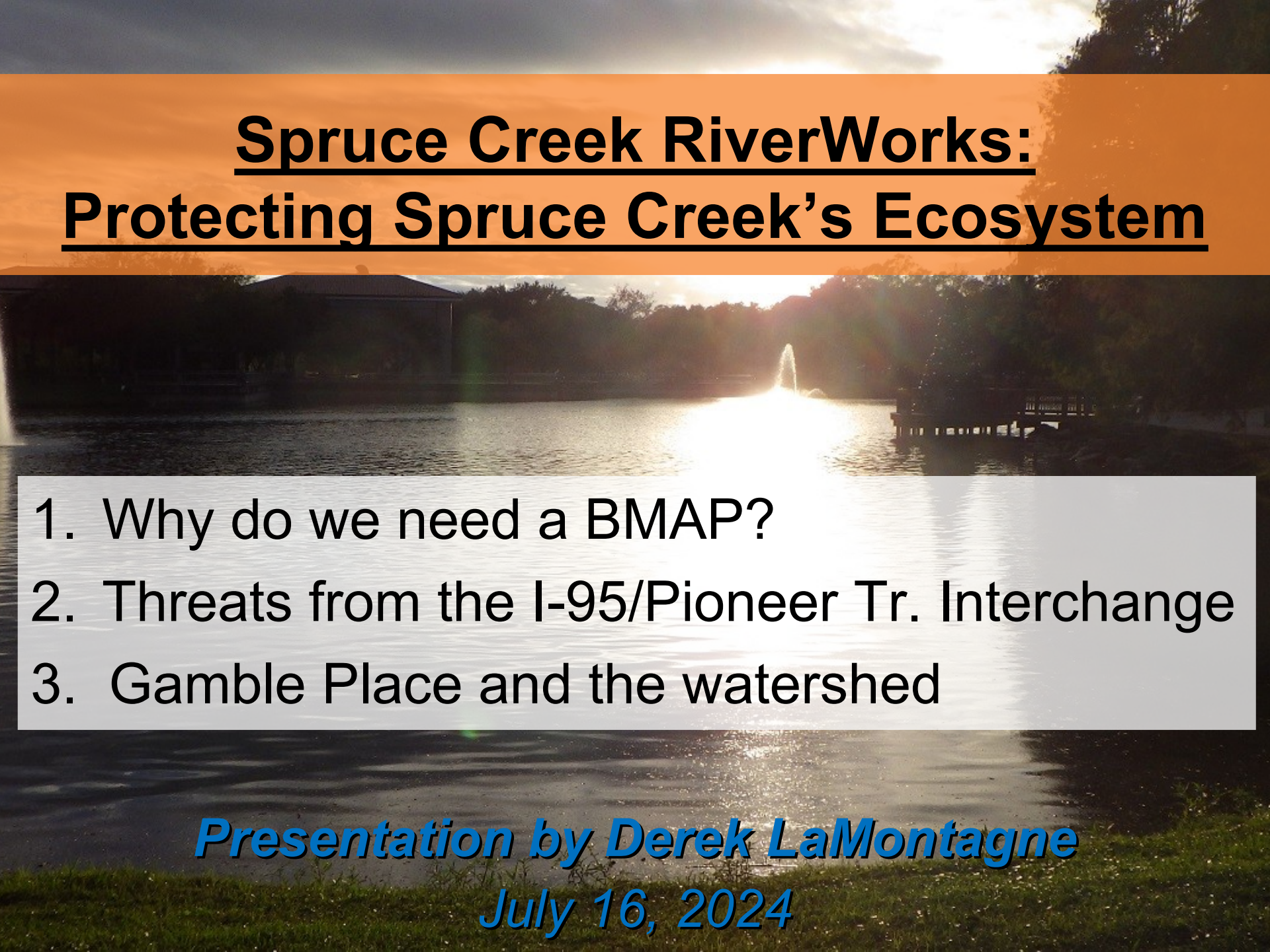
CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	CHORD
C204	20.06'	200.00'	05°44'46"	20.05'
C205	214.11'	310.00'	39°34'21"	208.88'
C206	212.48'	312.97'	38°53'54"	208.42'
C207	26.83'	18.00'	85°24'41"	24.42'
C208	34.20'	207.00'	09°28'02"	34.16'
C209	30.04'	18.00'	95°38'40"	26.67'
C210	22.69'	18.00'	72°13'11"	21.22'
C211	40.03'	17.00'	134°55'40"	31.40'
C212	37.30'	23.00'	92°55'24"	33.35'
C213	10.68'	30.59'	20°00'07"	10.63'
C214	37.30'	23.00'	92°55'24"	33.35'
C215	37.30'	23.00'	92°55'24"	33.35'
C216	37.30'	23.00'	92°55'24"	33.35'
C217	37.30'	23.00'	92°55'24"	33.35'
C218	37.30'	23.00'	92°55'24"	33.35'
C219	37.30'	23.00'	92°55'24"	33.35'
C220	37.30'	23.00'	92°55'24"	33.35'
C221	37.30'	23.00'	92°55'24"	33.35'
C222	37.30'	23.00'	92°55'24"	33.35'
C223	37.30'	23.00'	92°55'24"	33.35'
C224	37.30'	23.00'	92°55'24"	33.35'
C225	37.30'	23.00'	92°55'24"	33.35'
C226	37.30'	23.00'	92°55'24"	33.35'
C227	37.30'	23.00'	92°55'24"	33.35'
C228	37.30'	23.00'	92°55'24"	33.35'
C229	37.30'	23.00'	92°55'24"	33.35'
C230	37.30'	23.00'	92°55'24"	33.35'
C231	37.30'	23.00'	92°55'24"	33.35'
C232	37.30'	23.00'	92°55'24"	33.35'
C233	37.30'	23.00'	92°55'24"	33.35'
C234	37.30'	23.00'	92°55'24"	33.35'
C235	37.30'	23.00'	92°55'24"	33.35'
C236	37.30'	23.00'	92°55'24"	33.35'
C237	37.30'	23.00'	92°55'24"	33.35'
C238	37.30'	23.00'	92°55'24"	33.35'
C239	37.30'	23.00'	92°55'24"	33.35'
C240	37.30'	23.00'	92°55'24"	33.35'
C241	37.30'	23.00'	92°55'24"	33.35'
C242	37.30'	23.00'	92°55'24"	33.35'
C243	37.30'	23.00'	92°55'24"	33.35'
C244	37.30'	23.00'	92°55'24"	33.35'
C245	37.30'	23.00'	92°55'24"	33.35'
C246	37.30'	23.00'	92°55'24"	33.35'
C247	37.30'	23.00'	92°55'24"	33.35'
C248	37.30'	23.00'	92°55'24"	33.35'
C249	37.30'	23.00'	92°55'24"	33.35'
C250	37.30'	23.00'	92°55'24"	33.35'
C251	37.30'	23.00'	92°55'24"	33.35'
C252	37.30'	23.00'	92°55'24"	33.35'
C253	37.30'	23.00'	92°55'24"	33.35'
C254	37.30'	23.00'	92°55'24"	33.35'
C255	37.30'	23.00'	92°55'24"	33.35'
C256	37.30'	23.00'	92°55'24"	33.35'
C257	37.30'	23.00'	92°55'24"	33.35'
C258	37.30'	23.00'	92°55'24"	33.35'
C259	37.30'	23.00'	92°55'24"	33.35'
C260	37.30'	23.00'	92°55'24"	33.35'
C261	37.30'	23.00'	92°55'24"	33.35'
C262	37.30'	23.00'	92°55'24"	33.35'
C263	37.30'	23.00'	92°55'24"	33.35'
C264	37.30'	23.00'	92°55'24"	33.35'
C265	37.30'	23.00'	92°55'24"	33.35'
C266	37.30'	23.00'	92°55'24"	33.35'
C267	37.30'	23.00'	92°55'24"	33.35'
C268	37.30'	23.00'	92°55'24"	33.35'
C269	37.30'	23.00'	92°55'24"	33.35'
C270	37.30'	23.00'	92°55'24"	33.35'
C271	37.30'	23.00'	92°55'24"	33.35'
C272	37.30'	23.00'	92°55'24"	33.35'
C273	37.30'	23.00'	92°55'24"	33.35'
C274	37.30'	23.00'	92°55'24"	33.35'
C275	37.30'	23.00'	92°55'24"	33.35'
C276	37.30'	23.00'	92°55'24"	33.35'
C277	37.30'	23.00'	92°55'24"	33.35'
C278	37.30'	23.00'	92°55'24"	33.35'
C279	37.30'	23.00'	92°55'24"	33.35'
C280	37.30'	23.00'	92°55'24"	33.35'
C281	37.30'	23.00'	92°55'24"	33.35'
C282	37.30'	23.00'	92°55'24"	33.35'
C283	37.30'	23.00'	92°55'24"	33.35'
C284	37.30'	23.00'	92°55'24"	33.35'
C285	37.30'	23.00'	92°55'24"	33.35'
C286	37.30'	23.00'	92°55'24"	33.35'
C287	37.30'	23.00'	92°55'24"	33.35'
C288	37.30'	23.00'	92°55'24"	33.35'
C289	37.30'	23.00'	92°55'24"	33.35'
C290	37.30'	23.00'	92°55'24"	33.35'
C291	37.30'	23.00'	92°55'24"	33.35'
C292	37.30'	23.00'	92°55'24"	33.35'
C293	37.30'	23.00'	92°55'24"	33.35'
C294	37.30'	23.00'	92°55'24"	33.35'
C295	37.30'	23.00'	92°55'24"	33.35'
C296	37.30'	23.00'	92°55'24"	33.35'
C297	37.30'	23.00'	92°55'24"	33.35'
C298	37.30'	23.00'	92°55'24"	33.35'
C299	37.30'	23.00'	92°55'24"	33.35'
C300	37.30'	23.00'	92°55'24"	33.35'

CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	CHORD
C243	5.15'	23.00'	12°49'34"	5.14'
C244	6.74'	28.85'	13°23'12"	6.73'
C245	27.90'	28.00'	57°05'38"	26.76'
C246	27.95'	16.89'	94°48'02"	24.87'
C247	38.45'	42.00'	52°27'05"	37.12'
C248	32.11'	17.00'	108°13'34"	27.55'
C249	32.00'	58.29'	36°22'12"	36.38'
C250	10.32'	85.00'	06°57'11"	10.31'
C251	9.81'	45.00'	12°29'30"	9.79'
C252	25.96'	33.00'	45°04'11"	25.29'
C253	52.36'	20.00'	150°00'03"	38.64'
C254	35.41'	17.00'	119°20'49"	29.35'
C255	36.13'	23.00'	90°00'00"	32.53'
C256	11.41'	7.00'	93°21'25"	10.19'
C257	23.48'	7.34'	183°11'01"	14.68'
C258	18.13'	454.00'	02°17'15"	18.13'
C259	14.50'	312.00'	02°39'45"	14.50'

CURVE TABLE				
CURVE	LENGTH	RADIUS	DELTA	CHORD
C279	385.12'	330.00'	66°31'36"	363.63'
C280	420.55'	310.00'	77°43'45"	388.04'
C281	23.78'	15.00'	90°50'03"	21.37'
C282	48.76'	30.00'	93°07'47"	43.57'
C283	22.13'	11.00'	115°16'38"	18.58'
C284	36.81'	30.00'	70°18'11"	34.54'
C285	33.83'	20.00'	89°54'46"	29.94'
C286	21.23'	11.00'	110°34'30"	18.08'
C287	8.03'	3.00'	153°19'12"	5.84'
C288	3.34'	24.50'	07°46'49"	3.34'
C289	34.12'	35.00'	62°39'17"	32.82'
C290	31.42'	20.00'	90°00'00"	28.28'
C291	31.42'	20.00'	90°00'00"	28.28'
C292	31.42'	20.00'	90°00'00"	28.28'
C293	47.07'	30.00'	89°53'43"	42.39'
C294	38.25'	35.00'	62°39'17"	36.38'
C295	16.40'	15.00'	82°39'22"	15.60'
C296	16.37'	15.00'	82°39'17"	15.57'
C297	38.21'	35.00'	62°39'17"	36.34'
C298	29.96'	50.00'	57°12'49"	28.73'
C299	99.86'	50.00'	114°23'39"	84.07'
C300	29.96'	30.00'	57°12'49"	28.73'

GENERAL NOTES:

- BEARINGS SHOWN HEREON ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 WITH 2011 ADJUSTMENT DERIVING A BEARING OF S89°58'E ALONG THE SOUTH LINE OF LANTERN PARK UNIT 2, MB. 32, PG. 113, AND COVENTRY FOREST ON THE HILL PHASE IV, MB. 47, PG. 176, AND COVENTRY FOREST ON THE HILL PHASE VI, MB. 36, PG. 198, AND COVENTRY FOREST SUB SECTION SEVEN, MB. 42, PG. 68, AND COVENTRY FOREST ON THE HILL PHASE I, MB. 44, PG. 116.
- ALL LOT LINES INTERSECTING CURVES ARE RADIAL UNLESS NOTED OTHERWISE.
- ALL PLATTED UTILITY EASEMENTS, EXCLUSIVE OF PRIVATE EASEMENTS GRANTED TO OR OBTAINED BY A PARTICULAR ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY, SHALL ALSO BE EASEMENTS FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES; PROVIDED, HOWEVER, NO SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES SHALL INTERFERE WITH THE FACILITIES AND SERVICES OF AN ELECTRIC, TELEPHONE, GAS OR OTHER PUBLIC UTILITY. IN THE EVENT A CABLE TELEVISION COMPANY DAMAGES THE FACILITIES OF A PUBLIC UTILITY, IT SHALL BE SOLELY RESPONSIBLE FOR THE DAMAGES PURSUANT TO SECTION 177.091(28), FLORIDA STATUTES. SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE AND OPERATION SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE AS ADOPTED BY THE FLORIDA PUBLIC SERVICE COMMISSION.
- ALL DRAINAGE EASEMENTS SHOWN HEREON ARE DEDICATED TO THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC., AND THE CITY OF PORT ORANGE.
- TRACTS "D", "E", AND "F" DEPICTED HEREON AS COMMON OPEN SPACE AND TREE PRESERVATION AREAS WILL BE OWNED AND MAINTAINED BY THE MADELINE COMMONS HOMEOWNERS ASSOCIATION, INC. ITS SUCCESSORS AND/OR ASSIGNS FOR THE PURPOSE OF COMMON OPEN SPACE



Spruce Creek RiverWorks: **Protecting Spruce Creek's Ecosystem**

1. Why do we need a BMAP?
2. Threats from the I-95/Pioneer Tr. Interchange
3. Gamble Place and the watershed

Presentation by Derek LaMontagne
July 16, 2024

BMAPs generate \$MILLIONS for the economy

FINAL North Indian River Lagoon Basin Management Action Plan – 2013

generated from money spent on recreational activities, both from residents and visitors, including items such as boat purchases, boat repairs, and marina slip rental and dockage fees. An additional \$762 million was estimated for recreational use value, which is the amount that people would be willing to pay for the opportunity to engage in recreational activity on the lagoon. Therefore, the total value for 2007 for lagoon-related recreation was close to \$2.1 billion.

A significant increase in the amount and diversity of wildlife in the lagoon and improved water quality in the basin would increase the recreational use value of the entire IRL system by about \$80 million per year. Other recreational expenditures and real estate values may also increase under improved environmental conditions but were not estimated during the study. The increase in value reflects a greater willingness by residents and visitors to pay to improve the environmental quality of the lagoon (Hazen and Sawyer 2008).

The economic value of the entire IRL Basin's seagrass beds was estimated at \$329 million per year for 72,400 acres of seagrass. Seagrass habitats are an important component of the

Spruce Creek Watershed

“The creek was verified as **impaired** for fecal coliform” and

“The creek was verified as **impaired** for both DO [dissolved O₂] and nutrients.”

[TMDL FDEP report]

The TMDL concluded that:
“A fecal coliform reduction of 53% is required”
and “A TP [total phosphorous] reduction of 27%
and a 25% reduction in BOD [biological oxygen
demand] are required.”

Total Maximum Daily Load

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
Division of Water Resource Management, Bureau of Watershed Management

NORTHEAST DISTRICT • UPPER EAST COAST BASIN

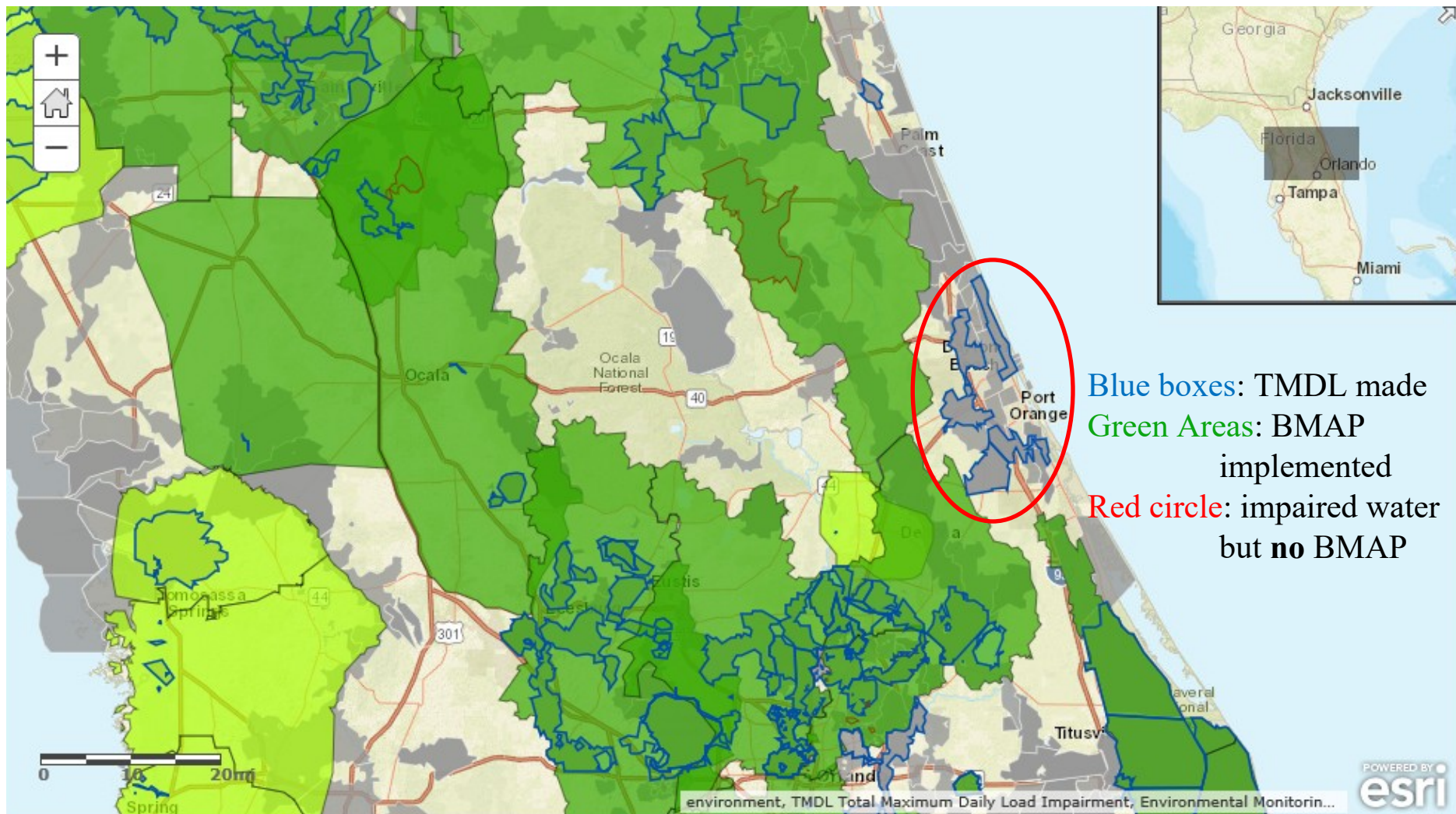
Final TMDL Report
Dissolved Oxygen and Nutrient
TMDL for
Spruce Creek,
WBID 2674A

Wayne Magley, Ph.D., P.E.



April 2008

BMAPs Missing for our Area



<http://fdep.maps.arcgis.com/home/webmap/viewer.html?webmap=1b4f1bf4c9c3481fb2864a415fbeca77#>

BMAP = Basin Management Action Plan

BMAPs tell local governments to be “proactive”

FINAL North Indian River Lagoon Basin Management Action Plan – 2013

condition of issuing a permit. In addition, efforts are under way to streamline the ERP process; however, the implications of this streamlining are unknown as of the date of this report.

Since the TMDL reductions are based on decreasing loads from past development, it is important that loads from new development are well controlled. Although future development may meet state stormwater standards, the development may still contribute loading to the lagoon. To ensure that future growth does not add to the degradation of the North IRL, local governments must be proactive in controlling loads from future growth.

Options to address future loading include low-impact development (LID) standards and Florida-friendly landscaping to further minimize the impacts of existing development and new development through local development regulations. LID is an approach to development that employs land planning, design practices, and technologies to conserve natural resources and reduce infrastructure costs. These activities could offset loads from future growth and, therefore, may reduce the reductions needed from the entities in future BMAP iterations. FDEP will continue to research how nutrient reduction credits should be quantified for the use of LID BMPs.

TMDL Program

What are the basic steps in the TMDL program? How does it work?



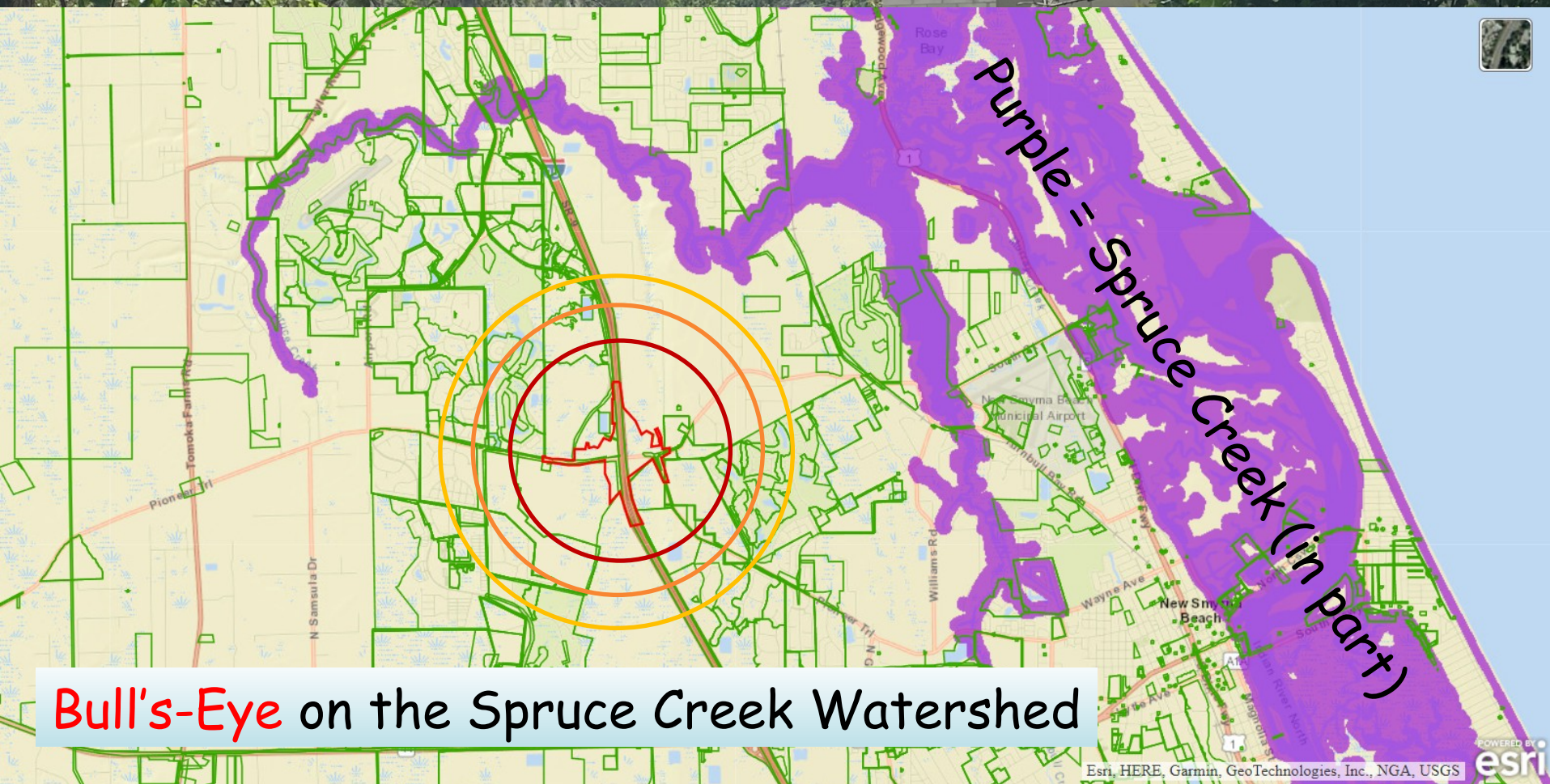
<http://www.dep.state.fl.us/water/tmdl/>

1. Assess the quality of surface waters
2. Determine which waters are impaired
3. Establish and adopt, by rule, a TMDL for each impaired water for the pollutants of concern
4. Develop, **with extensive local stakeholder input**,
Basin Management Action Plans (BMAPs) that....
5. Implement the strategies and actions in the BMAP
6. Measure the effectiveness of the BMAP, both continuously at the local level and through a formal re-evaluation every five years.
7. Adapt--change the plan and change the actions if things aren't working
8. Reassess the quality of surface waters continuously

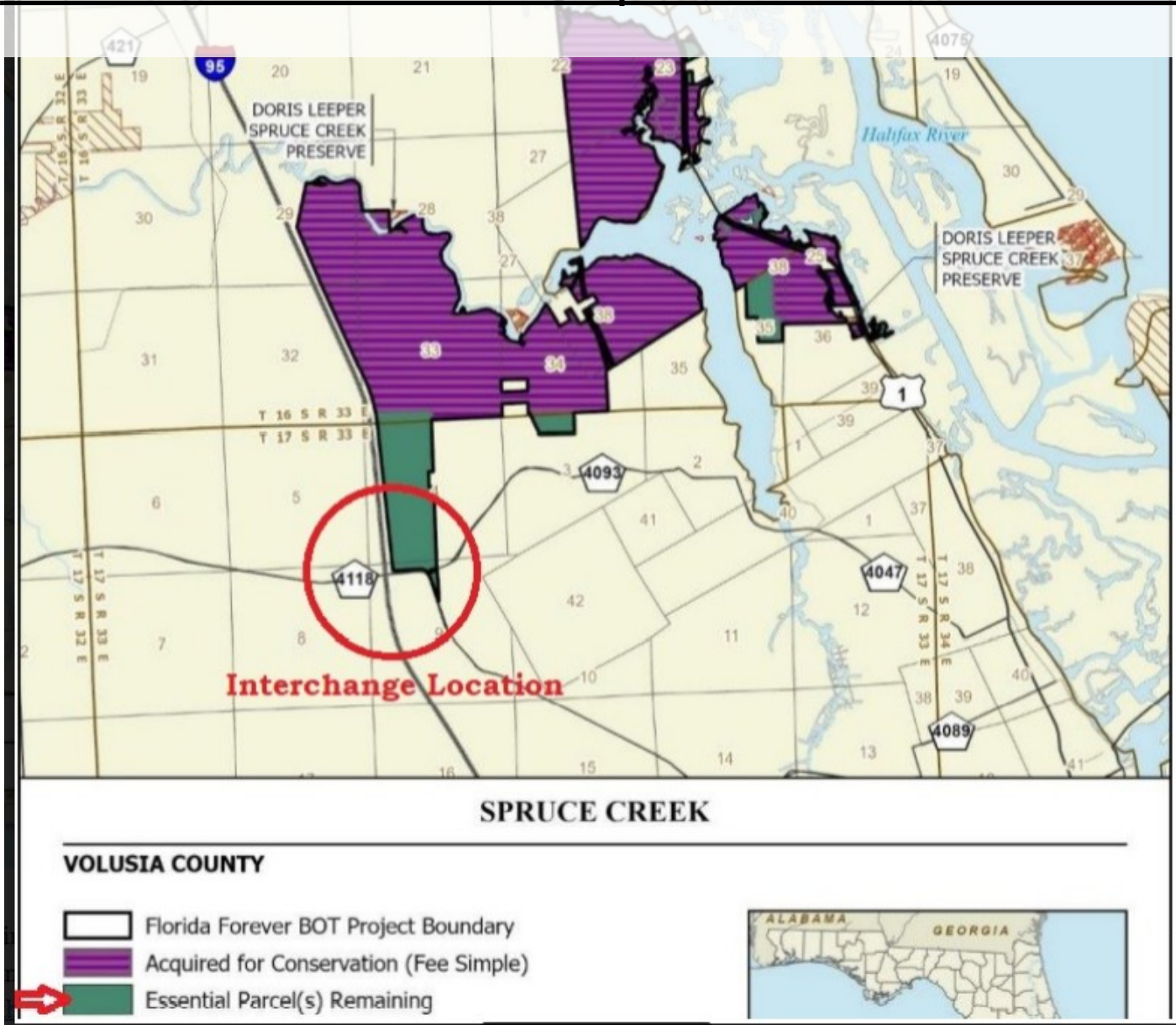


We are
stuck here

Harms from the Proposed I-95 Interchange at Pioneer Trail



Where Would the Pioneer Tr. Interchange Go? On Essential Land for Spruce Creek Preserve!



The FDOT *lied* to the Port Orange and other Government Officials *several times* to get approval

Water Quality

- This project does not directly drain into any FDEP impaired water. The project's stormwater runoff will drain into an unnamed canal (WBID 2679) that eventually drains into Spruce Creek.
- The FDOT recognizes that Spruce Creek is an Outstanding Florida Water (OFW). While the project study area is within the Spruce Creek Hydrologic Basin, the actual project area does not contain any designated OFW.
- Western Spruce Creek (WBID 2674) is impaired for fecal coliform. FDOT is not a contributor of this pollutant.

this is not true!!



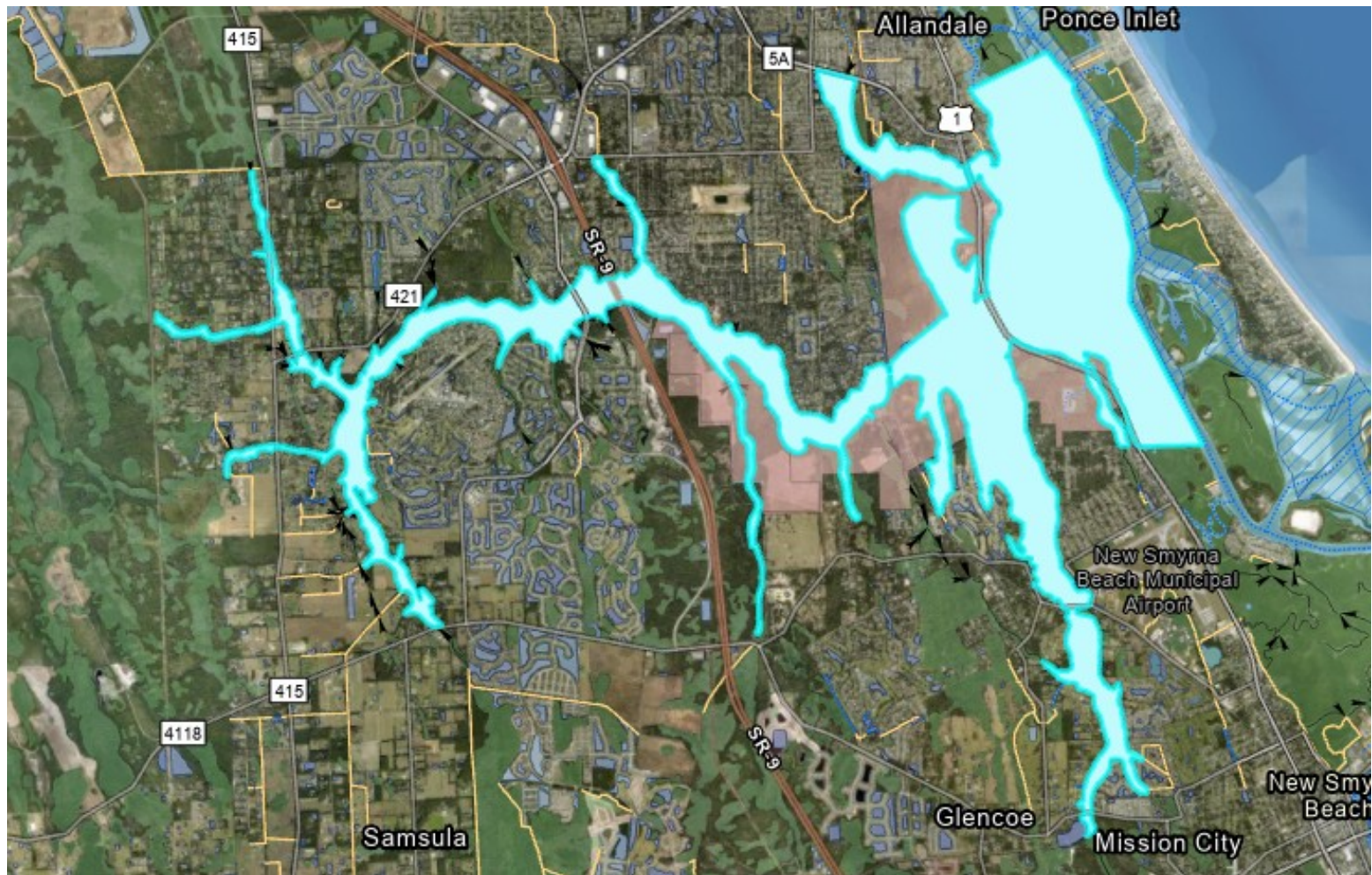
this map is misleading!

5. Name of waterbody(ies) (if applicable & if known) in which work will occur? ***Wetlands connected to unnamed wetlands and unnamed canal.***

6. Is the activity proposed in an Outstanding Florida Water or Aquatic Preserve?

☐ yes, name: ☒ no ☐ I don't know

this is not true!!



This official state map shows what is considered to be the protected waters of Spruce Creek. As you can see, there is a large tributary running right to the Interchange location.



I-95 Construction Pollution

“ . . . I walked for approximately 3 miles, following the tributaries, to find the source of the **milky-gray water**. We eventually came upon Highway I-95 at mile marker 252. We crossed the Highway and noticed that there was on-going work, both at Hwy I-95 (Road expansion), and at the Williamson Road connector (immediately adjacent to the West). Please see attached photos. . . . ”

-H. Valle, Volusia

Environmental Specialist

Harms from the Proposed I-95 Interchange at Pioneer Trail

1. Direct loss of ~50 acres of wetlands/habitat
2. Increased pollution, noise, and traffic
3. Peace and quality of life will suffer
4. Flooding concerns due to eastern ridge
5. \$120+ million tax-payer cost
6. Impacts to Spruce Creek Preserve corridor
7. Unknown long-term secondary effects

Visit SaveDontPaveSpruceCreek.com to learn more

Traffic Expert Opinion: There is no Need!

1. The stated “need” for the I-95 interchange at Pioneer Trail is to relieve congestion at the two interchanges immediately north and south of Pioneer Trail. Empirical data on the “need” for interstate interchanges have historically been to provide “access” to facilities or communities that were previously inaccessible or difficult to reach. That is not a need or a limitation for either of the communities affected by this project.

Constructing new federal interchanges as a means of alleviating local LOS failures has never been a successful solution. In fact, a new interchange at Pioneer Trail has the potential of transferring, or at the very least, duplicating the problems at Dunlawton Blvd/Taylor Road. Additionally, if the goal of the interchange is to provide access to potential future development there are other, less intrusive and more effective solutions or alternatives available. Those alternative solutions will be discussed later in this letter.

-Excerpts from 2020 analysis by PP&E

Other Expert Opinions:

“is there a real “need” for this project, and if so, is an interchange at Pioneer Trail the most prudent, cost-effective, and longest-lasting of all solutions? The answer, even in their own documents have, at the very least, stated maybe, and some cases, no. The so-called “need” for this project has been as a result of delays and failures at the intersection of Williamson and Dunlawton/Taylor Rd. That intersection is too close to the interchange, it should have been located/designed further west of it’s current location. In fact, even with the new interchange, the delays at the Dunlawton/Taylor Road Interchange ramps [going west in the southbound off-ramp] show little-to-no significant reduction in seconds-per-green cycle improvements.”

“this interchange would actually work to the detriment of Hurricane Evacuation.”

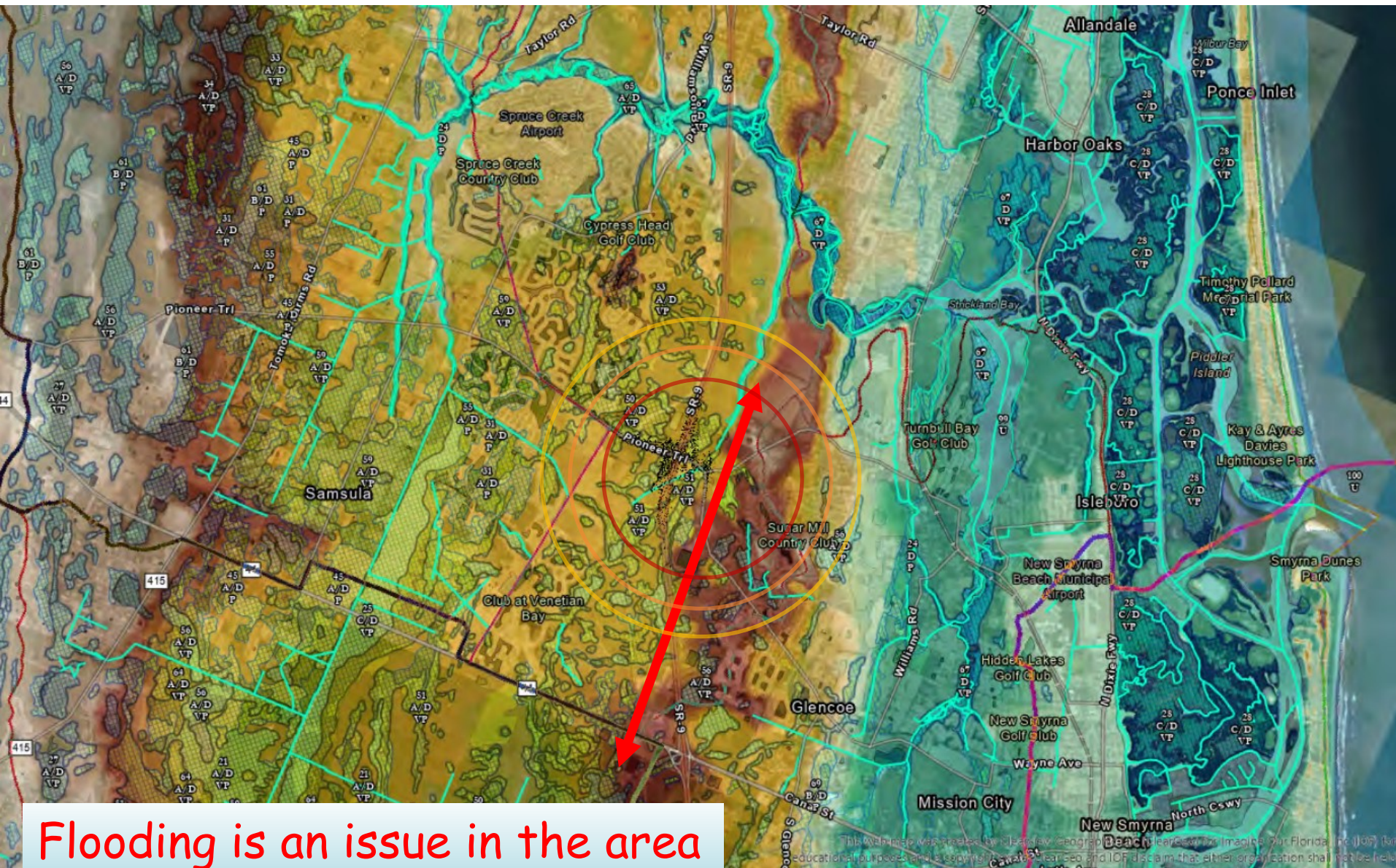
-PP&E Report

Flood Risk Elevated if Interchange Built

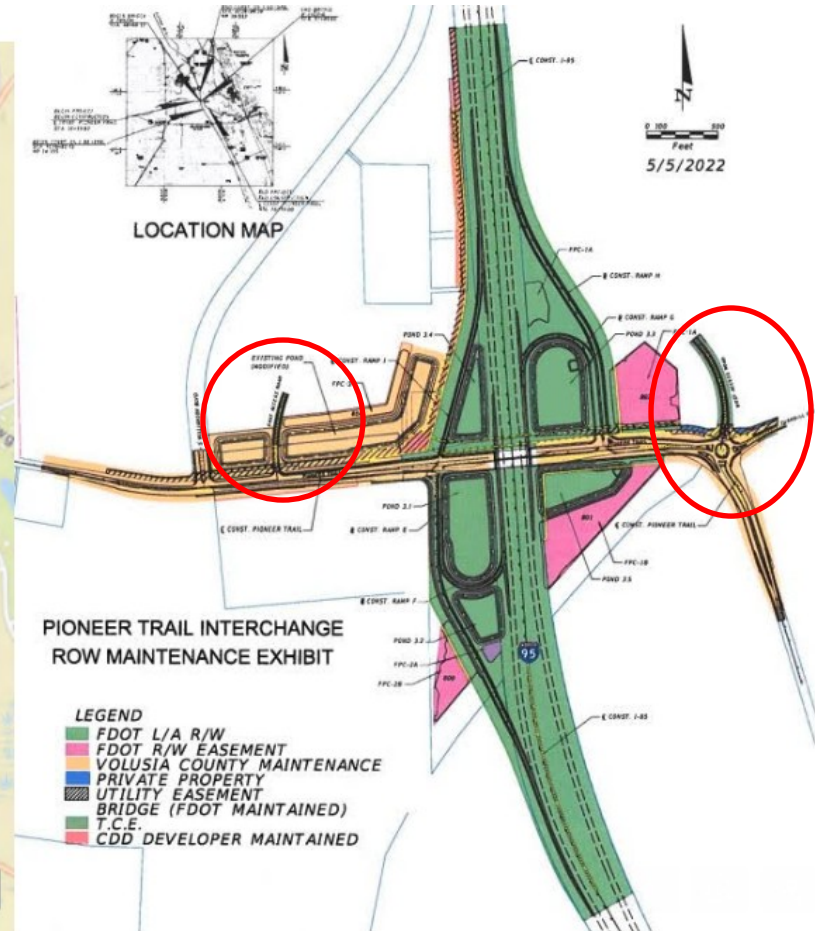
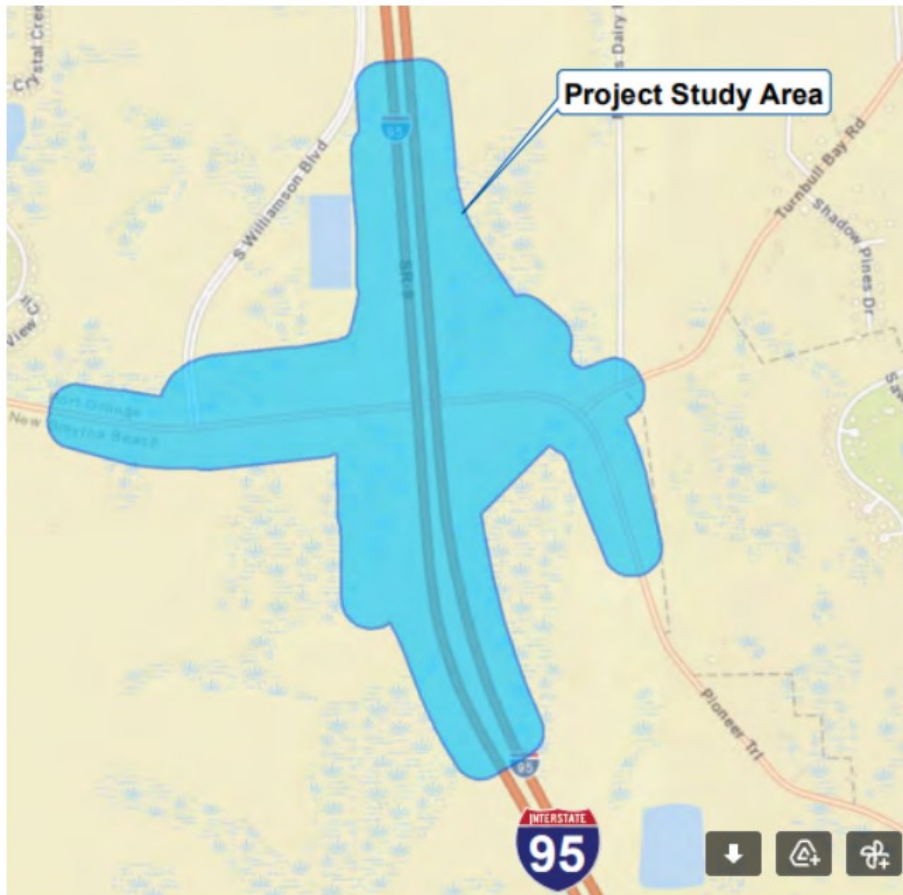
This lighter color along the right side is a higher elevation ridge, meaning the construction area being proposed is a low-lying area full of wetlands, which will potentially result in more flooding when they are destroyed!



Loss of Waterflow and Habitat

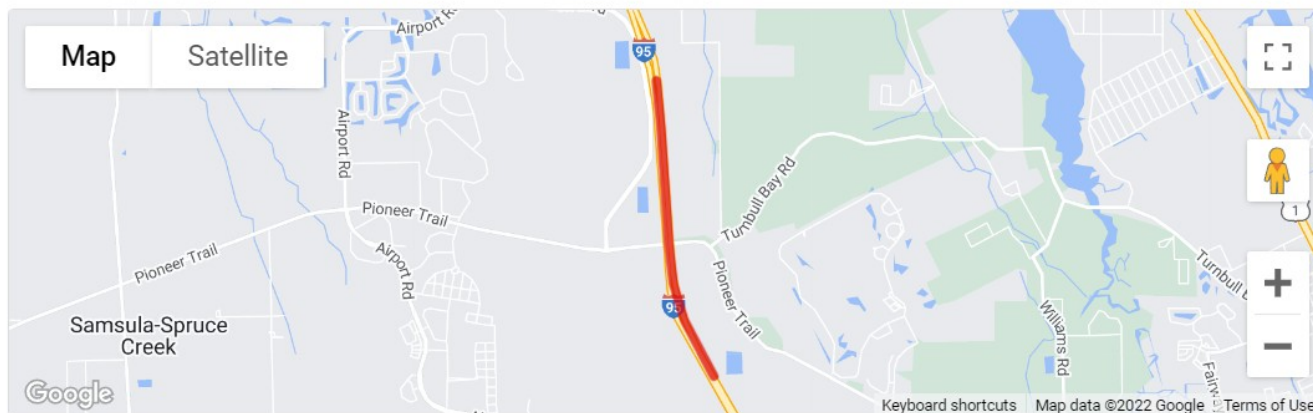


Project has changed!



That should be enough for new federal review.

436292-1 I-95 Interchange at Pioneer Trail



About

The Florida Department of Transportation (FDOT) has completed the I-95 at Pioneer Trail Project Development and Environment (PD&E) Study receiving approval in January 2021. The purpose of this study was to evaluate a new Interstate 95 (I-95) interchange at Pioneer Trail in Volusia County in order to address current and future travel demand as well as relieve traffic congestion on the two adjacent interchanges north and south of the project: I-95 at State Road 421 (Dunlawton Avenue) and I-95 at State Road 44 (Lytle Avenue).

Design is currently underway for the proposed improvements at this interchange. The findings and recommendations from the PD&E Study will be refined and updated during the design process.

Please check this website regularly for updates. Project documents, meeting announcements, and other important information will be uploaded as it becomes available. Thank you for your interest and involvement in this project.

Project Files

Project Details

Work Type: Interchange Construction
Phase: Design
Length: 2 miles
County: Volusia
Road: I-95
Design Cost: \$5.7 Million

Estimated Costs

ROW Cost: \$30.2 Million
Construction Cost: \$48 Million

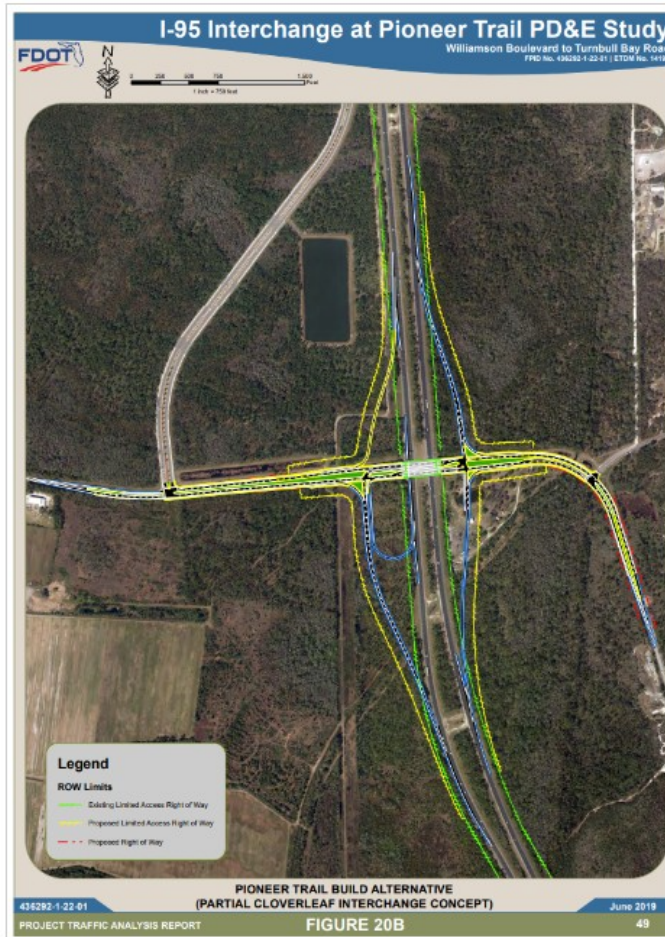
[Send a comment or ask a question about this project](#)

Contact Information

Design Project Manager
Kathleen Enot
(386) 943-5149
kathleen.enot@dot.state.fl.us

Cost now is over \$120 million (~\$80m just a couple years ago); it just keeps going up in price!!

Pioneer Trail Interchange Project



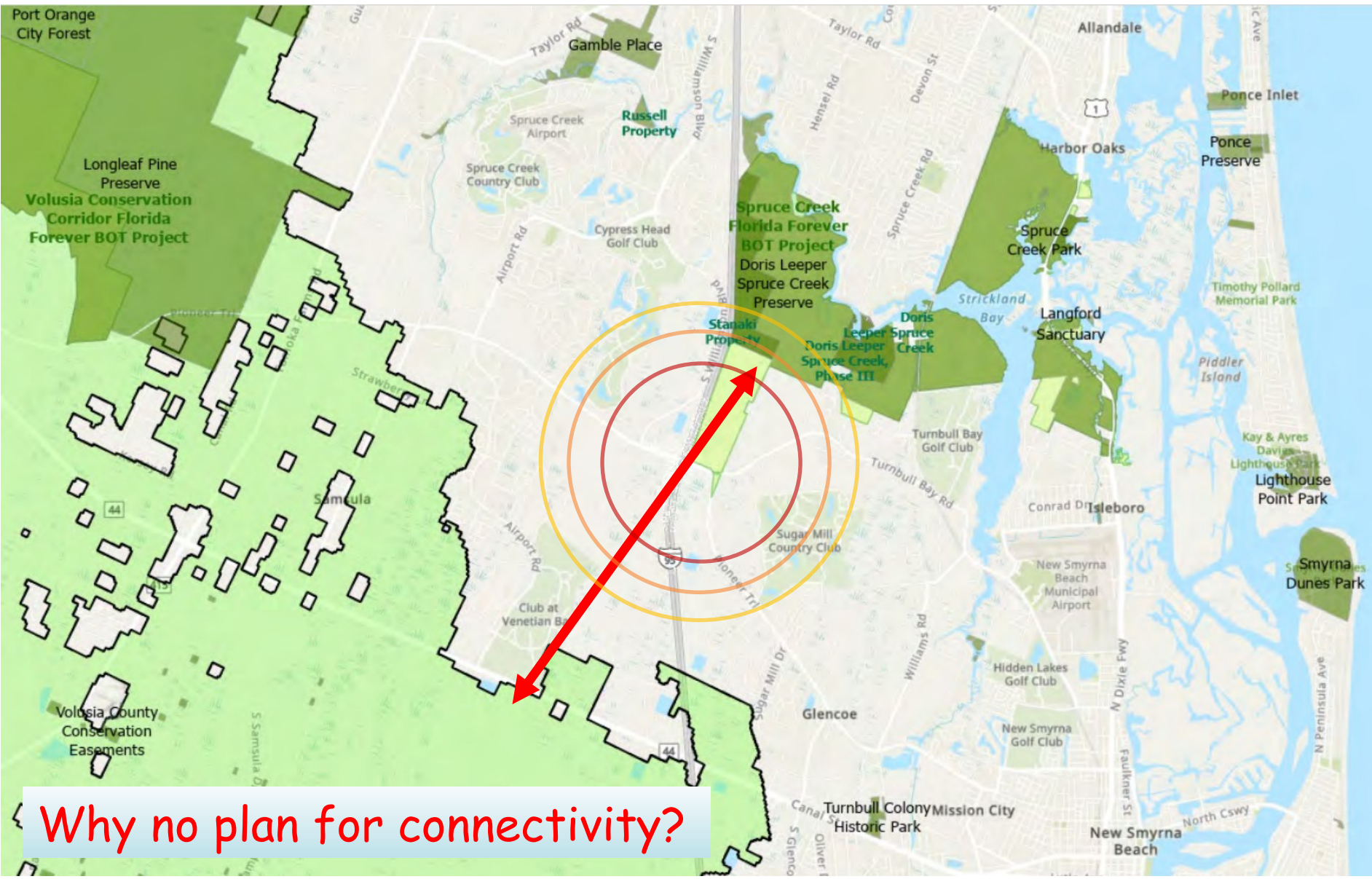
The purpose and need for the proposed interchange on I-95 at Pioneer Trail is to support the economic viability and job creation associated with planned and approved future development in the vicinity of the study area, reduce congestion at the adjacent I-95 interchanges, and to better serve regional trips originating in and destined to the study area. Additionally, Volusia County and the cities of Port Orange and New Smyrna Beach have identified benefits to emergency evacuation conditions that would be realized by an interchange on I-95 at Pioneer Trail. Section 7 of this document includes a summary of key assumptions, findings, and recommendations.

Construction for the project is anticipated to begin late 2023 or early 2024.

For the most up to date information on the project, visit: [I-95 at Pioneer Trail - Florida Interchange Portal - FDOT](#)

- Animal Tags
- City History
- City Meetings
- City Newsletters
- Community Events
- Community News
- Compliment a Department
- Current Water Restrictions
- Garbage & Recycling
- Important Phone Numbers +
- Maps & Geographic Information Systems
- Online Services +
- Parks & Facilities
- pogTV
- Notify Me +
- Pioneer Trail Interchange Project
- Port Orange University
- Public Safety +
- State of the City
- Utility Providers
- Yard & Garage Sales
- 2020 Census Information

Loss of Corridor to Preserve



Gamble Place Needs Port Orange's Help

Park abandoned by city years ago, and been neglected and in disrepair ever since. History is being lost, but we can still help with reinvestment.



Figure 6. Site management features of Spruce Creek Preserve.

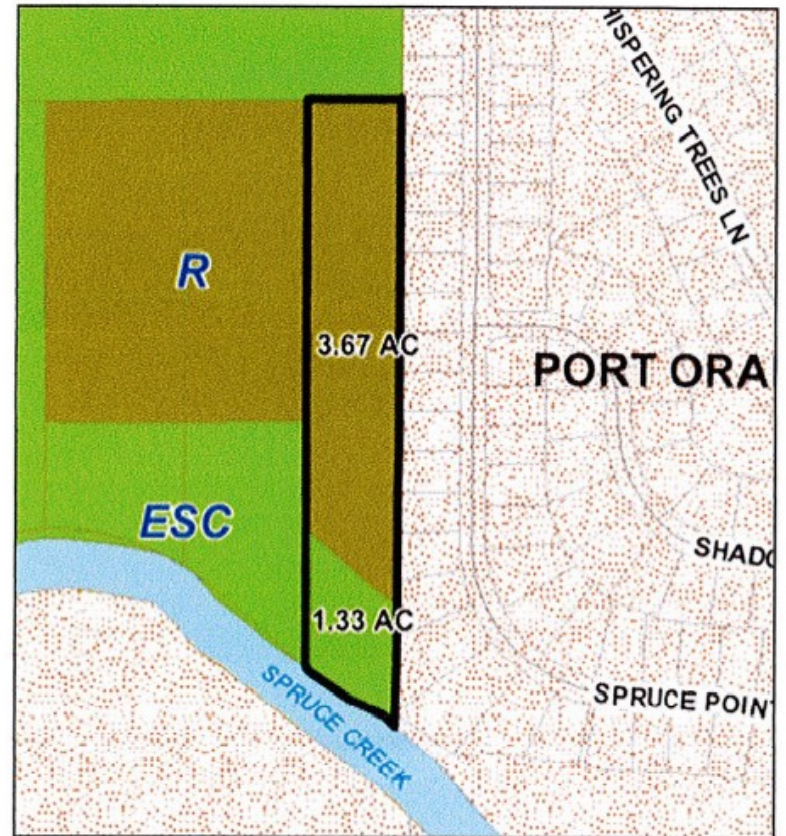
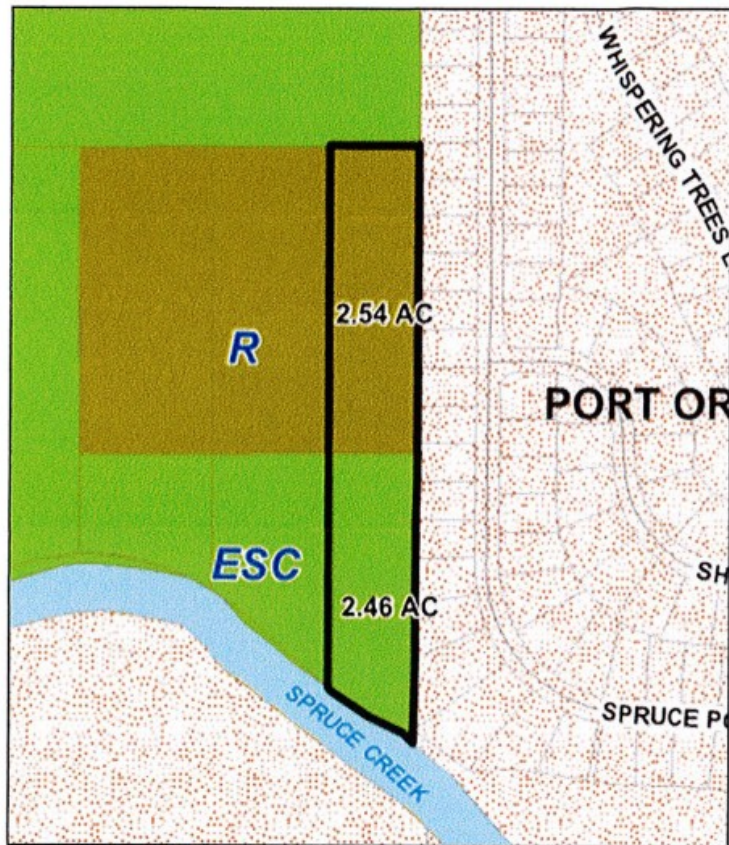
Gamble Place Dock



Spruce Creek Encroachment

Before ESC Future Land Use Boundary Adjustment

After



If rezoning done improperly, first map still holds.



Spruce Creek Buffer

200 feet is not adequate! According to 1995 study, Spruce Creek's buffer needs to be a minimum of 322 ft, more so for sloped areas!

In addition, extensive evaluations of habitat requirements of aquatic and wetland dependent wildlife were compiled for 6 landscape associations. In landscapes typical of the Tomoka River and Spruce Creek, recommended buffer widths aquatic and wetland wildlife protection were between 322 and 550 feet for freshwater riverine systems and 322 feet for salt water (salt marsh) systems.

From: TOMOKA RIVER AND SPRUCE CREEK: RIPARIAN HABITAT PROTECTION ZONE by UF Wetlands Scientists

<https://ufdc.ufl.edu/UF00016651/00001/>



**Thank You for
Listening!**

Spruce Creek Preserve





Port Orange Pavilion Plan

Natural Vegetation Preservation and Landscaping

The Land Development Code (LDC) requires fifteen percent of the square footage of any development to be designated for the protection of existing trees. This requirement may be waived or modified if the development contains an insufficient amount of existing trees to meet this requirement or if the modification of this requirement is warranted by specific on-site conditions. In the case of the subject development, at least ten percent of the square footage of the overall property will be maintained for conservation of existing natural communities, which equates to 7.3 acres. The areas to be preserved and/or enhanced include the +/-6.50 acre lake and the natural communities located along the I-95 corridor, except areas that include utility or Department of Transportation easements, view corridors or rights-of-way.

As a means of addressing the reduced preservation of existing trees, the developer has designated twelve percent of the area designed for vehicular use to be devoted to the creation of interior landscaping, in lieu of the ten percent required by the LDC. The developer will plant trees and other native and landscape vegetation within the development area as replacement stock for the trees that will not be avoided during construction. The proposed development provides for a good distribution of new trees that will eventually provide significant shading of the parking lot areas. The development team has worked closely with the City's Landscape Architect to proactively incorporate the landscaping into the overall design in order to create a very enjoyable

1) Reduced tree preservation, 2) No tree bank payment, 3) I-95 removes trees later

- The following table is a summary of what is required of the applicants regarding the mitigation of traffic impacts as a condition of approval. The City and the applicants agree that the Proportionate-Share Cost (PSC) of \$6,436,212 as identified in the Total Proportionate-Share column of the following table represents the DRI's total off-site Phase I mitigation costs for the identified transportation improvement needs. A set of roadway improvements and proportionate-share payments have been identified for which the cumulative sum of associated costs (the Total Roadway Improvement Cost) of \$7,046,918 (see the Mitigation Payment column of Table 2) exceeds the PSC. Therefore, when mitigation of Phase II impacts are reassessed at a future date, the difference between the PSC and the Total Roadway Improvement Cost will be counted towards mitigation of Phase II impacts.

Road
"improvements" pay
over \$7,000,000 to
remove trees!

[illegible]

Yorktowne Boulevard

Four-lane
90-ft Right-of-Way

BJ's Warehouse

Port Orange pays \$2.5+ million; ruins a canal!

ALAN ENGINEERING
CIVIL ENGINEER
CERTIFICATE NO. 14251
EXPIRATION DATE 12/31/2013
ALAN ENGINEERING, INC.
1111 CHESAPEAKE BLVD.
PORT ORANGE, FL 32129
TEL: (386) 321-1527

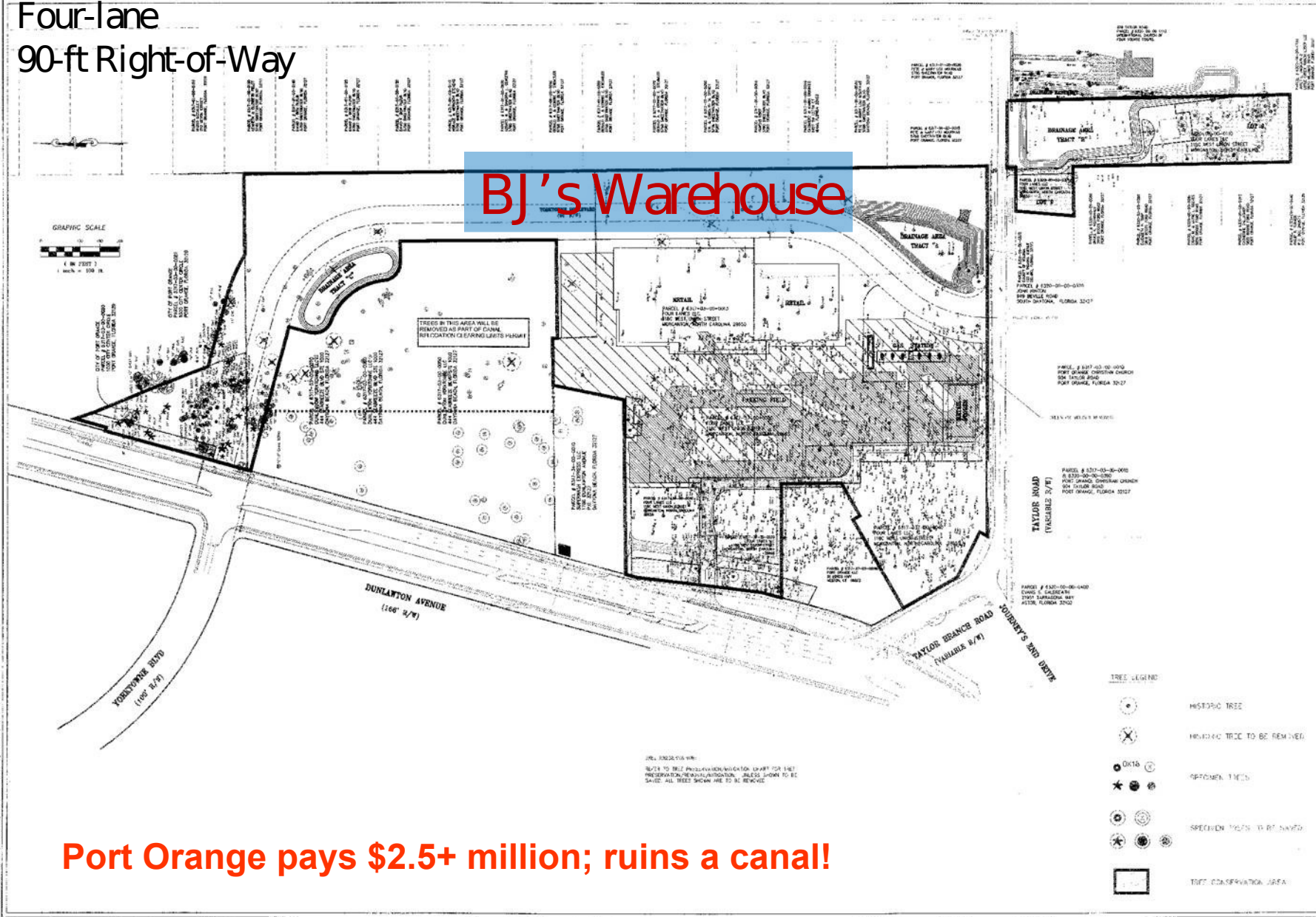
A

ALTAMIRA SHOPPING VILLAGE
PORT ORANGE, FLORIDA
TREE PRESERVATION EXHIBIT

NO.	DATE	BY	REVISION
1	12/22/11	ALAN	ISSUED FOR PERMIT
2	12/23/11	ALAN	REVISED TO ADD TREE LEGEND
3	01/03/12	ALAN	REVISED TO ADD TREE LEGEND

DESIGNER
ALAN
DRAWN BY
JOP
FILE
1107-1
PROJECT
1107-1
DATE
08/21/11
SCALE
1"=100'

SHEET
2 OF 4



Tree Mitigation

Example:

Port Orange waived \$250,000!

Table 1. Tree Removal for Canal Area:

# of Trees before Development	Required # of Trees to Remain per the LDC	Proposed # of trees after Development	Mitigation Required
94 Specimen	47 Specimen or 50%	6 Specimen or 6%	318 Trees or \$108,000
11 Historical	11 Historical or 100%	2 Historical or 18%	143 Trees or \$48,600

Table 2. Tree Removal for Yorktowne Blvd. Area:

# of Trees before Development	Required # of Trees to Remain per the LDC	Proposed # of trees after Development	Mitigation Required
48 Specimen	24 Specimen or 50%	2 Specimen or 4%	165 Trees or \$56,000
8 Historical	8 Historical or 100%	1 Historical or 12.5%	116 Trees or \$40,000

Altamira MDA:
Page 50,
Staff Report:
Page 5

Williamson Blvd area contains **Specimen Trees**:

-Maple, Cypress, Loblolly Bay, and many other species

According to Port Orange Land Development Code they must be mitigated for

Historic (large diameter) trees may also exist there, and a survey must be done.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (G15) Parks and Recreation Advisory Board Report

DEPARTMENT: City Clerk

GOAL:

RECOMMENDED MOTION:

SUMMARY:

PRESENTER: System Admin

ATTACHMENTS:

Meghan Meyer

Created/Initiated - 3/28/2024



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (H16) Second Reading - Ordinance No. 2024-11 - First Amendment to the Restated Master Development Agreement for the Catfish Commons Planned Commercial (Case No. PRZA-24-0004)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life 4 - Economic Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2024-11, approving the First Amendment to the Restated Master Development Agreement for the Catfish Commons Planned Commercial.

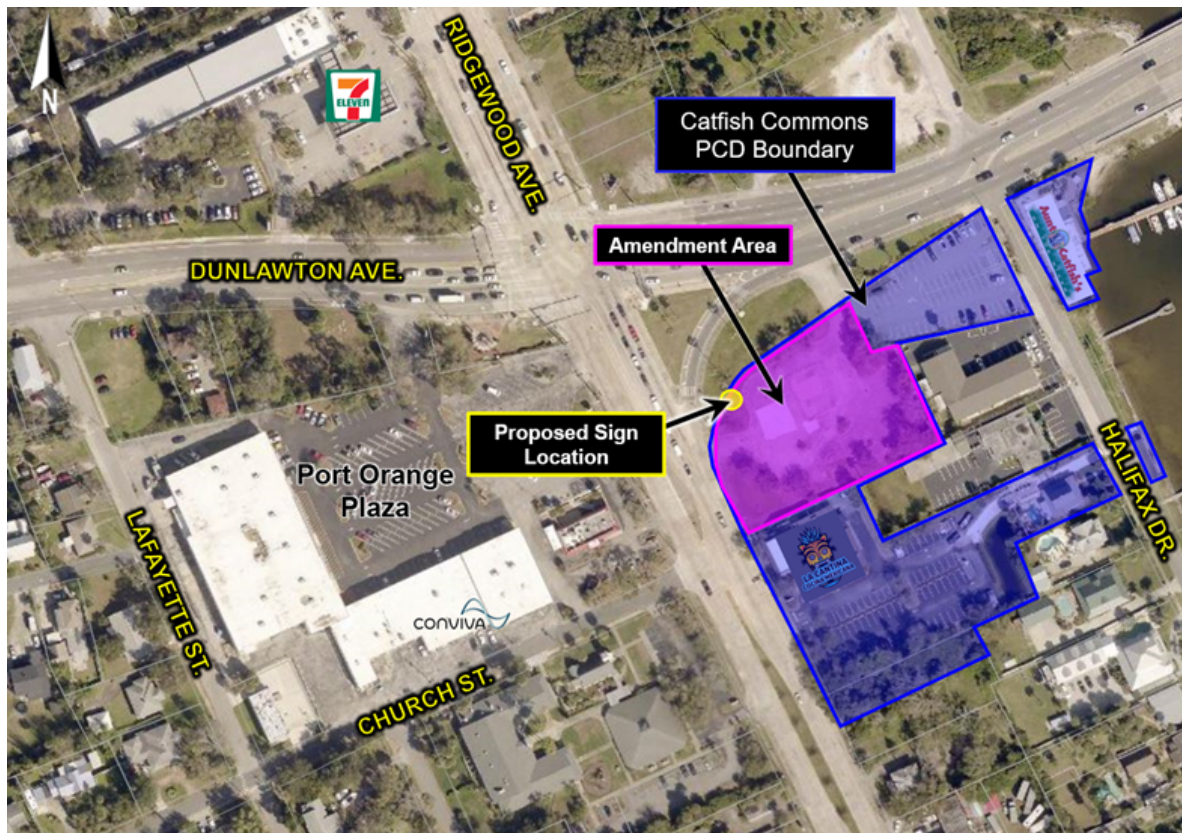
SUMMARY: Planning Commission Action (05/23/24): Recommended Approval (6-0)

The proposed amendment to the Restated Catfish Commons Master Development Agreement (MDA) for the Catfish Commons Planned Commercial Development (PCD) is to allow a multi-tenant sign with an 84-square-foot sign area at the southeast corner of Ridgewood Avenue and Dunlawton Avenue. The applicant is requesting an additional sign area to provide a sign that identifies the Catfish Commons development along with up to six tenants.

Signage for the Catfish Commons PCD is currently required to comply with the Land Development Code (LDC) unless specified in the approved Catfish Commons MDA. According to the LDC and Catfish Commons MDA, a multi-tenant freestanding sign with 56 square feet of sign area can be installed on the subject property, oriented toward the intersection of Ridgewood Avenue and Dunlawton Avenue, to identify the Catfish Commons development and tenants. The proposed amendment would allow an additional 28 square feet of sign area to the current permitted 56 square feet of multi-tenant sign requirements to identify at least six tenants and the Catfish Commons development.

According to the applicant, Brendan Galbreath, the proposed multi-tenant sign with an 84-square-foot sign area will serve as the prominent entry feature that identifies the overall Catfish Commons development and tenants within the PCD. The applicant also states that the large FDOT right-of-way in front of the parcel dictates the need for a larger sign. If the amendment is approved, the sign area dedicated to tenant panels would not significantly increase above what is currently allowed (56 square feet), as most of the requested additional sign area (28 square feet) will be used to identify the Catfish Commons development. The number of signs allowed on the subject property or within the PCD will not increase, and the proposed multi-tenant sign would be required

to meet the multi-tenant sign requirements (height, number of panels, landscaping, setbacks, and architectural design) as required by the LDC.



PRESENTER: Penelope Cruz

ATTACHMENTS:

1.	Ordinance No. 2024-11 w exhibit	Ordinance No. 2024-11 w exhibit.pdf
2.	MDA Amendment Catfish Commons	MDA Amendment Catfish Commons.pdf
3.	STAFF REPORT	STAFF REPORT.pdf
4.	Business Impact Estimate Form - PRZA-24-0004	Business Impact Estimate Form - PRZA-24-0004.pdf

Penelope Cruz

Created/Initiated - 6/25/2024

ORDINANCE NO. 2024-11

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROVING THE FIRST
AMENDMENT TO THE RESTATED MASTER
DEVELOPMENT AGREEMENT FOR THE CATFISH
COMMONS PLANNED COMMERCIAL DEVELOPMENT;
PROVIDING FOR THE REPEAL OF CONFLICTING
ORDINANCES; PROVIDING FOR SEVERABILITY OF; AND
PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City and Developer desire to enter into the First Amendment to the Restated Master Development Agreement for the Catfish Commons Planned Commercial (hereinafter referred to as the “First Amendment”); and

WHEREAS, the Owner submitted a request to the Planning Commission to approve the First Amendment; and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission has by majority vote recommended approval of the proposed First Amendment; and

WHEREAS, the City Council has approved by a majority vote of the members present the First Amendment.

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

Section 1. The City Council of the City of Port Orange does hereby approve the First Amendment (attached hereto as **Exhibit “1”**).

Section 2. The Mayor and City Clerk are hereby authorized to execute said First Amendment.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of

this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared severable.

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of _____, 2024

Passed and adopted on second and final reading on the day of _____, 2024

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

EXHIBIT "1"

FIRST AMENDMENT TO THE RESTATED MASTER DEVELOPMENT AGREEMENT FOR THE CATFISH COMMONS PLANNED COMMERCIAL DEVELOPMENT

This agreement constitutes the First Amendment to the Restated Master Development Agreement for the Catfish Commons Planned Commercial Development ("First Amendment"), entered into between the City of Port Orange, a Florida municipal corporation, having a mailing address of 1000 City Center Circle, Port Orange, Florida 32129 (hereinafter the "City"); and Commons 4075, LLC having a mailing address of 4190 Halifax Drive, Port Orange, Florida 32127 (the "Owner" or "Developer"), who hereby agree and covenant and bind their successors and assigns as follows:

WHEREAS, the Owner is the owner of the property described in Exhibit "A", which is attached hereto and by reference made a part hereof (the "Property"), the only property impacted by this First Amendment; and

WHEREAS, The City and Property Owners have previously entered into a Restated Master Development Agreement for Catfish Commons Planned Commercial Development recorded in Official Record Book 8278, Page 3843 all in Public Records, Volusia County, Florida ("Original MDA"); and

WHEREAS, the City and Owner want to amend the Original MDA as it applies to the Property for the purposes as set forth herein below.

NOW, THEREFORE, the City and Owner hereby agree as follows:

1. The premises stated above are true, and correct and form a material part of the First Amendment to the Restated Master Development Agreement for Catfish Commons Planned Commercial Development.
2. Paragraph 14. "SIGNAGE," Section A of the Restated Master Development Agreement, is hereby amended to read as follows:
 - A. The tenant at 4009 Halifax Dr shall be permitted to have a sign panel on the monument sign at 4075 Ridgewood Avenue. A multi-tenant monument sign at 4075 Ridgewood Avenue may have a maximum sign area not to exceed 84 square feet.
3. This First Amendment to the Restated Master Development Agreement shall be effective as of the date it is executed by all parties.
4. This First Amendment to the Restated Master Development Agreement shall be recorded in the public records of Volusia County, Florida, at the Developer's expense.
5. The Restated Master Development Agreement, as previously enacted, shall remain in full force and effect except with respect to those matters specifically amended by this First Amendment to the Restated Master Development Agreement

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Restated Master Development Agreement, by and through their duly authorized representatives, on the respective dates below:

WITNESSES:

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

CITY:

CITY OF PORT ORANGE, a Florida municipal Corporation

By: _____
Donald O. Burnette, Mayor

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

Date: _____

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____ 2024, by Donald O. Burnette, Mayor and by Robin L. Fenwick, City Clerk, both of the City of Port Orange, Florida a Florida Municipal Corporation, on behalf of the City. They are personally known to me and did not take an oath.

Print Name:
Notary Public, State of Florida
My commission expire

WITNESSES:

COMMONS 4075 LLC, a Florida limited liability company

Print Name: _____

By: _____

Brendan Galbreath, Member

Print Name: _____

Date: _____

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this ____ day of _____ 2024, by Brendan Galbreath, Manager of **Commons 4075, LLC**, who is [] personally known to me or [] who have produced _____ as identification and who did not take an oath.

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

EXHIBIT A
LEGAL DESCRIPTION – 4075 RIDGEWOOD AVENUE

PARCEL 1 PART OF LOTS 1, 2, AND 3, BLOCK 'A', WILSON'S SUBDIVISION OF PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A REFERENCE POINT, BEING THE INTERSECTION OF THE SOUTHERLY LINE OF BLOCK 'A', WILSON'S SUBDIVISION OF PORT ORANGE WITH THE EASTERLY LINE OF RIDGEWOOD AVENUE (U.S. HIGHWAY #1), A 100 FOOT STREET AS PRESENTLY ESTABLISHED, RUN THENCE NORTH 26 DEGREES 27 MINUTES 47 SECONDS WEST ALONG SAID EASTERLY LINE, A DISTANCE OF 35.10 FEET; THENCE CONTINUE ALONG SAID EASTERLY LINE NORTH 21 DEGREES 01 MINUTES 08 SECONDS WEST, A DISTANCE OF 38.68 FEET TO A POINT ON A CURVE CONCAVE EASTERLY; THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 126.51 FEET, A CENTRAL ANGLE OF 00 DEGREES 29 MINUTES 26 SECONDS AND A CHORD BEARING OF NORTH 24 DEGREES 14 MINUTES 04 SECONDS WEST, AN ARC LENGTH OF 1.08 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE ALONG SAID CURVE TO THE RIGHT AND ALONG THE SOUTHERLY LINE OF THE PORT ORANGE BRIDGE APPROACH, HAVING A RADIUS OF 126.51 FEET, A CENTRAL ANGLE OF 81 DEGREES 29 MINUTES 04 SECONDS AND A CHORD BEARING OF NORTH 16 DEGREES 52 MINUTES 36 SECONDS EAST, AN ARC LENGTH OF 179.92 FEET TO A POINT; THENCE NORTH 57 DEGREES 37 MINUTES 07 SECONDS EAST, A DISTANCE OF 123.70 FEET; THENCE SOUTH 19 DEGREES 32 MINUTES 00 SECONDS EAST, FOR A DISTANCE OF 70.94 FEET; THENCE NORTH 77 DEGREES 11 MINUTES 31 SECONDS EAST, A DISTANCE OF 36.78 FEET; THENCE SOUTH 24 DEGREES 46 MINUTES 56 SECONDS EAST, A DISTANCE OF 136.60 FEET TO THE SOUTHERLY LINE OF BLOCK 'A'; THENCE SOUTH 65 DEGREES 15 MINUTES 18 SECONDS WEST, ALONG SAID SOUTHERLY LINE A DISTANCE OF 98.66 FEET; THENCE NORTH 23 DEGREES 06 MINUTES 28 SECONDS WEST, A DISTANCE OF 75.0 FEET; THENCE SOUTH 65 DEGREES 15 MINUTES 18 SECONDS WEST, AND PARALLEL TO THE SOUTHERLY LINE OF BLOCK "A", 165.40 FEET TO THE POINT OF BEGINNING.

PARCEL 2

PART OF LOT 1, BLOCK 'A', WILSON'S SUBDIVISION OF PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF BLOCK 'A', WILSON'S SUBDIVISION OF PORT ORANGE WITH THE EASTERLY LINE OF RIDGEWOOD AVENUE (U.S. HIGHWAY #1), A 100 FOOT STREET AS PRESENTLY ESTABLISHED, RUN THENCE NORTH 26 DEGREES 27 MINUTES 47 SECONDS WEST ALONG SAID EASTERLY LINE A DISTANCE OF 35.10 FEET; THENCE CONTINUE ALONG SAID EASTERLY LINE NORTH 21 DEGREES 01 MINUTES 08 SECONDS WEST A DISTANCE OF 38.68 FEET TO A POINT ON A CURVE CONCAVE EASTERLY; THENCE ALONG SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 126.51 FEET, A CENTRAL ANGLE OF 00 DEGREES 29 MINUTES 26 SECONDS AND A CHORD BEARING OF NORTH 24 DEGREES 14 MINUTES 04 SECONDS WEST, AN ARC LENGTH OF 1.08 FEET TO A POINT; THENCE NORTH 65 DEGREES 15 MINUTES 18 SECONDS EAST, AND PARALLEL TO THE SOUTHERLY LINE: OF BLOCK 'A', A DISTANCE OF 165.40 FEET; THENCE SOUTH 23 DEGREES 06 MINUTES 28 SECONDS EAST, A DISTANCE OF 75.00 FEET TO THE SOUTHERLY LINE OF BLOCK 'A'; THENCE SOUTH 65 DEGREES 15 MINUTES 18 SECONDS WEST ALONG SAID SOUTHERLY LINE A DISTANCE OF 164.73 FEET TO THE POINT OF BEGINNING.

**FIRST AMENDMENT TO THE RESTATED
MASTER DEVELOPMENT AGREEMENT FOR THE
CATFISH COMMONS PLANNED COMMERCIAL DEVELOPMENT**

This agreement constitutes the First Amendment to the Restated Master Development Agreement for the Catfish Commons Planned Commercial Development ("First Amendment"), entered into between the City of Port Orange, a Florida municipal corporation, having a mailing address of 1000 City Center Circle, Port Orange, Florida 32129 (hereinafter the "City"); and Commons 4075, LLC having a mailing address of 4190 Halifax Drive, Port Orange, Florida 32127 (the "Owner" or "Developer"), who hereby agree and covenant and bind their successors and assigns as follows:

WHEREAS, the Owner is the owner of the property described in Exhibit "A", which is attached hereto and by reference made a part hereof (the "Property"), the only property impacted by this First Amendment; and

WHEREAS, The City and Property Owners have previously entered into a Restated Master Development Agreement for Catfish Commons Planned Commercial Development recorded in Official Record Book 8278, Page 3843 all in Public Records, Volusia County, Florida ("Original MDA"); and

WHEREAS, the City and Owner want to amend the Original MDA as it applies to the Property for the purposes as set forth herein below.

NOW, THEREFORE, the City and Owner hereby agree as follows:

1. The premises stated above are true, and correct and form a material part of the First Amendment to the Restated Master Development Agreement for Catfish Commons Planned Commercial Development.
2. Paragraph 14. "SIGNAGE," Section A of the Restated Master Development Agreement, is hereby amended to read as follows:
 - A. The tenant at 4009 Halifax Dr shall be permitted to have a sign panel on the monument sign at 4075 Ridgewood Avenue. A multi-tenant monument sign at 4075 Ridgewood Avenue may have a maximum sign area not to exceed 84 square feet.
3. This First Amendment to the Restated Master Development Agreement shall be effective as of the date it is executed by all parties.
4. This First Amendment to the Restated Master Development Agreement shall be recorded in the public records of Volusia County, Florida, at the Developer's expense.
5. The Restated Master Development Agreement, as previously enacted, shall remain in full force and effect except with respect to those matters specifically amended by this First Amendment to the Restated Master Development Agreement

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this First Amendment to the Restated Master Development Agreement, by and through their duly authorized representatives, on the respective dates below:

WITNESSES:

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

CITY:

CITY OF PORT ORANGE, a Florida municipal Corporation

By: _____
Donald O. Burnette, Mayor

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

Date: _____

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____ 2024, by Donald O. Burnette, Mayor and by Robin L. Fenwick, City Clerk, both of the City of Port Orange, Florida a Florida Municipal Corporation, on behalf of the City. They are personally known to me and did not take an oath.

Print Name:
Notary Public, State of Florida
My commission expire

WITNESSES:

COMMONS 4075 LLC, a Florida limited liability company

Print Name: _____

By: _____
Brendan Galbreath, Member

Print Name: _____

Date: _____

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this ____ day of _____ 2024, by Brendan Galbreath, Manager of **Commons 4075, LLC**, who is [] personally known to me or [] who have produced _____ as identification and who did not take an oath.

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

EXHIBIT A
LEGAL DESCRIPTION – 4075 RIDGEWOOD AVENUE

PARCEL 1 PART OF LOTS 1, 2, AND 3, BLOCK 'A', WILSON'S SUBDIVISION OF PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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PARCEL 2

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STAFF REPORT

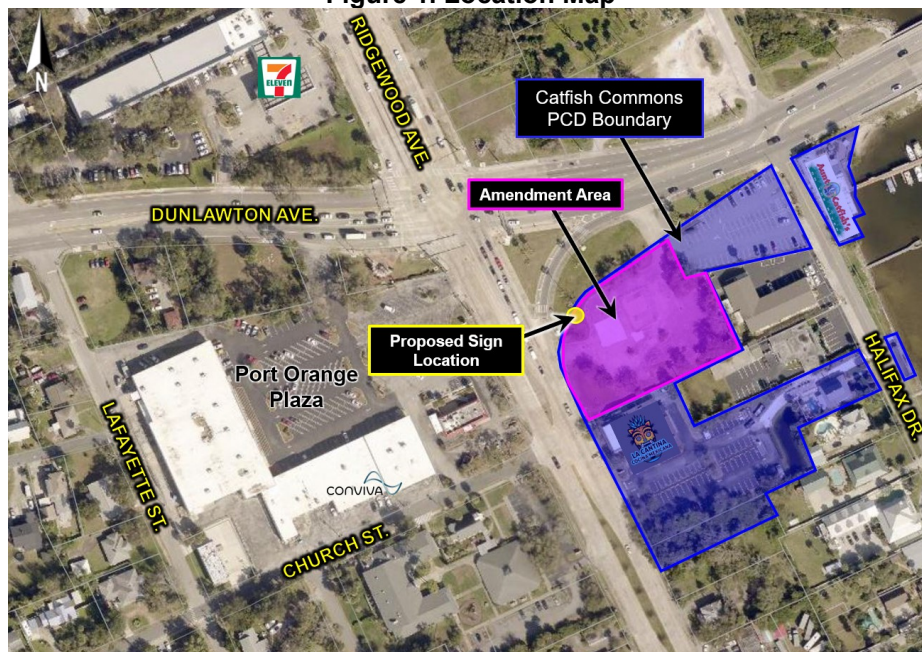
1st Amendment to the Restated Master Development Agreement for the Catfish Commons Planned Commercial Development Case No. PRZA-24-0004

REQUEST:	To approve the 1st Amendment to the Restated Master Development Agreement (MDA) for the Catfish Commons Planned Commercial Development (PCD) to allow a multi-tenant freestanding sign with an 84-square-foot sign area to identify the Catfish Commons development and tenants within the PCD.
LOCATION:	4075 Ridgewood Avenue
APPLICANT:	Brendan Galbreath
PROPERTY OWNER:	Commons 4075, LLC
STAFF CONTACT:	Tim Burman, Community Development Director
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval 6-0 (May 23, 2024)
CITY COUNCIL:	June 18, 2024

INTRODUCTION

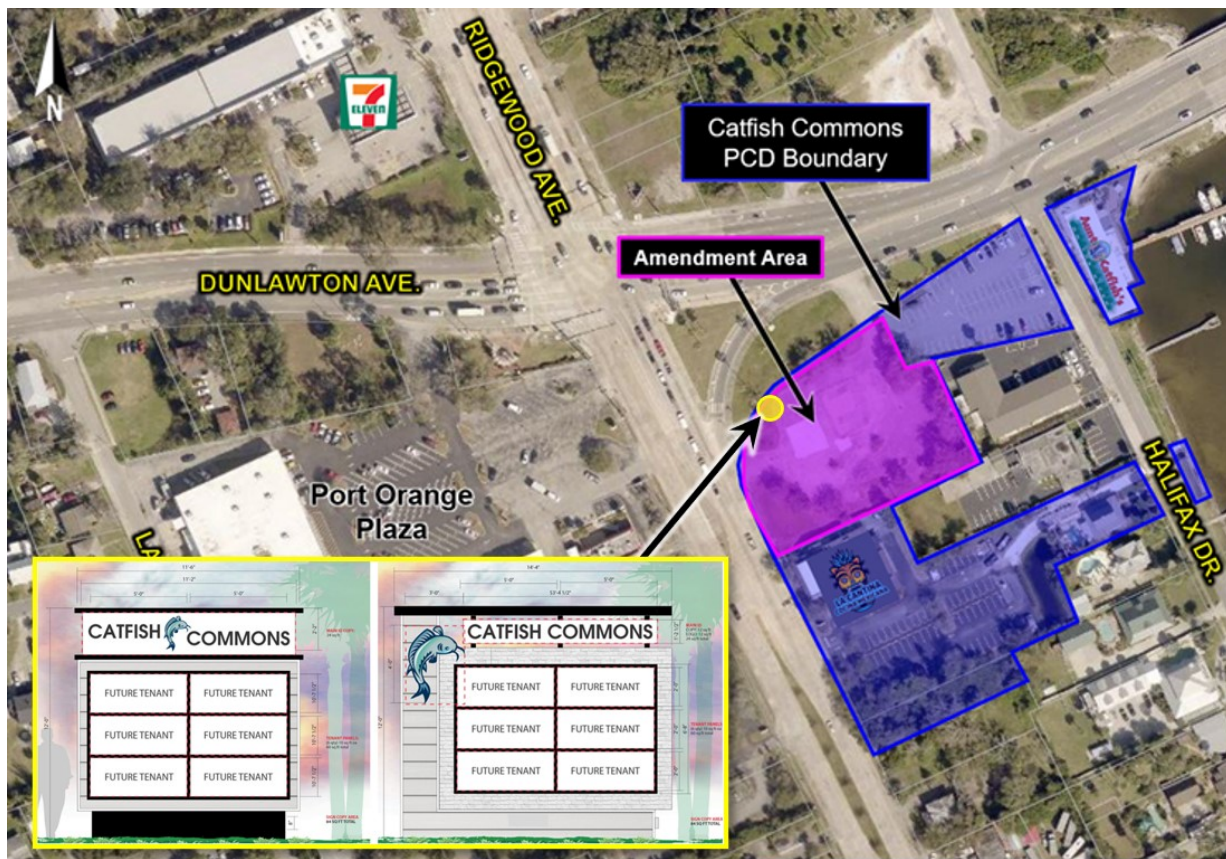
The proposed amendment to the Restated Master Development Agreement (MDA) for the Catfish Commons Planned Commercial Development (PCD) to allow a multi-tenant freestanding sign with an 84-square-foot sign area at the southeast corner of Ridgewood Avenue and Dunlawton Avenue to identify the Catfish Commons development and the tenants within the development.

Figure 1. Location Map



The Catfish Commons PCD is located within the Port Orange Town Center Community Redevelopment District. The PCD was initially approved in 2012 to provide the framework for a multi-use commercial project and an outdoor entertainment and staging area for special events. The PCD was amended in 2019 to allow a mobile retail unit, a residential unit above the entry feature at 4106 Halifax Drive, and to waive all fees associated with future amendments to the MDA or CDP for the PCD property. The PCD was amended again in 2022 to add an adjacent property into the PCD and add a framework for the development of a multi-tenant commercial building with a drive-thru, a three-story mixed-use building, a 12-slip marina, and expanded the application fee waiver to include building permits and site inspection fees.

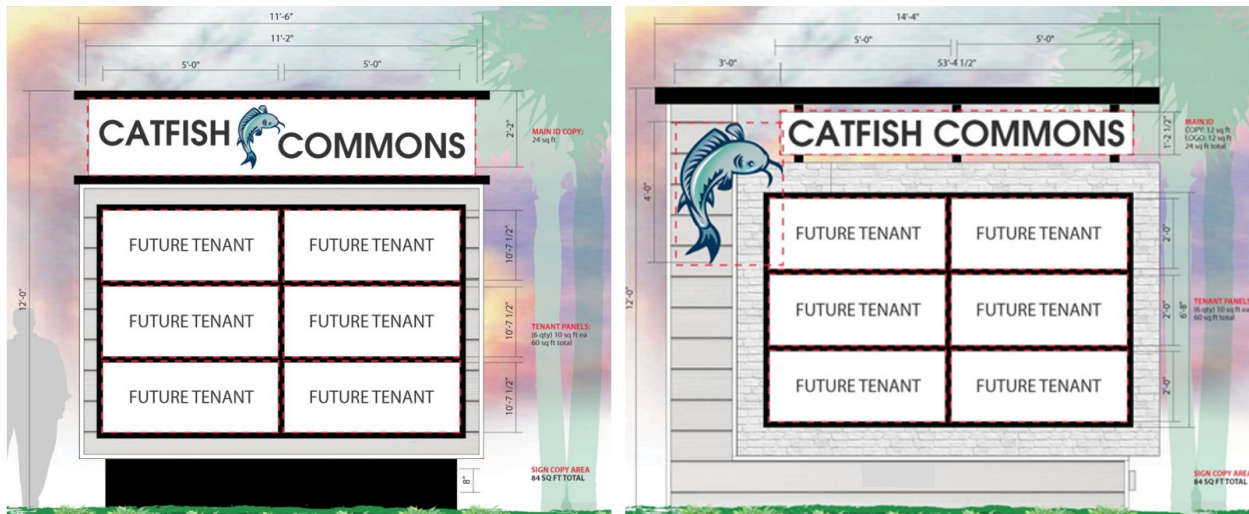
Signage for the Catfish Commons PCD is currently required to comply with the Land Development Code (LDC) requirements unless specified in the approved Catfish Commons MDA. According to the applicant, the requested amendment to the MDA is to allow additional sign area for a multi-tenant freestanding sign that will be located (4075 Ridgewood Avenue) at the intersection of Ridgewood Avenue and Dunlawton Avenue. The applicant states that the multi-tenant freestanding sign at this location will be designed to serve as the prominent entry feature that identifies the overall Catfish Commons PCD development and tenants within the PCD. The applicant also states that the large FDOT right-of-way in front of parcel dictates the need for a larger sign so it can effectively promote the businesses and the overall development.



According to the LDC and Catfish Commons MDA, a multi-tenant freestanding sign with 56 square feet of sign area can be installed on the subject property, oriented toward the

intersection of Ridgewood Avenue and Dunlawton Avenue, to identify the Catfish Commons development and tenants. The applicant is requesting a maximum sign area of 84 square feet to provide a sign that identifies the Catfish Commons development along with up to six tenants. According to the applicant, there are currently at least 6 tenants within the Catfish Commons development and the additional sign area requested would allow for the development to be identified at a predominant intersection along with the identification of current and future tenants within the development.

Figure 2. Two Sign Options Proposed by the Applicant with a Sign Area of 84 Square-Feet



If the amendment to the MDA is approved, the number of multi-tenant freestanding signs allowed on the subject property or within the PCD would not increase; the amendment would only allow an additional 28 square feet of sign area to the current permitted 56 square foot multi-tenant freestanding sign requirements. According to the applicant, the sign area for tenant panels would not significantly increase above what is currently allowed as most of the requested additional sign area would be used to identify the Catfish Commons development. The proposed multi-tenant freestanding sign at the southeast corner of Ridgewood Avenue and Dunlawton Avenue would be required to be designed to meet the multi-tenant freestanding sign requirements (height, number of panels, landscaping, setbacks, and architectural design) as provided in the LDC.

Figure 3. Comparison of the Permitted Sign and the Proposed Sign

	Permitted Multi-Tenant Freestanding Sign	Proposed Multi-Tenant Freestanding Sign	Changes to Multi-Tenant Freestanding Sign with MDA Amendment
Maximum Sign Area	56 square-feet	84 square-feet	(+) 28 square-feet
Maximum Height	12-foot	12-foot	N/A
Minimum Tenant Panel Size	10 square-feet	10 square-feet	N/A
Maximum Number of Tenant or Complex Identification Panels	5	8	(+) 3

According to the applicant, the requested sign is more than just the identifier for the four (4) tenants of the multi-tenant retail building at 4075 Ridgewood Avenue, it is viewed as the gateway identifier for the overall Catfish Commons development that currently includes five (5) properties, with additional properties anticipated to be added over the next several years.

CONSISTENCY WITH COMPREHENSIVE PLAN

In 2012, the original MDA and in 2022, the Restated MDA were found to be consistent with the Comprehensive Plan. The proposed 1st Amendment to the Restated MDA does not change the FLU designation for the subject property and is consistent with the general intent of the City's Comprehensive Plan.

The proposed amendment is generally consistent with the intent of the Goals, Objects, and Policies of the Comprehensive Plan and supports the infill redevelopment of parcels within an existing built commercial area that is already served by public infrastructure (water, sewer, roads, and schools).

PUBLIC NOTICE

A Public Notice sign was posted on the site on Wednesday, May 8, 2024. As of May 16, 2024, staff has not received any phone calls regarding the proposed PCD Amendment.

RECOMMENDATION

Staff recommends approval of the 1st Amendment to the Restated Master Development Agreement (MDA) for the Catfish Commons Planned Commercial Development (PCD), subject to review and approval by the City Attorney's Office for legal form and content.

ATTACHMENT.

Exhibit 1: 1st Amendment to the Restated Master Development Agreement for the Catfish Common Planned Commercial Development (See Ordinance Exhibit)



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the City's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance No. 2024-xx – First Amendment to the Restated Master Development Agreement for the Catfish Commons Planned Commercial (Case No. PRZA-24-0004)

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The proposed ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, *Florida Statutes*, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - c. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - d. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

A request by the property owner to approve the Restated Master Development Agreement (MDA) for the Catfish Commons Planned Commercial Development (PCD) to allow a multi-tenant freestanding sign with an 84-square-foot sign area to identify the Catfish Commons development and the tenants within the development. The amendment would only allow an additional 28 square feet of sign area to the current permitted 56 square foot multi-tenant freestanding sign requirements.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:

N/A

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:

N/A

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:

N/A

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

N/A

4. Additional information the governing body deems useful² (if any):

This ordinance is for a private property owners requesting to allow for more signage on their property.

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (H17) Second Reading - Ordinance No. 2024-01 - Chapter 74 - Utilities - Article V. Stormwater

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to adopt Ordinance No. 2024-01.

SUMMARY: Raftelis Financial Consultants, Inc. (Raftelis) was contracted to provide utility rate and other fee reviews, including the annual stormwater drainage utility fee. This scope also included preparing the 2023 Stormwater Utility Rate Study (the "Rate Study") and reviewing the City's existing stormwater utility ordinance. As part of their review, Raftelis identified the need to clarify how credits against the amount of the Stormwater Drainage Utility Fee are issued for non-residential properties with certain types of onsite stormwater retention facilities.

The proposed ordinance amends the Code of Ordinances Chapter 74, Article V – Stormwater Utility, to implement recommendations made by Raftelis as well as City staff for modernizing the utility and improving annual administration of the utility and the annual Stormwater Drainage Utility Fee imposed by the City to fund stormwater-related services and capital improvements. The amendments include adding the defined term "equivalent dwelling unit," eliminating the requirement to designate by resolution the percentage of the fee intended for capital improvements, and simplifying the provisions by which non-residential developed properties may receive credits against the amount of the Stormwater Drainage Utility Fee as a result of onsite stormwater retention facilities. These changes adhere to all other applicable state statutes and best practices of stormwater utilities among municipal governments.

Summary of Proposed Amendments:

1. Section 74-156 Definitions. Includes a new defined term, "equivalent dwelling unit (EDU)" to serve as the baseline unit for approximating the relative stormwater runoff created by different property uses. One EDU equals 3,050 square feet of impervious surface area. Each residential property is attributed one EDU per dwelling unit. For non-residential properties, the total square footage of impervious surface area is divided by 3,050 to determine the number of EDUs assigned. The number of EDUs assigned to each property is then multiplied by the annual rate to determine each property's annual stormwater drainage utility fee. The term "equivalent dwelling unit" is the unit of

measurement referenced in the Rate Study, is commonly used in stormwater programs nationwide and is generally considered the industry standard term versus the term "single-family unit (SFU)" currently used in the Code of Ordinances.

2. Section 74-159 Impervious surface calculations. This section is updated to reference the term "equivalent dwelling unit (EDU)" instead of "single-family unit (SFU)" and clarify provisions related to the assignment of EDUs to each property

3. Section 74-161 Utility fee established. This section is amended to (i) eliminate the requirement to designate by resolution the percentage of the stormwater drainage utility fee intended for capital improvements, and (ii) simplify and streamline the provisions by which non-residential developed properties may receive credits against the amount of the Stormwater Drainage Utility Fee as a result of onsite stormwater retention facilities. The Code of Ordinances currently contemplates that the stormwater fee will include a "capital facilities charge" component to fund capital improvements, and that the percentage of the charge will be established by resolution of the city council. The modern trend for stormwater rate design is to avoid specifying a percentage of the overall fee for capital purposes, and state law does not require a specified percentage. Eliminating this requirement does not reduce the amount of the fee or result in less annual revenue. It is only intended to increase city flexibility with respect to expenditure of the stormwater utility fee proceeds as it may be in a given year that capital needs are more or less than the percentage specified by a prior resolution. The city council can continue to specify the portion or percentage of the fee intended for capital improvements in the annual resolutions approving the non-ad valorem assessment roll if it so desires, but this will no longer be a requirement. The amendments clarify city intent that the stormwater fee will continue to fund both services and capital improvements and confirm that the fee may be used for the payment of debt obligations incurred to finance capital improvements.

The amendments also streamline the provisions for how stormwater drainage utility fee credits are calculated for non-single-family residential properties by adopting a more concise methodology that will be based on a percentage of the total stormwater drainage utility fee, which will be more consistent with industry standards. The credits are designed to be proportionate to the value of the improvement. Although the credit has been available since the late 1990s, it has only been used approximately five times. Despite their limited use, the proposed changes are expected to alleviate administrative burdens associated with the fee for both city staff and eligible property owners.

In summary, all the proposed amendments are intended to provide for more efficient management of the stormwater utility, while maintaining universal methodologies and compliance with Federal and State requirements.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Ordinance No. 2024-01	Ordinance No. 2024-01.pdf
2.	Business Impact Estimate	BIE - Ord. No. 2024-01 Stormwater Utility (1).pdf

Tracee Cody

Created/Initiated - 6/25/2024

ORDINANCE NO. 2024-01

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 74, ARTICLE V, STORMWATER UTILITY; AMENDING SECTION 74-156 TO ADD A DEFINITION FOR "EQUIVALENT DWELLING UNIT" AND DELETE UNUSED TERMS; AMENDING SECTION 74-159 TO DESCRIBE THE ASSIGNMENT OF EQUIVALENT DWELLING UNITS TO DEVELOPED RESIDENTIAL AND NON-RESIDENTIAL PROPERTIES; AMENDING SECTION 74-161 TO ELIMINATE THE REQUIREMENT TO DESIGNATE BY RESOLUTION THE PERCENTAGE OF THE STORMWATER DRAINAGE UTILITY FEE INTENDED FOR CAPITAL IMPROVEMENTS, STREAMLINE THE PROVISIONS BY WHICH NON-RESIDENTIAL DEVELOPED PROPERTIES MAY RECEIVE CREDITS AGAINST THE AMOUNT OF THE STORMWATER DRAINAGE UTILITY FEE AS A RESULT OF ONSITE STORMWATER RETENTION FACILITIES, AND DESCRIBE THE AUTHORIZED USES OF STORMWATER FEE PROCEEDS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SCRIVNERS ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Port Orange established the Stormwater Utility and in 2005 pursuant to Ordinance No. 2005-24 dated June 28, 2005 collected the Non-Ad Valorem Assessment by utilizing the uniform method of stormwater utility fee collection as authorized in Section 197.3632, Florida Statutes, and as agreed upon with the Volusia County Property Appraiser and Tax Collector; and

WHEREAS, the City previously engaged Raftelis Financial Consultants, Inc. (Raftelis) to provide utility rate and other fee reviews, including the annual stormwater drainage utility fee; and

WHEREAS, this scope of services provided by Rafelis also included preparing the 2023 Stormwater Utility Rate Study (the "Rate Study") and reviewing

the City's existing stormwater utility ordinance currently codified in Chapter 74, Article V of the City Code of Ordinances; and

WHEREAS, as part of their review, Raftelis identified the need to clarify how credits against the amount of the stormwater fee are issued for non-residential properties with certain types of onsite stormwater retention facilities; and

WHEREAS, based on additional recommendations made by Raftelis and City staff for modernizing the utility and improving annual administration of the utility and the annual stormwater fee imposed by the City to fund stormwater-related services and capital improvements, City Council has determined to amend Chapter 74, Article V of the City Code to (i) add the defined term "equivalent dwelling unit" and delete other defined terms which are not used therein, (ii) eliminate the requirement to designate by resolution the percentage of the fee intended for capital improvements, (iii) simplify the provisions by which non-residential developed properties may receive credits against the amount of the stormwater fee as a result of onsite stormwater retention facilities, and (iv) describe the authorized uses of the stormwater fee; and

WHEREAS, the City Council has determined that it is in the best interest of the citizens of the City of Port Orange to amend the Stormwater Utility as set forth herein.

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

SECTION 1: The City Council of the City of Port Orange, Florida hereby amends Section 74-156 of the Code of Ordinances to read as follows, with new text indicated by underline and deleted text indicated by strikethrough:

Sec. 74-156. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Beneficiaries of drainage service means all developed real properties within the city which benefit by the provision of maintenance, operation and improvement of the stormwater control system. Such benefits may include, but are not limited to, the provision of adequate systems of collection, conveyance, detention, treatment and release of stormwater, the reduction of hazard to property and life resulting from stormwater runoff, improvement in general health and welfare through reduction of undesirable stormwater conditions and improvements to the water quality in the storm and surface water system and its receiving waters.

Commercial unit means any building or facility used other than as a dwelling unit or for industrial purposes and which has not been converted to equivalent dwelling units.

Contributors of drainage waters shall include all developed real properties within the city.

Developed means any property altered in appearance by removal of vegetation, grading of the ground surface and construction of a structure or impervious surface.

Director means the director of the stormwater drainage utility, appointed or designated by the city manager.

Dwelling unit means a single-family unit providing complete, independent living facilities for one or multiple more persons including permanent provisions for living, sleeping, eating, cooking and sanitation. By way of example and not limitation, the term "dwelling unit located within a parcel and occupied for " shall include single family houses, residential purposes as defined in Section 74-156. condominium, townhome or apartment units, and mobile homes.

Equivalent dwelling unit (EDU) means the unit of measurement applied against each developed parcel to determine the relative demand for stormwater services created by development of such parcel and the amount of such parcel's stormwater fee. One EDU equals 3,050 square feet of impervious surfaces.

Fee means the stormwater drainage utility fee enacted herein and set by resolution.

~~Hydrologic response means the manner and means by which stormwater collects upon real property and is conveyed from real property, and which is a function dependent upon a number of interacting factors, including, but not limited to, topography, vegetation, surficial geologic conditions, antecedent soil moisture conditions and groundwater conditions. The principal measures of the hydrologic system may be stated in terms of total runoff volume, as a percentage of total precipitation which runs off, or in terms of the peak rate of flow generated in the event of a storm of given duration and intensity, or statistical interval of return (frequency).~~

Impervious surfaces means those hard-surfaced areas which either prevent or retard the entry of water into soil mantle, as it entered under natural conditions prior to development, and/or cause water to run off the surface in greater quantities or at an increased rate of flow from that present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, areas and other surfaces which similarly impact the natural infiltration or runoff patterns which existed prior to development, including impacts to normal water in ponds and lakes. The following ~~surfaces~~are considered examples of impervious surfaces:

- Apartment detached;
- Barn;
- Block enclosed pool;
- Block wall;
- Cabana;
- Canopy;
- Carport finished;
- Carport residential;
- Carport unfinished;
- Community swimming pool adult;
- Community swimming pool children;
- Cooler walk-in;
- Crypts, mausoleum;
- Enclosed porch fin masonry;
- Enclosed porch fin wood;
- Finished pool enclosure;
- Finished enclosed porch;
- Garage masonry finished;
- Garage wood finished;

Garage wood unfinished;
Garage, masonry unfinished;
Gazebo;
Glass wall enclosure;
Grand stand concrete;
Greenhouse;
In ground shelter;
Loading platform covered;
Loading platform uncovered;
Open porch finished;
Open porch unfinished;
Patio/concrete slab;
Paving asphalt (grade est. by size);
Paving concrete (grade est. by size);
Pole barn;
Pool enclosure, wood/block;
Pump island;
Racquetball court;
Reinforced concrete silo;
Rest room facility;
Screen enclosure residential;
Screen enclosure structure;
Screen porch finished;
Screen porch residential;
Screen porch unfinished;
Stable, racing;
Storage building;
Storage building masonry;
Storage building wood;
Tennis court;
Tennis court light;
Unfinished enclosed porch;
Unfinished residential utility;

Vinyl enclosed porch;

Warehouse prefab.

~~Multiple dwelling unit means a building or facility consisting of more than one dwelling unit, each such unit consisting of one or more rooms with bathroom and kitchen facilities designed for residential occupancy by one family, where the units are not sold or deeded as single-family units.~~

~~Open drainageway means a natural or manmade open cut which has the specific function of transmitting natural stream water or storm runoff water from a point of higher elevation to a point of lower elevation, such as swales, ditches, canals, streams and creeks.~~

~~Peak flow means the highest momentary rate of water flow, measured or estimated in cubic feet of water per second. It is differentiated from total flow volume by the introduction of a unit of time measure during which the maximum rate of flow is measured, calculated or estimated.~~

~~Runoff control means any means approved by the city engineer by which the peak rate of stormwater runoff from developed land surfaces is reduced and the erosion created by stormwater is reduced.~~

~~Single-family unit (SFU) means one or more rooms with bathroom and kitchen facilities designed for occupancy by one family such as townhouses, condominiums, zero lot-line and any other unit for residential purposes, etc., where the units are sold and deeded as single-family units.~~

~~Total flow means the accumulative volume of water discharged from a property, basin or watershed. The total flow is quantified in measures such as acre feet or cubic feet of water.~~

Non-residential property means real property classified by the county property appraiser for non-residential uses and/or developed with buildings or other structures for non-residential uses such as commercial, warehouse, industrial, restaurant, office, retail or other non-residential uses.

Residential property means real property classified by the county property appraiser for residential use and/or developed with one or more dwelling units.

Utility means the stormwater drainage utility created hereby.

SECTION 2: The City Council of the City of Port Orange, Florida hereby amends Section 74-159 of the Code of Ordinances as follows, with new text indicated by underline and deleted text indicated by strikethrough::

Sec. 74-159. Impervious surface calculation.

- (a) All parcels of developed residential property, ~~except in the City shall be assigned one EDU per dwelling units, in the city shall have their square~~

~~footage impervious area calculated in order to establish their single-family unit equivalency present on the parcel.~~

- (b) ~~The city council has determined that~~To calculate the number of EDUs assigned to parcels comprised of developed non-residential property not used for single-family dwellings is furnished service in proportion to the , the total amount of the property's impervious surface and that for each on the parcel, measured in square feet, shall be divided by 3,050 square feet of.
- (c) A minimum of one EDU shall be assigned to all developed parcels in the City.
- (d) Parcels which are undeveloped or which contain no impervious surface the property is furnished service equivalent to that furnished a single-family unit. The minimum service charge shall be that established for a single-family unit. surfaces shall not be subject to the stormwater fee.

SECTION 3: The City Council of the City of Port Orange, Florida hereby amends Section 74-161 of the Code of Ordinances as follows, with new text indicated by underline and deleted text indicated by strikethrough:

Sec. 74-161. Utility fee established.

- (a) Subject to the provisions of this article, there is hereby imposed on each and every developed lot or parcel of land within the city and the owners thereof a stormwater drainage utility fee. This fee is deemed reasonable and is necessary to pay for the operation, maintenance, administration and capital improvements of the existing city stormwater drainage facilities and the operation, maintenance, administration and capital improvements of such future stormwater drainage facilities as may be established within the city and to pay for the design, right-of-way acquisition and construction or reconstruction of stormwater drainage facilities to the extent that such costs have been determined to be the responsibility of developed properties. All of the proceeds of this fee are deemed to be in payment for use of the city stormwater drainage system. The fee shall be established by resolution of the city council.
- (b) ~~The service charges are based on the square footage of impervious area, such that for each 3,050 square feet of area or increments thereof the property shall be charged an additional single-family unit charge. (c) In addition to the stormwater drainage utility fee established in subsection (a) of this section, there is hereby shall be imposed on each and every developed lot or parcel of land within the city and the owners thereof a capital facilities charge as a portion of the stormwater drainage utility fee. The capital facilities charge shall be based upon the volume of water draining from such developed lot or parcel of land into the stormwater drainage management facilities of the city. The capital facilities charge is deemed reasonable and is~~

~~necessary to pay for capital improvements of the existing city stormwater drainage facilities and capital improvements of such future stormwater drainage facilities as may be established within the city. The capital facilities charge shall be established by resolution of the city council.~~

~~(d) The full amount of the capital facilities charge of the stormwater drainage utility fee shall be charged on against all developed residential property and non-residential property.~~

~~(c) The amount of the capital facilities charge of the stormwater drainage utility fee for developed nonresidential property shall be subject to a mitigation credit based on the presence of onsite stormwater retention facilities, determined in accordance with paragraphs (1), (2), (3), (4) or (5) below as follows:~~

~~(1) If the stormwater drainage management facilities serving the property reduce the volume of stormwater draining into stormwater drainage management facilities of the city by an amount less than 25 percent, the property shall be charged an amount equal to 100 earn a 10 percent of the capital facilities charge of credit to the stormwater drainage utility fee.~~

~~(2) If the stormwater drainage management facilities serving the property reduce the volume of stormwater draining into stormwater drainage management facilities of the city by an amount equal to or greater than 25 percent but less than 50 75 percent, the property shall be charged an amount equal to 50 earn a 25 percent credit to 75 percent of the capital facilities charge of the stormwater drainage utility fee.~~

~~(3) If the stormwater drainage management facilities serving the property reduce the volume of stormwater draining into stormwater drainage management facilities of the city by an amount equal to or greater than 50 percent but less than 75 percent, the property shall be charged an amount equal to 50 percent of the capital facilities charge of the stormwater drainage utility fee.~~

~~(4) If the stormwater drainage management facilities serving the property reduce the volume of stormwater draining into stormwater drainage management facilities of the city by an amount equal to or greater than 75 percent but less than up to 100 percent, the property shall be charged an amount equal to 25 earn a 40 percent of the capital facilities charge of credit to the stormwater drainage utility fee.~~

~~(5) If the stormwater drainage management facilities serving the property reduce the volume of stormwater draining into stormwater drainage management facilities of the city by an amount equal to 100 percent, the property shall not be charged any amount of the capital facilities charge of the stormwater drainage utility fee.~~

~~(e) In order to reduce the total number of stormwater drainage retention basins utilized for stormwater management, to pay a portion of the cost thereof, and to provide for the orderly growth within commercial and industrial districts,~~

~~the city establishes the following stormwater drainage utility fee credit against the capital facilities charge of the stormwater drainage utility fee.~~

~~(1) Prior to designing and constructing a regional stormwater drainage retention basin within a commercial or industrial district or to serve a commercial or industrial district, the city may enter into an agreement with one or more owners of property within such commercial or industrial district which requires such owner or owners to pay all or part of the construction costs of said regional stormwater drainage retention basin. Each developed lot or parcel of land within such commercial or industrial district (a "surcharged lot") shall be eligible for a stormwater drainage utility fee credit in an amount not to exceed \$2.00 per month or \$24.00 per year per ERU against the capital facilities portion of the stormwater drainage utility fee. The amount and term of the credit for each commercial or industrial district served by such regional stormwater drainage retention basin shall be established by resolution of the city council.~~

~~(2) The amount of the credit described in this subsection shall be determined under paragraphs a. or b. below.~~

~~a. If the property owner pays to the city a lump sum payment of the lot's pro-rata share of the cost of the regional stormwater drainage retention basin, then the property shall be eligible for a credit equal to the full amount of the capital facilities charge of the stormwater drainage utility fee. The pro-rata share shall be based upon one-half of the proportion of ERUs of the lot to the permitted design capacity of the required regional stormwater drainage retention basin.~~

~~b. If the property owner pays to the city a portion of the lump sum payment described in paragraph a. above, then the property shall be eligible for a credit equal to the difference between the full amount of the capital facilities charge of the stormwater drainage utility fee and the amount necessary to amortize the balance of the lump sum payment amount over a period of ten years or as otherwise provided in the agreement between the city and the property owner (at an assumed interest rate equal to the city's then-current average cost of funds), provided that such credit shall in no event exceed the capital facilities charge of the stormwater drainage utility fee.~~

~~(f) The city may retain a maximum of two percent of the funds collected from stormwater drainage utility fees on an annual basis to offset the city's reasonable administrative costs associated with the collection and administration of said fund. The amount of the city's reasonable administrative costs in connection with the collection and administration of these funds shall be documented as part of the city's annual budget process. Any funds retained by the city to offset the city's reasonable administrative~~

~~costs in connection with the collection and administration of said funds shall be placed in a separate city account which account shall be used solely for administrative expenses incurred by the city in the collection and administration of funds collected from stormwater drainage utility fees.~~

~~(1) Properties which voluntarily upgrade stormwater drainage management facilities to comply with current Land Development Code standards in effect on the date of construction of such facilities shall be eligible for a stormwater drainage utility fee credit in an amount not to exceed the full amount of the capital facilities charge of the stormwater drainage utility fee.~~

~~(2) The amount of the monthly credit described in this subsection shall be determined under paragraphs a., b., c., d. or e. below.~~

~~a. If the upgraded stormwater drainage management facilities reduce the volume of stormwater draining from the property in an amount less than 25 percent, the property shall not be eligible for any credit in any amount of the capital facilities charge of the stormwater drainage utility fee.~~

~~b. If the upgraded stormwater drainage management facilities reduce the volume of stormwater draining from the property in an amount equal to or greater than 25 percent but less than 50 percent, the property shall be eligible for a credit in the amount of 25 percent of the capital facilities charge of the stormwater drainage utility fee.~~

~~c. If the upgraded stormwater drainage management facilities reduce the volume of stormwater draining from the property in an amount equal to or greater than 50 percent but less than 75 percent, the property shall be eligible for a credit in the amount of 50 percent of the capital facilities charge of the stormwater drainage utility fee.~~

~~d. If the upgraded stormwater drainage management facilities reduce the volume of stormwater draining from the property in an amount equal to or greater than 75 percent but less than 100 percent, the property shall be eligible for a credit in the amount of 75 percent of the capital facilities charge of the stormwater drainage utility fee.~~

~~e. If the upgraded stormwater drainage management facilities reduce the volume of stormwater draining from the property in an amount equal to 100 percent, the property shall be eligible for a credit equal to the full amount of the capital facilities charge of the stormwater drainage utility fee.~~

~~(3) Such credit shall apply for a period until the aggregate amount of the credit shall equal the cost incurred to upgrade such stormwater drainage management facilities (but not to exceed ten years).~~

(gd) Procedures for obtaining credits.

- (1) The property owner shall submit a formal written request to the director if he desires a credit for his property. The application shall set forth the facts and circumstances necessary to determine eligibility for a credit and the amount of any credit. The director shall advise the applicant in writing as to any additional information required. Based upon the information provided by the utility and the property owner, the director shall make a final determination of the availability of any credits. The director shall notify the property owner, in writing, of his decision. If dissatisfied, a property owner may request, in writing, a review by the city manager of the director's decision. Such request must cite specific error by the director and the calculation which the property owner believes to be incorrect. The city manager shall review the record presented and render a written decision as soon as practical. He may request additional information from either party. If still dissatisfied, a property owner may appeal the city manager's decision to the city council in the same manner as preceding. The decision of the city council shall be final.
- (2) After a particular property receives a stormwater drainage utility fee credit, annually thereafter the city shall inspect the stormwater drainage facilities serving the site in order to determine whether those facilities are maintained and functioning properly. If the city inspection determines that they are maintained and functioning properly, the stormwater drainage utility fee credit shall be continued. However, if the city inspection determines that they are improperly maintained and not functioning properly, the city shall notify the property owner or owners to correct the deficiency within 60 days. If the deficiency is corrected to the satisfaction of the city within the 60-day period, the stormwater drainage utility fee credit shall continue in effect until the next annual inspection. However, if the deficiency is not corrected to the satisfaction of the city within 60 days, the city may cancel the stormwater drainage utility fee credit until the necessary corrections are made.
- ~~(h) In adopting any stormwater drainage utility fee, the city will separately identify the amount of such fee which shall be eligible for the credits established in subsections (e) and (f) of this section, which portion is designated the capital facilities charge. No credit shall exceed the applicable capital facilities charge of the stormwater drainage utility fee.~~
- ~~(i) No property shall be eligible for more than one credit established in either subsection (e) or (f) of this section.~~
- ~~(j) The credits established in subsections (e) and (f) of (3)~~ The credits established in this section shall apply only to applications approved by the city beginning the first month after adoption of this ordinance and before October 31, 1999, unless extended by action of the city council. The city council may revise, modify, rescind or repeal the credits established in subsection (e) or (f) of this section, provided that such

action shall not impair or affect the rights provided in a written agreement between the city and a property owner.

(e) The stormwater fee established hereunder may be collected as a non-ad valorem assessment on the annual property tax bill, pursuant to Section 74-164 hereof and section 403.0893, Florida Statutes, in which case the city shall comply with the requirements and procedure set forth in section 197.3632, Florida Statutes, including the provision of notices where applicable and the adoption of a resolution approving the non-ad valorem assessment roll for the forthcoming fiscal year(s). Such resolution may provide that the stormwater fee imposed against certain parcels may be collected by direct billing or any other method authorized by law. The amount of the stormwater fee may include annual expenses and costs incurred by the city in facilitating annual collection and administration of the stormwater fee, and any fees, expenses or costs associated with the tax bill collection method set forth in section 197.3632, Florida Statutes, including but not limited to fees of the tax collector and property appraiser and amounts necessary to offset the discount for the early payment of ad valorem taxes and no-ad valorem assessments.

(f) Use of the Stormwater Fee Proceeds. Proceeds of the Stormwater Fee may only be expended for purposes related to the City's provision of stormwater services and the stormwater utility system. Such purposes may include, but are not limited to, the following:

- (1) Costs to acquire real and personal property and interests therein, necessary to construct, operate, and maintain stormwater control facilities;
- (2) All costs of administration and implementation of the City's stormwater management program, including the establishment of reasonable operating and capital reserves to meet unanticipated or emergency stormwater management requirements;
- (3) Engineering, design, architectural and other professional services;
- (4) Costs of personnel, labor, services, materials, equipment and supplies;
- (5) Construction costs for new facilities, and enlargement, extension or improvement of existing facilities;
- (6) Planning and permitting expenses;
- (7) Operation and maintenance expenses;
- (8) Monitoring, surveillance, and inspection of stormwater control devices;
- (9) Debt service on any bonds or other debt obligations incurred to finance or refinance capital improvements, including any related financing expenses or closing costs;
- (10) Inspection and enforcement activities;

- (11) Billing, collection and administrative costs, including costs or expenses associated with collection of the stormwater fees as non-ad valorem assessments pursuant to section 197.3632, Florida Statutes; and
- (12) Other activities reasonably required to carry out the City's stormwater management responsibilities.

SECTION 3. Specific authority is hereby granted to codify and incorporate this ordinance in the existing Code of Ordinances of the City of Port Orange.

SECTION 4. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. 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 6. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

[Remainder of Page left blank]

SECTION 6. This ordinance amendment shall take effect upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the _____ day of _____, 2024.

Passed and adopted on second and final reading on the _____ day of
_____, 2024.

Reviewed and Approved: _____
Matthew J. Jones, City Attorney



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the City's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ord. No. 2024-01 - Amending Ch. 74 Utilities - Article V. Stormwater

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☒ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The proposed ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, *Florida Statutes*, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - c. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - d. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

The proposed ordinance amends the Code of Ordinances Chapter 74, Article V – Stormwater Utility, relating to additional definitions, removal of the capital facilities charge and simplification of providing credits to non-residential developed properties. These changes do not affect the council's authority over the stormwater utility and adhere to all other applicable state statutes and best practices of stormwater utilities among municipal governments.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:

None.

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:

Existing Fee already imposed

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:

None.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

Impacts all business within the City Limits of Port Orange.

4. Additional information the governing body deems useful² (if any):

All the proposed amendments are intended to provide for more efficient management of the stormwater utility, while maintaining universal methodologies and compliance with Federal and State requirements.

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (I18) First Reading - Ordinance No. 2024-10 - Amendment to Chapter 54, Article V, Police Pension Fund of the Code of Ordinances

DEPARTMENT: Finance

GOAL: 1 - Public Safety
6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve first reading of Ordinance No. 2024-10 amending the Police Pension Fund.

SUMMARY: The City Council approved the collective bargaining agreements for International Union of Police Associations (IUPA) and Coastal Florida Police Benevolent Association Lieutenants (PBALT) on October 17, 2023, and May 7, 2024, respectively, which included amendments to the retirement plan articles. The Plan Actuary, Freiman Little Actuaries, LLC, completed an updated actuarial impact statement. This ordinance is required to implement the pension changes negotiated by the two police unions.

The changes are as follows:

1. Section 54-122 - Definitions. Amends the definition of average final compensation to mean the three highest years of the last five years of credit service for both Tier 1 and Tier 2 members.
2. Section 54-126 - Pension Benefits. Amends language that clarified the normal retirement age shall be 48 years of age and ten vesting credits or has earned 20 vesting credits irrespective of age for both Tier 1 and Tier 2 members.
3. Section 54-127 - Forms of benefit Payment. Amends language that a participant may participate in the Deferred Retirement Option Plan (DROP) upon eligibility for the normal retirement date for both Tier 1 and Tier 2 members.

Preliminary estimates for fiscal year 2023 - 2024 show that this amendment will cost the city \$80,026 in additional required contributions to the police pension fund as part of the October 1, 2023, valuation for contributions through September 30, 2025.

PRESENTER: John McKinney

ATTACHMENTS:

1.	Ordinance 24-10 Police Pension Ord implementing IUPA - PBA MJrev5.3	Ordinance 24-10 Police Pension Ord implementing IUPA - PBA MJrev5.3.pdf
2.	BIE - Ord. No. 2024-10 Police Pension Changes Mjrev5.8.24	BIE - Ord. No. 2024-10 Police Pension Changes Mjrev5.8.24.pdf
3.	Port Orange Police Impact Statement Ordinance 24-10	Port Orange Police Impact Statement Ordinance 24-10.pdf

John McKinney

Created/Initiated - 4/29/2024

John McKinney

Approved - 4/29/2024

Matthew Jones

Approved - 5/9/2024

Wayne Clark

Approved - 7/9/2024

Tracee Cody

Final Approval - 7/10/2024

ORDINANCE NO. 2024-10

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 54, ARTICLE V, POLICE PENSION FUND, AMENDING SECTION 54-122, DEFINITIONS, AMENDING THE DEFINITION OF "AVERAGE FINAL COMPENSATION"; AMENDING SECTION 54-126, PENSION BENEFITS, AMENDING THE NORMAL RETIREMENT AGE; AMENDING SECTION 54-127, FORM OF BENEFIT PAYMENTS, PROVIDING DROP ELIGIBILITY FOR CERTAIN MEMBERS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange, Florida has entered into a collective bargaining agreement with the Port Orange Police Association, I.U.P.A. Local 6051 (Police Officers and Sergeants) for the period October 1, 2023, through September 30, 2026; and

WHEREAS, the City of Port Orange, Florida has entered into a collective bargaining agreement with the Port Orange Coastal Florida Police Benevolent Association (Lieutenants) for the period April 1, 2024, through September 30, 2024; and

WHEREAS, the collective bargaining agreements contain changes to retirement benefits under the City of Port Orange Police Pension Fund; and

WHEREAS, in order to implement the changes to the Police Pension Fund contained in the collective bargaining agreements, an amendment to Chapter 54 of the City Code is necessary; and

WHEREAS, the City has obtained an actuarial impact statement concerning the retirement plan changes in accordance with Article X, Section 14 of the Florida Constitution and Section 112.63, Florida Statutes.

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

SECTION 1: Section 54-122, Definitions, of the Port Orange Police Pension Fund

is hereby amended as follows:

Sec. 54-122. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

~~Average final compensation, for a participant hired on or before January 31, 2011,~~ shall mean one-twelfth of the average annual compensation of the three highest years of service prior to the employee's normal retirement date. ~~"Average final compensation" for a participant hired after January 31, 2011 shall mean one-twelfth of the average annual compensation of the five highest years of service prior to the employee's normal retirement date.~~ Effective January 31, 2011, annual compensation for all participants shall be as defined below.

* * *

SECTION 3: Section 54-126, Pension benefits, of the Port Orange Police

Pension Fund is hereby amended as follows:

Sec. 54-126. Pension benefits.

* * *

(b) *Normal retirement age.* The normal retirement age shall be the first day of the month on which or after the participant:

- (1) Attains age 48 and earns ten vesting credits, or
- (2) Earns 20 vesting credits irrespective of age.

~~Notwithstanding the preceding sentence, the normal retirement age for participants who are employed and not participating in the DROP on January 31, 2011, shall be the first day of the month on or after the participant:~~

- ~~(1) Attains age 48 and earns ten vesting credits, or~~

~~(2) Attains age 45 and earns 25 vesting credits;~~

~~and the normal retirement age for participants hired after January 31, 2011, shall be the first day of the month on or after the participant attains age 48 and earns ten vesting credits.~~

* * *

SECTION 3: Section 54-127, Forms of benefit payments, of the Port Orange

Police Pension Fund is hereby amended as follows:

Sec. 54-127. Forms of benefit payments.

* * *

(c) Optional forms of benefits

* * *

(3) Deferred retirement option plan ("DROP").

a. Eligibility. A participant who has reached the normal retirement age ~~attained 25 years of service~~ may elect to enter the DROP. ~~Notwithstanding the preceding sentence, a participant hied after January 31, 2011, shall not be eligible to participate in the DROP.~~

* * *

SECTION 4. Specific authority is hereby granted to codify and incorporate this ordinance in the existing Code of Ordinances of the City of Port Orange.

SECTION 5. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 6. 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 7. This ordinance amendment shall take effect upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the ____ day of _____, 2024.

Passed and adopted on second and final reading on the ____ day of _____, 2024.

Reviewed and Approved: _____
Matthew J. Jones, City Attorney



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the City's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ord. No. 2024-10 - Amending Ch. 54, Sec. 54-122 Average Final Compensation, Sec. 54-126 Normal Retirement Age, and Sec. 54-127, DROP eligibility.

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☒ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The proposed ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, *Florida Statutes*, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - c. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - d. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

This implements changes to the Police Pension Fund contained in the collective bargaining agreement for IUPA and PBALT, and amendments to Chapter 54 of the City Code is necessary to implement the agreed upon changes.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:

There are no direct compliance costs anticipated.

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:

None.

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:

None.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

No impact on businesses anticipated.

4. Additional information the governing body deems useful² (if any):

This ordinance formally amends the Port Orange Police Pension Fund ("Pension Fund") and is necessary to implement agreed upon changes to the pension plan pursuant to collective bargaining agreements with IUPA and PBALT. The changes allow the City to continue to recruit and retain quality law enforcement personnel to bolster public safety.

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



June 28, 2024

Karan Rounsavall
Pension Administrator
City of Port Orange Police Officers' Pension Fund
3695 Indian River Drive
Cocoa FL 32926

Re: Estimated Impact of Ordinance 2024-10

Dear Karan:

This letter is being written to provide an impact statement regarding the attached proposed ordinance which modifies the City of Port Orange (the City) Police Officers' Pension Fund (the Plan).

Summary of Changes

See the attached Exhibit A providing a side-by-side summary of Plan provisions. Draft Ordinance No. 2024-10 contains the following changes.

Section 54-122 Definitions. The definition of Average Final Compensation for members hired on or after January 31, 2011 is revised from a five-year average to a three-year average.

Section 54-126 Pension Benefits. The definition of Normal Retirement Age is modified to the first day of the month on which or after the participant: (1) Attains age 48 and earns ten vesting credits, or (2) Earns 20 vesting credits irrespective of age. Prior to this modification members hired prior to January 31, 2011 were eligible for Normal Retirement at 48/10 or 45/25 and those hired on or after January 31, 2011 were eligible at 48/10.

Section 54-127 Forms of Benefit Payments. The section is modified to allow for DROP eligibility at Normal Retirement Age. Prior to change DROP eligibility was only available to members hired prior to January 31, 2011 at 25 years.

Actuarial Impact

The estimated impact has been determined based on the data, assumptions and methods shown in the revised October 1, 2023 actuarial valuation of the Plan dated February 26, 2024, except as follows.

For the retirement eligibility change, we calculated the liability using two different sets of retirement decrements for Tier One members and under two different sets of retirement decrements for Tier Two members and used the value which resulted in the largest liability for each member. For Tier One, the two sets of retirement decrements were (1) the valuation Tier One retirement assumptions and (2) the Tier One valuation retirement assumptions revised to assume 100% retirement at 20 years of service regardless of age. For Tier Two, the two sets of retirement decrements were (1) the valuation Tier Two retirement assumptions and (2) Tier One valuation retirement assumptions revised to assume 100% retirement at 20 years of service regardless of age.

We do not believe that the change in DROP eligibility would create enough of a change in retirement behavior to warrant a change in the retirement assumptions. Tier Two members are already assumed to retire at first eligibility for Normal Retirement if it produces the higher liability. Tier One members may

choose to enter the DROP at their Normal Retirement Date or they may choose to remain employed until they become COLA eligible at 25 years as currently assumed. We do not anticipate a change in Tier One behavior (such as entering DROP earlier than the member would have retired otherwise). The current Tier One retirement decrements already assume a spike in retirement at age 48 with 10 years of service and 100% at age 45 with 25 years of service. For this reason we do not anticipate a material impact for the change in DROP eligibility.

Should the ordinance be adopted before September 30, 2024, this impact statement will determine the Minimum Required Contribution for the fiscal year ending September 30, 2025.

The impact of a benefit change can be looked at from several different perspectives. We can look at the change in the present value of projected benefits, the change in the normal cost, the change in the accrued liability, the change in the funded percentage, or the change in annual contributions.

- The Present Value of Benefits (PVB) is the present value, as of the valuation date, of all benefits that will become payable by the Plan for the current group of members in the census. The change in the PVB due to the proposed provisions is shown in Exhibit B.
- The Accrued Liability (AL) is the portion of the PVB attributable to the past at the valuation date. For active members, AL is the annual Normal Cost (NC) accumulated from date of entry to the valuation date for each Member. For retired and terminated members, the PVB and the AL are equal. The AL is the estimated liability at the valuation date. The Unfunded Accrued Liability (UAL) represents any excess of the Accrued Liability over the fund assets. A negative UAL indicates fund assets are greater than the Accrued Liability, otherwise known as a surplus. The Funded Percentage is a ratio of the fund assets divided by the Accrued Liability. The change in the UAL and Funded Percentage due to the proposed provisions is shown in Exhibit C.
- Normal Cost is the value of the portion of the total benefit for active members which accrues in the year following the valuation date. Under the Entry Age Normal (Level Percent of Salary) funding method, the NC is a constant fraction of salary from the member's date of entry into the Plan to the member's assumed date of termination, retirement, disability or death. The change in the NC due to the proposed provisions is shown in Exhibit D.
- The Minimum Required Contribution shown in Exhibit E determines the impact of the proposed provisions on the minimum contribution for the fiscal year ending September 30, 2025. The actual contribution payable for the fiscal year ending September 30, 2025 is as shown in the October 1, 2023 actuarial valuation unless the ordinance is adopted before September 30, 2024. Should the ordinance be adopted before September 30, 2024, this impact statement overrides the minimum required contribution shown in the October 1, 2023 actuarial valuation.

Note: The impact provided is an estimate for the funding of the Plan. Accounting impacts will be different as plan changes are fully recognized in a single year's expense for accounting purposes.

Required Disclosures

- The purpose of this impact statement is to estimate the value of benefits for the proposed changes. No third-party recipient of this work product should rely upon this work for any purpose other than as stated. Such recipients should engage qualified professionals for advice appropriate to their own specific needs. The consultants who worked on this assignment are pension actuaries. Our advice is not intended to be a substitute for qualified legal, tax or accounting counsel.
- Future actuarial measurements may differ significantly from the current measurements presented in this report due to such factors as the following: plan experience differing from that anticipated by the economic or demographic assumptions; changes in economic or demographic assumptions; increases or decreases expected as part of the natural operation of the methodology used for these measurements (such as the end of an amortization period or

additional cost or contribution requirements based on the plan's funded status); and changes in plan provisions or applicable law.

- In preparing our report we relied, without audit, on information (some oral and some written) supplied by the City and the Administrator. This information includes, but is not limited to, statutory provisions, employee census, and financial information. In our examination of these data, we have found them to be reasonably consistent and comparable with data used for other purposes. Since the valuation results are dependent on the integrity of the data supplied, the results can be expected to differ if the underlying data is incomplete or missing. It should be noted that if any data or other information is inaccurate or incomplete, our calculations may need to be revised.
- We understand that the ASOP 51 disclosures in the actuarial valuation report provide sufficient risk assessment and are not being modified as part of this study.
- In producing our work product, we rely on various models, internal and external, which were used for their intended purposes. Underlying data, assumptions, methodologies, model inputs and resulting outputs have been reviewed.
- The signing actuaries are independent of the plan sponsor. We are not aware of any relationship that would impair the objectivity of our work.
- On the basis of the foregoing, we hereby certify that, to the best of our knowledge and belief, this report is complete and accurate and has been prepared in accordance with generally recognized and accepted actuarial principles and practices which are consistent with Actuarial Standards of Practice, the Code of Professional Conduct and Qualification Standards for Public Statements of Actuarial Opinion of the American Academy of Actuaries. We meet the Qualification Standards under the American Academy of Actuaries to render the actuarial opinion contained.

Please let us know if you have any questions or need additional information.

Sincerely,



Chad M. Little, ASA, EA
Partner, Consulting Actuary
Enrollment Number 23-6619



Paula C. Freiman, ASA, EA
Partner, Consulting Actuary
Enrollment Number 23-5796

CITY OF PORT ORANGE POLICE PENSION FUND

EXHIBIT A

Compare Current Plan to DRAFT Ordinance No. 2024-10

	Current Plan Before Any Changes		Draft Ord No. 2024-10	
	Tier 1 (Hire<1/31/11)	Tier 2 (Hire>1/31/11)	Tier 1 (Hire<1/31/11)	Tier 2 (Hire>1/31/11)
Employee Contributions:	7.5%	8.0%	7.5%	8.0%
Average Final Compensation (AFC):	3-Year Average	5-Year Average	3-Year Average	3-Year Average
Normal Retirement Date (NRD):	48/10 or 45/25	48/10	48/10 or 0/20	48/10 or 0/20
Multiplier:	3.00%	3.00%	3.00%	3.00%
Normal Retirement Benefit:	3.00% x AFC x Service PLUS If work 25+ Years, lesser of \$600 and (\$200 plus \$20 x Service Over 10 Years)	3.00% x AFC x Service PLUS lesser of \$200 and (\$100 plus \$10 x Service Over 10 Years)	3.00% x AFC x Service PLUS If work 25+ Years, lesser of \$600 and (\$200 plus \$20 x Service Over 10 Years)	3.00% x AFC x Service PLUS lesser of \$200 and (\$100 plus \$10 x Service Over 10 Years)
Early Retirement Date:	45/10	45/10	45/10	45/10
Early Retirement Benefit:	3% per year reduction from NRD	3% per year reduction from NRD	3% per year reduction from NRD	3% per year reduction from NRD
COLA:	If work 25+ Years, 3% annual COLA commencing age 59	None	If work 25+ Years, 3% annual COLA commencing age 59	None
Annual Benefit Cap:	\$95,000	\$95,000	\$95,000	\$95,000
DROP:	If work 25+ Years, monthly benefit accumulates at fund's net assumed return for 60 months	None	Eligible at NRD, monthly benefit accumulates at fund's net assumed return for 60 months	Eligible at NRD, monthly benefit accumulates at fund's net assumed return for 60 months

CITY OF PORT ORANGE POLICE PENSION FUND

EXHIBIT B

Ordinance No. 2024-10 DRAFT

Present Value of Benefits

Valuation as of October 1,	Valuation 2023	Ord. No. 2024-10 Draft 2023
1. Active Members		
a. Retirement Benefits	\$33,131,847	\$33,676,890
b. Deferred Benefits	1,357,882	1,427,828
c. Survivor Benefits	457,706	418,959
d. Disability Retirement	<u>474,173</u>	<u>412,075</u>
e. Total	\$35,421,608	\$35,935,752
2. Inactive Members		
a. Retirement and DROP	\$35,981,115	\$35,981,115
b. Terminated Vested	380,057	380,057
c. Beneficiaries	1,228,949	1,228,949
d. Disability Retirement	<u>3,978,699</u>	<u>3,978,699</u>
e. Total	\$41,568,820	\$41,568,820
3. Present Value of Benefits (PVB)	<u>\$76,990,428</u>	<u>\$77,504,572</u>
4. Change in PVB		\$514,144

CITY OF PORT ORANGE POLICE PENSION FUND

EXHIBIT C

Ordinance No. 2024-10 DRAFT

Accrued Liability and Funded Percentage

Valuation as of October 1,	Valuation 2023	Ord. No. 2024-10 Draft 2023
1. Active Members		
a. Retirement Benefits	\$24,539,176	\$25,323,589
b. Deferred Benefits	203,935	307,958
c. Survivor Benefits	56,591	51,387
d. Disability Retirement	<u>120,016</u>	<u>87,919</u>
e. Total	\$24,919,718	\$25,770,853
2. Inactive Members		
a. Retirement and DROP	\$35,981,115	\$35,981,115
b. Terminated Vested	380,057	380,057
c. Beneficiaries	1,228,949	1,228,949
d. Disability Retirement	<u>3,978,699</u>	<u>3,978,699</u>
e. Total	\$41,568,820	\$41,568,820
3. Accrued Liability (AL)	<u>\$66,488,538</u>	<u>\$67,339,673</u>
4. Actuarial Value of Assets	\$58,040,818	\$58,040,818
5. Unfunded Accrued Liability	\$8,447,720	\$9,298,855
6. Funded Percentage	87.29 %	86.19 %
7. Change in AL		\$851,135
8. Change in Funded Percentage		(1.10)%

CITY OF PORT ORANGE POLICE PENSION FUND

EXHIBIT D

Ordinance No. 2024-10 DRAFT

Normal Cost

Valuation as of October 1,	Valuation 2023	Ord. No. 2024-10 Draft 2023
1. Preliminary Normal Cost		
a. Retirement Benefits	\$1,092,539	\$1,092,547
b. Deferred Benefits	133,354	133,679
c. Survivor Benefits	52,377	49,770
d. Disability Retirement	<u>45,593</u>	<u>42,781</u>
e. Total	\$1,323,863	\$1,318,777
2. Total Normal Cost		
a. Preliminary Normal Cost	\$1,323,863	\$1,318,777
b. Estimated Administrative Expense	<u>180,825</u>	<u>180,825</u>
c. Total Normal Cost	\$1,504,688	\$1,499,602
d. Total Normal Cost as a % of Pay	30.26 %	31.63 %
3. Valuation Payroll	\$4,972,291	\$4,741,741
4. Change in Total Normal Cost		\$(5,086)
5. Change in Total Normal Cost as a % of Pay		1.37 %

CITY OF PORT ORANGE POLICE PENSION FUND

EXHIBIT E

Ordinance No. 2024-10 DRAFT

Valuation as of October 1, Required Contribution for FYE September 30,	Minimum Required Contribution	Ord. No. 2024-10
	Valuation 2023 2025	Draft 2023 2025
1. Normal Cost	\$1,504,688	\$1,499,602
2. Amortization of Unfunded Actuarial Liability	<u>897,429</u>	<u>959,127</u>
3. Minimum Required Contribution at Valuation Date [1. + 2.]	\$2,402,117	\$2,458,729
4. Minimum Required Contribution Projected to Beginning of Budget Year	\$2,566,662	\$2,627,152
5. Interest for Periodic Payments	<u>107,900</u>	<u>109,972</u>
6. Minimum Required Contribution Adjusted for Periodic Payments [4. + 5.]	\$2,674,562	\$2,737,124
7. Expected Employee Contributions	\$393,814	\$376,350
8. Expected State Contribution	583,717	583,717
9. Estimated City Contribution	<u>1,697,031</u>	<u>1,777,057</u>
10. Minimum Required Contribution for Funding Year	\$2,674,562	\$2,737,124
11. City Plus State Contribution	\$2,280,748	\$2,360,774
12. Expected Employee Contribution Rate	7.84%	7.86%
13. Expected State Contribution Rate	11.62%	12.19%
14. Estimated City Contribution Rate	<u>33.80%</u>	<u>37.10%</u>
15. Minimum Required Contribution Rate	53.26%	57.15%
16. City Plus State Contribution Rate	45.42%	49.29%
17. Payroll		
a. Valuation Payroll	\$4,972,291	\$4,741,741
b. Projected Valuation Payroll	\$5,022,014	\$4,789,158
c. Hired < January 31, 2011	1,589,396	1,356,540
d. Hired > January 31, 2011	3,432,618	3,432,618
18. Assumptions		
a. Net Assumed Investment Return	6.85%	6.85%
b. Contribution Projected to Next FY	6.85%	6.85%
c. Total Payroll Inflation	1.00%	1.00%
d. Payroll Inflation for Amortization of UAL	1.00%	1.00%
19. Increase in Estimated City Contribution		\$80,026
20. Increase in Estimated City Contribution Rate		3.30 %

ORDINANCE NO. 2024-10

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 54, ARTICLE V, POLICE PENSION FUND, AMENDING SECTION 54-122, DEFINITIONS, AMENDING THE DEFINITION OF "AVERAGE FINAL COMPENSATION"; AMENDING SECTION 54-126, PENSION BENEFITS, AMENDING THE NORMAL RETIREMENT AGE; AMENDING SECTION 54-127, FORM OF BENEFIT PAYMENTS, PROVIDING DROP ELIGIBILITY FOR CERTAIN MEMBERS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange, Florida has entered into a collective bargaining agreement with the Port Orange Police Association, I.U.P.A. Local 6051 (Police Officers and Sergeants) for the period October 1, 2023, through September 30, 2026; and

WHEREAS, the City of Port Orange, Florida has entered into a collective bargaining agreement with the Port Orange Coastal Florida Police Benevolent Association (Lieutenants) for the period April 1, 2024, through September 30, 2024; and

WHEREAS, the collective bargaining agreement contains changes to retirement benefits under the City of Port Orange Police Pension Fund; and

WHEREAS, in order to implement the changes to the Police Pension Fund contained in the collective bargaining agreement, an amendment to Chapter 54 of the City Code is necessary; and

WHEREAS, the City has obtained an actuarial impact statement concerning the retirement plan changes in accordance with Article X, Section 14 of the Florida Constitution and Section 112.63, Florida Statutes; and

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

SECTION 1: Section 54-122, Definitions, of the Port Orange Police Pension Fund

is hereby amended as follows:

Sec. 54-122. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

~~Average final compensation, for a participant hired on or before January 31, 2011,~~ shall mean one-twelfth of the average annual compensation of the three highest years of service prior to the employee's normal retirement date. ~~"Average final compensation" for a participant hired after January 31, 2011 shall mean one-twelfth of the average annual compensation of the five highest years of service prior to the employee's normal retirement date.~~ Effective January 31, 2011, annual compensation for all participants shall be as defined below.

* * *

SECTION 3: Section 54-126, Pension benefits, of the Port Orange Police

Pension Fund is hereby amended as follows:

Sec. 54-126. Pension benefits.

* * *

(b) *Normal retirement age.* The normal retirement age shall be the first day of the month on which or after the participant:

- (1) Attains age 48 and earns ten vesting credits, or
- (2) Earns 20 vesting credits irrespective of age.

~~Notwithstanding the preceding sentence, the normal retirement age for participants who are employed and not participating in the DROP on January 31, 2011, shall be the first day of the month on or after the participant:~~

- ~~(1) Attains age 48 and earns ten vesting credits, or~~

~~(2) Attains age 45 and earns 25 vesting credits;~~

~~and the normal retirement age for participants hired after January 31, 2011, shall be the first day of the month on or after the participant attains age 48 and earns ten vesting credits.~~

* * *

SECTION 3: Section 54-127, Forms of benefit payments, of the Port Orange Police Pension Fund is hereby amended as follows:

Sec. 54-127. Forms of benefit payments.

* * *

(c) Optional forms of benefits

* * *

(3) Deferred retirement option plan ("DROP").

a. Eligibility. A participant who has reached the normal retirement age ~~attained 25 years of service~~ may elect to enter the DROP. ~~Notwithstanding the preceding sentence, a participant hired after January 31, 2011, shall not be eligible to participate in the DROP.~~

* * *

SECTION 4. Specific authority is hereby granted to codify and incorporate this ordinance in the existing Code of Ordinances of the City of Port Orange.

SECTION 5. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 6. 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 7. This ordinance amendment shall take effect upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the ____ day of _____, 2024.

Passed and adopted on second and final reading on the ____ day of _____, 2024.

Reviewed and Approved: _____
Matthew J. Jones, City Attorney



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 7/16/2024

SUBJECT: (I19) Removal of Two Historic Live Oak Trees at 5005 S. Ridgewood Avenue - Port Orange Flea Market

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the after-the-fact tree removal permit for two historic Live Oak trees along with the mitigation payment of \$16,604 to the City's Tree Bank as recommended by the Environmental Advisory Board, and payment of the \$10,000 penalty fee for the removal of two historic trees without a permit as required by the LDC.

SUMMARY: On March 4, 2024, Code Enforcement staff received a complaint that historic trees were being removed at the Port Orange Flea Market at 5005 S. Ridgewood Avenue. Code Enforcement staff arrived on-site to find that one tree had been cut down, the other tree was being cut down, and the trees were cut down without a city permit. The City Forester evaluated the tree stumps and segments of the tree trunks and branches on-site and determined both trees were historic live oak trees, and their diameter at breast height (DBH) was 48 inches and 54 inches. The Land Development Code (LDC) defines a Live Oak tree with a 36-inch diameter at breast height (DBH) or greater as a historic tree.

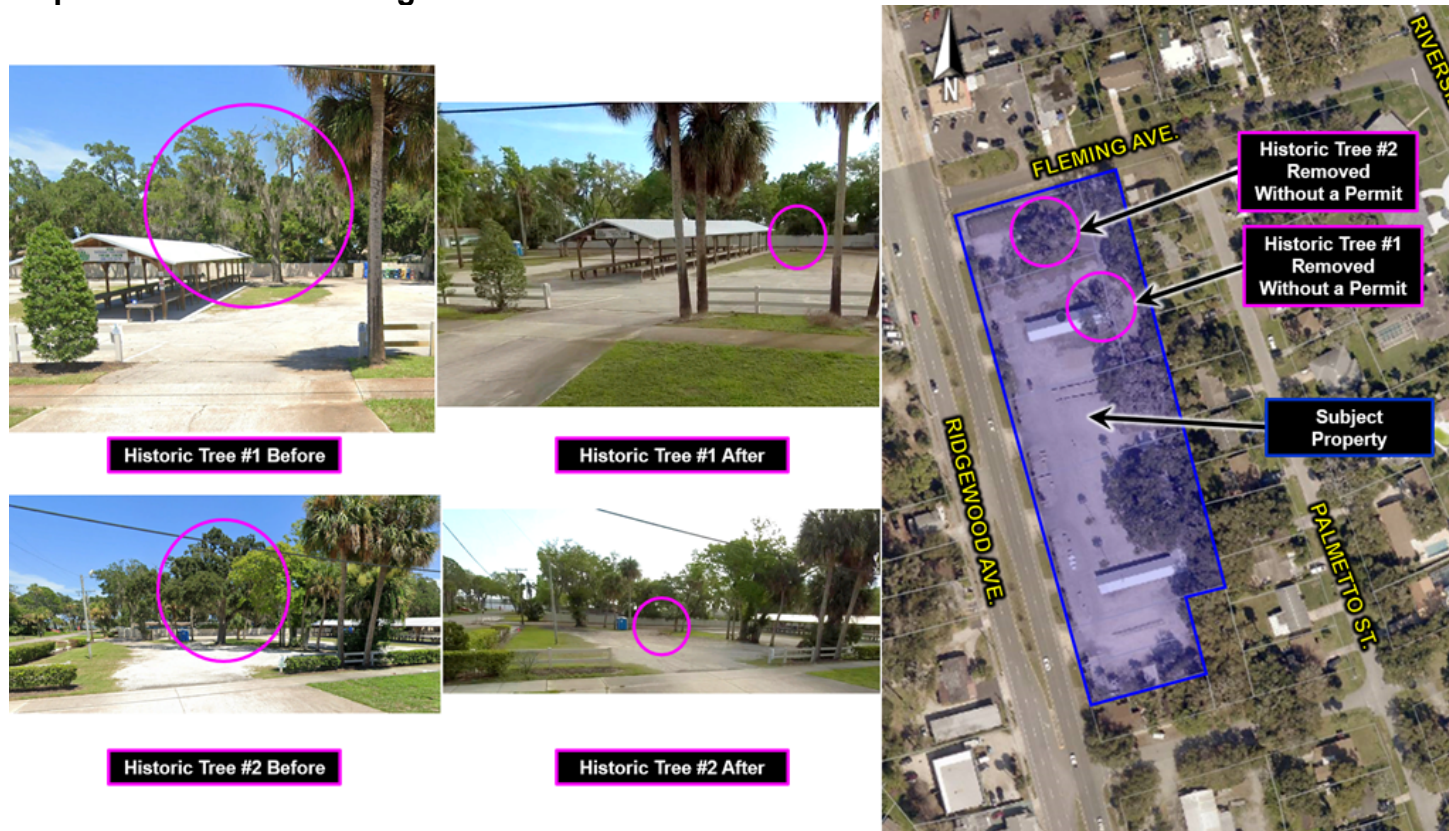
According to the LDC, if a historic tree is removed without obtaining a tree removal permit, the property owner is required to 1) submit an after-the-fact tree removal permit, 2) provide mitigation for the historic tree removed by either planting replacement trees, or make a payment to the City tree bank or a combination of both, 3) pay a \$5,000 fine for each historic tree removed without a permit, and 4) pay double the tree removal permit fee.

On March 8, 2024, Andy Clark, the representative for the property owner, 5005 Ridgewood LLC, submitted an after-the-fact tree removal permit for the two (2) historic trees cut down on March 4, 2024. According to the documents submitted with the permit, an arborist prepared an after-the-fact report that indicated the two (2) trees removed were diseased, and their diameter at breast height (DBH) was 36 inches and 48 inches.

According to Chapter 9, Article II, Section 16.5 of the LDC, if a historic tree is removed without city staff having an opportunity to inspect it to determine its health, then the historic tree shall be considered healthy as it relates to the requirements, mitigation, and

penalties in the LDC for the removal of a historic tree without a permit. Therefore, according to the LDC, the two (2) historic trees removed from the Port Orange Flea Market are considered healthy since city staff did not have an opportunity to inspect the trees before they were cut down. The City Forester also indicated that, based on his review of the tree stumps and segments of the tree trunks and branches on-site, both trees were healthy.

Map and Pictures Showing the Location of the Historic Trees Removed



According to the LDC, all non-residential historic tree removal permits, including after-the-fact tree removal permits, are required to go before the Environmental Advisory Board (EAB) for a recommendation on how the property owner is to mitigate the removal of the historic trees. After the EAB recommends a mitigation option, the after-the-fact tree removal permit goes before the City Council to approve the mitigation plan.

PENALTIES & MITIGATION REQUIRED BY THE LDC:

Mitigation

According to the LDC, the EAB may recommend mitigation for removing a historic tree based on the current tree mitigation resolution adopted by the City Council (Resolution No. 20-46). The EAB may allow the mitigation for the removal of a historic tree through a combination of planting replacement trees on the subject property and contribution to the city's tree bank, provided that the combination equals or exceeds the required percentage of the total cross-sectional area of the removed historic tree as established by Resolution No. 20-46. According to the LDC, mitigation is required in addition to the penalties listed above for removing a historic tree without a permit.

Environmental Advisory Board (EAB) Mitigation Recommendation:

At their April 22, 2024 meeting, the EAB recommended the property owner mitigate the removal of the two (2) historic trees with a mitigation payment of \$16,604 to the City's Tree Bank.

Penalties:

According to Chapter 9, Article II, Section 22.6(a) of the LDC, the property owner is required to pay a \$5,000 fine for removing a historic tree without a permit (\$10,000 total for the removal of two historic trees), and the after-the-fact tree removal permit fee is doubled (the double permit fee is \$360).

Andy Clark, representative for the property owner, 5005 Ridgewood LLC, is requesting that the \$10,000 penalty fee required by the LDC be waived since he was convinced by a tree contractor that the trees were diseased and hazardous to the public.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Staff Report - Historic Tree Removal - Port Orange Flea Market	Staff Report - Historic Tree Removal - Port Orange Flea Market.pdf
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Penelope Cruz	Created/Initiated - 4/18/2024
Tim Burman	Approved - 4/18/2024
Shannon Balmer	Approved - 7/8/2024
Wayne Clark	Approved - 7/9/2024
Tracee Cody	Final Approval - 7/10/2024



EAB AGENDA ITEM

EAB MEETING DATE 4/22/2024

CITY COUNCIL DATE 5/21/2024

SUBJECT: Recommendation of Mitigation Options for the Removal of Two Historic Live Oak Trees at 5005 S. Ridgewood Avenue - Port Orange Flea Market

DEPARTMENT: Community Development

REQUEST:

According to the Land Development Code (LDC), the Environmental Advisory Board is required to recommend a mitigation plan for the removal of a historic tree, as provided by city staff, based upon the current tree mitigation resolution adopted by the city council (Resolution 20-46). The EAB may allow mitigation by planting replacement trees on the subject property, contribution to the city's tree bank, or a combination that equals or exceeds 15% of the total cross-sectional area of the removed historic tree as established by Resolution 20-46.

SUMMARY:

On March 4, 2024, Code Enforcement staff received an anonymous complaint that historic trees were being removed at the Port Orange Flea Market at 5005 S. Ridgewood Avenue. Code Enforcement staff arrived on-site to find one tree had been cut down, and the other tree had been topped and was being cut down. The City Forester evaluated the tree stumps and segments of the tree trunks and branches on-site and determined both trees were healthy historic live oak trees, and their diameter at breast height (DBH) was 48 inches and 54 inches. The LDC defines a Live Oak tree with a 36-inch diameter at breast height (DBH) or greater as a historic tree.

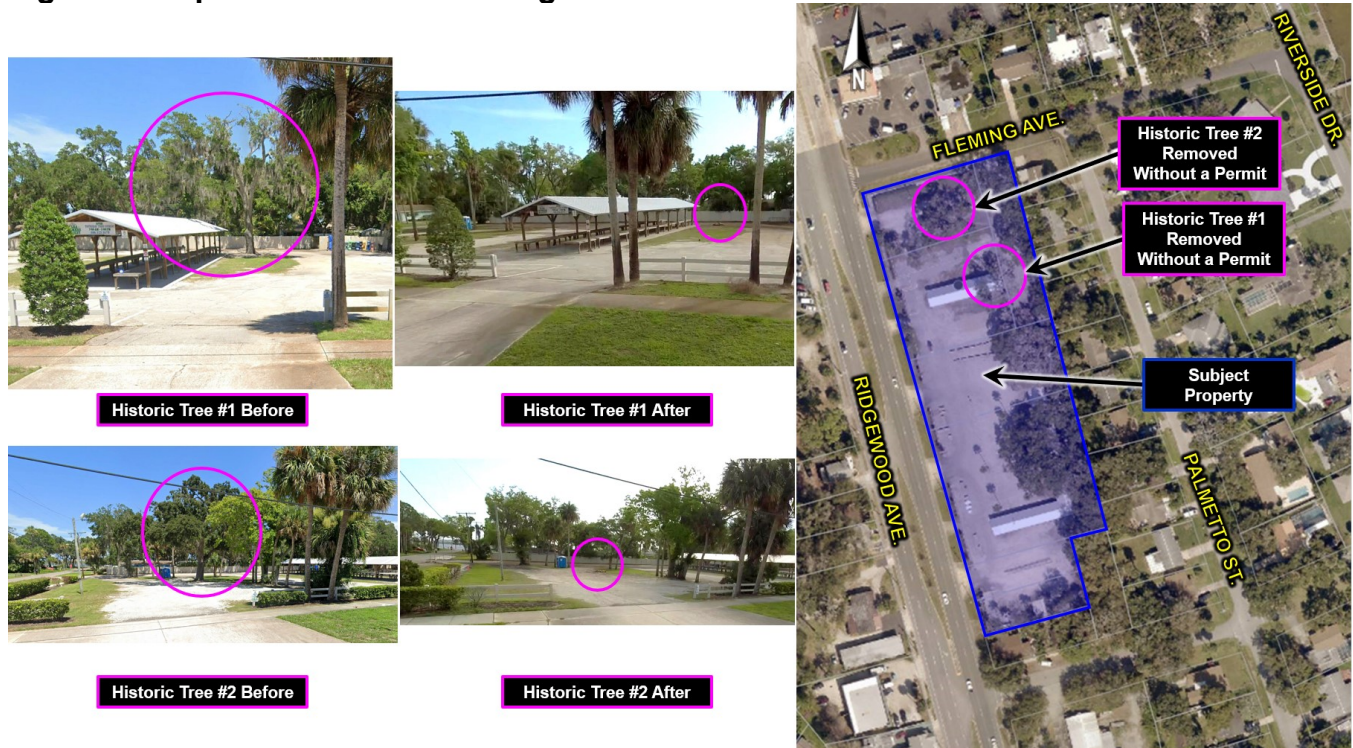
According to the Land Development Code (LDC), if a historic tree is removed without city staff having an opportunity to inspect it to determine its health, then the historic tree shall be considered healthy as it relates to the requirements, mitigation, and penalties in the LDC for the removal of a historic tree without a permit. Therefore, the two (2) historic trees that were removed from the Port Orange Flea Market have been determined to be healthy, per the LDC.

According to the LDC, if a historic tree is removed without obtaining a tree removal permit, the property owner is required to 1) submit an after-the-fact tree removal permit, 2) provide mitigation for the historic tree removed by either planting replacement trees or make a payment to the City tree bank or a combination of both, 3) pay a \$5,000 fine for each historic tree removed without a permit, and 4) pay double the tree removal permit fee. After the EAB recommends a mitigation option, the after-the-fact tree removal permit will go before the City Council.

According to the LDC, all non-residential historic tree removal permits, including after-the-fact tree removal permits, are required to go before the EAB for a recommendation on how the property owner is to mitigate for the removal of the historic trees and City Council for final review of the after-the-fact tree removal permit and approval of the mitigation plan.

On March 8, 2024, Andy Clark, representative for the property owner, 5005 Ridgewood LLC, submitted an after-the-fact tree removal permit for the two (2) historic trees cut down on March 4, 2024. According to the documents submitted with the permit, an arborist prepared an after-the-fact report that indicated the two (2) trees removed were diseased, and their diameter at breast height (DBH) was 36 inches and 48 inches. The report provided by the arborist was not dated and appeared to be prepared after the removal of the trees; it did not include photos and documentation of the risk level of the tree and did not provide a Tree Risk Assessment based on the ANSI A-300 as defined in the International Society of Arboriculture's Best Management Practice for Tree Risk Assessment (2017).

Figure 1. Map and Pictures Showing the Location of the Historic Trees Removed



PENALTIES & MITIGATION REQUIRED BY THE LDC:

Penalties:

According to Chapter 9, Article II, Section 22.6(a) of the LDC, the property owner is required to pay a \$5,000 fine for each historic tree removed without a permit, and the after-the-fact tree removal permit fee is doubled (double permit fee is \$360).

Mitigation

According to the LDC, the EAB may recommend mitigation for removing a historic tree, as provided by city staff, based upon the current tree mitigation resolution adopted by the city council (Resolution 20-46). The EAB may allow the mitigation for the removal of a historic tree through a combination of planting replacement trees on the subject property and contribution to the city's tree bank, provided that the combination equals or exceeds the required percentage of the total cross-sectional area of the removed historic tree as established by Resolution 20-46. According to the LDC, mitigation is required in addition to the penalties listed above for removing a historic tree without a permit.

48" Live Oak Tree

- a. Payment of \$7,329 into the tree bank (48-inch DBH @ 15% cross-sectional area = 271.43 x \$27.00); or
- b. Plant 17 trees on the subject property. The replacement trees shall be 4.5" caliper measured 12" above ground and 14' tall; or
- c. A combination of payment into the tree bank and replacement trees.

54" Live Oak Tree

- a. Payment of \$9,275 into the tree bank (54-inch DBH @ 15% cross-sectional area = 3,433.53 x \$27.00); or
- b. Plant 22 trees on the subject property. The replacement trees shall be 4.5" caliper measured 12" above ground and 14' tall; or
- c. A combination of payment into the tree bank and replacement trees.

This item is scheduled for City Council on May 21, 2024, and will include the mitigation recommendation made by the EAB in the City Council agenda item.

ATTACHMENTS:

Exhibit 1 – Email and pictures from Code Enforcement

Exhibit 2 – After-the-Fact Tree Removal Permit and Support Documents provided by the Property Owner.

Exhibit 3 – Resolution 20-46

EXHIBIT 1

Joseph, Dena

From: Joseph, Dena
Sent: Tuesday, March 5, 2024 10:23 AM
To: DeGrave, Flossie; Tomlinson, Margaret; Cameron, Suzette
Cc: Edgar, Steve; Bonin, Amanda
Subject: FW: Port Orange fleamarket historic Oak removal

Good morning all:

I wanted to bring something to your attention first thing as the property owners may be coming in to obtain an after-the-fact tree permit for this location. Two (2) historic oaks were removed from the property yesterday by a tree company hired by the manager/owner of the flea market. I measured them and one was around 48" and the other around 54" in diameter. I have attached photos of the debris, the company doing the work, etc. Steve came out and measured the trees as well and determined that they were both historic and that they were both healthy trees from what could be viewed from the remaining debris and stumps.

I contacted the manager of the property, Linda Sacks, yesterday afternoon and left her a message informing her of the situation. So, if anyone comes in, everyone is aware of what transpired at this location so that we can move forward with the proper fines and so forth.

Please let me know if you need anything else or have any other questions.

From: Joseph, Dena <djoseph@port-orange.org>
Sent: Tuesday, March 5, 2024 10:14 AM
To: Joseph, Dena <djoseph@port-orange.org>
Subject: Port Orange fleamarket historic Oak removal

Mar 4, 2024 at 3:28:38 PM







Mar 4, 2024 at 3:23:06 PM

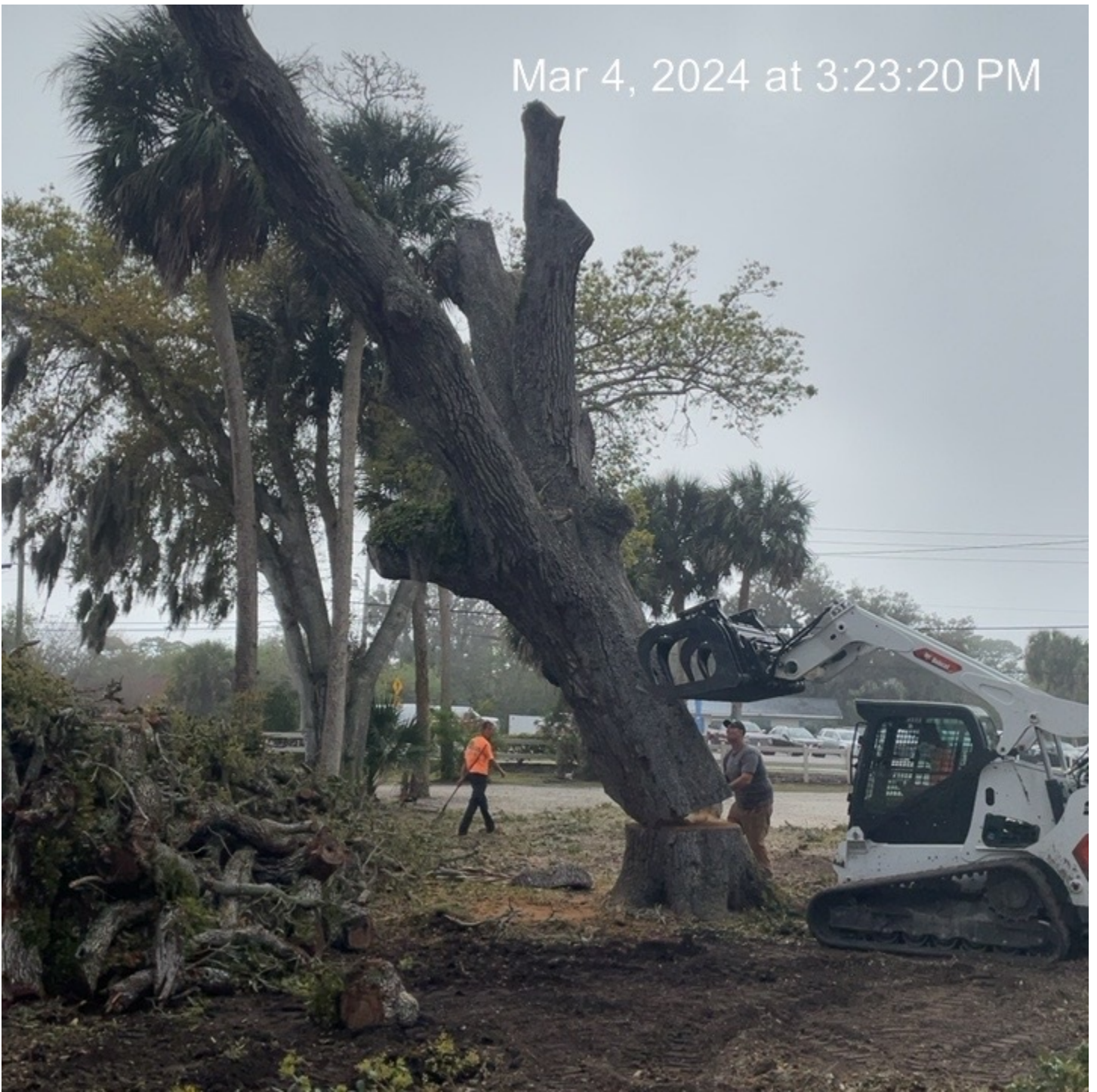








Mar 4, 2024 at 3:23:20 PM



Mar 4, 2024 at 3:25:18 PM





Mar 4, 2024 at 3:28:01 PM





Sent from my iPhone



CITY OF PORT ORANGE

 1000 CITY CENTER CIRCLE PORT ORANGE, FL 32129
 PHONE 386-506-5602 FAX 386-506-5699
*After-the-Fact***TREE REMOVAL PERMIT APPLICATION**
 TREE TYPE: ☐ RESIDENTIAL
 (One/Two-Family Lots)

☒ COMMERCIAL
 (Multi-Family/Commercial/Industrial Lots)

☒ HISTORIC*

*Live Oak and Bald Cypress trees 36 inches in diameter or greater may only be removed upon approval by the City Council.

 JOB ADDRESS & SUBDIVISION: 5001- 5029 S. RIDGEWOOD AVE.

 PROPERTY OWNER: Port Orange Flex Market, LLC

 ADDRESS: 5111 S. Ridgewood Ave., Suite 201, Port Orange, FL 32127

 PHONE NO.: 386-527-6365 (cell) EMAIL: aclark@goallaboard.com

 CONTRACTOR NAME: Charles Woods and Shawn Pruner

 BUSINESS NAME: Woods Land and Tree Removal, LLC

 PHONE NO.: 386-679-9319 EMAIL: shawn.pruner@gmail.com

DESCRIPTION OF PROPOSED TREE(S) TO BE REMOVED (List: quantity, size [diameter of trunk], and type, i.e. 2-6" oaks):

Remove one diseased 36" oak & one diseased 48" oak
The whole top of the trees would wobble by shaking a limb.

 REASON FOR REMOVAL: We are afraid these trees will fall damaging property or injuring our customers!

Port Orange Land Development Code may require tree replacements when removing a tree or trees from the property. The replacements will be noted on your permit.

Residential:

Fill out the "Tree Removal Sketch" on Page 2 of this application, showing all trees on the subject property to be removed as well as those remaining after the proposed removal.

Commercial:

This application must be accompanied by a sketch or survey showing all trees to be removed. This information will be compared to the approved Site Plan and other City records to determine if the proposed removal can be permitted, and what replacement(s), if any, is required by City Code. On older properties where records are not complete, additional information may be required.

SOME AREAS HAVE PRIVATE DEED COVENANTS AND RESTRICTIONS ON TREE REMOVAL. A CITY PERMIT IS ONLY TO ENSURE COMPLIANCE TO CITY AND STATE CODES. THE OWNER IS RESPONSIBLE FOR OBTAINING ANY PRIVATE ASSOCIATION APPROVAL BEFORE WORK IS STARTED.

I HEREBY CERTIFY THE INFORMATION SUBMITTED ON THIS APPLICATION TO BE TRUE AND ACCURATE;

 PROPERTY OWNER SIGNATURE: D. Andrew Clark DATE: March 5, 2024

 or
 HOA REPRESENTATIVE (if applicable)

 CONTRACTOR SIGNATURE: [Signature] DATE: 3/8/24



South Tree
Flea Market



South Tree
Flea Market



South tree
Flea Market



South Tree
Flea Market



North Tree
Flea Market



North Tree
Flea Market



North Tree
Pine Market



North Tree
File Market



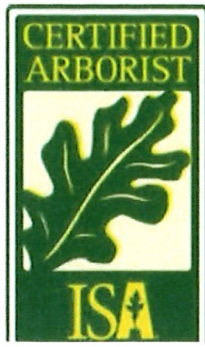
North Tree
Flea Market



North Tree
Flex Market



North Tree
Flea Market



Client: Linda Sacks

Address: 5005 South Ridgewood ave.

Port Orange, FL 32127

Reason for Inspection: Client is concerned with the health of this tree.

Specimen Details: Tree #1 is a 36 " DBH live oak (*Quercus virginiana*) exhibiting signs of decay and base rot. The upper canopy has significant signs of white rot with geo tropic growth. Structure target within drip line of specimen. Major root development impacting underground utility. Large leaders have failed in the past causing access moisture to enter xylem further, causing rapid decay. Carpenter infestation active and present.

Specimen Details: tree #2 is a 48" DBH live oak (*Quercus virginiana*) with major cavities and uncomp decay due to poor trimming methods in the past. This base caused the branch protection zone to become compromised.

Conclusion: In abnormal wind conditions failure can occur.

Recommendation: Removal for tree 1 and tree 2.

Michael Feltner

ISA Certified Arborist FL9716-A

(no subject)

1 message

Andy Clark <aclark@goallaboard.com>
To: Andy Clark <aclark@goallaboard.com>

Tue, Mar 5, 2024 at 11:55 AM

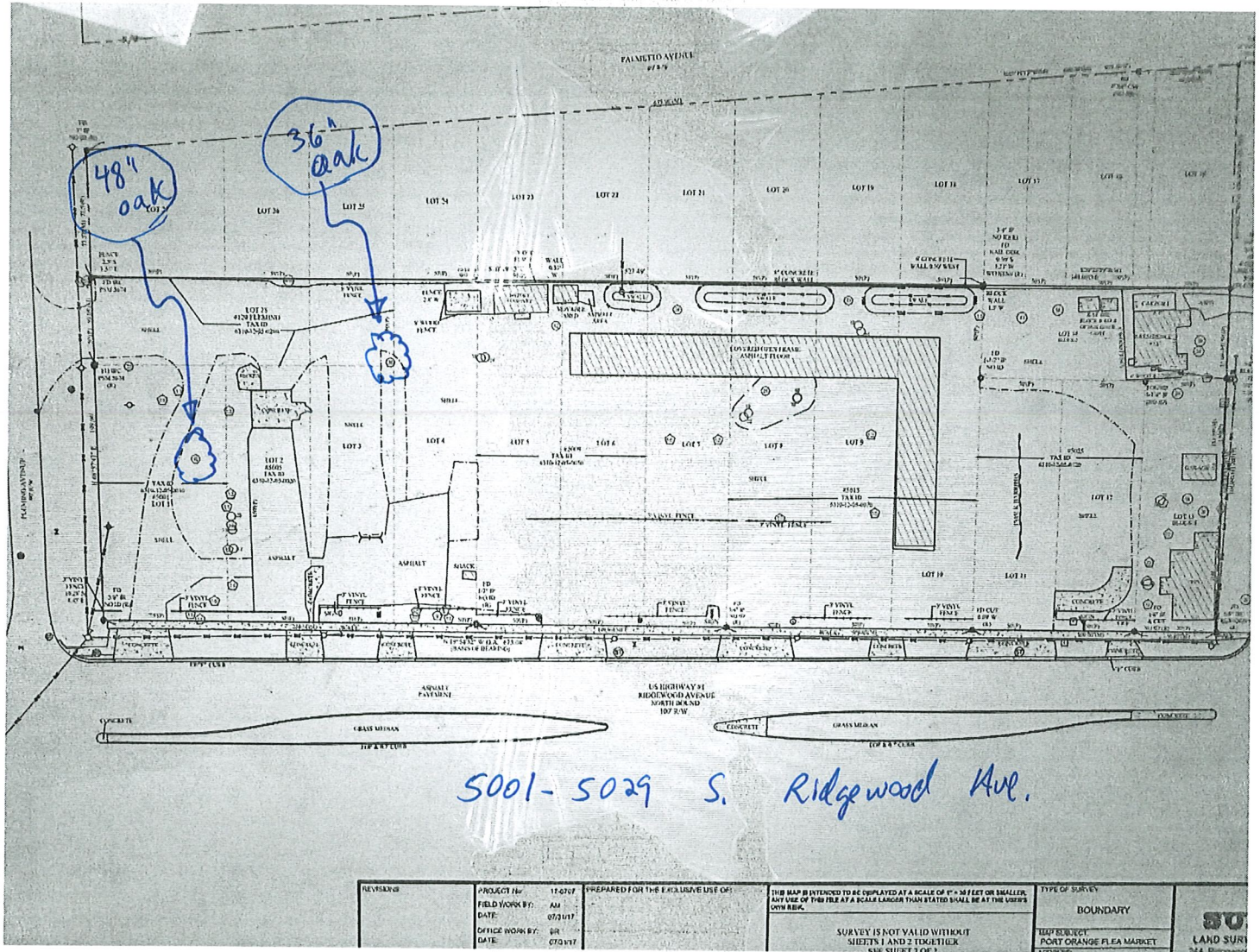


EXHIBIT 3

RESOLUTION NO. 20-46

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; ADOPTING MITIGATION TABLES FOR HISTORIC TREE REMOVAL ON RESIDENTIAL AND NONRESIDENTIAL PROPERTY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article II of Chapter 9 of the City of Port Orange Land Development Code authorizes adoption of mitigation tables for historic tree removal on residential and nonresidential property by resolution of the City Council of the City of Port Orange; and

WHEREAS, pursuant to this authority the City hereby adopts mitigation tables for historic tree removal on residential and nonresidential property by resolution; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Port Orange, Florida as follows:

SECTION 1. The City Council of the City of Port Orange hereby adopts the Mitigation Table for removal of Healthy Historic Trees, attached hereto as **Exhibit "A."**

SECTION 2. The City Council of the City of Port Orange hereby adopts the Mitigation Table for removal of Diseased or Deteriorated Historic Trees, attached hereto as **Exhibit "B."**

SECTION 3. The City Council of the City of Port Orange hereby adopts the Mitigation Table for removal of Healthy Historic Trees Removed Without a Permit, attached hereto as **Exhibit "C."**

SECTION 4. The City Council of the City of Port Orange hereby adopts the Mitigation Table for removal of Diseased or Deteriorated Historic Trees Removed Without a Permit, attached hereto as **Exhibit "D."**

SECTION 5. All resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed to the extent of such conflict.

SECTION 6. This resolution shall become effective immediately upon adoption.


MAYOR DONALD O. BURNETTE

ATTEST:


Robin L. Fenwick, MMC, City Clerk



Adopted on the 15 day of September, 2020.

Reviewed and Approved: 
Shannon K. Balmer, Assistant City Attorney

EXHIBIT A HEALTHY HISTORIC TREES**15% CROSS SECTIONAL AREA REPLACEMENT**

MITIGATION FOR HISTORIC TREES ON MULTI-FAMILY, COMMERCIAL, INDUSTRIAL OR INSTITUTIONAL LOTS

A	B	C	D	
SIZE OF TREE BEING REMOVED	15% CROSS SECTIONAL AREA IN SQUARE INCHES	# OF 4 1/2" CALIPER TREES REQUIRED FOR REPLACEMENT	TREE BANK CONTRIBUTION*	
36	152.68	10	B x \$27 =	\$ 4,122
37	161.28	10	B x \$27 =	\$ 4,355
38	170.12	11	B x \$27 =	\$ 4,593
39	179.19	11	B x \$27 =	\$ 4,838
40	188.50	12	B x \$27 =	\$ 5,089
41	198.04	12	B x \$27 =	\$ 5,347
42	207.82	13	B x \$27 =	\$ 5,611
43	217.83	14	B x \$27 =	\$ 5,881
44	228.08	14	B x \$27 =	\$ 6,158
45	238.57	15	B x \$27 =	\$ 6,441
46	249.29	16	B x \$27 =	\$ 6,731
47	260.24	16	B x \$27 =	\$ 7,027
48	271.43	17	B x \$27 =	\$ 7,329
49	282.86	18	B x \$27 =	\$ 7,637
50	294.53	19	B x \$27 =	\$ 7,952
51	306.42	19	B x \$27 =	\$ 8,273
52	318.56	20	B x \$27 =	\$ 8,601
53	330.93	21	B x \$27 =	\$ 8,935
54	343.53	22	B x \$27 =	\$ 9,275
55	356.38	22	B x \$27 =	\$ 9,622
56	369.45	23	B x \$27 =	\$ 9,975
57	382.76	24	B x \$27 =	\$ 10,335
58	396.31	25	B x \$27 =	\$ 10,700
59	410.10	26	B x \$27 =	\$ 11,073
60	424.12	27	B x \$27 =	\$ 11,451
61	438.37	28	B x \$27 =	\$ 11,836
62	452.86	28	B x \$27 =	\$ 12,227
63	467.59	29	B x \$27 =	\$ 12,625
64	482.55	30	B x \$27 =	\$ 13,029
65	497.75	31	B x \$27 =	\$ 13,439
66	513.18	32	B x \$27 =	\$ 13,856
67	528.85	33	B x \$27 =	\$ 14,279
68	544.75	34	B x \$27 =	\$ 14,708
69	560.89	35	B x \$27 =	\$ 15,144
70	577.27	36	B x \$27 =	\$ 15,586
71	593.88	37	B x \$27 =	\$ 16,035
72	610.73	38	B x \$27 =	\$ 16,490
73	627.81	39	B x \$27 =	\$ 16,951
74	645.13	41	B x \$27 =	\$ 17,418
75	662.68	42	B x \$27 =	\$ 17,892

* \$27 - ACCEPTED NATIONAL VALUE PER SQUARE INCH

EXHIBIT B DISEASED OR DETERIORATED HISTORIC TREES**5% CROSS SECTIONAL AREA REPLACEMENT**

MITIGATION FOR HISTORIC TREES ON MULTI-FAMILY, COMMERCIAL, INDUSTRIAL OR INSTITUTIONAL LOTS

A	B	C	D	
SIZE OF TREE BEING REMOVED	5% CROSS SECTIONAL AREA IN SQUARE INCHES	# OF 4 1/2" CALIPER TREES REQUIRED FOR REPLACEMENT	TREE BANK CONTRIBUTION*	
36	50.89	3	B x \$27 =	\$ 1,374
37	53.76	3	B x \$27 =	\$ 1,452
38	56.71	4	B x \$27 =	\$ 1,531
39	59.73	4	B x \$27 =	\$ 1,613
40	62.83	4	B x \$27 =	\$ 1,696
41	66.01	4	B x \$27 =	\$ 1,782
42	69.27	4	B x \$27 =	\$ 1,870
43	72.61	5	B x \$27 =	\$ 1,960
44	76.03	5	B x \$27 =	\$ 2,053
45	79.52	5	B x \$27 =	\$ 2,147
46	83.10	5	B x \$27 =	\$ 2,244
47	86.75	5	B x \$27 =	\$ 2,342
48	90.48	6	B x \$27 =	\$ 2,443
49	94.29	6	B x \$27 =	\$ 2,546
50	98.18	6	B x \$27 =	\$ 2,651
51	102.14	6	B x \$27 =	\$ 2,758
52	106.19	7	B x \$27 =	\$ 2,867
53	110.31	7	B x \$27 =	\$ 2,978
54	114.51	7	B x \$27 =	\$ 3,092
55	118.79	7	B x \$27 =	\$ 3,207
56	123.15	8	B x \$27 =	\$ 3,325
57	127.59	8	B x \$27 =	\$ 3,445
58	132.10	8	B x \$27 =	\$ 3,567
59	136.70	9	B x \$27 =	\$ 3,691
60	141.37	9	B x \$27 =	\$ 3,817
61	146.12	9	B x \$27 =	\$ 3,945
62	150.95	9	B x \$27 =	\$ 4,076
63	155.86	10	B x \$27 =	\$ 4,208
64	160.85	10	B x \$27 =	\$ 4,343
65	165.92	10	B x \$27 =	\$ 4,480
66	171.06	11	B x \$27 =	\$ 4,619
67	176.28	11	B x \$27 =	\$ 4,760
68	181.58	11	B x \$27 =	\$ 4,903
69	186.96	12	B x \$27 =	\$ 5,048
70	192.42	12	B x \$27 =	\$ 5,195
71	197.96	12	B x \$27 =	\$ 5,345
72	203.58	13	B x \$27 =	\$ 5,497
73	209.27	13	B x \$27 =	\$ 5,650
74	215.04	14	B x \$27 =	\$ 5,806
75	220.89	14	B x \$27 =	\$ 5,964

* \$27 - ACCEPTED NATIONAL VALUE PER SQUARE INCH

EXHIBIT C HEALTHY HISTORIC TREES
REMOVED WITHOUT A PERMIT
MITIGATION FOR HISTORIC TREES ON SINGLE AND TWO-FAMILY LOTS

A	B	C	
SIZE OF TREE BEING REMOVED	15% CROSS SECTIONAL AREA IN SQUARE INCHES	TREE BANK CONTRIBUTION*	
36	152.68	B x \$27 =	\$ 4,122
37	161.28	B x \$27 =	\$ 4,355
38	170.12	B x \$27 =	\$ 4,593
39	179.19	B x \$27 =	\$ 4,838
40	188.50	B x \$27 =	\$ 5,089
41	198.04	B x \$27 =	\$ 5,347
42	207.82	B x \$27 =	\$ 5,611
43	217.83	B x \$27 =	\$ 5,881
44	228.08	B x \$27 =	\$ 6,158
45	238.57	B x \$27 =	\$ 6,441
46	249.29	B x \$27 =	\$ 6,731
47	260.24	B x \$27 =	\$ 7,027
48	271.43	B x \$27 =	\$ 7,329
49	282.86	B x \$27 =	\$ 7,637
50	294.53	B x \$27 =	\$ 7,952
51	306.42	B x \$27 =	\$ 8,273
52	318.56	B x \$27 =	\$ 8,601
53	330.93	B x \$27 =	\$ 8,935
54	343.53	B x \$27 =	\$ 9,275
55	356.38	B x \$27 =	\$ 9,622
56	369.45	B x \$27 =	\$ 9,975
57	382.76	B x \$27 =	\$ 10,335
58	396.31	B x \$27 =	\$ 10,700
59	410.10	B x \$27 =	\$ 11,073
60	424.12	B x \$27 =	\$ 11,451
61	438.37	B x \$27 =	\$ 11,836
62	452.86	B x \$27 =	\$ 12,227
63	467.59	B x \$27 =	\$ 12,625
64	482.55	B x \$27 =	\$ 13,029
65	497.75	B x \$27 =	\$ 13,439
66	513.18	B x \$27 =	\$ 13,856
67	528.85	B x \$27 =	\$ 14,279
68	544.75	B x \$27 =	\$ 14,708
69	560.89	B x \$27 =	\$ 15,144
70	577.27	B x \$27 =	\$ 15,586
71	593.88	B x \$27 =	\$ 16,035
72	610.73	B x \$27 =	\$ 16,490
73	627.81	B x \$27 =	\$ 16,951
74	645.13	B x \$27 =	\$ 17,418
75	662.68	B x \$27 =	\$ 17,892

**Replacement tree schedule will follow the existing LDC requirements based on the size of the lot (1 shade tree/2,500

* \$27 - ACCEPTED NATIONAL VALUE PER SQUARE INCH

**EXHIBIT D DISEASED OR DETERIORATED HISTORIC TREES
REMOVED WITHOUT A PERMIT
MITIGATION FOR HISTORIC TREES ON SINGLE AND TWO-FAMILY LOTS**

A	B	D	
SIZE OF TREE BEING REMOVED	5% CROSS SECTIONAL AREA IN SQUARE INCHES	TREE BANK CONTRIBUTION*	
36	50.89	B x \$27 =	\$ 1,374
37	53.76	B x \$27 =	\$ 1,452
38	56.71	B x \$27 =	\$ 1,531
39	59.73	B x \$27 =	\$ 1,613
40	62.83	B x \$27 =	\$ 1,696
41	66.01	B x \$27 =	\$ 1,782
42	69.27	B x \$27 =	\$ 1,870
43	72.61	B x \$27 =	\$ 1,960
44	76.03	B x \$27 =	\$ 2,053
45	79.52	B x \$27 =	\$ 2,147
46	83.10	B x \$27 =	\$ 2,244
47	86.75	B x \$27 =	\$ 2,342
48	90.48	B x \$27 =	\$ 2,443
49	94.29	B x \$27 =	\$ 2,546
50	98.18	B x \$27 =	\$ 2,651
51	102.14	B x \$27 =	\$ 2,758
52	106.19	B x \$27 =	\$ 2,867
53	110.31	B x \$27 =	\$ 2,978
54	114.51	B x \$27 =	\$ 3,092
55	118.79	B x \$27 =	\$ 3,207
56	123.15	B x \$27 =	\$ 3,325
57	127.59	B x \$27 =	\$ 3,445
58	132.10	B x \$27 =	\$ 3,567
59	136.70	B x \$27 =	\$ 3,691
60	141.37	B x \$27 =	\$ 3,817
61	146.12	B x \$27 =	\$ 3,945
62	150.95	B x \$27 =	\$ 4,076
63	155.86	B x \$27 =	\$ 4,208
64	160.85	B x \$27 =	\$ 4,343
65	165.92	B x \$27 =	\$ 4,480
66	171.06	B x \$27 =	\$ 4,619
67	176.28	B x \$27 =	\$ 4,760
68	181.58	B x \$27 =	\$ 4,903
69	186.96	B x \$27 =	\$ 5,048
70	192.42	B x \$27 =	\$ 5,195
71	197.96	B x \$27 =	\$ 5,345
72	203.58	B x \$27 =	\$ 5,497
73	209.27	B x \$27 =	\$ 5,650
74	215.04	B x \$27 =	\$ 5,806
75	220.89	B x \$27 =	\$ 5,964

**Replacement tree schedule will follow the existing LDC requirements based on the size of the lot (1 shade tree/2,500

* \$27 - ACCEPTED NATIONAL VALUE PER SQUARE INCH